



WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1998

LEGISLATIVE COUNCIL

Wednesday, 1 April 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 4.00 pm, and read prayers.

YANCHEP NATIONAL PARK SWIMMING POOL

Petition

Hon Ken Travers presented the following petition bearing the signatures of 38 persons -

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

We, the undersigned residents of Western Australia oppose the closure of the swimming pool at Yanchep National Park.

We believe the pool is important to:

- (1) The heritage of the National Park.
- (2) The community in Yanchep and Two Rocks.
- (3) Local children having access to swimming lessons.

We call on the Government to urgently repair the pool to enable it to open this summer.

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

[See paper No 1487.]

MANJIMUP SHIRE TOWN PLANNING SCHEME AMENDMENT No 74

Petition

Hon Bob Thomas presented a petition, by delivery to the Clerk, from 50 persons praying that the Government reject Amendment 74 to the Manjimup Shire Town Planning Scheme.

[See paper No 1486.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Report on the Rottnest Island Amendment Regulations 1997

Hon N.D. Griffiths presented the "Thirtieth Report of the Joint Standing Committee on Delegated Legislation on the Rottnest Island Amendment Regulations 1997", and on his motion it was resolved -

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

[See paper No 1488.]

PARLIAMENT HOUSE

Visitors and Guests

The PRESIDENT: I take the opportunity to welcome to the Legislative Council a number of members of the Commonwealth Parliamentary Association who are visiting Western Australia as part of a study group. They are Mr Matataualiitia Afa Lesa, MP from Samoa, Mr Leituala Tone Tuuaga, MP from Samoa, the honourable Baki Reipa, MP from the Eastern Highlands Province of Papua New Guinea, the honourable Gallus Yumbui, MP from East Sepik Province in Papua New Guinea, the honourable Aloysius Amwano, MP from Nauru and the honourable Dogabe Jeremiah, MP also from Nauru. I also welcome Brenda Herd, a commonwealth liaison officer who is accompanying our CPA colleagues around Australia. Welcome to Perth, Western Australia. I hope that your study tour is both successful and worthwhile.

[Applause.]

STANDING COMMITTEE ON ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Salinity in Western Australia - Amendments to Motion

Resumed from 18 March on the following motion -

That the House calls on the Standing Committee on Ecologically Sustainable Development to examine the salinity problems facing Western Australia and to report every three months on the Government's progress on implementing the State's salinity action plan.

to which the following amendments were moved -

- (a) To delete the words "every three months" and substitute the words "annually, the first report to be tabled not later than December 31 1998.";
- (b) to delete the word "Government's"; and
- (c) to delete the words "on implementing" and substitute the words "of implementation of".

to which the following amendment was moved -

To delete the word "annually" and substitute the words "not less than once a year" in paragraph (a).

HON M.D. NIXON (Agricultural) [4.04 pm]: When last speaking on this matter I mentioned that in many areas different circumstances cause salinity and therefore it is important that appropriate measures be taken depending on the circumstances. One of the most important things that has happened in Western Australia in recent years is the use of plants, particularly in the forest areas and in the area of paper pulp. The only complaint that could be made is that in many country areas, very valuable agricultural land has been going back under trees. There are two things to bear in mind if this happens. Firstly, in the short term there is a loss of people in the community because the forestry industry does not require the number of workers that are required in a grazing or cropping situation. Once the forest is well established and becomes ready for pruning or particularly for cutting, a different situation arises. We should as a community bear in mind that, just as there is good reason to consider whether areas should be planted with trees, perhaps there is good reason to consider whether in certain areas, only the areas which are best for soil conservation should be planted under trees and some agricultural country would be best left as agricultural country for the benefit of the total community.

The most important thing to come out of the salinity debate is that there are communities and individuals who have been very badly affected by clearing bans. The strange thing is that under our current arrangements, if an area has been over cleared, those who have over cleared are not required to plant trees, but those who have not over cleared their areas are prevented from clearing those areas. This could be a way the community is setting up what might be called national parks at the expense of individuals. Sooner or later the community must decide that if it wants private land reserved for non-agricultural purposes, the community will have to pay for keeping that land out of agricultural production, because the individuals cannot always afford to do it. If the community values these remnant vegetation areas as it pretends it does, it will have to pay compensation for it. I believe there is no benefit in reviewing the salinity plan any more often than annually because it is an ongoing process which will not happen in a hurry, and I am sure that if the matter is kept under review once a year, that is all that will be required.

HON PETER FOSS (East Metropolitan - Attorney General) [4. 08 pm]: I can speak with some knowledge of how this particular plan evolved because the salinity plan was prepared by the chief executive officers of Agriculture Western Australia, the Department of Conservation and Land Management, the Department of Environmental Protection and the Water and Rivers Commission, and at that time I was the Minister responsible for three of those four departments, so I have some inside knowledge of the background to the preparation of this plan.

My father-in-law is an ex forester and he says that back in the 1920s and 1930s, he drew the attention of farmers to the problem of salinity. I can remember that when I was preparing school projects, I obtained books prepared by the Bank of New South Wales as it was then called dealing with problems with the land including in particular salinity. Those publications were available in the late 1940s and early 1950s. It is not as if the problem is a new one. It is not as if it is a problem which has been newly discovered. It is a problem which people have been talking about for a long time. It is a problem which people have in some minor way been addressing for a long time. It has been subject to much denial. When I first became Minister for the Environment I thought that nothing matched salinity as the most serious problem facing the environment in Western Australia. I think it was reported in the newspaper.

Hon Bob Thomas: It is about the only time you have been right.

Hon PETER FOSS: I am very grateful to Hon Bob Thomas for pointing out that I was right.

Hon Kim Chance: In a very exclusive sense.

Hon PETER FOSS: It is an exclusive situation for a politician.

It struck me that it was a very important problem for a number of reasons. The obvious one to farmers was the effect it had on their incomes. A farmer depends on the quality of his soil to produce viable crops and therefore provide an income. For many years farmers have been aware that they have been losing good, arable land to salt.

The real problem that aggravated the situation was that not only cleared land but also all land in an area was subject to salt. Throughout much of the State we have a very serious problem with remnant vegetation. The Department of Conservation and Land Management has many small reserves throughout the wheatbelt. They are at risk for a number of reasons: It is much harder to maintain an ecosystem - particularly for animals - in small areas than in large areas of land. They are subject to the invasion of weeds. As shire councils burn-off as a precaution against fires, the invasion of weeds becomes more extensive. The weeds encroach further into the reserve, so the shire councils burn off more and the cycle continues.

Occasionally farmers do not mind their stock wandering into reserves because they provide good fodder and protection. Sometimes it is about the only fodder around. Reserves that are not fenced from stock are ultimately doomed; we can forget remnant vegetation which is not protected from stock. It might not be dead now, but given time it will be dead.

Hon Kim Chance: You are quite right.

Hon PETER FOSS: However, the creeping menace is the salt. The land that turns to salt is not only land under cultivation but also land that is not under cultivation. Future watertables in the agricultural areas where some reserves exist are in their final stages. Their days are numbered unless something is done about the rising watertable. We have few enough; they are fragile enough; and they are threatened enough. Add salt to that situation and almost nothing is left of the remnant vegetation throughout our wheatbelt.

It is interesting to see how this happened. I have heard people say we should get away from the motor car and use horses because they are much more environmentally friendly than cars; they do not use fossil fuels. Many wheatbelt towns are having their centenaries. In 1895, as a result of gold discoveries, Perth expanded enormously and so did the need for transport. Therefore more horses were introduced into the area. With more horses, more fodder was required. The traditional wheatbelt area was wiped out to grow food for horses. It is too simplistic to say that vehicles that are more environmentally friendly than cars should be used. Horses have some unfriendly habits such as continually consuming food which must be grown somewhere. In that case it was grown in the wheatbelt.

Hon J.A. Cowdell: Greens to blame for this as well?

Hon PETER FOSS: No, it is one of the interesting aspects about the environment. What seems like a simple solution in fact is not. I am sure Hon Christine Sharp will be fully aware that we cannot change only one aspect; we must change many. In one way or another everything we do in society impinges on our environment. It is too simple to say we should have horses rather than cars. We will not alleviate problems by doing that. It is an interesting historical point that the devastation of our wheatbelt took place in order to feed horses.

Although everybody knew about this problem and was trying to do something about it, what was achieved? Very keen farmers became involved in land care groups and in planting trees that died. They were trying to do something but did not know what to do. As one moves around the countryside one hears people say that they do not know what to do about the problem. All sorts of fads and theories have been put forward. Although the salinity problem has evolved over 100 years, it will take much longer than 100 years to fix.

Many people planted trees which grew beautifully for about 15 years, or sometimes only five, until they hit the salt and died. The place where the trees should be planted is not where the problem is but further up the catchment. However, the people in that area do not feel like doing anything about it because they do not have a problem.

It is a bit like the old man in Arkansas who sat in his cabin door. When it was raining the water poured in through the holes in his roof, but it was too wet to fix it. When it did not rain the roof did not need fixing. The people with the holes in their roofs cannot fix them because there is too much salt and the people who do not have holes in their roofs do not want to fix them because they do not have a problem. That is our difficulty. I am very conscious that salt is life threatening - it threatens our economy and our ecology. I made that statement. I make another statement but I do not want it to be seen to be critical: At my first meeting with the Conservation Council of Western Australia I asked each member - I think there were about a dozen people - what he thought about the environmental problem facing Western Australia. I heard about trees, contamination and various other matters, but no-one mentioned salt. When I pointed out that nobody had said anything about salinity, they all agreed it was a problem. However, nobody saw it as their portfolio to solve the problem of salt.

Hon Kim Chance: It confirms many people's opinion of the Conservation Council.

Hon PETER FOSS: I do not want to be critical. It seemed to confirm society's opinion which they were representing. Salt is seen as too big a problem for an individual. Even the people with large amounts of land who were trying to take steps to improve the situation knew that individually they could do nothing. They knew that it required a concerted effort over decades.

Where do we start with a problem like this? What do we do? A salinity plan was commissioned and a document was served up to me which, to put it mildly, as a strategy was total garbage. The Minister for Primary Industry and I sent it back to the originators and told them to stop trotting out material about what they have already done and rearranging it in a document. What do we tell the people in the community where we have a problem of this size? Is there something we can say about where we start, how much money we must spend and how we must spend it? It will take far more money than we have. We must find some other way to get that money. We must find some way to start. We may need to change as we go along, but we must start somewhere to get people feeling that we are all working on this together and we will get somewhere on this.

I pay tribute to Roger Payne, the Chief Executive Officer of the Water and Rivers Commission, a newly created environmental agency which had some money! It is fairly important for an environmental agency to have money. Unfortunately, all too often environmental agencies are on a drip feed. The commission had a good dollop of money, which was not an opportunity to be missed.

Roger Payne had the capacity to draw everybody together to turn what was an assemblage of what was done in the past into a plan. I know that Hon Kim Chance has commended the salinity plan as a vision. That is where we must start. I must confess that since I lost the Environment portfolio, I have not followed progress on this issue. However, the production of this plan was an achievement of almost monumental size. Governments had been having a go at this for some time. It was not until we said that we would have a plan that would make sense and that the plan would not be window dressing because it would create a vision that we saw some action. Roger Payne came up with two documents, not one. The first document was the situation statement which answered the questions, "Why, and where are we now?" The first thing that had to be done was that we had to recognise the problem.

I have heard Hon Kim Chance deny what is in this document. This document shows the percentage of arable land which is salt affected. I have heard Hon Kim Chance say that if the figure is 10 per cent, one should be able to drive along a road and see that 1 hectare in 10 is affected by salt; however, that is not his experience. The insidious part of this problem, if one understands the definition of salt affected, is that it is not land on which the surface is scoured and covered in salt crystals. The definition of salt affected is that the fertility and yield of that land has been affected by salt.

Hon Kim Chance: Even by that definition I remain doubtful. The Attorney General should give me credit for knowing the difference.

Hon PETER FOSS: It is a good job Hon Kim Chance is not a sex offender! He would not be allowed into a treatment program, because the first thing they must do is get away from denial. People must recognise the seriousness of the problem. I have heard Hon Barbara Scott take that attitude. I am not sure whether Hon Murray Nixon is nodding his head.

Hon M.D. Nixon: There might be some exaggeration.

Hon PETER FOSS: We have a lot of denial in the Chamber. We also have a potential for equilibrium. The watertables are still rising. We have not reached a state of equilibrium. Some of the watertables that have been calculated at the time the state of equilibrium is reached are quite frightening. Nobody would claim that the situation has been stabilised. The situation is getting worse. Even if the predictions were only half right, there is enough there to scare the daylights out of every single one of us.

What I tried to achieve as Minister for the Environment - to some extent to my own detriment - was to get people at least to agree on the level of the problem, the level of effort required to address it and the time required to address it. I have a saying about getting the cat on the roof. It comes from a joke about cats on roofs with which I am sure some members are familiar. We cannot solve a problem until we get people to see the problem. This document attempted to get the cat on the roof. There is always difficulty when one tries to get the cat on the roof when the problem is as big as this one and one creates the awareness that the problem will need a big effort to solve it.

Hon Christine Sharp: The city people might not be as aware but country people are.

Hon PETER FOSS: It is interesting that Hon Christine Sharp says that because in this Chamber those members who most frequently deny the extent of the problem are farmers - Hon Kim Chance and Hon Barbara Scott have indicated that is not right and Hon Murray Nixon indicated he thought there was some exaggeration.

Hon M.D. Nixon: Salinity is increasing in some areas, stabilising in others and decreasing in others.

Hon PETER FOSS: Hon Murray Nixon has proved my point. People in the country are aware of salinity. I do not think they are aware of its full ramifications. I agree with Hon Christine Sharp that there is a greater awareness of salinity in the country. We cannot miss it now. However, 20 or 30 years ago the sense of denial was great. I can remember my father-in-law, when I first met him, pointing out salt and saying the farmers could clear more land and make up for the salt patches! That was the standard solution 20 years ago. If one had 10 acres of salt, one could make up for that by clearing another 10 acres, so why worry.

I agree that country people are aware of the problem. I do not think city people see it as something that affects them. It is not taking away their livelihood, so why worry! In fact, it is affecting them, because farmers are an important contributor to our economy. It is an enormous problem for their livelihood and the ecosystem in which they live.

I know that people worry about karri trees, but they are not threatened in the way that whole ecosystems in the wheatbelt are. The last vestiges of these systems will be wiped out. It is hard for people to get upset about mallee trees. They are not embraceable. Most people are not aware of the richness and variety of the wheatbelt ecosystems. They think they are driving through kilometres and kilometres of the same thing. Hon Murray Nixon is an exception, I am pleased to say. Prior to meeting my wife, I thought that the road to Kalgoorlie was the most boring road one could possibly drive on and one drove along it - rather like Hon Eric Charlton - as quickly as one could so one did not spend too much time looking at the boring landscape. My wife and her family would stop and get out every couple of kilometres. There is an amazing variety of insects, animals and flowers. It is teeming with variety. Some of Western Australia's most phenomenally interesting and varied ecosystems are under threat in the wheatbelt. I love the wheatbelt. I spent some time in the wheatbelt when I was young. However, I did not see it as being that interesting until I knew something about it. People can see a big tree and love it because it is obvious. People who love the big trees probably are not as concerned about the fungus which is vital to that ecosystem. The wheatbelt has equally if not more interesting ecosystems than some areas in the south west.

One cannot have a value judgment about what is more important to the people; one ecosystem rather than the other. A most phenomenally varied ecological heritage is under threat. If the people are not concerned about agriculture, they should be concerned about that. This document says this is where we are folks. There might be some percentages being disputed by various people and this document says that is the problem and puts it straight for the people. These are the practices that have done it, this is how it happens, and these are some of the possible solutions that need to be tried. This document is a vital document. It was a good thing that it was separated from the salinity action plan because these two documents really are different things. That was the first thing that Roger Payne did. He said, "Let's publish it", so we sat down to work on this one; that was done and that was good.

Some harsh statements have been made about the possibility of federal money. We recognise that the Federal Government is always a bit like Greeks bearing gifts.

Hon Kim Chance: Particularly this mob. They are a disgrace.

The PRESIDENT: Minister, will you direct your comments to the Chair.

Hon PETER FOSS: Unfortunately, it does not make the slightest difference which party is in power in Canberra - I would like to be able to say otherwise. Senator Hill has been a good Minister for the Environment in that he has recognised Western Australia's problem. Another problem, of course, is Senator Harradine. When the billion dollars came along, an awful lot seemed to end up in Tasmania. Leaving that little problem aside -

Hon Kim Chance: Senator Harradine is a good bloke and Senator Hill is hopeless.

The PRESIDENT: Order!

Hon Simon O'Brien: Like trying to get a cat on the roof and all you can get is a fly in the ointment.

Hon PETER FOSS: It was made quite clear in the salinity plan that the possible amount of commonwealth funding being suggested was not huge. In terms of the \$1b, the amount being suggested in the plan was not huge and there were good reasons for it. The salinity plan states that Western Australia has 70 per cent of Australia's reported dry land salinity. This is not a matter of heads of population; it is matter of land area, and this problem belongs to Australia. The environment in Western Australia is part of Australia and it must be seen in that context. It has been said in this plan. It is a heritage, some of the most richly varied heritage, which happens to be in Western Australia, for Australians.

When one considers the millions and millions of dollars that have gone into the Murray-Darling basin one feels that at long last we were ready to establish that the time had come to do something for Western Australia. The time really had come. It was made quite clear in the salinity action plan that these funds were estimated federal funds. There

was no trying to cover up that we were relying on the Federal Government - we were not. I do not think it was a big ask. I have not followed the detail of what has happened since then. One of the other concerns was how the money was to be distributed. One of the reasons a strategy plan was implemented was to prove that little dollops of money distributed all over the place in an uncoordinated fashion did not work. The time has come to make some significant expenditures of money.

Hon Ljiljanna Ravlich: You cannot allocate what you do not have.

Hon PETER FOSS: I am not going to argue with the member. I will take heed of the words of the President that I should ignore these interruptions.

It was made quite clear that not only did we expect these funds, with good reason, but we had been given good indications that we would do so. It was seen, very importantly, as being expended in large dollops of money, not the usual thing of distributing little bits of money all over the place in order to have the largest number of small groups satisfied by it. The time for that sort of expenditure, although it is useful, has gone.

Hon N.D. Griffiths: You still do it.

Hon PETER FOSS: This is commonwealth money I am talking about.

Hon Ljiljanna Ravlich: But you haven't got it.

Hon PETER FOSS: We have got it. I will not go into detail because, I must confess, I have not followed that particular path, because my involvement was to get the salinity plan put forward. At the time, there was a good reason to believe that we would receive the money and that it would be received in a manner that would make for a highly useful expenditure of those funds.

The other thing that was quite clear was that to gear up the funds it was necessary to have private investment. Some of the most significant work in drawing down the water table in Western Australia, to date, has been through commercial plantations. Many millions of dollars have gone in in that manner. It has been resisted in many places by farmers. They resist it for social reasons; they see good farming land going under trees. They have spent their lives getting rid of those trees and now somebody is coming back and planting them again. That is a big enough problem.

Hon N.D. Griffiths: It is something for the next generation to cut down, Minister.

Hon PETER FOSS: Exactly, that is right.

Hon E.J. Charlton: Not with an axe.

Hon PETER FOSS: The amount of work that comes from plantations is actually greater than comes from agriculture, especially if it then leads to pulp mills and things of that nature. The opportunities for employment, for increasing local populations and for economics are available, but the problem is that they are in the future. Everything we propose to deal with is 10 to 15 years down the track.

Hon Ljiljanna Ravlich: So should we get your plan in 15 years?

Hon PETER FOSS: I had hoped there would be bipartisan support for this matter in this Parliament because I believe that everybody is concerned. The problem is that if someone says he is buying this land to plant trees we cannot simply say that in 15 years' time there will be a lot of employment generated from this. People are not interested in the situation 15 years from now.

Hon Bob Thomas: There is a lot of employment in that now.

Hon PETER FOSS: That is right. However, the large number of employment opportunities come when there is a regular cutting program. At a standard mill 50 000 trees a day are cut, 80 000 trees a day are planted, and there is loads of work for people - huge amounts of work. The real bonanza in employment is a few years down the track.

Several members interjected.

The PRESIDENT: Order, members! The Minister has the floor at the moment.

Hon PETER FOSS: Unfortunately, everything one does with salinity is long term. Something must be done now for results in 20, 30, 40, or 50 years. Often our success cannot be determined until 5, 10, or 15 years have passed. The problem is that generations can go by before we can determine whether a suggestion for dealing with salinity will work. Some of the disheartening aspects of dealing with salinity has been the good work put in by people with the best of intentions in the wrong place. Those people have invested their hearts, their souls, their money, and their

land in growing trees only to see them die when the salt gets to them. It has happened to professional tree growers as well. We are still learning about how Western Australia functions, how the salt functions, and there are a lot of theories as to how that can be dealt with. It is time - always time.

I believe that there is a big future for commercial tree planting in Western Australia. In areas where growth patterns have been established the biggest obstacle is local resistance to them, not the people who are prepared to put money in. I can assure members that the Japanese, in particular, are still keen to put money into growing trees in Western Australia. In the dryer areas we do not have a suitable stream of crops. This is where the State can do the work to prove up the crops to take the risk. This is where the seed money is important. If the State is prepared to prove up other crops - *Pinus pinaster*, oil mallee and tagasaste; all of those things have the capacity to draw down water - to commercial interests, large amounts of money could be invested in growing these trees which would result in addressing the problem of salinity. We cannot ignore commercial investment in our fight against this problem. It must be there. It must be encouraged, but the Government will need to make it clear to people what are the rewards and the risks. We must get it to that basic load for it to work. We must prove scientifically that it does work, otherwise the commercial interests will not come here. Given a good commercial proposition, the money will be there. In other places in the world enormous sums are invested in growing trees.

Hon Greg Smith interjected.

Hon PETER FOSS: The biggest carbon sink in Western Australia is estimated to be mallee root. There are huge lumps of solid wood under the ground, some of which has been tested to be over 1 000 years old. That is locking up enormous amounts of carbon for thousands of years. We grow mallee trees and harvest them for oil. While we are doing this the carbon sink underground in the roots of the mallee trees is being increased. It represents a phenomenal opportunity. We cleared all that land. Mallee roots make marvellous fuel in open fires. I am sure some people from Doodlakine burn mallee roots from time to time! It is so old that it should be regarded as a fossil fuel. The opportunities in this area are phenomenal, if we can make it work. The salinity action plan tries to put this proposition. We are owed money by all Australia to help us. Admittedly, we caused the problem, as did those in the eastern States with the Murray-Darling basin. It is right that Australian money be spent on those problems. We must also say that, as a State, we must encourage commercial interests because, ultimately, we can mobilise enough money by encouraging commercial interests to bring a lot of that growth back and start to draw down the water that causes so much of the land salinity problem.

I thank Hon Kim Chance for acknowledging this as a good document. It is an important document. We needed something like this. I will not comment on the carrying out of this proposal, because I am not qualified to do so and I do not want anything I say to form the basis of any criticism of the whole process. One of the important things about it is that it is seen as a living process. A ministerial council is proposed. If we want something to happen in government, we must have Ministers at the highest level making it happen. That is how we got the salinity plan. We would never have got it had two Ministers not said that we will have the plan. They made it imperative that there be one. There must be a high level ministerial council. We also recognise that it is not a problem to be solved by government. It is a problem to be led and to be propelled by government, but it is not a problem to be solved by government. It will be solved by everybody.

The ministerial council was proposed to make certain that whatever came out to assist implementation was agreed to by all interests that were necessary to be involved. I have heard criticism from people who say that the plan is changing, and so it should. Having set the vision, I hope the people given the job will have the opportunity to say how they think it should be done. Sometimes plans are an excuse not to do something, to ignore the obvious, to charge on blindly with people saying that something will be done because it is in the plan. Often plans must be departed from. We depart from them, knowing where we are going. If we find something in the plan is not working, we do not charge like a headless chook all over the place; we ask why it is not working. To some extent, the plan is to test what is being done.

It was always part of this process that the council would be a major contributor to how things would happen and be capable of change and, hopefully, flexibility. I do not see that it is a process where people cannot say that they want to change because we have taken advice on it. To all that, I say good. I hope most people in this Parliament will be pleased to hear that we have set up a process that allows us to sit down and work out how to address the problem, or if it is not working, to discuss how to do this another way. At least we have set in place a process that allows that. Three cheers; that is a good process. Having listened to some criticisms, I sat here thinking that we intended that there be a capacity for change.

Having given that background, I will tell members why I do not think this amendment should be made. The problem had been a long time coming. We will take a long time working on it and it will be a long time after working on it before the results come in. It will be a bit slower than watching grass grow. What will be reported every three months? Do members really think things will happen so fast that they can be reported on every three months? I do not expect

we will see an awful lot happening from year to year. I expect this process to go slowly. Asking people to report every three months is one of the most dispiriting things we can ask them to do.

Hon Christine Sharp: It says not less than once a year.

Hon PETER FOSS: Even that is too often. We must recognise the length and breadth of this problem. If we start to talk in terms of three months, we are missing the point. There should be a sign that states "Go back and read the situation statement; go back and see the magnitude of this problem, the magnitude of what should be done to solve this problem and how long it will take, and get real". I believe the amendment moved by the Hon Bruce Donaldson recognises that that is the sort of problem we must have some patience with, and recognises the magnitude of the problem and the magnitude of the time it will take to deal with it.

I think members would find it disappointing to get short term, regular reports. These people will spend more time preparing reports for us than they will in getting on with the problem. There is enough bureaucracy in this world without Parliament adding another layer to it. What is the worst thing about dealing with the Commonwealth? Have members had to deal with obtaining commonwealth money? Have they ever had to fill in the interminable reports for the Commonwealth Government? In some areas it takes up to 10 or 20 per cent of our time. The real problem is that it takes about 50 per cent of our gumption. What will happen to the enthusiasm of the people who are out in the field wanting to fight the salinity problem, but who will be spending most of their time preparing reports for government? These people will report to not only us, but also other Governments and parliamentary committees and so on. I do not know how many people have been through this sort of process.

Hon Christine Sharp: It says not less than once a year. We are changing it from three months to not less than one year.

Hon PETER FOSS: That is certainly a lot better than reporting every three months.

Hon Ljiljanna Ravlich: I am glad you like it.

The PRESIDENT: Order! The Attorney General is running out of time.

Hon PETER FOSS: I am not blaming the Federal Government. To some extent I blame the Federal Parliament. That has been the biggest problem that we have had there. I hope we do not have the same problem with the other two-thirds of Telstra. If we did the right thing with the other two-thirds of Telstra, we might be able to tackle some of the major problems in this country. I hope the Greens and the Labor Party will give some support so that Senator Harradine does not bushwhack the process on the way through.

Hon N.D. Griffiths: He helped you to sell Telstra and rob the Australian people.

The PRESIDENT: Order! Let us deal with this salinity motion.

Hon PETER FOSS: He certainly helped us to sell Telstra, but I am not sure that it robbed all of the Australian people.

Hon N.D. Griffiths: You got rich out of it, did you?

Hon PETER FOSS: I hope that I have outlined how we arrived at the salinity plan and why I believe it is a positive process, in spite of some of the criticism that I have heard. We need to reaffirm the basis of the salinity plan. We need to look to the Federal Government to come up with some money. We need to look to private industry to put up some money and at how government can encourage that. We must not tie down this group of people with having to conform too much to any bureaucracy, let alone this Parliament's bureaucracy.

Hon Kim Chance: We also need to look beyond the Telstra funds and at the superannuation funds.

Hon PETER FOSS: That is right. The Telstra funds provided an opportunity. The Federal Government needs to get its priorities right. It has been putting money into the Murray-Darling basin for I do not know how long. I do not think the Murray-Darling basin has anything to match what we are trying to achieve through the salinity plan. I am a little concerned that some of the money has been dissipated in what I regard as minor dollops, because I do not think we will solve this problem with minor dollops. The Federal Government must be prepared to say, "We will put X million dollars into the state salinity plan. You must ensure that that money is spent in the best possible way." I know why Federal Governments do not like doing that, but if they did that they would get better value for their dollars than by just handing it out to little groups all around Western Australia.

Hon E.J. Charlton: Invite the Federal Government to monitor it so that it will see what is happening.

Hon PETER FOSS: Exactly. I think it will see some significant outputs, and I hope that in 10 to 15 years we will have some successful outcomes.

HON M.J. CRIDDLE (Agricultural) [4.55 pm]: Mr President -

The PRESIDENT: Order! I point out that Hon Murray Criddle has already spoken to the substantive motion and is now permitted to talk only to the amendment moved by Hon Norm Kelly, which is to delete the word "annually" and substitute the words "not less than once a year". That is how narrow the subject is.

Hon M.J. CRIDDLE: I understand that, Mr President.

Hon Kim Chance: You will sit down now!

Hon M.J. CRIDDLE: As a member of the Standing Committee on Ecologically Sustainable Development, I can see that we need to have an indication of the reporting requirements and of what we are required to measure and how we are required to measure it. I can see the committee spending a lot of its time on this wide-ranging issue. If we wanted to measure a cash injection over 12 months, it would be just a matter of adding up a few figures, but if we wanted to measure a visual improvement over 12 months, that would be difficult to achieve. The only way we could achieve that would be through satellite imagery, or the imagery that is used by the Department of Land Administration, which is a photograph of the farm plan.

I agree with the Minister that it is difficult to measure progress over 100 years. Visual measurement appears to be the only way. It has been said that salinity is spreading in the vicinity of a couple of hundred hectares a year. If the committee can identify that, well and good. I had some experience with the use of satellite imagery in comparing 12 monthly data when I was involved in monitoring the drought in the Gascoyne and on the south coast. That process can provide some sort of measurement, but it will be very slight, and it will also be difficult to measure it every 12 months when the salt affected areas are spread across 200 hectares.

The committee would like some guidance on those issues. There is no doubt that land care improvement is necessary, but I would not like to see us continually looking at this issue in a comprehensive way, because that would cost a lot of money and we would not see any reward for what we have done. Some of the debate about the reporting period being not less than once a year has not taken that matter into account. I want to highlight that matter and get some guidance from the mover of the motion about how he believes we can implement that reporting.

HON B.K. DONALDSON (Agricultural) [4.57 pm]: Mr President -

The PRESIDENT: Order! Hon Bruce Donaldson is also faced with the same -

Hon B.K. DONALDSON: Dilemma!

The PRESIDENT: - matter that was faced by Hon Murray Criddle; namely, that he must speak specifically to the amendment.

Hon B.K. DONALDSON: Thank you, Mr President. I am pleased that you have reminded me of that and I will ensure that I keep to that narrow pathway.

I believe that the amendment moved by Hon Norm Kelly is a bit pedantic. The original motion states that the committee must report no later than 31 December 1998. Committees have the right to report anyway. However, I will support the amendment, because a bipartisan approach has been taken to this issue, and it has been well and truly debated. Other members have said that it would be very difficult and time consuming for the committee to report every three months, as stated in the original motion. I am sure the members of that committee have other roles to play in committee work, in this Parliament and in their electorate. The reason I moved the amendment in the first place is that it would be difficult for the committee to report to the Parliament on a three monthly basis, or even on an annual basis, on the townships that are under threat from salinity.

It is important that we do not get bogged down, and that, as Hon Peter Foss pointed out, we do not impose a level of bureaucracy in addition to the parliamentary bureaucracy. The requirement that the committee report not less than once a year is not onerous, and the committee will probably appreciate that change to the motion, because had it been required to report on a three monthly basis - I do not know who would have done that work - it would have been time consuming and like watching the grass grow. However, the requirement that the committee report annually will mean that any changes that have occurred will be recognisable and that the committee will be able to report to the Parliament, with more maturity and responsibility, about how the salinity action plan is going.

I support the amendment, because while it is rather pedantic, it will give the committee flexibility to report to the Parliament examples of excellent success in the salinity action plan. It could be one way of alerting Parliament to that fact. I am looking at the positives rather than the negatives, and it could give the committee an opportunity to report some results that may be encouraging to all members of Parliament when they recognise the benefits to the State.

HON J.A. COWDELL (South West) [4.59 pm]: I accept the amendment moved by Hon Norm Kelly, and I note that Hon Bruce Donaldson also accepts that. I then accept the amendment of Hon Bruce Donaldson, as adapted by the amendment moved by Hon Norm Kelly.

Amendment on the amendment put and passed.

Amendment, as amended, put and passed.

Motion, as Amended

Debate adjourned, pursuant to standing orders.

[Questions without notice taken.]

ORDERS OF THE DAY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.36 pm]: I move -

That Order of Day No 11 be taken before Order of the Day No 1.

Point of Order

Hon TOM STEPHENS: I wonder whether the attendants can quickly bring me a set of minutes from yesterday's sitting of the House.

The PRESIDENT: Order! Is the Leader of the Opposition raising a point of order, or does he intend to debate the issue?

Hon TOM STEPHENS: I will raise a point of order.

The PRESIDENT: Order! The Leader of the Opposition is entitled to do either. I just want to work out what we are doing.

Hon TOM STEPHENS: In the minutes of yesterday's sitting of the House, at page 5, a decision is recorded that the motion to disallow the Dampier Port Amendment Regulations (No 2) 1997 be moved to appear as Order of the Day No 1 on today's Notice Paper. That was the subject of a motion put before the House without notice. It was carried by the House following a division, the result of which was 16 votes to 14 votes. That division was supported by the Australian Labor Party, the Greens (WA) and the Australian Democrats.

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

Hon TOM STEPHENS: It relates to Standing Order No 171 which covers motions and questions. It states -

An order, resolution, or other vote of the Council may be rescinded, but not during the same session, unless 7 days' notice be given and an absolute majority of the whole number of Members vote in favour of its rescission.

In view of the fact that yesterday, this Order of the Day was established as Order of the Day No 1 by a resolution, or effectively by an order of the House pursuant to Standing Order No 128 -

A member interjected.

Hon TOM STEPHENS: I am raising a point of order at this stage.

The PRESIDENT: Order! I have the general trust of the Leader of the Opposition's point of order.

Hon TOM STEPHENS: Thank you, Mr President. I would ask -

The PRESIDENT: Let me address the point of order. Yesterday, the Leader of the Opposition moved that Order of the Day No 11 on yesterday's Notice Paper be moved to Order of the Day No 1; and after a division, the House agreed to that motion. Today's Notice Paper indicates clearly that the disallowance motion in respect of Dampier Port Authority Amendment Regulations (No 2) 1997 is Order of the Day No 1. The House has, therefore, carried out the instruction that was given yesterday. However, Standing Order No 129, of which I am sure the member is aware, states that -

Any motion connected with the conduct of the business of the Council may be moved by a Minister at any time without notice.

I assume that is what the Leader of the House is doing. Therefore, there is no point of order.

Hon TOM STEPHENS: Mr President, are you telling me that Standing Order No 171 is effectively subordinate to Standing Order No 129? Yesterday, a clear decision of the House was made that would have brought on the Dampier Port Authority item as Order of the Day No 1. Are you saying that by virtue of Standing Order No 129, that clear decision of the House can be superseded in complete disregard of Standing Order No 171, which states that an order, resolution or other vote of the Council may be rescinded, but not during the same session, unless seven days' notice be given and an absolute majority of the whole number of members vote in favour of its rescission?

The PRESIDENT: Order! I say, firstly, that I do not agree with the premise on which the Leader of the Opposition based his argument, because much of what he said I have not said. I want to make that very clear. The fact is that yesterday, the House agreed to move an order of the day to a new position on today's Notice Paper, and that has been done. That is all that was asked and that is all that was done. Standing Order No 129 provides that a Minister may move at any time without notice any motion connected with the conduct of the business of the Council; and that has been done. The Leader of the Opposition's motion yesterday was not granted any immunity from Standing Order No 129. What the Leader of the Opposition asked was done. Standing Order No 129 provides an opportunity for a Minister to arrange the business of the House; and that is what the Leader of the House is obviously attempting to do.

Hon TOM STEPHENS: Mr President, I understand that the Leader of the House has now moved a motion which you have accepted and which is debatable.

The PRESIDENT: Order! The Leader of the Opposition is correct. We are now dealing with the motion moved by the Leader of the House, and I put the question that that motion be agreed to.

Debate Resumed

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [5.43 pm]: I oppose the motion moved by the Leader of the House. I note that that motion has been moved without - I am sorry to see that my colleagues are not here, but I will speak to those who are -

Hon N.F. Moore: Who is not here? You keep telling the House that no-one is here today.

Hon TOM STEPHENS: I am sorry. I understood that there might be some interest in this motion if some conditions were attached to the process by which it was moved; that is, if there was some indication or assurance from the Government about the handling of Order of the Day No 1. I noted with great interest that the leader of the Government, in moving that motion, chose not to give the House any such assurance about when any other item of business might be dealt with.

Hon Greg Smith interjected.

Hon TOM STEPHENS: I did not hear that interjection.

The PRESIDENT: Order! I hope the Leader of the Opposition did not hear it, because we are not taking interjections. The Leader of the Opposition's comments must be directed to why we should or should not agree to the motion moved by the Leader of the House, not to the substantive debate on the motion.

Hon TOM STEPHENS: Thank you, Mr President. You will know that I am a great stickler for the rules of this place.

The PRESIDENT: Order! I do not want to enter into the Leader of the Opposition's debate, but he can mark me down as not agreeing with that!

Hon TOM STEPHENS: I know the rules of this place.

Hon Simon O'Brien: What about Standing Order No 196?

Hon TOM STEPHENS: Is that relevant to this debate?

Hon Simon O'Brien: Absolutely.

Hon TOM STEPHENS: That states -

The orders of the day shall be disposed of in the order in which they stand upon the Notice Paper, unless the Council shall otherwise order.

Hon Simon O'Brien: That happens every sitting day.

Hon N.F. Moore: And usually with your agreement.

Hon N.D. Griffiths: That is a sign of inefficiency.

Hon TOM STEPHENS: The Leader of the House in moving to rearrange the Notice Paper with regard to Orders of the Day Nos 1 and 11, has not given any assurance about the motion before the House. Members opposite and members on this side of the House will know that the Australian Labor Party wants to deal with the disallowance of Dampier Port Authority Amendment Regulations (No 2) 1997, which is Order of the Day No 1.

Hon Barry House: Are you sure about that?

Hon Peter Foss: What about the House as a whole?

Hon Ken Travers: Start the debate now. We are raring to go.

The PRESIDENT: Order! The Leader of the Opposition is addressing the motion.

Hon TOM STEPHENS: I was asked by way of interjection whether I was confident of the support of the Australian Labor Party in bringing forward the disallowance of the Dampier Port Authority Amendment Regulations (No 2) 1997, and the answer is yes, I am.

Hon E.J. Charlton: Then let us vote on it.

Hon TOM STEPHENS: Would members like to know why I am confident?

Hon Peter Foss: No. Just get on with the debate.

The PRESIDENT: Order! The Leader of the Opposition is addressing the process of rearranging the Notice Paper, not why a particular group may or may not want to do something.

Hon TOM STEPHENS: Indeed, Mr President. I am, as members will know, by accident or design the leader of the Labor Party in the Legislative Council -

Hon Barry House interjected.

Hon TOM STEPHENS: I did not hear who that came from.

Hon N.D. Griffiths: That came from the former chairman of committees.

Hon TOM STEPHENS: In that capacity, I gave my colleagues the opportunity of considering what they would like to deal with today, and, as members will know, they have asked -

Hon Simon O'Brien: Does Hon Cheryl Davenport want Order of the Day No 1 or 11?

The PRESIDENT: Order! Let us address the motion. Other members do, no doubt, want to speak. I ask the Leader of the Opposition to address the Chair, and let us get on with it.

Hon TOM STEPHENS: The members of the Australian Labor Party have an opportunity through our caucus process of considering the options that are before us as a group. We have had the opportunity of considering what process we will adopt. I moved a recommendation at our caucus process to adopt a strategy aimed at bringing forward the consideration of the disallowance of the Dampier Port Authority Regulations. The reasons for dealing with Order of the Day No 1 before Order of the Day No 11 are very important and will need to be briefly canvassed in a moment. When that issue was brought before our group, the group made a decision that the Dampier Port Authority disallowance motion should be brought forward and dealt with prior to any other matter before the House.

The PRESIDENT (Hon George Cash): As far as the Chair is concerned, whether a group has decided on a course of action to support the Leader of the Opposition's argument is not relevant. The Leader of the Opposition has to show some impediment in the process of changing the order of the business and he has not done that. I ask him to address whatever impediment he sees in the process in respect of the changing of the orders of the day. I am trying to give him a fair bit of latitude, but I ask him to narrow his debate to the areas that he knows are relevant.

Hon TOM STEPHENS: I was interjected upon by members opposite. That led me to respond to those interjections by making it clear what has motivated me as Leader of the Opposition and leader of the Australian Labor Party group in this House to oppose the motion moved by the Leader of the House. Some members may have received assurances from the Leader of the House about the way business will be conducted in this House over the next 24 or 48 hours.

Hon N.F. Moore: I do not know what they are. I have said I am anxious to proceed with Order of the Day No 11.

Hon TOM STEPHENS: I hope members heard that; he has given no undertaking in relation to any other order of the day!

Hon N.F. Moore: I said I was anxious, that is why I moved it.

Hon TOM STEPHENS: I will look forward to hearing from my colleagues in the Australian Democrats and the Greens (WA) whether they still believe in the assurances they received from the Leader of the House about the handling of Order of the Day No 11.

The PRESIDENT: The Leader of the Opposition is not raising impediments to changing the order of the Notice Paper. What is now becoming obvious is that he is starting to breach Standing Order No 100 by indulging in tedious repetitious debate. Would he make his point and if there are any other speakers, allow them to speak so the matter can be put to the vote.

Hon TOM STEPHENS: The arrangement of the Notice Paper is a very important matter for the whole of the House and when any move is made to change that Notice Paper, it is very important that members fully appreciate exactly what is being done and what opportunities may emerge for getting items of business that they consider to be important dealt with by this House. Some members of the House might be inclined to vote to allow Order of the Day No 11 to precede Order of the Day No 1 on the basis that they felt they had an undertaking from the Leader of the Government to bring before the House -

Hon N.F. Moore: I have not given that assurance to anybody.

Hon TOM STEPHENS: The Leader of the House said he has not given that assurance to anyone and that there is no assurance from him that Order of the Day No 1 will be brought forward for consideration and resolution by this House either today or tomorrow.

Hon N.F. Moore: No such assurance has been given to anybody. All I have said is I am keen to proceed with Order of the Day No 11 today and I am not interested in dealing with Order of the Day No 1.

Hon TOM STEPHENS: The Leader of the House has indicated he is not interested in dealing with Order of the Day No 1 and he is now using a device aimed at ensuring that his process of altering the Notice Paper is achieved. I am pleased that the Leader of the House has made that clear to the House because as you know, Mr President, we have been trying to arrive at an orderly process aimed at organising the Notice Paper precisely to avoid debates such as this.

Hon N.F. Moore: Your motion is highly unusual.

The PRESIDENT: Let us deal with this motion, otherwise it will be 10 o'clock tonight by the time we get to the vote.

Hon N.F. Moore: I think that is what he has in mind.

The PRESIDENT: If that is the case, there are opportunities within the standing orders for members to act.

Hon TOM STEPHENS: Yesterday the Leader of the House did not take the opportunity of giving me the courtesy of any advice about what orders of business the Government intended to proceed with yesterday.

Hon N.F. Moore: With respect, you met me at 10 o'clock at the doorstep.

The PRESIDENT: The Leader of the House has moved his motion and the last thing we need is an interchange because other members may wish to speak on this matter.

Hon TOM STEPHENS: I endeavoured to make contact with the Leader of the Government prior to yesterday's sitting of the House and found that he was not available to take my call. Instead of being able to attend my party room meeting, I had to sit effectively in the gutter outside Parliament House.

Hon N.F. Moore: You chose to sit on the step.

Hon TOM STEPHENS: I was waiting for the arrival of the Leader of the House in order to crave some time from him so that I could find out what -

Hon N.F. Moore: You are turning into a joke.

Hon TOM STEPHENS: At 10.20 am the ministerial Ford LTD swooped into the driveway -

Hon N.F. Moore: Five past ten.

Hon TOM STEPHENS: No, twenty past ten. After waiting 20 minutes, I had to ask the Leader of the Government what order of business we would be dealing with yesterday, 31 March, and the Leader of the Government told me quickly as he walked down the corridor -

Hon N.F. Moore: I was rushing to a meeting.

Point of Order

Hon NORM KELLY: I direct your attention to Standing Order No 100 and believe it should be invoked on this occasion.

The PRESIDENT: I have raised Standing Order No 100 with the Leader of the Opposition. I remind him of it again. I say to members that we are now dealing with the general conduct of the House. If it is the Leader of the Opposition's wish to waste the time of the House, that is an option open to the House. The Leader of the Opposition has had a very fair go in making his point and I ask him to draw his comments to a close.

Debate Resumed

Hon TOM STEPHENS: In reference to today's order of business, Mr President, you will be aware that we do not have a business management structure in place that would provide the opportunity for the Government, the Opposition and the other non-government parties to participate in a process to resolve the issue of which Government -

Hon N.F. Moore: There was a meeting this afternoon.

The PRESIDENT: That is our problem. The interjections are wasting the time and sending people off on tangents. It is clear to me that the Leader of the Opposition wants to waste time until six o'clock. If that is his intention, tell the Chair that and I will leave the Chair because the sorts of things that he is raising now are the sorts of thing that he should be discussing behind the Chair with the relevant leaders in this House.

Hon TOM STEPHENS: I agree with you, Mr President.

Sitting suspended from 6.00 to 7.30 pm

Hon TOM STEPHENS: The Opposition opposes this motion. The Australian Labor Party wants to see the motion for the disallowance of the Dampier Port Authority Amendment Regulations brought on for consideration and resolution. It is our preference that be done tonight prior to any other business. We will make efforts to ensure that matter is brought forward for consideration and resolution before the end of this week. Jobs in Dampier which we are trying to protect depend on this motion being carried by this House. I call on the House to oppose the motion moved by the Leader of the House.

Hon N.D. GRIFFITHS: I also oppose the motion. However, in opposing the motion my Australian Labor Party colleagues and I have no desire to take up the time of the House. We had no intention whatsoever of engaging in the filibustering Hon Derrick Tomlinson indulged in with respect to Order of the Day No 1. Our interest has always been to bring Order of the Day No 1 to resolution. We would be happy to give 30 second speeches and have members vote on it. If members thought otherwise let it be on their heads.

Question put and a division taken with the following result -

Ayes (18)

Hon E.J. Charlton
Hon M.J. Criddle
Hon B.K. Donaldson
Hon Max Evans
Hon Peter Foss

Hon Ray Halligan
Hon Helen Hodgson
Hon Barry House
Hon Norm Kelly
Hon Murray Montgomery

Hon N.F. Moore
Hon M.D. Nixon
Hon Simon O'Brien
Hon J.A. Scott
Hon Christine Sharp

Hon Derrick Tomlinson
Hon Giz Watson
Hon Muriel Patterson
(Teller)

Noes (9)

Hon Kim Chance
Hon Cheryl Davenport
Hon N.D. Griffiths

Hon John Halden
Hon Mark Nevill
Hon Ljiljana Ravlich

Hon Tom Stephens
Hon Ken Travers

Hon Bob Thomas (Teller)

Pairs

Hon Greg Smith
Hon W.N. Stretch
Hon B.M. Scott

Hon J.A. Cowdell
Hon E.R.J. Dermer
Hon Tom Helm

Question thus passed

CRIMINAL CODE AMENDMENT (ABORTION) BILL*Instruction to Committee of the Whole House - Motion*

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [7.37 pm]: I move -

That it be an instruction to the Committee of the Whole House on the Criminal Code Amendment (Abortion) Bill that it have power to add one or more parts to the Bill.

In moving that motion I am seeking the concurrence of the House with my view that a solution to a potential stalemate between the two Houses is to put the "rules" relating to abortions and their conduct into the Health Act as a result of a decision by this House to remove sections 199, 200 and 201 from the Criminal Code.

In order to find middle ground on this debate I have flagged the idea and put on the Supplementary Notice Paper proposed amendments to this Bill which will enable that to happen. It is necessary for the House to instruct the Committee to add a new part to the Bill. I acknowledge this is quite an unusual process; I do not recall it happening very often, if at all, in my time. However, I understand from advice that it is a legitimate and proper process for the House to follow.

Having made a decision in the second reading vote on the Bill moved by Hon Cheryl Davenport the House indicated overwhelmingly, and surprisingly, support of the removal of the sections on abortion from the Criminal Code. Members may be aware that I voted against the second reading of the Bill. I wanted to see an alternative before I was prepared to vote for change. Now that I am aware of the view of the House and the potential end result of this it is important we acknowledge that the House has a view about the Criminal Code. Having taken that into account, it is necessary for us to contemplate the rules that will apply to the performance of a pregnancy termination.

The most appropriate legislation to contain those rules is the Health Act, because we are dealing with a medical-health issue. In order to give this House the opportunity to consider this I have moved a motion to instruct the Committee of the whole House to provide an opportunity to add one or more parts to the Bill. The Supplementary Notice Paper contains a number of amendments that, essentially, will provide for a new part 3 which will add a number of conditions pertaining to the procuring of a termination. This is one way in which this Chamber can resolve what is a difficult issue.

The debate so far in the other House has gone around in circles on a range of issues that are coincidental to the main issue which is where members stand on what is a justifiable abortion. The quicker the House is given a chance to resolve that matter the better it will be for all members, regardless of their attitudes to this issue. It will not be helpful for the debate to be prolonged for many days or weeks, if that is what some members have in mind. It will not be helpful for this House, the Legislature generally, or for member of Parliament individually, if we try to drag this out in an endeavour to score points ad nauseam hour after hour, and day after day.

I acknowledge that members have strong views on this subject. One of the reasons it is important that we resolve this is that the strong views that members hold are affecting their relationships with other members who have different points of view. That is unhealthy within parties and across parties, and the sooner we resolve this the better it will be for all of us and the community, which is seeking some leadership from the Legislature on this matter.

Contrary to the assertions made by a number of members in this debate that the Government is not promoting a Bill -

The PRESIDENT: Order! The debate on this matter is relatively narrow. The job of the Leader of the House is to argue why an instruction should or should not be agreed to in relation to this Bill. I ask you to stick to that narrow area.

Hon N.F. MOORE: I will say what I intended to indicate in a later debate. It is important that we take the course of action that this motion proposes; that is, we use it as a vehicle to resolve this issue. I do not know what the ultimate result will be any more than anybody else. I do not know how members will vote on the various options in proposed new part 3. I know how I will vote. It is important for this House and the Parliament to resolve this issue. The process that I have contemplated and put forward tonight will enable us to reach a resolution reasonably quickly. This motion will give us a chance to consider a course of action, following the decision of the House on the second reading. It will give us a process which will enable us to resolve the fundamental and serious issues that surround this matter.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [7.44 pm]: Effectively this is the first opportunity to tackle the issues before the House prior to going into Committee and following the resolution of the House on the second reading. The Leader of the House has taken a little liberty and I will not take much more than that.

The PRESIDENT: Yes, the Leader of the House took a little liberty and I am more than happy for you as Leader of the Opposition to be afforded that same opportunity. Members will be aware that both the Leader of the House and the Leader of the Opposition do get preference in this place as a matter of course. However, I say to the Leader of the Opposition that it is a narrow debate. We are talking about whether an instruction should be given to the Committee. We are not debating the substance of the Bill.

Hon TOM STEPHENS: As members will know I was one of those who was strongly opposed to this Bill being given a second reading and I remain opposed to this legislation. I have no doubt how I will be voting on this legislation at the third reading stage. The tensions about which the Leader of the Government has just spoken are understandable. Many of us have exercised extraordinary restraint up to this point. Members will understand that for me we are dealing with life. If they think that is something I can deal with lightly they are sorely mistaken.

Hon Christine Sharp: That any of us can.

The PRESIDENT: Order!

Hon TOM STEPHENS: I will take every opportunity to try to persuade the House against the carriage of this legislation. I do not believe that there is anything that this Committee can adequately do to this Bill to redeem it. I am of the view that there would be a better instruction to give to the Committee. Apparently the House does not have the appetite for an instruction of that sort. I will endeavour to participate in this debate with some restraint, but with the passion that tells me that those members who support this legislation are thoroughly wrong headed. I will do that again and again.

I cannot imagine another circumstance as powerful as this with which this Parliament will ever be faced.

Point of Order

Hon MARK NEVILL: The member is reflecting on a vote of this House. He must move to rescind that vote, otherwise he should not reflect on that vote in the House.

The PRESIDENT: Hon Mark Nevill is right and there is a technical point of order. I ask the Leader of the Opposition to move towards his summary in relation to whether an instruction should be given. I agree with Hon Mark Nevill that the Leader of the Opposition was straying into matters discussed in the second reading and was reflecting on the vote of the House. However, under the circumstances the Leader of the Opposition understands where the House is coming from with regard to my comments.

Debate Resumed

Hon TOM STEPHENS: As the Leader of the House stated, there will be an opportunity for these speeches during Committee, and no point of order will be able to stop me then. I will take that opportunity.

It is useful at this point to say that even though I will not oppose the motion moved by the Leader of the House it is not because I accept the proposition that there is any way of redeeming this Bill. It is irredeemable. However, I will tackle each of the amendments that are being proposed that I saw for the first time late today. This was printed about 12.30 pm.

Hon N.F. Moore: I gave you the draft last week. I came to your office and gave it to you some time after I tabled it. It is not significantly different, as you will notice.

Hon TOM STEPHENS: I am now looking for the opportunity to subject this Supplementary Notice Paper to scrutiny, to see whether it is in accordance with the draft that was previously supplied. I have not had that opportunity yet.

Hon N.F. Moore: The only variation is something that you will consider an improvement on what I gave you before.

Hon TOM STEPHENS: While not proposing formally to oppose the motion by the Leader of the House, I make it clear for the record that I see no way of redeeming this legislation. It is extraordinary that the Government would try to advance this legislation in preference to that which is called the Foss strategy, which is being debated in the other House at this time.

Hon N.F. Moore interjected.

The PRESIDENT: Order! The Leader of the House will come to order. I have asked that there be no interjections and that applies equally to the Leader of the House as it does to every other member.

Hon TOM STEPHENS: I conclude by saying that I do not buy that. This Government set out on a path of making sure both Houses of Parliament were jammed up with these two Bills which took up all of the time necessary,

effectively, to advance abortion on demand in this State. This Government goes down on record for having done that. I do not believe any other Government would have produced -

Hon N.F. Moore: You are an absolute disgrace. You refuse to accept the truth.

The PRESIDENT: Order! The Leader of the Opposition is way off course. I ask him to conclude his comments so that I can call the next speaker in the debate.

HON CHERYL DAVENPORT (South Metropolitan) [7.52 pm]: I rise as the original mover of the Criminal Code Amendment (Abortion) Bill, the second reading of which was passed in this House two weeks ago. I support the motion moved by the Leader of the House. He has shown leadership in this debate in reaching some agreement between me, as the mover, and him to progress this legislation through the next stages, bearing in mind that a piece of legislation is in the other place which may cause great difficulty when it arrives in this place. I am relatively relaxed about the content of the proposed amendments to be put before the House. I also put on the record that for the past almost two months a debate has been raging within the community and, as legislators, we have a responsibility to try to draw that debate into new laws which will apply as soon as realistically possible. I will continue, as I did during the first and second reading stages of this debate, to approach this issue with dignity. I am aware of the feelings of other members who hold very different views from mine. With those few words, I support the motion.

HON N.D. GRIFFITHS (East Metropolitan) [7.53 pm]: I note the role played by the Leader of the House in this matter. In putting forward this proposition that it be an instruction to the Committee of the Whole House on this Bill that it have power to add one or more parts to the Bill, the House and the people of Western Australia should be mindful of just what this House is setting itself up to do. I thought this was supposed to be the House of Review, not the House of initiation of controversial legislation. Whatever happened to the role of the House of Review? I thought our job was to review what comes from the other place and perhaps to look at matters through our committee structure; but, no, we are playing an entirely different role here.

That is a point I can make in the strict confines of this debate. I am aware that this House is moving to jump the gun to set the agenda. It is very interesting for a member of my party to do so, but that is another matter. This proposal was foreshadowed yesterday when notice was given. The Supplementary Notice Paper before us - presumably we will deal with it in due course - was required to be printed at or about 12.30 this afternoon. It has not been available to members or the community, as such.

There is a great need for a motion, such as that moved by the Leader of the House, to be agreed to. The reason for that is rather obvious when one considers the words in the Bill as it exists at the moment. In saying that, I am not reflecting on the decision of the House as much as I would like to. I will do that elsewhere. I have done it before, and I will continue to do it. It is necessary to add new parts to this Bill because of those many reasons alluded to by the Leader of the House in relation to the debate in the other place. It is necessary that those matters canvassed in the other place should also be canvassed here so that all members in this House can be tested as to where they stand on the issues that are before the community of Western Australia. If it was not for this motion of the Leader of the House, the public of Western Australia would not have the opportunity of seeing where we stand on those issues, albeit supplementary and secondary issues. However, it is not for me to go into them at this stage.

To proceed down this path is, I think, a sign of some leadership at last. The State has been crying out for a bit of leadership in this matter from the members of Parliament. In Western Australia, thanks to a prevailing view, we have had a very one-sided debate. What we lack in Western Australia -

The PRESIDENT: Order! Until the last statement, the member was heading in the right direction and was discussing whether the instruction should be agreed to. The matter the member has just raised is not relevant to this motion.

Hon N.D. GRIFFITHS: Mr President, I thank you for that guidance, and I will deal with that lack of leadership in another context at great length, probably when somebody else is presiding -

The PRESIDENT: Order! There is a correct place and a correct time.

Hon N.D. GRIFFITHS: I quite agree with that. Certain matters must be discussed so that areas - I cannot reflect on the decisions of the House, but some people might put it this way - of greatest deficiency can be dealt with.

The Leader of the House has talked about leadership, as has Hon Cheryl Davenport. I will not do so because there has been no leadership in Western Australia on this issue. Hon Cheryl Davenport said that she wanted to proceed because she thought it was her duty to bring the debate to a close, and I think that is very nice and I thank her for that. We will get to a conclusion with this legislation relatively soon, bearing in mind its importance.

In the short time I have been a member, we have spent many hours talking about matters of relative insignificance

at very great length. I say relative insignificance because the matters were not unimportant. I remember some very momentous speeches, and I say that with greatest respect to all members who have delivered those speeches. The debate on abortion in Western Australia has only just begun. It has been one-sided for 30 years. Some people have won 1998, but they will lose out in the end.

HON GIZ WATSON (North Metropolitan) [8.00 pm]: I do not wish to oppose this motion. However, I believed that the Bill as it stood was adequate and addressed the concerns. I understand the need to try to obtain a middle path that will win support in both Houses. There is a concern about this process of putting in additional parts, because we must come up with a workable solution. It must not result in further prosecutions or insecurities in the community. We are facing a dilemma in that we need to act swiftly in order to resolve this matter and to provide some certainty but the rapid moving debate raises concerns about how well we can all be advised before voting on this. With those few concerns I am not opposed to this motion.

HON LJILJANNA RAVLICH (East Metropolitan) [8.01 pm]: I do not agree with Hon Nick Griffiths' comments that this is purely a House restricted to being a House of Review.

Hon N.D. Griffiths: Can't be right all the time.

Hon LJILJANNA RAVLICH: Hon Nick Griffiths has a motion on the Notice Paper to introduce a Bill. Quite clearly if he honestly believed that this was a House of Review he would not be going down that line.

Hon N.D. Griffiths interjected.

Hon LJILJANNA RAVLICH: I do not want to go into that issue. I will just say one cannot run with the foxes and hunt with the hounds. Leaving that aside, I sympathise with the Leader of the Opposition in this House and Hon Nick Griffiths and people who hold their view.

Hon Tom Stephens: All I want is your vote.

Hon LJILJANNA RAVLICH: We all have our views and our convictions. Some of us perceive our roles in Parliament differently. My view is that I should not allow my religious belief to play an overriding part in the decision I make.

The PRESIDENT: Order! I appreciate what the member is saying but this is not the time to be raising these issues. The question before the Chair is whether an instruction should be given to the Committee and that is what the member must address; either she agrees or does not agree and gives her reasons.

Hon LJILJANNA RAVLICH: I fully agree that an instruction should be given to the Committee of the Whole House on the Criminal Code Amendment (Abortion) Bill 1998 that the Committee have the power to add one or more parts to the Bill. Like Hon Giz Watson I would like to have seen this simplified. I would have preferred the original Davenport Bill. However, given that these amendments before us will clear the way to a resolution on this issue I am more than happy to support the motion.

HON NORM KELLY (East Metropolitan) [8.03 pm]: It is quite extraordinary that we are presented with these new parts of the Bill to contemplate but I believe we are dealing with an extraordinary circumstance. I appreciate the work that has been undertaken by various members in this House to resolve a possible impasse with the legislation before us and the legislation before another place at this same time. I appreciate that we do have this opportunity tonight to resolve matters which are of critical importance to the majority of Western Australians. When we consider the order of business in this House it is important that we take on board the impact that our actions have on the population of Western Australia.

Question put and passed.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Cheryl Davenport in charge of the Bill.

Clause 1: Short title -

Hon TOM STEPHENS: This short title is a better short title for the abortion legislation that is before this Chamber than the one that has been dishonestly selected for the Foss Bill in the Assembly. There the Government sponsored, promoted and introduced Foss Bill has a similar title but one that is stripped of reference to the issue of abortion. Its short title has no reference to abortion. The other place apparently resisted inserting into the short title any reference to abortion in a most unbelievable decision. It was almost a dishonest decision designed presumably to hide behind a false title of a Bill, presumably to allow them to work on the basis that they were not considering a Bill dealing with abortion. I can say to Hon Cheryl Davenport that in the Bill she has drafted in collaboration and

cooperation with the Attorney General Hon Peter Foss, at least they have had the honesty to include in the short title a correct reference to what the Bill is about. I am fascinated by the bizarre debate that occurred in the other place where it voted to reject the inclusion of the word abortion in the Foss Bill. It is bizarre because when members look for a Bill that has been introduced it is fairly sensible that they might try to find in the short title of that Bill some indication of the intention of the Bill. It was an extraordinary act of dishonesty in the other place to resist that inclusion. We see a different short title before this Chamber for consideration.

Short title debates in this place have frequently gone on for a long time, and many members of the Labor Party have participated in those long debates on the short title and argued strenuously and vigorously why the short title should be opposed in Committee, because that is the first opportunity that the Committee has to respond to the propositions that are in the Bill following the conclusion of the second reading debate.

I will take a little time to outline the reasons that I believe the short title should be defeated. I intend to oppose the short title and to take the opportunity of encouraging other members to join with me in defeating this Bill at this time. I note with interest that at least one member did not have the opportunity of voting on the policy of this Bill at the second reading stage; I understand that was for the very good reason that the member had been granted leave for personal reasons. This is the first opportunity for that member to state on record whether this attempt to remove from the Criminal Code the references to abortion should proceed.

Almost every member who spoke during the second reading debate accepted the proposition that when we are talking about abortion, we are talking about the taking of human life. The view was generally expressed that in talking about abortion and about the unborn child in the womb - or whatever other words are used, depending on which side of the argument people come from, the other words being embryo or foetus - we are talking about the taking of human life.

Some members believe that the right to take that human life is justified by the principle that the sanctity of choice can be juxtaposed against the sanctity of human life, where if a human life is the product of an unwanted pregnancy, that human life is unwanted, and the sanctity of that choice takes precedence over the sanctity of that human life. I do not accept that principle, and I will vote against the short title and hope that I will be joined by others in so doing.

I treat the struggle of dealing with this legislation as a desperate struggle. The desperation on my part has been in trying to give people the opportunity of understanding what they are doing. I have been bitterly disappointed about a number of features of this process. For example, I have noted that whenever I have spoken, the Attorney General has either left the Chamber or positioned himself next to another member, as he is doing now, and had a loud conversation with that member, presumably as part of a process of discourtesy and disrespect to the views that I am putting before the Chamber. The Attorney General has been grossly discourteous in the debate to this point, and he is continuing that process tonight. Every time I have spoken, the Attorney General has either walked out or had a loud conversation with another member of the Chamber that has led to loud laughter coming from the corner in which he has been sitting. I have found that behaviour offensive and discourteous.

Point of Order

Hon PETER FOSS: One of the most consistent features of Hon Tom Stephens is that he continually beats me on the head even though I am merely a minor player in this matter. It is neither a government Bill nor am I a proponent of the Bill. Hon Tom Stephens should address the Bill and not continue to make attacks on me which are most unfair and unreasonable.

Hon Tom Stephens: But truthful.

The CHAIRMAN: The point is taken that the member should not reflect on the Attorney with regard to where he is in the Chamber, or other matters of that nature.

Committee Resumed

Hon TOM STEPHENS: I am also fascinated by the fact that while I have made myself available to listen to any argument that anyone wants to put, to read any piece of correspondence that anyone wants to put, and to expose myself to every conceivable side of the argument, I have witnessed dishearteningly that the people who support this Bill which provides for abortion on demand have displayed discourtesy towards and disinterest in the opposition that has been expressed by people like me.

I have also watched with alarm in the the offices of my parliamentary colleagues not bother to open correspondence and material that they have received. Those colleagues are prepared to vote to allow at law a most repulsive process to continue in our community - that is, the taking of the life of an unborn child in the womb - but have declined the opportunity of looking at that material. I will be fascinated to see whether anyone on the pro-abortion side of this argument has taken the opportunity of looking at that material.

Point of Order

Hon LJILJANNA RAVLICH: Mr Chairman, what does this have to do with the amendment to the short title of this Bill? I could understand this debate if we were debating some of the clauses, but this debate is about an amendment to two words in the short title of this Bill. I do not believe the Leader of the Opposition is addressing that matter specifically.

The CHAIRMAN: The member is not able to recapitulate the second reading debate but is able to refer to an overview of the clauses that follow, so in that sense the member can continue but needs to be aware that he should relate his comments to the overview of the different sections that follow.

Committee Resumed

Hon TOM STEPHENS: I will not be extraordinarily long, however I know the amendments are relatively new. I assure Hon Ljiljanna Ravlich that this is a process which she and her colleagues have had to engage in from time to time with other Bills that have great importance, but lesser importance than this issue. I will be damned if I will not give the short title the same level of attention I have given to similar debate on other Bills, aided and assisted by my Labor Party colleagues, who have urged upon me the need to do so in those debates, so bear with me, but I do take the instruction.

The CHAIRMAN: The Leader of the Opposition might address the Chair. We would not wish the Leader of the Opposition to be damned.

Hon Ljiljanna Ravlich: Absolutely not!

Hon TOM STEPHENS: All I want to say as we move into this Committee debate is that I know for a fact that there are people who have not allowed themselves to watch the video material that has been made available to all of us as parliamentarians that has illustrated the abortion process as it currently operates within the abortion clinics of the world. I still take the opportunity today in this debate of challenging every member of the Committee to slip quietly out of the Chamber and to watch those two videos that I did not want to watch, but decided that I would in preparation for this debate because I felt that if ever there was a need for eloquence to try to persuade members to my view, this was the opportunity and time. Parliamentarians who have a respect for life and have adopted a pro-life viewpoint need all of the eloquence that they can muster in presenting the case as to why this short title should be defeated and thereby defeat the legislation that is before the Committee. I hope that there is someone among the pro-choice or pro-abortion group in this Chamber - the 21 who voted for the passage of this Bill - who will tell me that he or she has seen the video. Silence!

Hon Ljiljanna Ravlich: The Hon Bruce Donaldson did.

Hon TOM STEPHENS: I do not think he voted as one of the 21.

Hon Bruce Donaldson: Yes I did.

The CHAIRMAN: The Leader of the Opposition should address his comments to the Chair.

Hon TOM STEPHENS: I had momentarily forgotten that Hon Bruce Donaldson had deserted us, but I hope he will take the opportunity, if he subsequently watched the video material about the destruction of human life that goes on through the abortion process, of voting now on the short title against the Committee continuing to consider this Bill. For those members who did not see it, Hon Bruce Donaldson did not see it -

Hon B.K. Donaldson: I did see it.

Hon TOM STEPHENS: Sorry, the member did see it, but apparently no-one else within the Chamber from the pro-abortion or pro-choice groups is prepared to say whether he or she watched it. I will work on that basis and presume that they have not watched it. In that situation I will do my best to describe the reality -

Hon Giz Watson interjected.

Hon TOM STEPHENS: No, he described the partial birth abortions also provided for under the unamended Davenport Bill. Hon Giz Watson supported the passage of the Davenport Bill that provides for partial birth abortions, as described by my colleague Hon Nick Griffiths. Hon Giz Watson should not shake her head. I know this member as a good member. I know she is a member who is sensitive to life issues. I have seen her on the banks of Roebuck Bay showing sensitivity to the little slug; remember the little slug?

The CHAIRMAN: Order! The Leader of the Opposition might depart from the shores of Roebuck Bay and perhaps address the Bill before us. I remind the Leader of the Opposition that he should address the Chair rather than create a dialogue in the Chamber.

Hon TOM STEPHENS: Regrettably and through you Mr Chairman, Hon Giz Watson has shaken her head at the proposition I put before the House that the unamended Davenport Bill provides for partial birth abortions to be carried out in Western Australia. Those partial birth abortions have been accurately described by Hon Nick Griffiths in the second reading debate. However with the passage of the Bill, Mr Chairman -

Several members interjected.

The CHAIRMAN: Order! The Leader of the Opposition has the floor.

Hon TOM STEPHENS: There will be nothing to stop the Queensland doctor who carries out partial birth abortions already, who has proceeded to set up the mechanisms whereby he would be able to do the same in Victoria, being denied that opportunity in Western Australia if the legislation of our dear colleague is passed unamended.

Hon Cheryl Davenport: Do not be patronising.

Hon TOM STEPHENS: I say to the member whose Bill this is that she has given the people of Western Australia no protection within her legislation that would prevent partial birth abortions being carried out in this State, if her Bill became law. The Minister for Health said today in the other place that there is no way in the world that that doctor can be stopped applying for and obtaining the appropriate licences that would allow him to proceed with his partial birth abortion processes in this State, unless some provision were put in the Statute. I do not for a minute think that the Hon Cheryl Davenport supports partial birth abortion becoming the norm. She indeed has said that partial birth abortions or late term abortions are extremely rare. I think a very small percentage, probably 300 or so unborn babies a year, were aborted towards the later part of a pregnancy -

Hon Cheryl Davenport: Not even that many.

Hon TOM STEPHENS: That is absolute rubbish!

Hon Giz Watson: One or two.

Hon Cheryl Davenport: Six last year in the State.

Hon TOM STEPHENS: I find it absolutely fascinating that the member now produces a figure that suggests only six abortions in Western Australia were carried out after 20 weeks of pregnancy.

Hon Cheryl Davenport: There were 15 post 16 weeks.

Hon TOM STEPHENS: I find this an interesting debate as it unfolds.

Hon Ljiljana Ravlich: Especially given it is a title debate.

Hon TOM STEPHENS: If Hon Cheryl Davenport is of the view that abortions later than 20 weeks should not be the norm, she has done nothing in her Bill to try to prevent that practice from becoming a regular reality. Nothing in the member's Bill would create any disincentive for later term pregnancies being aborted. I have been fascinated to watch the alleged sensitivity of members in the other place to the same argument. No matter what argument those members posed about late abortion, and no matter which amendments were moved to attempt to limit the abortion process, all those members said in public debate that the amendments did not adequately cover the issue and were not appropriately drafted for the job. However, the pro-abortion people have done nothing to try to draft an amendment to either piece of legislation to stop that practice from becoming a regular reality in this State. Also, nothing has been done to stop that Queensland doctor from operating in this State. That is a complete disgrace.

Having watched proceedings in the other House, I will not participate in - certainly not at this stage anyway - amending this Bill in any shape or form.

Hon N.D. Griffiths: We will see.

Hon TOM STEPHENS: Every amendment I heard moved in the other place was greeted with derision as members complained about the lack of artistry in the draft. On that basis, despite their sensitivity to the principle that abortion should not proceed after 20 weeks of pregnancy, members did not feel the draft was adequate to respond to their responsibilities.

Hon N.D. Griffiths: It was excellent drafting; in fact, it was better than what I see before me here.

Hon TOM STEPHENS: Members were not prepared to put into law a restriction on the abortion process that would in any way prevent or discourage abortions after 20 weeks' gestation.

Hon Nick Griffiths dealt in the second reading debate with the partial abortion process and described it graphically in a way that I will not repeat - I find it distressing to hear it. However, I have discovered that the practice he outlined

is the exact process adopted in Queensland by the doctor who wants a licence to operate in Western Australia and in Victoria. I note that the Kennett Government has had the good sense to take steps to develop a strategy to move away from the process of allowing the taking of human life after 20 weeks' gestation.

Let us return to what the abortion process has become in the abortion clinics that quite regularly carry out this procedure of termination of up to 20 weeks' pregnancy. This process was developed in China and Russia, and we all know of those two nations' great sensitivity to the protection of women's interests and rights! We also know of those societies' unfortunate disregard for human life. The procedure came into wide acceptance in the western world, first in America, then Europe and Great Britain and, fairly soon after, in Australia. The procedure, which basically vacuums out the pregnant womb, was refined.

Hon Cheryl Davenport: That is how my son was born, Mr Stephens. It was by vacuum extraction because he was stressed in my womb.

Hon TOM STEPHENS: Let us face the reality of what we are dealing with.

Hon Cheryl Davenport: None of those terminations is done here as they are carried out through induced labour. If the baby is in such a position at presentation that it cannot get through the canal, the vacuum extraction is used.

Hon TOM STEPHENS: I might have a severe case of invincible ignorance, but people have made available to me information about the processes utilised in the clinics of Western Australia. Material has been shown to me that has provoked disgust for that process of taking human life. If the member feels that the vacuum evacuation of a womb should not be provided for in law, I would be delighted if she drafted an amendment to satisfy that sensitivity expressed in debate.

Hon Cheryl Davenport: I am saying it is a medical procedure.

The CHAIRMAN: I draw Hon Cheryl Davenport's attention to the fact that when the Leader of the Opposition has finished speaking, she will have the opportunity to address the points raised.

Hon TOM STEPHENS: The display of that process shows the evacuation of an unborn child, which effectively sees a young life sucked out of the womb and destroyed in the process. The video material shows the instruments being inserted into the womb of the mother of these unborn children. At one stage the young baby tried to get away from that instrument. A small metal needle was inserted into the mother's womb from which the baby recoiled. The baby was sensitive to the reality of what was taking place in the womb. It recoiled and tried to escape as it sensed danger. The unborn baby retreated to another side of the womb. It kicked and tried to move away from the instrument. Therefore, it was not an insensate human life; it was a young, unborn child trying to escape the murderous instrument of this doctor who was committed to the Hippocratic oath of protecting life, but was attacking the life of the unborn child.

Experiments conducted on unborn children to discover more about life in the womb indicate that in pregnancies as early as 12 weeks' gestation, the unborn child responds to sensations in the womb. The 12 week old, unborn child can display learning from sensations in the womb. The example given was the insertion of a needle passing near the unborn children which coincided with a sound being made. That happened about 10 times. Every time the sound was made the baby retreated because it knew that the needle would come at the same time as the sound. When the needle was taken away and the sound was made a couple of times, the baby kept retreating even though the needle was nowhere near the uterus of the mother. That was a 12 week foetus, a human life, sensing danger and the need to move away from the potential danger.

We also know that the process of extracting a baby from the womb occurs regularly. Doctors have created a language to divide the body of a human being. They call the head No 1, and the torso, arms and legs are given a different number. Therefore, during the abortion process they say that No 1 is separated from the body. Quite often the head is severed from the unborn child, effectively killing the child by decapitation in the womb. Regularly, it would appear, the extraction of the child involves a suction process. The doctor examines the vacuumed material from the unborn child because the doctor's task is to ensure that the entire contents of the womb have been evacuated. The doctor must ensure that nothing remains. That is, No 1 - the head of the child - or the limbs must not remain. Therefore, the doctor reassembles the baby in a sink at the side of the clinic. The doctor must put the two arms, the two legs and the torso together to be sure that all of the unborn child as well as the placenta has been removed from the mother's womb. Often doctors find that the head has not been removed, and that can cause enormous complications - as can any material that is retained - for the mother who could bleed subsequent to the abortion process. The doctors have an obligation to remove the remaining parts of the unborn baby from the womb, to assemble the material and ensure that nothing remains.

I had the opportunity of meeting an abortion doctor the other night when she visited Western Australia. I refer to

Dr Barbara MacMillan. She described that process to me. She has conducted thousands of abortions in her clinics in America. She described to me and to many others the process in which she has been involved for a long time. She said that she was dehumanised by the process, and eventually someone came with her on her journey to the sink in the clinic. A nurse asked her what she was doing at the sink. She said that she would show the nurse. She said that she had to reassemble the baby to make sure that all of the baby had been removed from the mother's womb. At that stage the baby was in several pieces. That process ensures that the mother is protected from the prospect of further bleeding after the abortion has been completed.

Dr MacMillan said that the process of explaining her actions to another person made her think, for the first time, that she had been engaged in an evil process. That was the beginning of a change of consciousness on her part about being engaged in the abortion industry. Her career did not finish there, because she persisted for a while longer. She described how later she was at the sink in the clinic theatre reassembling the body of a 12 to 13 week foetus when she came across the outstretched arm which had been separated from the torso of the baby. The little arm had muscles. It was a piece of human life. The fingers were identifiable, and she said it reminded her of her son's desire to flex his muscles in later life. That stark reality finally did it, and she put up her scalpel and her tools of abortion. She refused to participate in another abortion after that moment of realisation that she was destroying human life in the womb. For many years she stayed away from the process. However, she was involved accidentally in a discussion one day with another great abortion practitioner in the United States - who has since ceased carrying out abortions as well, and is now part of the pro-life movement. Together they have shared their experiences in the hope that people will recognise the evil in which they are involved when they allow this process to be provided for at law.

Regrettably, Hon Cheryl Davenport's Bill shows no sensitivity for pregnant women in Western Australia. Her Bill will allow the taking of human life - from conception to birth, to partial birth abortions. Under the amended Criminal Code, the killing of a child with just a remaining finger of the child in the womb could be regarded as a legal abortion, because by definition in the criminal Statutes the baby is regarded as still being inside the womb. One finger remaining in the womb would be sufficient to allow for some provision for legal abortion. That situation is not prevented by the Statutes nor by the Bills before both Houses. I am yet to hear the arguments in support of the amendments to be moved by Hon Norman Moore, but I hope that in the process of considering these issues the alleged sensitivity of members will lead them to the view that abortions should not happen after 20 weeks, and that at least it will encourage members to put at law some line in the sand relating to this process, or at least find a point at which they are not prepared to allow the process to continue.

One reason that I am keen to ensure that this clause of the Bill is defeated is that we still do not have any sufficient proscription at law relating to the bodies of unborn children that have been killed in the womb - at whatever age - or what can happen to the bodies of the dead children following the abortion process. Still at this late stage I encourage the member to rethink the issue. The feminist speaker Catherine Killerby Kovesi spoke about the ultimate irony that we are now seeing in the abortion process - a violence being done to women that has so many awful consequences to their life, health and physiology. The great irony is that the foetal material being evacuated from the wombs of mothers in various parts of the world is now being utilised in the French cosmetic industry. The tissue of aborted infants is now considered to be useful in the manufacture of makeup. Cosmetics have always appeared to me to be part of the oppression of women - they feel obligated to wear them. This double whammy and irony was not lost on Catherine Killerby Kovesi as she spoke about the horrors of this process recently.

I may not be the most eloquent presenter of what goes on inside the abortion clinics of Western Australia. I have not been inside one, but very few members have. That is another reason that this process is absurd and obscene. If we are so intent on allowing for this measure, members should expose themselves to the reality and test whether my view is so misguided.

Hon Derrick Tomlinson: I have and you have.

Hon TOM STEPHENS: The member has.

Hon Derrick Tomlinson: I have and you have.

Hon N.D. Griffiths: You may have, but you are wrong.

Hon Derrick Tomlinson: I have and you have.

The CHAIRMAN: Perhaps at this stage I should remind the Leader of the Opposition that I have allowed a wide-ranging debate. However, we are coming close to completely redebating the principle agreed at the second reading stage. We have agreed to the principle of allowing abortion. This discussion of the short title should consider whether the Bill as drafted meets the stated objectives. I am allowing some latitude, but I remind the leader that he is straying towards revisiting completely the second reading debate and that he should relate his comments to some of the range of clauses that we are now considering.

Hon TOM STEPHENS: I accept that instruction from the Chair as an invitation to spell out exactly the sorts of provisions I hoped would be included in the clauses. A motion has been passed instructing this Committee to provide for the addition of one or more parts, presumably including amendments to the Health Act to prescribe and proscribe in great detail those things which members find offensive and which should not be allowed for at law.

Members know where I stand, but the Committee does not support that view. However, members who do not have my sensitivity and who are opposed to abortion altogether claim to have some sensitivity in relation to some issues. By virtue of that motion - if they do not defeat the short title - they have the opportunity of expressing in law where they are prepared to draw the line on some of these questions in the Health Act. Are they saying that they would not be prepared to allow at law the evacuation of unborn children by the vacuum technique that dismembers a body as shown in the video I have received? If they are, I support them. Are they saying that they would be prepared to embrace an amendment to the Health Act that would reduce the period of the life of the unborn child to 20 weeks or less?

Hon Cheryl Davenport: It is in there.

Hon TOM STEPHENS: In which case I want to see exactly how far people are prepared to take that.

Hon N.F. Moore: We would like to do that.

Hon TOM STEPHENS: I have yet to see that. I ask the member who has great sensitivity to the life of sea slugs and other creatures whether she would be prepared to allow this legislation to be passed completely unamended to allow abortion up to 40 weeks? Would she defend the sea slugs and leave -

Hon Ken Travers interjected.

Hon TOM STEPHENS: That is my view.

The CHAIRMAN: The Leader of the Opposition will address the Chair and other members will desist from engaging in dialogue.

Hon TOM STEPHENS: Members in this Chamber have seen that great sensitivity to the sea slugs and I love it. I just wish it were on display in relation to this debate. I have the same sensitivity to all forms of life, especially human life.

I hope that even now members might be prepared to countenance an amendment to the Health Act that would proscribe the use of foetal material in any way, shape or form after an abortion. It should simply be respectfully buried.

I have been lobbied by a woman who had an abortion and who is totally opposed to the legislation. She said that the most distressing thing for her now that she has accepted that the abortion has done great damage to her and destroyed the life of the unborn child is that she is left with the reality that the body was disposed of and she has no way to honour its burial place. We require the respectful disposal of the bodies of the rest of the human race.

There is also nothing preventing the French cosmetic industry or anyone else utilising the foetal tissue. If members have some sensitivity, they should display it.

Hon Ljiljanna Ravlich: You also should not use foetal material as advertising material.

Hon TOM STEPHENS: If the member were to move an amendment to the Health Act preventing that happening there would be something to say for it. However, it displays a reality with which we must come to terms. I do not like what I have seen in the community in this process. Apparently Hon Ljiljanna Ravlich is prepared to allow that process to happen. It seems she is not even prepared at this stage to put into the Health Act anything that would limit the way in which people can deal with the bodies of unborn babies killed in the wombs of their mothers.

Hon N.F. Moore: I am sure the Chamber would consider any amendment you might make to the Bill.

Hon TOM STEPHENS: I will be damned if I will do that. Does the Leader of the House know why? I do not believe that there are any bona fides in this Chamber on this subject. Why do I come to that conclusion? I have watched members in the other place display no bona fides in its debates on this issue. They have been hypocrites from the introduction of the Foss Bill to the finish. They have all been damned hypocrites and I will not join in the process.

The CHAIRMAN: Order! The Leader of the Opposition will address the Chair.

Hon TOM STEPHENS: I hoped that they would display somewhere in this process some authenticity about their alleged sensitivities. I have watched the turning and the squirming of their stupid and ridiculous arguments in the

other place. I am utterly sickened by the lack of authenticity, honesty and integrity in the way members have participated in the debate in that place. If members have any sensitivity to the life principle, let them put it on display. Let them put in the Health Act where they are prepared to draw the line in respect of how the bodies of unborn children should be dealt with after the abortion process. Should that foetal material turn up in the French cosmetic industry? Is that good enough for them? I do not accept that and I hope that our society does not either.

Worse than that, we have seen in other places the process of allowing babies to be evacuated from the womb and then used in experimentation. I am referring specifically to experiments conducted in Finland, which have been referred to in some of the material made available to us. I wonder whether anyone is endeavouring to construct some amendments to the Health Act which will make it absolutely clear that once a baby has been taken out of the womb and has managed to survive the abortion process members are prepared to proscribe procedures that would allow for disrespectful experimentation on the live body of that human life. I note for instance that if an unborn baby is evacuated by an induced contraction process and survives those violent contractions, the process is apparently completed by that live baby being left with a cold and wet towel wrapped around it because the sudden loss of heat brings about its sudden death. Where are members prepared to draw the line?

Hon E.R.J. Dermer interjected.

Hon TOM STEPHENS: Apparently that is provided for in the abortion process because it is written-off human material that has been discarded by the abortion. Then there is a process of pretending that it cannot sustain itself, so a cold wet towel is draped around the newly delivered baby, which is sufficient to extinguish its life. Some might say that it is like turning off a life support machine. I do not accept that it is. I believe that it is effectively homicide. I am told that it has happened at least once in the abortion clinics in Western Australia. I hope that somewhere along the way during the consideration of this Bill some opportunity will be given of ensuring that the alleged sensitivities of members are somewhere enshrined in law. I challenge members to do that. I do not see those alleged sensitivities anywhere on display as yet.

The whole process of jamming up this Parliament with two Bills in two places at the same time and somehow trying to meet in the middle to resolve this issue is a terribly unsatisfactory way of handling the issue. I urge members not to allow the passage of the short title of this Bill at this time because they know that there is developing and continuing a process that will see the passage of the Foss Bill in the other place, which Bill could come to this Chamber and then be processed in an orderly fashion. The hothouse environment that has been delivered by virtue of the sophistry and design of the Attorney General is extraordinary. It has been caused by the handling of the two Bills at the same time in this Parliament. I see the hand of the Attorney General over this Bill. I saw it specifically on a draft that was made available to me. It showed the specific handiwork of the Attorney General. The Davenport Bill had been faxed -

Hon E.J. Charlton: That is not true.

Hon TOM STEPHENS: I will show the member now.

Several members interjected.

The CHAIRMAN: Order! This is not a general discussion.

Hon TOM STEPHENS: The Attorney General and the member introducing the Bill have conceded my point; that is, that Hon Peter Foss specifically organised this Bill together with Hon Cheryl Davenport.

Hon Peter Foss: I stated publicly that is what I was asked to do.

Hon E.J. Charlton: He had two choices: He could let Hon Cheryl Davenport continue alone or he could provide legal information. Do not be unfair. You are not doing justice to yourself.

Hon Peter Foss: Next you will be accusing parliamentary counsel because he wrote the thing.

Hon N.F. Moore: He has already thought of that.

The CHAIRMAN: Order!

Hon TOM STEPHENS: I have not; that is not true.

Hon N.F. Moore: I am pleased you did not do anything about it.

Hon TOM STEPHENS: I specifically did not do that of which the Leader of the House tried to accuse me.

Hon N.F. Moore: You thought about it.

The CHAIRMAN: Order! The Leader of the House will come to order.

Hon TOM STEPHENS: I thought of no such thing. Nothing could be further from the truth.

The CHAIRMAN: Order! The Leader of the Opposition will address the Chair and not the Leader of the House.

Hon TOM STEPHENS: The sophistry of the Attorney General -

Hon E.J. Charlton: That is not true. This is unfair and not right. Stick to your facts and you will be right.

Hon TOM STEPHENS: I will stick to the facts as I know them. I have the first draft of the Davenport Bill which was faxed from the Attorney General.

Hon Peter Foss: That is not artistry; it is assistance.

Hon TOM STEPHENS: The Attorney General at the same time gave to the other place his Bill. I wanted to find out which Bill the Attorney General supported.

Point of Order

Hon E.J. CHARLTON: Who was constructing one Bill in the other place or what was going on here has absolutely nothing to do with the short title. I strongly recommend, Mr Chairman, that you ensure that the Leader of the Opposition sticks to the facts and not supposition about what may or may not have happened.

The CHAIRMAN: I remind the Leader of the Opposition that he has strayed towards detailed comments about what is occurring in another place and also comments that are not pertinent to the short title or clauses that may be before us. Certainly some of his comments have been about clauses that may be included in conformity with the policy of the Bill. I ask him to continue his comments along those lines.

Committee Resumed

Hon TOM STEPHENS: I have described what I find offensive. Two Bills are before the Parliament at the same time in two different Chambers. That is an additional reason for not advancing the Bill at this time and why I would be happy if members were prepared to vote against the short title. In trying to determine which Bill the Attorney General supports I asked a friend of mine in his party.

Point of Order

Hon N.F. MOORE: I draw your attention, Mr Chairman, to the relevance of that comment. It has nothing to do with clause 1 of the Bill and I ask you to direct the member to relate his remarks to the clause.

Hon TOM STEPHENS: I will do that.

The CHAIRMAN: I look forward to following the Leader of the Opposition's comments in this regard.

Committee Resumed

Hon TOM STEPHENS: The short title of this Bill should not be agreed to by this Committee of the House because unleashed in another place is a further Bill, which apparently represents a draft presented to the Parliament by the Attorney General for consideration, that could be left to proceed in an orderly fashion in that Chamber and then be transmitted to this place.

The CHAIRMAN: Order! I remind the Leader of the Opposition of Standing Order No 94. To refresh his memory, it states that no member shall allude to any debate of the current session in the Assembly, or to any measure impending therein. Obviously, that is designed to prevent any undue influence in this Chamber with respect to what is happening in another place.

Hon TOM STEPHENS: I appreciate that standing order, and I recognise that it is part of the difficulty of entering into this debate. Nonetheless, by virtue of Standing Order No 94 and in recognition of the media reports that debate on another Bill is taking place, it is all the more reason for this Committee to stop doing what it is now doing and for members to await the arrival of the government Bill from the other place.

I am also concerned about another reality; that is, I cannot allude in this debate to the charges that have been laid against the two doctors.

The CHAIRMAN: Order! I trust that the member will not refer to that.

Hon TOM STEPHENS: I will not. It is interesting that these charges are the justification for bringing forward this Bill, yet no reference can be made to that reality, which is the framework that has hemmed in the Committee. The

very existence of those charges is justification in itself for not dealing with the legislation at this time. If members of the Committee are not prepared to do that, at least they should try to find out - in camera if necessary - the circumstances that led to those charges being laid that makes them significantly different from the situation that has operated in Western Australia for some time. Members should determine whether that reality would lead them to want to improve the Criminal Code or the Health Act in such a way as to respond to that situation.

Members have been deprived of that opportunity. I wrote to the Attorney General on that specific issue. I said I understood that the House would soon be asked to respond to legislation introduced as a result of those criminal charges, and I wanted to know whether his comments, which suggested that the prosecutions were so significantly different in material fact as to justify prosecution in this case, had been accurately reported in the media. I indicated that, as a legislator, I wanted to know what information could be made available to me with reference to that prosecution to enable me to respond more appropriately in the Chamber to that reality. I received today a letter dated 25 March from the Attorney General. It was a one line response indicating that because the matter was before the courts, the Attorney General was not in a position to comment on a particular prosecution.

It is interesting that the Attorney General was reported in the media as saying the material circumstances were so significantly different that they justified a prosecution in this case. I wanted to explore and understand that statement. In the second reading speech Hon Cheryl Davenport said that that is the reason she wishes to proceed with the Bill at this time. However, members of this Committee are not able to respond to those circumstances to enable us to do our job better, or to understand the legal reality that has brought about those prosecutions. We do not know whether we should respond to those circumstances in the detail of the legislative process currently before us.

In my view, this Parliament is being stampeded, certainly by the media, by the abortion doctors, those who are involved in the abortion industry in Western Australia and by the pro-choice people. I am left to ask the question: What sort of conspiracy has been involved in the process? Was it a deliberate attempt to steamroll this Parliament into a knee-jerk legislative response, such as that represented in the Bill before the Committee, and to deliver the long-stated goal of members such as Hon Cheryl Davenport and others to remove reference to abortion from the Criminal Code? It has now provided the vehicle for the Attorney General to participate so fulsomely in the same process.

I hope the Committee will see fit to reject the short title of this Bill because I believe there are members in this Committee who are universally sensitive to the interests of the women of Western Australia and the rights of women. They do not want to encourage or advance the procedure of abortion and they do not want it to become commonplace. They do not want abortion to become more regular and prolific in the community because this procedure has a damaging impact on the lives and health of women. It affects their health not only physically but also mentally. The abortion process, as I have learnt in very recent days, has been consistently identified as the cause of growing incidence of ill-health, such as breast cancer, among women in our community.

The CHAIRMAN: Order! I remind the Leader of the Opposition that he is, or is close to, canvassing the second reading debate. He needs to address some clauses rather than the principle to which he is returning.

Hon TOM STEPHENS: I thank you, Mr Chairman for your direction, which I take on board.

In response to the sensitivity of the Chamber to the abortion process, do we at this stage want to see the abortion numbers continue to rise within our community? We surely all know the damage which abortions are causing to the lives and the physical and psychological health of women within our community. Are we not prepared to put somewhere within the Health Act, even at this late stage, some requirement to guarantee that the dangers of abortion are fully and completely understood by those participating in the process? Are we not apprehensive as a Committee about the future risk to women who are caught up in the abortion process once or twice due to the lack of a discouragement in the law which led them into thinking that abortion was a simple process?

We know as legislators that the abortion process is causing great injury and damage to the health and lives of women within our community, our nation and across the world. However, I have yet to see any recognition with any amendments before the Committee to guarantee that this reality is brought home to women before they embark on an abortion. I bet that down the track we will see class actions taken by women against the State of Western Australia and its Governments for having created the climate in which abortion has become a regular reality in women's lives. Action will be taken because of the damage done to women's lives and health. Even at this late stage, members have the opportunity to ensure that that does not happen. Perhaps an amendment could be moved to the Bill by the Leader of the Government or other members. As legislators, members have that possibility in their hands. Otherwise, members will create a reality which will ensure that more women have abortions through legalising the process as though it were some healthy medical procedure.

I saw on the front page of *The West Australian* one of my party colleagues indicate that legalising abortion in

countries across the world has not seen any great impact on the number of abortions carried out. I was surprised by the claim, which I had heard made by others. This Committee needs to consider seriously the opportunity to defeat the short title of the Bill because that claim is not true. The abortion numbers in England increased as soon as the process was legalised in that country, and we know that the global figure in America has dramatically increased since abortions became legally available on demand in that country. In Western Australia, as abortion became legal on demand through the court decisions of this nation, the abortion figures increased.

Hon N.D. Griffiths: It became legal not by the judgment of the courts, but by the actions of the Executive. They were rulings by two judges in separate States which had no real standing whatsoever.

Hon TOM STEPHENS: There has been a process by which abortion numbers have increased through administration of the law in reference to abortion which has effectively seen abortion numbers dramatically increase with all the loss of innocent life involved and the damage done to the health and minds of many women. I accept that I am painting a one-sided picture, but this picture has been given little attention by the advocates of abortion on demand in our community. Even at this late stage, the opportunity exists for the Committee to reject the Bill's short title, thereby effectively ensuring that other processes are adopted in handling consideration of the abortion issue. For instance, I would commend the process of waiting for the arrival of the other Bill from another place - I gather that it will not be very far away.

Hon Simon O'Brien: I missed that point. Are you saying that we should delay and see what comes out of another place?

Hon TOM STEPHENS: That is my preference. My preference is to deal with that Bill in the first instance and see whether this Chamber still then has an appetite to deal with this matter.

Hon Simon O'Brien: Is it your intention to talk until it happens even if it takes a week? I get that impression.

Point of Order

Hon MARK NEVILL: It is a breach of standing orders to allow reference to debate in another House. That comment was a clear breach of standing orders.

The CHAIRMAN: I remind members of Standing Order No 94 in that regard and ask the Leader of the Opposition to address his comments to the quantum of the clause.

Committee Resumed

Hon TOM STEPHENS: I will not breach the standing orders. I accept the member's point and the ruling of the Chair. My preference is not to proceed with this Bill.

Hon Simon O'Brien: Do we not - and you in particular - have a responsibility to progress the business of the House? While we are dealing with this matter, we do so at the exclusion of all other business.

The CHAIRMAN: Order! We cannot continue this conversation.

Hon TOM STEPHENS: This Chamber could more appropriately be dealing with many other issues. I would love to facilitate the Government's dealing with other items on the legislative program; but, unfortunately, this Committee debate is before us. I encourage members to defeat the short title because we should consider what will happen. Members know what could happen in this place. I cannot talk about the Bill now being debated in the other place, but it will presumably arrive in this place at some time.

Point of Order

Hon KEN TRAVERS: The member is breaching Standing Order No 94. It is tiresome and tedious.

The CHAIRMAN: The Leader of the Opposition should desist from any detailed reference to proceedings in another Chamber.

Committee Resumed

Hon TOM STEPHENS: Members can see the advantages in not proceeding with further consideration of this Bill. We can take a better path. Although I am constrained from talking about those better ways, members can see what can happen in this place. Anyone who has been in this place for a long time is aware of what can happen. We are operating as individuals. On this side of the Chamber, on this point we have no party discipline.

Hon Simon O'Brien: You are the Leader of the Opposition. You are taking advantage of your opportunity of having

unlimited speaking time. Other members in this Chamber wish to contribute, but we seem to be engaged in a war of attrition. With respect, despite your obvious strong feelings on this issue, this is a misuse of the time available to you which is not available to other members.

The CHAIRMAN: Order!

Hon TOM STEPHENS: I understand the member's point. I am not one to abuse the processes of this place. I certainly do not want to upset Hon Simon O'Brien. However, the Committee is left with our individual responses because we have a conscience vote on this vital issue of life and death. I am surprised with the processes that have been unleashed today that have led to this Committee stage being brought on. It should not have been brought on. I want to persuade the Chamber to adopt a strategy other than proceeding with this Committee debate at this time. One need only look at the vote at the second reading stage to recognise that in view of the appetite of this place for this Bill I am up against significant and insurmountable odds.

What does a person like me do in a Committee debate to try to give the Chamber a chance to recognise that there may be other ways to proceed? I believe that the Committee should not be considering this Bill in detail. If members are intent on proceeding with the remaining clauses of this Bill, ultimately they would be better off to call on another committee of the House to resolve what could be a dispute between the two Houses. The Houses have different appetites for what should be allowed at law through the abortion process. If members had the same view as I, and recognised that they were dealing with a law to legalise the taking of life, and compared that to the opportunities that face legislators in other jurisdictions - I do not like the allusion completely, but complaints have been made about church personnel who are seen to have cooperated with the laws that were in place -

The CHAIRMAN: The member is straying from the clause before us or those that may be before us. He is returning to the principle of the Bill. The Leader of the Opposition must relate his comments to how the clauses as drafted meet the objects of the Bill or otherwise, rather than arguing the principle that has been decided.

Hon TOM STEPHENS: I argue for the defeat of the short title, with all the processes I can muster, because I want to ensure that I am on the record as having put in place a process that strenuously and vigorously resists the unacceptable passage of bad law in this State. We have yet to see on the Notice Paper any amendments to this Bill that would adequately improve either this Bill, the Health Act, or any other Statute, and adequately protect the human lives which are at risk through abortion on demand, or the lives and health of women that are adversely affected by the abortion process. I cannot see any amendments in the Supplementary Notice Paper -

Point of Order

Hon KEN TRAVERS: Mr Chairman, I draw your attention to Standing Order No 100. I have heard this matter previously in the debate a number of times.

Hon N.D. Griffiths: Only in your mind.

The CHAIRMAN: The Leader of the Opposition should address the interrelationship of the clauses specifically.

Committee Resumed

Hon TOM STEPHENS: I will now deal with one of the reasons that would justify the defeat of the short title. Clause 5 was a late addition to the Bill from the earlier drafts circulated prior to the Bill that emerged from the Attorney General's office. The clause deleted the words "for the preservation of the mother's life" from section 259 of the Criminal Code. That was an extraordinary proposition and it was included in the Bill at short notice. Members have not had adequately explained any justification for proceeding with the Committee stage.

Hon Ken Travers: I am sure members will explain it.

Hon TOM STEPHENS: If we were to defeat the short title, we could protect section 259 of the Criminal Code, which would otherwise be amended by the passage of this Bill. There has been no justification for that amendment.

Hon Ken Travers: It is part of the policy of the Bill.

Hon Cheryl Davenport: Why not let us get to the clauses so that we can debate it?

Hon TOM STEPHENS: I am explaining that the short title should be defeated because that will provide the opportunity to ensure there is no progress to clause 5 - a clause for which no argument has been presented. If we eventually debate clause 5, which I hope we do not - we will not if members agree to defeat the short title - members will find there are many reasons that it should not be allowed to proceed.

As members know, this is a relatively short Bill of six clauses. The overall debate presumably will not take very long once we get through the consideration of this clause. Clause 2 will not produce much debate, and clause 3 should not produce any great or dramatic contributions; it simply details the Act concerned. Clause 4 will lead to more debate, as will clauses 5 and 6. Therefore, three clauses will be debated at length. Spending a little time arguing why we should defeat the short title is not unreasonable.

I received a copy of a letter today from a friend who has written to the member handling the legislation. The letter contains a line that illustrates why the short title should be defeated. The letter, signed by Hon Cheryl Davenport, states -

For the past 30 years in this State women, in consultation with their doctors have accessed safe, legal termination of pregnancy.

Hon Cheryl Davenport: Fact!

Hon TOM STEPHENS: My response in part to the member -

Hon Cheryl Davenport: Are you saying it is not a fact?

Hon TOM STEPHENS: No, that is the reality by virtue of de facto -

Hon N.D. Griffiths interjected.

Hon TOM STEPHENS: That is the end result of the way the processes have been unleashed in Western Australia. The member can argue another case, but I will agree. That is all the more reason to argue the case for not proceeding.

The CHAIRMAN: I remind the member that we are not conducting another second reading debate. Certain principles have been established and he should address the clauses and how they do or do not embody the principles of the Bill and their adequacy in respect of that, not in respect of abortion per se.

Hon TOM STEPHENS: Clauses 4 and 5 effectively repeal provisions of the Criminal Code in relation to the abortion process, provisions which, as the member has rightly pointed out, have effectively become inoperative given the way the law is being administered in Western Australia. We are not privy to the specific circumstances. For all intents and purposes abortion is legal. Safe and legal terminations of pregnancy have been provided for by the way the process is operating in Western Australia.

Point of Order

Hon KEN TRAVERS: I remind you, Mr Chairman, of Standing Order No 100. The point made by the Leader of the Opposition has been covered previously in the debate.

The CHAIRMAN: I bring to the attention of the Leader of the Opposition that certainly debate on the repeal of sections 199, 200 and 201 are the core of the principle which has already been agreed to. He has traversed at length and in a number of different ways the fact that by defeating the short title the Bill itself will be defeated. He is coming very close to repetition under Standing Order No 100.

Committee Resumed

Hon TOM STEPHENS: The Bill is deserving of defeat on the short title in this Committee because it does not have in it an adequate response to the interests of all Western Australians, to the women of Western Australia, to the unborn children in the wombs of pregnant women of Western Australia, and to the rights of the consciences of doctors and nurses who do not wish to be forced into participating in the abortion process. I ask the member handling the Bill, is she sensitive to the rights of doctors and nursing professionals who do not want to participate in the abortion process? If she is, where are the provisions in this Bill that would protect their interests? Now that we are soon to have before us a Health Act amendment by virtue of the Supplementary Notice Paper provided by the Leader of the House, what provision is yet to be included that would ensure that those doctors and nurses get a chance to avoid having to participate in the abortion process carried out in the hospitals of Western Australia?

All of those arguments should have been taken on board by the member in the drafting of her original Bill. She chose not to do so, which is another reason I had hoped that there would be a chance for the Chamber even at this late stage to defeat the short title of the Bill. As I have said, there is at least an opportunity for a member to contribute to the debate on this issue and perhaps to be joined by others in bringing about the defeat of the Bill in a very short time. If the Leader of the House were persuaded to adopt the strategy I have advocated -

Hon N.F. Moore: You forget one simple fact when you attack me: I supported you at the second reading stage. You

are alienating everybody in this Chamber who may have had some sympathy with you. Taking all night is not helping your cause one iota.

Hon TOM STEPHENS: The Leader of the House has the opportunity even at this late stage to facilitate another process.

Progress reported.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [9.07 pm]: I move -

That the House at its rising adjourn until 10.15 pm on Wednesday, 1 April 1998 and proceed immediately to deal with the Criminal Code Amendment (Abortion) Bill.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [9.08 pm]: I understand the process that the Leader of the House has unleashed. I was surprised when he had not moved it earlier in the day.

Hon N.F. Moore: I did not get a chance because you kept talking quite deliberately.

Hon TOM STEPHENS: It is within the province of the Leader of the House to so move. I obviously oppose the motion. I will not speak on it at length. Members are familiar with the process which has been unleashed in the House. Our sensible handling of this process can be achieved in another way; that is, the consideration of this matter by handling the government Bill when it comes from the other place. Therefore, I oppose the House coming back at 10.15 tonight.

I hope that I will be joined by some members who might be encouraged not to go down the path of the House sitting late into the night to consider the Bill. The House might have a different view, but I hope members will be cognisant of some of the speeches that have been made in this place. I think specifically of Hon Cheryl Davenport, who regularly argued the case of why the House should not sit beyond 10.00 pm.

HON N.D. GRIFFITHS (East Metropolitan) [9.09 pm]: I oppose this motion moved by the Leader of the House for four reasons. First, it shows no consideration whatsoever for the families of members of Parliament, which is pretty consistent with the sort of material we have been obliged to deal with. Second, it is pretty inefficient to be sitting past 10.00 pm. We will adjourn for 15 minutes and then deal with a substantive piece of legislation. Third, it defies commonsense. Fourth, it shows a distinct lack of courtesy.

I want to remind some members about the words some of them have said in the past. I will not say that people who say one thing and do another are hypocrites because I would never say that of a member of Parliament. There is an adequate description for a person who says one thing and does another. The Leader of the House thinks he is entitled to move this motion without notice.

Hon N.F. Moore: I am entitled to do it, I do not think I am.

Hon N.D. GRIFFITHS: Quite so, but the Leader of the House advances the reason that debate has been held on the short title of a very important Bill. When I look around this Chamber, I see a number of people who have occupied time in this House on the short title of a Bill. I am advised by those who were in this House before me, that members opposite did it time and again. Of course it was different then because they had the numbers.

Mr President, by virtue of your office, the time you have been a member and your experience in another place, you are one of the senior parliamentarians in this State. Therefore, I trust you will forgive me if I quote you. I do so with the utmost respect and kindly. I note the criterion you had when you were Leader of the House. I refer to *Hansard* of 15 September 1993. I think there must be some inaccuracy because the time of these observations on your part, Mr President, was 2.01 am. As former Leader of the House, you, Mr President, said -

It is understood that at times the House will be required to sit beyond what are the normal sitting hours. When that is necessary I will give the Leader of the Opposition as much notice as I can to enable him to advise his members so that they are not unduly inconvenienced.

That was the test put forward by the Leader of the House.

Hon Barry House interjected.

Hon N.D. GRIFFITHS: I am an individual member and I am inconvenienced. I was given no notice. I am expected at home at 10.20 pm, and I wish to go home.

The PRESIDENT: Order! We are debating whether the House should adjourn to a certain time.

Hon N.D. GRIFFITHS: I am speaking to that, Mr President. That very wise criterion was set. I remember the comments and the time of the morning. Other members present have also had cause to comment on the matter of late sittings. I hope Hon Barbara Scott will forgive me for using her profound words in support of my opposition to this outrageous proposal to adjourn until 10.15 pm. I refer to *Hansard* of 2 June 1994. When I first read the words, I was very impressed by such lucid observations. I thought the speech was made at 5.06 am, but it was 5.06 pm. Hon Barbara Scott said -

I was heartened to hear the Governor say in his speech that the Government has made a commitment to the family in this international Year of the Family and he made reference to the programs the Government intends to advance during the year. However, I hope that as members of Parliament we will recognise that we can show some example in work and family responsibility by addressing the sitting hours in this Parliament which are not conducive to people with family responsibilities. I hope that during the Year of the Family that issue can be addressed.

Hon Barbara Scott concluded her observations with the following words -

It is of interest to me that it is an international project which will be picked up by nations around the world and will address the very institution which the majority of people recognise is the cornerstone of any community.

The Leader of the House is attacking the family by making members sit late.

In his former life, the Chairman of Committees Hon John Cowdell was reported in *Hansard* on 7 May 1997 at page 2409 as saying - I cannot begin to emulate the eloquence of Hon John Cowdell on these matters, but I will endeavour to give his words the utmost respect which they deserve -

We sat until 3.00 am last night and the level of scrutiny, I hazard a guess, between 10.00 pm and 3.30 am would not be as effective as scrutiny at any other time.

A typical masterly statement on the part of Hon John Cowdell.

Hon N.F. Moore: He may vote against this motion. Why not give him a chance?

Hon N.D. GRIFFITHS: Members know that I do not like to quote the Attorney General, but I tried hard and found something worthy of being quoted. On 1 December 1992, when he was in opposition, and members know how matters change in those circumstances, he said at 8.42 pm -

I believe that if the legislation is any good, it should be dealt with properly and at the right time of day. If it is not any good, then I do not know why we should bother to deal with it at all.

My sentiments exactly. Hon Peter Foss then made a well founded complaint -

I believe that whenever such a motion is moved, an adequate explanation should be given to the House so that it is on record and not just behind the Chair . . .

None of that happened. Another honourable member who has really occupied time on the short titles of Bills since I have been in this place is Hon John Halden. On many occasions he spoke against these sorts of motions and, with respect, did so very eloquently. On 10 November 1993 at page 6613, he made observations about the committee system and in his own style said -

In all fairness, it would be an opportunity to assist the House in its handling of business, particularly at this difficult time for the Government.

People have different points of view when they are in opposition, but the points remain. The Leader of the House wants to sit late, but I do not want to sit late. Hon John Halden went on to say -

At the end of the day, the Opposition does not have to be bludgeoned by sleep deprivation into supporting Government legislation. If the Government thinks that that is a tactic, it is a very crude and brutal tactic that should not be contemplated.

Hon John Halden made a number of observations in these debates, but they are not of any great use and I do not want to offend any standing orders on that point. He said on 30 April 1997, on page 1940 of *Hansard* of that year -

We all know the problems of sitting around the clock. We all know that this legislation is particularly controversial and has some significant difficulties that should be examined exhaustively and thoroughly. If we were to do that at three o'clock or four o'clock in the morning, or after having sat here for 28 or 29 hours, it would make a mockery of the process of looking at this Bill in a constructive fashion.

Whether we can agree with each other's views on the central premise of this Bill is not the issue.

Hon John Halden: It is profound!

Hon N.D. GRIFFITHS: I know it is profound. I will not take much longer.

Hon Bob Thomas is aware that I quote him always with great respect as he always has something meaningful to say, particularly on these important matters. I pay tribute to him.

Hon Bob Thomas: I am on your side this time.

Hon N.D. GRIFFITHS: The member's words are wise even if his actions may not be on occasions. On 30 April 1997, to be found on page 1947 of *Hansard*, Hon Bob Thomas spoke at 8.54 pm as follows -

Finishing at 10.00 pm is probably not the most productive time at which to be closing but it is better than 11.00 pm given that we quite often have an adjournment debate that may take between 30 and 40 minutes. Often we do not get home until after 11.00 pm. We then need time to wind down. Those of us who get up early may get only four or five hours' sleep and do not feel productive the next day.

I think that is the tactic, although some members are never productive. On page 1948 of the same *Hansard* the member makes the obvious point -

I do not believe that we are productive after 10 o'clock or 11 o'clock at night when we are sitting here considering legislation.

The member was spot on. Who can forget Hon Bob Thomas' "Men Behaving Badly" speech when he pointed out that men would behave badly if they sat our stupid hours? The member was right on that occasion.

The PRESIDENT: Order! The member will draw his comments to a close so we will be able to test the will of the House about continuing to sit.

Hon N.D. GRIFFITHS: I am obliged to remind members of what they have said in the past. I want to see whether they stand by their words, or they say one thing and do another. Let the public then decide how members should be rated.

I note that Hon Bob Thomas made the following observation on 10 November 1993 on page 6618 of *Hansard* -

We are placing too much strain on the staff of this place when we sit extraordinary hours.

Some members who will vote in support of Hon Norman Moore's motion do not care about that aspect.

Hon N.F. Moore: How do you know that?

Hon N.D. GRIFFITHS: Some do, some do not - I do not know. Hon Graham Edwards had many wise observations to make on the subject, but I will not quote him as he is no longer in this place. Hon Sam Piantadosi, who is also not here, also made observations about people with young families. Hon Val Ferguson, who was here last year, said in *Hansard* of 4 April 1995 on page 497 -

Young children need both parents. If the sitting hours were changed the families of all members would benefit.

What is the point of a change of sitting hours if we do not get home at a reasonable time? She continued -

Sitting hours impact not only on members of Parliament. The staff of Parliament House should receive due consideration with regard to this issue.

If members vote for the motion of the Leader of the House, they do not care about staff or members with families. Hon Cheryl Davenport said on 10 November 1993, on page 6614 of that year's *Hansard* -

Members opposite can hang on a little longer and listen to me. One of my main topics of debate in this House since I have been here is the lack of women representing the community in Parliament. The major reason that women do not want to represent the community in this place is the stupid sittings hours that we must endure.

I look forward with great interest to see how members vote on this question. Will they vote in accord with their words, or will they fall into the category of persons who do the opposite of what they say?

Question put and a division taken with the following result -

Ayes (28)

Hon Kim Chance
Hon E.J. Charlton
Hon J.A. Cowdell
Hon M.J. Criddle
Hon Cheryl Davenport
Hon B.K. Donaldson
Hon Max Evans
Hon Peter Foss

Hon John Halden
Hon Ray Halligan
Hon Tom Helm
Hon Helen Hodgson
Hon Barry House
Hon Norm Kelly
Hon Murray Montgomery

Hon N.F. Moore
Hon Mark Nevill
Hon M.D. Nixon
Hon Simon O'Brien
Hon Ljiljanna Ravlich
Hon J.A. Scott
Hon Christine Sharp

Hon Greg Smith
Hon W.N. Stretch
Hon Derrick Tomlinson
Hon Ken Travers
Hon Giz Watson
Hon Muriel Patterson
(*Teller*)

Noes (5)

Hon N.D. Griffiths
Hon B.M. Scott
Hon Tom Stephens

Hon Bob Thomas
Hon E.R.J. Dermer (*Teller*)

Question thus passed.

House adjourned at 10.17 pm

Legislative Council

Wednesday, 1 April 1998

THE PRESIDENT (Hon George Cash) took the Chair at 10.22 pm.

The PRESIDENT: Pursuant to the resolution carried by the House in the previous sitting, the House is ready to deal with Order of the Day No 11, the Criminal Code Amendment (Abortion) Bill. The House is dealing with the matter in Committee.

CRIMINAL CODE AMENDMENT (ABORTION) BILL

Committee

Resumed from the previous sitting. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Cheryl Davenport in charge of the Bill.

Clause 1: Short title -

Progress was reported after the clause had been partly considered.

Hon N.F. MOORE: I move -

To delete "*Criminal Code*" and substitute "*Acts*".

Ruling by the Chairman

The CHAIRMAN: I rule that the amendment cannot be considered at this stage, because it will not make sense to change the short title unless we subsequently adopt later clauses of this Bill. I therefore rule that further consideration of clause 1 be deferred until after consideration of the remainder of the Bill.

Further consideration of the clause postponed.

Clause 2: Commencement -

The CHAIRMAN: The question is that clause 2 stand as printed.

Question put and a division held, with the Chairman casting his vote with the ayes -

Ayes (27)

Hon Kim Chance
Hon J.A. Cowdell
Hon M.J. Criddle
Hon Cheryl Davenport
Hon B.K. Donaldson
Hon Max Evans
Hon Peter Foss

Hon John Halden
Hon Ray Halligan
Hon Tom Helm
Hon Helen Hodgson
Hon Barry House
Hon Norm Kelly
Hon Murray Montgomery

Hon N.F. Moore
Hon Mark Nevill
Hon M.D. Nixon
Hon Simon O'Brien
Hon Ljiljana Ravlich
Hon J.A. Scott
Hon Christine Sharp

Hon Greg Smith
Hon W.N. Stretch
Hon Derrick Tomlinson
Hon Ken Travers
Hon Giz Watson
Hon Bob Thomas
(Teller)

Noes (6)

Hon E.J. Charlton
Hon N.D. Griffiths

Hon Muriel Patterson
Hon B.M. Scott

Hon Tom Stephens

Hon E.R.J. Dermer (Teller)

Clause thus passed.

Clause 3 put and passed.

Clause 4: Sections 199, 200 and 201 repealed -

Hon N.D. GRIFFITHS: This clause is the substance of the Bill. If it is passed, every member who votes for it is saying that there is no protection for human life from conception to birth. I want them to know what they are doing.

Hon N.F. Moore: The problem with that statement is that it is wrong.

Hon N.D. GRIFFITHS: That is not so.

Hon N.F. Moore: It is wrong; it is untrue and a misrepresentation of the facts.

Hon N.D. GRIFFITHS: The leader presupposes that the Committee will act in a particular way. I must deal with matters as they appear before me. There is no protection.

Hon N.F. Moore: If there is not, I will vote against the third reading. Give it a go you twit!

The CHAIRMAN: The leader will come to order.

Hon N.D. GRIFFITHS: These sections of the Criminal Code are good and proper. The only thing wrong with them is that they have not been enforced by executives of all political colours because of a misguided view of the world that has prevailed for the last generation. I do not want to reiterate what was said in the second reading debate. However, this is the essence of the Bill. These words will have evil effects on those they will allow to be killed and on our society.

Hon SIMON O'BRIEN: Mr Chairman, can we defer consideration of clause 4 until after the Committee has adopted the proposed amendments to part 3 of the Health Act?

The CHAIRMAN: We cannot defer these clauses because they embody the principle of the Bill as already passed in the second reading stage. This clause must be considered at this stage.

Hon TOM STEPHENS: As members have said, this is the essential section of the Bill. I am fascinated by what has gone on. No attempt was made by Hon Cheryl Davenport to respond to the issues I raised in reference to the short title. In the end, we do not have the same sensitivities to human life. I recognise that that reflects the view of some in the community who see no need to respond to these issues. They are happy to allow a process whereby the short title -

Hon N.F. Moore: It will be debated. There is an amendment.

Hon TOM STEPHENS: The member had the chance to rise but did not.

Hon N.F. Moore: I got the call. Hon Cheryl Davenport will have the chance to respond.

Hon TOM STEPHENS: I hope she does.

Hon Cheryl Davenport: I intend to respond.

Hon TOM STEPHENS: It is interesting to see how the Government is shepherding this Bill.

Several members interjected.

Hon TOM STEPHENS: It fascinating to see this shepherding.

Hon Derrick Tomlinson: Why are you insulting your own supporters?

Hon N.F. Moore: You might have had some previously.

Hon TOM STEPHENS: Hon Norman Moore is not my supporter.

Hon N.F. Moore: I know you do not support the process.

Hon TOM STEPHENS: There is another path available to people like me. I could participate by stringing out a whole series of amendments and rehearsing the arguments that have been put very adequately in the other place. I am in despair about members of this Chamber. They are beyond any sensitivity about the principles of life. Members are perpetrating an enormous injustice with the passage of this Bill. I will not bother to argue the case. I have gauged the mood and watched the process and members are not interested in any argument.

Hon N.D. Griffiths: Half of them are not here.

Hon TOM STEPHENS: Let it be on their heads. They can pass their damn Bill! If the Government is silly enough to give it time, let it be on members' heads. It is an atrocious process. I am saddened that I am a member of this Parliament and seeing this. I wish this clause was not being agreed to by the Committee.

Hon B.M. SCOTT: I do not support this clause. It is important that members be reminded of what has already been said; that is, that abortion is an evil against humanity. It has profound similarities to slavery, colonisation and the oppression of Aboriginals and women. Later I will talk about the oppression of women. With a Bill like this, which proposes that abortion should come out of the Criminal Code, we dehumanise people and we lose the very sanctity of life which many of us want to protect. By giving women the power to abort, according to personal choice, and removing these provisions from the Criminal Code, it is implied that abortion is not murder and that the foetus is not a person. This redefinition of foetus from being a person to being property will make it very difficult for both men and women to sustain any legal action against people who violate the life or the welfare of the foetus, except as property.

It is important to see the abortion debate in 1998 in the context of our historical place in western civilisation. The

language in this debate in depersonalising the foetus has been heard many times in many historical settings which we look back on as the darkest moments of our heritage. The human, or non-person, or more of a person or less of a person distinction is a rhetorical feature of the political processes we associated with slavery, with repression, with the genocide of our Aborigines, with the oppression of workers, with the subjugation of women, with Nazism and with Pol Pot. I, for one, cannot stand by and see two classes of humans being declared in this legislation - one, the oppressed; the other, the oppressor.

To me, the unborn child is a child. This debate is about human rights. The child does have rights. We are here to defend human rights and the dignity and the sanctity of life. Like William Wilberforce, who put up a Bill in 1789 against slavery but did not see its fulfilment, I stand tonight against this abortion Bill. I believe it is against the sanctity of life. I cannot stand in this place and approve of these provisions coming out of the Criminal Code and going into the Health Act.

I believe life begins at conception. We are talking about a life. Most people believe this debate began in 1998 with the words of a child: "There is a baby in the fridge." The mother believed it was a baby, and her children were led to believe it was a baby. The fact that the mother wanted to have a proper burial for that aborted foetus, her child, in accordance with her cultural beliefs, led us to this situation here today. The abortion debate must begin by recognising that life begins at conception. To me, at four weeks, the foetus looks like, and is, a tiny child. As I have said in this place before, as a civilisation we will be judged on how we value our frail, our elderly, our disabled and, most importantly, our children. Instead, in this debate our unborn children are becoming the casualties of economic rationalism, an argument that is put forward so often by women as the most used form of discrimination against women.

This Bill condones abortion on demand. In the letters and telephone calls that have come into my electorate office, there is no indication that Western Australians want abortion on demand. There is a level of support for some compassionate abortions in the case of the life of the mother being threatened, but in the main from my observation of the letters and telephone calls that have come to me there is no support for abortion on demand. We are going down a very dangerous path when we take out of the Criminal Code and put into the Health Act what is perceived by most people as killing. By doing this, we certainly create two classes of people for Western Australia - the unborn and the born. I must defend a person's right to life as a greater right than the right to manage a life or lives.

Hon LJILJANNA RAVLICH: I rise in support of the amendment. We are currently looking at section 199, 200 and 201 of the Criminal Code. They are very much out of date. Section 199 states that any person who attempts to induce an abortion for a woman is liable to imprisonment with hard labour for 14 years. Section 200 provides that any woman who has an abortion is liable to imprisonment with hard labour for seven years. Section 201 provides that any person who procures a method of abortion for a woman is liable to imprisonment with hard labour for three years. This is totally inappropriate in this day and age.

I will not take up too much time of the Committee because I want to see the speedy passage of this Bill. Hon Barbara Scott holds the view that abortion is an evil against humanity. That may well be the view of Hon Barbara Scott and some of her colleagues, but the fact is that abortion is a reality and at least 9 000 occur in this State annually. The women who make the choices about abortion are not criminals. They make those choices after great consideration and great thought and often - not all the time - will make those choices on their ability to be able to mother the child appropriately.

I do not want to go over the speech I made in the second reading debate; however, the view that these women are in some way murderers is totally inappropriate. I understand 82 per cent of the Western Australian population is saying that. If that is the case and those people are saying that it should be taken out of the Criminal Code and that we should not make criminals out of innocent women, quite frankly I reiterate that it is my job as a parliamentary representative to do exactly that.

Hon E.R.J. DERMER: I speak against clause 4. I do not propose to revisit the points I made in my speech in the second reading debate. I stand with one purpose; that is, to ask each member of this Chamber to give final and full thought to what they are about to do. All of us bring with us life experience and many of us find this is a very hard issue to deal with. I believe in the depths of our hearts we must know abortion is about killing people. For that reason it must be a difficult issue to deal with. Many of us have built up barriers to that consideration. All of us have had experiences in our lives of something that we did not want to confront, that we did not want to come to terms with. It is natural for us to try to blur those issues in our own consciences and not to face up to the reality.

Tonight members have before them the ability to make a law that will impact on the lives of many thousands of unborn Western Australians. I implore members to set aside the barriers that they may have built up in their own minds and to give consideration to this issue, to peel away those barriers, and to look for a moment at just what is at stake when we consider this clause that deals with human life.

I implore members to look into their hearts and decide whether they are prepared to sit on the side of the execution of many unborn Western Australians. That is what is at stake. The kernel of the issue is the life of those unborn children. The judgment that we will make tonight will carry that responsibility for those lives. Members should look deep within themselves and make sure they are comfortable with voting for the execution of those children. Members will have a lifetime to live with that decision, in the same way that women who have had abortions have a lifetime to live with that decision.

Those women are also the victims of abortion. The most telling evidence of how women are the victims of abortion has come from women who have had abortions or who have been practitioners of abortion. They have committed themselves to abortion in the past, and the natural human instinct would be to bury and not come to terms with that thought, but they have overcome that and have had the great courage to look within their hearts and come to terms with the grim reality of what they have done, and have made the decision to now oppose abortion.

Those people have had the courage to do that, and I ask all members of this Chamber to examine their hearts in the knowledge that if they vote to support this legislation, they will be voting to support the death of children in the future. I ask all Members to make sure that they can live with that decision for the rest of their lives. I hope and trust that a thorough examination will result in the defeat of this clause and the remainder of the legislation.

Hon E.J. CHARLTON: I am disappointed that we have reached the stage of debating the clauses of this Bill, because it is a tragedy that this Bill was introduced in the first place. I need to correct the Leader of the Opposition. This is not a government Bill. What the Government has done, through the auspices and commitment of Hon Peter Foss, is put into the Parliament a Bill that will enable some decisions to be made. The tragedy of what has happened in the past few weeks is that while members of both Chambers have certainly had the opportunity to state their position simultaneously, we have been going down two different roads to reach a decision. At the end of the day, the Parliament will reach a decision, and the law of Western Australia will be whatever the Parliament decides. It obviously will not be, from the way we are heading, the sort of legislation that I will be satisfied with, for want of a better word.

We need to go back a few years to when Lionel Murphy in the Federal Parliament made enormous changes to the way people lived and to the rules that were applied in society. How many of those massive and controversial changes of which he was the architect - he did not do it on his own; the Parliament had to agree - have led to respect and cooperation in society and have demonstrated the goodwill of the people of Australia? The people of Australia were renowned for having respect for each another, for giving each other a fair go, and for looking after their mates. Over the past 20-odd years, most of that has gone out the window. It is every man for himself, at the expense of any person who gets in his way.

The key to this clause, to put it in pretty blunt terminology, is that we must respect our fellow people; that is, the unborn. Some members in this place and the other place have made a decision that they will not count the unborn, and they dress it up by saying there must be valid reasons for a woman to have a termination.

I am disappointed that this Bill has come into this place, and I have opposed it at the second reading stage and I will oppose every clause, because we had a chance and we still have a chance to make something out of the other piece of legislation and to determine how far the community can go, and to then amend it to ensure that if the penalties in the Criminal Code are too harsh, they are reduced to what the Parliament considers is acceptable and fair. Some members are seeking to take abortion out of the Criminal Code altogether so that it will not be a criminal offence. The one group of people who have got off scot-free are the medical practitioners who are the architects of this problem. It is all very well for people to say that if they could not perform abortions in a clinic, they would do it in the backyard. We all know that would be the case.

This community is supposed to be a community full of care and understanding. We are falling over ourselves to put in various programs to help the underprivileged. Every day of the week we hear about another program for this or that. I heard again just this week about some additional programs. However, most of those programs have been dismal failures. We put in a program to assist in the AIDS epidemic by giving people clean needles. Has that assisted them? We hear increasingly about the situation in Africa and Asia, where the incidence of AIDS is increasing day by day. What we are doing is turning a blind eye to the problem and saying to people that if they want to get onto drugs, we will do what we can to help them not get AIDS by giving them a clean needle. If we put as much emphasis and effort into trying to educate people about the consequences and the causes of AIDS, we might be more successful. People crow about how successful Australia has been. Australia is not Africa or Asia. We are a country of 17 million or 18 million people. If we cannot do something about educating people about the problems associated with that sort of activity, no-one can.

Hon Derrick Tomlinson: We are doing that. That is why the AIDS campaign is so successful in Australia.

Hon E.J. CHARLTON: That is right. I am always hearing about the soft option that people want to take: Let us turn our eyes from the real cause of the problem and try to give people some help so that they can use drugs and have intravenous injections and not suffer the consequences.

The other aspect is that those doctors who want the law to be changed so that they can carry out this task or calling, or whatever they like to call it, should be made public as well. I am totally opposed to capital punishment. I do not think anyone has the right to take the life of another person, no matter how horrendous the crime. I believe the perpetrators of those crimes should be given a severe penalty and be locked up for the term of their natural life with hard labour, but I do not believe they should be hanged. If I believed that about a criminal, how could I say it is fair to kill a baby in the womb that is a few weeks old? I am disappointed that we could not as a Parliament put our heads together behind the scenes and work out some agreement, because I know that the people who support this Bill do want to have some rules and regulations in place. We have spent a lot of time trying to justify our positions on this matter instead of trying to find another way of dealing with it. However, it is not too late to find another way, whether it be by using this Bill, or by using the Bill being dealt with in the other place. We have to use a bit of lateral thinking to try to arrive at a penalty for abortion. Having an abortion should not be like going down to the local deli. Having an abortion, other than for the reasons laid down, should be a criminal offence.

I will oppose all clauses in this Bill and hope that both sides of this debate will come together to solve this dilemma so that we do not desert the innocent unborn children of this nation. I guarantee that, if members of this Parliament had to make a decision about terminating a life, not one of them would do it.

Hon MURIEL PATTERSON: It is incredible that a society can consider legalising abortion on demand while it supports and protects the people in our society who require our help, including the aged, the sick and the infirm. What confidence can we have in a civilised society when its lawmakers fail to protect the lives of the most vulnerable? Every one of us knows of women we would be far better off helping than leading them to this place of no return. I wonder whether our servicemen fought to defend this country so that we could destroy innocent lives. This State has a serious moral obligation to protect life. There is so much in this State to share with all people. It appears that, in our demoralised society, self comes first at whatever cost. Also, there is a growing acceptance that, as something becomes more and more common, it is acceptable to not only condone the wrong, but also legalise it, thus easing society's conscience, including the consciences of those committing the wrong. Some issues in life deserve to be treated with value and should not be negotiable. Abortion is one such issue; it is not negotiable.

I would like to have had more time to try to find out whether there is a relationship between the increase in breast cancer and the number of abortions being conducted. I would also like to find out whether a study that I read recently which referred to a relationship between child abuse and abortion has any credibility. Recently, the federal Minister for Immigration said that Australia has a duty to provide a home and protection for the underprivileged, people living in poverty, and people from strife torn countries. Can we provide genuine charity while we provide abortion on demand? The majority of letters written to me - in fact 20:1 and I have read every one of them - have been pro-life. I feel therefore, that I speak on behalf of those good people who took the time to contact me and will make it clear to this Committee where I stand on this Bill.

Hon GIZ WATSON: I want to speak only briefly because we have to resolve this issue tonight. I reiterate that which was said by Hon Ljiljanna Ravlich: The fundamental issue in this debate is the repeal of sections 199, 200 and 201 of the Criminal Code. The most abhorrent part of those sections is that anyone who attempts to procure the miscarriage of a woman is guilty of a crime and is liable to imprisonment for 14 years. That and the provision relating to the imprisonment of a woman for seven years have to be removed from the Criminal Code. That is the crux of this clause and I wholeheartedly support it.

Hon SIMON O'BRIEN: As far as the community is concerned, this is our moment of truth. We now have the opportunity of casting our votes in support or otherwise of this key issue. I want to respond to a couple of points raised by previous speakers. The first was whether sections 199, 200 and 201 of the Criminal Code represent a challenge to the Parliament by virtue of their being out of date and inappropriate. I think that, in part, the answer to that is yes. It is therefore a great pity that we are not amending those sections rather than repealing them. However, we do not have that opportunity at the moment. Repealing those sections is all that is available to us.

I will vote against the proposal to repeal those sections because my view on abortion is on the side of those who uphold the rights of the unborn child. I hope it is possible for our society to try to heal itself so that it does not have to accept that one-quarter of all pregnancies end up with the unborn child being killed violently.

As members of Parliament, we have been barraged with opinions and surveys which suggest that 82 per cent of people agree with this proposition and 89 per cent of people agree with that proposition. I have had a look at some of the questions asked in these surveys and they are lamentable. I daresay that various points of view have been put forward when these surveys have been conducted so that both sides of the argument are at fault. A previous speaker

explained to the Chamber that 82 per cent of people surveyed agreed with the statement that a decision to have an abortion should be made between a woman and her doctor. Of course an overwhelming majority would support a question couched in those terms. If they had been asked whether they agree that unborn children should be torn apart and sucked out of the uterus, the answer would be quite different. We have seen this happen in a variety of ways with surveys on a great many issues. The result of surveys is very much based on how the questions are couched.

Hon Norm Kelly interjected.

Hon SIMON O'BRIEN: Hon Norm Kelly observed that it is possible to influence respondents in the way one would like by the way questions are phrased. That is deplorable regardless of the point of view we seek to explore. Surveys produced by pressure groups versus surveys conducted by professional pollsters are not very helpful. That aside, I echo the sentiments of Hon Eric Charlton that it is a great pity we have taken this path in dealing with this problem. Although it is now too late to do anything about it with the Bill at hand, we might be able to address these matters in future.

Hon TOM STEPHENS: An observation, albeit perhaps a bit cute, was made in the newspapers that the Cheryl Davenport legislation, the repeal of the abortion provisions, will mean effectively that dropping litter in St George's Terrace will involve a larger penalty than taking the life of an unborn child. Hon Norm Kelly might not appreciate the image but during his time in Parliament he will no doubt want to pursue the protection of various plants, trees and the environment. He will be wanting to impose penalties on the people who vandalise the life of the natural environment. That was part of my bewilderment about his desertion of those principles in supporting this clause.

Hon B.K. DONALDSON: I was not going to get involved in this debate because I made my stance well known during the second reading debate. I support this amendment; it is the hub of the Bill. Abortion should not be a criminal offence. People should remember that the reasons people seek abortions are known to them, their partners, their family or their family doctor. How can I judge what that decision means to them both in the way of trauma -

Hon E.R.J. Dermer: What about the child?

Hon B.K. DONALDSON: I did not interject on Hon Ed Dermer and I expect the same consideration. Perhaps as a result of the debate on this issue and our awareness that more than 9 000 abortions are undertaken each year we should be asking ourselves why they occur. Irrespective of what we do here tonight or whatever comes out of this debate, there is a responsibility for all of us to examine the causes of this issue rather than the end result.

Hon B.M. Scott: Hear, hear!

Hon B.K. DONALDSON: It has generated something in our society that nobody wanted to talk about. Many people in the wider community did not realise the number of terminations that occur. We must also realise that the gestation period is not nine months; it is at least 18 years for all children. As I said before, the most precious gift to a newborn child is the love and care of his or her mother. That bonding sets us up for the rest of our lives. In that 18 years our mothers have the formative role to a greater degree than most fathers, although not in all cases. If that love and care cannot be administered because of circumstances about which I do not know, but the woman, her family and her doctor know, at the end of the day they must meet their maker and be responsible for their actions. Although we are giving them rights, they have a responsibility. I hope that this debate generates greater debate within our own homes, our families and the community.

It is incumbent on the medical fraternity to examine more seriously the avenues of contraception. What is failing? Only those people will know because they have first-hand knowledge of the situations.

I can see some positives coming from this debate. Abortion is not a criminal offence. I commend Hon Cheryl Davenport for introducing the Bill and the Leader of the House for moving the amendments which will bring this matter within the Health Act. That is where it should have been in the first place. Time has marched on. I hope that we will see some positives come from this debate. It will certainly not make everybody happy.

This afternoon I had a call from a constituent, one among many others, who was a young woman with a child and who had a miscarriage about four years ago. She is desperately trying to have another child. She rang to ask me my views on the debate. When I told her she said she was delighted. I thought I would be defending my stance. But she said, "I probably would not seek an abortion but I should have that right. It should be a decision between me, my partner and my family doctor."

In conclusion, we can all be very moralistic, but there is a well known saying, "Let he who is without sin, cast the first stone."

Hon J.A. SCOTT: I support this clause and the amendment. I do not agree with the views put forward by some members that our moving the controls of abortion to the Health Act and out of the Criminal Code will dehumanise

the issue. It was described as dehumanising it and turning it into an argument of property rather than of human life. That is nonsense. The Health Act deals with people, with human suffering and human life. That is exactly what the Health Act does and it is exactly where this part of reproduction belongs.

Abortion clinics symbolise the relegation of something to the outskirts, away from the normal health system. I look forward to the day when units of reproductive health are in hospitals where people can get the best advice regardless of their choice on these matters. I hope that we move towards a more humane situation than the current situation, where people are made to feel like criminals. Western Australia has a slightly higher per capita abortion rate than States with less restrictive laws. Clearly the Criminal Code is not an effective way to stop abortions. We need better education, health services, advice, counselling and support. Around the world today many nations are vilifying single mothers. Britain is bringing in oppressive laws to force unmarried mothers back into the work force away from their children. Opponents of this Bill would probably say that it is unreasonable to force mothers back to the work force rather than allow them to care for their children.

Hon B.M. Scott interjected.

Hon J.A. SCOTT: I want to see a more enlightened approach to reproduction laws in this country, and in this State in particular. This clause will take this matter out of the Criminal Code. We can look at the situation in a new light in a way that will enhance the whole process of reproduction in this State.

Hon BARRY HOUSE: This is the central clause in the Bill. I supported the second reading because I wanted realistic legislation to come out of this Parliament. I wanted legislation that reflected the situation in the real world. Obviously the status quo does not do that. Since the second reading debate I have become even more convinced that this Chamber is heading the right way by taking abortion out of the Criminal Code and providing the conditions and regulations in the Health Act. Those provisions are foreshadowed on the Supplementary Notice Paper.

I am pleased to see phrases like surgical and medical treatments, good faith, reasonable care and skill and reference to a medical practitioner as defined in the Health Act. That means that medically qualified people will perform the procedure and not backyard abortionists. The Bill provides significant penalties for illegal procedures. It uses phrases like "she will suffer serious personal, family, social or economic consequences" and an expansive definition of informed consent. They are the sorts of missing links that I was looking for when I supported the second reading of this legislation. I congratulate Hon Norman Moore and Hon Cheryl Davenport for coming up with a package that puts some meat around this legislation to provide meaningful law which will reflect the real world and provide a set of guidelines for people to follow in our society. In the week since the second reading debate I have been more inclined than ever to support this critical clause in particular.

Hon KEN TRAVERS: I made the comment in the second reading debate that it was hard as a male in society to understand what went through a woman's mind when confronted with the choice of whether to terminate a pregnancy. I take on board the comments by Hon Bruce Donaldson in that regard. I do not think that the termination of a pregnancy or a range of other medical procedures should be encouraged unless they are necessary. I also agree that society must grapple with the reason that 9 000 abortions are performed annually. One in three women in Australia have made that choice. I can never understand what goes through a woman's mind. I do not believe that women see themselves as criminals killing their children. The mothers whom I have had the opportunity to know will defend their children at every step of the way. I do not know how they reach a decision, but they will have gone through a gut wrenching process to weigh that up in their own minds. Hon Bruce Donaldson said they will be judged by their maker. That may be right.

Regardless of what the opinion polls say, the fact is that one in three women in Australia have made that decision. One can only assume they have made that decision in consultation and in discussion with their partners and families, so that represents a far greater proportion of society. I accept it is their decision. I think that says far more about public opinion than any poll. I cannot believe that they or society see them as criminals. I do not believe that these women regard a termination as killing their child. For that reason I do not believe it is appropriate for this to be part of the Criminal Code. I appreciate the amendments that have been put forward to seek ways to reduce the number of abortions. I hope that more funding will be allocated to advise people on other forms of contraception to reduce the number of abortions in society.

Hon RAY HALLIGAN: When we first voted on the repeal of these sections in clause 4 of the Bill, I voted against it purely because I had no idea at that stage of what would replace them. At this point I am still a little unsure, although we have foreshadowed amendments. Like Hon Simon O'Brien, I would have liked debate on this clause to be deferred, but I accept the ruling that we have no option other than to go down this path. A great number of people, who have made contact with me - although they may have been against abortion in principle - have quite often said there may well be a case for abortion at some stage. Usually when they described the circumstances, it was when the mother's mental or physical health was likely to be seriously impaired. If we are to go down this path, I would

like to see necessary checks and balances put in place to protect the physical, mental and spiritual aspects of the women who are going through this traumatic event.

It has also been said that abortion should not be in the Criminal Code. My concern - I understand what is there at present relates to women more often than not - is that there are people in society and unscrupulous doctors who are likely to take advantage of women of all ages. I have concern that the penalties that we intend to place within the Health Act may not be as strong as I would like to see them. For that reason, I had hoped that something would be retained that would cover those aspects in the Criminal Code.

There are obviously a variety of views on abortion; whether we should have it, or whether we should not. There is also concern about what might happen to women should they undertake the termination of a pregnancy. There is a lot of talk about infertility, miscarriages and the greater possibility of breast cancer, and I hope a lot of this can be taken into consideration before we finally decide on what type of legislation we put before women in this State. As I say, there is a great variety of views. Obviously not all of them are right, but I certainly have no intention of judging others because their view is different from mine.

Hon CHERYL DAVENPORT: I support this clause. I will cover some of the comments that have been made during the debate. The legislation does not force any woman to have a termination of her pregnancy. I said that at the outset, and I will continue to say it. We have here a practical response to a problem that occurred after the charging of two doctors in February this year. It was my intention during this year to introduce a criminal law amendment Bill to try to clarify the shadowiness of the law as it stands. As I have said in this place before, these laws were made nearly 100 years ago for a different time and for different circumstances. Those circumstances have changed. It is no longer acceptable within this community to make a woman a criminal for seeking to have a termination and to make a doctor a criminal for carrying out the termination.

Over the past week I have tried to accommodate some of the concerns that have been expressed within the community, by those in the medical profession and by members of the Parliament across all parties. I have done that in consultation with the Leader of the House. We have tried to put together, as one member said, a package that will address many of these concerns. As we get closer to the passage of this Bill, I hope we will be able to proceed through these concerns at a rapid rate.

In a perfect world we would all like to think there is no need for abortion. Unfortunately, we know that is not the case by virtue of the fact that 9 000 abortions are conducted in this State annually. The ratio has not risen greatly over the past 10 years. When I first made a speech on this issue in 1989, the figure was about 8 000. That means there has been an increase of about 1 000 in those 10 years. The population has increased, so we could probably say that the number of terminations per capita has reduced.

Hon Eric Charlton raised a question of education and liberal thinking. I agree with him: There must be a concise and comprehensive education program in the community. That does not begin with family planning when a woman finds that her contraception has failed. It must start with issues such as this being addressed within the education system. People may balk at that, but, unfortunately, abortion is the final part of reproductive health. Whatever we say and do, we cannot get away from that fact. Under its obligations to the United Nations convention on all forms of discrimination against women, Australia has not delivered on its obligations in respect of reproductive rights and abortion law reform.

Hon Tom Stephens: I hope you understand that sort of doublespeak upsets people like me.

Hon CHERYL DAVENPORT: It is reproductive health, whether the Leader of the Opposition likes it or not.

Hon N.D. Griffiths: It is killing.

Hon CHERYL DAVENPORT: I do not see it as killing. I have tried to confine my comments to dealing with how I see the issues. I do not have a disregard for life, as some people might have others believe. That is not the case. I have a child. I also lost a child at six months into my pregnancy. I know about these things. That was called a missed abortion. I should have spontaneously aborted at three months into my pregnancy, and that did not happen. That was very traumatic for me. Nevertheless, it happened and life goes on. I do not have a disrespect for life. Those people who believe that is the case are very much mistaken.

I will deal with the question of opinion polls. Hon Simon O'Brien raised the fact that some recent opinion polling has been conducted on this issue. That has been done by those on either side of the abortion spectrum. Over the past 15 years throughout this nation reputable companies, such as AGB McNair, ANOP Research Services Pty Ltd and Westpoll, consistently have come up with quite high figures on this issue. I remember the figure of 67 per cent in the Westpoll survey taken at the time of the Australian Labor Party state conference in 1991 when, once again, my party reaffirmed its policy to repeal these laws. In fact, I think 67 per cent of the Western Australian community -

more in rural areas than in the metropolitan area - believed that this decision should be between a woman and her doctor and should be legal.

Hon Muriel Patterson referred to women who are refused an abortion. A recent Swedish study found that the refusal of abortion led to an increased level of child abuse and neglect. There is no doubt that there are many unwanted children in our community. I have received telephone calls from a psychologist who deals primarily with children and young people, who has told me that one of her main problems is that the children whom she sees are both unwanted and unloved. That is a real problem for our society, and we need to address it.

I hope that we will be able to move swiftly through the amendments proposed by Hon Norman Moore. I do not want to stifle the debate on this important community issue. I do not need to remind any member that the debate which has raged and which continues to rage within the community is the result of the need to change this law. That is what we are trying to do. I do not have any sinister reason for doing what I am doing. I want a society that does not criminalise women for having a termination and that does not criminalise doctors for performing a termination. I do not disregard the sanctity of life. That is not what I am about. I urge members to support this clause.

Clause put and a division called for, with the Chairman casting his vote with the ayes.

Ayes (23)

Hon Kim Chance	Hon John Halden	Hon N.F. Moore	Hon Derrick
Hon J.A. Cowdell	Hon Ray Halligan	Hon Mark Nevill	Tomlinson
Hon M.J. Criddle	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon B.K. Donaldson	Hon Barry House	Hon Christine Sharp	Hon Bob Thomas
Hon Max Evans	Hon Norm Kelly	Hon W.N. Stretch	(Teller)
Hon Peter Foss			

Noes (10)

Hon E.J. Charlton	Hon M.D. Nixon	Hon B.M. Scott	Hon Tom Stephens
Hon N.D. Griffiths	Hon Simon O'Brien	Hon Greg Smith	Hon E.R.J. Dermer (Teller)
Hon Murray Montgomery	Hon Muriel Patterson		

Clause thus passed.

Clause 5: Section 259 amended -

The CHAIRMAN: We would normally deal now with clause 5, but as there is an amendment on the Supplementary Notice Paper which is consequential upon some part of proposed part 3, we will postpone consideration of clause 5 until after consideration of proposed new part 3.

Clause postponed.

Clause 6: *Evidence Act 1906* amended and saving -

Hon TOM STEPHENS: I did not realise that we would deal with the matter in this way. I had expected to deal with clause 5 and was about to speak.

The CHAIRMAN: The Supplementary Notice Paper refers to section 334(1) of the Health Act. That is in new part 3. That obviously cannot be referred to if new part 3 is not passed, so it makes sense to defer consideration of that matter until immediately after consideration of new part 3.

Clause put and passed.

New part 3 -

Hon N.F. MOORE: I move -

Page 3, after line 4 - To insert the following new part -

PART 3 — *HEALTH ACT 1911*

***Health Act 1911* amended**

7. After section 333 of the *Health Act 1911* the following section is inserted —

“

Performance of abortions

334. (1) If a person who is not a medical practitioner performs an abortion that person commits an offence.

Penalty: \$50 000.

(2) A medical practitioner who performs an abortion commits an offence unless the performance of the abortion is justified.

Penalty: \$50 000

(3) Subject to subsections (4) and (5), the performance of an abortion is justified if, and only if -

- (a) the woman concerned has given informed consent; or
- (b) the woman concerned will suffer serious personal, family, social or economic consequences if the abortion is not performed;
- (c) serious danger to the physical or mental health of the woman concerned will result if the abortion is not performed; or
- (d) the pregnancy of the woman concerned is causing serious danger to her physical or mental health.

(4) Paragraph (b), (c) or (d) of subsection (3) does not apply unless the woman has given informed consent or it is impracticable for her to do so.

(5) In this section -

“**informed consent**” means consent given by the woman after she has received counselling about the consequences of an abortion.

(6) If at least 20 weeks of the woman’s pregnancy have been completed when the abortion is performed, the performance of the abortion is not justified unless -

- (a) 2 medical practitioners have agreed that paragraph (c) or (d) of subsection (3) applies; and
- (b) the abortion is performed in a facility approved under the regulations.

(7) Regulations are to provide for -

- (a) the counselling to be offered to a woman before she has an abortion;
- (b) the approval of facilities for the purposes of subsection (6) (b); and
- (c) such other matters as may be required to give effect to the provisions of this section.

(8) Proceedings for an offence against subsection (1) or (2) -

- (a) are not to be commenced without the written consent of the Minister; and
- (b) are to be heard before a court of petty sessions constituted by a magistrate sitting alone.

(9) The protection from criminal liability given by section 259 (1) of *The Criminal Code* extends to the offences created by subsections (1) and (2).”

The CHAIRMAN: The question would normally be simply that new part 3 be inserted, but given that this is a multifaceted new part, I propose to put it in sections. The first question is that new section 334(1) be inserted.

Hon N.F. MOORE: I put new part 3 on the Notice Paper as a vehicle for the Chamber to make some decisions about the important issues about which we have been talking. Importantly, if we put these rules into the Health Act, it should also contain a rule in respect of these matters and make it clear that if a person who is not a medical practitioner performs an abortion, he commits an offence. Some members will say that \$50 000 is not the value of a life, and we will debate that point. However, we must look for a penalty which is appropriate and we considered \$50 000 to be appropriate.

Hon N.D. GRIFFITHS: We deal with many pieces of legislation which set out penalties. People in Western Australia can go to prison for very minor matters, yet it is proposed that the taking of a human life leads to the sanction of a fine only. I record my disgust at the way things are going in this society and this Parliament, and my disgust that we value human life with money.

Hon NORM KELLY: Unfortunately, Hon Nick Griffiths is still confusing this matter as being part of the Criminal Code. We are talking about the Health Act.

Hon N.D. Griffiths: I am not confusing anything, Dumbo!

Hon NORM KELLY: As I said in my contribution to the second reading debate, we are dealing with a health, not a criminal, matter. I am concerned that we are looking at amending the Health Act in this way as it is extraneous to what is necessary for proper regulation of these procedures. It is not a regular occurrence that we impose on medical practitioners a penalty for conduct of their work practices. Parts of the Human Reproductive Technology Act specify monetary amounts for offences, and I agree that arguments can be mounted for stipulating a penalty. I am willing to support the amendment as it will send a message to the community. It will provide a level of penalty which is commensurate with the serious nature of the act, not of carrying out an abortion, but carrying out an abortion when not adhering to the appropriate guidelines.

Hon LJILJANNA RAVLICH: I support the amendment, which simply establishes that abortions will be undertaken by medical practitioners. This amendment to the Health Act is a positive move. It sets out clearly who can undertake the abortion legally. The subsequent amendments underline the circumstances and within what period the procedure may be undertaken. This is an excellent starting point.

Hon RAY HALLIGAN: I support this amendment, but I have two questions. I notice the terms "medical practitioner" and "registered medical practitioner" are used. Are those terms synonymous? Secondly, the proposed section relates to section 259 of the Criminal Code, which refers to a person not being criminally responsible under certain circumstances. However, we now refer to a person if he is not a registered medical practitioner committing an offence under the Health Act under proposed section 331(1).

Hon CHERYL DAVENPORT: My trusty adviser has pointed out that sometimes doctors can be deregistered by the Medical Board for committing an offence. Also, people may be qualified elsewhere but have not gained registration in Western Australia. We might need to look at amending proposed section 334(1) to insert "registered" between "a" and "medical".

Hon N.F. MOORE: In drafting this amendment, I had it considered by parliamentary counsel and I was told that "registered medical practitioner" and "medical practitioner" are synonymous. They are the same person with the same qualification; it has the same meaning under the Health Act.

Hon PETER FOSS: One of the reasons for putting this provision into the Criminal Code and making a distinction between a registered medical practitioner and someone who has the capacity to be a medical practitioner relates to the distinction of not being able to perform an abortion, which carries with it a 14 years' imprisonment penalty, when someone has not registered in Western Australia. The normal penalty in the Health Act for a person who acts as a medical practitioner, but who is not qualified under law to do so, is \$2 000.

We should not include a provision in the Criminal Code which states that if a person is not a registered medical practitioner, he or she can be sent to gaol for 14 years. That is the why the Medical Act is the best place to apply a reasonable penalty. The effect of that will be to keep the penalty more in line with the situation with registered or unregistered medical practitioners.

Also, section 259 of the Criminal Code has never been the basis of defining an illegal abortion. Many people went straight to section 259 and claimed that it stated the circumstances under which one can have a legal abortion. That is not correct. The principal definition in that regard is in sections 199, 200 and 201 of the code, which state that abortions may not be unlawfully carried out. Something which is unlawful must be defined by the courts. The New South Wales legislation went as far as "economic factors" and in Victoria it went as far as what we call the Davidson test. Section 259 provides another defence on top of that. An offence can occur under sections 199, 200 and 201 of the Criminal Code and a defence on top of that offence. Section 259 is important in dealing with the question of the

life of the mother and does not refer to medical practitioners because it has always been intended for emergency situations.

I think I gave the example of a woman in the third trimester of a pregnancy going into labour in the Central Desert when it becomes clear there is a serious problem with her labour. If no doctor or qualified midwife is present and something is not done urgently she and the infant will die. Section 259 allows that anyone, if it is reasonable in the circumstances, could carry out termination of that pregnancy. That will continue to be the case. This amendment has been drafted to allow section 259 of the Criminal Code to continue to apply to those emergency cases. It must be the case.

That is why problems have occurred over regulating whether it should be in the first, second or third trimester. The emergency situation is more likely to arise in the third trimester. Admittedly those situations happened more when this code was enacted. In those days it was far more frequent for pregnant women to have complications, especially in the later stages of their term. Section 259 allows for the fact that there could be a time when there is no doctor, an emergency arises and something must be done to save the mother's life. That could involve termination of pregnancy at a very late stage. That must be maintained under the Criminal Code. The new provisions in the Health Act deal with situations where it is not a matter of saving the mother's life. It is all the other factors in the amendment.

Hon RAY HALLIGAN: I accept what Hon Peter Foss says and the circumstances in which section 259(1) can come into play, although there is no sign of the word "emergency" in either subsection (1)(a) or (b) of new section 334.

Hon Peter Foss: It says "circumstances".

Hon RAY HALLIGAN: It seems to be very open - just something done in good faith.

Hon Peter Foss: It has been there since 1902.

Hon RAY HALLIGAN: It seems to go well beyond an emergency. Anyone could say he acted in good faith and unfortunately the mother and the child died. Is there still no conflict between section 259 and proposed section 334(1) where it states that if a person is not a medical practitioner he commits an offence?

Hon PETER FOSS: One must satisfy all of section 259(1). There must be a circumstance which requires it to happen for the preservation of the mother's life. The emergency example I gave involves a clear set of circumstances in which it would be appropriate to preserve the mother's life. That is typical of criminal law. We cannot say what are the possibilities because assuredly we will get it wrong. One of the important things about a Criminal Code is that we do not try to predict precisely what will happen. This amendment does not change the law; it has been the law since 1902. It is not a new proposition. It makes a necessary change recommended by Mr Michael Murray's review of the Criminal Code. Since 1902 medical treatments have been developed which could be seriously life threatening. This does not deal with only pregnancy but any form of medical treatment. New forms of medical treatment can be also life threatening. For example, chemotherapy can have a serious effect on people's health sufficient to be caught by various sections of the Criminal Code if it were not for section 259. This is a necessary update of section 259.

Under proposed section 334 an offence is created, but there is a defence to that. I do not know that proposed subsection (9) is required because surely the Criminal Code defence would apply to any offences. If a person is not criminally responsible, even without proposed subsection (9) the defence would apply, although it is not a bad idea to include it to make the position clear. People ask the very question Hon Ray Halligan asked. Therefore, it is much easier to read proposed subsection (9) than to say that that is the way it should be read. Many of the offences set up in the Criminal Code envisage that the basic rule of the elements of the offence have been proved and, notwithstanding that the basic elements have been proved, there is a defence. What we can see of course is that the defence is very much narrower than this area indicates. It says for instance, that one must be a medical practitioner but if one satisfies section 259(1) one does not have to be such a practitioner. That is the way the two sections will fit together.

Hon MARK NEVILL: In the example the Attorney General gave of a woman in the desert whose life is in danger if a medical practitioner or nurse refused to give assistance because they were opposed to procuring an abortion, would that be an offence against the Medical Act?

Hon PETER FOSS: I very much doubt it. I am not aware of any provision of the Medical Act that requires a doctor to do that. I would be surprised if they refused to do it. The example I gave was one in which not only the mother but also the child faced losing their life. I could not imagine a doctor or a midwife being in that situation and not assisting. I think even the Roman Catholic Church allows under those circumstances the use of medical intervention to preserve a life. The alternative could be to lose both lives. It would not be an ethical problem for people with

those religious beliefs. If a person performed a termination it would not be an offence under the Medical Act. It would be a justification for somebody else who was prepared to intervene. All these are only instances. Each case must be treated on its own merits.

One of the problems I have had dealing with doctors' objection is that they want to be given an answer for every occasion. The law does not work in that way. It works on the facts in the case. The law asks: What is the offence and the defence? Section 259(1) of the Criminal Code has a broad meaning that will be interpreted reasonably by the courts. As long as people act reasonably in the circumstances it is unlikely they will be found guilty of the offence. Members must keep in mind that this offence will not involve a jury trial. This is a summary offence and will be tried by a magistrate. The one loss from moving from the Criminal Code to the Health Act is that the jury system has provided for centuries a way to communicate the ordinary views of the public. A magistrate may take a more legalistic approach to that interpretation than a jury would. If a person had acted reasonably in the circumstances no jury would ever convict.

Hon SIMON O'BRIEN: The second reading speech alluded to a draft Bill provided by Jocelynn Scutt of the Association for the Legal Right to Abortion which proposed an identical provision with a penalty of \$50 000 or two years' imprisonment. Why is imprisonment an unacceptable option in this case, especially as it would be a rare case that would appear before the court but it may involve serious cases such as the backyard abortionist?

Hon CHERYL DAVENPORT: I had not given any consideration to an imprisonment penalty in that context, and \$50 000 is a steep amount for anybody who is not a medical practitioner. I would have thought that would be a substantial deterrent. I would not object one way or another if the member moved to amend that subclause.

Hon N.F. MOORE: It was considered that \$50 000 was a significant financial penalty for a person committing an offence. In the event that they do not pay the \$50 000 they will go to gaol anyway. It was deemed to be more appropriate in the Health Act to have a penalty in monetary terms rather than imprisonment. However, the Chamber can make its own judgment. A penalty is very much in the eye of the beholder. Penalties are included as a deterrent or a punishment for someone who has committed the offence. It would be a significant penalty for most people and if they could not pay they would be end up in gaol anyway.

Hon SIMON O'BRIEN: I move -

To insert after "\$50 000" the words "or 2 years".

As Hon Norman Moore has said \$50 000 is a substantial penalty. In many cases it would more than adequate as a deterrent. However, people who are not medical practitioners who improperly engage in performing abortions may be in a position to scoff at such a penalty. It may occur that the option of a custodial penalty would seem appropriate in the eye of some court at some future date on the rare occasion that an offence might occur. The custodial sentence should therefore be available at the discretion of the court.

The other reason for proposing a custodial sentence is that I could see that someone breaching this proposed provision could be the worst type of what is known as a backyard abortionist. Some members in this place do not want any abortions performed. However, I am sure we all agree that we do not want unqualified people of the backyard abortionist type performing abortions in any circumstance. It is important that the Parliament express the view that if such offences are committed we will view them seriously. Therefore the availability of the optional custodial sentence would be desirable. It is important to deal with that concern in the community. I hope members will support my amendment.

Hon KEN TRAVERS: I am concerned about consistency. What is the penalty for someone who hangs out a shingle and purports to be a medical practitioner?

Hon Cheryl Davenport: It is \$1 000.

Hon KEN TRAVERS: This \$50 000 penalty is significantly more than that which already exists if these people were to say, "Come and see me for an appendix operation or some other such procedure." Although I accept this is a significant monetary penalty -

Hon Simon O'Brien: The maximum is \$50 000.

Hon KEN TRAVERS: This goes significantly further than that. I would not want to put in custodial sentences at this point if under the Medical Act the penalty is only a fine of \$1 000 with no custodial sentence. There may be some inconsistency in that. I do not know whether I will have an opportunity to look at some of those things before we vote on the amendment. The likelihood of backyard abortionists being in practice is no higher than that of a backyard operator who performs any other medical operation. Under the clauses we have already accepted tonight -

Hon Simon O'Brien: People don't go to backyard operators to have their ingrown toenails removed.

Hon KEN TRAVERS: That is so. However, given the clauses that have already been passed, what will be the point of having a backyard abortionist? In the same way, there would be no point in a medical practitioner setting up to do any medical procedure in the backyard.

Hon Simon O'Brien: Vulnerable people worried about parental knowledge, vulnerable young women who are concerned about approaching what they see as official people, doctors in hospitals and those sorts of people, may be tempted to go to one, or be referred by pressuring friends and boyfriends to keep things discreet. I hope it will never happen.

Hon KEN TRAVERS: I think a penalty of \$50 000 is enough to deter that from occurring.

Hon N.D. GRIFFITHS: The genesis of this was a letter received by Hon Simon O'Brien, of which I received a copy; I think all members received it. I open all my mail and respond to most letters. I do not leave my letters unopened as I understand some people do. The letter was from the Association for the Legal Rights to Abortion. It states -

We are enclosing a copy of legislation drafted by Dr Jocelyne Scutt, Barrister, earlier this week and reproduced here with her permission.

It goes on to say -

... this draft shows how a replacement law could work.

It suggests legal requirements dealing with a number of things and goes on to talk about appropriate penalties, including that the Scutt proposal is consistent with existing laws and would require very little public expenditure to implement. This is what the pro-abortionists say and what Dr Jocelyne Scutt has provided in the draft Bill. Hon Simon O'Brien made reference to it in his speech in the second reading stage. The wording in the draft states that no person, other than a medical practitioner, shall be entitled to practice medicine or surgery in any one or more of its branches, including termination of pregnancy. The suggested penalty for the first offence is \$10 000 or imprisonment for 12 months, or both; and for a subsequent offence \$20 000 or imprisonment for two years. This idea of two years' imprisonment does not come from left field, but those who advocate abortion.

Hon CHERYL DAVENPORT: I do not have any real concern with that. It might allay some concerns people in the community have had about the potential for backyard abortionists to conduct terminations. However, I do have some concerns that it might apply to proposed section 334(2). I am happy to argue that at the appropriate time. I certainly do not have any difficulty with its application to proposed new subsection (1).

Amendment put and passed.

Question (subsection (1), as amended) put and passed.

The CHAIRMAN: The question is that subsection (2) be agreed to.

Hon N.F. MOORE: Proposed subsection (2) refers to a medical practitioner who performs an abortion which is not justified, and who commits an offence. Again the penalty is \$50 000. A justifiable abortion will be what the Committee decides under the four options in proposed subsection (3). This means that when the Committee determines what it considers to be a justifiable abortion, if it decides that any are justifiable, a doctor who then performs an unjustifiable abortion will commit an offence and will be subject to a penalty of \$50 000. I put that forward for the consideration of the Committee.

Hon CHERYL DAVENPORT: I am happy to accept that amendment.

Question (subsection (2)) put and passed.

Hon N.D. GRIFFITHS: I move -

To insert after proposed section 334(2) the following subsection -

(3) No person is under a duty, whether by contract or by statutory or other legal requirement, to participate in the procurement of any abortion.

I think those words speak for themselves. If we are to continue what we have had in Western Australia - that is, an abortion regime - and we legalise abortion as we are doing, there is no protection for those who do not want to participate in it, given the way our industrial relations system works. That is another matter and I do not want to colour the debate with respect to that.

Hon E.J. Charlton: You had better stop there while you are in front.

Hon N.D. GRIFFITHS: It is a proper protection and there should be no argument against it.

Hon CHERYL DAVENPORT: Generally I am happy to go along with this; however, I just ask Hon Nick Griffiths to explain exactly what he means by the word "participate".

Hon N.D. GRIFFITHS: The word has its normal and natural meaning which essentially is to be involved. I do not want anyone who does not want to be involved in this procedure being required to be involved in it. Hon Kim Chance used the words "naturally to have any involvement in it". I am really concerned about employees, more than anything else.

Hon Cheryl Davenport: Would that mean that some people who have a religious objection and who are general practitioners would be at liberty to refer people on to other doctors? Is the member comfortable with that?

Hon N.D. GRIFFITHS: The words mean what they say. A person is not under a duty to participate.

Hon Cheryl Davenport: Are they under a duty to refer the person to another doctor?

Hon PETER FOSS: I think there is only one concern which I do not see as having any practical difficulty; that is, where a person has no objection to performing an abortion, who is contracted to perform an abortion, and then fails to perform the abortion that he or she has agreed, under contract, to do. It is a fairly remote possibility. The mischief that would be created thereby is not sufficient to worry about. That is the only concern I would have but it is so unlikely to occur that any attempt to deal with it while addressing Hon Nick Griffiths' concern would lead to unworkable legislation. One is better off with a small risk of someone welshing on a contract than trying to deal with it by way of what he has moved. I support his amendment.

Hon NORM KELLY: This proposed amendment is probably additional to what is required in the Bill, although I appreciate that reinforcing the rights of the individual to act under his own conscience does not hurt the Bill. What would be the situation in a small town which may have only one doctor and a woman does not have access to other medical health facilities and requires assistance in procuring an abortion? Would there be a legal obligation on that doctor to provide assistance by referring that woman to someone else?

Hon PETER FOSS: I do not believe there currently is an obligation on any person. Certainly under the present legislation the general provision is that it would be illegal unless it was within the Davidson or possibly even the Levine test. The practice has been that some doctors do not provide that advice, some doctors do provide enough to refer a woman on to other people and some will undertake the job themselves. I hope that we do not try to overrule people's objections. I understand that the member is saying that we could pose a situation where it would be almost impossible in a town for a woman to gain that advice. We must think of the alternative. If a person does it because he is compelled to do it, we will not get the quality of advice that we really want. As with anything that requires the giving of professional advice, it would be quite destructive to that professional relationship if a person did it because he felt that some law imposed a duty on him. It would be a most unwise move on our part to force somebody to give that advice. One could certainly bring a strong moral persuasion to bear on a doctor because he is the only one in town. However, if we made it a legal obligation, we would be interfering with the basic professional relationship that should exist between a doctor and a patient. I would not count too much on the quality of the medical advice in those circumstances.

Hon E.J. CHARLTON: This amendment is critically important. We have heard much about the rights of the individual to be able to make a decision about procuring the termination of a pregnancy. If we do not have this amendment, we are saying that the rights of the mother are paramount and the person who may be called upon to participate - not just a doctor or a nurse but anybody else involved in the procedure - is compelled to do so if the woman decides to proceed with an abortion. If there is to be any fair play at all, although all of us have our respective positions, I would certainly encourage those who have been so committed to wanting abortion decriminalised to at least recognise that people who take an oath to preserve life and do everything in their power to do so, can at least be paid respect when not wanting to terminate it.

Hon DERRICK TOMLINSON: Hon Norm Kelly asked a question about obligations upon a medical practitioner to refer a woman to another practitioner if the first practitioner found himself or herself unable for whatever reason to conduct the requested medical procedure. Section 21(b) of the Medical Act states -

Any medical practitioner who is requested to do so by a patient or by a relative of a patient who for any reason is unable to make the request himself, shall endeavour to arrange for a professional consultation between such medical practitioner and another medical practitioner with respect to the condition of the patient and the medical or surgical treatment appropriate in the circumstances.

I do not think that could be read to mean that if the medical practitioner who for reasons of conscience could not refer to an abortion clinic, for example, would be compelled by section 21(b) to refer to an abortion clinic, gynaecologist

or whatever for a procedure to be carried out. It could be interpreted that a medical practitioner who for reasons of conscience or whatever was unable to make that specific referral for a procedure should endeavour to arrange for the patient to see another appropriate person for consultation on the medical condition.

Hon CHERYL DAVENPORT: The AMA position statement on reproductive health at section 6 states that when a personal moral judgment or a religious belief prevents doctors from recommending some form of therapy, they should so inform their patients. They should also inform patients that such therapy may be available elsewhere. That is all I am trying to ascertain.

Hon NORM KELLY: I appreciate the comments of members. This proposed amendment is superfluous to laws that we have under the provisions of the Medical Act, as Hon Derrick Tomlinson has pointed out. Those safeguards are not only for doctors to be able to follow their own conscience but also for individuals to be able to have access to available medical care.

Amendment put and passed.

The CHAIRMAN: The question is that proposed subsection (3) of the original amendment be inserted.

Hon N.F. MOORE: Subsection (3) is the most fundamental issue at stake in this whole debate. It is a determination by this Chamber as to whether we want to change the law for the justification of a termination. One of the most unfortunate aspects of this whole debate has been the desire of some people, for reasons best known to themselves, to suggest that the original Foss Bill and the four propositions contained in this Bill are somehow or other a reflection of the Government's position. It is suggested that the Government supports all those options, when the Government's proposal in the first place was to identify the options, provide a list of them to Parliament, and allow the Parliament to decide which options it chose to incorporate in the law. It has annoyed me considerably to listen to people speaking on this debate who have suggested that somehow or other the Government in Western Australia is supporting abortion on demand. That has been said in this Chamber and I want to say in the clearest possible terms that it is not the case at all. The Government has assisted in the preparation of legislation to enable members to make a decision.

With this amendment members can choose to reject the clause altogether, which would take the situation back to the current law under which the only justifiable basis for a termination is when the life of the mother is at stake. Alternatively, members may choose to pass paragraph (a), which is paragraph (d) in the other Bill. The order has been reversed because it was important to determine whether the Committee supports abortion on demand. Proposed subsection (3) states that subject to subsections (4) and (5) - which relate to informed consent - the performance of an abortion is justified if and only if paragraphs (a), (b), (c) or (d) apply.

I find myself in an unusual position because I am presenting this amendment but I will vote against paragraph (a). I will move it for the purpose of debate. As I said at the beginning of my comments, this vote is the most crucial of them all because it is where the most fundamental issue lies. I indicated in the second reading debate that my view is in line with the Davidson principle which contains an appropriate set of reasons to justify an abortion.

If the Committee agrees to (a), provided a woman has given her informed consent - which means she has been counselled about the consequences of an abortion - an abortion is justified. I have thought about this long and hard and I do not support the proposal. I believe far greater justification is needed than a request for an abortion with no reasons being required or given for that request.

Hon CHERYL DAVENPORT: I certainly support new subsection (3)(a). I take exception to the whole notion of abortion on demand - I note that Hon Norman Moore refined his terminology on this occasion - being available in this State. It is not the case. One or two women may have multiple abortions. They are very rare cases and, quite frankly, it goes back to the question of choice. It must be an informed choice. It is most important to support the provision in new paragraph (a) for the range of reasons I gave during the second reading debate; that is, this should be a woman's choice made in consultation with her doctor.

I am concerned that if the Committee supported only the Davidson test, it would not pick up the number of terminations that have been performed over the past 25 years in this State. Certainly new paragraph (b) would be necessary to cover approximately 80 per cent of the abortions carried out. If this amendment is not passed, it will deny women the responsibility for determining their lives. They do not present to a doctor to make this informed choice without having given the matter loads of consideration. I have spoken to a range of women who have had terminations, and I know they agonised over this for weeks before going to a doctor to see what could be done about the situation in which they found themselves. In the main, pregnancy occurs because of failed contraception. We have had that debate in this Chamber. The contraceptive pill has been available for a number of years but, unfortunately, it is not always successful. If a woman has a viral infection and takes antibiotics, that can interfere with the contraceptive process. If the pill is not taken at the same time each day, that can also have an effect. This

Parliament will be doing women a real injustice if it does not believe they have the capacity to make their own decisions. No woman makes such a decision lightly, and if this proposal is not supported it will be a grave injustice to the women in this State.

Hon GIZ WATSON: I also give my strong support to new paragraph (a). I understand that informed consent is the outcome needed for justification. It is also my understanding that if this provision is not supported, the problem will be transferred and legal challenges will continue in this State. It may well remove the problem from the District Court to the Court of Petty Sessions, and from one prosecuting agency to another.

I am given to understand that a number of doctors have been vocal on this issue and are concerned that if informed consent is not accepted as justification for termination, the situation will be more restrictive than it has been in this State in recent times. For those reasons, we must trust women with that choice.

I clarify one point. In my opinion informed consent should involve counselling being offered but it should not be compulsory. I will speak later on that matter. If informed consent is defined in that way, it will be the best situation for the provision of this service in the State.

Hon LJILJANNA RAVLICH: I support the amendment. I fully support the view of Hon Giz Watson that counselling should not be compulsory but it should be offered to those women who need it. Making it compulsory is based on the premise that women cannot make decisions for themselves. That is totally wrong. It is a woman's civil right to make a decision about whether to terminate a pregnancy.

I also find it difficult that we are looking at new paragraph (a) in isolation from new paragraphs (b), (c) and (d). Any woman making the judgment about whether to terminate a pregnancy would quite clearly have considered all those variables outlined in paragraphs (a), (b) and (c), such as their own personal health, the social and economic consequences, the impact that those social and economic consequences may have on the child in the long term and their ability to deal with issues as they arose. Certainly they would have given some consideration to their physical and mental health. They would be in the best position to determine their state of health. I fully support the provision that the woman concerned has to give informed consent but I, like Hon Giz Watson, object to the notion that counselling has to be mandatory in this situation.

Hon KIM CHANCE: This may be a pedantic point but it actually has a bearing on the meaning of paragraph (a), which is why I raise it now. Members will note that the word "or" is used between paragraphs (a) and (b) and between paragraphs (c) and (d). That clearly makes paragraphs (a) and (d) disjunctive, but does it mean that we have to take paragraphs (b) and (c) as possibly being conjunctive as they are not separated by the word "or". I note Mr Chairman that the Clerk is shaking his head and looking unhappy with me, but my question is: Do we assume that all paragraphs are disjunctive and that the addition of the word "or" between paragraphs (b) and (c) will be a Clerk's amendment?

Hon N.F. Moore: That is my objection.

Hon KIM CHANCE: I actually asked for a ruling. Will the addition of the word "or" between paragraphs (b) and (c) be a Clerk's amendment?

The CHAIRMAN: This is a matter of interpretation of the Bill itself. I am not in a position to give a ruling on that.

Hon BARBARA SCOTT: In relation to paragraph (a), the woman concerned has given informed consent. I have difficulty agreeing with this provision because there is nothing specific about what information the woman has before she gives consent. In the second reading debate I referred in detail to the Rawlinson inquiry in England, the report of which contains a section on informed consent. The Rawlinson inquiry found that a necessary requirement of good measure of practice is adequate information about the possible consequences of medical treatment prior to commencing that treatment in order to allow the patient to make an informed decision when consenting to it. It goes on to note that the importance of counselling was noted in another report. Hon Ljiljanna Ravlich has dwelt on the issue that women should be given the credibility for making their own informed consent. If I were to have my gall bladder removed, I would like the doctor to explain it in detail. I do not believe that saying, "Yes, I want my gall bladder out, I had a terrible attack last night and I want to get rid of the pain", represents an informed decision because I do not really have that information.

Hon Ljiljanna Ravlich: One would assume there is going to be some consultation between the doctor and the patient.

Hon BARBARA SCOTT: Nothing in this new section would require the woman to be fully informed so that she can give that informed consent. I have difficulty accepting that sufficient information is required to be given in this instance. I would like to ask a question of counsel or Hon Cheryl Davenport - because I have some initial notes on the definition of informed consent and this was raised in the Rawlinson report. Would the definition of informed consent in this legislation override the common law definition of informed consent? I am not a lawyer, but I raise

that issue and want to know whether there is a common law interpretation of informed consent that would override this definition. Unless the definition is as comprehensive as the meaning of informed consent in common law, this legislation will reduce the standard of informed consent required in any other surgical procedure. Nothing in this provision requires doctors to give to women in this situation the information that must be given in every other procedure.

Hon CHERYL DAVENPORT: I assure Hon Barbara Scott that, as a consequence of the ability to make regulations within part 3, clause 7, there will certainly be the ability to deal with the whole question of counselling. It will be something along the lines of whether the registered medical practitioner has properly, appropriately and adequately provided the woman with information about the medical risk of termination. Presumably she is looking at carrying a pregnancy to term. The member might look at whether the woman has been offered the opportunity of referral to appropriate and adequate counselling. Thirdly, it must be established whether she has been informed that appropriate and adequate counselling will be available to her should she wish it upon termination of pregnancy or after carrying the pregnancy to term. I think in fact there is plenty of ability for those sorts of regulations to be reviewed by the Delegated Legislation Committee of this Parliament. I hope that that will be looked at so that the issue of informed consent can be teased out far more. I presume, in terms of preparing these sorts of regulations, that the Health Department could call in a range of people who deal with those counselling components to talk to the Delegated Legislation Committee before that is put in place. It does not need to be that detailed in the current Act. I do not have any difficulty whatsoever with counselling. In fact I think the more counselling available to a woman, the more informed she is to make the decision either to continue her pregnancy or to terminate it. I am not opposed to counselling, but I think the appropriate place for that counselling to be designed is the Delegated Legislation Committee of both Houses of Parliament.

Hon DERRICK TOMLINSON: I am not a lawyer either; but there are lawyers in this Chamber who might be able to inform us on matters of law. It is my understanding that words in legislation mean exactly what the words mean. If a word is in common usage, the common usage applies. If it has an esoteric meaning, the esoteric meaning applies. The word "informed" is a word in common meaning. A very common dictionary, the *Macquarie Concise Dictionary* defines "informed" as "to impart knowledge of a fact or circumstance, to supply (oneself) with knowledge of a matter or subject, to give information," and so on. One would assume that since the common meaning of the word applies, common usage applies to interpreting the meaning in the legislation; that is, informed and knowledgeable. In the context of a medical procedure, the word "knowledgeable" means that one understands what the procedure involves, the consequences of the procedure, how the procedure will be carried out and how one will feel physically and psychologically afterwards. The point is simply that the common meaning of the words apply. If one wants the precise informed meaning of the word, one would go to the *Oxford Dictionary*, but the common usage applies.

Hon N.F. MOORE: It is intended to provide for regulations to deal with the issues about which Hon Cheryl Davenport spoke. It may be that there should be some regulations which refer to how counselling is to be undertaken. I understand it is a necessary requirement before any person has a justified abortion under proposed paragraph (a), for that person to have been counselled. Rather than putting the pedantic rules and regulations in the Act, it is proposed to put them into regulations. When that happens, the Parliament will have a chance to deliberate on them, because such regulations come before this place.

Question (subsection 3(a)) put and a division held, with the Chairman casting his vote with the ayes -

Ayes (22)

Hon Kim Chance	Hon Peter Foss	Hon Norm Kelly	Hon Derrick Tomlinson
Hon J.A. Cowdell	Hon John Halden	Hon Mark Nevill	Hon Ken Travers
Hon M.J. Criddle	Hon Ray Halligan	Hon Ljiljana Ravlich	Hon Giz Watson
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Bob Thomas
Hon B.K. Donaldson	Hon Helen Hodgson	Hon Christine Sharp	(Teller)
Hon Max Evans	Hon Barry House	Hon W.N. Stretch	

Noes (11)

Hon E.J. Charlton	Hon M.D. Nixon	Hon B.M. Scott	Hon E.R.J. Dermer
Hon N.D. Griffiths	Hon Simon O'Brien	Hon Greg Smith	(Teller)
Hon Murray Montgomery	Hon Muriel Patterson	Hon Tom Stephens	
Hon N.F. Moore			

Question (subsection 3(a)) thus passed.

The CHAIRMAN: The question is that proposed subsection (3)(b) be inserted.

Hon N.F. MOORE: In a sense, as a result of the previous decision, proposed paragraphs (b), (c) and (d) are

superfluous, because all that is now required for a female in Western Australia - if this becomes law - to have an abortion is simply for her to give her informed consent. Therefore, a female seeking a termination need only go to a doctor, indicate that she has been counselled and has given her informed consent, and the doctor can perform the abortion. I assume all members were aware of that, when they voted, because this is the second time in two weeks that my judgment of this Chamber has been flawed. I am amazed by the result of the last vote. Be that as it may, I understand that tonight the Assembly similarly voted on another Bill -

Hon Tom Stephens: The fact that you refer to that is further illustration of how disgusting it is that we are dealing with this Bill.

Hon N.F. MOORE: I have been amazingly tolerant of some of the member's comments tonight, because I want to achieve a solution, not to win a debate with the member. I suggest that he stop his interjections, and stop giving me another reason to get stuck into him!

The CHAIRMAN: Order! The Leader of the House will address the Chair.

Hon N.F. MOORE: To ensure that there is no doubt about what we mean, I argue that we continue to put proposed paragraphs (b), (c) and (d) into the legislation but with the word "or" after (b) and (c). To expedite the matter, I move -

To add after the word "performed;" the word "or".

Hon TOM STEPHENS: I was told that I need be in no doubt about how this Chamber would vote on this Bill. The Government should not have been under any misapprehension about the way this place was proposing to deal with this Bill - and with proposed paragraphs (a) to (d). The fact that the Government has facilitated the timing of this Bill coming forward is an indication of the Government's intent with this legislation. The Government has achieved what I believe to be its intent. That is, by the passage of this legislation it will deliver to Western Australia, effectively, abortion on demand. If a large majority of the community hold the Government accountable for what it has done, members opposite have only themselves to blame. I chose not to speak on proposed paragraph (a) in the faint hope that my silence would have been more persuasive than my eloquence.

Several members interjected.

Hon TOM STEPHENS: It appears to be the eloquence of the Leader of the House in arguing the case for proposed paragraph (a) -

Hon Cheryl Davenport: He voted with you!

Hon TOM STEPHENS: Nevertheless the Government has provided the time to deal with a Bill which will now deliver abortion on demand. I am conscious that people in the community will hold this Government accountable. The Government has been aided and abetted by others in the process. The most recent vote is a disgrace. For instance, if an abortion were conducted on a woman without her consent, the penalty would be only \$50 000. The provisions on the Statute books relating to assaults on women should be considered. Members opposite should wake up to what they are doing. They are hellbent on taking away the rights of women by the processes being unleashed in this place. Minister Foss is most culpable because he has been the architect of the provisions from day one.

Hon Cheryl Davenport: I am happy to own it, so you can stop that.

Several members interjected.

The CHAIRMAN: Order! The Leader of the Opposition has the floor.

Hon TOM STEPHENS: I will be fascinated to see what provision the Attorney believes is still in the Criminal Code dealing with someone performing an abortion without the woman's consent.

Hon Peter Foss: Sit down and I will tell you.

Hon TOM STEPHENS: I look forward to the Attorney's displaying more of his ignorance.

Hon Peter Foss: Sit down!

Hon TOM STEPHENS: I will sit down when I am ready.

Hon Peter Foss: Then you will not hear it.

Hon TOM STEPHENS: The sophistry with which the Attorney has graced this debate in the media and this Parliament and, more importantly, the disgraceful dishonesty with which he has confronted -

Withdrawal of Remark

Hon PETER FOSS: I ask that that comment be withdrawn.

The CHAIRMAN: Will the member withdraw?

Hon TOM STEPHENS: The processes of this Committee are that if I do not -

The CHAIRMAN: I have asked whether the member will withdraw the statement.

Hon TOM STEPHENS: I will withdraw but I will find another of way saying effectively the same thing.

Hon PETER FOSS: That is an open defiance of the Chair and the member should withdraw. If he then proceeds to do what he says he will do, I might object again. However, he should not say to the Chair that he defies a ruling.

The CHAIRMAN: The Leader of the Opposition will make an unqualified withdrawal.

Hon TOM STEPHENS: I will make an unqualified withdrawal and then say that it is up to the people of Western Australia to judge whether we have an honest Attorney General in the face of the facts with which we are presented.

Committee Resumed

Hon TOM STEPHENS: This Attorney General told his colleagues that he would support the Foss Bill before the Legislative Assembly and vote against the Davenport Bill. He boasted of that to his colleagues and they relayed that to me.

Hon Peter Foss: I have been misrepresented!

Hon TOM STEPHENS: Do not do that at this stage; wait until I have finished.

The CHAIRMAN: The Leader of the Opposition.

Hon TOM STEPHENS: The provisions the Attorney General is putting in the Statute book of Western Australia -

Point of Order

Hon PETER FOSS: I should have taken this point of order earlier. Will the member kindly give us a relevant comment? This is not his first transgression; he has consistently failed to address the content of this Bill.

The CHAIRMAN: I take that point of order. I remind the Leader of the Opposition of Standing Order No 97, which states -

No Member shall use offensive or unbecoming words in reference to any Member of either House, and all imputations of improper motives and personal reflections on Members shall be considered highly disorderly . . .

I remind the Leader of the Opposition of that standing order.

Committee Resumed

Hon TOM STEPHENS: This Committee has been assisted by this Attorney General in delivering to Western Australia legislation that, if it is passed through all stages, will make him more of a laughingstock than he is currently.

Hon PETER FOSS: At an early stage of this debate I indicated that in some ways we cannot take abortion out of the Criminal Code. We can remove sections 199, 200 and 201 and, by so doing, we remove specific provisions relating to the termination of a pregnancy. In addition, we must take into account the other provisions in the code relate to grievous bodily harm, serious assaults and manslaughter. What we will probably be doing in the Criminal Code, because we have bypassed clause 5, is repeat section 259 as proposed new section 259(1), which provides for specific defences.

Many people think that section 259 is definitive of the current law. They seem to think the only basis upon which one can say that an abortion can be performed is if proposed new section 259(1) is applied. In fact, sections 199, 200 and 201 provide that one may not unlawfully procure a miscarriage. The definition of 'unlawful' has been the basis of the Davidson and Levine tests.

Section 259 is important because it provides a general defence. The Leader of the Opposition is proposing a situation where an abortion is performed without the woman's consent, and presumably against her consent. He is virtually saying there is no penalty for that other than \$50 000. Surely even the leader would not suggest that under those circumstances one has satisfied proposed new section 259(2)? If one is performing against the will of a woman, it

is hardly being administered in good faith. I simply do not believe it. This sort of nonsense has been put out to the general public. It is the sort of claptrap put forward by people opposing abortion with choice. One of the reasons that the Leader of the Opposition has lost sympathy is that he has not argued with what has been proposed but with what he has put up as what has been proposed by the Bill. He has lost it because people have lost any belief in what he is saying. I have not lost credibility. Those opposed to the legislation have lost credibility because they have not been prepared to play it as it is; they have gone out and said to the people things that nobody could read into the legislation. That is why the Leader of the Opposition has found himself in the position he is in. He has lost the sympathy of the members of this place and the public because he has not been prepared to deal with the arguments and what is being proposed.

As to his description of my role, I would like to make clear what my role has been. I have been a member of the Parliament as equally concerned and taking equal responsibility with every other member of this Parliament in either Chamber for the decision I am making. I do not for one moment stand back from that. I know what I am doing. I am quite certain that every other member of this Parliament knows what he or she is doing and has made that decision very seriously. In addition, as Attorney General I made a very important suggestion; that is, that I assist anybody who wishes to bring this legislation before either Chamber. I did that for a very good reason. I perceived that the worst thing we could do would be to end up with legislation being defeated through pettifogging procedural amendments. I say it with no criticism, but when I saw the first amendment proposed by Hon Cheryl Davenport I saw problems. Whether or not one liked that particular Bill, I saw it as having the capacity to be lost by procedural differences. That is when I came up with what has been described as the Foss Bill. I drafted it originally for Hon Cheryl Davenport because it seemed to me to be a process whereby we could allow the matter to be fully discussed and people could work through the issues and decide what they were prepared to accept.

Hon Cheryl Davenport: With respect, the Bill was based on my original Bill, was it not?

Hon PETER FOSS: Indeed it was. I took what Hon Cheryl Davenport proposed and put it in a format that I felt was capable of coming before the Parliament and being voted on in a way which did not lead to procedural muck-ups.

Hon N.D. Griffiths: She was the architect and you were the draftsman.

Hon PETER FOSS: I went to the parliamentary draftsman and said how I believed we should handle it and asked him to draft it. I actively participated in the drafting. I make no secret of the fact. Next Hon Cheryl Davenport indicated that she wanted a Bill which took this out of the Criminal Code. Again I assisted in that, probably less actively because I took her instructions to parliamentary counsel and asked him to draft it, because it seemed to me important that if we were to make the change, I did not want, especially as Attorney General, to end up with a law which was incapable of being administered. Some of the suggestions that came up for how we could improve this would have been an absolute nightmare for administration. I suppose that some of the pro-abortion people would have thought some of the suggestions were wonderful because one could never have got a prosecution as one could never have proved all the various things that needed to be proved. Other suggestions would have meant a nightmare for choice because one could never have established that one had done all of the procedures that needed to be done. We needed to have something which would fit into the Criminal Code and which I, as the person with the ultimate responsibility for the administration of criminal law, could accept as a law. It is not a question of whether I agree with the principle. As the person with the ultimate responsibility for that law, I believe that it was capable of being administered. That is what I did.

With regard to Hon Tom Stephens' comments, I do not believe we have open slather. As a result of carrying on some discussions about the Bill I missed what is being done with (b), (c) and (d). I would like to look at (b), (c) and (d) because the important thing about (b), (c) and (d) is that they do not take away the first part of the defence. Under the Criminal Code one still has to satisfy the requirement that one is acting in good faith. That is the underlying requirement of the Act. However, it recognises that there are some circumstances in which in the interests of the mother one might have to operate without her consent. Section 259 contains nothing about consent at all. That is not a problem because section 259 is governed by the circumstances. Similarly these paragraphs are governed by those circumstances. Subsection (4), where we deal with impracticability, might go further. Under (a) it has to be informed consent; there is no way around it. Paragraphs (b), (c) and (d), as proposed by Hon Norman Moore, say again that informed consent is required unless it is impracticable for women to give it. I have some concern. Perhaps we should have it that paragraphs (b), (c) and (d) do not apply unless the woman has given her informed consent, and paragraph (c) or (d) apply if it is impracticable for her to do so. When it is causing serious danger to her physical or mental health, we need to have the provision of informed consent being impracticable to obtain; in fact, one might even say that (d) is the only provision where one would say it is impracticable and that is the justification. That ties in to some extent with section 259.

Hon N.D. Griffiths: I regret the vote the House took three hours ago when we agreed to sit late, because we have to listen to you at this time of night.

Hon PETER FOSS: It gives me a certain degree of satisfaction to know that the member is suffering in the same way as I did when he was on his feet.

Hon N.D. Griffiths: I am thinking of the people of Western Australia, some of whom have to listen to your trite nonsense.

Hon PETER FOSS: Very nice!

Section 259(1) may be sufficient but if we are going to have "impracticable . . . to do so" we need paragraphs (b), (c) and (d). We could delete proposed subsection (4) altogether and simply take up (b), (c) and (d). If we take up (b), (c) and (d), we will have to take out subsection (4). Informed consent would be the only test remaining, or that in section 259(1). If we want to keep the possibility of "impracticable" because of proposed paragraph (d), we could do so. If members are thinking of changing it round or doing anything with (b), (c) and (d), if they took (b), (c) and (d) out they would also have to take out subsection (4). If members want to keep "impracticable" then it should probably be restricted to paragraph (d) alone. Having raised that with Hon Norman Moore, I might ask whether he will fiddle with it as he has drafted it.

Hon N.F. MOORE: It is amazing how long the debate can go on about a two letter word. In response to the Leader of the Opposition's allegations about my role in this matter -

Hon Tom Stephens: Will it be relevant to the word?

Hon N.F. MOORE: It is about as relevant as the member's speech was, and if I am called to order I will do as I am told.

I have sought in this debate to reach a resolution. It has not been some government plot, of which I have been part, to get the law changed. I voted with Hon Tom Stephens and indeed more Liberal Party members voted with him than did Labor Party members. For the member to suggest in the most improper and dishonest way that this Government -

Withdrawal of Remark

Hon TOM STEPHENS: Earlier in the debate I was asked to withdraw the word "dishonest" with reference to the Attorney General, which I reluctantly did. I will not have the Leader of the Government accuse me of being dishonest, when I am patently not being dishonest.

The CHAIRMAN: The member has objected, and the Minister will withdraw the comment.

Hon N.F. MOORE: I am happy to withdraw the suggestion that the member is dishonest.

Committee Resumed

Hon N.F. MOORE: However, what he said is dishonest. The Leader of the Opposition said something that is strictly not true. I will not say it is a lie, because the word "lie" is also out of order. However, he is trying to score some cheap party political advantage for himself by suggesting that the coalition Government has sponsored this legislation and has organised it to go through the Parliament in the way it is. He knows as well as I do, that the issue arose as a result of two doctors being charged. Subsequently a member of his party recommended changes to the law. The Government sought, through the Attorney General, to facilitate the Parliament resolving the problem. Members have voted as individuals in accordance with their consciences on this matter. That includes me.

I know I have an obligation, as Leader of the House, to ensure that a resolution is reached as quickly as possible, while giving members an opportunity to talk for as long as they wish. The Leader of the Opposition has taken advantage of that opportunity. He has spoken for five or six hours on this Bill, as he is entitled to. Nobody has put him in a position in which he has not had time to talk about whatever he wants. It is grossly unfair and unreasonable for him to suggest that this is all the Government's doing. Most of the support for abortion being provided after informed consent, as contained in new paragraph (a), came from members of the Labor Party, the Greens and the Democrats, together with some members of the Liberal Party. The bottom line is that this is not a party matter. It is a decision made by members of Parliament as grown adults capable of making their own judgments and decisions. They have made them in ways I never imagined would happen. Members of this Chamber have reached a level of maturity that I am delighted to acknowledge. They are able as adults to address an issue such as this and reach a conclusion. I do not agree with the conclusion reached but I believe the process has been proper and right.

I hope the colleagues of the Leader of the Opposition, who understand this as well as I do, will take the Leader of the Opposition to task if he keeps trying to score cheap political points. They know that what he is trying to do is grossly unfair and it is simply wrong.

Hon N.D. Griffiths: You control the Notice Paper.

Hon N.F. MOORE: That is right, and I take complete credit or blame, whichever the member prefers, for bringing on the debate. I want the matter to be resolved, as do probably 87 other members in this Parliament. They have had enough. The pressure has become too much and everybody knows where they stand. The Bill has been dealt with very quickly tonight. People knew how they would vote and they did so without a great deal of time being wasted.

I do not understand exactly what the member is talking about with respect to new subsection (4), but it should remain as it is. New paragraphs (b), (c) and (d) should remain with the word "or" attached to paragraph (b).

Amendment put and passed.

The CHAIRMAN: The question is that subsection (3)(b), as amended, and subsection (c) be inserted.

Question put and a division held, with the Chairman casting his vote with the ayes.

Ayes (27)

Hon Kim Chance	Hon John Halden	Hon N.F. Moore	Hon Greg Smith
Hon J.A. Cowdell	Hon Ray Halligan	Hon Mark Nevill	Hon W.N. Stretch
Hon M.J. Criddle	Hon Tom Helm	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Simon O'Brien	Hon Ken Travers
Hon B.K. Donaldson	Hon Barry House	Hon Ljiljana Ravlich	Hon Giz Watson
Hon Max Evans	Hon Norm Kelly	Hon J.A. Scott	Hon Bob Thomas (<i>Teller</i>)
Hon Peter Foss	Hon Murray Montgomery	Hon Christine Sharp	

Noes (6)

Hon E.J. Charlton	Hon Muriel Patterson	Hon Tom Stephens	Hon E.R.J. Dermer (<i>Teller</i>)
Hon N.D. Griffiths	Hon B.M. Scott		

Question (subsection (3)(b), as amended, and subsection (c)) thus passed.

The CHAIRMAN: The question is that proposed subsection 3(d) be inserted.

Hon BARBARA SCOTT: With regard to paragraph (d), and having passed (a), I seek clarification from the Chair. If a termination can be carried out when the woman has given informed consent, the phrase about informed consent in (d) reads -

the pregnancy of a woman concerned is causing serious danger to her physical or mental health.

With a woman in a coma, she could be given an abortion without even her husband's or parent's consent and later regain consciousness to find her much wanted child had been aborted in full accord with the legislation. Women in psychiatric hospitals, those on antidepressant medication, and minors would have no protection from being given an abortion against their will. It could be interpreted as impractical to get the woman's consent if it is known she would refuse and likewise in the case of language difficulties where the abortion clinic was too busy to have the time to obtain informed consent. Paragraph (a), having been passed, causes problems with (d), in that every termination must be done after the woman has given informed consent. In the situation I have raised, it is not possible, even if the woman's physical or mental health is in grave danger or serious danger.

The CHAIRMAN: This request is a call for an opinion from me that I cannot give, although obviously the concerns the member raises with respect to involuntary application apply more appropriately to subsection (4) the member's concerns could be put in subsection (4). I do not think that they can be dealt with in paragraph (d) given that paragraph (a) has already been passed.

Question (subsection 3(d)) put and passed.

The CHAIRMAN: The question is that proposed subsection (4) be inserted.

Hon N.F. MOORE: I did not hear the Attorney General talking about this earlier. As I now understand the situation, a woman seeking an abortion will now go to her doctor and he will decide under which of the four criteria the abortion is to be carried out. If he or she decided that the reason was to do with (b), (c) or (d), it would be appropriate that we include that it should also be after informed consent has been given. To take into account the matter raised by Hon Barbara Scott, that there may be some occasions when it is impractical for the person to do that, there needs to be provision that for a woman in a coma, the doctor can make the decision that that is the reason for terminating a pregnancy under (d), but as he cannot get the consent of the female, subsection (4) will give the doctor the right to perform the abortion. Essentially (d) is the current law and it seems to me that it should continue but there should be a provision in the law which says in the event that the informed consent cannot be given under those circumstances, the doctor makes a decision under (d) and is able to do so without the informed consent being given

because it is impractical for it to be given. We should retain subsection (4) as it is and then the doctor will make the decision that he or she wants to for whatever reason the termination is to take place, whether it is (a) through to (d), although I suspect most will be done under (a). That is why I said it is redundant to have (b), (c) or (d), but there are circumstances where it is important to have it, so we have decided to leave it in there, but I think subsection (4) has to be retained to look after the circumstances that might pertain if the justification is (b), (c) or (d).

Hon PETER FOSS: I agree with what was said by the Leader of the House. I just raise one thing and it is purely to do with drafting. Subsection (4) says "Paragraph (b), (c) or (d) of subsection (3) does not apply". Is that because they are distributed or should it actually be paragraphs (b), (c) or (d) do not apply? I am not sure why it has been drafted in that form. If it is because they are separate possibilities, so each of them does not apply, I think it is something to be dealt with by the Clerk.

Hon Nick Griffiths: I think it is something that the Clerk should deal with. Next time do not vote to sit beyond 10 o'clock; you are not up to it.

Hon PETER FOSS: I suggest to the Leader of the House that it is really only (d) that needs to have the impractical alternative signs to equate with the current situation and therefore I move -

To insert after the words "consent or" the words "in the case of paragraphs (c) or (d)".

The only one in which the impractical would then apply is to paragraph (d).

The important point raised by Hon Barbara Scott is that the requirement must not only be justified, but also be in good faith, and it is very much an intent to extend section 259 more broadly to this question of where the pregnancy is causing serious danger to the woman's physical and mental health. I think especially now that I have brought it down to (d) with this amendment, rather than just (b), (c) or (d), the decision will be made when the pregnancy is causing serious danger to the woman's physical or mental health. The problem is that it is possible for a woman to be in a coma and for it to be necessary to protect her health, but I think some of the examples the member gave were not such as would be capable of being carried out in good faith. I think they would not be reasonable circumstances and the person could not claim to have satisfied the first limb of the defence so as to avail himself of the second defence. I cannot remember all the examples the member gave, however some of them were extreme and one could say they were on the wrong side of the line. In some cases the woman will be in a coma and will seriously require something to happen, and under those circumstances it is appropriate that the doctor be able to act. By the time the serious danger does result, we may want to have (c) or (d), but certainly not (b).

Hon N.F. Moore: I agree that there may be circumstances under (c) where it is impractical to give consent.

Hon PETER FOSS: If the person is permanently in a coma, a doctor would not have to wait until the pregnancy was threatening her life.

Hon Cheryl Davenport: I accept that amendment.

Amendment put and passed.

Question (subsection (4), as amended) put and passed.

The CHAIRMAN: The question is that proposed subsection (5) be inserted.

Hon N.F. MOORE: Proposed subsection (5) is a definition of "informed consent", a phrase which has been used on several occasions in proposed subsection (3). It means what it says - consent given by the woman after she has received counselling about the consequences of an abortion. I interpret that to mean that it is mandatory. That is the way I expect it to be enforced.

Hon NORM KELLY: I refer to proposed subsection (7)(a) relating to regulations to provide for the counselling to be offered to a woman before she has an abortion. Is the intention that this process be made legal, or is it simply a matter that the woman be offered counselling? How will such a requirement for counselling be regulated?

Hon N.F. MOORE: The definition of "informed consent" contains the words "after she has received counselling". I interpret the meaning to be that a woman receives counselling and after that she will be in a position to say that she has given her informed consent. The reason for the regulation making power under proposed subsection (7)(a) is to give the Minister for Health the capacity to draft some rules and regulations surrounding the way counselling may be provided. I do not know what may be included. It might relate to who can provide the counselling, when it should be given and so on - the details one would not include in an Act but would be relevant to counselling. It would be for this place to decide by virtue of its capacity to deal with regulations. I seek simply to require that counselling be received, and that regulations be provided to ensure that is done in a way that is acceptable to Parliament.

Hon NORM KELLY: I appreciate the need for regulations to be made. However, although it is important to offer counselling services, in a number of cases a woman should be allowed to decide that she does not want to receive counselling, that she is able to give informed consent without needing to go through a required counselling service, if it is deemed unnecessary. My concern is that proposed subsection (5) would require a woman to undertake counselling - whatever it may be. I understand that is for the Minister for Health to work out. However, it would not be in the best interests of the woman to undergo counselling if it was not required. It is possibly another hurdle for a woman to overcome before procuring an abortion.

Hon PETER FOSS: For a person to give consent, that person must understand what he or she is giving consent to. It is important that the doctor tell the woman of the consequences of the procedure that the doctor will carry out - that is how the law stands now - otherwise people cannot give consent. Therefore, a doctor has an obligation to do that; then the woman can give her consent. The member is talking about a woman undergoing other forms of counselling. This does not require that. The question is what might be put in the regulations. The time to deal with that question is if regulations require the hurdle to be gone over; we will then consider those regulations and approve or disapprove of them. This provision requires what would be required in any event, because strictly speaking before any procedure that a doctor may perform on a person, the doctor must give sufficient information for the person to make a proper consent to the procedure. Doctors should be doing that as a matter of course - leaving aside abortion - in any medical procedure. The degree of the information would depend on what the doctor perceives to be acknowledged when giving that information. If the person is the patient of the doctor, the doctor should ensure that the person understands the procedure, the risks, and so on. That is a basic duty that the doctor has. The other aspect is a matter for regulation.

Hon B.M. SCOTT: I move -

To delete all words after the word "counselling" and substitute the following -

which explains the consequences of an abortion. Counselling in a particular case must not be given by a person who has a personal or pecuniary association with the medical practitioner who will perform the abortion.

Counselling has been referred to by a number of members this evening. Most people agree that very good counselling is important in this decision, especially given the irreversibility of the decision to undergo an abortion. I refer again to the Rawlinson report, which was very thorough. The inquiry brought in top doctors and consulted many people. It found that most countries in Europe recognise that there needed to be a period of waiting after consultation for an abortion and the operation, and that during this time the counselling may be given. As the Attorney General said, counselling must include information about alternatives and the services available to the woman to help her keep the child, if that is her choice. More importantly, the physical implications of the procedure must be explained. The Rawlinson report states that an ultrasound scan to confirm pregnancy and gestation may be offered, including the opportunity for the pregnant woman to see the scan.

The point of the amendment is that it seems to me this Chamber has agreed that it is wise for people to have counselling. We have heard speeches about post-abortion depression and regrets, and so on. I will not go into that now, but the important point is that counselling should be given by a person who is independent of the medical practitioner who will perform the abortion. If we truly believe in giving women a choice, women can decide after consultation with an independent person - probably a doctor, and perhaps a GP, but it should be someone independent of the abortion process. It should be someone who is not related, or does not have a personal or pecuniary association with the medical practitioner who will perform the abortion. We all agree that counselling is extremely important.

There is potential - the Rawlinson report found this - to experience permanent consequences from an abortion. In fact, the Rawlinson committee believed that it is essential to have a waiting period of at least a week before an abortion can be performed. I am not suggesting that tonight. In fact, nothing in the Bill suggests a time for reflection or consideration. However, the amendment will provide that counselling be given by a person independent of the medical practitioner performing the termination procedure.

Hon CHERYL DAVENPORT: I oppose this amendment. However, I am not against counselling. A woman could live in a remote country town that has only one doctor and that doctor may be the person who will perform the termination. The amendment is not compatible with that situation. There are real difficulties with time delays in termination cases. Women who attend the clinics in Western Australia have to be referred by another doctor. Therefore, the referring doctor is capable of offering counselling to the woman in her decision to go forward with the pregnancy or not. In that instance, there has already been counselling before the woman is referred to the abortion clinic.

I also believe this amendment could exclude the genetic services department of King Edward Memorial Hospital for

Women because it has a pecuniary interest in this issue. The people in that department are the experts and this amendment will deny them the opportunity of counselling women about the correctness or otherwise of their decisions. Therefore, we should be very careful about imposing counselling restrictions. I believe that counselling is up to the referring doctor and that will always be the case in genetic considerations or dangers to the woman's health. The best way to provide counselling will be by way of the mechanisms laid down by the Joint Standing Committee on Delegated Legislation at a later time.

Hon GIZ WATSON: I oppose the amendment. I agree with Hon Cheryl Davenport's comments. I believe we will be pre-empting proposed subsection (7)(c), which provides for the setting up of the regulations at a later date. That is a much more appropriate way to address our concerns.

Hon SIMON O'BRIEN: I support Hon Barbara Scott's sentiments in support of her amendment. The clinics that practise abortions are perceived by many, including me, to be profiteering and there is great concern about the sort of counselling that a prospective client receives when she presents at such a clinic. I think that is the nub of Hon Barbara Scott's concerns and rightly so. I agree with Hon Cheryl Davenport's comments about the referring doctor; he or she will provide counselling prior to referral. I do not believe that that person will have a pecuniary interest in the procedure at the abortion clinic. Nonetheless, there are fears, because of anecdotal reports, that patients present at abortion clinics directly and are dealt with. I know that the sort of counselling that occurs in these clinics in those cases is, "Don't worry; she'll be right" and it is given by the people who are running the business of abortion for profit. Hon Cheryl Davenport is aware of the reports from the United States of America about false results of pregnancy tests and so on. I recognise Hon Barbara Scott's concerns and they should not be disregarded. However, having said that, I believe it is appropriate to not proceed with this amendment because Hon Cheryl Davenport and Hon Giz Watson are also correct about proposed subsection (7)(c) being the more appropriate place for such complex matters to be dealt with.

Hon E.J. CHARLTON: This is a very important amendment. Following that to which the Committee has agreed, something should be acknowledged; that is, that there are people in the medical profession who support abortion, and there are people who do not. Therefore, a definition of what counselling is should be included in the Bill. I am aware it will be defined later in the regulations under proposed subsection (7)(c). However, all the amendment does is point out that counselling should be provided and the person providing the counselling should not have a pecuniary interest in the procedure. There is nothing wrong with that following the Committee's agreement to what is basically abortion on demand.

Hon Cheryl Davenport: I wish the Minister would not say that because it is not true.

Hon E.J. CHARLTON: The member can argue with me about terminology. However, if a person wants to have an abortion for whatever reason, no legal impediment will be placed in her way to prevent it. Having acknowledged that and if this becomes the law of this State, it is in Hon Cheryl Davenport's interests as the proponent of the legislation to want to be able say at the end of this issue that she stood up before Parliament and Parliament supported her. Some people ask: Who will make these decisions and how will the person be counselled? At least there will be something in the legislation. When it is all said and done, a regulation is a regulation.

Hon Ljiljanna Ravlich: Are you saying regulations do not work?

Hon E.J. CHARLTON: No. I am saying that regulations are very different from an Act, for obvious reasons. This amendment is seeking simply to have in the legislation a provision that requires that there will be counselling and it will not be carried out by those who have pecuniary interests in the procedure. I know a bit about the country, as many members in here do. On an issue like this there is no problem in getting a second opinion. In the country we all suffer from not having a very fast contact with a doctor. We might have to drive 40 miles and by the time we get to the doctor it could be too late. We may get to a hospital and a doctor is not there. Some towns have a hospital, but no doctor. If we are talking about life and death, it is a totally different scenario than if we are talking about a decision to be made by these women over a day or some days, having gone to their local doctor or another doctor or a clinic. I would have thought the amendment would enhance what the member set out to do in the first place - to incorporate in legislation the proviso that women should have this information. We could say that if we do not want women to be exposed to this counselling, we are frightened that they might change their minds.

Hon Cheryl Davenport: No. It would be good. I am happy for them to change their minds.

Hon E.J. CHARLTON: I would not want members not to support the amendment because they are frightened that having this information might leave women in a position where they will change their mind. I am one of the people who believes we should get a second opinion about most things in life, including medical issues. In my speech in the second reading debate I mentioned my grand-daughter. Had she not got a second opinion, she would dead. That is how serious her situation was and how critical the timing was. We should all endorse an amendment like this. It

is not just about a medical situation at the time; it is about what goes on year in and year out. In making this very important decision in their lives, these women should be provided with the best information that can be made available. This would also be helping the medical profession to know that these women intended to seek independent, qualified and accredited advice.

Hon DERRICK TOMLINSON: I do not think there is much point in splitting hairs about whether abortion is on demand or by choice. We have agreed to proposed subsection (1), which requires that a woman give her informed consent. We have also agreed to the amendment of Hon Nick Griffiths which requires that no person is under any duty to carry out a termination of a pregnancy. Consent is required on both sides. If consent is required, I suggest that the word "demand" becomes redundant. I do not think there is any point in pursuing that.

I seek an explanation from Hon Barbara Scott about her change to delete the word "about" and replace it with the words "which explains". The words on the Supplementary Notice Paper say that the woman has received counselling about the consequences of an abortion. Hon Barbara Scott seeks to change that to read that the woman has received counselling to explain the consequences of an abortion. It has considerable impact upon the meaning of counselling. As I understand it, counselling is a sharing of information which might require some instruction on the part of the informed person so that the client understands procedures, consequences and so on. It also requires a sharing of information from the client to the counsellor. It is not a process of instructing. The word "explains" means to instruct. Counselling is not really about instructing, but about guiding a woman, in this case, towards her own decision. I am concerned that if we were to accept the suggestion of Hon Barbara Scott to replace the word "about", which implies sharing, with the word "explain", which implies instruction, we will limit the possibility of counselling. I also challenge the proposition advanced by Hon Simon O'Brien about the abortion clinics being somewhat biased towards a pecuniary advantage. I have responded to the challenge of Hon Tom Stephens to visit a clinic. I have done that. I want to be informed before I participate in debates in this place.

Hon Tom Stephens: Did you say that I have, that you have or that you have not?

Hon DERRICK TOMLINSON: If the Leader of the Opposition checks the report of the debate, he will find the challenge was to go there and to prove that he was wrong. I have; he was. The Leader of the Opposition should look at that in its context. As I said, I have visited such a clinic and spoken to the doctor in charge and to the theatre nurses, although I did not speak to the anaesthetist because that person was not available. I also spoke to the counsellor. Two things about the information given by the counsellor have remained with me: Firstly, she said that many of the women who come to the clinic, even though they have been referred by their general practitioners, are very confused and uncertain about the decision they are about to make. She saw her job as helping these people through that uncertainty, not towards necessarily having them make a decision, but usually counselling in a proper sense, by the sharing of information to help the client to come to her decision. Secondly, many women decide not to proceed after this counsellor has spoken with them. She did not see her role as recruiting clients for the theatre, but rather as helping a person towards making her own decision, by the sharing of information. That does not mean directing the person's decision. Many of the women who went to that clinic, after counselling, decided that abortion was not for them. Just because a professional person is in the clinic where a procedure for terminations is available, it does not necessarily follow that that person prostitutes her professional responsibility for the purposes of the doctor. The doctor at that clinic said that it is very important that, before they make that decision, these women be properly informed and come to a decision themselves. Hence, he would not carry out the procedure unless that counsellor was confident that the woman was comfortable with the decision that she had made.

Hon BARRY HOUSE: I am pleased that counselling will be part of the informed consent clause. However, the practicalities of what Hon Barbara Scott has proposed concern me in some ways because they may make it quite prescriptive and not leave it general. I am concerned that the words used by Hon Barbara Scott may rule out some of the most vital people who are involved in the process of counselling. For example, they may rule out the referring doctor, because if the woman were to return to that doctor after the termination, it might be deemed in a court of law that that doctor had a pecuniary interest in the termination industry, if we want to use that term. It might be deemed also that the only counselling that was available at the clinic where the termination was performed was professional counselling; and just because there was a pecuniary interest in the industry does not mean to say, as Hon Derrick Tomlinson has said, that the counselling was directed towards recruiting subjects for the theatre. The practicalities of inserting these words may rule out some of the people who are best placed to provide meaningful counselling so that the woman involved can give informed consent. Therefore, I cannot support the amendment.

Hon NORM KELLY: I appreciate the intention of Hon Barbara Scott in moving this amendment, but I, like some other members, would have serious concerns if this amendment were successful. Hon Derrick Tomlinson highlighted some of the dangers and unfortunate consequences that can arise from the inappropriate use of individual words in amendments. When we prescribe things such as are prescribed in this amendment, we enter dangerous territory. I am not saying this amendment has been done on the run, but at this stage of debating this Bill we may unintentionally

amend the whole purpose of the Bill. I do not believe the people in this Chamber are best qualified to make those types of changes. I agree that proposed subsection 7(c) adequately covers the power to prescribe how those counselling services should be carried out, and I believe it is best left to that area. We should allow the medical experts and the people who will be entrusted with using this legislation to formulate those regulations. As has also been pointed out, those regulations would come before this Chamber at a later date and could be disallowed if we were not happy with them; and if some matters were not included in those regulations, it would be appropriate for a member to move an amendment Bill that included those matters. At that stage we could make the appropriate decisions on that matter. However, it would be necessary for those medical people to have thorough input and consultation with their professional bodies before those regulations became law.

Hon CHRISTINE SHARP: I cannot support the amendment either because there is lot of complexity in the words that are proposed to be used. On the one hand, as other members have discussed, this amendment will add unnecessarily inflexible hurdles to the process. We must be very careful about how we do that. The other factor that members have not mentioned is that, on the other hand, Hon Barbara Scott's amendment will remove a hurdle, because I see a hurdle in the original wording of the definition of informed consent. I do not know whether the definition as proposed in the Supplementary Notice Paper is some kind of standard medical definition of informed consent, and I would like advice on that. It seems to me - and Hon Derrick Tomlinson has already discussed this notion of everyday language - that in everyday language the word "counselling" has two fairly distinct meanings. One meaning is the provision of information, and is a kind of one way flow where a medical practitioner explains to a prospective patient the practice, the process and some of the physical implications.

The other meaning of counselling which is in common parlance these days is completely different and is a kind of psychological discussion of feelings and of going through a long process of opening up to another person and dialoguing about a matter. Those are very different meanings. If the word "counselling" in the original definition were to follow the everyday meaning, it would add a confusion to this Bill which would be regrettable because it would mean that women would be obliged to undergo both types of counselling, and some women might not wish to undergo that kind of long, psychological process if they felt comfortable with their decision. Therefore, although the original wording will add a hurdle which Hon Barbara Scott's amendment will remove by limiting the definition of counselling to mean an explanation, I will vote against the amendment because of the additional hurdle that it will impose, and if that vote were successful in the negative, I would then propose an amendment to make that counselling not compulsory.

Hon KEN TRAVERS: I do not want to say too much because I think most people opposing the amendment have covered the points involved. It is important that counselling is offered. However, how a woman wants to deal with it is particular to her.

The wording of personal or pecuniary association leads into a range of questions. I checked the dictionary to ensure I was not being too pedantic, and the definitions given would mean that the question of personal associations between doctors in Western Australia would be difficult to determine. If both doctors are active in the AMA, is that a personal association? Arguably, it is. Therefore, it would limit who would be able to provide the counselling. On that basis, I oppose the amendment.

Hon MARK NEVILL: I also oppose the amendment, particularly on the grounds of the person providing the counselling not being permitted to have a personal association with the medical practitioner. In many country towns throughout the State it is highly probable that some personal association exists between the person who seeks to offer counselling, particularly if he or she is a professional person, and the medical professional. That would be a common occurrence throughout my electorate. I find that too restrictive. I understand the member's intention regarding pecuniary association, but if that is a problem and evidence can be produced, it can be dealt with under proposed section 7(7) relating to the regulations.

Hon GIZ WATSON: I respond to both Hon Barbara Scott's and Hon Simon O'Brien's slight misunderstanding about abortion clinics; namely, the implication that they are exclusive, stand-alone facilities. Often they offer a range of services. That will cause a huge problem if one is seeking to separate pecuniary associations in that way. A woman should have the opportunity to seek counselling from the doctor of her choice. Potentially, a woman may not use a doctor of her choice because he or she may have an association with a facility which offers terminations among its services. That is unfair.

It helps with counselling to talk to somebody with whom one has a degree of trust and connection. If we limit that opportunity, I have grave concerns and cannot support the amendment.

Hon ED DERMER: Members clearly know my view on abortion by now, and I have a sufficiently developed sense of political meteorology to know what the likely outcome of this debate will be.

It is essential that informed consent means informed consent. As a Parliament we have a responsibility to give guidance to those who draw up the regulations on what informed consent means. Hon Derrick Tomlinson was concerned about the explanation of the consequences of abortion. Surely, in any understanding of plain English, informed consent would require an explanation of the consequences of an abortion. I am pleased that the clinic Hon Derrick Tomlinson visited was able to convince him that it was giving that explanation. That is a good thing. However, I have no confidence that each clinic which performs abortions, and at which a direct pecuniary interest affecting people's livelihood is involved, will provide an informed explanation.

I draw a comparison between Hon Barbara Scott's amendment and proposed subsection (5) in the amendment moved by the Leader of the House. The latter amendment states that informed consent means consent given by a woman after she has received counselling about the consequences of an abortion. An explanation of the consequences of an abortion does not mean a full anatomical thesis of every detail of an abortion; it could only be part of it. However, the words of Hon Barbara Scott's amendment are clearer: The woman must receive counselling which gives an explanation of each consequence of abortion. That will aid the woman's ability to make an informed decision. My understanding of the English language is that that term "counselling . . . about an abortion" does not mean that she needs to be given a reasonable explanation of each of the consequences. Hon Barbara Scott's wording is clearer as it refers to the need to give an explanation of each of the consequences.

In many decision making bodies in our society, there is a sensible and time-honoured process by which people who have a pecuniary interest are required to state that interest, and to absent themselves from decision making. From my perspective, and I hope for most members, abortion is a life and death decision. It is an entirely reasonable prospect that people who offer counselling do not have a pecuniary relationship with the person who is making a living from the abortion process.

That is relating to the organisation or clinic providing the abortion. That is not to say that the woman making the decision must go to a certain person for counselling. It states that the counselling she receives should not be linked in that way to people offering the abortion. I am sure that in an isolated town people might need to travel to find a counsellor not linked to the abortion practitioner. In most cases, it would be simple for the woman to find somebody else to offer that counselling. She has a choice. Hon Barbara Scott's amendment does not say that people must go to one place for counselling, but that counsellor must not have a pecuniary or other close link to the practitioner of the abortion.

Hon Barry House: Despite its best intentions, does the amendment exclude the best person placed to provide the counselling?

Hon ED DERMER: I suggest that it could be possible, but in a real world the woman will be free to choose a counsellor, apart from those in pecuniary relationship with the abortionist. Many people would be competent to offer that explanation. She has the right to choose those options, apart from counsellors in the clinic. If the woman was determined in her judgment that the best counsellor was in abortion clinic A, she could obtain that counselling and attend clinic B to receive the abortion.

Hon Barbara Scott's amendment would not preclude the choice of accessing anybody for counselling - if a woman had counselling from one clinic, she must simply go to another clinic for the abortion.

Hon KEN TRAVERS: This amendment is much more prescriptive than Hon Ed Dermer described. The amendment I have described is in plain English and in front of members. Members should not read any more into it. It is to ensure that the consent is informed consent. We as legislators in the State are taking responsibility for guiding the regulators towards ensuring that consent is informed consent.

Hon B.M. SCOTT: I am very pleased that there is a thorough understanding of the extent of counselling. A number of people, including Hon Derrick Tomlinson, began splitting hairs about whether counselling was an explanation or a form of guiding someone through a decision. That is just one important part of counselling. As I said, the irreversible consequences of abortion have been shown to be advantageous to some women and disadvantageous to others. It is very important they be taken through those emotional feelings.

There are also physical aspects, but that is part of the counselling that should be undertaken in the first instance, probably by the general practitioner or a doctor. The original clause refers to the "consequences of an abortion". We cannot get away with dealing with only psychological effects. We must consider the detailed physical consequences of an abortion. We know that for some women it means sterility for the rest of their lives; the inability to carry future babies and other consequences of which I am sure some people in the Chamber are aware.

Hon Cheryl Davenport said regulations could prescribe that. That is certainly able to be prescribed when we are talking about what is needed in the counselling areas to cover the various disciplines. In the second reading debate Hon Ljiljanna Ravlich made something of the fact that everybody needed counselling but we could not put it in place

because the current legislation does not provide for it. She spoke passionately about the fact that women require counselling.

Hon Ljiljanna Ravlich: It depends on the definition of counselling. I did not object to it.

Hon B.M. SCOTT: Clause 5 refers to the consequences and I am explaining that psychological, emotional and physical consequences must be taken into account. Everybody has agreed that counselling is complex and necessary. Some women must be taken past the abortion stage into perhaps grief or loss. As Hon Christine Sharp said, that is a different but critical aspect of counselling.

I respect the views of Hon Barry House and others who spoke about the problems in the country. However, in a small country town the GP will probably not be performing too many abortions. That is the case now and I do not expect the situation to change much. One does not necessarily have to go to another doctor to get the counselling we have spoken about. Counsellors can come from a number of disciplines.

The essence of this proposed amendment is just to ensure that the counsellor not only explains the consequences of abortion but counsels on all the psychological, emotional and physical consequences so that counselling is not prescriptive or finite. The important thing is that the counsellor is independent of the medical practitioner who performs the abortion. I am not satisfied that that will be fully covered within the regulation. I support the amendment and thank other members who have contributed to the debate. A form of counselling for the women is one side of the abortion issue that everybody agrees is critical.

Amendment put and a division taken with the following result -

Ayes (8)

Hon E.J. Charlton
Hon N.D. Griffiths

Hon Murray Montgomery
Hon Muriel Patterson

Hon B.M. Scott
Hon Greg Smith

Hon Tom Stephens
Hon E.R.J. Dermer(*Teller*)

Noes (25)

Hon Kim Chance
Hon J.A. Cowdell
Hon M.J. Criddle
Hon Cheryl Davenport
Hon B.K. Donaldson
Hon Max Evans
Hon Peter Foss

Hon John Halden
Hon Ray Halligan
Hon Tom Helm
Hon Helen Hodgson
Hon Barry House
Hon Norm Kelly
Hon N.F. Moore

Hon Mark Nevill
Hon M.D. Nixon
Hon Simon O'Brien
Hon Ljiljanna Ravlich
Hon J.A. Scott
Hon C. Sharp

Hon W.N. Stretch
Hon Derrick Tomlinson
Hon Ken Travers
Hon Giz Watson
Hon Bob Thomas
(*Teller*)

Amendment thus negated.

Question (subsection (5)) put and passed.

The CHAIRMAN: The question now is that proposed subsection (6) be inserted.

Hon N.F. MOORE: This relates to a set of circumstances that would apply to a pregnancy beyond 20 weeks. This proposal suggests that if an abortion is to be performed after 20 weeks it is not just justified unless particular circumstances apply. This proposal states that the abortion is not justified unless two medical practitioners have agreed that paragraph (c) or (d) of proposed subsection (3) applies and the abortion is performed in a facility approved under the regulations. I understand that Hon Cheryl Davenport will move an amendment to (a) which has been circulated and which I happen to think is a better proposition than the paragraph (a) here. I will move new subsection (6) paragraphs (a) and (b) and Hon Cheryl Davenport will move an amendment to (a) and we come back to (a) and (a) later.

Hon CHERYL DAVENPORT: I move -

To delete proposed paragraph (a) and substitute the following -

- (a) 2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that the mother, or the unborn child, has a severe medical condition that, in the clinical judgment of those 2 medical practitioners, justifies the procedure; and

This amendment seeks to improve upon the new section (6)(a) that the Leader of the House has moved. This amendment was designed today in consultation with members in the other place to try to deal with an impasse developing there. This amendment will strengthen the subsection. It will apply to terminations past 20 weeks. It

will regulate a total of six pregnancies in this State in any one year. It respects the life of the unborn child and the mother. It will make this a better piece of legislation. I am happy with proposed subsection 6(b).

Hon MARK NEVILL: I presume that these six medical practitioners would be located in the metropolitan area and the procedure would be carried out somewhere like King Edward Memorial Hospital for Women?

Hon CHERYL DAVENPORT: In the main they would comprise the geneticists and gynaecologists at King Edward. The facility would not exist in the regional areas in this State nor would the doctors in those regional areas want to tackle something so complex and difficult. These sorts of terminations are carried out by inducing the woman's labour and in the case of a woman in severe difficulty perhaps a caesarian section would be done.

Hon E.R.J. DERMER: I move -

To substitute the words "has a severe medical condition" with the words "where there is a serious danger to the physical or mental health of the woman concerned".

There is merit in the view that at least six medical practitioners may have a special expertise in this weighty matter. However, the amendment moved by Hon Cheryl Davenport lessens the test by which a judgment could be made that an abortion after 20 weeks' gestation is justifiable. I remind members that premature babies born after 24 weeks' gestation with due care from the doctors and nurses involved can achieve a full life. My colleague Hon Nick Griffiths suggests that the figure is now 20 or 21 weeks' gestation. We can say with confidence that in the fullness of time and with advances in medical technology younger and younger premature babies will be nurtured and fostered by sound medical care to a full life. Any contemplation of an act as grave as the abortion of a child beyond 20 weeks' gestation requires that we do not water down the test of the gravity which would justify that termination. For that reason I suggest that we continue with the words in the motion foreshadowed by the Leader of the House. Rather than being a severe physical condition, which could be interpreted easily to be a lesser test, it is more appropriate to have the greater test of serious danger to the physical or mental health of the woman.

Ruling by the Chairman

The CHAIRMAN: I must rule that amendment out of order on the basis that what the member is advocating is contained essentially in the current paragraph (a). Given this situation the member would need to oppose the current amendment and support proposed new subsection 6(a) as it is at the moment.

Committee Resumed

Hon E.R.J. DERMER: I seek your guidance, Mr Chairman. The amendment moved by Hon Cheryl Davenport has two substantive parts relative to the amendment proposed by the Leader of the House. One is to set up this panel of practitioners authorised by the Minister to make the judgments and the other is to change the test from serious danger to the physical and mental health of the woman to the lesser test of a severe medical condition. I hope your greater knowledge of standing orders will be such that you can guide me through a process which would enable the members of this Committee to make a judgment on each of the parts of Hon Cheryl Davenport's amendment separately. There are two discernable parts. That is the purpose of my amendment. If you can suggest an alternative way to achieve that freedom as legislators to consider each of those weighty issues separately, I would be grateful for your advice.

The CHAIRMAN: As the member pointed out, there are two parts to the amendment. With respect to the second part, the member is proposing to put back in what has been taken out in proposed section (6)(a). I will consult to see whether there is a way of doing that.

Hon E.R.J. DERMER: On reflection, perhaps I can move an amendment, quite separate from that of Hon Cheryl Davenport, which is similar in nature to her amendment, to include a panel of doctors authorised by the Minister. The test would be contained in the amendment of Hon Norman Moore in terms of the serious danger to physical and mental health. Is there a standing order under which the amendment of Hon Cheryl Davenport could be considered and if the amendment were unsuccessful, my proposed amendment could be considered?

Hon BARRY HOUSE: What Hon Ed Dermer is proposing should be done during debate. He should foreshadow an amendment that he will move in the event of the amendment of Hon Cheryl Davenport being defeated. If he foreshadows what he intends to put in its place, in the event the amendment of Hon Cheryl Davenport is defeated, he will achieve his end.

Hon E.R.J. DERMER: That sounds like a mechanism that will achieve the end I am seeking so that the Chamber will consider each of the issues separately. I am grateful for the advice of Hon Barry House. If that advice can be confirmed by the Chairman, I will be happy to go ahead on that basis.

The CHAIRMAN: If the member foreshadows his amendment, we will put the amendment of Hon Cheryl Davenport first.

Hon E.R.J. DERMER: My foreshadowed amendment will be in the terms I put forward earlier. I foreshadow an amendment in which I will seek to replace the reference to a severe medical condition with a reference to serious danger to the physical and mental health of the woman concerned.

Hon N.F. MOORE: Perhaps I can suggest an alternative to all of this. I think what Hon Ed Dermer is saying is worthy of consideration. I wonder whether Hon Cheryl Davenport might consider the potentiality that the new paragraph (a) be amended to read something like this: Two medical practitioners, who are members of a panel of at least six medical practitioners, appointed by the Minister for the purposes of this section, have agreed that paragraph (c) or (d) of subsection (3) applies to the mother or the unborn child with a severe medical condition, and that in the clinical judgment of those two medical practitioners it justifies the procedure.

That will put back into the paragraph that which I had originally proposed, but which I agreed to remove because I thought it would not cover abnormalities of the unborn which needed to be dealt with. It seems to me that we could require that paragraphs (c) and (d) of proposed subsection (3) apply to the mother and that the words "that in the clinical judgment of the medical practitioners justifies the procedure in respect of the unborn child" be inserted. That might cover the point raised by Hon Ed Dermer, who feels the new test is not strong enough in respect of the mother.

It will also provide an opportunity for those medical practitioners in their clinical judgment to make a decision about the abnormality of the child, which may lead to their suggesting that the procedure should go ahead. If there is agreement, Hon Cheryl Davenport could withdraw her amendment and I will move an amendment on my amendment.

Hon CHERYL DAVENPORT: I am happy to go along with what the Leader of the House is suggesting. In relation to the test of a severe medical condition, at one point in the debate which decided this amendment, we were talking about dealing with defining congenital abnormalities. We went away from that on the basis that it was too hard to define them and that we should leave it to the expertise of the medical practitioners who are dealing with these sorts of issues constantly to decide whether that procedure should be carried out. Those sorts of terminations would be captured in this proposed new paragraph. They are all carried out at King Edward Memorial Hospital. The abnormalities are generally incompatible with life - for example, in the case of anencephalitis - so that the mother is not forced to carry the foetus to term, knowing that it will die at birth.

The CHAIRMAN: Is Hon Cheryl Davenport seeking leave to withdraw her amendment?

Hon CHERYL DAVENPORT: In terms of splitting the amendment, presumably the two medical practitioners will not be looking at the mother's condition, or will they? I probably need to see this in writing.

Hon N.F. MOORE: The original proposed subsection (6)(a) said that beyond 20 weeks an abortion is justified only if two medical practitioners have agreed that paragraph (c) or (d) of proposed subsection (3) applies. I am suggesting that we retain that in the context of the proposal of Hon Cheryl Davenport to have a panel of six. With respect to the unborn child, we should use the words she has proposed to cover that situation. We will probably have to split paragraph (a) into two parts, one to deal with the mother and the other to deal with the unborn child. We will then bring in paragraphs (c) and (d), which should satisfy Hon Ed Dermer in respect of the mother, and it will give us an opportunity to put in some words that will apply to a child who has a congenital abnormality, for which these two doctors believe a termination is justified.

Hon CHERYL DAVENPORT: I am happy with the proposition of the Leader of the House. I seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Hon N.F. MOORE: I move -

To delete paragraph (a) and substitute the following -

- (a) 2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that -
 - (i) paragraph (c) or (d) of subsection (4) applies to the mother; or
 - (ii) the unborn child has a severe medical condition that, in the clinical judgment of those 2 medical practitioners justifies, the procedure; and

Amendment put and passed.

Hon E.R.J. DERMER: I would be grateful for the guidance of the Attorney General on this matter, but unfortunately

he is not in this Chamber. The guidance I seek relates to an endeavour to gauge what in the view of this Chamber is a severe enough medical condition to justify the killing of a child at a gestation of more than 20 weeks. Some members in this place will know I have a son, of whom I am enormously proud, who unfortunately is autistic. My son has very significant educational needs. He has the potential to become a fully functioning, and not least a taxpaying, member of this community, based on early intervention and the application of appropriate educational facilities. I am very pleased that my salary allows our family to provide that service to our son to give him the best chance. I read an article in *The West Australian* which suggested that the problem of autism is now close to being solved, that in the near future the scientists will come close to isolating the gene or genes that cause this condition.

This will solve the problem because we can do a test while a child like my son is in the mother's womb and use that test to designate autism, which would justify, I fear, in the terms of this Bill a termination after 20 weeks. It fills me with great dread, as does the notion of abortion. It is important that this Chamber give some guidance to the courts and medical practitioners, including the panel which will be endorsed by the Minister for Health under the proposal as it is likely to go through, as to what constitutes a severe enough medical condition to kill a child after 20 weeks' gestation. That is perhaps a week earlier than the most successful case of saving a prematurely born child. I would be very concerned that parents of lesser financial means than myself with the prospect of an autistic child may be told by an economically rational Government some time in the future that they will not receive assistance for the education of their child because they had an economically rational option of an abortion. As this legislation stands the Chamber is offering no guidance for what is a sufficiently severe medical condition to justify killing that or any other child. My great fear is that as the understanding of genetics advances it will be possible to determine prior to birth a wider and wider range of conditions.

I would be grateful for the advice of the Attorney General. What is the legal status of a child who is delivered alive from an abortion procedure? We know that children born prematurely after 21 weeks can survive. That period of viability for a prematurely born child will get less and less as time goes on and technology advances. If the abortion procedure is not sufficiently violent there is every prospect of the child being delivered alive. I would like the Attorney General's advice as to the status of that child. Is it a child because it is delivered alive in an insufficiently violent abortion procedure or is it because it was meant to be aborted by the abortionist that the child has no status even though it is delivered alive? This is a critical point. We have a responsibility to all concerned in this State. I seek the advice of the chief law officer of the State to achieve that end.

Listening to Hon Tom Stephens, I learnt of the horrible incidents in which children delivered alive from abortion procedures have been left to die. Their temperature was lowered to facilitate the death process. Some people might argue that to leave somebody to die by not actively killing them but not actively helping them is not killing them. I cannot understand that argument and do not accept it. Does a child in those circumstances have the same rights that we do for protection by the State? Is an active step to kill that child homicide? Is the passive death of that child through neglect homicide? Is the subtle active step of reducing a child's temperature by way of a cold wet towel homicide? These are critically important questions. Whatever side of the argument we might adopt on the abortion question, this Chamber has a primary responsibility to guide the State. Our role as legislators is to provide sensible and understandable legislation. These critical questions are not answered in the legislation put forward to us. I am pleased that we have the chief law officer of this State in the Chamber so that he can advise us directly.

Hon PETER FOSS: The member is also privileged to have had Hon Derrick Tomlinson make the position quite clear during the course of his speech. He drew the member's attention to section 269 of the Criminal Code, which reads -

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

The member might also be interested in section 290. One of the things that Hon Derrick Tomlinson pointed out is that no matter what people might say about murder, life and the killing of the child in the womb, the legal situation is that that is not the case. In law it is not until a child is born that it becomes a person. A lot of people are saying that is murder, but under the law as it currently stands it is not. The child is required to be born before it is a person in law. I have ignored statements of some people who are saying it is killing and that life begins at conception because I assume those remarks to be made in that person's conception of the moral situation. The current law in this State is that we are not killing a person or a child or dealing with somebody who is alive because by virtue of section 269 a foetus is not a child until it is born. I draw the member's attention to section 290, which reads-

Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.

There is a small gloss on what I said in that there is almost an equivalent to murder in section 290. If as part of a

process of termination of pregnancy the child is born, so that under section 269 it becomes a person, then it has all the consequences of being alive. If the member looks through the Act he will find that there are already provisions in it relating to how people can be held culpable for homicide where there is an omission. Not everyone is culpable, but some sections provide that some people are liable for not taking positive measures to prevent death, as opposed to being liable for negative measures taken to cause death.

Another matter I raised in my speech of which members must be aware is that we currently encourage multiple births as part of fertility programs. That is encouraged in a number of ways. Various substances are administered which encourage multiple ovulation. Also, people insert fertilised eggs in significant numbers so that women may deliver four or five children. Research has shown that a baby born weighing under a thousand grams has something like 14 times the probability of suffering from cerebral palsy. Similar consequences will arise with all the other types of health problems children face, and even psychological, psychiatric and social problems.

If we are querying morality, there is as much to be queried in that area as with terminations. In each case, we are fiddling with foetuses and causing an impact. It is one thing to raise a question about terminating a life, but people should also consider the responsibility of creating or perpetuating a life of misery. That is the other half of the debate which we keep forgetting. We have concentrated on terminating a foetus at a stage where the law does not see - nor do I - it as a live person. There is as much, if not more, to criticise in creating and knowingly perpetuating a potentially miserable and terrible life as terminating a life.

I know the arguments posed. Once the process of termination actually leads to birth, it does not matter when it occurs - it is a live person, and is treated as such by the law.

Hon B.M. SCOTT: I find it astounding to be deliberating on whether a foetus is a person at 12 weeks or 20 weeks. I must record my objection to this amendment. When one refers to two medical doctors from a selection of six, that is fine. However, when the wording is that those doctors can "justify the procedure", we should hang our heads in shame.

If one has an ethnic family in a multiple birth situation, as the Attorney General described, with very small babies, and the pressure is on to sex select and it is decided to destroy the female foetus, I can think of no other word than foeticide to explain the procedure. I am very concerned that the provision does not clearly state that the procedure is allowed only when the life of the mother or the child is at risk. If that requirement cannot be included, there is no way I can support this amendment. In no way would I support it anyway.

I record that I find it absolutely abhorrent that two doctors need only to justify the procedure with no qualification on how we will select determining medical conditions. Hon Cheryl Davenport said earlier that it was not decided to do that in these provisions. I understand that to do so would be complicated, but it is complicated because it is classing children. I will not be part of any legislation which creates two classes of people. As I said in this Chamber earlier this evening, I cannot accept that we should promote measures to create two classes of people, one of which is determined by doctors to justify killing a child because of a degree of a medical condition, and the other maybe selected on the basis of sex. That is abhorrent. I know that this will not apply in all circumstances, but the measure is not prescriptive enough to give doctors direction on how to justify the procedure.

Hon E.R.J. DERMER: I am grateful for the Attorney General's advice, although I am horrified by it. I am further interested in the Attorney General's advice on the status of my autistic son on the day, and moments before, he was born. In the future the condition of autism will be detected in utero. We are responsible as a Parliament for giving guidance to the community on what is a sufficiently severe condition to justify the killing of that child. I would be grateful for the advice of the chief law officer of the State in that regard. Any guidance would be better than what we have at the moment. What would be a sufficiently severe condition to justify that killing? Would my autistic son have been justifiably killed within the terms of this measure moments before he was born?

Hon PETER FOSS: I think it would be most unlikely. We have lost sight of the fact that the protection given is subject to it being given at all times in good faith. We have lost track of the reality of the situation. Would the member, his wife or any other women, moments before the delivery of a child, ask for an abortion? Does the member think he is putting forward a real example?

Hon E.R.J. Dermer: I am interested beyond 20 weeks.

The CHAIRMAN: Order! This is not a conversation. The Attorney may wish to address the Chair.

Hon PETER FOSS: We must deal with this point. We have had all sorts of examples given which are not related. The member posed the question, "Could you kill just before birth?" It is not what happens now. I am sure we could come up with all sorts of extraordinary examples for inclusion in criminal law. People could work through the Criminal Code and consider possibilities not covered by it because nobody had previously thought it possible.

We are incorporating into the Bill a special rule after 20 weeks. Frankly, I would prefer not to have it there at all. I know it is included to meet the requirements of people who say, "What about after 20 weeks?" We do not currently have such a provision. We need to recognise the way in which professional people operate, as the whole process is governed by the necessity for it to be applied in good faith.

It requires the consent of the mother and in this particular case it is saying it must also satisfy certain tests and it needs independent doctors. I do not believe it is necessary. I do not believe that we would have doctors performing in that way or parents performing in that way nor that we need to start preparing for it. With respect, the member's question is a silly one because he is going out of his way to propose a situation which is what we already had in there by way of the requirement for good faith and the requirement for consent. It is not reasonable to expect that the doctor should be actually agreeable to do this. If we add more and more auditory type provisions to it, all we will do is detract from the fundamental scheme of this provision. To add this sort of thing in the Criminal Code would be absurd because the effect of that would be to turn the Criminal Code into a regulatory type of Act. Even adding it in the Health Act is putting in the belts and braces when there is already a very adequate regime to ensure that people will do things properly. The more we go into fine little bits of this and that, the more little loopholes will open. I think this is unnecessary. I prefer not to have it in at all and I do not think we should have it. I know why it is there. I think what was there before was preferable but what is there now is fine. If members want to have it there, have it, but do not try to attack it by putting up quite ludicrous examples.

Hon KEN TRAVERS: I place on the record that I share the Attorney General's view that proposed subsection (6) is not necessary. Going on the advice the Attorney General has given in reference to the Criminal Code, I think the issue is dealt with sufficiently there and within proposed subsection (3), which we have already accepted. I say that because it is for the mother and her medical practitioner to make the decisions about the issues we are talking about here. The Criminal Code provides protection in terms of the issues that Hon Ed Dermer is raising.

The reason I am prepared to support this amendment tonight and the reason I understand it has been brought forward is in a sense of a compromise to address the concerns of some members in this place. That is why I am supporting this Bill and for no other reason. We always have to make compromises in life. I feel strongly about uranium mining, and I have gone along with my party in the past and have supported a three mines policy. It was not what I necessarily agreed with, however I supported it as a compromise to try to bring together the different groups. However, I definitely want to place on the record that I do not think this provision is necessary but I will support it for the reasons I have explained.

Hon E.R.J. DERMER: I have now asked twice for some guidance as to what is a sufficiently severe medical condition to justify - I accept with great regret that "killing" may not be the legal term - the extinguishment of the life of an unborn child. I am asking a question in all honesty with the hope of getting some guidance for me and for all Western Australians as to what is a sufficiently severe disease to justify the killing of the unborn child, using the term from the Criminal Code. I have not yet got an answer. No-one here has been prepared to make that judgment as yet; someone may be before the conclusion of the day. I worry that the chief law officer of the State considers my very reasonable question to be silly. My question is of grave importance to the consideration of this matter.

Hon Peter Foss: The question is not silly, the example is.

Hon E.R.J. DERMER: The points I was making were clearly within the terms of the amendment before us, which is beyond 20 weeks' gestation. I made the reference earlier to just before birth.

Hon Peter Foss That is what was silly, not the question

The CHAIRMAN: Hon Ed Dermer should address his comments to the Chair rather than have an interchange about legal opinions that are at a tangent to this clause ad infinitum.

Hon E.R.J. DERMER: I drew that reference because the effect of this clause will be from 20 weeks' gestation onwards to the time of birth, and that has already been clearly explained to us by the Attorney General. That is why I made a reference to a very late abortion, because under the terms of the amendment, we have to decide whether we want this provision in this State; it will be legal right up to the point of the birth. That is why it was raised. That was my best endeavour to be clear in the explanation of what we are considering. How the Attorney General considers that silly I fail to understand also.

Something that really has got to me and kept me up at night since this was brought to my attention, and it was further brought to my attention by listening to the second reading speech of Hon Nick Griffiths, is this process of partial birth abortion. I wish I was not looking at this because it does not do my peace of mind any good. The thought that we could be legislating to allow this in Western Australia is terrifying. The graphic illustration that accompanies this shows a child being born. The child's body except for the head is outside the mother's body. The child's head is sufficiently progressed out of the mother's body to allow the exposure of the back of the head. The doctor then cracks

open the skull using a pair of scissors and sucks out the child's brain. I imagine the purpose of this monstrosity is to ensure that a child is not born alive from an abortion procedure. The distinction between this procedure and a birth is the fact that the doctor cracks open the baby's head and sucks out its brain. This is what we are contemplating, by this clause, making legal in Western Australia.

The Attorney General has protested that as long as some part of the child's body is still inside the mother's body, this procedure is legally not homicide. This procedure to my understanding - and I am neither a lawyer nor a doctor - would become legal by the effect of the clause that is before us. I will be very grateful for the comfort of any undertaking the Attorney General may wish to give that the partial birth abortion procedure as proposed, I understand, by Dr Dave Grundmann, would not be legal under the clause before us. If we cannot receive that assurance, I do not know what else I can do to paint the picture, but I will certainly implore anyone who has an interest in their own peace of mind in the future to vote against this proposal.

Hon CHERYL DAVENPORT: The whole notion of defining a severe medical condition will be a matter for the clinical judgment of the appointed panel, and the procedure must be justified.

Hon N.D. Griffiths: Do you trust doctors?

Hon CHERYL DAVENPORT: Is the member suggesting that he does not trust the geneticists at King Edward Memorial Hospital for Women?

Hon N.D. Griffiths: Many doctors I do not trust.

Hon CHERYL DAVENPORT: I am sorry, but I do. As I indicated earlier only about six terminations post-20 weeks are carried out in Western Australia -

Hon E.R.J. Dermer: Is one not enough?

Hon CHERYL DAVENPORT: I have explained why those terminations are carried out. It is either to protect the life of the mother or because the foetus has severe congenital abnormalities. If the baby is born post-20 weeks, it is delivered as a proper birth. It is an induced birth. It is not the Grundmann method. I can assure the member that paragraph (b) of the amendment moved by the Leader of the House requires that the abortion is performed in a facility approved under the regulations, and that will prevent the likes of Dr David Grundmann from performing operations in this State. It is not an acceptable practice. I certainly do not accept it.

The aim of the amendment was to allay the fears that were expressed by the member during the second reading debate. We do not condone that sort of practice, and such a procedure will not be carried out in Western Australia, because procedures will be carried out in an approved facility - no doubt a hospital which will be subject to an ethics committee. Therefore, the fears expressed by the member represent scaremongering. Those procedures will not happen in this State. This amendment will apply to about six terminations in a calendar year.

Hon B.K. DONALDSON: I do not know why, at this stage, we are fiddling around with an amendment. The provisions in the Supplementary Notice Paper cover most of the issues. In 1997, 15 terminations were carried out in Western Australia, after 20 weeks' gestation - almost all at 20 or 21 weeks - at King Edward Memorial Hospital, and all were because of major congenital abnormalities. The abnormalities are generally incompatible with life, so the mother is not forced to carry the foetus to term knowing that it will die at birth. Termination is carried out by inducing labour. Partial birth extraction for late terminations is not carried out in Western Australia.

Hon E.R.J. Dermer: What is the source of that information?

Hon B.K. DONALDSON: The Coalition for Legal Abortion. These are the clinical facts.

Hon E.R.J. Dermer: Can you provide further detail of the source?

Hon B.K. DONALDSON: It is "Source Material for the Abortion Debate, March 31, 1998". We have already agreed to proposed new section 334, subsections (1) to (4), and paragraphs (a) to (d). Paragraphs (c) and (d) have addressed the situation of abnormalities showing up 20 weeks into a pregnancy. Only 15 procedures, in those circumstances, were carried out in 1997 at King Edward Memorial Hospital. I pay credit to the professional staff at that hospital. They would make the decision regarding a procedure following an ultrasound -

Hon E.R.J. Dermer interjected.

Hon B.K. DONALDSON: If it were up to me, I would delete proposed subsection (6), because it has been covered in other areas of the legislation. Failing that, proposed subsection (6) will cover the current situation.

Hon PETER FOSS: With this provision we are trying to satisfy the concerns raised by members opposite who are opposing it. It is not because we believe that a problem must be dealt with. The general provisions that remain would

deal with it. We are trying to answer members' concerns. As Hon Cheryl Davenport and Hon Bruce Donaldson have said, if we have the capacity to determine those institutions in which the procedures can be carried out, and we can determine the doctors who will say whether it is justified, I will not try to put a gloss on it.

I do not believe that proposed subsection (6) should be included, but I will not try to say what it means in addition to those words. The people who will determine that, are the doctors who will be appointed for that purpose. It will not be left to me, but to those doctors who have the professional responsibility to make that decision. Those people will not be Dr Grundmann but the same responsible people who are currently doing what Hon Bruce Donaldson referred to. We have a guarantee in law that that will continue. The most important point is that in Western Australia it has been handled responsibly.

The one gloss that I would put on the justification aspect is that what is justified will be determined by the circumstances. Those circumstances include how soon after 20 weeks it will be. That is why I find Hon Ed Dermers example offensive. It is a silly example, because the member has put forward propositions purely for the purpose of showing that they at least will not be justified. The member has picked out a clear example of what would not be justified.

He asked me to define the situation. The question was not a bad one, but the example given was a silly and offensive one. One of the reasons that the people opposing abortion have lost a lot of sympathy in this debate is because they have dwelt on the sorts of matters that the member has dwelt on. Most people are trying to recognise that a large number of women need the capacity to make this decision. That right and obligation to make that decision should be recognised. That is the issue before us.

We end up debating these provisions due to the extreme examples members give and then ask us for solutions. When they are given the solution, they do not like it, and want to make it more complicated. The mechanism will work because it sets up the institutions and appoints the people who will make the decisions. One of the reasons I think the whole question of abortion is difficult is because I cannot think of anyone better to make the decision. It is a serious ethical and moral decision. If we must pick someone to make that decision - as the member pointed out, the woman will live with that decision for the rest of her life. If there is a hereafter, she will face God in the hereafter and answer for it. Therefore, the person, more than any judge, tribunal or panel of doctors, who will face that moral decision will be the mother. That is the fundamental protection. We have added the extra protections under proposed subsection (6) because the member wanted us to deal with that question.

The system of setting up an approved institution and panel of doctors - using their medical ability and their standing in the profession - will make that a serious decision. That is a far better guarantee of propriety than any words in an Act defining it in greater detail. If the member does not trust those doctors and institutions then he is not trusting the very thing that should give him the greatest guarantee. We will not achieve more by including more words. We have set up a system that will work and I am happy with it. That is why I support this. I do not believe it is necessary, but it is included because of the arguments raised by the member.

Hon MARK NEVILL: The proposed amendment strengthens this clause for those members who are uncomfortable about the direction of this Bill. If those examining this amendment are not happy with it, it is up to them to propose a further amendment or to vote against it. There we have the problem with their approach to this proposed new section: They certainly do not want to see subsection (6) deleted. If the amendment does not go far enough - in fact, it strengthens the legislation - it is up to them to move an amendment and argue that case. They want the best of both worlds; they are having two bob each way. They want it in the Bill and to extend it but they are not moving any amendments to achieve that. They should make up their mind whether they want this in the Bill.

Question (subsection (6), as amended) put and passed.

The CHAIRMAN: The question is that proposed subsection (7) be inserted.

Hon N.F. MOORE: It is important that the Minister for Health be given an opportunity to look at the decisions of the Chamber in respect of these matters, particularly in respect of those relating to counselling and the facilities that would be necessary under proposed subsection (6)(b) and to make regulations to cover the detail of those issues.

Hon Tom Stephens: Would he not get the chance to do that when it goes to the other House?

Hon N.F. MOORE: I do not know what will happen with this Bill in the context of the other Bill. I believe both Chambers agree on the fundamental issues. Out of the two Bills may come a Bill that will pass both Chambers, but I am not sure how that will happen. We should make the point that regulation making powers should be contained in proposed new section 344 of the Health Act.

There is a cover all paragraph which provides for such other matters as may be required to give effect to the provisions of this section. That will give the Minister for Health the opportunity to look at the important issues and

to go to the medical profession, hospitals and members of Parliament and groups that want to have an input into the way the regulations are formulated. Of course, as members know, once the regulations are determined they are tabled in the House and are subject to disallowance. We will have a chance to look at them again later. A number of the issues raised in the other place are better in regulations rather than the Act. The construction of the regulations will allow those issues to be further considered.

Hon CHERYL DAVENPORT: I support the proposed subsection. I hope that whoever drafts the regulations will consider the fact that the doctors who drafted the amendments - they have made it much more palatable - are very keen to include something along the line that all terminations of pregnancy must be notified to the Health Department on a specified form and in a manner that ensures that there are no particulars from which it may be possible to determine the identity of the woman. That is a very important public health issue. This will be the means for us to find out why the terminations are occurring and will enable us to formulate education programs to try to reduce the number of terminations carried out in Western Australia on an annual basis. It is better to allow the experts to draft these regulations and for us to debate them at the appropriate time.

Hon N.F. MOORE: Section 335 of the Health Act requires reports to be furnished. The matters raised are already covered by the Act.

Question (subsection (7)) put and passed.

The CHAIRMAN: The question is that proposed subsection (8) be inserted.

Hon N.F. MOORE: The controversial issue here is the Minister's involvement. Bearing in mind that effectively we now have abortion on demand - the member will argue that that is the wrong expression - very few proceedings will occur in relation to this matter. I cannot imagine too many circumstances where anyone will break the law in respect of abortion because there is not much law left. There would be very extreme circumstances where an offence would be committed. However, it is important that it not be left to some overzealous individual in a prosecuting role to take action against someone because of his or her religious beliefs. There should be a government element in this before a prosecution is commenced.

Hon N.D. GRIFFITHS: The Leader of the House should not be surprised that I agree with him - proposed subsection (8)(a) is the controversial issue. I move -

That paragraph (a) be deleted.

My reason for seeking to delete this subsection is that it is inappropriate for Ministers of Health to be involved in deciding whether prosecutions should take place. This State relatively recently set up a separate prosecuting agency. The Attorney General has a role there, as he should have as the first law officer. It is bad policy for a Minister for Health to be involved in whether a prosecution should take place in respect of these matters, for this reason: In addition to the obvious points made by the Minister, when he said there must be a bit of politics here, according to the abortionists, more than 9 000 abortions take place each year. Are we to be assured that all 9 000 will be within the law? It would be a most unlikely occurrence for 9 000 abortions to be within the absolute certainty of the provisions of the legislation, notwithstanding that it is abortion on demand.

The Minister for Health will be involved in determining whether a prosecution will take place in accordance with the Committee's decision. It involves some pretty minor offences. One involves a maximum fine of \$50 000 or two years' imprisonment, and the other a maximum fine of \$50 000. A fine of \$50 000 for somebody operating an abortion clinic is an absurdity. I would be interested to hear in what other areas in Western Australia Ministers are involved in the decision on whether prosecutions take place.

Hon Peter Foss: Environment.

Hon N.D. GRIFFITHS: Perhaps that should not be there either. I do not want to hold up the Committee. I have made my points. I suspect this is all about making sure that nobody is ever prosecuted.

Hon E.R.J. DERMER: I have found much of what has arisen in this debate extraordinary. I have heard the Leader of the House explain that the effect of the Bill will be almost abortion on demand with precious little defence of unborn children. If there is some slight vestige of defence remaining, which would otherwise lead to a prosecution, the insertion into the Bill of proposed subsection (8)(a) means that the Minister for Health could veto the prosecution. If one child should have been saved and there was one basis for prosecution, because someone performed an abortion contrary to that last vestige of protection, according to this clause, which Hon Nick Griffiths seeks to remove, the Minister will have the opportunity to effectively veto that prosecution. Not only will the law be stripped down to basically nothing, but also this proposed subsection 8(a) will provide that proceedings will not be commenced without the written consent of the Minister. This gives the Minister a veto on prosecuting anyone who could find a way of breaching one of the worst abortion laws in the world.

Very little protection to the last vestige remains. This clause Hon Nick Griffiths seeks to remove will give the Minister a veto on the application of that last vestige of protection for unborn Western Australians. Proposed subsection (2) reads that a medical practitioner who performs an abortion commits an offence unless the performance of the abortion is justified. A key part of that justification is the informed consent of the woman.

Proposed subsection (8)(a) means that if an abortion is performed on a woman without her informed consent and is therefore unjustified, one of the few remaining vestiges of protection for unborn children and women in Western Australia in this pathetic excuse for abortion law could be affected by the Minister's discretion not to proceed with a prosecution. The proposed subsection that Hon Nick Griffiths seeks to remove allows too great a responsibility to be vested in a Minister. The only way for this Chamber to effect its responsibility is to support the amendment proposed by Hon Nick Griffiths. I ask members to do so.

Hon PETER FOSS: Earlier I spoke of the difference as a result of the penalty being moved out of the Criminal Code and its being made a summary offence. The effect was the loss of a very important veto from the community; that is, the 12 jury persons who sit on a trial. In some cases, some of which were referred to in the Davidson and Levine tests, directions were given to a jury to convict and the jury did not convict. It has always been a very important capacity in our society for juries to decide they will not convict. That protection has been taken away, and people are running the risk of losing that option and being compelled to appear before a magistrate. The need for this provision has been proved by the events of the past few days. If members want any idea of how people opposed to abortion will behave, they need only look at the events of the past few days.

The problem is that it does not matter in the end what is the result of the case. The whole position with regard to Western Australian doctors performing abortions has been thrown into total confusion by the mere laying of charges - not an indictment, conviction or determination on appeal. It has not caused a change in the law. The concern is that people have re-examined the law and they are frightened because they do not know where they stand. They have asked for the judge-made law to be included in the Criminal Code.

Of course, the situation has progressed from there. I have no doubt in my mind that the people who would do the things that have happened over the past few days would use the opportunity to bring prosecutions, irrespective of the result, in order to cause concern, problems and difficulties. I believe this is the very least protection that must be written into this Bill to prevent those sorts of nuisance prosecutions. It is not often necessary to do that. Generally speaking, there is no major problem with nuisance prosecutions. Two areas come to mind immediately - environmental laws and abortion laws. The amendment is fully justified. There are precedents for it, but if ever one wanted an example of an area in which there was a high probability, if not certainty, of nuisance prosecutions, I cannot think of a better one than this.

While we are auditing the processes, by the inclusion of subsection (6), to ensure that doctors perform ethically, as they have to date, there should be a protection against the sort of behaviour that has been exhibited in the past few days by people who oppose the abortion laws. They have shown disgraceful disregard for other people in that respect. Under the present system if it reaches the indictment stage, the Director of Public Prosecutions has the capacity to cease the prosecution as soon as it gets to that indictment. He can decide not to indict or nolle the indictment. That would be lost in the case of these prosecutions because they would be prosecutions not by the State, but by a complainant. Without the protection of the requirement for the Minister to agree to prosecutions - it is a pre-condition and not a subsequent condition - much of what is sought to be achieved by this legislation would be lost because I believe there will be nuisance prosecutions.

Hon N.D. GRIFFITHS: I do not think politics should be involved in the prosecutorial process at all. This proposed subsection seeks to make sure that no-one will be prosecuted for the offences the Committee has agreed should exist. It is a safety net for the abortionists. On the subject of people behaving disgracefully, I think it is a disgrace that the abortion industry in Western Australia has ignored the law for the past 20-odd years.

It is a disgrace that the Executives over the past 20-odd years, every Commissioner of Police and police officers who may have had some knowledge of these matters have ignored the law. What this society has done is a disgrace, and what it is doing now is a disgrace.

Amendment put and a division held, with the Chairman casting his vote with the noes -

Ayes (6)

Hon E.J. Charlton
Hon N.D. Griffiths

Hon Muriel Patterson
Hon B.M. Scott

Hon Tom Stephens

Hon E.R.J. Dermer(*Teller*)

Noes (27)

Hon Kim Chance	Hon John Halden	Hon N.F. Moore	Hon Greg Smith
Hon J.A. Cowdell	Hon Ray Halligan	Hon Mark Nevill	Hon W.N. Stretch
Hon M.J. Criddle	Hon Tom Helm	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Simon O'Brien	Hon Ken Travers
Hon B.K. Donaldson	Hon Barry House	Hon Ljiljana Ravlich	Hon Giz Watson
Hon Max Evans	Hon Norm Kelly	Hon J.A. Scott	Hon Bob Thomas (<i>Teller</i>)
Hon Peter Foss	Hon Murray Montgomery	Hon Christine Sharp	

Amendment thus negated**Question (subsection (8)) put and passed.**

The CHAIRMAN: The question now is that subsection (9) be agreed to.

Hon N.F. MOORE: This new subsection relates to section 259(1) of the Criminal Code, and the Attorney has explained it.

Question (subsection (9)) put and passed.**New clause 7, as amended, put and passed.****Postponed clause 5: Section 259 amended -**

Hon N.F. MOORE: The Committee has already discussed this indirectly in debate. Again, the Attorney has given a long dissertation on what it means. It is proposed to repeal section 259 and to substitute a new section 259 which is based on the recommendations of Mr Michael Murray, who reviewed the Criminal Code in the 1980s. It deals with a number of issues that have been in need of attention for some time.

Clause put and negated.**New clause 5: Section 259 repealed and a section substituted -**

Hon N.F. MOORE: I move -

Page 2, lines 12 to 14 - To insert the following clause -

Section 259 repealed and a section substituted

5. Section 259 of the Code is repealed and the following section is substituted -

" Surgical and medical treatment

259. (1) A person is not criminally responsible for administering, in good faith and with reasonable care and skill, surgical or medical treatment -

- (a) to another person for that other person's benefit; or
- (b) to an unborn child for the preservation of the mother's life,

if the administration of the treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

(2) A medical practitioner as defined in the *Health Act 1911* is not criminally responsible for administering surgical or medical treatment to a woman for the purpose of performing an abortion if -

- (a) the treatment is administered in good faith and with reasonable care and skill; and
 - (b) the performance of the abortion is justified under section 334 of the *Health Act 1911*.
- "

New clause put and passed.**Postponed clause 1: Short title -**

Resumed from an earlier stage.

Hon N.F. MOORE: I move -

Page 1 - To delete the words "*Criminal Code*" and substitute the word "*Acts*".

The clause would then read: This Act may be cited as the *Acts Amendment (Abortion) Act 1998*.

Hon CHERYL DAVENPORT: I support this amendment, and this is the stage at which people canvass the short title. Members have been in this Chamber for a long time tonight but I felt I should respond to some points made by the Leader of the Opposition earlier this evening.

I repeat that this Bill will not force any woman to terminate a pregnancy. This law has not been enforced for the past 30 years. Some people have been members of the Legislative Council for a very long time and I include in that the Leader of the Opposition. If he has had these concerns for so long-

The CHAIRMAN: I advise the member that this summing up response should be dealt with after the amendment. The amendment debate is a rather narrow debate but there will be an opportunity after the amendment.

Amendment put and passed.

Hon CHERYL DAVENPORT: Hon Tom Stephens has been a member of this Parliament since 1982. He knows that I have had concerns about the shadowy nature of this law since I came into this Parliament in 1989. If he has been so concerned about the non-enforcement of this law, why has he not taken action to deal with it before now?

Hon N.D. Griffiths: Because you had the numbers to change it.

Hon CHERYL DAVENPORT: I did not have the numbers in 1989 or in 1991 when I tried to put it through. I lobbied and tried to deal with the situation. I do not believe I have proceeded with discourtesy in relation to this Bill, which I was accused of earlier this evening. The Legislative Council adopted a second reading position which established the policy of this Bill. I am very pleased to have been able to negotiate with the Leader of the House over the past week or so in an attempt to get some clarity and to provide a reasonable set of laws or rules on abortion, with which most members in this Parliament might be able to live.

In relation to unopened material information that has been delivered to members, I have responded to every letter written to me from both the pro-choice position and the anti-choice position, so I cannot be accused of not having responded. Obviously the people on the anti-choice side of this argument will not have liked my response. Nevertheless I do not resile from that. I have chosen to go down this path for the right reasons.

Questions relating to partial birth have been dealt with during debate on the amendment to new part 3 of this legislation. I also went through the number of terminations and the fact that babies are not delivered by that method in Western Australia, but through induced labour.

I also indicate that on all occasions it has been my choice to proceed with the conduct of this Bill through this Chamber. I made the decision not to introduce in this place a Criminal Law Amendment Bill. I made the decision to proceed with a repeal Bill, and I did so on the basis of community concern that has existed in this State for the past two months. I also did it on the basis that real clarity is needed in this law, and I think that can now be achieved.

I do not believe this legislation will damage women's lives. There will always be a number of women who are damaged by virtue of having had a termination of pregnancy, for whom I have great concern. I hope that the mechanisms to be put into place for counselling will help to remedy some of those women's problems. However, it must also be acknowledged that there are some pretty ugly counselling services in the community and we should never forget that. I will not name names, but when regulations dealing with counselling are in place, I hope they will result in good counselling services.

I also hope the Government will allocate proper funding to places like the Family Planning Association which has existed on a very small budget for too many years. As I said earlier, the Labor Government was at fault for having reduced the state money that went towards the Family Planning Association. The current Government has also reduced its funding. Everybody is guilty in this instance. Both major political parties and their Governments have been guilty of not providing that funding. Women need that service in order to make informed choices. Those opportunities should be provided, and the time has now come.

I am very pleased to have been part of the process whereby the laws in this area are now real, and responsibility has not been absolutely abrogated through lack of enforcement because it is an old Statute that was put in place for a different time and different place. With those few comments I support the short title.

Hon TOM STEPHENS: Hon Cheryl Davenport asked why I, as a legislator, had not done anything about my concerns about the incidence of abortion in Western Australia. It was a legitimate question. It is one that has puzzled me as I have had to respond to the legislative initiatives presented to this Parliament - particularly to this place - and to the recent prosecutions. I guess the answer is that, in part, I have been a coward; in part, I have been cowered.

I guess I have been intimidated, and I guess I have been weak. I have not followed my convictions. If anything, this debate has hit me between the eyes and left me with the challenge of working out what my convictions are, and whether I was comfortable with the process of supporting the retention of the law within the Criminal Code - and I was not altogether comfortable - not the prosecutions and penalty possibilities that exist in the Criminal Code. The reality was that the community was out of step with me, and I with it, on this issue. As soon as I opened my mouth on the cocktail circuit I was a source of embarrassment. People recognised that I was a person who opposed abortion, and assumed that I was therefore antiquated and a silly old dud. One becomes intimidated in that process.

Hon Cheryl Davenport has not done that to me but some of her fellow travellers have deliberately set out on the path to cower me. By and large, they have been successful. Members should know that during my first preselection many years ago in 1981 these same people were forceful and intimidating in presenting their case. It has been part of a process of making sure that people like me - with my views - had to put their views in their back pocket. However, we had not been faced with the knowledge now available to me.

We are nearing the end of this debate, and one could go a couple of ways. Members know that I am deeply unhappy with what this Chamber is doing. This will not be the end of it, because tomorrow we will face the third reading debate -

Hon N.F. Moore: Today!

Hon TOM STEPHENS: It is now Thursday, 2 April.

Hon N.F. Moore: After this, we will do the third reading.

Hon TOM STEPHENS: I would not grant leave.

Hon N.F. Moore: We can do it in other ways.

Hon TOM STEPHENS: Surely the Leader of the House would not do it in another way!

Hon N.F. Moore: It is up to the Chamber.

Hon TOM STEPHENS: I urge the Leader of the House not to do that. I will not filibuster on the third reading. Give us some space on the third reading!

Hon N.F. Moore: The Chamber will make the decision at the time.

Hon TOM STEPHENS: It would be nice if, on the third reading, the Leader of the House gave us the opportunity to come back afresh -

Hon N.F. Moore: You have already had about five hours. I do not know how much more time you need.

Hon TOM STEPHENS: I was about to say that the chance is that this could be effectively my last crack at this debate. I hope that is not the case.

Hon N.F. Moore: There will always be the third reading stage.

Hon TOM STEPHENS: Does the Leader of the House mean that will be when we are all exhausted, in a few moments, before breakfast?

Hon Max Evans: After breakfast!

Hon N.F. Moore: We will give the Chamber an opportunity to make that decision.

Hon TOM STEPHENS: I can imagine what the decision will be, if the device is found to do that.

The CHAIRMAN: Order!

Hon TOM STEPHENS: I thank the Leader of the House for showing me that courtesy -

Hon N.F. Moore: I had not intended to.

Several members interjected.

The CHAIRMAN: Order! The Leader of the Opposition has the floor.

Hon TOM STEPHENS: I have provided some of the answers to questions asked in the debate, brought on firstly by the prosecutions and now by this legislation. I have had to do some soul searching about where I stand on the issues. I found it extremely difficult to do that. It has been a long journey for me since the charges, to work out how to respond and where I would go in that process. I have become strongly and passionately opposed to the legislation.

It is bad law; it is a bad situation that is being delivered to Western Australia. No matter what my view, the Parliament is about to adopt a different approach from that which I hold strongly.

One could go out bitterly or acrimoniously, complaining about the other side of this debate. The temptation is to do that. I find it easier to be acrimonious with Hon Max Evans than I do with some of my colleagues. The Minister for Finance is creating a social climate in which abortions will be easily procured, as a result of the policies with which he is associated. His cavalier approach to life is consistent with the society he is creating by his tax policies. His approach during this debate is consistent with the affluent lifestyle he leads and the complete lack of concern he has for quality of life in the community. His approach and that of Hon Derrick Tomlinson have been consistent in this debate. He has no concern for a good quality of life for our community.

I have recognised that in this debate, some people on the other side of the Chamber in particular have shown great sensitivity for the principles of life. I guess I want to see some of that sensitivity developing in this Parliament to create in this State a consistent sensitivity to the principle of life, not only the important bioethical questions of abortion and euthanasia, but also across a range of social strategies and possibilities, and legislative responses to the needs and interests of the entire community. We must try to work our way back from the evil of abortion. I hope we can create a coalition of people - a narrow coalition has developed - and I hope it will be strong as it responds to the increasing pressure on the bioethical questions of euthanasia and abortion. I hope that that coalition of pro-life members will have the opportunity to meet and formulate responses to the issues with which we are faced.

I was pleased that that group was very forceful in presenting to the Government the need for it to respond with social initiatives to remove the pressures on women and families that can lead them to turn to the abortion option. I hope that that sensitivity on both sides of the Chamber will flourish and that there will be a greater sensitivity to the broad panoply of issues we face day in and day out.

I have a strong sense of discomfort with some members in particular. However, many have clearly displayed sensitivity to the quality of life issues, although in this case we are dealing with a disregard for the right to life issue. I see the issues as intertwined. I want to work on the sensitivity we share and to establish social action strategies in legislation and government activities that remove the evil of abortion. That is where my efforts will be focused in the first instance in the hope that the number of abortions decreases, that my fears are not realised and that the legalising of abortion does not create the educative environment for abortion on demand. We do not want a situation where abortion is accepted and there is no restraint, discouragement or disincentive to a cavalier approach to the life of the unborn child.

Hon Kim Chance: Most of us probably agree with you.

Hon TOM STEPHENS: I know that is the case. However, members disagree with me on the strategy for dealing with this legislation. That is a fundamental disagreement that causes me a considerable sense of loss and pain. Nonetheless, that is the reality. I am trying to work out my response as a parliamentarian to this reality. I will try to get out of this debate without any sense of increased acrimony and to find ways to build on the sensitivity expressed. I would like to see whether we can reach an agreed social agenda or a consensus on some initiatives. We certainly need some agreed government responses and a change of direction in the social pressure applied to women and poor families in this community so there is a chance of escaping from what some people feel is the only opportunity for them; that is, abortion.

Hon Cheryl Davenport quite correctly asks me what I have been doing. I have not been a great right to life in my public life. I have been preoccupied with quality of life issues. I now understand that these are inextricably linked and I must take on the responsibility of my moral obligations as a lawmaker and make good law to establish public morality. I will pursue that in all debates; I will rise to the challenge of being a good lawmaker in trying to have public morality enshrined in law that respects the rights of all life in the Western Australian community.

I oppose the short title and I hope that other members will do likewise. I would love to see it defeated and I hope the Government does not send this Bill to the Legislative Assembly for it to be debated and enacted. If it does, it will be on its head.

The CHAIRMAN: I have allowed the last two speakers some considerable latitude. This is in fact the short title debate. The previous speaker was not even dealing with the second reading debate, let alone the short title. I point out to future speakers that, if they are brief, I probably will not notice their straying too much.

Hon N.D. GRIFFITHS: Mr Chairman, if you are strained by my speaking, so be it. Normally when we deal with the short title we look at the amendments that have been canvassed on the Notice Paper. There is no point in my doing that. Before doing that, members would normally canvass the amendments and look at what is in the Bill. This is a repeal Bill. There is not a shred of regulation or anything to do with counselling and the like. It contains nothing to protect women and the unborn.

I will not comment on the Bill as it comes out of Committee. I may or may not exercise that right in due course. However, I will make two observations. When I first came to this place, Hon David Smith urged me to speak at length about legislation I considered to be evil. I could not see the point in speaking past a certain hour when it was obvious a Bill would be passed at one o'clock or two o'clock in the morning. There was no point in dragging it out until three o'clock or four o'clock. On that issue, we parted company. However, I agree with him that when something is evil we should continue to speak and campaign against it.

I assure the Chamber that I have found this a radicalising experience. I have been shown the horrors of abortion. Like most people in the community, I did not want to know anything about it. I have been shown its horrors and I can tell those who have advocated it in our community for the best part of a generation and a half that they have found in me someone who will campaign vigorously against abortion. The next Bill introduced dealing with abortion will properly regulate it.

Clause, as amended, put and a division taken with the following result -

Ayes (26)

Hon Kim Chance	Hon John Halden	Hon Mark Nevill	Hon W.N. Stretch
Hon J.A. Cowdell	Hon Ray Halligan	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon M.J. Criddle	Hon Tom Helm	Hon Simon O'Brien	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon B.K. Donaldson	Hon Barry House	Hon J.A. Scott	Hon Bob Thomas (<i>Teller</i>)
Hon Max Evans	Hon Norm Kelly	Hon Christine Sharp	
Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith	

Noes (7)

Hon E.J. Charlton	Hon Murray Montgomery	Hon B.M. Scott	Hon E.R.J. Dermer (<i>Teller</i>)
Hon N.D. Griffiths	Hon Muriel Patterson	Hon Tom Stephens	

Clause, as amended, thus passed.

Long title -

Hon N.F. MOORE: I move -

Page 1 - To insert after the word "**abortion**" the following -

, to amend the *Health Act 1911* to regulate the performance of abortion

This amendment reflects the fact that we now have a new part which relates to the Health Act. That needs to be contained within the long title.

Amendment put and passed.

Title, as amended, put and passed.

Progress reported.

Standing Orders Suspension

HON CHERYL DAVENPORT (South Metropolitan) [4.55 am]: I move -

That so much of standing orders as are necessary be suspended to enable the Bill to pass through all remaining stages at this day's sitting.

I realise this is not convention but this debate, not just within the Houses of Parliament but within the community, has gone on for the best part of two months. I see no good being achieved by our coming back tomorrow simply to put the Bill through for its third reading.

The PRESIDENT: If there is a dissenting voice on the vote it will be necessary to divide the House.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.56 am]: As members would expect, I oppose the motion. I would prefer that the House provide us with some respite in which we can look back at our handiwork in the fresh light of day and have an opportunity of responding, I hope with some eloquence, in a way that might yet convince the House why it should not agree to the third reading of this Bill. I recognise that is a faint hope. Nonetheless, as I have grown accustomed to sometimes seeking to have hope spring eternal in the human breast, I like to think that even yet sanity and reason can prevail and that there might be some prospect of this legislation not being given a third reading. I would certainly prefer that the third reading debate be, if necessary, succinct but in

accordance with the normal processes of this House. I object to this indecent haste. I spoke at length, I guess, on the second reading debate, as I was entitled to.

Hon N.F. Moore: I think you might have misused your time.

The PRESIDENT: Order!

Hon TOM STEPHENS: There is a fair argument along those lines. We have now gone through all of the amendments at the Committee stage during effectively one brief sitting of the House from eight o'clock last night until now. With any other legislation the House would normally give itself an opportunity quickly to reflect on what it had done and in those circumstances hold a third reading debate the next day. I encourage members to adopt the normal processes when dealing with this Bill and not show the indecent haste involved in the motion moved by Hon Cheryl Davenport.

HON N.D. GRIFFITHS (East Metropolitan) [4.58 am]: This motion does not surprise me, although I was given no notice of it. That is a lack of courtesy. It does not surprise me because I know why this debate was brought on today. It was brought on today for the convenience of the Attorney General, who is about to leave the State. He wants to make sure that his handiwork, with that of Hon Cheryl Davenport, is carried through before he leaves.

The PRESIDENT: Order! I can hear Hon Nick Griffiths and I am quite sure that all members can hear him, so there is no need for him to raise his voice.

Hon Peter Foss interjected.

The PRESIDENT: Order!

Hon N.D. GRIFFITHS: I was about to conclude by saying that those who vote for this motion are trashing the conventions of this House. Do not any of them ever speak to me about proper behaviour and the conventions of the Legislative Council and its noble role as a House of Review. Every one of them who votes for this motion is trashing those conventions.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [4.59 am]: Everyone has demonstrated his or her position on this legislation. I see no value whatsoever in taking it over until tomorrow or any other sitting day. Everybody has had more than a fair chance to put points of view and set the record straight about where he or she stands on the Bill. It is quite proper that we proceed through the remaining stages now.

Question put and a division taken with the following result -

Ayes (29)

Hon Kim Chance	Hon John Halden	Hon N.F. Moore	Hon Christine Sharp
Hon E.J. Charlton	Hon Ray Halligan	Hon Mark Nevill	Hon Greg Smith
Hon J.A. Cowdell	Hon Tom Helm	Hon M.D. Nixon	Hon W.N. Stretch
Hon M.J. Criddle	Hon Helen Hodgson	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Barry House	Hon Muriel Patterson	Hon Ken Travers
Hon B.K. Donaldson	Hon Norm Kelly	Hon Ljiljana Ravlich	Hon Giz Watson
Hon Max Evans	Hon Murray Montgomery	Hon J.A. Scott	Hon Bob Thomas (<i>Teller</i>)
Hon Peter Foss			

Noes (4)

Hon N.D. Griffiths	Hon Tom Stephens
Hon B.M. Scott	Hon E.R.J. Dermer (<i>Teller</i>)

Question put and passed with an absolute majority.

Report

Report adopted.

Third Reading

HON CHERYL DAVENPORT (South Metropolitan) [5.02 am]: I move -

That the Bill be now read a third time.

This has been an historic debate in Australia. I am proud to say that Western Australia has led the way on this matter. This law should have been changed a long time ago. I thank the members who have supported me through this debate and those who have joined our ranks in the latter stages. I thank members opposite. In the main, we have conducted

ourselves with dignity and respect. I hope that that means we will not have to build bridges to enable us to work together in the future. I am aware that I am a member of the Opposition and that Government members have supported me. That is not normal for this place. However, in that sense, it has been a unique debate and a very rewarding time for me in this Parliament.

This Bill does not force any woman in this State to have her pregnancy terminated. It sets up mechanisms for women who will be able to, in consultation with their doctors, access a legal and safe procedure.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.05 am]: I will be opposing the third reading of this Bill and ask the House not to support it. During the last couple of days I have not said a lot about my views on this legislation because I have been seeking to reach a conclusion. I felt it was important for the House to resolve the problem that was brought to our attention through charges being laid. Because I could see a serious impasse developing, I sought to provide an opportunity for the House to at least contemplate its position and to come up with a proposal that would allow a decision to be made.

I also do not accept that the current law is satisfactory. One of the reasons for trying to seek a solution to the problem is that the current law is unsatisfactory and it had to be changed. As I have indicated briefly, my position is somewhere in the middle. However, the decision by the House to agree to proposed section 334(3)(a) of new part 3, provides for abortion on demand as far as I am concerned, regardless of whether members agree with that terminology. It means that any person who has informed consent can seek an abortion without any other justification whatsoever.

I think the House has gone too far and I did not believe it would go that far when this debate started. I felt it would be a debate about paragraph (c) and I did not quite know where that would finish up. Therefore, I am exceptionally surprised to say the least. Maybe I have been here too long and I am too old in respect of my views. However, the fact is that I misjudged the House's position on this matter and it has made the decision to virtually allow abortion on demand. We have provided abortion laws which I think are far too liberal and laws which I do not believe reflect the views of the majority of Western Australians. I will vote against the third reading because I believe we have gone too far on this issue.

HON PETER FOSS (East Metropolitan - Attorney General) [5.06 am]: I urge support for the third reading of this Bill. I believe that the Committee stage has led to better legislation than we had before. The way Hon Cheryl Davenport has handled this Bill is highly commendable. Very few of us will be able to look back on our parliamentary careers and say that we made a difference. Hon Cheryl Davenport can do that. I know that some people have tried to say that it is my legislation. I assure them that it is Hon Cheryl Davenport's legislation and she has done a remarkable job with it. She has taken me and many other people along with her by the forthright and compassionate way in which she has dealt with it. It is no mean feat to do what she has done. It is the sort of reward that members of Parliaments want to receive. She has done it without party support; she has done it by gaining the Parliament's support. She should be congratulated for that.

I also want to pass on my appreciation to the Leader of the House. He came forward with what I hoped would be the way in which we could resolve what may be the differences between the two Houses. Notwithstanding that we may be moving quickly to pass the third reading of the Bill, I remind members that we have a first, second, and third reading stage and a Committee stage of somebody's Bill still to deal with. Despite his personal beliefs of what he considers to be the appropriate law, Hon Norman Moore gave us the lead in presenting to the House a solution which enabled us to work our way through the legislation so that we might end up with something acceptable to both Houses. There is no point in this House passing legislation which is not capable of passing through the other place, and likewise for the other place. I therefore congratulate Hon Norman Moore for truly being the Leader of the House and for accepting the very difficult position in which he found himself when he was on the other side of the House for most of the divisions, despite the fact that he was very much involved in putting forward a compromise.

For me, it has been one of the most rewarding debates in which I have ever been involved. The atmosphere in this House during the debate has been extraordinary. I think we are all changed as a result of it although I am sure that the change will not be so obvious when we get onto the workers' compensation legislation. Hon Ljiljanna Ravlich is one of the most reasonable members of this House, and because of her eminent ability to get along well with everybody, it will probably be a very good debate.

As I said, this Bill has changed all of us and, even though we will get back into the hurly-burly of abuse, I do not think we will ever lose the changes that have occurred during this debate. It has been an extraordinary experience for me as a member of Parliament. It will definitely go in my memoirs, including the remarks made across the Chamber, which probably did not get into *Hansard*. However, I hope a remark made by Hon Ljiljanna Ravlich does get into *Hansard*. If Parliament were always like this it would be a far more pleasant place to be in.

HON B.M. SCOTT (South Metropolitan) [5.10 am]: It will come as no surprise to members that I oppose the third reading of the Bill. I do so as a woman and a mother of four children, and I speak for both mothers and children.

This debate has caught the imagination of Western Australians who, somehow or other, have been convinced that this debate is about choice for women. I do not agree with that view. This debate is about human rights and the rights of unborn children. Maybe somewhere down the track, with the urging of those of us who have opposed the Bill on the basis of human rights and have defended the rights of the unborn and spoken about two classes of citizens, women will realise that this has been a wrong decision for women.

I referred in my speech in the second reading debate and in my comments in Committee to the importance of looking at this debate in the historical context of other major debates, such as those on slavery and the oppression of our indigenous people. Women would be well aware of the fight taken by the minority of women who fought and won the right to vote, to sit in this House of Parliament, to have a career and a family, and even the menial right to raise a housing loan. These rights have been gained by much fighting. However, this latest fight has been fought in a similar way as have other struggles against an oppressed group of people, and I refer to the fight against the oppressed unborn children. Sadly this fight, taken forward in the main by women in the community, has turned the oppressed into the oppressor, so that the formerly oppressed women have fought for abortion on demand under the banner of choice for women. In doing so, they have become the oppressors or the tyrants.

I finish my third reading speech with these words. The oppression of women relied upon the definition of two classes of human; so does abortion. The oppression of women relied upon the victim being defined as less than a full person; so does abortion. The oppression of women relied on powerful economic arguments and interests; so does abortion. The oppression of women relied on accepting the premise that this is the way things are; so does abortion. The oppression of women relied on the argument that the issue is not a moral one; so does abortion. The oppression of women relied on politicians not interfering in the so-called personal domestic issues; so does abortion. The oppression of women relied on the argument that church and religionists should not impose their values on the rest of society; so does abortion. The oppression of women led to atrocities and dehumanisation; so does abortion. The oppression of women relied on the fact that the victim does not have rights; so does abortion. The expression of women relied on the fact that the victim does not have a voice; so does abortion. The oppression of women relied on the claim that it led to the common good and even benefited the victim; so does abortion. Tonight I vote against the third reading of this Bill.

HON E.R.J. DERMER (North Metropolitan) [5.16 am]: I had intended making only short comments, and having heard the eloquence of Hon Barbara Scott I will further shorten my comments as little remains to be said.

I take comfort from the fact that when William Wilberforce led the charge in the British Parliament to abolish slavery, he was unsuccessful on his first four attempts. I hope for the sake of the unborn children of Western Australia it will not take four major struggles in this Parliament to achieve justice. It is a source of comfort for all of us to know that persistence and determination will lift the veil. The realisation that the dead child is not the only victim of abortion will become more evident in time and we will lift the veil. We can be confident in the knowledge that previous notable proponents of abortion, such as the woman who was the subject of the Roe v Wade case in the United States, have come to a true realisation of the nature of the practice they proposed. That will lift the veil.

With the extra knowledge I and colleagues in this House have gained about the great sadness which is abortion, that realisation will be spread throughout the community. In the end, like Wilberforce, we will achieve justice.

HON GREG SMITH (Mining and Pastoral) [5.18 am]: I will not support this Bill at the third reading stage, and I now explain some reasons for that position as I supported the Bill at its second reading stage. First, I feel privileged to have been involved in and to have witnessed this debate. It has been enlightening to see how members have conducted themselves and related to each other without party lines and the adversarial climate in which we normally operate. Also, it has demonstrated the obvious importance of having parties in the political process. We have seen the length of time consumed with this legislation. If we adopted the same process on every piece of legislation, we would get very little done each year. It has been a good learning experience for me. I do not know about other members, but I feel it has been a privilege to experience this debate.

I supported the second reading of the Bill because at that stage we had no other options available to us for resolving the difficulty created through the charging of the doctors. It was obvious at that time that the legislation in place was inadequate and had too many holes. However, I am now aware that other legislation or another avenue may be available to us to rectify the situation. Removing sections of the Criminal Code relating to abortions and placing them in the Health Act will trivialise the taking of a life.

Members can talk until they are red in the face, but the act of abortion takes a human life. No-one can deny that. Under the Health Act that procedure would be no more significant than a procedure under the Dog Act. It should

be a criminal offence for someone to take the life of a human being or potential human being. I will not support this Bill at the third reading stage. I urge everyone else to do likewise.

HON GIZ WATSON (North Metropolitan) [5.21 am]: I support the third reading of this Bill and acknowledge this historic occasion. I am proud and delighted to be part of this historic piece of legislation. I hope that the passage of this Bill has partly been as a result of the changes in this place and that it is a sign of other progressive legislation of which this Council can be part. I thank and acknowledge Hon Cheryl Davenport for her persistence and tenacity. It has been a pleasure to offer whatever assistance I and my colleagues could to ensure that this legislation passed to this third reading stage. I hope it will pass through this House.

HON LJILJANNA RAVLICH (East Metropolitan) [5.22 am]: I support this third reading. As members of Parliament, we are in this place to do a job and we are beholden to our electorate and this Parliament do that job. We have been through a fairly comprehensive exercise and have explored a piece of historical legislation.

I compliment Hon Cheryl Davenport for the outstanding work she has done in bringing it to the House and the Attorney General for assisting her. We have explored the options through the clauses in the Bill and the issues surrounding the Bill. We have heard both sides of the argument and have made some decisions through that process based on what we, as individual members of this place, think is best for our constituency and is in line with some of the personal views that we all bring with us.

On each of the clauses on which the Committee divided, the majority was about two thirds in support of them. Quite clearly that is not a slight margin. It is a clear majority in support of all the clauses in the Bill. The composition of this House and the support on those clauses is probably reflective of the support in the community. There is little doubt that people want abortion law reform. Given the voting patterns of members in this place, we believe that. I cannot buy the argument of the Leader of the House that the outcome has gone too far and, therefore, this legislation will be a retrograde step. That is very bad politics and is a retrograde step. We shall be short-changing the Western Australian public if that is done. What does it say about us as politicians? At every point during this debate I knew what my position was on each clause. I chose not to speak on each clause because I had made up my mind that I wanted a speedy resolution on this Bill. I wanted it to go through this House with the least amount of fuss because I deemed that it was good legislation. Quite frankly, if members who have sat in this Chamber for a number of days and made decisions in support of this legislation are now saying they think we have gone too far, that reflects very poorly on them as legislators. They should be answerable to the Western Australian public for changing their minds so quickly.

Members should put religious views aside. I said in the second reading debate that I was raised a Roman Catholic. I also made the point that in coming to this place I consciously decided that the decisions I made would be based on the best interests of the Western Australian public. I also commented that when the Western Australian public are consistently telling members that they want abortion law reform, as their representatives, that is the direction we should take. That is exactly what I am doing with a clear conscience. I urge members to legitimise the process we have gone through in this House because it is not acceptable to do otherwise. We can legitimise this process by supporting the third reading.

HON NORM KELLY (East Metropolitan) [5.27 am]: I support the third reading of this Bill. Although the amendments were not available during the second reading of this debate, I was happy with the original content of the Bill. When the amendments were proposed in various forms over the past week or so I had serious concerns about the outcome of this Bill. I was extremely concerned that we could do a grave amount of damage. I acknowledge Hon Cheryl Davenport's efforts spent working towards this stage, particularly in recent weeks when the Bill was moulded into its present shape. I also acknowledge the work of Hon Norman Moore who put aside his personal views on this issue and worked well at guiding this House through a veritable minefield of legislation to pass workable and comprehensive legislation. This legislation will not hinder women who need free and ready access to abortions, and that was the prime thrust of my contribution to the second reading debate. As a result of these amendments, I fully support the third reading.

Question put and a division taken with the following result -

Ayes (22)

Hon Kim Chance
Hon J.A. Cowdell
Hon M.J. Criddle
Hon Cheryl Davenport
Hon B.K. Donaldson
Hon Max Evans

Hon Peter Foss
Hon John Halden
Hon Ray Halligan
Hon Tom Helm
Hon Helen Hodgson
Hon Barry House

Hon Norm Kelly
Hon Mark Nevill
Hon Ljiljanna Ravlich
Hon J.A. Scott
Hon Christine Sharp

Hon W.N. Stretch
Hon Derrick Tomlinson
Hon Ken Travers
Hon Giz Watson
Hon Bob Thomas (*Teller*)

Noes (11)

Hon E.J. Charlton
Hon N.D. Griffiths
Hon Murray Montgomery

Hon N.F. Moore
Hon M.D. Nixon
Hon Simon O'Brien

Hon Muriel Patterson
Hon B.M. Scott
Hon Greg Smith

Hon Tom Stephens
Hon E.R.J. Dermer (*Teller*)

Question thus passed.

Bill read a third time and transmitted to the Assembly.

COUNTRY HOUSING BILL

Assembly's Message

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

SITTINGS OF THE HOUSE

Statement by Leader of the House

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.33 am]: As members know, we are now on the third day's sitting of this week because the House was adjourned at 10 o'clock last night and resumed again at 10.15 pm. We have already done a fair bit of work on Thursday. It will be a very long Thursday! Instead of a fourth day's sitting for this week I propose to ask you, Mr President, to leave the Chair until the ringing of the bells at 2.00 pm, rather than at 11.00 am, which is the normal time. The House will resume at 2.00 pm on Orders of the Day and sit for the duration of this day's sitting until five o'clock when it would normally adjourn. I ask that you, Mr President, leave the Chair until the ringing of the bells at 2.00 pm.

The PRESIDENT: I am happy to agree to that. I remind members of the Standing Orders Committee that a meeting will be held at 1.00 pm today in the normal place, and lunch will probably be supplied.

Hon TOM STEPHENS: If the members of the Select Committee on Native Title Rights in Western Australia do not mind we can meet at one o'clock.

Sitting suspended from 5.35 am to 2.00 pm (Thursday, 2 April 1998)

HANSARD

Tape Recording of Proceedings

THE PRESIDENT (Hon George Cash): I have received the following letter from the Deputy Chief Hansard Reporter, dated 2 April 1998 -

Dear Mr President

I advise that due to the extended sitting last night of the Legislative Assembly, and limited Hansard staff resources, the proceedings of the Legislative Council from 2.00 pm until the adjournment of the House today will be tape recorded, and a transcription provided at the earliest opportunity.

Yours sincerely

C.R. Hall
Deputy Chief Hansard Reporter

Quotations in Members' Speeches

The PRESIDENT: On another matter in relation to *Hansard*, I remind honourable members that when they quote from documents of any sort, Hansard staff are required to check the accuracy of the quotation. Therefore, it is essential that members supply to Hansard staff a copy of the quoted material, as the staff are responsible for ensuring that the material is accurately published in *Hansard*. I will be grateful for members' cooperation in that regard. I will write to each member, setting out the situation and the reasons that Hansard staff need their cooperation.

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION

Report in relation to the Statutes (Repeals and Minor Amendments) Bill (No 2) 1997

Hon M.D. Nixon presented the twenty-first report of the Standing Committee on Constitutional Affairs and Statutes Revision in relation to the Statutes (Repeals and Minor Amendments) Bill (No 2) 1997, and on his motion it was resolved -

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

[See paper No 1494.]

JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION

Discussion Paper "Secrecy under the Anti-Corruption Commission Act"

Hon Derrick Tomlinson presented a discussion paper of the Joint Standing Committee on the Anti-Corruption Commission entitled "Secrecy under the Anti-Corruption Commission Act", and on his motion it was resolved -

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

[See paper No 1495.]

DAMPIER PORT AUTHORITY AMENDMENT REGULATIONS (No 2) 1997

Motion for Disallowance

Pursuant to Standing Order No 152(b), the following motion by Hon Tom Stephens was moved pro forma -

That the Dampier Port Authority Amendment Regulations (No 2) 1997 published in the *Gazette* on 13 February 1998 and tabled in the Legislative Council on 10 March 1998 under the *Dampier Port Authority Act 1985*, be and are hereby disallowed.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [2.04 pm]: It is my intention to be very brief in the presentation of this case.

Hon Max Evans: That will be a new experience!

Hon TOM STEPHENS: Discussions have been held on this side of the House between all members of the Labor Party, the Greens and Democrats with reference to this disallowance motion. I can speak on behalf only of the Labor Party. I understand a vote will be taken today at the appropriate time to facilitate the disallowance of this motion. There is some desire on the part of the Government to get on with its business, and the Opposition wants to facilitate that rather than engage in a protracted debate on this matter.

These regulations have been introduced to facilitate the granting of the management and exclusive stevedoring rights of the Dampier public wharf to Western Stevedores. This contract will come into effect on Monday, 6 April 1998. The management of the public wharf is currently the responsibility of the Dampier Port Authority, which is also responsible for the bulk cargo facilities at the port. One of the conditions of the lease agreement between the Dampier Port Authority and Western Stevedores is that the company will be responsible for levying all charges for the use of the Dampier public wharf and the provision of services. Western Stevedores will have the option of retaining existing structure charges and rates, or negotiating a new arrangement. The Dampier Port Authority regulations will allow charges for use of the public wharf to be imposed by, and paid to, the private operator. Without the amendment to the regulations, the proposed privatisation cannot be effected.

The Opposition parties are strongly opposed to the agreement with Western Stevedores, and believe the monopoly that has been introduced at the Dampier Port is unfair and contrary to the public interest.

Dampier is Australia's biggest tonnage port, largely because of the exports from Hamersley Iron Pty Ltd through its own facilities. The public wharf handled 800 vessels last year, primarily carrying goods and machinery to service industry. For 20 years P&O Ports Ltd, formerly known as Conaust, has been offering stevedoring services at the Dampier public wharf. In May 1997 Oil and Gas Stevedoring commenced operations on the wharf, and Western Stevedores took over from it in July of the same year. Until now Western Stevedores has attracted only about 10 per cent of the total work.

Customers presented with choice and genuine competition have chosen to continue using P&O Ports because it provides an excellent service. Employee relations between P&O and its staff have been harmonious. The only dispute in years resulted from a national stoppage in 1995, which arose when the State Government awarded the Stateships contract to Len Buckeridge. Major customers are angry that wharf users have not been consulted on the changes, and they will be forced to move their business to a company about which they know nothing. Others say that they fail to see how the service offered by P&O Ports could be improved on. I have read letters from seven different customers who praise P&O Ports for their reliability, flexibility, cooperation, willing work ethic and excellent service. One shipping agent commented that having worked in various ports around Australia and Europe, he found it a welcome and refreshing change to work a port at which the wharf labour are not only reasonable in their attitude, but also helpful.

Point of Order

Hon E.J. CHARLTON: I do not want to interrupt the Leader of the Opposition's speech, but I understand a court case is proceeding in the Supreme Court. I just wonder whether this debate is contravening the rules in any way.

The PRESIDENT: I am aware only from press reports that there may be a dispute between companies with respect to the Dampier Port area. I have listened carefully to what the Leader of the Opposition has said to date and I do not think he has said anything that would compromise that case. The Leader of the Opposition is aware, as are other members in this House, that the sub judice rule applies in this House. However, that is qualified by the fact that the sub judice rule cannot stop the Parliament from legislating. Having said that, I will continue to listen closely to the Leader of the Opposition although I just remind the House that, as much as I have a responsibility to draw it to members' attention if I think they may be breaching that rule, it is the responsibility and obligation of individual members to ensure that they do not breach the sub judice rule.

Debate Resumed

Hon TOM STEPHENS: The Federal Government has used European ports as an example of best practice. This operation exceeds customer expectations and the performance of European stevedoring operations, but it has been forced to close down. Has the Federal Government been encouraging competition at Webb dock in Melbourne, for example? Yet its counterparts in the Western Australian Government are allowing a monopoly situation to develop in the servicing of the vital oil and gas industry. Why should this be allowed to happen? What process has led to the bizarre outcome of such an internationally renowned and reputable service provider being thrown out of Dampier? Why has Western Stevedores been granted exclusive stevedoring rights when, under competition, it attracted such a low percentage of the work?

What tendering process was undertaken by the Dampier Port Authority on instruction from the Minister for Transport Hon Eric Charlton? It seems that the process to privatise the management of the public wharf began shortly after Western Stevedores commenced operations at Dampier. The Dampier Port Authority advertised nationally for expressions of interest. In August 1997, from responses to the advertisement for expressions of interest, the authority invited five short listed companies to tender for the lease of the Dampier public wharf. P&O Ports and Western Stevedores were among those five.

On 28 October 1997 it was announced that Western Stevedores had been awarded preferred tenderer status to lease, manage and operate the public wharf for five years. On 10 November 1997 Mr John Peraldini of Western Stevedores said it was unlikely to enforce the exclusive entitlement to services on the wharf, which the company had won with the contract to manage the facility. Mr Peraldini said that if customers did not want stevedoring services from his company, he doubted the wisdom of pressing them and was reluctant to force that issue. However, it seems that between then and the end of November pressure was put on him to do exactly that. He was told that he was contractually obliged to take up exclusivity.

P&O Ports, its work force and the users of its services were stunned when told at the end of November that Western Stevedores would have exclusive rights to offer stevedoring services, and P&O Ports would be forced to close its operation in early April. What happened to customer choice or open competition? If P&O Ports is forced to close down, will it ever want to foot the cost of starting up again in Dampier?

What is known about Western Stevedores? It was formed in April 1996 by Mr John Peraldini, who was second in charge at the Fremantle Port Authority until he retired to form that company. Initially he started operating at the Port of Fremantle loading livestock. The company has since worked ships at Esperance, Albany, Bunbury and Geraldton, as well as Dampier. Company activities have revolved around livestock, fertiliser and small amounts of general cargo. During the BAAC Pty Ltd dispute in May 1995, while Mr Peraldini was still working at the FPA, he claims he formed a friendship with Len Buckeridge. He also said that if he needed financial backing, it would probably come from Len. Western Stevedores' initial expression of interest in managing the Dampier public wharf revolved around Peraldini providing stevedoring services, and a Buckeridge company providing a transport service between the port and its depot in Karratha. The final successful bid did not involve the Buckeridge company.

The Minister for Transport actively promoted Western Stevedores while the tenders were being considered. In a speech he gave to an International Cargo Handling Co-ordination Association Conference on 9 September 1997 he said -

It is the State Government's belief, certainly in view of the experience of new local entrant Western Stevedores, that significant improvements can be made to our stevedoring activities by changing the focus of the work force from union to employer.

In this respect, Western Stevedores represents a very true enterprise employment arrangement, something that has not yet been achieved by the larger operators.

The Australian Competition and Consumer Commission has informally advised the Dampier Port Authority that it will not intervene. Its decision is based on two erroneous assumptions. The first is that the Dampier and Port Hedland wharves are in competition. The reality is that Port Hedland is an additional day's travel time from the oil and gas fields, which would mean an additional cost between \$15 000 and \$20 000 in ship charter fuel costs. Dampier is in a much better position to provide access to support industries. The second assumption is that Western Stevedores has agreed to the capping of charges at a lower rate than is currently charged by either stevedoring company. However, the figures I have quoted suggest that this is not the case.

As a member representing this area, I am very concerned about the impact this decision will have on people in Karratha, Dampier and other local towns, such as Roebourne. P&O Ports employs 11 permanent staff and 30 casual staff, who will all be unemployed as a result of this decision. Most of the staff were born and bred in the area, so it is home to them. They have no desire to move anywhere else. However, those in Karratha could not possibly afford the high rentals they would have to pay if they were on the dole. Of particular concern to me are the employment opportunities for the indigenous work force currently employed by P&O Ports. Approximately 50 per cent of the total work force are indigenous people. Some of them are from towns such as Roebourne where the unemployment rate among Aboriginal people is between 70 and 80 per cent. What will their future be? My involvement in the Pilbara region over many years has made me aware of how difficult it has been to secure employment opportunities for this sector of the population. P&O Ports has been a shining example in this regard. It has employed a high percentage of local Aboriginal people, and has been rewarded by excellent performance from these employees. At times when I have been trying to persuade major organisations to employ more indigenous people, I have been grateful for the lead established by P&O Ports. We are told that Western Stevedores will import labour from Fremantle and New Zealand. I have moved this disallowance motion for those reasons.

I note in passing that the people in that work force in recent times allocated all their efforts to do the bidding of the port authority, their employer and the users of the port. Recently in temperatures reaching 45 degrees they worked 24 hours almost continuously in the hull of a ship. They worked in stinking hot conditions, unloading the ship and providing a service to the people in that area, the companies and the users of that port. That demonstrates enormous dedication on the part of those workers. This is not an appropriate response from the Government to the fantastic service that has been provided until now.

HON NORM KELLY (East Metropolitan) [2.20 pm]: The Australian Democrats supported the motion moved on Tuesday, 31 March, that this matter be made Order of the Day No 1 for the next day of sitting. That is not a usual step for us to take, but we believe strongly that this House should make use of an opportunity to debate regulations before they take effect. The contract that has been signed will come into effect on Monday, 6 April, and it is important that we debate this matter before that contract comes into effect. I am aware that court proceedings are under way, but I understand that these regulations are technically separate from those court proceedings, although very much closely related.

Hon Tom Stephens has outlined the recent history of the Dampier public wharf. In the early 1990s, P&O Ports Ltd was the sole stevedoring operator on that wharf, and that remained the case for five or six years. In recent days I have received a number of reports about the operations of P&O on that wharf during those years, which varied quite widely from saying that P&O had done a remarkably good job to saying that the work ethic at that wharf had been abysmal. I will not dwell on that too much, other than to say I have heard conflicting stories. I have been given a number of letters that acknowledge the good work done by that company, but I am also aware that a number of those letters were solicited by people at the Dampier wharf to strengthen their argument, so I do not place a great deal of weight on those letters. I have also spoken to a number of the users of that public wharf, which helped me to form the view that although the operations of P&O were not ideal, they were acceptable to a number of those users.

In early 1997, a new process called for expressions of interest for the operation and management of the Dampier public wharf. Five tenders were submitted, and the decision about the successful tenderer was made late last year. It is interesting that during the tender process, the Minister for Transport made it clear publicly that his preferred option was that Western Stevedores be awarded the contract to operate and manage the wharf. I am not sure whether that behaviour was ethical or whether it could be perceived as interference in the independent tendering process, and I can understand the belief of some tenderers that the process was flawed from the start. I have been told that they believe the decision about which tender would be successful had been made well before the official announcement date.

The criteria for assessment of the tenders emphasised that it was essential that the new port operator provide continuity of service. In the seven years that P&O has been operating the wharf, only one day has been lost through strike action. Therefore, it has performed well on that criterion, although I know that other criteria can militate

against that, such as the day to day operation of the wharf. Another criterion was the track record of the various tenderers. After the expressions of interest process had begun, Western Stevedores decided to set up its own operation on the wharf, which commenced in July last year. Although Western Stevedores has conducted operations in Fremantle for a long period, it is very much a newcomer on the Dampier scene. The track record of Western Stevedores is dubious when we consider that it has only recently set up operations at Dampier; and, as John Peraldini from that company told me, the only reason that it set up at Dampier wharf was the prospect of winning that exclusive contract. Its intention was not to create competition and try to win work from P&O, but to get P&O out of the wharf and do that work exclusively for the next five years.

The Minister for Transport said in answer to a question yesterday that the contract would achieve a 30 per cent reduction in costs to port users. I have been told in discussions with the Dampier Port Authority that reduction in costs has already been achieved as a result of the competition on the port that has existed for the past six to nine months. It is competition, not exclusive rights, that creates reductions in costs.

The main thrust of my concern is that these regulations will facilitate exclusive rights to the Dampier public wharf. I am aware that there is a question mark over whether the amount of work at that port can justify having two stevedores operate at that wharf, but surely competitive forces will determine whether the wharf can sustain two operators and, if not, who is the better operator of the port; and survival of the fittest will ensure that port users are provided with the best service.

I have told the Minister for Transport privately that the Australian Democrats will support the Minister in his attempt to bring about waterfront reform in Western Australia, but that reform must be based on open competition. We do not believe in monopolies, whether they be for employee groups or operator and employer groups. The decision to be made on Monday will result in no competition at the Dampier port. It has been argued that competition is provided by the Port Hedland port, but that is a fallacy, because that is not a real competitor in serving the North West Shelf project in that area.

The tendering process must be examined to see whether it was legitimate and proper, because there is a suspicion that the successful tenderer had been determined before the process was finalised.

Hon E.J. Charlton: I will show you the tenders.

Hon NORM KELLY: Okay.

I have read some of the comments that the Minister made last September about waterfront reform. I am sure his audience was thrilled to hear those comments, particularly about the plan to reform the Western Australian waterfront being so good that we should sell that expertise Australia-wide to fix up all Australia's ports, and thereby generate income for the Department of Transport. I am not sure how well that was received by the industry, but it was obviously not well received by Hon Peter Reith, who has been running a country mile to distance himself from any involvement in what the Minister for Transport in this State is trying to achieve.

I am aware that both P&O and Western Stevedores are employing union labour, albeit under different terms and different awards or contracts. The Australian Democrats do not support a monopoly with employees or a closed shop situation on the waterfront. Until we achieve true equality in competition, with not only employee groups, but also operators and employer groups, we will not have genuine waterfront reform in this State.

In conclusion, the basic regulations will enable Western Stevedores to collect charges directly from the port users. This is straightforward. If the regulations were to be disallowed, a small inefficiency would be created in the system as the charges would continue to be collected by the Dampier Port Authority and passed on to Western Stevedores. It would maintain a loop in the system. However, my concern is that if the Australian Democrats permitted the regulations to stand, they would facilitate exclusivity in the Dampier Port. It is the anti-competitive nature of this Government and the establishment of the monopoly to which the Australian Democrats are opposed.

HON GREG SMITH (Mining and Pastoral) [2.34 pm]: Hon Tom Stephens has treated a few members like bunnies as he has told stories about the massive tonnage passing through the Dampier port. This contract involves about 100 000 tonnes of work per annum, which accounts for about 0.2 per cent of the total tonnage passing out of the Dampier port area.

The tendering process has brought competition into play. The 100 000 tonnes of work does not justify two operators working in a viable manner. Therefore, when the tender was offered, every tenderer was made aware that it was for the exclusive provision of that service. It was obvious that two operators could not operate viably out of that port. The tender process brought about the competition.

Members opposite are upset mainly because they are doing the bidding of the unions; nevertheless, the unions are still involved, so I cannot understand why opposition members are upset. As Hon Norm Kelly said, the disallowance

of these regulations will not change anything, as Western Stevedores will still operate at the port. Hon Norm Kelly said that he supports increases in efficiency and competition, yet he will vote for the disallowance motion. The passage of the motion will have no effect, apart from creating a clumsy process with inefficiency in administration. If the member thinks that will contribute to the efficiency of the Port of Dampier, he has a strange way of looking at things.

The new contract has resulted in some workplace agreements being entered into. The Dampier area has massive tides, and ships must come in and out of the port on the tide. If one has a locked-in arrangement with a night-day or morning-afternoon shift, flexibility is lacking. If high tide is at, say, 2.00 pm, the ship must come in at high tide and the day shift must sit around all morning being paid. When the ship comes in at two o'clock, work commences to load and the workers eventually move into overtime. Under the new contract, the operator can say that the ship will not arrive until two o'clock, so workers can start a little later, work a little later and be paid the same money. It is efficient.

A member interjected.

Hon GREG SMITH: People are prepared to work there, so I do not think they are dissatisfied with the situation.

Importantly, this is a supply port. It is not a big tonnage port with iron ore exports or imports of large volume items. The port is used to supply the oil and gas fields, and billions of dollars will be invested at Burrup and the Carnarvon basin over the next few years.

Hon Norm Kelly: So more work will be generated in the port.

Hon GREG SMITH: One hopes that more work will be generated.

Hon Ljiljanna Ravlich: But you do not know!

Hon GREG SMITH: That is right. That is why it is important to offer exclusive work for the port. Someone made a very competitive tender in the hope that the workload would increase.

Hon Ken Travers: Why did the users of the port not switch to them?

Hon GREG SMITH: The port authority put out these tenders and accepted one. It does not matter how good a job Hon Tom Stephens perceived that P&O Ports Ltd was doing, the people who operate the port have the right to give the job to somebody else. It is not up to us in here to decide who should be running the Dampier port.

Several members interjected.

Hon GREG SMITH: I cannot believe that we are wasting our time debating this motion. To disallow these regulations will not achieve anything apart from setting up a complicated and inefficient system of administration. I urge the minority parties in particular not to support the motion, because to do so is to vote for inefficiency.

HON KIM CHANCE (Agricultural) [2.42 pm]: The subject of the regulations -

Hon Peter Foss: At least he is not supporting it!

Hon KIM CHANCE: I am supporting the motion to disallow.

The effect of the regulations which are the subject of this disallowance motion is minor. It relates to the opportunity for the new monopoly operator to collect fees. My advice from the Minister yesterday was that if the disallowance motion were successful, the Dampier Port Authority, rather than Western Stevedores, would be responsible for the collection of fees. It is of no interest to me whether one stevedore company or another has the port monopoly. However, if we are to have a monopoly, we must be extremely careful about the procedure we use to select that provider. We must ensure that the selection is subject to proper standards and scrutiny. I am aware of the point of order raised by the Minister. To go beyond that comment in any detail would run the risk of subjudice.

It seems that the Government's preference for one company, Western Stevedores, has been clearly enunciated by Ministers in this Government; for example, the Minister for Transport and the Deputy Premier. The Minister told us yesterday that the new arrangement would result in a 30 per cent reduction in port costs. I hope that that is true. I hope that the Minister can demonstrate those efficiencies in 12 months' time. I am genuinely interested. I am sure a standing committee of this House will be similarly interested in this outcome.

Hon Norm Kelly: It has already happened.

Hon KIM CHANCE: I note Hon Norm Kelly's point.

Hon E.J. Charlton: That is not true - it is a theory.

Hon KIM CHANCE: We need to ensure that any improvements which seem to flow from this change are improvements over and above cost reductions already achieved. I do not want to argue about the degree of reductions achieved under current arrangements. I simply acknowledge that some savings may already have been achieved. That issue has been raised.

This issue goes to the essence of the current dispute about waterfront reform and the involvement of government in the structure of waterfront management. We are witnessing a very small part of a larger question of what seems to me to be a clumsy political campaign, Australia-wide, by the coalition parties and the National Farmers Federation to make a point about the Australian waterfront. That point has nothing to do with economics and international efficiency; it has everything to do with untruths, with politics and with what I think is a very disturbing element in Australian society today.

The Dampier changes have been sold on the basis of reduced cost. Only time will tell whether that is a fair point. This issue has been justified, at least in part, by the Government on the basis that port users want this to occur. Of course, port users will be interested in a reduction in costs. The Leader of the Opposition made it very clear that the current port customers seem to be very happy with the present arrangement. Last week the Minister was reported in *The Geraldton Guardian* as saying that port customers needed more flexibility, that they were somehow unhappy with the current arrangements in the Geraldton port. The Minister should tell us who those port users are.

Hon E.J. Charlton: I would love to do that, but I cannot because they would be victimised just as people in Dampier are. They cannot afford to complain publicly.

Hon KIM CHANCE: The Minister is a fine one to talk about victimisation. The fact is that I talk to those port users fairly regularly and I do not perceive any difficulty in the port of Geraldton expressed by the port users. Surely in their private conversations with me they do not think I will victimise them, or that those conversations with me will, in some way, not be confidential.

Hon E.J. Charlton: Perhaps they think they have friends in high places.

Hon KIM CHANCE: Perhaps the Minister and I should have a private chat about this.

Hon E.J. Charlton: Yes.

Hon KIM CHANCE: I have promised that I will not go on about this; however, I feel it is necessary for me to raise this issue in this debate because I am extremely concerned that what we are seeing in the waterfront campaign has nothing to do with efficiency or economics, but a great deal to do with politics.

HON J.A. SCOTT (South Metropolitan) [2.51 pm]: I also support this motion. I am very concerned at the attempt, at both the federal and state levels, to stir up trouble and cause chaos on the waterfronts around Australia. We have seen consistent examples of that in recent times where Patrick The Australian Stevedore, the National Farmers Federation and the Federal Government have been working together to cause problems on the waterfronts in the eastern States. This situation is linked very much to the same philosophy.

Hon Greg Smith: This is a commercial decision.

Hon J.A. SCOTT: The member has made his speech and I ask him to let me make mine because I want to get this debate over and done with. It was not a very sensible commercial decision, if it was a decision at all. Two operators were working at the port. The Government has said that one of those is better than the other, and that it will give it sole rights. In any normal market situation the Liberal Party espouses that the company which provides the most efficient, the cheapest and best service will get the work. In this situation there was competition. If there is not enough work, the Government has said that one operator will be given an exclusive monopoly, instead of allowing whichever company won on the commercial front to win the battle. It is not allowing market forces to decide the situation. People will not have a choice. The Government will be locked into a far less flexible situation than is the case now.

I have been very concerned with the attitude of both the Federal and State Governments to union labour on the waterfront. Recently I heard the Prime Minister and the Federal Minister for Labour Relations say that they would support companies replacing their union workforce with non-union labour. It is absolutely extraordinary. This Government is going down the same track and is saying that it will support people being thrown out of their jobs because they happen to be members of a union.

Hon E.J. Charlton: Those members are all members of the union.

Hon J.A. SCOTT: That is a human rights issue.

Hon E.J. Charlton: Do you know any of the facts about this at all?

Hon J.A. SCOTT: As a matter of fact, I do.

The PRESIDENT: Order!

Hon J.A. SCOTT: This whole attitude is of concern to me. A number of stevedoring companies work on the waterfronts Australia-wide. In Western Australia the main competition seems to be from P & O Ports Ltd and Patrick, although there are other players. The Government seems not to be very happy with the P & O company because in its attempts to achieve higher efficiency and productivity levels, it is working with its workforce.

Hon E.J. Charlton: I thought you did not like multinationals.

Hon J.A. SCOTT: I understand that at Fremantle, P & O quite easily outperforms Patrick in efficiency and cargo shifting rates.

Hon E.J. Charlton: It outdoes it in terms of turnover. There are two operational forces.

Hon J.A. SCOTT: The system adopted by P & O seems to work better than a confrontational approach. I get very worried when the Minister for Transport starts to try to manipulate the market in the way in which he has been. Traditionally the operations on the waterfronts have not worked as well as they could, but that was a management problem as well a workforce problem.

Hon Kim Chance: And a mechanical problem.

Hon J.A. SCOTT: That is a management problem. If the equipment is out of date, or whatever, it is up to the management to do something about it. I went to the Fremantle wharves during the Buckeridge dispute and talked to people about why cargo was not moving quickly enough through the Fremantle port. The workers told me that they were getting maligned because crane drivers were earning \$70 000 a year; that not all workers earn that; and that the crane drivers earn that much because of the long hours they work. The other workers did not want to earn \$70 000 a year. They did not want to work the long hours and would rather be sharing jobs and having time off.

Hon Derrick Tomlinson: And you believed them?

Hon J.A. SCOTT: I did believe them because they were very sincere and had no reason to lie to me.

Hon Kim Chance: It is a standard union position

Hon J.A. SCOTT: They said they would rather have more people being trained to do the work so that they could spend some time with their families. The workers said that the other part of the problem is that one of the cranes came from Singapore in the 1960s; yet the Minister is saying we should be able to shift cargo using this old equipment at the same rate as would be achieved when using the brand new equipment being used in Singapore. That is not possible. It is absolute nonsense. Many other variables - the number of ships coming into the harbour, the amount of work and the type of unloading - will prevent efficiency rates being the same at each port. Those differences will never be overcome even with the best equipment, the most efficient workforce and the best management.

An unrealistic set of expectations is being put in place that all waterfronts will achieve an incredible target. It is a nonsense to think that suddenly every port in the world will reach a world best practice. The efficiency in ports is based on the variables that affect them individually. Although the ports should be working to the highest level of efficiency, we should not be making silly comments that somehow many slackers work on the waterfront. That is not the way to achieve some sort of consensus approach to gain high levels of efficiency on the waterfront. I believe this company is being discriminated against and not getting work on the Dampier wharves because it is trying to work with its workforce to achieve efficiency.

The Minister's forays into trying to achieve a political gain on the waterfront have already cost Australia a lot of money; for example, the \$1m which went to Len Buckeridge because of the failure of the contracts that were written on the back of a paper bag. From the debate that raged on that issue, I understand other companies were not given similar contracts.

Hon Ljiljanna Ravlich: I would love to see the contract.

Hon J.A. SCOTT: That sort of behaviour from the Minister is just not acceptable. Right throughout the work on the waterfront, the Minister has played favourites. People had to pay \$1 000 for the tender document covering the construction of the private port at Kwinana. That meant the local community could not find out what was happening. The residents who live next door to this proposed facility could not have the information unless they fronted up with \$1 000. I very quickly got a copy of that document. There is no way it was worth \$1 000.

Hon Ljiljanna Ravlich: The whole lot would not have been worth \$1 000.

Hon J.A. SCOTT: The Minister should have been taken to the jurisdiction of the Ministry of Fair Trading where someone could see what he had done. It was an absolute rip off.

Hon Kim Chance: It was a public relations triumph for the Minister.

Hon Ljiljanna Ravlich: A PR success story.

Hon Max Evans: You will get the truth in a moment.

Hon J.A. SCOTT: The chaotic situation of the waterfront is increasing. There is huge resentment. I am very worried that we will have a complete breakdown in the various working relationships on the waterfront and see wasteful, stupid battles occur just to please the NFF. I wonder whether the Minister has a vested interest in this matter. Is he a member of the NFF?

Hon E.J. Charlton: I might be a member of the Maritime Union of Australia.

Hon Ljiljanna Ravlich interjected.

Hon N.F. Moore: You sound like the chairman.

Hon J.A. SCOTT: He could well be. I would like the Minister to tell the House whether he is because it is of some relevance in this matter. He should tell us whether he is a member of the NFF.

Hon Ljiljanna Ravlich: Yes, is he a member?

The PRESIDENT: Order! I have said before that we are taping today's proceedings. Interjections will be rather difficult to discern by Hansard staff in due course.

The Federal Government and the Western Australian Government want more competition on the waterfront. Nicholas Way was reported in *The Australian* on 4 November 1997 as follows -

The State Government's line is that the competition is at the tender stage, an argument that leaves others in the industry more than slightly bemused.

After all, the Federal Government has been calling for competition on the wharves. At Dampier it had it. And, for good measure, Western Stevedores could have introduced workplace agreements.

Now, the WA Government has a new operator servicing the vital oil and gas industry, a wary MUA (which has industrial muscle in the region) and an angry P&O. Little wonder Mr Reith is saying naught.

People are waiting for trouble to erupt. It has been bubbling up in a number of wharves in Australia. The Minister's tactics are likely to result in huge costs to the State in lost export potential. Furthermore, these tactics are already seeing labour being imported from other countries. I am even more worried when the Minister boasts that an international company might operate the private port he envisages for Kwinana. That is nothing to boast about.

Hon E.J. Charlton: Like P&O?

Hon J.A. SCOTT: Australian companies should run our wharves. P&O has been in Australia for a long time and employs an Australian work force.

Hon E.J. Charlton: Who do you think the other companies will employ?

Hon J.A. SCOTT: New Zealanders and other nationals are employed in Dampier right now.

Hon E.J. Charlton: You don't know what you are talking about.

Hon Max Evans: He is quoting newspaper reports.

Hon J.A. SCOTT: I have not asked workers in Dampier if they were born in New Zealand. However, the newspapers have reported that is the case. If the Minister can prove the media are not telling the truth I would be interested to hear from him. I am worried about the situation on our waterfronts. Dampier is part of an Australia-wide mess. I support the motion.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [3.04 pm]: It is a sad fact that debate has spread to extraneous issues, although I am interested in members' views on the broader issue of waterfront reform. It is time members acknowledged the facts.

I do not hold a grudge against the Maritime Workers Union, Patrick The Australian Stevedore, or P & O Australia Ltd. I want reform on the waterfront along the lines of that which I instigated in the rail system in Western Australia.

We now have a one stop shop rail network across Australia. It is better to have a one stop shop than an operator being required to obtain 17 approvals to run one train across Australia. The previous rail system was inefficient.

The situation with public transport is different. We cannot have different bus operators operating services in the same street. We cannot have a green bus, a blue bus and a red bus operating in the same street. The Government packaged the public transport network into sections and called tenders for each section. I was criticised for that decision. I was accused of being uncaring and looking after my mates! I wanted to provide the people of Perth with the best public transport system with the money available. Fares make up 20 per cent of revenue and taxes provide the remaining 80 per cent. The system is working well.

Hon Ken Travers: How much do those contractors now receive above the original tender price?

Hon E.J. CHARLTON: The contracts are six years with an option of a further six years, although some are seven years plus five years, or five years plus three years.

Hon Ken Travers: Did you renegotiate the original contract?

Hon E.J. CHARLTON: The bottom line is that we are paying the private contractors between \$30m and \$40m less than we would have paid MetroBus to do the same job. The Auditor General has provided those figures. The thrust of what this Government wants to achieve on the waterfront is horses for courses. The situation in Fremantle is about competition. I will not promote exclusivity of operators in Fremantle.

My job puts me in a privileged position. I travel extensively in Western Australia, and I visit the wharves regularly. I communicate with people. I spoke to a number of people in Dampier - board members, managers, the office girl and the users. I asked whether they were happy with how the wharves were operating. They said they wanted the Government to allocate funds to expand the wharf. I said that I would do everything I could to ensure they could borrow the money to expand the port as long as they could guarantee that the port would be operated in the most efficient manner. I did not attach strings on how they would achieve that. I asked for a commitment from the manager and the port authority board that people who use that wharf could use it in the most efficient manner; that is, when a ship is berthed trucks come onto the wharf to be loaded and then off they go. The key to efficiency is as simple as that. That was the basis upon which I discussed the future of the Dampier wharf.

Although Dampier is a small wharf it plays a key role in that industry. The people with whom I held discussions told me that they could not make their views public, because they would be victimised. I do not take those comments lightly. I was not born yesterday. Like Hon Kim Chance I have been around the back blocks and the front bars. We know when people are having us on. They told me that people are abused and told how they should work. That does not help anybody. Members will not hear me say that waterside workers are paid too much. I have never suggested cutting their wages; I do not agree with that. I want the right number of people to do the job at the right time. I would pay more to get people to do the job when it needs to be done. Everybody wins in that situation. However, the MUA wants to protect its patch.

I have discussed that issue with P&O's management on several occasions. I met with the new manager of P & O last week. I told him what I knew about the situation in Dampier and a few other wharves in Western Australia, and I asked whether he was aware of the situation. He said that he was new in the job, but he had been told what is happening. I told him that it was not right and he gave me a commitment that he would do something about it. I hope that he does, because I do not subscribe to a word like "scabs" being written on the crib room door. That is despite all employees of Western Stevedores being members of the MUA. In addition, scab stickers have been placed throughout the workplace, door locks have been clogged with SuperGlue, and rubbish bins have been kicked over. P & O employees are continually abusing Western Stevedores employees and giving them the fingers salute, and have threatened Western employees at hotels.

Prior to Western Stevedores operation in Dampier, Lombardo stevedores attempted to provide a service. Conducting a business on the waterfront is no picnic. Nobody tapped me on the shoulder and told me to force this issue; I did it because there was no fair play in the industry. When I played football and someone was cutting it rough I would play the game that way too. I could forget about the ball and play the man. That is the way I played this game. When Lombardo stevedores attempted to operate in Dampier it fell over.

Western Stevedores started its operations in Dampier because Lombardo asked it to pick up some of its contracts. Western Stevedores did not go to Dampier with the idea of setting up business there. It was operating in Fremantle and in other parts of the State. It took three or four employees to Dampier to complete Lombardo's contracts. However, once its presence was established in Dampier it gathered a greater share of the business to the extent that its business had increased by 50 per cent.

I could have let that go. However, I had already made a decision that port by port, where a task needed to be done,

the Government would respond. A week ago I announced that the boards and management of the southern regional ports would have the option to contract out work if they believed that would deliver a better service to the users of the port. How can anyone argue with that?

Hon Kim Chance: That is a touch inflammatory to some people.

Hon E.J. CHARLTON: Hon Kim Chance knows the silo manufacturer, M.J. and H. Moylan Pty Ltd. If the member wanted to buy a silo off Mick Moylan, and the bloke down the road quoted a lower price he would get his silo from the bloke down the road. That is how business operates across the board.

Hon Kim Chance: The Minister is trivialising a serious issue.

Hon E.J. CHARLTON: I am not.

We decided that Dampier was an ideal port at which to test the market. Hon Norman Kelly asked why we wanted to give exclusivity to a port. The situation is comparable to bus transport and other concerns about which exclusivity is appropriate. If a high grade quality service can be provided to the port users, with no strings attached, we should ascertain the cost at which it can be done and put it to public tender. Five tenders were submitted. It is questionable whether P&O Australia Ltd is a conforming tenderer. P&O totally disregarded the terms and conditions of the tender because I suspect its work force did not want to deliver on some of them. I accept that. Those people did not want to erode the hard won conditions they fought for over the years. However, others were prepared to offer a service.

Hon Ken Travers: Get to the point; the process is about reducing people's wages and getting rid of their security of employment.

Hon E.J. CHARLTON: No; I cannot change the view of Hon Ken Travers. However, he is wrong. That is not the case at all. I answered a question in here yesterday. As Hon Greg Smith pointed out, if a work force is prepared to work on a ship as soon as it berths and empties it with fewer men, quicker than the competitors, at the same price per man per hour it will cost less. He will probably make a greater profit than the other company. It is as simple as A, B, C and that is how those organisations are doing it. There is nothing smart about it. When a ship berths the company indicates the number of people required to unload it and that is the number used. It does not use 10 people if the job requires only six. That is how the work can be done at a more competitive price.

With due respect, I am astounded when I hear members opposite say that our policy is an attack on P&O Australia Ltd or the Maritime Union of Australia. I do not want to attack anyone. If a cheaper quality service can be offered while satisfying the appropriate occupational health and safety rules, and so on, that is how it should be done.

In Dampier, prior to Western Stevedore's entry into Dampier, manning levels were set with very little flexibility. Western Stevedores operates on the basis that manning levels on any job should be based on actual operational requirements. For example, rig tenderers traditionally use a stevedoring gang of six; Western Stevedores offered to do it with four. The difference is two people, a significant number when they are being paid the amount mentioned earlier of \$50 000 to \$100 000 a year. They are all receiving the same wages because they are paid under the same award.

I am disappointed that I must try to justify why tenders have been openly called. I admit that I have sung the virtues of Western Stevedores. I will sing the virtues of any company that seeks to provide a better service on the waterfront of Western Australia, for one very valid reason: My friends are all Western Australians. I want them to load their products on and off ships in the most efficient manner. For the life of me I cannot see what is antisocial or antiunion about that. Although I must cop responsibility for my decisions in this job - that is fair; I cop it with a smile and will have a beer with members opposite at the end of the day - on the waterfront issue I respect other people's philosophical positions. My agenda has not been philosophical. In Geraldton, a new contract is available for towage. The same company that had the contract before won the contract so the same union people will be operating the tug boat.

We simply advised that company that it was a contract between the port authority and the company and what were the rules by which they should adhere to the contract; that is, continuity of service, agreement between employer and employee demonstrating that their first priority was to the users of the Geraldton Port, and so on. The MUA was not happy with that because it wanted to make the decision about when the tug boat operated. We said, "No, you cannot have it that way; we are paying you. So if you don't want to do it by my rules, you won't be considered." The workers signed on and the company got the contract. That is great and I am as happy as Larry about the same people doing the same job.

The same thing happened in Albany. However, the users of those two ports now have complete confidence that they can tell their suppliers throughout the world that towage stoppages will not occur in Albany or Geraldton because they have a contract with their operator. The same thing will happen in the port of Dampier.

It is disappointing when a disallowance motion like this is moved simply because the Dampier Port Authority seeks to increase its fees and give the money to Western Stevedores. However, that is what we will do. We might find another way, one never knows. It can be done.

I took Hon Norm Kelly seriously because I thought his comments were genuine. He is unhappy that there will be no competition. As I said Western Stevedores went to Dampier to take over the Lombardo contract, in which move it was successful. The situation grew from there.

Hon Norm Kelly: They went there to get that exclusive contract.

Hon E.J. CHARLTON: No. Western Stevedores went to Dampier because Lombardo had some contracts in place -

Hon Norm Kelly: John Paraldine must be wrong then.

Hon E.J. CHARLTON: No; I am explaining why the company went there in the first place. An opportunity was not available for that company to work there. Hon Norman Kelly must understand that starting from scratch at Dampier was a very dangerous personal experience. That is why I feel bad saying that as a Western Australian. Doug Rowe -

Hon Bob Thomas: From Albany? He is a fine gentleman.

Hon E.J. CHARLTON: Yes, from Albany, and he is well renowned for being a fairly persuasive person. He was on the board of the Dampier Port Authority when the coalition took office. He is physically a fine upstanding plausible young man. However, he has a way of dealing with people who should not be on the waterfront. I do not tolerate that. He can play those games while he can but I do not think his methods are very nice. It is not nice when someone is pulled out of a truck and dragged around the corner and belted. That is not Australian.

Hon Bob Thomas interjected.

Hon E.J. CHARLTON: I am saying people - I will not name anyone under parliamentary privilege - have done that.

Hon Bob Thomas: You named Mr Rowe.

Hon E.J. CHARLTON: Yes, concerning the Dampier situation. His brother Alan has been named in the local community for threatening someone in a public place.

Hon Bob Thomas: Are you saying he assaulted someone?

Hon E.J. CHARLTON: His words were, "On Wednesday you will be dead."

Hon Bob Thomas: Are you saying he assaulted someone?

Hon E.J. CHARLTON: Hon Bob Thomas can defend him all he likes.

The PRESIDENT: We are dealing with a disallowance motion. I cannot quite relate the Minister's most recent comments to it so he should construct his speech to take the motion into account.

Hon E.J. CHARLTON: Yes, Mr President. I am summing up that the Dampier Port Authority issue is about creating competition through a tendering process. That is an alternative option to a multiplicity of operators on the Dampier waterfront. As members who have had anything to do with ports know, ultimately Dampier will have only one major operator. Some will have a go and move out as has occurred over the years. Mermaid Marine once made an attempt to work there, but it was victimised because that is the way the unions operate.

The current situation on the Australian waterfront is about ensuring that there is no competition. The Government's position is that a lack of throughput cannot generate competition. We are saying that we will contract out part or all of the services through a competitive tendering process. We encourage that sort of thing to happen. I encourage members to see this disallowance motion for what it really is. This is not an appropriate way of interfering with the Government's process. We contracted out fair and square. If anybody wants to have a look at the tendering documents, I am happy privately to facilitate that. However, this disallowance motion is the wrong way to address the outcome of the tendering process. If members want to take some action against me or the Government over that contracting process, I encourage them to do it. I also encourage them not to pass this disallowance motion, because it will do is exactly what every speaker on the other side has mentioned; that is, feed inconsistency and place an impediment in the way of an efficient operation.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.15 pm]: I hope that members will be able to bring this debate to a close and to a resolution. I believe, unfortunately, that the Minister has clearly demonstrated an enormous determination to be actively involved in this portfolio. I appreciate the courtesy with which he responded to my argument. He demonstrated his comprehensive engagement in his portfolio and his

appreciation of the fundamental difference between ourselves and himself on his issue. I am, nonetheless, still determined to ask the House to proceed with this disallowance motion.

Question put and a division taken with the following result -

Ayes (16)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon E.R.J. Dermer

Hon N.D. Griffiths
Hon John Halden
Hon Helen Hodgson
Hon Norm Kelly

Hon Mark Nevill
Hon Ljiljanna Ravlich
Hon J.A. Scott
Hon Christine Sharp

Hon Tom Stephens
Hon Ken Travers
Hon Giz Watson
Hon Bob Thomas (*Teller*)

Noes (15)

Hon E.J. Charlton
Hon M.J. Criddle
Hon B.K. Donaldson
Hon Max Evans

Hon Peter Foss
Hon Ray Halligan
Hon Barry House
Hon N.F. Moore

Hon M.D. Nixon
Hon Simon O'Brien
Hon B.M. Scott
Hon Greg Smith

Hon W.N. Stretch
Hon Derrick Tomlinson
Hon Muriel Patterson
(*Teller*)

Pair

Hon Tom Helm

Hon Murray Montgomery

Question thus passed.

WORKERS' COMPENSATION AND REHABILITATION AMENDMENT BILL

Second Reading

Resumed from 31 March.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.25 pm]: For a number of reasons, I shall be much briefer than I originally intended. We have strong reservations about three clauses in the Bill. They demonstrate a misplaced Government policy direction. Although the Opposition will support the Bill, we will seek to defeat the three clauses in Committee. The Bill needs to be rectified and the emphasis changed. The Government needs to start to move away from its policies of effectively attacking the rights and interests of injured workers and their access to fair compensation. The system is being inadequately dealt with by the current Government. I will deal with the three clauses when we get to the Committee stage.

HON HELEN HODGSON (North Metropolitan) [3.26 pm]: The Australian Democrats also have reservations about the same three clauses which Hon Tom Stephens indicated are likely to cause problems when we get to the Committee stage. We agree with most of the issues that are raised in the Bill. We note that some of the amendments in the Bill will correct mistakes and oversights made by the Government when amending the law back in 1993.

Clause 14 is very important. It reinstates the ability of certain categories of injured workers to redeem their entitlements; that is, to receive a lump sum payment rather than a weekly payment. In 1993 the Government placed a restriction on injured workers who were entitled to redeem payments. That is one of the reasons that we are hearing stories about blow-outs in lump sum superannuation claims. What is happening is that instead of being able to make redemptions, insurance companies are using the so-called second gateway provisions to try to get rid of claims from their books. Therefore, it is extremely important that this measure is passed. It will alleviate a lot of pressure currently on our workers' compensation system.

We need time to allow these provisions to have their full impact and to see what effect they will have on common law claims. The Democrats will not support any moves to take away the right of injured persons to be looked after and compensated for the negligence of their employers. The fact that an accident occurs in the workplace is not of itself a good reason to say that the person who caused the accident should be exempted from his duties at common law.

Clause 18 also rectifies another of the 1993 oversights, which limited the definition of "dispute" for the purposes of the Act; specifically it did not include disputes between employers and insurers over whether the insurer had a liability to cover the claim. In 1994 the ruling in the case of the State Government Insurance Office v Ivoclar Pty Ltd was that these sorts of disputes are not covered by the legislation. That is another instance where the 1993 Bill was shown to have defects which now need to be corrected.

The provisions dealing with dependants of deceased workers being able to enter into a dispute concerning workers' compensation entitlements is a positive step. It will improve equity with the entitlements of dependants.

The Democrats cannot support three clauses, because we believe they strike at the heart of the issues of equity and fairness to the worker. The first deals with the capacity for work rather than whether the worker is wholly or partially recovered. Those terms are found to have different meanings at law. It is not appropriate to expect the worker to return to work until he has recovered. The second relates to medical panels and the powers given to them. The third is the definition of what a worker can have included in compensation and the technical terms used to define that. Again, those particular issues will be addressed in more detail at the Committee stage.

We have some reservations about the proposals to deal with lung related illnesses that arise out of the mining industry. Asbestosis, pneumosilicosis and other lung diseases are known to relate to the workplace. That is a fairly important issue in workers' compensation, particularly in Western Australia with the mesothelioma heritage from Wittenoom. Of the limited number of cases at common law that are being processed through the so-called first gateway - that is, where the extent of capacity is more than 30 per cent - the vast majority are asbestos related illnesses. A problem is occurring where we have two successive lung related illnesses and the current legislation allows for two claims. The belief is that the two illnesses may be related and, therefore, it may not be appropriate to allow two claims. Although I accept that principle, I am not sure that an equitable application of that principle is to say that there is no possible potential future claim.

There must be another way of dealing with it. If the worker's illness increases in severity so that it steps up the nature of the lung disease and the worker's incapacity is increased, it would be far fairer and more reasonable to say that the worker is entitled to some further amount but not necessarily to a full second claim. I have reservations about that particular issue. However, at this stage we are supporting the second reading of the Bill. I hope that the issues I have raised will be addressed in the Committee stage. I support the Bill.

HON J.A. SCOTT (South Metropolitan) [3.35 pm]: I, too, support the Bill, although I have similar concerns to those outlined by Hon Helen Hodgson. In addition, I am concerned about any moves towards cutting anyone, let alone injured workers, away from the common law. Any steps in that direction are an infringement of basic human rights. We are following a dangerous path in order to keep the insurance industry buoyant. The aim of the previous legislation was to reduce legal costs to allow better margins and, hopefully, to lower workers' compensation premiums.

Despite the huge windfalls that resulted from that legislation, insurance companies have indulged in high levels of competition. Instead of behaving sensibly, they have tried to undercut to the point where they are no longer able to maintain a proper service. We are now experiencing a further erosion of people's rights at common law to correct that. That is not right. Court costs are very high, but the previous legislation contributed to that problem. It was hastily and badly drafted and it affected the ability to make lump sum payments. That is being reintroduced and it is a good move. That is one of the reasons the gains achieved from people accessing the courts have evaporated.

We should ensure that when we debate legislation in this place we do not forget the aim of workers' compensation - it is for the benefit of injured workers, not insurance companies. While lower premiums may be a good secondary aim, it is not the principal purpose of workers' compensation.

The system is not currently working well. Many people have telephoned me about this legislation to tell me about their experiences, which have been harrowing. Workers have had difficulty getting initial payments and, when they are under incredible stress and strain, there is very little support. When they get to the point where they are supposed to be undergoing rehabilitation and preparing to re-enter the workforce they find the services provided are not equipping them for real jobs in the community. The \$7 000 or so they get to pay for these services has been frittered away. At the end of that time they are told they can move into a particular job. The problem is that they need to undertake a four year university course before they can do such a job. A single parent told me about such a situation and said that the job offered was unrealistic for that person to do. Other people are told they can return to a job that their private doctor has told them they cannot do because it involves lifting and that would cause the injury to resurface. One man and his wife were so depressed by his situation that the wife committed suicide and left him to cope with an 18 month old child.

This legislation is failing many people because it focuses too much on lower premiums and not on ensuring that injured people are adequately treated. They are one of the most vulnerable groups in our community. They have no job certainty and they are forced to face medical panels but are not allowed to have legal representation. Unskilled workers with no experience in that field are battling against very experienced insurance company agents in those disputes. That is totally unfair and unreasonable. The legislation should take that into account and not be principally concerned with administration. Of course, administration costs must be kept down, but if that leads to harassment of those who are injured and if it makes it difficult for them to get fair and just treatment, the program is a failure.

The previous legislation was unfair and some of the measures in this legislation will improve that, and I will support the relevant clauses. However, there are other clauses about which I am concerned. In particular, I am concerned

about the reference to "total or partial capacity for work" in place of "wholly or partially recovered". While we know that workers' compensation is about responding to loss of earning capacity, we must not lose sight of the fact that when people are injured through no fault of their own and are left permanently incapacitated, that makes their normal lifestyle difficult. I refer to lifting their children, getting in and out of their car and other things that we take for granted. We are not dealing only with loss of earning capacity but also with loss of lifestyle.

Another issue of concern relates to the definition of future pecuniary loss, which is substituted for future loss of earnings. I understand there are certain problems with future pecuniary loss being a new term and not meaning what the Minister intends it to mean when it is interpreted. Members should consider the case of people who move from a job which requires physical input and is reasonably highly paid but which they can no longer do and who must therefore take on a more lowly paid job. They lose not only wages but also superannuation benefits. I am worried about that change unless we ensure that things like losses in superannuation are also covered.

[Continued below.]

Sitting suspended from 3.45 to 4.00 pm

TIME FOR QUESTIONS WITHOUT NOTICE

Thursday, 2 April 1998

The PRESIDENT: It being 4.00 pm, and also a Thursday, we normally take questions at this time. However, this is not a normal Thursday sitting day. In accordance with Standing Order No 139 (b)(3), the Leader of the House or a Minister will need to move that questions be taken at this time, if this is the desired time, or at some other time this afternoon.

Hon N.F. MOORE: Is it necessary to formally interrupt the debate?

The PRESIDENT: No, the debate was interrupted.

Hon N.F. MOORE: I move -

That questions without notice be taken at this time until 4.30 pm.

Question put and passed.

[Questions without notice taken.]

WORKERS' COMPENSATION AND REHABILITATION AMENDMENT BILL

Second Reading

Resumed from an earlier stage of the sitting.

HON J.A. SCOTT (South Metropolitan) [4.36 pm]: I am concerned that there is a focus on reducing access to the common law by injured workers. I would like this House to look at the wider ramifications of this legislation; that is, if in the future we prevent people in other areas from accessing the common law, we will be eroding article 7 of the Universal Declaration of Human Rights. That article states that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection from discrimination in violation of this declaration and from any incitement to such discrimination. The previous legislation and this legislation have and will erode that right and I think we are moving in a very dangerous direction. I urge the Minister for Labour Relations to consider what he is doing, because if we do it in other areas, the people of this country will be second class citizens. Injured workers are one of the most vulnerable citizens groups that we could possibly have. I will be supporting the Bill but there are sections that I want changed.

HON PETER FOSS (East Metropolitan - Attorney General) [4.38 pm]: The remarks made by honourable members are interesting. There are things in the Bill which are of benefit to workers and also to employers and insurers. That is no accident. The Bill is intended to be a package which has measures which improve the overall scheme, not only from one point of view. I advise the House that it is a package and that if this House were to choose those parts that it feels should be left in and leave the other bits out, the Government's intention in the other House, on receipt of such an amended Bill, is to reject the Bill. It is not merely a matter of picking and choosing what is required; it is to accept the package as it is or to reject it. That will be the effect of amending the particular sections.

At this stage, I will deal only with the questions raised, which are not among the clauses which will be discussed during the Committee stages. Hon Liljanna Ravlich raised the question of the Workers' Compensation and Rehabilitation Commission's corporate performance indicators. There was only one occasion that that qualification

took place; it would be tabled in the House. I draw the attention of the Hon Liljanna Ravlich to the 26 November 1997 report of the Auditor General in which he stated that in his opinion the performance indicators are relevant to the objectives of the Workers' Compensation and Rehabilitation Commission. The indicators are appropriate for assisting users to assess the Commission's performance, and fairly represent the indicated performance for the year ended 30 June 1997, so the Auditor General agreed for the following year.

Most of the others relate to the ones that will come up with the sections in Committee. I thank members for their indications of support for the second reading of this Bill and will deal with their concerns with some of the clauses when we get to the Committee stage.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clauses 1 to 12 put and passed.

Clause 13: Section 61 amended -

Hon TOM STEPHENS: The Opposition has concerns about this clause. The capacity for work involves much broader non-medical considerations than that of recovery from an injury. The interplay of clauses 13 and 22 is part of the problem of ensuring that the new panel would be effectively making determinations on this. This provision introduces a test which we believe is inappropriate and would make it easier for employers to terminate weekly payments to workers who are yet to recover from their injuries. For that reason we will be opposing this clause.

Hon HELEN HODGSON: The Australian Democrats will be opposing this clause. We believe the amendment has the effect of lowering the thresholds which will make it easier for compensation payments to cease before the worker has actual rather than the notional capacity to return to work. People who are active in the workers' compensation field advise that it is a much simpler task to show a capacity for work than the current requirement of wholly or partially recovered. I believe that a worker should not have to return to work until he is recovered. That cuts out the risk of aggravating an injury that has not properly healed.

This proposal also fails to recognise that a similar injury can have a different impact on an individual because of his circumstances. For example, a person with a broken leg may be able to find a suitable form of redeployment, although he may not be wholly or partially recovered, whereas a person with a broken leg who is functionally illiterate and has limited training in any non-manual field may not have a suitable form of redeployment, and yet while he has the capacity for work, he may be forced back into the work force too early. We believe that the main objective should be the proper rehabilitation of the injured worker. It is not a matter of taking him off compensation. We think it needs to be based on the individual factors affecting the worker rather than just some theoretical standard stating when the worker may be ready to go back to work.

Hon PETER FOSS: A person could be recovered but not be capable of working. I do not think one could say that a person is capable of working if he is not recovered. If he is capable of working, perhaps he should. If a person's disability prevents him from working, then he is obviously not capable. I suggest Hon Helen Hodgson look at the wording and the logical extension of it because she has got it the wrong way around.

Clause put and a division taken with the following result -

Ayes (13)

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

Hon Ray Halligan
Hon Barry House
Hon N.F. Moore
Hon M.D. Nixon

Hon B.M. Scott
Hon Greg Smith
Hon W.N. Stretch

Hon Derrick Tomlinson
Hon Bruce Donaldson
(Teller)

Noes (14)

Hon Kim Chance
Hon J.A. Cowdell
Hon N.D. Griffiths
Hon John Halden

Hon Helen Hodgson
Hon Norm Kelly
Hon Mark Nevill
Hon Liljanna Ravlich

Hon J.A. Scott
Hon Christine Sharp
Hon Tom Stephens

Hon Ken Travers
Hon Giz Watson
Hon Ed Dermer (Teller)

Pairs

Hon Muriel Patterson
 Hon Murray Montgomery
 Hon Simon O'Brien

Hon Bob Thomas
 Hon Cheryl Davenport
 Hon Tom Helm

Clause thus negatived.

Clauses 14 to 21 put and passed.

Clause 22: Sections 84R, 84ZH, and 84ZR amended -

Hon LJILJANNA RAVLICH: The Australian Labor Party does not support this clause which provides for matters to be referred to a medical assessment panel.

Members on this side of the House oppose giving conciliation officers the right to flick cases across to medical assessment panels. I spoke during the second reading about the workload of conciliation officers and I made the point that it was not good enough and perhaps the Government is using this as a way out. Rather than putting on more conciliation officers, there will be fewer conciliation officers and these teams of medical experts will be built up.

There were many unanswered questions about who will fund these assessment panels. The fundamental issue is that my Labor colleagues and I do not believe that the medical assessment panels will work in the best interests of the injured worker. For that reason, we believe that medical assessment panels are dangerous and can be very intimidating. We believe that very large sections of workers will be adversely affected, and therefore cannot support this amendment.

Hon PETER FOSS: There is some misapprehension about the effect of this clause. During the second reading debate Hon Ljiljanna Ravlich indicated that it introduced medical assessment panels. Of course, medical assessment panels have existed for some time. I will give some figures on the number of referrals to medical assessment panels: In 1996-97, 66 workers were referred; in 1995-96, 54 workers; in 1994-95, 73 workers; and, in 1993-94, 24 workers. When a worker has a dispute and applies for conciliation, the worker does not have a choice of whether to go to a conciliation officer or a medical assessment panel. The process is that, when required under the Act, a conciliation officer, review officer or the compensation magistrate is to refer to a medical assessment panel a question as to the nature or extent of the disability, or whether the disability is permanent or temporary. The question is to be referred when there is a conflict of medical opinion.

One of the objectives of clause 22 is to introduce a discretion. It allows some choice for the dispute resolution bodies to refer or not to refer medical disputes to medical assessment panels. At the moment, once the situation arises the dispute must be referred. The intent is to reduce the number of medical disputes referred to medical assessment panels, rather than increase it. The panels are paid for by the directorate, and not the private sector. One of the great benefits of the panels is that there is no cost to the worker. Before 1994 workers had to pay between \$300 and \$400 from their own pockets to get a specialist's report to support their case.

The other problem was the practice of doctor shopping. There were well known insurers' doctors and well known insureds' doctors. When a dispute arose between the two, the matter went to legal hearings, which also involved considerable legal expense. This provision will enable a much cheaper and simpler process than that which was originally part of the litigation and adversary process.

Medical panels are empowered to make decisions on the nature or extent of disability only, which is their field of expertise. The amendment will not alter that role. In deciding the issue of a worker's capacity to work, doctors will not be required to consider the availability of jobs, which is an area outside their field of expertise. A worker's entitlement to weekly payments has always been based on his notional residual capacity to work, whether or not there is work for him. This amendment clarifies more accurately only that doctors should make their determination based on the worker's residual ability to work, and not just his recovery from injury.

Section 145D of the Act requires the panels to act in accordance with good conscience, without regard to technicalities or legal forms. That is consistent with natural justice. Decisions of the panel are found, final and binding on the medical issues within their purview only. If medical panel determinations could be set aside, the review officer or compensation magistrate would have to adjudicate between conflicting medical evidence submitted by the parties. Medical panels were introduced to enable medical disputation to be determined with expertise and precision not available to non-medically qualified persons, and they have been very successful in achieving this aim. If anything, the changes in clause 22 may reduce the number and length of time matters take to be resolved, and may decrease the need to come to the directorate more than once.

The number of disputes dealt with by the directorate has increased dramatically, but this is because it is so easily accessible. There may be increased costs if solicitors become involved, as they may do in certain situations. This increase in demand appears to vindicate the system.

Hon HELEN HODGSON: The Australian Democrats also oppose this clause, because we believe the amendment places too much emphasis on the physical condition of the injured worker and, once again, does not consider sociological and psychological factors that are important in rehabilitation and return to the work force. The Democrats are also concerned that there is no avenue of appeal against a medical panel decision, and the worker is not represented on the panel. We are well aware that medical assessment panels currently exist and that they have a particular role to decide certain medical questions.

We are also aware of the recommendations of both the Chapman report and the Guthrie report in respect of medical tribunals. However, it is important to note that those reports recommended that the medical tribunals be limited to medical conditions. The proposal before the Committee extends beyond the determination of medical conditions, and provides that this procedure must be undertaken.

Also, the worker has no right to representation before a panel, and that is considered to be inherently unfair. I acknowledge the Attorney General's comments about cost, but insurers deal with these matters every day and they are experienced in these issues. The worker who fronts up to the panel without representation can feel extraordinarily intimidated. I know of a number of cases in which people have accepted payments, believing they have no choice, only to find when they consult their lawyer that other options were available. By then, it is far too late. The insurers are familiar with processes and legalities, and they have developed expertise and access to experts in the area.

The clause also fails to recognise the inherent imbalance of power in workers' compensation matters, between the powerful insurers and the workers. I also note some contradiction in government legislation in this area; that is, the use of legal representation is encouraged in some tribunals, but legislation relating to other tribunals deliberately limits the use of legal representation. The Democrats are concerned that the decision of the panel cannot be appealed against and, therefore, there is no avenue for natural justice. On that basis the Democrats do not support the clause.

Hon PETER FOSS: The member said there is a difference between a worker, on one side, and an experienced insurer, on the other. However, the insurer is not present. It must be understood that this is not an adversarial process, in which one person argues one side and the worker argues another. The worker is present to have his incapacity assessed. The people who are dealing with him are not on one side or the other. It is an independent panel of doctors doing just what doctors are expected to do; that is, assess the worker's incapacity. Striking out this amendment will not change the system of medical panels, and there is a problem with the old system. The worker would visit his doctor, and would then be sent to the other party's doctor. Two doctors would look at the problem. Then the worker would go to the workers' compensation board, and there could be conflicting evidence from those two doctors because they could see their role as representing one or other client.

Hon Ljiljanna Ravlich interjected.

Hon PETER FOSS: I do not know why the member says that, because that has not been the experience.

Hon Ljiljanna Ravlich: You obviously have not had the experience.

Hon PETER FOSS: I am surprised to hear that. One of the reasons that some doctors represented insurers and some represented workers was that the character of the doctors soon indicated their attitude to the issue. I am not saying that it was a case of he who pays the piper, chooses the tune, but that people would choose the doctor who had the right attitude for them. This panel of doctors has been appointed because of their particular characteristic that they are not seen as being either claimant or respondent doctors.

Hon Ljiljanna Ravlich: Will there be insurance doctors on the panel or not?

Hon PETER FOSS: If this clause is struck out, medical panels will still operate. The member has the wrong impression about the effect of opposing this clause. This legislation does not introduce medical assessment panels. They already exist and they will continue to function.

Hon Ljiljanna Ravlich interjected.

Hon PETER FOSS: It will certainly pick up some of them. The important point is that the panels will still do that job. If the member does not like the idea of medical panels, striking out this clause will not change the situation.

Hon Helen Hodgson: They need to be limited to medical questions.

Hon PETER FOSS: They are limited to medical questions.

Hon Ljiljanna Ravlich: They are not. Clause 13 does not involve a medical question.

The CHAIRMAN: Order! Members, this is not question and answer time. The Attorney General might like to direct his comments to the Chair.

Hon PETER FOSS: The amendment refers to the nature or extent of a disability, whether a disability is permanent or temporary, or a worker's capacity for work, for determination by a medical assessment panel. They are all medical questions, and those questions have always been determined by doctors. The somewhat futile exercise that used to exist no longer applies. Members will not make the slightest difference to the scheme of things by opposing this clause. This amendment will enable doctors to see with more clarity what they are doing. There will continue to be medical questions.

It has been a very valuable experience. I used to practice in the workers' compensation area - no points for guessing correctly for which side I acted - but I could see the futility of determining the medical questions. We had a list of doctors to whom we would send people, and they were all insurance doctors. There were degrees of doctors for workers. If certain workers ended up with a particular doctor, we would immediately start to look at their case because we thought that if they had to go to that doctor to get an opinion, there must be something questionable about the genuineness of their medical condition. On the other hand, if they had to be referred to a particular insurance doctor, we thought they must be scraping the bottom of the barrel. There were degrees of doctors, and we could almost pick whether it was a genuine dispute by the doctor to whom the person was sent. It was just a matter of someone trying to offset the situation. This amendment will remove the futility of knowing almost immediately that if we send a worker to a particular doctor, we will get a certain result. There is a huge number of doctors in between who are not seen as being either claimants' or defendants' doctors. The idea of the medical panel is to get away from the situation where we have two totally antipathetic ideas. The case will be put to a panel of doctors, who will act almost as *amicus curiae* to advise the court on medical matters. That concept will remain; the only change will be to add the words proposed in clause 22.

Some of the comments that have been made by members opposite are irrelevant to this amendment. This amendment will address only medical questions. It is an important amendment. Even though it may reduce the amount of work available for lawyers, I happen to be one of those lawyers who believes that there is enough work to be done by lawyers and we do not need to create artificial disputes; and we were getting artificial disputes within the area of workers' compensation. We have had a worthwhile reform in this part of the Act, where this matter ceased to be a matter for the litigious system and became a matter tried by another tribunal in an informal way. It is not an adversarial system. The only person who has an opportunity to speak to the doctor is the claimant. The respondent is not even present.

Hon J.A. SCOTT: My objections to this clause are somewhat different. This clause will change the focus of a doctor from saying, "This person is incapacitated by his injury to a certain degree" - that is, his physical wellbeing - to a position where the doctor is saying, "I think this person can carry out a certain job to a certain degree." What does a doctor know about these jobs? I have worked on an oil rig. If the worker were a derrick man on an oil rig, would a doctor know the difference between the conditions on an old oil rig that had a standing derrick where the derrick man would dangle on a little rope and have to push in the drill pipe and quickly slam it on in a very physical, dangerous way, and the conditions on a more modern oil rig where he would sit in an office and pull a few levers? Doctors would not know that.

This clause is saying that rather than look at a person's injury, the doctor should look at his ability to carry out a certain job. That is a nonsense. Doctors will not know how to do that unless they are trained. The problem with this clause is that it does not address the area in which doctors have expertise. It completely misses the point, and it should not go ahead unless some people are put on that panel who have expertise in industry and in what happens in the workplace. That is the first reason I do not like this clause.

The second reason is that the Minister is missing the point in saying that if we defeat these clauses, the Government will withdraw this Bill in the other place because it will not be any good. The reality is that the problem has arisen because of the weekly payments for common law claims. The amount of weekly payments and the number of common law claims have increased. The legal costs have reduced considerably, as was the Government's intention. The answer is in the redemptions. Since this legislation came into effect in 1993-94, redemptions have reduced from a high of \$26.7m to \$6.8m. However, at the same time weekly payments have increased from \$85.1m to \$108m. That is where the big increase can be found. The common law claims have increased from \$73.9m to \$86.4m as a direct result of the redemptions. The Government cannot afford to throw out this Bill, because that is where the problem lies. It is no good threatening us with that.

Hon PETER FOSS: I want to correct some of the comments made by Hon Jim Scott. What is suggested by this amendment was decided by the Chamber on the last vote, because all that this clause will add is the words "a worker's

capacity for work". If the Chamber votes against this clause, the only change will be that we do not add those words. The obvious effect of the Chamber's making the previous decision is that it must make this decision. The points that have been raised by way of objection are in no way answered by striking out this clause, because the clause will remain exactly as it is, but without the words "a worker's capacity for work". I will not oppose this amendment, because I believe the decision of the Chamber requires this amendment to be made; the question has virtually been decided. Therefore, some of the criticisms that have been made are misguided.

Clause put and negatived.

Clauses 23 to 31 put and passed.

Clause 32: Sections 93A and 93D amended and transitional provisions -

Hon KIM CHANCE: It is claimed that this amendment involves a semantic argument, but it is more than that. When we engage in semantics of a legal nature with the Attorney General, it is hard to predict the extent of the debate and I always enter them with some trepidation.

A member interjected

Hon KIM CHANCE: No. Not very often as I am only a poor, broken down cocky!

The old standard for coalition conservative Governments Australia-wide again raises its ugly head in clause 32. This amendment sets out to further reduce the rights of injured workers to take common law action in seeking redress for injuries and their loss of future income. At present, a threshold of approximately \$104 800 exists for the determination of "future pecuniary loss" before the claim has standing. The amendment will make an apparently subtle change to that wording. It will read not as "future pecuniary loss", but "future loss of earnings". Why is that change proposed?

Since Parliament enacted the Workers' Compensation and Rehabilitation Amendment Act, which was assented to on 20 December 1993, the number of common law claims has reduced resulting in a deterioration in the safety standards applied by employers. I simply remind members of the urgency motion in this place on Tuesday of this week relating to mine safety as a burning illustration of deteriorating safety standards resulting in increased fatalities in the mining industry in recent years, particularly and significantly after December 1993.

One possible reason can be found for this apparently subtle change; namely, that the proposed new definition will make it more difficult for an injured worker to initiate action under common law to gain a damages settlement, or even to enter into litigation regarding such settlement. The Act currently allows items such as medical expenses, superannuation and other benefits to be used to calculate the amount of loss which may bring the worker over the standing threshold, and thus enable him or her to pursue common law damages claims. This amendment will mean that medical costs will no longer be included in the threshold amount, which is about \$104 800, therefore the gates are being closed on an injured worker's access to remedy under common law.

Most workers' compensation beneficiaries suffer loss above the amount they can obtain under workers' compensation when all their expenses and losses are taken into account. This clause represents a further narrowing of access to compensation for loss the injured worker suffers by shutting out access to workers' compensation. The Government's reason for the proposed change may at first reading seem obscure. Members will forgive me for being somewhat alerted by the change, notwithstanding its obscurity. I was immediately sceptical that the Government may have been in any way altruistic towards injured workers in this change.

What does the proposed change mean? I sought guidance first from the *Pocket Oxford Dictionary*, which was the only one available in my office at the time, between the two definitions. "Future pecuniary loss", the current position, means future loss of, or in, money. In other words, it is a fairly broad concept which can encompass a wide range of financial considerations, only one of which might be earnings. The proposed new terminology of "earnings" is a narrower definition than "pecuniary". Therefore, we will have a funnelling effect through the choice of the proposed new words.

"Future loss of earnings" means the future loss of reward for work. That is a much narrower concept. A person's work-related disability might impinge on future loss of money from a range of sources which is much wider than only future loss of reward from work. For example, it will involve an inability to gain from superannuation.

Hon Peter Foss: I think we accept what you are saying.

Hon KIM CHANCE: If the Government accepts what I am saying, I will mention some examples without expanding on them - my time is getting short anyway. The amendment will cut off superannuation and services otherwise available to injured workers, such as travel entitlements, use of a company car and a range of issues covered under

salary packages with school fees, health cost cover, world club membership, The Western Australian Club membership -

Hon Peter Foss: You could not get into The Western Australian Club!

Hon KIM CHANCE: Broken down cockies cannot get in, but a range of other people can!

Several members interjected.

The CHAIRMAN: Order! The member is trying to gather his thoughts.

Hon KIM CHANCE: I will not mention in its entirety the extensive list of benefits which could be defined as "pecuniary", but not "earnings". I have made my point. The current meaning is a broader term than the proposed meaning. The effect of the adoption of the narrower meaning of the words is to deny more people access to remedy under common law.

Hon J.A. SCOTT: Does this loss, as proposed by the new wording, include superannuation?

Hon PETER FOSS: The problem is that workers would not cease to receive superannuation, so it is hardly a loss under either of the wordings under discussion.

Hon J.A. Scott: It depends upon how much money one receives from certain jobs.

Hon PETER FOSS: I suppose it could be if one were sacked and lost one's job. It all depends on the facts of the case. Potentially, it may apply, but it would be incorrect to categorically answer yes or no. One would need to look at the way it will be worked out in the definition.

Importantly, the intention is to have a narrower field. It was always intended to keep the threshold within the areas currently in workers' compensation. Some of the examples posed by Hon Kim Chance are not encompassed in workers' compensation, and this was the intention when the legislation was originally drafted. We are simply trying to take us back to the original intention, which is not the way it has been interpreted. This is a response to that situation. Rather than trying to find out what is in and out, I accept the basic premise that the wording we seek to substitute is a subset of the provision currently in place. That is the intent. I do not want to go into any detail about what is included.

Hon HELEN HODGSON: I accept what the Minister has just said about this being the original intention of the legislation when it was amended back in 1983. However, I hasten to point out that as is quite common under government policy and the interpretation by Parliament of that policy, we are now being asked to reconsider this matter. It seems that this Parliament does not agree that the policy suggested in 1993 is appropriate at this time. I cannot see what was intended in 1993 because we are now considering the situation as it was in 1997. Hon Kim Chance has listed a number of matters that could be relevant in determining the difference between loss of earnings and pecuniary losses. Given that, we do not intend to support this clause.

Hon KIM CHANCE: I wish to make one point very clear about the class of workers who have moved some of their earnings out of the traditional bracket and into other pecuniary rewards under the auspices of salary packaging arrangements. I know I mentioned it before, but I do not think I gave it sufficient emphasis. We have seen a marked change in the workplace. Sometimes with the active encouragement of the State Government, people have sought to minimise their tax and other responsibilities by entering into such arrangements.

I am not a great fan of these arrangements. In fact, on a number of occasions, I have written to the Deputy Commissioner of Taxation to try to get him to close these loopholes. Nonetheless, the State Government has actively encouraged its employees to enter into such arrangements; in particular, the Health Department where the employees have the advantage of being able to use the freedom from the fringe benefits tax in relation to public beneficiary institutions to compound what I regard as illicit gains.

I am not here to talk on the tax issues, but to make the point that as a result of salary packaging arrangements, the traditional notion of earnings has shifted into the broader definition of pecuniary gains; for example, to include club membership, school fees and negated car lease costs. We must note that that shift has occurred. If we were to adopt the wording proposed by the Government and not vote against this clause, people, having made that change with government encouragement, would be put in the position of facing some risk about their future capacity to gain standing in a common law damages case.

Hon PETER FOSS: I recognise also that some people's workplace agreements go the other way. Things which would never have been capable of being grouped in weekly earnings are now there. It is not all one way. Like everything, we must look at a whole package to see what the result has been.

I will correct one other statement; that is, there has been a big drop in commonwealth claims. Immediately after the passage of the legislation there was a major increase in the commonwealth claims which, in effect, were outstanding claims. Therefore, the number of claims increased significantly in the first year.

Hon Kim Chance: Were they all Kevin Prince's clients?

Hon PETER FOSS: I do not know whose they were. Then there was a big drop; however, the number has gone back up again. The net result is an increase. Members may have seen some reports in the newspaper recently about the effect of this in Western Australia, because it is the only State which has the second gateway. It is having a very significant impact on workers' compensation premiums.

We cannot ignore the fact that workers' compensation is a social measure paid for by the community. It does not come off the money tree. It is paid for by a very specific part of the community - employers with insurance premiums. Obviously insurance premiums are under a lot of pressure in Western Australia, far more than they are anywhere else.

Hon Kim Chance: Justice comes at a cost

Hon PETER FOSS: If we do not do something about it, it will become a significant cost to our whole business area. It must be taken in the overall account of what is available for workers in terms of pay, the number of jobs, the competitiveness of the Western Australian industry compared with that in the remainder of Australia, and with our competitiveness overseas.

I cannot say, "This is the number of jobs that will be put out by the extra cost on Western Australian industry." It is like ecology: We cannot have an effect on one area, without its working its way through the whole ecosystem. It is not free money. It is not money off the tree. It is a matter of concern to the Government. I raised this within the question of the package because it must be addressed by this Government. My firm belief is that if this package is rejected, when we see it back here again it is quite likely that it will have something attached to it which will deal with the second gateway. We believe this is a fair package which can be understood by the other people involved. If it is knocked back now, another deal is likely to be presented. Obviously the members here are resolved against this change. We seek the support of the Committee. I think the best thing to do is to take a vote now.

Clause put and a division held, with the Chairman casting his vote with the noes -

Ayes (12)

Hon E.J. Charlton
Hon M.J. Criddle
Hon Peter Foss
Hon Ray Halligan

Hon Barry House
Hon N.F. Moore
Hon M.D. Nixon

Hon B.M. Scott
Hon Greg Smith
Hon W.N. Stretch

Hon Derrick Tomlinson
Hon B.K. Donaldson
(Teller)

Noes (13)

Hon Kim Chance
Hon J.A. Cowdell
Hon N.D. Griffiths
Hon John Halden

Hon Helen Hodgson
Hon Norm Kelly
Hon Ljiljanna Ravlich

Hon J.A. Scott
Hon Christine Sharp
Hon Tom Stephens

Hon Ken Travers
Hon Giz Watson
Hon E.R.J. Dermer (Teller)

Pairs

Hon Muriel Patterson
Hon Murray Montgomery
Hon Simon O'Brien

Hon Bob Thomas
Hon Cheryl Davenport
Hon Tom Helm

Clause thus negatived.

Clauses 33 to 61 put and passed.

Schedule 1 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 Hon Peter Foss (Attorney General), and returned to the Assembly with amendments.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.30 pm]: I move -

That the House do now adjourn.

Government Expenditure on Private Club Memberships - Adjournment Debate

HON LJILJANNA RAVLICH (East Metropolitan) [5.31 pm]: When I took on the role of opposition spokesperson for public sector management I thought it would be boring. I can assure members that the past few days have not been boring. The excitement started on Tuesday, 31 March when I received a copy of the Supplementary Notice Paper in which I was surprised by the responses to questions about government expenditure on private club memberships that I addressed to Ministers in this place.

I thought that payment of fees for professional associations was a legitimate expenditure of government funds. However, some expenditure did not reflect good use of taxpayers' money. For example, the Peel Development Commission paid Mr John Styants' membership fee for the Mandurah Football Club; the Heritage Council paid the membership fees of seven employees to the Body Club at a cost of \$1 365 to the taxpayers. I do not know why the Heritage Council would do this for its employees, yet no other government agency has seen the need for this.

The example that I find most offensive is the expenditure by the Albany Port Authority on membership fees to the WA Club for its executive and members at a cost of \$600 each. I might accept that this was an oversight on the part of the authority. However, for the Minister for Transport to justify that expenditure on the basis that the authority did not have access to a conference facility is rich! I suspect that given the rate of downsizing in the Public Service one could find a room in any state government agency in which to conduct a meeting. I understand this type of arrangement is under review. It is unforgivable for the Minister for Transport, who privatises anything he can get his hands on, to use this logic as a justification for blatantly spending taxpayers' money.

In response to my question to the Minister for Heritage concerning private health club membership for employees of the Heritage Council, Mr Kierath said that he supported team building. Unless Mr Kierath has gone through some sort of personality change I find that difficult to believe. If it is true, I am heartened by the fact that he is moving in this positive direction. I am concerned as a taxpayer in this State that some of my taxes are being used in this way. Mr Kierath has stated that these memberships will be reviewed following their expiration in July. An assessment will be made on the value for money provided by private health club memberships. I will be keen to read that report, particularly the indicators that will be used to assess productivity increases as a result of public servants going to a gym. As they visit the gym in their own time I cannot understand why their memberships are being paid by the Heritage Council. Surely they should pay their own membership fees!

I have a further concern about the Heritage Council. I received a telephone call from someone who claimed that more deep seated problems existed with the operations of the Heritage Council, and allegations were made about a conference that the council held in Broome at a cost of \$15 000. I will look into that issue. These areas concern me. On the one hand the Government is trying to cut costs and reduce staff numbers -

Hon Ken Travers: It is sacking workers.

Hon LJILJANNA RAVLICH: Yes, and it is closing schools, and hospital waiting lists are increasing. People in the community are doing it hard. On the other hand the Government is involved in this senseless waste of taxpayers' money. As a member of Parliament I do not want to cop this waste, and I do not expect anyone else in the community to cop it either.

AlintaGas Employees - Adjournment Debate

HON HELEN HODGSON (North Metropolitan) [5.37 pm]: This urgent matter relating to Ministers' responsibilities to this place came to my attention yesterday.

Members might be aware that for some months I have been concerned with the rights of AlintaGas employees affected by the privatisation of the Dampier to Bunbury pipeline. Since June 1997 I have asked seven questions in this place and spoken in the adjournment debate on the issue. The problem that arose yesterday concerns an answer to a question on notice that is inconsistent with information that is now in the public arena.

On 22 October 1997 I placed a question on notice - this was after asking the same question without notice and being requested to place it on notice - about the superannuation entitlements of employees of AlintaGas at the time of the privatisation and the discount that applied under the Government Employees Superannuation Board rules. On 9 January 1998 the Government advised AlintaGas employees that it had revised its position; on 12 January it advised the union. I have no difficulty with the Government's changing its position in this case so that some justice is done. I hope that in some small measure it is because I pursued this matter.

However, on 12 February 1998 while we were still in recess I received a written response to my question on notice with a covering letter.

The PRESIDENT: Who from?

Hon HELEN HODGSON: From the Minister for Energy giving me information which at that stage was inconsistent with what employees had been advised a month earlier. That same answer was given in this place on 10 March 1998 when Parliament resumed after the summer recess. Therefore, information provided on 10 March is inconsistent with information publicly available. Yesterday I asked why that was the case. In reply the Leader of the House said that the answer was based on the information available and the policy as at 22 October, when I placed the question on notice. He indicated that the Minister would provide a further response in writing to me about why that approach was taken.

I am raising it in this House because this is the right place in which the explanation should be given. It is not a private matter between me and the Minister for Energy. However, within the processes and entitlements of this House, members should receive accurate answers to their questions. Therefore, I ask the Leader of the House, as the Minister representing the Minister for Energy, to raise the concerns I expressed in this adjournment debate. I will ask him another question next week to enable the Minister to explain to this House why he chose to provide a response to a question in the Legislative Council, based on information that was several months out of date at the time. I ask the Leader of the House to convey this to the Minister so that the relevant officers can provide the necessary details to clear up the matter fairly promptly.

Private Prisons - Adjournment Debate

HON GIZ WATSON (North Metropolitan) [5.40 pm]: I refer to recent speculation that the Government is considering operating private prisons in this State. That is an appalling prospect and I will outline why.

Hon N.F. Moore: Perhaps you can tell us over dinner.

Hon Ljiljanna Ravlich: We do not get many chances to speak.

Hon N.F. Moore: It is just a whingeing occasion.

Hon GIZ WATSON: I might do that as well. The prison system in Western Australia is in an appalling state. Prisons are subject to significant overcrowding which means inmates and prison staff are having massive problems. Already seven deaths in custody have occurred this year, prisoner deaths usually being regarded as a barometer for prison conditions. Furthermore, these figures do not reflect failed attempts at suicide and other efforts to cause self-harm. Many reports show that the prison environment is overwhelmed by fear, brutality, despair and violence, indicating that this Government is failing tragically in its duty of care to prisoners.

A culture ensures that the savage reality of life "inside" is never disclosed. This is a system plagued by a cancer fed from the top. I understand this "top" to be run by a so-called "purple circle" of Ministry of Justice staff whose reportedly intimidating behaviour has seen the people involved referred to as the untouchables. A recent newspaper article by Anne Burns dated 19 March read -

The prisons chief who investigated a powerful cartel of jail superintendents told a Legislative Council inquiry yesterday that he had been subjected to a weekly campaign of terror, including threats of death, violence and imprisonment.

Justice Ministry director of standards Peter Moore said he had been squeezed out of his job as director of prison operations after running foul of the cartel.

This is an appalling situation in our State. Since this conservative Government created the super Justice Ministry, the prison system has become out of control as the lineup of the justice chiefs and Ministers change faces. The Attorney General is acting in his usual state of denial. Questions in this place have not met with satisfactory answers; they have met with fabrications.

Only in recent days has the Government admitted that problems exist, by outlining its intention to solve them by

possibly operating private prisons. This is in the face of startling evidence that the death rate in private prisons already in existence in Australia is staggering. A report on Victorian private prisons reads -

Both Arthur Gorrie and June, *(both Victorian prisons)* have been plagued by high levels of internal violence, riots, insufficient staffing levels and contract breaches. There is a conflict of interest between society's goals for rehabilitation of prisoners and safety and the private prison corporation's desire to increase profits.

The Government's proposal to build new gaols to house anticipated increased prisoner numbers is contrary to the policy of Greens (WA). As Greens, my colleagues and I advocate positive steps being taken by this resource rich Government to reduce the number of offenders and prisoners in this State. It must look critically at alternatives to imprisonment. More than that, it must examine the causes, conditions and structures which form the breeding grounds for the overwhelming majority of crimes, many of which I believe are due to unemployment.

The Greens believe it should be the central goal of economic policy of every Government to ensure that employment is available for anyone who wants to work, by providing people with the relevant skills through fair access to high quality educational opportunities. That is important particularly for young people, for whom there is still a 1:5 unemployment rate. We all know this is morally, socially and even economically unacceptable.

The Government's talk of increasing prison populations and building prisons to house a further 750 prisoners, indicates that it is treating this social malaise as inevitable. I have done a small calculation based on the maintenance cost of \$122 a day per prisoner. Annually the cost to the State would be about \$33m, which could provide many jobs on the outside and a wealthier, happier and healthier society in general.

Rather than addressing the real issues and the causes, we are shutting people up in untenable numbers in intolerable conditions. The Government is proposing to build bigger and more efficient institutions to quell the troublesome masses who, for the large part, lack the wherewithal to lead productive or at least compliant lives or to sustain reasonable standards of living. I will make this brief because I understand another member wishes to speak.

Hon N.F. Moore: You can take the whole time as long as you choose the menu.

Hon GIZ WATSON: The menu?

Hon N.F. Moore: If we do not finish at six o'clock we will come back at 7.30 pm.

Hon GIZ WATSON: Before the Government allows profits to be made out of the misery of others, it has a moral and ethical responsibility to ask itself a number of questions: Can it philosophically justify profit from punishment? As the State has imposed a sentence, is it not the State's responsibility as a duty of care to provide and oversee a system that fulfils its role as a corrective service? Merely locking up people in the most deplorable of conditions and minimalising rehabilitative services will not change people. In fact, it will aggravate the situation. One death in every two weeks in Western Australian prisons is testimony to that. What about the concept of a two-tiered system where the so-called better off prisoners - we have had our share of those in recent years - are feted in private prisons while poor inmates languish in intolerable conditions?

There is blatant reference to preferential treatment in the Kennedy report, which was the basis of the first privatisation of corrective services in Australia. The report states that it is inhumane and inappropriate to certain classes of inmates, particularly those involved in so-called white collar crimes, to be placed in the existing gaol system. What a joke. There are those of us who understand that a single action of white collar crime can equate to greater corruption, more contrived deviance and greater guilt than the crimes of most of the rest of the prison population combined. It is nothing short of a farce to punish people less, simply because they are rich.

Scarborough Senior High School - Adjournment Debate

HON E.R.J. DERMER (North Metropolitan) [5.50 pm] Mr President, you will recall my earlier reports of the work of the Scarborough Senior High School. I do have new aspects of that work which I would like to share with the House this evening. The work of the Scarborough Senior High School entails very special educational qualities. The prime importance of this school is providing quality education to its students. This of course pertains to current students and also to future students, many of whom are in the burgeoning local primary schools which are the contributory schools for the Scarborough Senior High School. However, the Scarborough Senior High School is much more than an excellent educational institution.

The Scarborough Senior High School is a community institution. Its importance extends beyond the quality of education it provides to its students and into many facets of life in the local community. The school's local community has had a close relationship with it since its inception in 1959. The history of the Scarborough Senior High School is the history of the Scarborough community. As the two have grown together their relationship has

grown. That relationship between the Scarborough Senior High School and the community which it serves shows excellent examples of cooperation in our society. One example is the funding undertaken by the parents and citizens' association for the school, which in 1972 resulted in the provision of a 25 metre pool for the school. The local community got right behind that project. The local community directly contributed to making possible that excellent pool facility for the school. Correspondingly the facilities of the school are shared with the community. That spirit of cooperation prevails in that community for which the Scarborough Senior High School is a central point. The pool is shared with the burgeoning local primary schools which have great potential. Some have a steady number of students and others have a clearly increasing number who would appreciate the Scarborough Senior High School's future. If we can ensure the future of the school, those primary school students will have an excellent educational opportunity before them. They have a taste of that because their schools work closely in cooperation with the Scarborough Senior High School, as do so many other components of that community.

I appreciate the lateness of the hour, Mr President, especially in relation to our early start this morning, but it is important that I share with the House a small sample of the many facets of the close and integral relationship between the Scarborough Senior High School and its community. The Scarborough basketball club has direct access to the facilities of the school. Few causes in our community could be as important as the Red Cross blood donation. Those people organising that blood donation facility have access to the school's facilities, which advances that very important cause. The local council has access to the school for regular council elections. The very democratic nature of that community and how it expresses its will depends on its access to the Scarborough Senior High School. That is facilitated by the Scarborough Senior High School cooperating with the local council. The Floreat Calisthenics Club, cricket clubs, Scarborough churches and other religious groups, and recently the religious denomination associated with that well known evangelist Billy Graham, all organise functions at the Scarborough Senior High School. The list goes on and on.

These various facets of the local community in the integral, positive, cooperative relationship with the Scarborough Senior High School are many and varied. So many groups in that community have a vital relationship with the Scarborough Senior High School, and not only groups in the community. The Scarborough Senior High School is seen by individuals as an important institution. Its grounds are beautiful, as I have had occasion to relate to the House before. Many residents take advantage of the Scarborough Senior High School grounds for such pleasant and aesthetic exercises as walking their dogs or just enjoying its ambience.

The Scarborough Senior High School puts first its excellent educational performance, and it succeeds. It has shown a capacity for great flexibility in pursuing its desperate struggle with the Minister for Education to ensure continuity of that excellence in educational service. The staff of the Scarborough Senior High School are sensible and quite pragmatic when those qualities are required. For example, the Scarborough Senior High School has a good relationship with the Karrinyup shopping centre. There is cooperation for the best use of facilities.

The school's lowest demand for parking, during the Christmas break, coincides with the greatest demand at the shopping centre. The school has an excellent relationship with the shopping centre and obtains a financial contribution for the use of its parking facilities. That is the best use of resources as a result of sensible cooperation.

Hon Derrick Tomlinson interjected.

Hon E.R.J. DERMER: It is sad to reflect on the need for schools to exercise this wisdom to supplement their funding. That illustrates inadequate funding from the State. However, the school struggles on in its great work.

In every respect, Scarborough Senior High School is a community institution. Its relationship with the community is rich and multi-faceted. It is built on the principles of cooperation and goodwill. That relationship began at the inception of the school and through, the rich history of the school as an institution in the community, it has continued to grow.

Several members interjected.

Hon E.R.J. DERMER: I return to the question of the quality of education provided by the high school. Education is more than literacy and numeracy; it is more than academic pursuits. An important part of education for those students is its relationship with the community. The students are part of the school and the community is part of the school. In these many facets, the school and the community work together. That is an essential part of the education of those students to prepare them for life as good citizens and contributors to the local community. I have seen examples of generation after generation of people who have graduated from the school and who are making a contribution to the community.

When the economic rationalists, the bean counters, the Minister and his cohorts decide to make money by selling that school, they should seriously evaluate not only the real estate but also the intrinsic value of the education and the relationship between the school and the community. Each facet of that relationship, where the school provides

practical assistance to the community, should also be evaluated. That would produce a true accounting on which to base the decision. I again call on the Minister to reconsider his ill-founded intention to close the school and to account for that need and those resources as they are being used by the community.

McDonalds' Hamburgers and Coca-Cola - Adjournment Debate

HON DERRICK TOMLINSON (East Metropolitan) [5.59 pm]: I cannot leave without drawing members' attention to the nutritional value of McDonalds' takeaway hamburgers, because the dining room is closed this evening. If I speak beyond 6.00 pm, we will be compelled to return at 7.30 pm, and it will be increasingly important for members to find something to eat outside this place. McDonalds' hamburgers are known worldwide for their nutritional value. I strongly recommend that members also obtain for themselves a Coca-Cola, because the bar is also closed. Mr President, it is with great pleasure that I draw your attention to the fact that it is now 6.00 pm.

Question put and passed.

House adjourned at 6.00 pm

QUESTIONS ON NOTICE

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

(FOR FIRST SITTING ON WEDNESDAY)

(Questions for second sitting commence on p 1255.)

BOAT REGISTRATION FEES

1251. Hon J.A. COWDELL to the Minister for Transport:

I refer the minister to his answer on October 23, 1997 to my question without notice about boat registration fees -

- (1) Why has the largest increase been applied to the owners of the smallest boats?
- (2) How much does the Government receive in registration fees from each class of boat?
- (3) How much does the Government spend on services for each class of boat?
- (4) How much do commercial boat owners pay in registration fees?

Hon E.J. CHARLTON replied:

- (1) The same annual percentage increase was applied to all vessels, regardless of length. The increases were 28 per cent in the first year and 22 per cent in the second year. In accordance with normal practice, the figures resulting from a percentage increase are rounded to the nearest dollar.
- (2) The total revenue for transfers, new registrations and renewals for the 1996/97 financial year was \$2.749m. Although revenue figures are not readily available for each of the respective length categories, indicative revenue figures are as follows:

	Fees received in last financial year 1996/97
0-4.99m	1 302 000
5-9.99m	1 251 000
10-19.99m	193 000
over 20m	3 000
	2 749 000

- (3) Expenditure on marine safety services and infrastructure cannot be allocated against each of the length categories of vessel.
- (4) Commercial vessels are not required to be registered, but are required to pay survey fees and conservancy dues.

GOOMALLING RAILWAY YARD DERAILMENT

1258. Hon BOB THOMAS to the Minister for Transport:

- (1) What was the cause of the recent derailment in the Goomalling railway yard?
- (2) What maintenance had been carried out on the points in the previous 12 months?
- (3) During that time had there been any reports of safe working problems with the points?

Hon E.J. CHARLTON replied:

- (1) Westrail does not have any record of a recent derailment at the Goomalling railway yard. The last recorded derailment at this yard was in October 1991.
- (2)-(3) Not applicable.

LOCOMOTIVE LW276 - REVENUE EARNING HOURS

1259. Hon BOB THOMAS to the Minister for Transport:

- (1) How long was locomotive LW276 in revenue earning service?
- (2) How many revenue earning hours was it in service for Westrail?

Hon E.J. CHARLTON replied:

- (1)-(2) It is understood that locomotive LW276 commenced service in Queensland in February 1974. The unit was purchased by Westrail from Comalco in August 1994 where it commenced service in October 1994 and was taken out of service in May 1997.

PINGELLY RAILWAY YARD DERAILMENT

1260. Hon BOB THOMAS to the Minister for Transport:

- (1) What was the cause of the recent derailment in the Pingelly railway yard?
- (2) What maintenance had been carried out on the points in the previous 12 months?
- (3) During that time had there been any reports of safe working problems with the points?

Hon E.J. CHARLTON replied:

- (1) I presume the Hon Member is referring to a derailment at the Pingelly yard which occurred on October 24 1997. That derailment resulted from employee error when two locomotives (coupled) traversed points which were incorrectly set for the passage of those locomotives.
- (2) Specific records are not kept. However, the points are checked monthly and maintenance found to be required is carried out as required.
- (3) No.

ALUMINA TRAIN DERAILMENT - PICTON

1261. Hon BOB THOMAS to the Minister for Transport:

- (1) What was the cause of the alumina train derailment near Picton on January 21 or 22, 1998?
- (2) What maintenance had been carried out on the faulty wagon in the previous 12 months?
- (3) Who performed the maintenance?

Hon E.J. CHARLTON replied:

- (1) Westrail does not have any record of a derailment involving an alumina train near Picton on January 21 or 22 1998.
- (2)-(3) Not applicable.

WESTRAIL'S VOLVO BUSES - GEAR BOX PROBLEMS

1262. Hon BOB THOMAS to the Minister for Transport:

- (1) What problems has Westrail experienced with its Volvo coach gear boxes in the past 18 months?
- (2) What was the cause of the breakdown of the Volvo coach "Shire of Lake Grace" at Williams on January 26, 1998?
- (3) What was the cost of hiring extra buses to complete the journey?
- (4) On how many other occasions have the Volvo buses broken down necessitating Westrail to hire extra buses?
- (5) What was the extra cost on each of those occasions to hire extra buses?

Hon E.J. CHARLTON replied:

- (1) Faults with electronic gear selection occurred on five occasions.

- (2) There was not a breakdown at Williams on January 26 1998. I presume the Hon Member is referring to the road coach 'Spirit of Lake Grace' which broke down at Williams on January 23 1998. That breakdown occurred as a result of a fault in the electronic gear selection.
- (3) \$790.
- (4) Ten other occasions, five of which were due to the faults mentioned in my answer to part (1) of this question.
- (5)
- | | |
|-------------------|------------|
| January 10 1997 | \$ 630.00 |
| April 7 1997 | \$ 840.00 |
| May 21 1997 | \$ 960.00 |
| August 11 1997 | \$1 575.00 |
| September 23 1997 | \$1 000.00 |
| November 18 1997 | \$ 561.00 |
| December 18 1997 | \$1 690.00 |
| February 6 1998 | \$ 560.00 |
| February 19 1998 | \$1 404.00 |
| March 9 1998 | \$ 335.00 |

WESTRAIL LOCOMOTIVES - SALE TO NEW ZEALAND

1263 Hon BOB THOMAS to the Minister for Transport:

With regard to the locomotives sold to New Zealand by Westrail -

- (1) To which firm were they sold?
- (2) What was the class of each locomotive?
- (3) What price was paid for each locomotive?
- (4) Did the price include freight?
- (5) If so, what component of the price was freight?
- (6) Who paid the freight?

Hon E.J. CHARLTON replied:

I presume the Hon Member is referring to the sale of 10 locomotives to Tranz Rail Limited, New Zealand on January 9 1998 and my answer is provided on that basis.

- (1) Tranz Rail Limited.
- (2) Nine 'A' class locomotives and one 'AB' class locomotive.
- (3)

A1502	\$40 000
A1503	\$50 000
A1504	\$35 000
A1505	\$50 000
A1506	\$50 000
A1507	\$50 000
A1508	\$50 000
A1509	\$50 000
A1510	\$50 000
AB1533	\$30 000

- (4) No.
- (5) Not applicable.
- (6) I am not aware of who paid the freight. If the Hon Member requires this information he should ask the purchaser.

DERAILMENT OF LOCOMOTIVES Q302 AND A1513

1273. Hon BOB THOMAS to the Minister for Transport:

- (1) Can the Minister for Transport confirm that on September 2, 1997 locomotives Q302 and A1513 derailed at Forrestfield?

- (2) Were employees of Clyde Engineering shunting Q302 prior to its derailment?
- (3) Were employees of Clyde Engineering shunting A1513 prior to its derailment?
- (4) What damage was sustained to Q302 in the derailment?
- (5) Who was liable for the costs of rerailing and the repairs to Q302?

Hon E.J. CHARLTON replied:

- (1) Yes, both locomotives were derailed at Forrestfield on September 2 1997.
- (2) Yes, the derailment occurred on track which is under lease to Clyde Engineering.
- (3) No.
- (4)-(5) The incident happened prior to the locomotive's delivery to Westrail. Accordingly Westrail would not be responsible for any such costs.

WESTRAIL STANDARD GAUGE DIESEL ELECTRIC LOCOMOTIVES

1274. Hon BOB THOMAS to the Minister for Transport:

In regard to Westrail standard gauge diesel electric locomotives -

- (1) Can the Minister for Transport confirm that -
 - (a) locomotives L274 and LW276 have been withdrawn from service;
 - (b) locomotive L269 has been scrapped; and
 - (c) locomotives L260, L271 and L274 have been stored?
- (2) What is the difference in Westrail policy between locomotives being stored or withdrawn?
- (3) Can the Minister confirm that the Westrail L class locomotives are to be sold?
- (4) If so, to whom and at what price?

Hon E.J. CHARLTON replied:

- (1) (a) Yes, locomotive LW276 has been written-off, locomotive L274 has been withdrawn from service due to accident damage.
- (b) Yes, locomotive L269 was scrapped.
- (c) No, locomotive L260 is in operating service, locomotive L271 has been written-off, locomotive L274 has been withdrawn from service with accident damage.
- (2) A locomotive is stored when there is no requirement for the unit in the immediate future but where there may be a requirement for its use in the longer term. Withdrawn means it could be stored, written-off or removed from service for maintenance.
- (3) Yes, L class locomotives will be offered for sale as they become surplus to Westrail's transport requirements.
- (4) The locomotives will be offered for sale by public process, eg, tender.

DERAILMENT AT WEST MERREDIN - LIFTING EQUIPMENT

1275. Hon BOB THOMAS to the Minister for Transport:

- (1) Can the Minister for Transport confirm that on December 28, 1997 a wagon carrying an 18 000 litre container of cyanide derailed at the West Merredin marshalling yards?
- (2) Was the equipment used to lift the container brought in from other Westrail depots, the private sector or both?
- (3) Does the Avon Westrail depot have cranes suitable for use in derailments?

- (4) Has the provision of lifting equipment used in derailments been contracted out to the private sector?

Hon E.J. CHARLTON replied:

- (1) I presume the Hon Member is referring to a derailment at West Merredin on December 27 1997 involving a consignment of Cyanide. On that basis I confirm that such a derailment took place.

- (2) Both.

- (3)-(4) No.

LAW REFORM COMMISSION'S REPORT ON LIMITATION AND NOTICE OF ACTIONS -
IMPLEMENTATION

1296. Hon N.D. GRIFFITHS to the Attorney General:

What recommendations of the Law Reform Commission's Report of Western Australia "Report on Limitation and Notice of Actions" does the Government intend to implement?

Hon PETER FOSS replied:

At this stage the Report is before the Standing Committee of Attorneys General in connection with an examination of whether and to what extent there can be uniformity in limitation laws throughout Australia.

STONEVILLE ROAD/GREAT EASTERN HIGHWAY, MUNDARING INTERSECTION - TRAFFIC
LIGHTS

1304. Hon N.D. GRIFFITHS to the Minister for Transport:

With respect to the intersection of Stoneville Road and Great Eastern Highway, Mundaring -

- (1) How many motor vehicle collisions have occurred since the January 1, 1997?
- (2) How many incidents involving motor vehicles colliding with pedestrians have occurred since July 1, 1997?
- (3) Are there any proposals to install traffic lights at the intersection?
- (4) If so, what is the status of the proposals?

Hon E.J. CHARLTON replied:

- (1) Thirteen reported.
- (2) None reported.
- (3) No.
- (4) Not applicable.

TERRY JOHN CICIORA - RELEASE ON PAROLE

1308. Hon N.D. GRIFFITHS to the Attorney General:

With respect to the Parole Board decision of January 9, 1998 dealing with one Terry John Ciciora -

- (1) Is it the case that the Attorney General did not consider the prisoner suitable for release on parole?
- (2) Is it also the case that the Parole Board made a positive recommendation to the Attorney General but that you were of the opinion that if Terry John Ciciora was to be released at that time it would more than likely result in his re offending and placing the community at an unacceptable risk?

On what was your opinion based?

Hon PETER FOSS replied:

- (1)-(2) Yes.
- (3) The information available left me with considerable concerns. As you are aware, it is my decision not the Board's and I have a responsibility to the public which I take seriously.

BAULDERSTONE CLOUGH JOINT VENTURE CONTRACT - DUE DILIGENCE CHECK

1323. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 1808 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm Baulderstone Clough Joint Venture worth approximately \$203.8m to design and construct Mitchell Freeway to East Parade, can the Minister advise -

- (1) Was a due diligence check carried out on the contractor before the above contract was awarded?
- (2) If yes, did it include a check of the contractor's financial background?
- (3) Who carried out the financial background check?
- (4) If the contractor is a company -
 - (a) when was the company formed;
 - (b) what is its share capitalization?
 - (c) who are the directors of the company; and
 - (d) are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

- (1)-(2) Yes.
- (3) Arthur Andersen.
- (4) The contractor is not a company but a joint venture established specifically for this contract by two construction companies.

LAKE RAESIDE CROSSING UPGRADE

1335. Hon TOM STEPHENS to the Minister for Transport:

- (1) When will the Lake Raeside Crossing on the Kalgoorlie Meekatharra Road be upgraded?
- (2) What level of funding is currently allocated to this project?
- (3) Why has there been a delay in the upgrading of the Crossing?

Hon E.J. CHARLTON replied:

- (1) 2004/05-2006/07 or earlier depending on availability of funds.
- (2) \$11.3m to construct a bridge and reconstruct floodways.
- (3) The construction schedule is in accordance with State-wide priorities established by Main Roads.

ANIMAL CRUELTY PROSECUTIONS

1347. Hon J.A. SCOTT to the Minister for Transport representing the Minister for Local Government:

- (1) How many prosecutions have been undertaken on animal cruelty cases?
- (2) How many of these prosecutions have involved intensive farming practices?
- (3) Did -
 - (a) the police; or
 - (b) RSPCA special constables,
 carry out these prosecutions?
- (4) Do the police initiate animal welfare prosecutions?
- (5) If so, which units or divisions initiate prosecutions?
- (6) How many inspections of battery hen operations have been carried out in the last three years?

Hon E.J. CHARLTON replied:

- (1) This issue is not the responsibility of the Department of Local Government. The questions should be directed to the Royal Society for the Prevention of Cruelty to Animals.
- (2) Not applicable.
- (3)-(4) This question should be directed to the Minister for Police.
- (5) Not applicable.
- (6) This issue is not the responsibility of the Department of Local Government. The questions should be directed to the Royal Society for the Prevention of Cruelty to Animals.

BURAKIN-BONNIE ROCK BRANCH LINE

1408. Hon BOB THOMAS to the Attorney General representing the Minister for Transport:

In regard to the Burakin to Bonnie Rock branch line -

- (1) How many grain trains have operated on this branch line since 1995?
- (2) How many derailments have occurred on this branch line since 1995?
- (3) What is the maximum speed permitted for grain trains on this line?
- (4) What locomotive classes are permitted to work this line?
- (5) What tonnage of grain was carried on this line in:
 - (a) 1983/84;
 - (b) 1984/85;
 - (c) 1985/86;
 - (d) 1986/87; and
 - (e) 1987/88?
- (6) What tonnage of grain was carried by road transport from receival points on this line in -
 - (a) 1983/84;
 - (b) 1984/85;
 - (c) 1985/86;
 - (d) 1986/87; and
 - (e) 1987/88?
- (7) When will re-sleepering, re-railing or reballasting be done on this line?
- (8) When re-sleepering, re-railing or reballasting is done -
 - (a) what ballast type will be used;
 - (b) will concrete sleepers be used;
 - (c) what rail weight will be used;
 - (d) will the line be rebuilt all the way to Bonnie Rock; and
 - (e) will the work done on the line be provided by Westrail employees or will it be contracted out?
- (9) What was the amount spent on maintenance of the line from July 1983 to June 1988?

Hon E.J. CHARLTON replied:

- (1) From July 1 1995 to March 24 1997 inclusive, 491 grain trains operated from Burakin to points between Burakin and Bonnie Rock.
- (2) Three.
- (3) 30 kilometres per hour from Burakin to a point six kilometres east of Wialki and 20 kilometres per hour from that point to Bonnie Rock.
- (4) A, AB, DA and P class locomotives.

- (5) (a)-(e) Records of tonnages carried on this line between July 1983 and June 1988 inclusive are not readily available. The resources required to research this information would be considerable and I am not prepared to commit them to that task.
- (6) (a)-(e) Nil.
- (7) Resleepering between Burakin and Beacon will be carried out between April and June 1998. Selective ballasting work is scheduled to be undertaken in 2001/2002. There is no requirement for rerailing.
- (8) (a) Crushed rock.
 (b) No.
 (c) Not applicable.
 (d) There is no intention to rebuild any part of this railway. Resleepering and ballasting work is currently planned between Burakin and Beacon only.
 (e) The work will be undertaken by a contractor.
- (9) July 1983 to June 1987 inclusive - \$2 079 516.
- Records pertaining to the cost of work carried out from July 1987 to June 1988 inclusive are not readily available. The resources required to research this information would be considerable and I am not prepared to commit them to that task.

PRIVATE INVESTIGATORS

Use by Government Departments and Agencies

1417. Hon TOM HELM to the Leader of the House representing the Premier:

- (1) On how many occasions have private investigators been used by Government departments or agencies?
 (2) What were the departments involved?
 (3) When did this involvement occur?

Hon N.F. MOORE replied:

With respect to the Department of Local Government

- (1) None.
 (2)-(3) Not applicable.

With respect to the Disability Services Commission

- (1) None.
 (2)-(3) Not applicable.

With respect to the Keep Australia Beautiful Council

- (1) None.
 (2)-(3) Not applicable.

With respect to the Fremantle Cemetery Board

- (1) None.
 (2)-(3) Not applicable.

With respect to the Metropolitan Cemeteries Board

- (1) None.
 (2)-(3) Not applicable.

QUESTIONS ON NOTICE**(FOR SECOND SITTING ON WEDNESDAY)***(Questions for first sitting commence on p 1247.)***SPENCER LODGE NURSING HOME - BUDGET**

1277. Hon BOB THOMAS to the Minister for Finance representing the Minister for Health:

- (1) What was the budget for the Spencer Lodge Nursing Home in Albany for the years -
 - (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97; and
 - (d) 1997/98?
- (2) What was the number of beds available in each of those years?
- (3) What capital works were undertaken in each of those years and what sum was provided by the State Government?
- (4) For what capital works was money allocated but not spent?
- (5) What was the estimated cost of those works?
- (6) What works need to be done, and what is the cost of upgrading Spencer Lodge in order to meet new accreditation requirements for nursing homes?

Hon MAX EVANS replied:

(1)	Budgets (\$000's)	Expenses	Revenue	Deficit
	1994/5	Budget was combined with ARH budget.		
	1995/6	1675.8	1406.3	269.5
	1996/7	1962.0	1873.4	88.6
	1997/8	1998.4	1794.0	204.4

- (2) Beds

1994/5	48
1995/6	48
1996/7	48
1997/8	48

- (3) Capital Works

	\$
1994/5	None
1995/6	None
1996/7	99698
1997/8	29440

- (4) All above funds have been spent.
- (5) The estimated costs of these works were as per funds received.
- (6) New Work Required

Equipment

TV upgrade	2000
Lifting Hoists	6500
Beds	8000

Building

Storage Shed	3400
Internal Lights & Skylights	8000
Car Park	3400

TV locations	30800
Pathways	2500
Roof Cleaning & Recoat	15000
Toilet/Shower upgrade	80000
Personal Phone Connections	1500
Kitchen Tiles	2000
Duress Alarms	1500
Total	164600

LAW REFORM COMMISSION'S REPORT ON RESTRICTIVE COVENANTS - IMPLEMENTATION

1302. Hon N.D. GRIFFITHS to the Attorney General:

What recommendations of the Law Reform Commission's Report of Western Australia "Restrictive covenants" Project No 91 does the Government intend to implement?

Hon PETER FOSS replied:

This report and its recommendations are currently under consideration. As you will appreciate, it goes beyond my portfolio.

DOUGLAS ROSS THOMAS - RELEASE ON PAROLE

1312. Hon N.D. GRIFFITHS to the Attorney General:

- (1) With respect to Douglas Ross Thomas, a prisoner at Canning Vale Prison, is it correct that on August 8, 1997 the Chairman of the Parole Board wrote to the Attorney General recommending that he be included in a six-month prison based Pre-Release Programme in order that his suitability for eventual release could be further evaluated?
- (2) Is it also correct that as at February 5, 1998 the Attorney General had not responded to the Chairman of the Parole Board's letter?
- (3) What was the reason for the delay in responding as at that date?
- (4) Have you now responded to the Chairman of the Parole Board?
- (5) If so, what is the date of that response and its substance?
- (6) If not, when do you anticipate responding and what is the reason for the continued delay in responding?

Hon PETER FOSS replied:

- (1)-(2) Yes.
- (3) I have asked for the Ministry to set up a new method for dealing with Governor's Pleasure sex offenders.
- (4) No.
- (5) Not applicable.
- (6) I am still awaiting a response from the Ministry.

IRON ORE DOWNSTREAM PROCESSING COMMITMENTS

1334. Hon TOM STEPHENS to the Leader of the House representing the Minister for Resources Development:

- (1) What commitments have BHP and Mt Newman Iron Ore entered into in the last 20 years with regard to the provision of downstream processing facilities for iron ore in Western Australia?
- (2) Which of these commitments have been kept?

Hon N.F. MOORE replied:

- (1) BHP is now a party to six State Agreement Acts that contain provisions relating to further processing of iron ore. Mt Newman Iron Ore Company Limited was the original party to the Iron Ore (Mount Newman) Agreement Act 1964. The six State Agreements are -

Iron Ore (Mount Newman) Agreement Act 1964,
 Iron Ore (Mount Goldsworthy) Agreement Act 1964,
 Iron Ore (McCamey's Monster) Agreement Authorization Act 1972,
 Iron Ore (Marillana Creek) Agreement Act 1991,

Iron Ore-Direct Reduced Iron (BHP) Agreement Act 1996; and
Iron Ore Beneficiation (BHP) Agreement Act 1996.

- (2) Downstream processing obligations have been met as follows -

The Iron Ore (Mount Newman) Agreement Act 1964 obligations were discharged in October 1996 by the construction of the Karratha to Port Hedland gas pipeline and power stations at Port Hedland and Newman.

The Iron Ore Processing (BHP Minerals) Agreement Act 1994 brought together the further processing obligations of the Iron Ore (Marillana Creek) Agreement Act 1991, the Iron Ore (McCamey's Monster) Agreement Authorization Act 1972, and the Iron Ore (Mount Goldsworthy) Agreement Act 1964. These obligations were discharged with the submission of proposals for the Port Hedland HBI project that is being developed under the Iron Ore-Direct Reduced Iron (BHP) Agreement Act 1996 and the Iron Ore Beneficiation (BHP) Agreement Act 1996.

COMSWEST PTY LTD'S CONTRACT

1400. Hon LJILJANNA RAVLICH to the Minister for the Arts:

In relation to the Library and Information Services of WA contract with the firm ComsWest Pty Ltd worth approximately \$316 692 per annum for the provision of Desktop PC support and associates services for administrative and public access equipment, can the Minister advise -

- (1) Was a business case conducted?
- (2) Did it include a comprehensive cost benefit analysis?
- (3) If so, what did it show?
- (4) If not, why not?
- (5) What were the identified inherent risks?
- (6) What other options were considered?
- (7) Was a due diligence check carried out on the contractor before the above contract was awarded?
- (8) If yes, did it include a check of the contractor's financial background?
- (9) Who carried out the financial background check?
- (10) If the contractor is a company -
 - (a) when was the company formed; and
 - (b) what is its share capitalisation?
- (11) Who are the directors of the company?
- (12) Are any of the company directors Ministers or senior public servants?

Hon PETER FOSS replied:

- (1) No.
- (2) This contract is a standard service designed for Government Agencies that was approved and listed in the State Telecommunications Management Agreement established in February 1995 between the State Government and Pacific Star Communications Pty Ltd.
- (3)-(5) Not applicable.
- (6) The option of LISWA calling for tenders for this service was considered, however under the State Telecommunications Management Agreement Government Agencies were not required to call for tenders if a standard service from the State Telecommunications Management Agreement matched their requirements.
- (7) No, ComsWest Pty Ltd was established under the State Telecommunications Management Agreement to deal exclusively with Government Agencies. It was assumed that CAMS had conducted a due diligence check before awarding the State Telecommunications Management Agreement.
- (8)-(9) Not applicable.

(10)-(12) The Member should refer these questions to ComsWest Pty Ltd.

MARSH & McLENNAN'S CONTRACT

1401. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Disability Services:

In relation to the Disability Services Department's contract with the firm Marsh and McLennan worth approximately \$117 500 pa for the provision of occupational health and safety workers compensation claims management, can the Minister for Disability Services advise -

- (1) Was a business case conducted?
- (2) Did it include a comprehensive cost benefit analysis?
- (3) If so, what did it show?
- (4) If not, why not?
- (5) What were the identified inherent risks?
- (6) What other options were considered?
- (7) Was a due diligence check carried out on the contractor before the above contract was awarded?
- (8) If yes, did it include a check of the contractor's financial background?
- (9) Who carried out the financial background check?
- (10) If the contractor is a company -
 - (a) when was the company formed; and
 - (b) what is its share capitalization?
- (11) Who are the directors of the company?
- (12) Are any of the company directors ministers or senior public servants?

Hon MAX EVANS replied:

- (1)-(2) Yes.
- (3) An Occupational Safety and Health Service could be provided at the same quality but lower cost than the in-house service.
- (4) Not applicable.
- (5) No inherent risks were identified.
- (6) Retain the function in house.
- (7) The preferred tenderers were asked to provide reference sites. The DSC conducted reference checks in person.
- (8) Yes. Marsh McLennan Companies Inc is one of the world's largest risk management and insurance brokerage firms.
- (9) DSC as part of the contracting process.
- (10) (a) United States Parent established 1871
Australia 1930
Western Australia 1965
 - (b) \$1.888 billion.
- (11) Board of Directors -

AJC Smith
Chairman

Lewis W Bernard
Chairman
Classroom, Inc
Former Chief
Administrative & Financial
Officer
Morgan Stanley & Co, Inc

Richard H Blum
Marsh & McLennan
Companies, Inc

Frank J Borelli Senior Vice President & Chief Financial Officer	Robert Clements Chairman Risk Capital Holdings, Inc	Peter Coster President Mercer Consulting Group, Inc
Robert F Erburu Former Chairman The Times Mirror Company	Jeffrey W Greenberg Chairman Marsh & McLennan Risk Capital Corp	Ray J Groves Chairman Legg Mason Merchant Banking, Inc Former Chairman Ernst & Young
Richard S Hickok Former Chairman KMG Main Hurdman	David D Holbrook Chairman Marsh & McLennan Inc	Lawrence J Lasser President Putnam Investments Inc
Richard M Morrow Former Chairman Amoco Corporation	George Putnam Chairman The Putnam Funds	Adele Smith Simmons President John D & Catherine T MacArthur Foundation
John T Sinnott President & Chief Executive Officer Marsh & McLennan Inc	Frant J Tasco Former Chairman Marsh & McLennan Companies, The	RJ Ventres Former Chairman Borden, Inc

(12) No.

LEASEPLAN AUSTRALIA PTY LTD'S CONTRACT

1402. Hon LJILJANNA RAVLICH to the Minister for Justice:

In relation to the Justice Department's contract with the firm Lease Plan Australia Pty Ltd worth approximately \$42 000 per month, and \$25 000 per month for the provision of fleet management in prisons and juvenile detention centres, can the Minister advise -

- (1) Was a business case conducted?
- (2) Did it include a comprehensive cost benefit analysis?
- (3) If so, what did it show?
- (4) If not, why not?
- (5) What were the identified inherent risks?
- (6) What other options were considered?
- (7) Was a due diligence check carried out on the contractor before the above contract was awarded?
- (8) If yes, did it include a check of the contractor's financial background?
- (9) Who carried out the financial background check?
- (10) If the contractor is a company -
 - (a) when was the company formed; and
 - (b) what is its share capitalization?
- (11) Who are the directors of the company?
- (12) Are any of the company directors ministers or senior public servants?

Hon PETER FOSS replied:

- (1)-(12) The Department of Contract and Management Services awarded a series of contracts on a "Whole of Government" basis for the provision of Fleet Services to Government Agencies. The Ministry of Justice utilises Lease Plan Australia Ltd as its fleet manager.

QUESTIONS WITHOUT NOTICE**(FOR FIRST SITTING ON WEDNESDAY)**

(Questions for second sitting commence on p 1270.)

KWINANA NAVAL BASE PORT**1344. Hon TOM STEPHENS to the Minister for Transport:**

I saw the Attorney General a moment ago. He is like a jack-in-the-box at times.

Several members interjected.

The PRESIDENT: Order!

Hon TOM STEPHENS: He displays in this House constant discourtesy.

The PRESIDENT: Order! Does the member want to ask a question?

Hon TOM STEPHENS: Indeed.

- (1) Will the Minister provide information on the contract under which Arthur Andersen is engaged to oversee the expressions of interest in the construction and management of the Kwinana-Naval Base port?
- (2) Specifically -
 - (a) is the contract a fixed sum contract;
 - (b) if yes, what is the total value of the contract; and
 - (c) if no, how is Arthur Andersen's remuneration determined?
- (3) How much has been budgeted for Arthur Andersen's fees?
- (4) How much has been paid to Arthur Andersen to date on this project?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) A letter of engagement was issued by the Department of Contract and Management Services dated 27 June 1997.
- (2)
 - (a) No;
 - (b) not applicable;
 - (c) hourly rate.
- (3) No funds have been specifically budgeted for Arthur Andersen.
- (4) An amount of \$24 250.

CHARTER CARS**1345. Hon TOM STEPHENS to the Minister for Transport:**

I would appreciate it if the Attorney General could be told that question time is on. Will someone be kind enough to do that?

Hon N.F. Moore: Just settle down.

The PRESIDENT: Order! I will worry about who settles down. The question is to the Minister for Transport.

Hon TOM STEPHENS: I ask -

- (1) What action is the Department of Transport taking to ensure that vehicles operating under charter car licences are charging the minimum prescribed rate?
- (2) Have any charter car operators been charged with breaching hire rate conditions?

- (3) If so, how many have been charged and how many have been convicted?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) The Department of Transport has taken the following action -

It has introduced a compliance monitoring program which requires operators to keep and show upon demand, detailed records of all their trips undertaken as well as proof of the amount paid for each trip. The program includes a random audit of all operators to ensure compliance.

It has commenced a complaints register which clearly defines the information required by the Department of Transport in order to investigate an operator.

On 20 March 1998, all small charter vehicle licences were reissued with revised licence conditions clearly showing the \$37.70 minimum charter charge and the conditions controlling how they are to operate.

- (2) No small charter vehicle operator has been charged with breaching the hire rate condition. To date, 25 operators have been audited and all have been found to be operating in compliance with their licence conditions.
- (3) Not applicable.

ATTORNEY GENERAL'S REPORT ON PLANNED OVERSEAS TRIP

1346. Hon N.D. GRIFFITHS to the Leader of the House:

- (1) Where is the Attorney General?
- (2) Has he already left for his planned overseas trip?
- (3) Will the Leader of the House assure the House that when the Attorney General returns from his forthcoming overseas trip he will table a report on that trip within six sitting days?
- (4) If not, why not?

The PRESIDENT: Order! I am not sure that the Leader of the House within his portfolios has the ability to do what the member is asking, but I leave it to him.

Hon N.F. MOORE replied:

- (1)-(4) Quite obviously it is not my portfolio responsibility to keep an eye on the Attorney General at any moment. The Attorney General has been delayed for, I suspect, five minutes and I have asked the Whip to find out where he is.

Hon Bob Thomas: He is in John Bradshaw's room.

Hon N.F. MOORE: I will take as long as members want to answer this question. I had intended to be magnanimous and to allow question time to continue for an additional five minutes, but if that is the way members opposite want to behave, they will take what they get.

This is the first time I can recall a Minister not being in the Chamber right on time, and I have been in this House long enough to know that on many occasions in the past some Ministers have not arrived on time or have not been here at all and have not told anybody they would not be present. The Government has sought to extend the courtesy to members opposite of advising them well in advance if it knows a Minister will not be present. The Attorney General has obviously been delayed for some reason and I can say in all sincerity that there will be a good reason for that. I am sure he will explain the situation. The member has made smart comments about people travelling overseas, and I suggest it is a silly way to try to score a point. It does not help anyone's cause to make those comments, allegations and threats because it is not in the interests of anybody. The member should know that better than anybody else.

STUDENT GUILDS

1347. Hon CHRISTINE SHARP to the Leader of the House representing the Minister for Education:

- (1) Will the Minister for Education provide a comparison of members, budgets and services provided by the student guilds in Western Australia between 1994 and 1998?

- (2) Given the apparent financial difficulty of student guilds, particularly the Edith Cowan University student guild, as detailed in *The West Australian* on 18 March 1998, how does the Minister intend to maintain services and representation to students?
- (3) Given the apparent loss of services and representation for students, does the Minister intend to provide financial aid to student guilds?
- (4) Does the Minister intend to repeal voluntary student unionism?

Hon N.F. MOORE replied:

I would like to be the Minister for Education again so that I could give the answer I want to give. That would take an hour and a half. The Minister for Education has provided the following response -

- (1) The Minister does not have this kind of information. This would need to be obtained from the universities directly, as student guilds operate entirely independently of the State Government, which is how it should be.
- (2) Edith Cowan University has offered the student guild a financial support package to assist it in maintaining its core activities, such as representation and advocacy.
- (3) No. There is no appropriate source or mechanism for the Minister to provide financial assistance to student guilds.
- (4) No, to do so would infringe upon students' basic freedom of voluntary association.

PORT OF DAMPIER

1348. Hon GREG SMITH to the Minister for Transport:

What savings will be made by customers using the Port of Dampier now that Western Stevedores has been awarded the port contract?

Hon E.J. CHARLTON replied:

The savings to people using the Dampier Port will be in the order of 30 per cent.

Hon Norm Kelly: That happened before they took over!

Hon E.J. CHARLTON: Incidentally, the workers involved are Maritime Union of Australia members, and I cannot understand why some opposition members keep attacking members of the MUA - the one union they choose not to support.

Hon N.F. Moore: It is a little unusual.

Hon E.J. CHARLTON: The situation prior to Western Stevedores' securing the contract was that the day shift would start at 8.00 am and the night shift would start at 8.00 pm. Under Western Stevedores' operation, flexibility has been introduced to start the shift between 6.00 am and 9.00 am, and the night shift between 6.00 pm and 9.00 pm. This provides a three hour variation in which work can commence. This gives flexibility. It is one small example of how savings can be achieved as a consequence of such change. The same situation applies when ordering labour. Prior to Western Stevedores' assuming the operation, it was necessary to order labour in 1 600-hour lots on the day before the labour was required; it was necessary to order labour on Friday for Sunday's requirements; and labour could be provided on short notice only in emergencies. Western Stevedores has increased flexibility, and labour for Sunday can be booked on Saturday afternoon. In unforeseen circumstances, labour can be arranged on shorter notice subject only to contract labour availability.

I have two more pages of such changes. These illustrate the flexibility which has resulted from change. Unfortunately, this flexibility has led employees of Western Stevedores, who are MUA members, to be subjected to tirades of threats and accusations which nobody should have to put up with in this day and age.

COLONOSCOPY WAITING TIMES

1349. Hon NORM KELLY to the Minister representing the Minister for Health:

- (1) In relation to a question without notice asked on 31 March, can the Minister explain why figures were not available for waiting times for colonoscopy and general surgery at Joondalup Health Campus and Osborne Park Hospital when the central wait list bureau, to be successful, should be able to readily provide such information?

- (2) What steps has the Minister taken to ensure that waiting list information from non-teaching hospitals is readily available?
- (3) Does the Minister anticipate a duplication of consultancy and investigative procedures as a result of the transfer of patients from one hospital and doctor to another?
- (4) What steps will be taken to minimise this duplication?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The waiting time for general surgery at Joondalup Health Campus and Osborne Park Hospital were provided as three to six months and 2.1 months respectively. The waiting time for colonoscopy is not specifically identified in the current databases. The central wait list bureau, as identified yesterday, is expected to have this information available by July 1998.
- (2) The general managers have been instructed by the Health Department that the provision of this information is a requirement to access wait list funding and activity.
- (3) Duplication of consultancy and investigative procedures are not anticipated as a result of transferring patients from one hospital and doctor to another.
- (4) Under current conditions, all patients who are long-wait patients require review before procedures are undertaken. Normal reviews will be undertaken by the new doctor.

PORNOGRAPHIC VIDEOS

1350. Hon J.A. SCOTT to the Minister for Justice:

- (1) Has an employee of the Ministry of Justice outlined details to the Minister concerning the showing of pornographic videos in the ministry during working hours?
- (2) Was a senior level manager involved in the showing or viewing of the pornographic material?
- (3) Does this office deal with victims of sexual assaults?
- (4) What action has the Minister taken regarding this disclosure?
- (5) What action has the Minister taken to protect the whistleblower from recrimination or harassment?

Hon PETER FOSS replied:

I ask that the question be placed on notice.

COUNTRY HEALTH SERVICES

1351. Hon M.J. CRIDDLE to the Minister representing the Minister for Health:

- (1) Which Western Australian country health services received a base funding review?
- (2) What is the breakdown of additional funding, if any, provided under this review?
- (3) What, if any, additional funding was or has been provided to the country health services over their initial indicative budgets in the years 1996-97 and 1997-98?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(2) Nine country health services received base funding reviews relating to the 1997-98 financial year. The health services and the additional funding they received as a consequence of reviews are as follows: Avon, \$200 000; central great southern, \$150 000; Geraldton, \$100 000; south east coastal, \$100 000; upper great southern, \$250 000; Warren-Blackwood, \$100 000; Wellington, \$150 000, and west Pilbara, \$250 000.
- (3) Country health services recurrent funding levels for 1997-98 are maintained at the 1996-97 level. The initial allocations and subsequent additional funding for country health services are set out in this table, which I seek leave to table.

Leave granted. [See paper No 1489.]

FLETCHER, MR IAN

1352. Hon LJILJANNA RAVLICH to the Leader of the House:

- (1) Is Mr Ian Fletcher, the Premier's chief of staff, a corporate member of the Western Australian Club (Inc)?
- (2) If so, when was he admitted to membership?
- (3) Did the Government pay for his membership?
- (4) If yes to (3), why did the Government pay for that membership?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) November 1996.
- (3) No.
- (4) Not applicable.

ALINTAGAS EMPLOYEES' SUPERANNUATION

1353. Hon HELEN HODGSON to the Leader of the House representing the Minister for Resources Development:

- (1) In respect of AlintaGas employees who are members of the government employees superannuation gold state fund who have accepted employment with the purchaser of the Dampier-Bunbury gas pipeline, has the Government agreed that the 1.75 per cent discount applied by the Government Employees Superannuation Board be reimbursed?
- (2) If no to (1), why did a circular letter from AlintaGas dated 9 January 1998 advise employees that they would have their discounts reimbursed?
- (3) If yes to (1), how does the Minister reconcile this with the answer given to question on notice 1090 tabled on Tuesday, 10 March 1998?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) Not applicable.
- (3) The answer to question on notice 1090 tabled on 10 March 1998 reflected the intended approach at the time the question was posed - namely, 22 October 1997. This approach was subsequently replaced with an alternative whereby employees would be reimbursed the 1.75 per cent discount levied by the GESB in the event that gold state fund members elected to withdraw their money from the fund. The Minister for Resources Development has advised that he will write to the member with a more detailed explanation on the matter.

SWAN-CANNING RIVERS CLEAN-UP PROGRAM

1354. Hon RAY HALLIGAN to the Minister representing the Minister for Water Resources:

What funding has the Government provided to the Swan-Canning Rivers clean-up program, and how will this money be spent?

Hon MAX EVANS replied:

I thank the member for some notice of this question. An amount of \$5.6m has been provided to that program from 1994-95 to 1997-98. The Western Australian Estuarine Research Foundation received \$2m over three years from 1994-95 to 1996-97 to undertake research into algal blooms. The remainder of the money was used by the Swan River Trust for the following purposes -

to monitor estuary and catchment drainage water quality;

to develop river mediation methods, such as destratification, oxygenation, sediment and modification;
 to conduct field trials for these river remediation methods;
 to prepare catchment management plans;
 to prepare stormwater management guidelines to reduce pollution;
 to provide information to the community on the program; and
 to prepare an action plan setting out strategies to better manage the estuary and its catchment to reduce algal blooms.

CENTRAL RECEIVING AUTHORITY, ROYAL PERTH HOSPITAL

1355. Hon JOHN HALDEN to the Minister representing the Minister for Health:

- (1) Has Royal Perth Hospital instigated a central receiving authority for all general practitioner referrals to the various clinics within the hospital?
- (2) When did this change occur?
- (3) Why was such a change made and at whose request?
- (4) Have there been any complaints about the new service and, if yes, how many?
- (5) Has the hospital investigated or monitored the efficiency of this new service and, if so, what has been the result?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) 29 December 1997.
- (3) In response to problems experienced by divisions of general practice in WA, a quality review working party was formed to examine the reported problems. The recommendation of the working party was that a central outpatients referral centre be established. This recommendation was submitted for approval by the hospital's divisional directors' forum on 13 November 1997.
- (4) No complaints have been received.
- (5) The efficiency of the new service is being examined currently. No formal report is available as yet. However, as no complaints have been received, it indicates that the new service is meeting the needs of general practitioners and therefore improving the service to patients.

PROPOSED POWER STATION, ESPERANCE PORT AUTHORITY

1356. Hon GIZ WATSON to the Minister for Transport:

With reference to the proposed purchase and establishment of a power station by the Esperance Port Authority associated with the establishment of an iron ore loadout facility for the iron ore coming from the Koolyanobbing mine

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Several members interjected.

The PRESIDENT: Order! I advise the Leader of the Opposition that other members wish to ask questions also. Would he give the member a fair go!

Hon Tom Stephens: I am sorry. I was responding to interjections.

The PRESIDENT: That is the reason that we do not have interjections!

Hon GIZ WATSON: Can the Minister provide details in respect of this proposal -

- (1) Where is the power station coming from?
- (2) What is the fuel source of this power station?
- (3) What is the size - that is, power - of the station?

- (4) Why is power not being supplied by Western Power?
- (5) How much is the port authority paying for the power station?
- (6) Where is the power station to be located?
- (7) Has the port authority referred the proposed power station to the Environmental Protection Authority for assessment?

Hon E.J. CHARLTON replied:

I have not had any notice of the question.

AUSTRALIND BYPASS CHANGE

1357. Hon BOB THOMAS to the Minister for Transport:

- (1) Which member of the Minister's staff raised the issue of the median strip with the Commissioner of Main Roads?
- (2) On what date was the issue raised?
- (3) What was the content of the discussion?
- (4) Was any written record made of this discussion by the Minister's office staff member or by the commissioner, and if so, will the Minister table those records?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) My policy officer for Main Roads, Mr Brent Higgins.
- (2) There is no record of the actual date, but it was in late 1997.
- (3) A request from the service station for a median break.
- (4) No.

MARGARET HARRIS DAY CARE CENTRE, MANDURAH

1358. Hon J.A. COWDELL to the Minister representing the Minister for Health:

- (1) Is the Minister aware that the Margaret Harris Day Care Centre in Mandurah is located in the Community Health Centre Building which is shortly to be sold by the State Government?
- (2) Has the Minister been informed that Silver Chain, which runs the day care centre, cannot find a replacement building to house the day care centre within the time frame allotted by the State Government?
- (3) Can the Minister assure the House that the Margaret Harris Day Care Centre will not be turned out before alternative accommodation is found?

Hon MAX EVANS replied:

- (1) No. While I can confirm that the Margaret Harris Day Care Centre in Mandurah is located in the Community Health Centre Building, the State Government has not determined any date by which the building will be sold. Disposal of the building is entirely dependent on the identification of suitable alternative accommodation for the tenants.
- (2) No. As no date for disposal of the building has been set, no time frame could apply to either Peel Health Services or Silver Chain who are actively working together to find suitable alternative accommodation or extend their tenancy at the current site.
- (3) Yes.

CHARLES STREET OFF-RAMP, NORTHBRIDGE TUNNEL

1359. Hon KEN TRAVERS to the Minister for Transport:

I refer to the soil being removed today from under the Charles Street off-ramp on the Northbridge tunnel site.

- (1) Why is this material being removed?
- (2) Where is the material being removed to?
- (3) Will the Minister provide details of when and to where all contaminated soil has been taken from the tunnel site, and will he table the individual management plans prepared for this material?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1)-(2) The material is being used in backfill to retaining walls within the freeway reserve at the eastern end of the Northbridge tunnel.
- (3) I have previously advised that all contaminated soil taken from the tunnel has been disposed of at the Red Hill disposal site. This is in accordance with the procedure for handling this material, as approved by the Department of Environmental Protection.

WEST AUSTRALIAN CLUB

1360. Hon KIM CHANCE to the Minister for Transport:

Some notice of this question has been given by Hon Ljiljana Ravlich. Further to the Minister's response to question on notice 762 -

- (1) Why did the Minister approve funding of \$600 for R.H. Emery to become a corporate member of the West Australian Club?
- (2) Did the Albany Port Authority board and/or executive seek the use of facilities in government agencies as a venue to hold formal meetings, prior to agreeing to pay for membership to the West Australian Club?
- (3) If not, why not?

Hon E.J. CHARLTON replied:

- (1) The corporate membership for the general manager, Mr R.H. Emery, was approved by the board of the Albany Port Authority. The matter was not referred to the Minister for Transport.
- (2) Yes. At times the authority utilises the facilities of the Fremantle Port Authority.
- (3) Not applicable.

MAIN ROADS REPORT

1361. Hon E.R.J. DERMER to the Minister for Transport:

I refer to the November 1994 report of Main Roads engineer T.L. Andrews, which dealt with the issue of road maintenance by contract within the British Columbian Ministry of Transportation and Highways.

- (1) When did the Minister read this report?
- (2) In reading this report did the Minister note that the British Columbian privatised highway maintenance program had resulted in annual cost overruns, highway rehabilitation not meeting appropriate standards and the absence of training for maintenance workers?
- (3) What precautions did the Minister take to ensure that similar problems did not arise from the private contracting out of functions of Main Roads?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1)-(3) Significant developments have occurred in contracting for road maintenance both internationally and nationally since 1994. The experience in British Columbia, where 100 per cent of maintenance work was outsourced, occurred in 1990 and has provided the basis for improvements in outsourcing road maintenance practices in a number of countries, including Australia.

Main Roads' approach to outsourcing roadworks was determined by the consideration of national and international experiences and trends, particularly over the past three years. The successes in outsourcing roadworks have been examined, as well as the less successful. In particular, Main Roads has drawn on

recent experience in New South Wales and Tasmania, and in Virginia in the United States to determine how best to outsource road maintenance activities and minor works activities.

In addition to learning from the experiences of other jurisdictions, Main Roads proposed to prepare "benchmark bids" for each contract based on the agreed or negotiated performance standards for preservation works and the standard schedules for capital works. These benchmark bids shall be utilised when assessing the proposals or tenders to ensure that they offer value for money to the Western Australian community.

I must emphasise that in all the contracting out that has taken place in Transport since we came to government, we have not followed a prescriptive mechanism as promoted by other experiences around the world. We have sought information from other areas in which contracting out has occurred. We have picked out the positives in an operation, and we have applied our rules, regulations, requirements and specifications to suit our environment. Our method of contracting out bus services is nothing like any methods used around the world, because we have different circumstances. The same applies to Main Roads' contracting out.

MINING

Working Conditions

1362. Hon TOM STEPHENS to the Attorney General representing the Minister for Labour Relations:

I shall avail myself of the five minutes' extension of question time of which the Leader of the House assured us, and ask -

- (1) Is the Minister concerned that, with the demise of organised unions in most of the mining industry, most underground miners are working a 56 hour week?
- (2) Is the Minister aware of claims that some mining companies are compiling unofficial black lists of members of staff who complain about working conditions in an effort to exclude these individuals from the industry?
- (3) If so, what is he doing about the matter?

Hon PETER FOSS replied:

I assume that the Leader of the Opposition is asking whether the Minister for Labour Relations has these views. I would be unable to form the sort of opinion he is asking. Assuming he is asking in that manner, the opinion of the Minister for Labour Relations is as follows -

- (1) There are many instances where enterprise agreements have been negotiated with unions that provide for a working week of 56 hours or more. Accordingly, a 56 hour week cannot be directly related to the so-called demise of unions. What can be directly related to the demise of unions is their inability to represent workers adequately.
- (2) No.
- (3) Not applicable.

JANDAKOT WATER MOUND

Arsenic Poisoning

1363. Hon J.A. SCOTT to the Minister representing the Minister for Water Resources:

- (1) Is the Minister aware that a resident drawing drinking water from the Jandakot mound is suffering from arsenic poisoning?
- (2) Is he further aware of claims by residents that arsenic is getting into the watertable from cement slurry that has been dumped in the water catchment area of the Jandakot mound?
- (3) If the Minister is aware, what action has he taken to investigate these claims and to protect the public supply; and if he is not aware, what action does he propose to take?
- (4) Which company or companies are dumping the slurry over the water mound and do they have the necessary permits?
- (5) Who provided these permits and are any monitoring and management plans in place?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The Minister is aware that the Water and Rivers Commission was advised at a meeting of Banjup residents in late 1997 that a resident was suffering from arsenic poisoning. Testing at the nearby site did not find arsenic in the ground water.
- (2) No.
- (3) It is requested that the data on which these claims are based be provided for review.
- (4) The Minister is unaware of any company dumping cement slurry over the Jandakot mound.
- (5) Not applicable.

ATTORNEY GENERAL

Visit to Japan

1364. Hon TOM STEPHENS to the Attorney General:

- (1) Is the Attorney General intending to travel to Japan soon for government business again?
- (2) Will the Attorney General be able to table a report on that trip within six sitting days of his return; and, if not, why not?

Hon PETER FOSS replied:

- (1)-(2) I have been singularly honoured by the Hyogo Prefecture by personal invitation to two functions which are taking place in Japan - the unveiling of a statue, to which the people of Western Australia have contributed, in particular, the Australia-Japan Association, in the memorial garden to the earthquake; and also the historic opening of the longest suspension bridge in the world. I will be accompanying the Premier on that occasion.

Hon Tom Stephens: When will you go?

Hon PETER FOSS: I will go on the weekend and will be back later next week. I do not intend to table a report within six days of my return. I am not aware that any Minister other than me has tabled a report in this House.

Several members interjected.

The PRESIDENT: Order! If we are to have interjections so that the answer cannot be heard, we do not want the answer. If members want to hear answers, they should not interject.

Hon PETER FOSS: I undertake travel much less than other Ministers. Members can check on that if they want. I went to a great deal of trouble to table a very full report in this House. Only one person read it and he did that only after I had complained that no-one had read it some time after I had tabled it. I hope all members will read the report I tabled in this House. If they want to follow up the travel reports of Ministers, they might start by asking for the reports of former Labor Ministers to be tabled and work their way through everybody else's, rather than just picking on me.

Hon Tom Stephens: That is ancient history.

Hon PETER FOSS: The Leader of the Opposition would like to think it is. I am particularly honoured by the fact that the Japanese Government has made this request to me. I think it is in recognition of the fact that I have shown a particular interest in and recognition of Japanese culture, which has been very much appreciated by the Hyogo Government, and the fact that one of the statues is from Western Australia.

Hon Bob Thomas: What is the statue from Western Australia?

Hon PETER FOSS: The statue from Western Australia is of a big, black duck!

The PRESIDENT: Order! I advise the Attorney General that other members want to ask questions.

REGIONAL FOREST AGREEMENTS

Timber Industry Structural Adjustment Funding

1365. Hon NORM KELLY to the Minister representing the Minister for the Environment:

At the completion of the deferred forest assessment process, the Commonwealth Government announced it had

allocated \$107m to the forest industry structural adjustment package to allow for timber industry structural adjustment following the completion of regional forest agreements in each State.

- (1) What amount of timber industry structural adjustment funding is available for Western Australia from this Commonwealth fund?
- (2) Does the State Government also have a similar fund to facilitate outcomes of the Western Australian regional forest agreement?
- (3) If not, is it considering such a fund?
- (4) If not, why not?
- (5) Is the Western Australian regional forest agreement steering committee considering the use of structural adjustment funds when assessing options for the conservation of forests and the impacts of those options?
- (6) Is the Western Australian regional forest agreement steering committee considering the use of these funds when assessing options for the transfer of timber production from old growth forests to plantation resources?
- (7) How much money has been spent so far by the State and Commonwealth Governments on the regional forest agreements?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(7) As the question will require considerable research, I request the member place it on notice.

(FOR SECOND SITTING ON WEDNESDAY)

(Questions for first sitting commence on p 1260.)

QUESTIONS WITHOUT NOTICE

MAIN ROADS' REDUNDANCIES

1366. Hon TOM STEPHENS to the Minister for Transport:

- (1) In a media statement on 9 January 1998, the Minister for Transport said, "It is not about numbers on a payroll, it is about having the competent people in the right place . . ." In the light of this statement, how can Main Roads now offer 250 redundancies to its employees when it has not identified the proposed Main Roads' structure which will supposedly ensure that Main Roads retains the most competent people?
- (2) How does the Minister expect Main Roads to make a decision on redundancy when it has not been told whether its sections will be abolished under the planned restructuring?

Hon E.J. CHARLTON replied:

- (1)-(2) The member once used aircraft a lot, but now he drives. The thrust of Main Roads' policies is to ensure that every dollar spent on fuel by the Leader of the Opposition together with funds contributed by other Western Australians helps to maximise state revenue. The changes at Main Roads will deliver maximum efficiency and maximum revenue into regional areas; and will ensure that the work force is properly structured so that that work undertaken predominantly by contractors is properly and appropriately carried out. Western Australians can probably look forward to an additional \$30m each year being allocated to road construction rather than being caught up in the administration of Main Roads' operations.

Hon Bob Thomas: Was that a pig flying by?

Hon E.J. CHARLTON: I think pigs do fly in the member's electorate.

There will be a substantial increase in revenue allocated to road construction. Improvements have been made to Albany Highway. Lanes have been widened, and so on. This would not have happened had the member been in charge, because he would have wasted money on dreamtime stuff, and everyone else would have missed out.

AUSTRALIND BYPASS MEDIAN STRIP

1367. Hon BOB THOMAS to the Minister for Transport:

This question is without notice. My question relates to the Australind bypass -

- (1) Did the Minister at any time, prior to 13 February 1998, discuss the proposal to open the median strip along the Australind bypass with any member of Parliament?
- (2) If so, which members?

Hon E.J. CHARLTON replied:

- (1)-(2) I do not know whether I did. As I have already said, when I visited Hon Bob Thomas' electorate I called into the roadhouse in question. I went to Gelorup, Bridgetown and Busselton. I drove around in a bus. As well as making a few suggestions about other matters, I had a look around, because I am interested in the issue. I cannot understand why the median strip has become such a large issue.

Hon Bob Thomas: Do you support it?

Hon E.J. CHARLTON: Absolutely. Of course I do. The point is that a design engineer drew up the plan for the median strip opening, and Main Roads approved that plan.

PROPOSED POWER STATION, ESPERANCE

1368. Hon GIZ WATSON to the Minister for Transport:

With reference to the proposed purchase and establishment of a power station by the Esperance Port Authority associated with the establishment of an iron ore load out facility for the iron ore coming from Koolyanobbing mine, can the Minister provide details in respect of this proposal -

- (1) Where is the power station coming from?
- (2) What is the fuel source of this power station?
- (3) What is the size - power - of the station?
- (4) Why is the power not being supplied by SECWA?
- (5) How much is the port authority paying for the power station?
- (6) Where is the power station to be located?
- (7) Has the port authority referred the proposed power station to the Environmental Protection Authority for assessment?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. The question implies that the acquisition of the power station by the Esperance Port Authority is associated with the Koolyanobbing Iron Pty Ltd export facility. The power station will generate power for the entire port operation including power consumed by the port tenants, such as Co-operative Bulk Handling, WMC Resources, Black Swan Nickel, Summit Fertilisers and Koolyanobbing Iron.

- (1) The power station is coming from the Red, White and Blue Mine, south of Norseman, which ceased operations last November.
- (2) The power station is diesel-fired.
- (3) The power station is approximately 3 megawatts.
- (4) Power is currently provided to the port by Western Power. However, since July 1996 the cost of that power has risen from 15.5¢ per unit to 32¢, adding approximately \$1m per annum to the port's power bill. The port has also been advised by Western Power that its power allocation has been reduced from 2.9 MW to 2.4 MW.
- (5) The port authority paid \$270 000 for the power station.

- (6) The power station will be housed in a 10 metre by 24 metre building, fully lined with noise attenuation material. The building will be located on port property well away from the town and residential areas.
- (7) The port authority has advised the Department of Environmental Protection of the proposal. The power station will be installed so that it complies with the port authority's DEP licence conditions, particularly those relating to noise emissions.

It is not the port authority's ambition to be a generator of power. However, it must ensure that the Esperance port operates efficiently. I look forward to the day when Hon Mark Nevill can arrange a gas supply - or some other energy - so that this is not necessary.

CHIPLOG SUPPLY CONTRACT

1369. Hon NORM KELLY to the Minister representing the Minister for the Environment:

- (1) Can the Minister confirm that the chiplog supply contract executed between the Department of Conservation and Land Management and Bunnings Forest Products Pty Ltd on 29 December 1997 will be presented to Parliament in a state agreement Act?
- (2) If so, can the Minister say when this legislation will be presented to Parliament?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I request that it be placed on notice.

AUSTRALIND TRAIN SERVICE TIMETABLE

1370. Hon J.A. COWDELL to the Minister for Transport:

- (1) Is the Minister aware of community concern in Bunbury about the Westrail timetable for the *Australind* train service, which currently leaves day trippers at Bunbury less than an hour to spend in town?
- (2) How does the Minister respond to this concern?

Hon E.J. CHARLTON replied:

- (1)-(2) We are attempting to provide a service that will allow people to travel to and from Perth in a reasonable time frame. Commuters also use the *Australind*, as the member would know. We want to encourage more of that, and we want to provide a same day return service. Many people connect to the service by bus from outlying areas in the south west. Without putting on a double length train, it is difficult to satisfy everyone's needs. The number of passengers using the *Australind* is increasing, but the current service is the best we can offer under the circumstances. If the member can make any suggestions to improve the current timetable, I invite him to do so.

WEST AUSTRALIAN CLUB

1371. Hon MARK NEVILL to the Leader of the House:

- (1) Was the Minister's office budget used to pay for the corporate membership of Mr Trevor Whittington of the West Australian Club?
- (2) If yes, why did the Government pay for that membership?

Hon N.F. MOORE replied:

- (1) To the best of my knowledge, no.
- (2) Not applicable.

DIESEL EXHAUST

1372. Hon J.A. SCOTT to the Minister for Transport:

I draw the Minister's attention to an article that appeared in the October 1997 edition of *New Scientist* titled "Devil in the Diesel" in which research has identified two compounds in diesel exhaust - 3 nitrobenzanthrone and 1.8 dinitropyrene. The research has found that the former is strongly carcinogenic while the later is a powerful mutagen.

- (1) In the light of this evidence and of the health and environmental benefits to the public, will the Minister reassure this House that only the cleaner and quieter and natural gas buses will be considered for the new bus fleet?

- (2) If no, what is preventing the Minister from ordering natural gas powered buses?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1)-(2) Compressed natural gas and diesel buses are being considered for the new bus fleet. Orders for buses will be placed as soon as the tender evaluation process is complete and Cabinet has considered the recommendations submitted by the tender evaluation panel.

This is an important question. Last year in Perth we held a conference on fuels for the future. Members have heard me talk about this before. We invited overseas people with expertise in all forms of power, to put their views on this important issue. We have taken those opinions into account, and collected information from studies conducted around the world. We also have bus manufacturers' research and development plans and, as part of the decision making process, we will make public our final plan. The first contract will relate to the supply of vehicles for the first year. Following that, 50 or 60 buses will be supplied each year for about the next 10 years.

Without trying to make any predictions, I hope that eventually we will acquire some gas powered buses. We must take into account all these factors and arrive at a proper evaluation. The member can play a part in that process as we compare a variety of vehicles. Of all the buses sold in the world only about 1 per cent are gas powered. Last week I saw the European statistics based on the most stringent specifications and, again, only about 1 per cent of those vehicles are gas powered. Most authorities are still buying diesel powered buses. I will submit to Parliament the emission variations between the available fuel options.

SCHOOL CHAPLAINS

1373. Hon HELEN HODGSON to the Leader of the House representing the Minister for Education:

- (1) How many chaplains are placed in -
- (a) government primary schools, and
 - (b) government high schools
- in the metropolitan area?
- (2) How much funding does the State Government provide for chaplaincies in government schools?
- (3) What proportion of total cost per chaplain does the State Government fund?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) (a) There are five part time chaplains in government primary schools in the metropolitan area.
- (b) There are nine full time and 35 part time chaplains in government high schools in the metropolitan area.
- (2) Government funding in the 1997-98 financial year is \$90 000. This figure is being reviewed.
- (3) Through the Education Department of WA, the Government currently funds approximately 6.4 per cent of the total estimated cost of \$1.4m.

PEPPER SPRAYS

1374. Hon RAY HALLIGAN to the Attorney General representing the Minister for Police:

What is the current legal status of pepper sprays?

Hon PETER FOSS replied:

I thank the member for some notice of this question. Under section 65(4a) of the Police Act, the carrying of any weapon which is intended to cause injury is unlawful. In addition, the use of such a weapon, including a pepper spray, for offensive purposes would constitute an offence. The actual possession of pepper sprays is not currently unlawful in Western Australia. However, the situation is being monitored.

CHIEF PSYCHIATRIST, STUBBS TERRACE HOSPITAL

1375. Hon LJILJANNA RAVLICH to the Minister representing the Minister for Health:

Following the recent change of the chief of psychiatry at Stubbs Terrace Hospital -

- (1) What process of the appointment was used for the position of chief of psychiatry at Stubbs Terrace Hospital?
- (2) Is this standard procedure for employing senior officers?
- (3) Was an independent board appointed for the interview and selection process?
- (4) Under what circumstances did the position of chief of psychiatry become vacant?
- (5) Was the former chief of psychiatry given the opportunity to apply for the position, and if not, why not?
- (6) Is the new chief of psychiatry more highly qualified than the previous chief of psychiatry, and if not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The position of chief of psychiatry at Stubbs Terrace Hospital has not been filled. An independent review indicated that a full time position was not required. A consultant psychiatrist from Princess Margaret Hospital for Children works 0.4 FTE at Stubbs Terrace and 0.4 FTE at PMH.
- (2)-(3) Not applicable.
- (4) The chief of psychiatry moved to the Selby Unit to undertake case management for a consultant who was on sick leave.
- (5)-(6) Not applicable.

RISK ASSESSMENT, NORTHBRIDGE TUNNEL

1376. Hon CHERYL DAVENPORT to the Minister for Transport:

- (1) Has a risk assessment report been completed for the Northbridge tunnel?
- (2) If so, which risks were assessed?
- (3) What were the outcomes of those assessments?
- (4) If not, when will the risk assessment process be completed, and will the Minister table the outcome of the assessments?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) The environmental, social and Aboriginal heritage site risks were considered by the Burswood Bridge and Road Committee and the assessment is detailed in its various public reports. A risk assessment study on the passage of hazardous goods through the Northbridge tunnel has recently been completed.
- (3) The outcome was that the environmental, social and Aboriginal risks could be managed during implementation of the project. In relation to the passage of hazardous goods, the report confirmed that vehicles carrying high level explosives should be prohibited from using the tunnel and this will be done.
- (4) Not applicable.

This whole process has involved close liaison with Aboriginal people.

NATIVE TITLE CLAIMS

1377. Hon CHRISTINE SHARP to the Minister for Mines:

In respect of allegations that native title claims are causing extreme delays in the processing of mining applications -

- (1) Is the Minister aware that, with current staffing levels in the Department of Minerals and Energy, at any given time the department is able to process only about one-third of future act applications involving native title land?
- (2) Can the Minister explain -
 - (a) why the situation has arisen; and
 - (b) how long this lack of staff has been delaying the processing of future act applications?
- (3) Does the Minister acknowledge that the delays in the Department of Minerals and Energy due to inadequate staffing are -
 - (a) frustrating the resolution of future act applications;
 - (b) showing a lack of good faith on behalf of the Government to resolve the administration of the future act process under the Native Title Act since its legislation was struck out by the High Court in 1995; and
 - (c) inflaming public opinion against the native title rights of indigenous Australians?
- (4) Can the Minister provide more case managers within the Department of Minerals and Energy to process the backlog of future act applications?
- (5) If no, why not?

Hon N.F. MOORE replied:

The premise on which the question is based is extraordinary.

- (1) I am aware that in excess of 2 000 mineral tenements are held up in the Department of Minerals and Energy by delays resulting from the unworkable procedures of the commonwealth Native Title Act. I understand that the Department of Minerals and Energy is currently involved in some 320 concurrent negotiations for about 150 tenements which have been identified by the applicants as priority.
- (2) The delays are not caused by a lack of staff but are the result of the unworkable procedures of the Native Title Act and the very large number of overlapping native title claims. The delays have been occurring ever since the State was forced to adopt the commonwealth Native Title Act procedures in March 1995.
- (3) The backlog within the Department of Minerals and Energy has arisen because applicants have been unable to reach agreement with native title parties so that titles may be granted. The Government's role is important only where applicants seek to proceed to a determination by the National Native Title Tribunal and few applicants currently see this as a satisfactory means of achieving a title.

Hon J.A. Scott interjected.

Hon N.F. MOORE: The member does not know what he is talking about. He should not interject.

- (4)-(5) The resources of the Department of Minerals and Energy are kept under constant review and additional resources will be provided when it is judged to be an effective means of achieving the grant of mineral and petroleum titles. I will be interested to see how Hon Jim Scott votes on the gold royalty question, bearing in mind that he wants us to spend a heap of money in the Department of Minerals and Energy. His vote may deprive the Government of some \$70m in revenue each year.

PORT OF FREMANTLE STEVEDORING SERVICES

1378. Hon TOM STEPHENS to the Leader of the House representing the Premier:

I ask this question on behalf of Hon Tom Helm. I refer to the claim by Producers and Consumers Stevedores in yesterday's *The Australian Financial Review* that it planned to extend its non-union docks venture to Fremantle within weeks.

- (1) Has the Government or any government department or agency been negotiating stevedoring services with P & C Stevedores?
- (2) Has Cabinet discussed the company's plans to move into the Port of Fremantle?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. However, I regret that I do not have an answer, and request that it be placed on notice

YANCHEP NATIONAL PARK SWIMMING POOL**1379. Hon KEN TRAVERS to the Minister representing the Minister for the Environment:**

- (1) Did the Minister write a letter to people concerning the swimming pool in Yanchep National Park in December 1997?
- (2) If yes, where did the Minister obtain the list of names and addresses of the people to whom she wrote?
- (3) How many letters did she send out and what was the cost?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) From letters and a petition received by the Minister.
- (3) 955 letters at a cost of 45¢ postage per letter.

WESTRAIL TICKET VENDING MACHINES**1380. Hon E.R.J. DERMER to the Minister for Transport:**

I refer to the Minister's advice of 12 March 1998 that moneys collected from the Westrail ticket vending machines are counted during the day of collection and banked in the Westrail account the next day. Will the Minister confirm that the amount banked following each collection from a machine is verified by comparing the amount of money banked and the amount collected as recorded by the ticket vending machine?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

Secureforce International has been collecting and counting money from ticket vending machines for Westrail since December 1996 and providing Westrail with a cheque to the value of cash collected. On a particular day the amount of cash collected for a given number of ticket vending machines is balanced to the total of the print-outs from the ticket vending machines cleared on that day by Secureforce International. In late February 1998 Westrail commenced a process to verify that the money paid to Westrail was equal to money collected from ticket vending machines.

GRADUATE TEACHERS**1381. Hon GREG SMITH to the Minister representing the Minister for Education:**

- (1) How many teaching graduates were given jobs in 1998?
- (2) How many of the positions were in regional areas?
- (3) How long is the average graduate likely to stay teaching in a regional school before receiving a posting back to the metropolitan or major coastal regional centre?
- (4) Can the Government offer any form of inducement to encourage teachers to take up or remain in country positions?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) As at February 1998 a total of 271 new graduates were employed.
- (2) 207 graduates were employed in the country and 64 were placed in metropolitan schools.
- (3) The average graduate spends approximately two years in a regional school before receiving a transfer to a metropolitan or major coastal centre. However, this figure may be misleading as length of country service

depends on a variety of factors. Classroom teachers may apply for transfer in respect of vacant positions and their placement will be considered in the context of organisational requirements and employee needs.

- (4) In 1997 the Education Department established a working party comprising key interest groups to frame a discussion paper for reviewing country benefits for teachers and framing appropriate incentives to attract persons to take up and remain in country placement. Based on recommendations of the working party, the Government allocated resources to implement an incentive package which is attached to the enterprise bargaining agreement between the Education Department and its employees.

The recent acceptance of the new agreements means the new country incentives to be in place for country teachers from the beginning of 1999 can be finalised. Incentives being negotiated include leave conditions, better housing, and payment of subsidies and allowances.

EARLY PSYCHOSIS, POSTNATAL DEPRESSION AND VOCATIONAL TRAINING FUNDING

1382. Hon NORM KELLY to the Minister representing the Minister for Health:

- (1) In relation to the Minister's reply to question without notice 1343, what steps is the Minister taking to maintain programs such as early psychosis, postnatal depression and vocational training, that are in danger of losing commonwealth funding?
- (2) More specifically, what steps is the Minister taking to ensure that Wesley Mission - currently recipients of \$31 000 from the national mental health strategy - is able to continue to provide accommodation and support for people with psychiatric disabilities?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I request that it be put on notice.

FREMANTLE PORT, SWANDOCK LEASE

1383. Hon J.A. SCOTT to the Minister for Transport:

This question is similar to one asked by the Leader of the Opposition.

- (1) Why has the Fremantle Port Authority not renewed the Swandock lease on Fremantle slipway?
- (2) Will the FPA be renewing all current leases on Victoria Quay?
- (3) Will the FPA honour all existing leases on Victoria Quay?
- (4) If no to (2) and (3), which person or organisation will be affected by non-renewal or variation of their lease?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) One of the leases held by Swandock expires on 31 October 1998. An approach has now been made to the administrator of Swandock to initiate discussions in respect of arrangements for a possible new lease over an area including the slipway for slipway operations.
- (2) A lease is valid for its current term. When a lease expires, the situation is considered on its merits.
- (3) The land occupied by one existing tenant on Victoria Quay is likely to be required by the proposed Maritime Museum and confidential negotiations are proceeding with the tenant for the early surrender of that lease. At this stage, other leases are not considered likely to be affected, and the FPA has lease obligations with tenants which it will fulfill.
- (4) See (3) above which addresses this question.

BREAST CANCER SCREENING

1384. Hon J.A. COWDELL to the Minister representing the Minister for Health:

- (1) How many women were screened for breast cancer at BreastScreen WA mobile units in the past 12 months in -
- (a) Rockingham;
- (b) Kwinana;

- (c) Mandurah; and
 - (d) Pinjarra?
- (2) How do those figures compare to the anticipated number of women who would seek screening in each location?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)
 - (a) 4 164;
 - (b) we will not know how many women in Kwinana will be screened until the screening schedule is completed on 17 April 1998;
 - (c) we will not know how many women in Mandurah will be screened until the screening schedule is completed on 7 August 1998;
 - (d) we will not be screening at Pinjarra until 30 June 1998. Screening will continue until 4 August 1998. We will not know the number of women to be screened until after that date.
 - (2)
 - (a) 3 000 anticipated; actually screened, 4 164 women;
 - (b) we anticipate screening 820 women;
 - (c) we anticipate screening 3 750 women;
 - (d) we anticipate screening 575 women.
-