WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1998

LEGISLATIVE COUNCIL

Tuesday, 23 June 1998

Legislative Council

Tuesday, 23 June 1998

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

LOCAL AREA EDUCATIONAL PLANNING

Petition

Hon E.R.J. Dermer presented the following petition bearing the signatures of 141 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 means whereby the educational future of our children is being decided under the Local Area Educational Planning (LAEP) process in the Perth Education District.

We protest that:

. the LAEP process is designed to give the appearance of community endorsement of decisions already made by the Western Australian Department of Education;

. while LAEP guidelines emphasised the need to develop and consider all options, the procedures adopted by the Drafting Committee have made this impossible;

. the recommendations made ignore crucial issues relating to social justice educational programs, local community needs and student and parental preferences;

. the recommendations made ignore current international educational research findings by assuming that the educational interests of our children are best served by school sizes well in excess of one thousand students.

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

[See paper No 1725.]

ANIMALS IN CIRCUSES

Petition

Hon Norm Kelly presented the following petition bearing the signatures of 302 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 are opposed to the use of animals in circuses.

Your petitioners request that the Legislative Council urge the cabinet to accept the recommendations of the Animal Welfare Advisory Committee, which state:

"It shall be an offence to import exotic animals into Western Australia as part of a circus troop, whether or not for the purpose of using animals in the circus".

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

[See paper No 1726.]

CANNINGTON AND MADDINGTON SENIOR HIGH SCHOOLS

Petition

Hon Ljiljanna Ravlich presented the following petition bearing the signatures of 3 881 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 urge you to keep both Cannington Senior High School and Maddington Senior High School open with the current Yr 8 to 12 Campus arrangement.

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 1727.]

VOLUNTARY EUTHANASIA BILL

Petition

Hon Norm Kelly presented the following petition bearing the signatures of 243 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 respectfully request that the Legislative Council debate the Voluntary Euthanasia Bill 1997 as a matter of urgency.

Your petitioners pray the House will pass the Bill allowing for the strict and properly regulated practice of voluntary euthanasia for individuals with an irreversible illness or condition.

And your petitioners, as in duty bound, will ever pray.

[See paper No 1728.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Report on Spent Convictions (Act Amendment) Regulations 1998

Hon N.D. Griffiths presented the thirty-fourth report of the Joint Standing Committee on Delegated Legislation on the Spent Convictions (Act Amendment) Regulations 1998, and on his motion it was resolved -

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

[See paper No 1729.]

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Report on Distribution Adjustment Assistance Scheme (DAAS): Guidelines

Hon Kim Chance presented the sixth report of the Standing Committee on Public Administration on the distribution adjustment assistance scheme and guidelines for compensation for the milk vendors, and on his motion it was resolved -

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

[See paper No 1730.]

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION

Report on a Petition Regarding the Funding and Care Provided to People with Acquired Brain Injury

Hon M.D. Nixon presented the twenty-fourth report of the Standing Committee on Constitutional Affairs and Statutes Revision on a petition regarding the funding and care provided to people with acquired brain injury, and on his motion it was resolved -

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

[See paper No 1731.]

POLICE SERVICE

Urgency Motion

THE PRESIDENT (Hon George Cash): I have received the following letter addressed to me and dated 22 June -

Dear Mr President

At today's sitting, it is my intention to move under SO 72 that the House, at its rising, adjourn until 9.00 am on 25 December 1998 for the purpose of discussing the current concern in the Police Service, and in the

wider community, associated with the suspensions of various Police Officers, the powers of the Police Commissioner under section 8 of the Police Act, and other related matters.

Yours sincerely

NORM KELLY MLC
Member for East Metropolitan Region

In order to discuss this matter, it will be necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

HON NORM KELLY (East Metropolitan) [3.44 pm]: I move -

That the House at its rising adjourn until 9.00 am on 25 December 1998.

It is truly a matter of urgency for the Parliament to debate the crisis currently before the Police Service in this State. Members are no doubt aware that action has been taken by the Police Union to initiate industrial action commencing this Friday unless a list of demands, which were put before a meeting of police officers last Sunday, are acted upon by this Government, and particularly the Minister for Police and the Commissioner of Police.

That list of demands includes repeal of section 8 of the Police Act. Of course, we are well aware that the section cannot be repealed by Friday, but the Police Service is looking for some indication that the Government is serious about addressing the inadequacies in the Police Act and changing that section. Another demand is to ensure that officers who are being forced to clear their annual leave and long service leave be returned to full duties.

Hon Peter Foss interjected.

Hon NORM KELLY: I am saying that was in the motions passed on Sunday. Another demand is for an independent judicial investigation into the activities of the Anti-Corruption Commission.

Hon Derrick Tomlinson: Does that mean a royal commission?

Hon NORM KELLY: No mention was made of that. Today's motion relates primarily to the Police Act and the ways in which it could be changed to ensure police officers have a fairer process of appeal in disciplinary matters and when more substantial accusations are made against them. Obviously, the current focus has primarily been on the six officers suspended from duty last December, who have now been on suspension for six months. In recent weeks that has technically been changed to the effect that they are no longer on suspension but they have been stood down from the Police Service. It is a technical adjustment in the light of recent events.

Hon N.D. Griffiths: They are in a state of suspension!

Hon NORM KELLY: The reason for such strong support for these motions at the union meeting held on Sunday is that other officers in the Police Service recognise that they could be the target of such accusations in the future.

Hon Derrick Tomlinson: That is the real reason.

Hon NORM KELLY: They recognise that they could be in the same predicament as these officers have been in for the past six months.

This matter first became public in December last year. The Commissioner of Police originally received a report from the Anti-Corruption Commission, which included findings of guilt against those officers. Subsequently, the Supreme Court found that the ACC acted beyond its powers in making those findings of guilt, and also that the Commissioner of Police had acted beyond his powers. With regard to the ACC action, one judge commented along the lines that not since the Inquisition had an investigatory body delivered findings. That relates to some of the inadequacies of the Anti-Corruption Commission Act. After the court ruling, a second report - presumably much the same as the first, minus the findings of guilt - was given to the Commissioner of Police. He acted upon that report by issuing section 8 notices to the officers involved. It is impossible to accept that the Commissioner of Police could have acted independently of the views he formed when he read the first report. His views must have been affected by the findings of guilt in the first report from the ACC. He has received a subsequent report and, because of the expediency with which he has acted on that report - we are not privy to its contents - one can only assume that the commissioner had already made up his mind to issue the section 8 notices and to get the officers out of the Police Force.

Hon Derrick Tomlinson: Would you have them in there?

Hon Peter Foss: It is a strong accusation. Do you have any basis for it?

Hon NORM KELLY: As the commissioner acted on the second report without allowing any form of appeal, it means that any future action he takes will be tainted by the fact that he based his decision on the initial report, even though it has been demonstrated that the ACC did not have the power to make that report.

Hon Peter Foss: Was that what the Full Court said?

Hon NORM KELLY: It was beyond its power to make a finding on those matters.

I turn now to section 8 of the Police Act. It is important that the Police Commissioner have powers to dismiss officers in whom he has lost confidence, and it is necessary for the commissioner to retain those powers in certain circumstances. However, an independent appeals process should be available to those officers. I am aware that following the Codd report, for which a review was conducted, administrative arrangements were implemented relating to actions under section 8 of the Police Act. Interestingly, yesterday's *The West Australian* included the following -

> Mr Day announced last Friday that officers facing dismissal under section 8 would be able to request an independent assessment to make sure it had been fairly reached.

Although a review is included in the administrative arrangement, it does not cover the substance of the material on which the decision was made. It is purely a review of procedures adopted in reaching that decision. It is wrong to regard that as an independent review of the action taken. The Minister stated -

> "The only thing that won't be able to be overturned is the judgment by the Police Commissioner about who is appropriate to be in the WA Police Service," . . .

When reading through the arrangements, one returns to the point that such authority resides only with the Police Commissioner. Police officers are given access to materials in their efforts to show cause why they should not be removed from the Police Service. Part 2 of the arrangement states -

> The Member will be given special access, on a 'refresh the memory' basis, to materials already seen or created by the Member in the course of duty . . .

This is a very loose arrangement. I would appreciate hearing the Attorney General's thoughts on how wide the arrangement could be construed to be. Could officers take a copy of the diary notes made, or would it be a supervised look at the diary to "refresh the memory"? When considering people's livelihoods, and such allegations, surely they should have access to a full range of documents to use the documents in a full way? That is one inadequacy of the arrangement.

As I said earlier, a review process is available to review the commissioner's recommendation; however, this is purely on procedural matters to ensure correct procedures were followed. Of course, once a reviewer determines that the procedures were not correctly followed, the matter is returned to the commissioner, who can receive the reviewer's report and start the process again. The commissioner determines how he will act from that point on. No access is provided for officers to argue their cases, or to examine the evidence used by the commissioner in making his initial recommendation.

In considering other ways of providing an independent assessment, I refer to the situation in other States. It was argued recently that such appeals should go to the Industrial Relations Commission, which is the case in other jurisdictions.

Hon Peter Foss: In New South Wales.

Hon NORM KELLY: I refer to the States one by one to show how rights of appeal are provided in other jurisdictions. First, the right of appeal against the commissioner's decision to dismiss in Victoria is to the Police Review Commission, established under the Victoria Police Regulation Act. The Police Review Commission comprises a chairman and a deputy chairman appointed by the Governor of that State. The Police Regulation Act of Tasmania provides in section 50(d)(i) that any decision made by the commissioner to dismiss an officer, or to reduce his pay, can be made the subject of appeal by the officer to the Police Appeals Board. Under the Queensland Police Service Administration Act, which was recently under review, police can appeal to a misconduct tribunal, although I am not sure whether it has yet been formed.

Under the South Australia Police (Complaints and Disciplinary Proceedings) Act, officers can appeal against conviction and penalties under the Police Disciplinary Tribunal. The South Australian Supreme Court has the power to make a binding order on the commissioner. Under the New South Wales Police Act, section 181D, the commissioner can remove any police officer in whom he has lost confidence. Under section 181E an officer can apply to the Industrial Relations Commission for a review of the order to discharge him on the grounds that the removal was harsh, unreasonable or unjust. The only difference in the New South Wales Industrial Relations

Commission when comparing the treatment of police with that of other workers is that police officers only have 14 days to lodge an appeal, rather than the usual 21 days.

Hon N.D. Griffiths: They still have a right to do so.

Hon NORM KELLY: Confidentiality can be maintained through in camera hearings to ensure that police operations are not affected.

These officers in Western Australia are caught in the cracks of the legislation. A more serious situation would be that charges were laid by the Director of Public Prosecutions; however, he decided that it would not be worthwhile to lay those charges, yet the allegations are deemed to be too serious to be a minor disciplinary matter within the Police Service.

Section 8 of the Police Act gives the commissioner incredible powers without a right of appeal for those affected by his decision. This situation is different from that in other States. Section 23 provides a procedure for disciplinary measures and allows for cases in which a recommendation is made for suspension from duty, discharge or dismissal from the force. Before that decision is enacted, an appeal can be made to the board.

Section 33B of the Police Act outlines the constitution of the Police Appeals Board. This is a three person board, including one person elected, normally by the police union, as a representative of police officers; another person by the commissioner; and the third person, who shall be the chairman, is to be a stipendiary magistrate appointed by the Governor. Therefore, the three person board is clearly balanced with the relevant expertise to decide these matters.

In conclusion, whether or not these officers are guilty of these accused actions, they should not be denied natural justice. They should have the opportunity to argue their cases before an independent forum. To date, that opportunity has not been afforded.

HON PETER FOSS (East Metropolitan - Attorney General) [3.59 pm]: We need to get a few matters clear for the record. First, a total of eight notices were delivered under section 8 of the Police Act: Six were based on a report by the Anti-Corruption Commission; one was based on a report by a joint task force of the internal affairs unit and the Australian Federal Police; and one was based on a report of the internal affairs unit. I have the section 8 notices here. One of them has a duplication because one person had his section 8 notice based on the Anti-Corruption Commission report and separately on the joint task force. I seek leave to table those notices.

Leave granted. [See paper No 1732.]

Hon PETER FOSS: Secondly, despite the two conflicting statements by Hon Norm Kelly, these are not based on allegations of criminality; they are based on section 8 of the Police Act which deals with lack of confidence. Members must make up their minds whether they support that section and the findings of the Wood royal commission. I will read from 4.94 of volume 2 of the final report of the Wood royal commission -

> The introduction of dismissal for want of Commissioner's confidence reflects the spirit of the procedure already in place in the Australian Federal Police. It is predicated upon the circumstance that the Police Commissioner is obliged to maintain the integrity and reputation of the Service.
>
> At the end of the day it is the Commissioner who must take responsibility for the inappropriate performance of the Service. It follows that it is he who should be able to maintain a team in whom he has confidence. This principle flows down through the ranks. A sergeant should not be required to lead those who are not worthy of the Commissioner's confidence, nor should an officer have to work with a colleague if that colleague is not deserving of the Commissioner's confidence. This Commission, accordingly, remains strongly supportive of the retention of this discretion and of its exercise in a way that accords with the objective for which it was created.

Hon N.D. Griffiths: He also recommended a right of appeal.

Hon PETER FOSS: I will deal with that. The important thing is that he makes that recommendation and we must first establish whether we support the view that a person can be dismissed from the service on the basis of lack of confidence. I support that, the Government supports that and I trust that every member of this Chamber supports that.

Hon Derrick Tomlinson: Hear, hear!

Hon PETER FOSS: The next thing is that there should be proper procedural fairness; and we are determined that there will be proper procedural fairness. I will let the House know what happens. First, if we assume the commissioner is entitled to act, he gives 21 days' notice. The officers are not suspended; they are stood down from duties on full pay. An extension has always been granted, if required. After that, if a decision is made, they are given the opportunity to have that decision independently reviewed, if requested. The important thing about this - a point

that Hon Norm Kelly perhaps has not fully appreciated - is whether that review should be of the procedure or of the merits. Hon Norm Kelly appears to want a review of the merits. This Government cannot support a situation under which a court or a tribunal decides the merits. There should be procedural fairness; however, in the end it is the commissioner who is responsible for the performance of the Police Force; it is the commissioner who must have that confidence. Provided he follows the appropriate procedures, his decision should be supported.

Hon N.D. Griffiths: You support a Clayton's appeal?

The PRESIDENT: Order! Other speakers were heard in relative silence.

Hon PETER FOSS: I support the procedure. If it is not procedurally fair, there is an appeal to the Supreme Court, as has already been demonstrated. That has always lain there. As was wrongly said in this House, it was not a matter that the court said was beyond the power of the commissioner; the commissioner acted on a document which was beyond the power of the ACC to present and, therefore, it was held that his decision was tainted by that document. It was never said that he acted beyond power.

The next question is: What did they receive? They received all the documents that the police have. They have the amended report from the ACC, relevant transcripts and the report of the assistant commissioner of professional standards, which is the recommendation to the commissioner. It is quite improper to say that the commissioner does not have the capacity to make up his mind. This is something that is regularly asked of judges. I do not think it is an unreasonable thing to ask of the commissioner. Members should keep in mind also that the decision by the commissioner, if he were to decide that the officers should go, still must be confirmed by the Minister. Therefore, a further area of decision exists.

We seem to have a strange idea in this country that all decisions should be made by somebody who has been appointed to some form of independent tribunal. It is about time we had decisions being made by the people who have to wear them. One can hardly ask the commissioner to be responsible for the integrity of the force if he continually has his decisions on merit taken over by other people. We have never had a problem with it being reviewed; however, we do have a problem with the merits being reviewed as opposed to the procedure. It is appropriate that the process should be reviewed and we have set up a process for that; and the Supreme Court always has the power to do so.

Another point is that a considerable amount of misinformation has been put about on this matter. I am pleased to say that some of that misinformation has been severely stamped on by a committee of both Houses. I will not repeat what the committee had to say; however, it is clear that the information put about by one officer was false. I have little hesitation in saying that it was not accidentally false.

Hon N.D. Griffiths: That report is irrelevant to this debate.

Hon PETER FOSS: It is not irrelevant to this debate because part of the concern - and this was raised by Hon Norm Kelly - is the concern of the public. Part of that concern arises out of misinformation that has been spread about this process. To me, it appears - and we would like to make sure that is the case - that the process has been conducted fairly according to the rules of natural justice. We do not have any problem in committing ourselves to that. We do have a problem when there is no process which enables the commissioner to say to the public, "I am the person in charge. I have full confidence in all my officers." That is what he should be able to say to the public. Yet, if he is not to have a decision in that process, we will put him in an impossible position.

Members should keep in mind the position of trust that our police officers have. Those members who were here at the time will remember the debate on setting up the ACC. It was thought then that it did not have enough power. It was criticised as being too closely aligned with the police. I hope we have disabused the public and members of this House of the notion that the ACC is a puppet of the police. It must be expected that when it takes action people will not like it. All we ask for is procedural fairness; and we must back the Commissioner of Police in what he does.

I would like to make certain - and the Minister for Police likewise - that the public is aware of the facts of this case or the allegations that have been made. It has not been at the wish of the Government that these allegations have been suppressed. Appropriately, as it turned out, due to an injunction obtained by the police officers with regard to the first report, that report never came before the public. I can assure members that the other reports that I referred to will be tabled in this Parliament as soon as can be done in accordance with procedural fairness. Our concerns at the moment are that the police officers have 21 days' notice - they may ask for an extension of that period of time - and we hope that they do not canvass the facts. in the same way as we will not canvass those facts until such time.

We, as members of Parliament, must take a serious view of whether we wish to have a Police Force in which we have confidence or a Police Force in which, in order to remove people in whom we do not have confidence, we have to go through almost a criminal trial before we can ask those police to leave. If members think that is a basis, I can tell

them it will not work. The Wood royal commission report does not say that and any member of the public would know that one cannot say that that is the precondition.

Hon Norm Kelly: Does the Attorney General not believe that the police appeal board could play a role in these proceedings?

Hon PETER FOSS: As I said, I have no problem with a review of the process. However, in the end the man in charge - or woman if we should ever have a female commissioner - must be able to say, "I have confidence in these people." The Wood royal commission supported that. How can we say to the commissioner, "You will have confidence in this person" if he does not? He has been through the proper processes; he has made the decision on the basis of the proper processes; he does not have confidence in them. Members must decide whether they support section 8. We are being asked to repeal it. This Government will not support the repeal of section 8. It is essential to the integrity of the Police Force in this State; I give members that guarantee now. We do not believe it should be repealed and I hope members in this House do not believe it should be repealed. However, we are happy to look at options to ensure that that process is appropriately carried out. Nevertheless, in the end the person whose judgment must count must be the commissioner. We must have confidence in him and he must have confidence in all the members of his force, otherwise we will not have a Police Force in which we can place any trust.

HON N.D. GRIFFITHS (East Metropolitan) [4.09 pm]: This motion invites us to discuss the current concern in the Police Service and in the wider community associated with the suspensions of various police officers, the powers of the Commissioner of Police under section 8 of the Police Act, and other related matters.

It is, as the Attorney General has said, properly a matter of confidence. We as a community must have confidence in our Police Force. Someone with a bit of media panache keeps referring to it as a service. The Parliament says it is a Police Force and the Police Act has not been changed. When we look at the matters of concern to the community, we must take note of the fact that mismanagement of policing is part of a pattern that is feeding community insecurity in 1998. There are two aspects to this: The first is public safety and the second is civil liberty. Public safety is now at risk at a time when the Government needs to be taking positive measures. It is very unfortunate for the community that the providers of a major public service and a major government service, police officers, have no confidence in the Government. It seems that the police officers are no Robinson Crusoes when it comes to this process. They are joining the queue of the teachers, nurses and others. It is a matter of grave disquiet that in the core government responsibilities of nurses, health, teachers, education and policing public safety, the community as a whole and the people involved in those areas lack confidence in the Government.

The failure to manage the police in Western Australia is borne out by the dreadful crime statistics that we read whenever those statistics are tabled. Something must be done about it. The community needs to have crime levels brought down urgently because public safety is about people being secure and feeling secure. They cannot feel secure when the Police Force is being mismanaged. The question of civil liberties arises from this mismanagement of the Police Force. When we talk about managing the Police Force, we are talking about the use of force and power. Where there is power there is abuse of power. We are talking about managing the use of power properly and putting in place proper constraints and accountability mechanisms to minimise the abuse of power. This is where the problem began for this Government because it failed to properly act on the report of a committee of this House, which was tabled two years ago today. Instead of setting up, as Justice Wood proposed in New South Wales, a police specific Anti-Corruption Commission, the Government revamped the old, discredited Official Corruption Commission and gave it a fancy new name and put in a couple of special little sections. Quite frankly, the Government brought in inadequate, inappropriate legislation so as not to enable a police specific Anti-Corruption Commission to get on with the job and minimise the abuse of power that occurs from time to time in any police force in any part of the world. That mismanagement of the process led to the current section 8 fiasco.

The awful thing about the section 8 fiasco is that initially the Anti-Corruption Commission provided findings to the Police Commissioner and the section 8 notices were then issued. There was in essence a lack of due process. The section 8 process itself is a lack of due process because it does not give people who face the penalties that section 8 enables to be provided the opportunity to be heard.

Hon Peter Foss: Do you support the grounds?

Hon N.D. GRIFFITHS: I support a mechanism which allows an effective right of appeal on the merits. Police officers and commissioners should have the confidence of the community. Policing cannot work if a Commissioner of Police can sack a police officer with unbridled discretion. We live in Australia. Australia has had that former great friend of the Queensland National Party, formerly Sir Terence Lewis, proved to be very corrupt. He was sentenced to a very heavy term of imprisonment. I understand that he is now out. Police commissioners in Australia have been shown to be corrupt and unworthy of holding high office. If we have a situation where police commissioners have unbridled discretion to dispense with police officers who are perhaps incorruptible - the Serpicos

of Western Australia, or however we may want to characterise them - we are letting ourselves into the sort of situation that Queensland and New South Wales have seen from time to time. It is important that we have an appeals mechanism which can deal with the matter on its merits.

Hon Peter Foss: Do you support the grounds?

Hon N.D. GRIFFITHS: The police commissioner must have the power to sack, but that must be able to be dealt with by an effective appeal mechanism dealing with the merits.

Hon Peter Foss: On what grounds?

Hon N.D. GRIFFITHS: That is the difference between the Government and the Opposition. Under the government scenario we would have the world of Sir Terence Lewis. The Attorney General supports that.

Hon Peter Foss: Nonsense.

The PRESIDENT: Order!

Hon N.D. GRIFFITHS: The Attorney General would allow a future corrupt police commissioner to sack his honest officers because they may be getting too close to him. We do not want that situation. If police officers do not have a fair go, due process, a right of appeal against an unfair and unwarranted dismissal - I know where the Attorney General's party stands on unfair dismissals - and any semblance of liberty, what hope does the ordinary citizen have? The ordinary citizen is very concerned that police officers are being treated so shabbily by this Government.

Hon Peter Foss: You are backing down on Wood and you know it.

Hon N.D. GRIFFITHS: If the Attorney General is to interject, I wish he would interject louder so that I could hear him.

The PRESIDENT: Order! Let me sort out the interjections. I do not want anyone to interject because I want Hansard to be able to record this accurately.

Hon N.D. GRIFFITHS: Section 8 of the Police Act involves in the case of a commissioned officer a role for the Executive Council. In the case of any non-commissioned officer there is a safeguard that people seem to lose sight of. That safeguard is the Minister for Police. Unfortunately that is not much of a safeguard because the Minister for Police carries on with that age old great tradition of Ministers for Police, which is "I have absolute confidence in the commissioner and the decisions of the commissioner rightly or wrongly because they are the commissioner's decisions." That is not a very satisfactory safeguard. The history of the use of section 8 is relevant. It is not used very often. It came into fashion with this Minister.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.20 pm]: I take the opportunity to join this debate because the community has every right to have its concerns addressed in this place. Those concerns were enunciated by Hon Nick Griffiths when he spoke about the community's need to have a sense of security. That sense of security will not be achieved by the Government's maintaining a Police Service in chaos. That is the process that has been unleashed in Western Australia by the management strategies apparently adopted with the support and blessing of the Minister for Police and presumably the Government.

No doubt many members have spoken to Police Department employees who have used the complaint processes. Some members also will have had the opportunity of listening to police personnel who have been either suspended or sacked. I have been approached by a sacked Police Department employee who sought my help to provide an opportunity to put his case, in the knowledge that there was no opportunity to do that through any other process. Even through a member of Parliament or by having access to the Minister for Police, there is no opportunity for redress for such officers.

During the contribution by Hon Nick Griffiths, the Attorney General interjected and intimated that we are stepping back from the Wood royal commission report. Nothing could be further from the truth. The Attorney General is making the same mistake that has been made by the Minister for Police and the Commissioner of Police. He is confused by the recommendations which flowed from the Codd report, as though that report accurately reflected the Wood report. That is not the case. It would appear that the crucial recommendations of Codd - purported to have drawn upon the Wood recommendations - are based upon an erroneous interpretation of the Wood appeal process.

That becomes more evident as one reads the recommendations in the Wood report and compares them with the Codd recommendations. One notes that an alternative process was available to this Government, the Minister for Police, and the Commissioner of Police - if he were prepared to embrace the Wood recommendations. Other reports have flowed from consideration of the recommendations of Wood, and have brought about misunderstandings by this Government. This is yet another example: We have witnessed the difficulties faced by the Police Service, and by

the Attorney General when he tried to deflect the criticisms that flowed from the recommendations of the Wood report relating to the child abuse unit. Again, the Government, the Minister for Police, the Attorney General and the Commissioner of Police have failed to recognise the disjuncture between the Wood report on appeal processes and that which flowed from Codd, which is a completely different structure.

The Commissioner of Police has dismissed police personnel. We recognise that something is missing from that process because officers do not have a right of appeal. We have witnessed the media publicity on these issues. We have seen well known names hit the media spotlight. However, some people are aware of other police personnel who have been dismissed without the opportunity to argue their case in the public arena in the media, or to gain access to the Industrial Relations Commission to seek redress from a decision by the Commissioner of Police. These people are faced with all sorts of hurdles, not the least of which is the argument by the Commissioner of Police, in particular, that the IRC has no jurisdiction. It will be necessary for police personnel to continue to address the issue so that their employment rights and conditions cannot be terminated by the Commissioner of Police without due cause, and without the provision of an appeal and review process.

I turn now to my concern about the observations by the Minister for Police which were relayed to the media and to the people of Western Australia on television on Sunday night. He indicated that he would not stand by and watch police personnel wrongfully or unjustly dismissed. However, we have heard during this debate from the contribution by Hon Nick Griffiths, in particular, that although there is an opportunity for participation by the Minister for Police by recommendation to the Executive Council in cases involving commissioned officers, there does not appear to be an automatic appeals process by way of the Minister for Police to consider the dismissal of other personnel.

Hon N.D. Griffiths: The Police Minister rubber stamps decisions by the Police Commissioner on almost every occasion.

Hon TOM STEPHENS: If that is not the case, if the Minister for Police has taken on a new process to handle decisions by the Commissioner of Police, it is up to the Minister to indicate clearly what opportunities are available to police personnel when faced with unfair and unjust dismissal. People have such claims. I know a person who has been through the courts and has had his charges dismissed. However, the charges were the basis of an action by the Commissioner of Police to sack the police personnel involved -

Hon Derrick Tomlinson: Was that a section 23 or a section 8 case? I think the member is referring to a section 23 case before the Supreme Court.

Hon TOM STEPHENS: Neither case has been before the Supreme Court. The person involved has not had the opportunity of obtaining legal assistance to find his way through the system. I will make every effort to find an opportunity for the police employee to gain redress for that unfair dismissal by the Commissioner of Police.

Hon Derrick Tomlinson: Under what process was the person dismissed?

Hon TOM STEPHENS: The Commissioner of Police decided that he had the right to sack the employee without referral to, or review by, anyone else.

Hon Derrick Tomlinson: Was it a section 8 action?

Hon TOM STEPHENS: It appears to me that the Police Commissioner could not rely -

Hon Derrick Tomlinson: It was a section 23 action.

Hon TOM STEPHENS: If that is the case, this person has not been able to obtain the redress to which he is entitled as a citizen of Western Australia.

Hon Derrick Tomlinson: It is a section 8 case.

Hon TOM STEPHENS: All the arguments that have been put before the House, particularly by Hon Nick Griffiths -

Hon Simon O'Brien: Did that police officer exercise his right within 21 days to respond to the commissioner?

Hon TOM STEPHENS: Yes, but the Commissioner of Police upheld his original decision - despite the fact that the courts have dismissed the charges against the officer, and that those charges were the basis for the original decision by the Commissioner of Police. The Commissioner of Police upheld his original decision, on the basis of his own review!

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

Hon TOM STEPHENS: This was the process faced by one individual. I doubt that any member in this Chamber knows anything about that case.

Hon Derrick Tomlinson: But guilt is not a prerequisite for lack of confidence!

Hon TOM STEPHENS: That process is not sufficient for the Police Commissioner to decide that his original decision was correct, subject to appeal to no-one and review by no-one!

I have known the person involved since he was an infant. I would trust him with my life, and the lives of members of the community that he endeavours to serve. To arrive at such a decision is a judgment on the Commissioner of Police, not the individual involved.

HON GIZ WATSON (North Metropolitan) [4.29 pm]: I will make two points. It is absolutely critical that the community have confidence in the Police Force. We are seeing the result of the fact, as Hon Nick Griffiths mentioned, that the ACC was not a good choice of the remedy. It is time that the Premier revisited the notion of a royal commission. That would give the fairest resolution, both for the community, and for the members of the Police Force who are feeling aggrieved. That is the only way the full story will be told. I call on the Premier to seriously consider that.

[Motion lapsed, pursuant to standing orders.]

SELECT COMMITTEE ON IMMUNISATION AND VACCINATION RATES IN CHILDREN

Extension of Time

Hon B.M. Scott reported that the Select Committee on Immunisation and Vaccination Rates in Children had resolved that the time in which it had to report be extended from 30 June 1998 to 29 October 1998, and on her motion it was resolved -

That the report do lie upon the Table and be adopted and agreed to.

[See paper No 1733.]

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION

Report on Rail Safety Bill

Hon M.D. Nixon presented the twenty-fifth report of the Standing Committee on Constitutional Affairs and Statutes Revision on the Rail Safety Bill 1998, and on his motion it was resolved -

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

[See paper No 1734.]

SPENT CONVICTIONS (ACT AMENDMENT) REGULATIONS

Disallowance - Order of the Day Discharged

HON N.D. GRIFFITHS (East Metropolitan) [4.31 pm]: I move -

That Order of the Day No 1 be discharged.

My reasons for the motion lie in the thirty-fourth report of the Joint Standing Committee on Delegated Legislation tabled earlier this afternoon. The report refers to the broad object of the amendment regulations being to grant the offender management division of the Ministry of Justice an exception from the operation of division 4 part 3 of the Spent Convictions Act 1988, which provides that it is unlawful to access criminal records containing spent convictions. It is also unlawful to ask a person about their spent convictions, or to make an assessment of the person by having regard to any spent convictions which the person may have. The offender management division of the Ministry of Justice uses information on spent convictions in the performance of its functions. That is an interesting observation, because that body, which has recently been granted the power to be exempt, prior to being granted that power had been exercising the power even though it did not have the power. In doing so, the committee points out in its report that that body probably acted contrary to law. I will go further as a member of this House and say it has acted contrary to law.

I refer to the committee report, in particular its executive summary, in which the committee points out that it accepts the requirement for the offender management division of the Ministry of Justice to have access to criminal records information, including information regarding spent convictions, in order to discharge those functions given to it under the Sentencing Act 1995 and the Sentencing Administration Act 1995. The committee accepts that the regulation is within power and can be made in accordance with the Spent Convictions Act. However, the committee expresses in the report its concern over the lack of a statutory basis for the sharing of criminal records information relating to spent convictions between when the Act came into operation, and the date the regulations came into operation. That

is a period in excess of seven and a half years. The fact that the committee is no longer of the view that the disallowance motion should proceed does not in any way, I suggest, remove the very proper concern that has come to light, in respect of a number of unlawful acts. The committee became aware of it. It points out that what has taken place, in the committee's words, appears to be provided in breach of the Spent Convictions Act 1988, and makes reference at page 7 of the report to what section 28 states.

The committee refers to the fact that thousands of assessments of offenders have been carried out by the offender management division of the Ministry of Justice over the period in question; namely, 1 July 1992 to 27 February 1998. The committee notes that the provision of such information is legal, but provides in the report by way of annexure a number of documents which say something about the practices of the police and the Ministry of Justice with respect to the provision of this information, which should not have been provided and used in the way it was because it was contrary to law for many years. I refer to the memorandum of understanding of 19 October 1994 signed by the then Deputy Commissioner Ayton and the then Director General of the Ministry of Justice, Mr David Grant, in which the Police Department agrees to allow access to the material by the department. Again, in drawing my remarks to a close, I make reference to a letter from the recently former Director General of the Ministry of Justice, Mr Gary Byron, in annexure E in which he states fairly succinctly in a letter to the Attorney General the observation that -

> In 1994 the Ministry of Justice and the Police Department entered into a memorandum of understanding which enabled certain Ministry Staff to have on-line access to criminal record information. This information is utilised on a day-to-day basis in the assessment and classification of offenders.

This is contrary to the Act. He does not use those words; I use them. This procedure was contrary to the Act. We have at the highest level the police and the Ministry of Justice entering into an arrangement contrary to law; an arrangement which has a penalty - it is not just unlawful. To his credit, he goes on to say -

> At a recent meeting I had with Deputy Commissioner Bruce Brennan and Assistant Commissioner Bill Mott, they raised some concerns regarding the ability of the Ministry to have access to criminal records containing spent convictions.

I think the three people involved in this process, Mr Brennan, Mr Mott, and Mr Byron behaved in a very creditable manner in putting an end to this illegal behaviour on the part of the two public agencies. Reference is made to raising concerns regarding the ability of the ministry to have access to criminal records containing spent convictions. Their concerns centred around the issue that the ministry does not have exempt status under the Spent Convictions Act to allow it to access details of a person's spent convictions.

The processes of the Delegated Legislation Committee have brought to light the fact that two very important government agencies concerned with the administration of justice, the Police Force and the Ministry of Justice, have been engaged in widespread illegal behaviour for seven and a half years. I am pleased that position is now legal. In that context I note that the committee is of the view that it is inappropriate that its disallowance motion proceed because the power should be available to the ministry.

HON HELEN HODGSON (North Metropolitan) [4.40 pm]: The committee's report indicates its thorough work on the potential reasons that this regulation might be ultra vires. However, the issue is whether the power is appropriately established in the first place. The Australian Democrats have spoken in this place over the past year about when it is appropriate to prescribe something by regulation. At times the use of regulation is not appropriate, and this is such a case. The appropriate use of regulations depends on how the legislation has been established. Section 16 of the Spent Convictions Act provides that regulations may be made to provide for exceptions. Those exceptions relate to employers, employees, types of employment and so on. It seems that the use of exceptions is a way to limit the application of the legislation.

I have no problem with the principle that some people, by virtue of their type of employment, should be required to disclose a spent conviction. That must be limited to specific cases, such as serious offences, which is contained in the legislation. However, it is probably inappropriate to do that by way of regulation and it is more appropriate for the Act to address situations in which people may have to disclose a type of conviction - that is, a serious offence - in certain types of employment.

The committee has brought to the attention of this place a matter that is important. Even though the motion that the committee intends to withdraw is relevant, the matter should be taken on board by the Government and the core issue addressed.

HON PETER FOSS (East Metropolitan - Attorney General) [4.42 pm]: I note the remarks made by Hon Nick Griffiths. The matter is not without some doubt, and the intent of the regulation is to resolve any doubt.

Hon N.D. Griffiths: I think you are putting a brave face on it. It is not an attack on the Attorney.

Hon PETER FOSS: I realise that, because as soon as I became aware of the problem I arranged for the regulation to be drafted. I am not saying that I do not believe it is appropriate for that to be done; it is highly appropriate to put the matter totally beyond doubt. The other point that members should bear in mind is that it is not only appropriate but also essential this information is exchanged between the police and the Ministry of Justice.

Hon N.D. Griffiths: For the purposes referred to.

Hon PETER FOSS: That is right.

Hon N.D. Griffiths: It is most important that agencies involved with the administration of justice should be seen to be obeying the same set of rules.

Hon PETER FOSS: It is dotting the i's and crossing the t's.

Hon N.D. Griffiths: It is more than that.

Hon PETER FOSS: If Hon Nick Griffiths reads the memorandum, it is a matter of concern.

Hon N.D. Griffiths: It is a matter of grave concern, and it has been rectified now. The point of the committee's bringing it to the attention of the House is to encourage Ministers to be more proactive to ensure that this sort of error is not going on in other places.

Hon PETER FOSS: Precisely.

Hon N.D. Griffiths: The Minister should not make apologies for what has taken place.

Hon PETER FOSS: I am not making apologies. Hon Nick Griffiths made a categorical statement and I would like to restore some balance to the issue. It is a matter of concern that was acted on promptly by me and my ministry. I make no apology for doing that. That was the appropriate response on my part. I do not want to be seen to be saying that the matter was totally without doubt. To some extent the process started well before I was Minister - in fact well before we were in government. That was the appropriate time for people to check the law.

Hon N.D. Griffiths: That is so. However, that was a short period from July 1992 to February 1993 compared with February 1993 to now.

Hon PETER FOSS: The appropriate time to check a process is before one puts it in place. That was omitted to be done.

Hon N.D. Griffiths: The memorandum of understanding is dated 1994.

Hon PETER FOSS: I realise that; however, the process started before then.

The important point is that the matter was not totally without doubt. However, as soon as I became aware of the situation it was appropriate that we take the action that we took. That is now in place. I would like to emphasise that what occurred was an essential part of the administration of justice. It is something that I have been encouraging to put on a more effective basis than currently, not only from the point of view of looking after people who come into our system, so that we have a full understanding of their background and effect on the community, but also to ensure that the policemen dealing with people have the appropriate information from us. The exchange of information between those two departments is a fundamental issue from the point of view of administration of justice. I am not simply referring to convictions and records, but also to the information that each of those departments have on people with whom they deal. In the natural course of events people go through the hands of police, to the courts, into prisons, out of prisons and into the community, and possibly come to the notice of the police once more. Under those circumstances it is important that information be available between the two agencies on a fairly easy basis, simply because it is the proper way for it to be administered. I support the intention of the committee in seeking to withdraw the motion.

Question put and passed.

INDUSTRIAL RELATIONS (SUPERANNUATION) REGULATIONS 1997

Motion for Disallowance

Pursuant to Standing Order No 152(b), the following motion by Hon Tom Stephens was moved pro forma -

> That the Industrial Relations (Superannuation) Regulations 1997 published in the *Gazette* on 31 December 1997 and tabled in the Legislative Council on 19 March 1998 under the Industrial Relations Act 1979, be and are hereby disallowed.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.48 pm]: Two key aspects to the disallowance are the contradictions between section 49C(1) of the Industrial Relations Act and the Industrial Relations (Superannuation) Regulations 1997, and the process by which the regulations were drafted and subsequently gazetted.

Sections of the regulations are directly contradictory with the Industrial Relations Act. Members would find it illustrative to consider the requirement under section 49C(2)(c)(i) of the legislation, which specifies that if the award order or industrial agreement specifies one or more complying superannuation funds or schemes to make contributions to that fund or scheme or one of those funds or schemes nominated by the employer until the employee nominates a complying superannuation fund or scheme, the form 1 must be sent out to employers and in turn passed on to employees. Form 1 is contained within the regulations gazetted on 31 December 1997, and is specifically consequent upon regulation 4. The last paragraph under the heading of "which fund" in that regulation reads -

> If you do not nominate a fund your contributions will be paid to a fund chosen by your employer.

That is clearly contradictory, where the employee's award, order or industrial agreement specifies a fund. The implication created is that if employees do not choose a specific fund the employer will nominate a fund on their behalf. Clearly that is contrary to the processes provided for in the Statute. An employer's choice is limited by the provisions of the award or the industrial agreement.

Hon Peter Foss: If there is one.

Hon TOM STEPHENS: That is correct. The reality is that, being satisfied with the fund to which they belong, most people will not want to make a choice. However, they could feel as though they were being forced to change as a result of the wording in Form 1 "Notification of Choice of Superannuation Fund".

Much has been made in this Parliament about the Government's approach to employees on the issue of choice. It is reasonable to consider what choice means in relation to a superannuation fund. This matter has been the subject of considerable discussion at a federal level, reported in the Federal Parliament's "Choice of Fund", the Twenty Eighth Report of the Senate Select Committee on Superannuation delivered in March 1998. Nonetheless, it is worthwhile examining the use of the word "choice" articulated by the Minister for Labour Relations. Perhaps an employee's membership of a fund will allow him to decide whether to remain in the fund or change to another fund. In both cases clearly the participant in the scheme would be exercising choice. However, the wording of the notification form that the Government seeks to use as the basis for delivering choice to employees, is aimed at ensuring employees move from their current fund. That is the schema contained in the form.

Equally important, it is worth considering the issues involved in the drafting of the regulations that I seek to have disallowed through this motion. I am sure the Government will endeavour to put on record that a broad range of consultations took place in drawing up the regulations. No doubt it will claim that the discussions and consultations involved representatives of the Australian Mines and Metals Association, the Chamber of Commerce and Industry and the Trades and Labor Council. It is true that representatives of those organisations met until June 1996 to consider the detail of the regulations. I am advised, however, that at that point, the Department of Productivity and Labour Relations representatives were to return to the next meeting with proposed drafting instructions. No further meeting was called and in October 1997, more than a year later at a joint meeting, the Minister advised the CCI and the TLC that he intended to gazette the regulations in the light of developments at federal level with associated draft legislation on choice of superannuation fund.

The CCI and the TLC jointly asked Mr Kierath to hold back until the federal model was determined. I am advised that was not agreed to. However, the Minister invited parties to submit their concerns to him within the next 10 days. That was done by the TLC. However, I am advised by that group it heard nothing more from the Minister other than advice that the regulations had been gazetted on 31 December 1997. Indeed, apparently the Minister's office failed even to respond to the TLC's submission, let alone amend the regulations according to either the CCI or the TLC submissions. The TLC was surprised to receive a letter from Hon Graham Kierath dated 16 June regarding choice of superannuation fund regulations in which he says -

> Thank you for the TLC's submission, dated 3 November 1997 . . .

He notes the key area of concern to the TLC is the employee's right to know. He continues -

> It was for this reason that a Regulations Consultation Group (RCG) was established to prepare the regulations in support of the legislation. These regulations, through Form 1, set down the information which employees should consider prior to making a decision and were developed by the RCG. This information is similar, but simpler, than the information requirements proposed by the TLC.
>
> The choice of superannuation fund provisions have been implemented in WA effective from 1 January 1998

in the light of the continued delays to the federal legislation. This approach is consistent with the Government's support of harmonisation between State and federal industrial relations systems as the WA system may well become a compelling model.

Yours sincerely

GRAHAM KIERATH MLA
MINISTER FOR LABOUR RELATIONS

That is an interesting approach by the Minister in defence of his unilateral decision to bring down regulations in the *Government Gazette* at the end of last year. It was a surprise to the TLC to be thanked by the Minister for the submission it had lodged almost six months earlier. Perhaps the letter arose more out of the Minister's awareness of the disallowance motion before the House, rather than a real expression of gratitude for the submission lodged by the TLC.

Both the Chamber of Commerce and Industry and the Trades and Labor Council consider different aspects of the regulations to be ultra vires the Act. As members will know, any finding of regulations to be ultra vires is sufficient grounds for them to be struck down by the House. Support for that strategy is contained in arguments advanced by the CCI and by the TLC.

The CCI sought legal advice which indicated that the requirement in the regulations for employers to notify employees of their entitlements was not specified in the Act. This matter was put to the Minister in some detail. I am advised that the Minister chose to ignore that commentary supplied to him by the CCI. Given this legislation is limited to workers on state awards and industrial agreements which include superannuation provisions, it excludes workers on federal awards and agreements and public sector employees covered by workplace agreements. Since the federal legislation associated with choice of superannuation fund has been withdrawn by the Government, it is very difficult for the Minister to rely on the argument he advanced in his letter to the secretary of the TLC that it is somehow part of this Government's strategy to support harmonisation between state and federal industrial regimes when the federal regime has not been advanced.

By his efforts to progress his regulations the Minister appears to be attempting to deliver a compelling model to the Commonwealth of Australia that would become the template for overlaying arrangements for providing choice of superannuation to the workers of Australia. Surely that will not happen for a variety of reasons, not least of which is that the approach adopted by the Minister for Labour Relations of providing choice of superannuation is again demonstrably wrong-headed. With the withdrawal of the federal legislation it appears that the most appropriate and fair approach to employees and employers in Western Australia is to support this disallowance motion. A reference in the *Australian Financial Review* at the weekend called on the Western Australian Government to introduce legislation to shelve this legislation, given the developments at the federal level; although the disallowance of the regulations does not achieve this, it does in some part assist.

The Industrial Relations (Superannuation) Regulations require employers to notify employees of their right to choose the superannuation fund into which their employer contributions are to be paid. Indeed, employees need to nominate in writing the fund into which the employer is to pay superannuation contributions. It is a statutory requirement that the employer must comply with. Employees covered are those bound by an award, order or industrial agreement which requires the employer to make superannuation contributions for the employee. A prescribed form must be given or a written notice containing all the written prescribed information.

[Questions without notice taken.]

Hon TOM STEPHENS: The notification form with regard to this effort to provide choice to employees is basically constructed in the following way: Notice must be given (a) if the employee is, on the commencement day, an award employee - as soon as practicable after the commencement day; (b) if the employee commences employment as an award employee after the commencement day - as soon as practicable after the employment commences; or (c) if the employee (i) becomes an award employee after the commencement day other than by reason of commencing employment; and (ii) immediately prior to becoming an award employee was not subject to any other award, order or industrial agreement which required the employer to make superannuation contributions for the employee, as soon as practicable after the employee becomes an award employee. Proposed changes to state awards to incorporate these provisions must be made by 1 July 1998.

My primary objection to the regulations that we are seeking to disallow is that they are ultra vires the legislation. The Chamber of Commerce and Industry has obtained legal advice that also indicates that this is the case. That legal advice is to the effect that for most existing employees, the Act does not give the Government power to prescribe through regulations that employers must notify employees of their right to choose. The Act does not allow for regulations prescribing notification procedures for employees covered by state awards or agreements made before

1 January 1998. Section 49C of the Act gives the Government the power to make regulations only for employees covered by state awards or agreements made after 1 January 1998. The ultra vires provisions do not, however, invalidate the employee's right to choose a superannuation fund. From 1 January 1998, award employees can nominate the fund of their choice. This effectively replaces the default scheme, where the employee was not involved in an active choice but simply defaulted to the fund by virtue of the conditions of the award. As a result of its advice, the CCI has put out an employer alert, which has been made available to me, and at the end of my contribution I will be more than happy to ask that it be tabled. That employer alert tells employers that currently they have no obligation to notify employees of their right to choose a superannuation fund.

We have some additional important objections to these regulations. These include the inconsistencies between the treatment of employees depending on whether they are covered by the regulations. We note that the regulations apply only to employees covered by state awards or industrial agreements; that is, those who are linked with unions. We start to see more graphically what these regulations are all about when we dig beneath the surface. We know that Labour Relations Minister Kierath is endeavouring to run his industrial relations agenda through these regulations and that he is using regulations that purport to originate from the industrial relations legislation to try to further attack the power of unions.

Therefore, consumers are clearly not a consideration for the Minister in his assessment of the issues that have led him to make these regulations. If consumers were a consideration, the regulations would apply across all the superannuation funds, including those referred to in workplace agreements, and not only to those which affect union members. In addition, employees on federal awards or agreements are not affected. Clearly, by being very selective about which employees will be provided with choice, Minister Kierath is seeking to undermine the popularity of the funds involved. I presume that the reason is that superannuation funds are nominated under awards and industrial agreements, and Minister Kierath is hoping that in providing this choice, employees will choose another fund in which the unions have not been involved in any way.

I put it to the House that this effort on the part of the Minister for Labour Relations is based on a profound misunderstanding of the structure of superannuation trusts and the obligations of the trustees. Contained in these regulations is a transparent fear on the part of the Government and the Minister for Labour Relations of union control or influence over these funds. It is misplaced fear. It demonstrates a failure by the Government and the Minister to understand the obligations under which trustees - whether from the union movement or any other sector of the community - operate. No matter whether their background is union or they are from another sector of the community, their obligations are to carry out their responsibilities in exactly the same way to the beneficiaries of the trust and the trust itself. Unions do not and cannot control these funds. Despite the fact that some union people might serve as directors of those funds, they are obligated to serve the interests of the trust and the beneficiaries of those trusts. If all the effort involved in the regulations is somehow based on that misunderstanding of the role of the trusts, clearly there is no justification for these regulations to attack what the Minister sees as sinister union control over the trusts. That is all the more reason for the House to support this disallowance motion.

It appears that Minister Kierath is trying to undermine industry funds in which unions have a representative role on the trust itself. This is another attempt by Minister Kierath to attack, wherever he sees an opportunity for unions to exert power. That sums up the driving force behind his agenda; it is not a real desire to support choice in superannuation funds. The difficulty is that Minister Kierath is running his industrial relations agenda rather than addressing the primary issue of superannuation cover. The industrial relations agenda of this Government, ideologically driven as it is, should not sidetrack the community, the Government or any of the participants in the superannuation debate from the essential issues. Superannuation should not be put at risk by the process being unleashed by the Minister in these regulations. Superannuation choice is a key issue but these regulations in no way advance that important principle. The amendment to the Act, by the Industrial Relations Legislation Amendment and Repeal Act 1995, with the insertion of section 49C, from which these regulations draw their head of power, do not address choice for workers generally.

A fundamental feature of superannuation is consumer protection, to ensure the best possible return without the consumers being ripped off or having their funds put at risk. There is a need for superannuation funds to have insurance and a balanced investment portfolio. This is controlled by prudential standards, which are required by the Commonwealth, and it is not controlled at a state level. When offering choice, questions of liability arise. Any student of the efforts to introduce the principle of choice in superannuation will know of some extraordinary examples on the world stage of mishaps in the pursuit of choice in this field. If a fund to which an employee is directed by an employer is not performing as well as expected, or as well as it should having regard to the market, there could arguably be a claim for liability in that the employer perhaps had not provided proper information to the employee on which the employee made his or her choice.

The classic example, to which I have alluded, is the United Kingdom experience from the mid-1980s when the

Government of the day introduced its form of choice in the superannuation field. This experience demonstrated the vulnerability of workers to unscrupulous agents. Attempts were made by the Government at that time in the United Kingdom to let employers off the hook lightly with regard to superannuation issues. Employers were given an opportunity of pursuing the prospect of choice for employees in superannuation but this, in turn, eventually led to the United Kingdom's fair trading office bringing on prosecutions. More than 570 000 cases of mis-selling have been identified, and the latest reports on those cases that have effectively been brought forward indicate a total compensation bill in the United Kingdom in this area of more than $10b. One would think that is an extraordinary example, which even Minister Kierath could not help but notice before proceeding to introduce regulations such as those now before the House pursuant to the disallowance motion I have moved.

Offering choice will inevitably result in superannuation providers actively competing for the business of employees and, as a result, marketing costs will rise as well as administration and legal costs. Another example from the international stage relates to Chile. I am given to understand, from a submission from William M. Mercer Pty Ltd to the Senate Select Committee on Superannuation, that Chile operates a compulsory private sector superannuation system in which funds actively compete for members. I understand 29 per cent of members switched funds in 1996-97. Much of that fund switching was triggered by sales people who were paid on the basis of the funds transfer. Approximately 38 per cent of the entire cost of managing Chile's superannuation system is associated with that fund switching. The related issue emerges of the cost to the fund of any commissions paid on the sale of superannuation packages. That means an added cost to the superannuant for which there is little demonstrable benefit in return. One must question whether the diversion of members' money into promotion and sales activities in this way is in the interests of the beneficiaries of these funds, and also whether the providers' marketing will provide the employees with the basic information upon which to make an informed decision on which fund they should trust with their superannuation arrangements. There is a need for very strong education and disclosure requirements.

Just this morning I received a copy of a statement from the Association of Superannuation Funds of Australia. In a statement on Monday, 25 May the executive officer of the association articulated loudly and clearly arguments in support of the need to provide much more extensive education, which is informative in nature, before the process begins of facilitating choice in this way to the employees.

The Executive Officer of the Australian Institute of Superannuation Trustees, Mr Stephen Gibbs, on 17 February 1998 told the federal Select Committee on Superannuation that commission-based selling in a compulsory superannuation environment is undesirable. He also told the Senate select committee, in the "Choice of Funds" report, that commissions are okay for optional personal contributions, but in terms of somebody's superannuation guaranteed payments, one should outlaw the payment of commission to ensure avoiding the UK problem.

The issue of bundled selling arises. No doubt many members have been subject to this type of selling; for example, the banks offer favourable conditions on other products to employers and employees if the employer is persuaded to make available, or persuades employees to switch to, certain funds. Westscheme said in its submission to the select committee that evidence emerged within weeks of the WA choice of fund legislation being enacted of employers being offered financial incentives to meet their choice obligations through a certain service provider. The cost of this phenomenon is estimated to be 10 per cent. This does not mean that the Opposition is against choice - of course it is not. However, it clearly opposed the legislation upon which the regulations purport to rely. The Labor Party is not happy with the regulations as gazetted, and now opposes them because they are ultra vires the legislation.

Some additional issues need to be referred to in this debate. Minister Kierath brought in the regulations thinking that the Commonwealth would introduce its proposals at the same time. The Commonwealth has not proceeded, resulting in added complexity for employees in pursuit of appropriate superannuation. The Federal Government has deferred the starting date for its choice of funds to new employees until 1 July 1999, which is a year later than originally proposed. This is expected to further confuse the position in Western Australia, where choice has been available through these regulations. The proposed 1 July 2000 deadline remains the same for existing employees not covered by the state legislation.

A report in *The West Australian* of 18 May outlined that both union and employer representatives said that the differences with the WA legislation applying to state awards, which cover a large proportion of the WA work force, and the federal proposal applicable to all other employees, complicated an already confusing issue for both sides. Also, the state proposals allow unlimited choice of funds, whereas the federal proposal includes several options, including one under which employers can offer a limited choice.

Employers can meet their choice obligations through workplace agreements, formal and informal. When an employer has employees covered by both areas, confusion could arise and one group of employees could have rights which are denied to another group. This situation will be a real dog's breakfast by anyone's standards. Employees will operate in the same workplace under different schemes. If the Commonwealth and all the States do their own thing in this regard, rather than adopting the flawed template that Minister Kierath has proffered, things can only become worse.

I hope that at some time during this debate the Government will be persuaded by the looming disaster of the regulations to support this motion for disallowance. Trying to work out what an employer must offer is a nightmare. An employer could find that he missed something, or he misread something. Employers, particular those who are trying to do the right thing - as clearly most are - will be placed at risk.

The Trades and Labor Council has indicated that the State Government should have delayed its changes until the national position was settled, which would have reduced confusion, ensured conformity, and avoided the now likely need for further State-based adjustment after the federal rules are finalised. Such inconsistencies, including those created by Minister Kierath for a restricted group of employees, add to the complexity of the area, and have resulted in a lack of national uniformity, and increasing administrative and compliance costs for employers. Surely that is an important consideration for this House: Should it visit upon employers the increased cost of compliance with the regulations?

Although the regulations prescribe the minimum information employers must provide to employees, they do not prescribe the minimum information the employer requires from the employee to give effect to the employee's choice. For example, the minimum contribution required for the fund is not prescribed. This could have serious consequences for employers if employees choose a fund with a minimum contribution level higher than the amount the employer usually contributes. The fund may consider the employer's cheque invalid, leaving him in breach of the superannuation guarantee deadlines.

Also, no systematic education campaign has been embarked upon. Consequently, many employees are unsure about where they stand. This confusion applies to the legislation as a whole, not only these regulations. Employees are inevitably confused as most are unaware of the provisions, and those who are aware of them do not know whether they will be affected by them. If an employee wants to exercise choice, he or she may need to approach the employer while unaware of the regulations and unable to assert his or her rights.

These regulations are asking for trouble, just as trouble resulted in the United Kingdom from the pursuit of an ideology of choice in this field. The UK experience was that the most inappropriate products were taken up by the vulnerable. People in the vulnerable category are not necessarily the employees to whom one's mind might easily turn; for example, a fair number of miners fell into this trap, as did teachers, government workers and many others. These people were shown to be extremely vulnerable to the Government's pursuit of choice in the field as employees bought inappropriate products. They did not bring to employees the benefits they would have enjoyed if they had stuck to the original superannuation arrangements. Consequently, litigation is rife in the UK in this field, and compensation arrangements are costing billions. People were buying personal pensions and other arrangements which were inappropriate products when compared with the superannuation provisions available prior to the UK's introduction, and promotion, of choice without controlling the sellers of the products.

The Labor Party is not taking a definitive position on all the questions raised in this debate. However, all matters need to be raised and addressed comprehensively so the proposals are complementary to and reflect the Commonwealth's position. If choice works well, it has the potential to significantly benefit superannuation fund members. However, to be a success, great care must be taken by government to ensure that the relevant measures are properly and carefully drafted. Choice should be provided, but it should apply across the board, rather than being selective.

The objection of the Western Australian Chamber of Commerce and Industry, like that of the ALP, relates to the fact the State and Federal Governments could not coordinate their approaches to this issue. The chamber requested the State Government to enact its legislation on the same date as the Commonwealth's, so employers could address superannuation choice with the whole work force, rather than with only some employees. The Chamber of Commerce and Industry's alert said that only employees under the state awards, orders or industrial agreements which require the employer to make a contribution to a specified superannuation fund or scheme had the right to nominate. One must ask why the Government chose to ignore the advice of such commentators on these regulations.

Sitting suspended from 6.01 to 7.30 pm

Hon TOM STEPHENS: I have outlined to the House a number of arguments within my presentation, some of which members may find more attractive than others. All of them add up to a reason why this House should disallow the regulations by virtue of the motion that I have moved. There is a legitimate argument for saying that the regulations are ultra vires. In addition to that argument, I throw in to support that position the observations of the Chamber of Commerce and Industry and the Trades and Labor Council. I also throw in the commentary from the superannuation industry which expressed its concern about the confusion that will result in these regulations coming into effect next month. In view of all of those arguments, I commend this disallowance motion to the House in the hope that the regulations will be disallowed.

HON HELEN HODGSON (North Metropolitan) [7.33 pm]: I assume that we do not need a formal seconder for the motion.

The PRESIDENT: No. The standing orders make reference to seconders. However, it has been the custom of the House for more than 12 months not to call for seconders and that is another matter that the standing committee at the moment is looking at. Therefore, the answer is yes and no.

Hon HELEN HODGSON: Thank you very much, Sir, because I do not want to be recorded as seconding this motion, for reasons that will become clear.

The Australian Democrats have looked at the issue of choice in superannuation. It is difficult to argue against the proposition of choice. The issue is how choice is structured. In practice, when people are well informed and able to make decisions because they have all the information available to them, they can make a valid choice. However, the problem is that consumers of superannuation products, not only in Australia but around the world, are often not well informed about what are their choices. To pursue a regime of choice for purely ideological reasons without consideration of the real world impact on consumers, providers, employers and public finances does not produce a good public policy outcome.

The Democrats, in considering this motion, gave primary consideration to the interests of members of superannuation funds. We looked at the impact that the choice regime has on investments, prospects, rights and protection of fund members. Over the past decade and a half, most of the improvements in superannuation for workers have been achieved through union agitation, national wage cases and commonwealth superannuation guarantee legislation. All of this has been largely industrially driven. There are good policy reasons why superannuation should be structured in this way because it will lessen the burden of pensions on the taxpayers as people retire. Therefore, the superannuation regime is a good one in which people should be compelled to participate.

The unions have built up considerable expertise in issues of superannuation and provided a very effective level of consumer advocacy on behalf of Australian workers, many of whom have little or no knowledge of investment matters. The primary concern of the Australian Democrats is that this legislation must ensure that workers are not worse off as a result of any overriding repeal of award superannuation clauses. The legislation should not be used to undermine industry superannuation funds. They have provided good value for money to workers.

The other problem is that if members are forced out of the industry superannuation funds, they will tend to go to the larger financial institutions. This is not necessarily cost effective because larger amounts of money in those institutions are spent on marketing and related matters which are not returned directly to members. Therefore, we do have concerns about the impact that a choice regime will have on the union superannuation fund. Will the choice regime that is basically in place now increase the control that employees have over superannuation or will it increase the control that employers have? Is member choice the best way to increase competition on returns on superannuation? Will competition lead to greater efficiency?

In many cases, members are still directed without choice into industry superannuation funds. However, the funds themselves compete in the market to find investment managers and fund administrators. They have well qualified people making decisions on behalf of the investors in that fund whereas workers often do not have that expertise. It is obvious that people who are not well informed in financial matters tend to err on the side of caution and conservatism which is likely to reduce the long term returns for many workers. Well qualified and well trained fund managers can maximise return and minimise risk in the process. It is clear that choice, instead of reducing costs across industry, in fact increases costs as superannuation funds need to increase their spending on advertising, marketing and commissions in order to attract and retain members.

Hon Tom Stephens referred earlier to the situations in both the United Kingdom and Chile where choice has been implemented. The Chilean choice system has caused costs of up to 18 per cent of contributions because of the cost of administering a choice system. Choice does not necessarily have to be between the types of funds; it can occur within funds, and we would encourage funds to look at developing different forms of investment within a fund structure.

This would mean that members in a particular investment regime could choose what sort of investment suited them best. The fund might have a property portfolio as opposed to a more liquid one and different levels of return might be available. Members should be able to choose what sort of returns they need from a fund. Essentially, all stakeholders should be looking at developing an informed market for superannuation products through regulation and disclosure. The regulatory regime needs to extend to limiting the use of commissions and inducements to employers and also the content and placement of advertising and marketing materials, so that we can ensure people are making well informed choices.

The evidence is that many workers prefer not to have to make choices about superannuation. They are required to

be in superannuation funds, but prefer to have decisions made for them. I understand that state schemes offer choices in New South Wales and Queensland, where people have tended to opt for the default option rather than go through the difficult process of deciding where they want their money to be invested. In these sorts of arrangements it is often better that these matters be left in the hands of an industry fund where the interests of members are protected by union trustees, who have an intimate knowledge of the sorts of people with whom they are working. Although we see some merit in improving choice mechanisms within the superannuation system as a means of enhancing the ownership and control by members over their investments, this needs to be done in a way which maximises the benefits to employees and minimises costs to the system as a whole. Those are the sorts of issues we were looking at in determining whether this regulation should be allowed to stand.

This legislation was introduced in 1995. I looked at some of the detail of the debate at the time it was introduced. This was the very controversial second wave legislation. It was so controversial that the Bill was split; part of it was dealt with in this place and part of it was referred to the Legislation Committee. Many of the issues that were referred to the committee ended up back here in 1997 in an even more controversial wave of industrial legislation. Choice of superannuation legislation was passed in 1995. I was interested to hear the comments of Hon Tom Stephens in respect of the debate at the time because when I looked up the debate in *Hansard* - of course I was not here in person and had to go back to the record - I saw the clauses were severely amended at the Committee stage in this House. The amendments that were moved formed the final legislation that was passed. At the Committee stage the ALP supported the amended clauses. When the Bill was returned to the other place, I note from page 13407 of *Hansard* that the member for Bassendean said -

> I am pleased this amendment has been moved in the upper House as it genuinely provides that where an employee is covered by an award based scheme, superannuation contributions will go into that scheme until such time as the employee chooses to place those contributions elsewhere.

It is clear that after this part of the legislation was amended to its present form, it had the support of the Australian Labor Party. The proclamation date of the legislation was considerably deferred. If I may digress for a moment, it is quite appalling that legislation passed in late 1995 was not proclaimed and did not take effect until 31 December 1997 - over two years later. I understand there were reasons for that, partly connected with the Federal Government's proposals for a choice regime. However, over two years is far too long for this place to have legislation that is passed and unproclaimed sitting around on the books. In about August of last year somebody raised this issue with me. I tried to find out what he was talking about, but I could not find the legislation; because it had not been proclaimed, I had to go back to the amending Bill. Given that I was not around when the debate took place, it was not an easy task to trace this legislation. Fortunately, with the help of people from the Bills and Papers Office I found it, but that is not the point.

Consistency between federal and state legislation is one of the reasons the legislation was not proclaimed for such a long period. Considerable discussion has occurred in the financial Press about the impact of the choice of fund regime. In respect of the federal legislation, on Tuesday, 26 May an article appeared in *The Australian Financial Review* which reads -

> Small and medium-sized businesses are still uncertain about which approach to take in offering their employees a choice of superannuation funds, and a majority are negative about the Federal Government's policies.

The article went on to state that 65 per cent of employees had not yet decided what to do and 78 per cent said that they would prefer less involvement in the responsibility for managing superannuation.

Later that same week, on Thursday, 28 May, another article appeared in *The Australian Financial Review* which said that the Federal Government would be proceeding with choice of superannuation despite Senate delays. The Government was withdrawing the superannuation choice proposals from the current legislation before the Senate in order to try to find something which was workable. The federal regime has obviously been put on hold for some time while the Government sorts out what is going on. At the same time, however, we have the Western Australian legislation which effectively comes into play in a week or so. An article in *The Australian Financial Review* of Tuesday, 9 June reads -

> Superannuation experts have called on Western Australia not to introduce a State-based choice of superannuation fund regime, saying it could be the beginning of a complex patchwork of inconsistent State laws that would increase the compliance burden on business.

In *The Weekend Australian* of 20-21 June, which was last weekend, an article reads, in part -

> Pressure is mounting for the Western Australian Government to withdraw its system for choice of superannuation fund, as industry groups warn it will undermine a uniform national regime.

It is clear that industry does not support the choice regime, as implemented in the Western Australian legislation. It wants to hold back and see what the federal proposals are, so that they can be developed in a uniform way.

My problem is very much a practical one. I refer to question without notice 1601, which I asked on Wednesday, 27 May. I asked whether the Minister for Labour Relations was considering deferring the implementation of the choice regime. The answer I received was -

> Section 49C of the Industrial Relations Act is already in force, having come into effect on 1 January 1998.

Both employer and union groups do not want it implemented yet because they are having practical problems. Federal and state choice regimes must be uniform. Our practical problem is that this legislation is already here. Will it do any good to disallow this regulation if the primary legislation is in place? Essentially the regulations before us cover the prescription of notifying employees that they have a choice. They protect the rights of employees because if they are not notified of their right to have a choice, then by default - depending on whether there is an existing award which includes a superannuation fund - essentially the employer gets the choice. If there is an existing fund, it is the choice of the funds already listed in the award. Presumably employees would be happy with that. If it is an award which does not have a superannuation fund listed, the employer gets the choice. My sticking point was that these regulations protect the rights of employees to choose where their fund is to be invested. Given that the legislation is in place, the legislation is not ultra vires; the regulations cannot be disallowed. Within the framework of the legislation which has serious problems, all the regulations do is protect members' rights.

I have heard the argument that the regulation is ultra vires, on the basis that in some way it is retrospective legislation, because regulations cannot be made in respect of employees who are working under existing awards. It is clear from the way the amending Bill was drafted that there was a transitional provision allowing the regulations to be made under section 49C(3) of the Act, which refers to people who are working under existing awards. Without question, on the surface we are able to make a regulation in respect of employees under existing awards that include a superannuation fund. Of course, there is a presumption against retrospective legislation. The question then becomes whether by legislating to impact on people who are under an existing arrangement, it is retrospective legislation. Existing rights can be specifically overruled by legislation; legislation can affect the rights and obligations which exist at the commencement date. We do that in this place all the time, particularly in respect of tax laws -

Hon Peter Foss: That applies to almost everything we do.

Hon HELEN HODGSON: Yes. It does not change anything that has happened prior to the date; but from this date our actions will affect people's existing rights and obligations. The leading reference on this matter is *Statutory Interpretations in Australia* by Pearce and Geddes, at which paragraph 10.3 reads -

> All legislation impinges on existing rights and obligations. Conduct that could formerly be engaged in will have to be modified to fit in with the new law. It cannot therefore be said that in this sense legislation is retrospective because this is true of all legislation. Legislation only operates retrospectively if it provides that rights and obligations are changed with effect prior to the commencement of the legislation.

The document considers case law on the matter. With regard to Coleman v Shell Co of Australia Ltd it states -

> . . . as regards any matter or transaction, if events have occurred prior to the passing of the Act which have brought into existence particular rights or liabilities in respect of that matter or transaction, it would be giving a retrospective operation to the Act to treat it as intended to alter those rights or liabilities, but it would not be giving it a retrospective operation to treat it as governing the future operation of the matter or transaction as regards the creation of further particular rights or liabilities.

Therefore, it is fairly clear, first, that although it does impact on people's prospective actions in respect of an existing contractual arrangement at the time the legislation was passed, that in itself does not fall foul of the presumption against retrospective legislation.

Another issue is whether legislation will confer rights or limit rights. Obviously this depends on one's perspective - whether one thinks that choice is a good or a bad thing. I would say that this regulation, as opposed to the legislation itself, is definitely conferring rights, because it is ensuring that employees have the right to know that they have the option to choose a superannuation fund. It is clear that the presumption against retrospectivity arises only in the reading of the legislation that it would impinge upon a person's rights or duties. Given that we are expanding people's rights, it would be very difficult to argue technically that this is retrospective legislation and should be overruled in that respect.

However, a practical problem was brought to my attention today regarding the form of the notice attached to the regulation, and that relates to a particular paragraph. In the process of drafting a form that is easy to read, it seems that the drafting has changed the interpretation of the legislation itself. The paragraph states that if a person does not

nominate a fund, the contributions will be paid to a fund chosen by the employer. Anyone who has read the legislation can see that the statement is misleading, because it states that if a person is under an award, an order, or an industrial agreement which specifies a superannuation fund - which offers a possibility of investment - one must return to that first. The employer will still have the choice of which fund, if there is a number in the award, order or industrial agreement; but the employer is restricted in that choice to one of those funds.

In that respect, given that the legislation will often be read by people with limited understanding of the legal issues surrounding investing in superannuation, this form could be seen as misleading, because it suggests that a person must change his or her fund or the employer can change it for that person. That is not the intention of the legislation, and I do not believe that is the intention of the form. Therefore, I wrote to the Minister today on that basis. I asked whether the Minister would give an undertaking to redraft the relevant paragraph to more clearly reflect the rights of employees currently covered by an award that nominates complying superannuation funds. I hope that the Minister handling the legislation in this place will be able to give a response to that request when he has the opportunity to speak on the regulation.

Basically the legislation is flawed; but the legislation is not before us today. If it were, I would not vote to support the choice regime as set by the legislation. However, the legislation is not before us, and we cannot make a decision on that. We have before us a regulation which confers rights on employees subject to the framework put in place under the legislation. It has been put to me that the disallowance of the regulation would send a message to the Government that the industry does not support this regime; and that sending such a message will impact on the way in which the legislation is implemented. I send a message by my comments. I am saying that this legislation should be deferred until the federal system is sorted out. I call on the Minister to defer it in that way, until everyone knows how the federal and state systems will line up. I do not think the practical impact of disallowing this regulation will do that. If anything, it will limit employees' rights even further. It will mean that the choice regime is put in place and employees will not know their rights under the choice regime.

On that basis, given that the regulation is not ultra vires, and I can see no technical reasons for disallowing it, we will not be supporting the motion to disallow this regulation. That explains the reason that I did not want to be the seconder of the motion.

HON J.A. SCOTT (South Metropolitan) [7.58 pm]: I am concerned that the regulation changes the meaning and restricts the ambit of the intention of the Act. I am not sure that the regulation is not ultra vires. That aspect is questionable. The regulation should be broadened because it does not reflect the intention of the Act. Until it does, I cannot support it. By the same token, I do not think that it would need much amendment to bring it into line with the Act. It would be a simple task for the Government and it would gain my support. At this point I cannot support it.

HON SIMON O'BRIEN (South Metropolitan) [7.59 pm]: I am sure the Attorney General will address a number of the points that have been raised. In so doing, he will no doubt comment on a number of matters that were the substance of the contribution of Hon Helen Hodgson a moment ago. In regard to the practicality of superannuation and the administration of superannuation funds generally, I will limit my comments to whether these regulations are ultra vires. It is possible to pay more heed to some provisions of the principal Act than others in seeking to deduce that the regulations in some way or other exceed power.

I draw the attention of members to a part of the principal Act, not the regulations, which relates to the making of regulations. The Act that caused this issue to be regulated was the Industrial Relations Legislation Amendment and Repeal Act 1995, which in section 13 introduced a new section 49C into division 3 of part 2 of the principal Act. The new section 49C contained the provisions that have already been referred to by the Leader of the Opposition and others, and in part, section 49C(3) states -

> The governor may make regulations -
>
> (a) prescribing procedures to be followed by an employer in notifying an employee of entitlement to nominate a complying superannuation fund or scheme; and
>
> (b) prescribing procedures to be followed by an employee in nominating a complying superannuation fund or scheme.

The first subsection of section 13 creates section 49C which has some other parts to it as well. Subsection (3) of section 13 of the Industrial Relations Legislation Amendment and Repeal Act states -

> Regulations made under section 49C (3) -

to which I have just alluded -

> - of the principal Act as amended by this Act apply to and in respect of notifications and nominations under subsection (2) of this section.

When it comes to suggestions that any part of these regulations is ultra vires, the suggestions are about the notifications and nominations, and in particular the form, to which members with that view refer - we heard from Hon Tom Stephens, and I think Hon Jim Scott also expressed some doubts. Let us now go back to section 13(2) of the amendment and repeal Act to which Hon Helen Hodgson referred in dismissing the notion that any of this was ultra vires. It is worth reading into the record in detail. That subsection reads -

> On the coming into operation of this section any employer bound by an award, order or industrial agreement which requires contributions in respect of an employee to be made to a superannuation fund or scheme specified in the award, order or industrial agreement may, in lieu of those contributions and notwithstanding any provision of the award, order or industrial agreement, make contributions to a complying superannuation fund or scheme, as defined in section 49C(1) of the principal Act, nominated by the employee.

The principal Act in considering the regulations, and then in turn the procedures which will then flow from it, goes into substantial detail. There is nothing then when we look at the regulations the subject of this disallowance motion that is inconsistent with that principal Act. I do not know if advice received by other members has perhaps disregarded that subsection which I have just alluded to, but once we examine that in even the most superficial detail, it becomes apparent that not only do the regulations, as gazetted, fall well within the ambit of the Act, but also they are almost within the specific description of what the principal Act countenanced in the first place. I utterly reject the notion that these regulations are ultra vires and any examination of them in any sort of detail clearly shows that is not so. Members may seek to oppose these regulations because they have some philosophical disagreement with the parent Act which they find hard to stomach, but the idea that these regulations should be disallowed because they are ultra vires is not supported by any reading of the Act or the regulations themselves and should be rejected on that basis. Therefore, I reject the disallowance motion and will vote against it.

HON PETER FOSS (East Metropolitan - Attorney General) [8.06 pm]: The Government opposes this motion. Hon Tom Stephens said that he does not like the legislation. As Hon Helen Hodgson pointed out, that is an unusual change of heart in view of the fact that it was in Committee in this House that the legislation was changed, and the change was welcomed on its return to the other House. I cannot explain the change of heart of the Opposition on this, and I am grateful to Hon Helen Hodgson for pointing it out. His other argument is that it is ultra vires, and again that is an argument that has been comprehensively demolished by both Hon Helen Hodgson and Hon Simon O'Brien. I support the arguments that they advanced.

Hon Helen Hodgson also expressed some concern about the original legislation. At least she was not here to have the opportunity to support it in the first instance. Her concern is the possible disparity between state and federal legislation and whether this is a good model. I will address the concerns expressed regarding the possibility of a patchwork of inconsistent state laws by referring to the same article that Hon Helen Hodgson spoke of which appeared on Tuesday, 9 June in *The Australian Financial Review*. Ms Philippa Smith, Executive Director of the Association of Superannuation Funds of Australia, agreed that it was important to have consistency, but feared it was too late to stop the WA model.

The article continues -

> However, Ms Smith said the WA choice regime might be a useful model for the Federal Government and Opposition to look at in their search for a compromise on their differing positions over how the new regime would treat superannuation award clauses.
>
> "We're supportive of having an award underpinning and we think the WA model mightn't be a bad model to look at as a way out of the [Senate] impasse," she said.

She is supportive of having an award underpinning and thinks the WA model might not be a bad model to look at as a way out of the Senate impasse.

The important thing is this: Hon Helen Hodgson picked up another problem. It has taken two years for the Act to be proclaimed, yet on the other hand, as well as not condemning the Government for not having it proclaimed in that period of time, she also urged that it be deferred for a bit longer. I do not think she can have it both ways. There was certainly an attempt to ensure the Government lined up with any federal legislation; but there comes a time when we believe the principle should be carried into effect. It is a fairly remote chance that Canberra or anywhere east of the rabbit proof fence will pay attention to what happens here. We do have the capacity to set things happening. I believe and hope that it is important that the legislation go ahead, and hopefully we will not have a patchwork, because having established the style, it may be that that is followed throughout the whole of Australia.

Hon N.D. Griffiths: I do not think so.

Hon PETER FOSS: We must be in a position to say that this is the time for the legislation to go forward. The other important point that Hon Helen Hodgson raised was the effect of these regulations. One would be a bit of a Canute if one thought one could stop the legislation going forward; it has been proclaimed, it is there, and one then must look at what would be the effect of disallowing it. I think it would be disadvantageous for both employers and employees because it makes the situation clearer for both of them.

Hon Helen Hodgson pointed out that if the employer did not have that it would remove certain rights to know. Hon Jim Scott says that the form limits people's rights. A form cannot limit rights. It may incorrectly state the rights, but it cannot have a legislative effect. No regulation can do that. A form does not purport to do so; a form is a form.

Hon Helen Hodgson was concerned that the form incorrectly states that if employees do not nominate a fund their contributions will be paid to a fund chosen by the employer. That is stating only half the legislation. The problem with any form is that it must paraphrase the legislation. Quoting the legislation in full would not do the employee an awful lot of good, because the technical terms used for exactness in the legislation are not appropriate for a form that will be read by a person who is not familiar with legislation. One benefit of the form is that it probably alarms employees rather than lulling them into any feeling of complacency. I have discussed different wording with Hon Helen Hodgson.

Hon N.D. Griffiths: I am sure you have, and the employees have no reason to be complacent with you around.

Hon PETER FOSS: We believe that what it gains in accuracy it might lose in clarity.

Hon N.D. Griffiths: Or protection, as far as employees go!

Hon PETER FOSS: The words that we suggest might replace that are -

> . . . unless and until you nominate a fund your contributions will be paid to a fund chosen by your employer subject to any applicable award, order or industrial agreement.

The word "unless" indicates that the employer does not have the choice and "until" indicates that the employee may choose later on because he or she has that right. It then states correctly that an employer can make the choice but that can be limited by an applicable award or other industrial agreement. I have discussed this with some members opposite and advised them that the Government is happy to have that alteration made in the form and that will be promulgated at the earliest moment. That deals with the one objection that could be found to the regulation. I hope in that light that all members of the House would be happy to oppose the motion and support the regulation.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [8.13 pm]: In recent times I have watched how on a number of occasions the Attorney General has responded in debate by ignoring the substantive argument and, by purporting to summarise the substantive argument, has shot down that summary as though that was the argument that had been put to the House. That is what the Attorney General has just done with my argument - that is, to the extent that he was in his chair in the Chamber while I was putting the argument. The Attorney General spends so much time fiddling with that damned machine that he keeps in the Chamber rather than listening to the debate.

Point of Order

Hon PETER FOSS: The sorts of references that are currently being made by the Leader of the Opposition are improper and should cease immediately. They are inconsistent with the custom of this House.

Hon N.D. Griffiths: They are accurate.

The PRESIDENT: Order! The right of reply of the Leader of the Opposition is to reply to the matters raised by other speakers; it is not to branch out into those other matters that he wants to canvass.

Debate Resumed

Hon TOM STEPHENS: In the Attorney General's response to my speech he displayed what was on display to the Chamber while I was speaking - that is, he was not listening to the argument and if he was listening he presumably had no capacity to comprehend what was said.

Hon Peter Foss: I understand perfectly what you said and that was the impression that I gave everyone else. You are arrogant.

Hon Ljiljanna Ravlich: That is a bit rich.

The PRESIDENT: Order! Members will listen to the Leader of the Opposition, who is summing up the earlier debate.

Hon TOM STEPHENS: I made a number of arguments to support the disallowance of this motion. Some of those arguments were based on observations made by the Trades and Labor Council.

Hon Peter Foss: You read your whole speech.

The PRESIDENT: Order!

Hon TOM STEPHENS: I have proudly drawn on some of the comments provided by the TLC.

Hon Peter Foss: They were copious notes.

Hon N.D. Griffiths: You should talk; you read just about every speech you give.

The PRESIDENT: Hon Nick Griffiths will come to order.

Hon Peter Foss: I have not read one.

The PRESIDENT: Order! The Attorney General will cease interjecting.

Hon TOM STEPHENS: I am pleased to have the opportunity to draw on some of the comments of the Trades and Labor Council as corroboration for the argument that I put before the House. The argument on the claim of ultra vires is supported by the Chamber of Commerce and Industry, but is dismissed by the Attorney General, who then claims that other members show the arrogance which he constantly displays wherever he chooses to parade himself around the State.

Points of Order

Hon PETER FOSS: I have been very patient.

Hon Tom Stephens: You are the one who just called me arrogant.

The PRESIDENT: Order! The Leader of the Opposition will let me hear the point of order.

Hon PETER FOSS: The Leader of the Opposition is meant to be replying to the various arguments. He seems to think that I gave a reply and he must respond to that. The Leader of the Opposition must deal with the arguments. I did not pick him up for reading his speech or going to sleep during his own speech with his feet on the table. He should now direct himself to the arguments he made and not digress to other matters.

The PRESIDENT: That was not a point of order; that was advice to me.

Hon TOM STEPHENS: It is unacceptable that the Attorney General should object when I am making comments -

The PRESIDENT: The Leader of the Opposition has no point of order. If he wants to continue his right of reply he can, otherwise I will put the vote.

Debate Resumed

Hon TOM STEPHENS: I put a number of arguments to the House and I am not surprised that the Attorney General did not address any of those arguments. That he would then have the gall to draw upon the comments of the Executive Director of the Association of Superannuation Funds of Australia Ltd as extracted from the media as the basis upon which this disallowance should not be supported by the House is disquieting for me. When one considers the comments supplied by the Association of Superannuation Funds in its various media releases this year, its submissions to the Senate select committee on the issue of choice, and letters it has made available to the Opposition, and I hope to the Democrats and to the Government, in response to the Industrial Relations (Superannuation) Regulations, it would be a long bow for anyone to draw to say that the association supports the regulations that are currently being discussed in this motion to disallow them. That association has put forward the strongest arguments to justify this disallowance. It is that association which has been begging the Federal Government and Governments around Australia not to go down the path which this State Government is currently embarking upon by virtue of the determination of this Minister for Labour Relations. That association has been the strongest in predicting the difficulties which will be experienced by employees and employers around Australia by virtue of States going it alone or regulations coming into effect in advance of programs - for which Ms Philippa Smith has been a strong advocate - being put in place before the regulations come into effect. None of those programs has been implemented at either the federal or the state level. That is the part of the argument that I put to the House in urging it to support the disallowance motion.

Hon Peter Foss interjected.

Hon TOM STEPHENS: The Attorney General has no capacity to listen. Certainly while his mouth is open he has no capacity to listen. The Attorney General should see if he can have the opportunity to listen to what I have to say while his mouth is shut!

Hon Peter Foss interjected.

The PRESIDENT: Order!

Hon TOM STEPHENS: I put to the House that on a number of occasions over the past 12 months I have watched debate in this place and heard contributions made that have amended some of the most piddling provisions by way of putting thumb prints on various pieces of legislation.

When I first started to speak this afternoon, I pointed out to the House that phrase contained within the form 1 pursuant to regulation 4 under the heading of "Which fund?" I spelt out the fact that under that heading appear the words "if you do not nominate a fund your contributions will be paid to a fund chosen by your employer". This House has a duty to respond to that and the non-government members of this House particularly have a responsibility. That is, members get this chance only when the regulations are before them and subject to disallowance.

It does not matter what assurances are given by this Attorney General or this Minister for Labour Relations. The opportunity of members as legislators to respond to an inaccuracy contained within a regulation tabled in the House comes now when the issue of disallowing the regulation is before them. To those people who have engaged in piddling, trifling thumb printing of legislation with piddling and trifling amendments of no consequence I say: When they are faced with a form that misleads the employees of Western Australia -

The PRESIDENT: Order! The Leader of the Opposition knows the right of reply is restricted to comment on those matters and issues raised by the speakers who spoke subsequent to his initial moving of the motion. It seems to me that he is trying to rerun the original debate.

Hon TOM STEPHENS: The opportunity for legislators to move in response to this form is now. Members do not get a second crack at it as legislators. This is the way they rise to their responsibilities as legislators. It is the way occupants of this House have the chance to tell the Government what it should do by virtue of their response to the regulation before the House.

The form has been tabled in this House pursuant to the regulations and this is members' opportunity to require the Government to correct the regulations in the image and likeness of the legislation and in the image and likeness of the calls of the Trades and Labor Council, industry and the Association of Superannuation Funds of Australia. I observed the critical commentary made by prominent Australian Democrats in the federal arena on this same issue. Their leaders at that level grasped these questions and adopted a different stance to that which is proposed to be adopted by Hon Helen Hodgson.

I say to Hon Jim Scott: I am pleased he has indicated support for this disallowance. I hope that he perseveres with his intention to support the disallowance because our chance as legislators to respond to the forms and the regulations before us is now. That is what is before us now. Once we have disallowed this regulation, if the House is so lucky, the Government can produce the appropriate forms to respond to the legislation's requirements and state on those forms what should be accurately recorded there but which is not now.

Hon J.A. Scott: Does the Leader of the Opposition think what the Attorney General has said would fix it?

Hon TOM STEPHENS: That is right. The opportunity to do that would be by presenting the regulation again once this disallowance motion was carried.

The PRESIDENT: Order! The Leader of the Opposition is to address the Chair. I am battling to know who is speaking at this stage.

Hon TOM STEPHENS: I say to Hon Jim Scott that our opportunity as legislators is to respond to that which has been tabled - the form, the regulations - which deserve disallowance. Disallowance is the opportunity for getting fresh paperwork, regulations and forms which reflect the requirements of the Statutes, and which ensure that the employees and the employers of Western Australia have before them material - forms provided by the Government - which correctly reflects the Statute.

I pointed out to the House why it is that that particular line in the form is inaccurate. All I say to the House is: I do not resile from that argument. I say to people in this House that there are some questions of principle and appropriate ways of dealing with issues. All right, it might not have been dreamt up by people of their own narrow party political persuasion. The disallowance motion may not be before the House by virtue of their preferred vehicle - a proponent

from their political party. I say to people with a preoccupation with that question: Deal with the issue at hand! The Labor Party has committed itself to always dealing with the issue at hand.

Hon Simon O'Brien: A line on a form?

Hon TOM STEPHENS: It does not matter from whom the argument comes. It does not matter who moves the disallowance. It does not matter to us who moves the amendment.

Hon Peter Foss: That is a little bit much.

Hon TOM STEPHENS: It does not matter on any of these occasions; we are committed to the questions of principle. I ask other parties to start displaying those same principles in the debates and processes in this House.

Hon Peter Foss interjected.

Hon TOM STEPHENS: Sure, some members are new and it has been an absolute delight to work with some of them on these questions, but others are yet to rise to the challenge as legislators, to face each question on its own merits and forget the narrow party and partisan political questions that some of them appear to be preoccupied with on every question before the House. I guess some of these members are increasingly distressed about the -

Point of Order

Hon PETER FOSS: I would like the Leader of the Opposition to address the particular topic. I really rose so he did not explode, which I thought he might do if he carried on the way he has been.

Hon N.D. Griffiths: You are just so stupid and senseless; just sit down and shut up!

The PRESIDENT: The Leader of the Opposition has been given the courtesy by me, and indeed by the House, that he be seated while he makes his address. That does not give the Leader of the Opposition the comfort of a lounge chair to speak at great length. I might say the matter has been raised with me. There is no point of order. I ask the Leader of the Opposition to address the Chair in summing up this debate.

Debate Resumed

Hon TOM STEPHENS: I have almost finished my comments. I would be alarmed if anyone wanted to deny me the provisions of standing orders.

The PRESIDENT: Order! I do not think anyone wants to deny the Leader of the Opposition an opportunity. A member raised the point with me that it appeared the seated position of the Leader of the Opposition was a comfortable position from which he could speak at great length. Other members are not afforded that opportunity.

Hon TOM STEPHENS: I take issue with you on that, Mr President. This situation is not within my control. I am in this position because of a provision available under the standing orders.

The PRESIDENT: Order! I will not argue with the Leader of the Opposition. He knows that I afforded him the courtesy in the first instance. I am just saying that the matter was raised with me.

Hon TOM STEPHENS: I hope you gave whoever it was short shrift, Mr President.

I will be very disappointed indeed if this disallowance motion is defeated by the House. This is an opportunity for the legislators in this House to respond to the issue before us. They should forget who moved the motion.

Hon Simon O'Brien: That is not the question.

Hon Ljiljanna Ravlich: Calm down.

Hon Simon O'Brien: Why are you telling me to calm down?

The PRESIDENT: Order! Hon Simon O'Brien will come to order, as will Hon Ljiljanna Ravlich.

Hon TOM STEPHENS: All I say to members is that this regulation deserves to be disallowed because it adds nothing to the orderly processing of superannuation with which employers and employees will be faced in Western Australia. Surely all the reasons well and truly canvassed by industry, the Trades and Labor Council, the Superannuation Association, and I understand argument in support of some of the issues by the Australian Democrats at a national level, are justification for support of this disallowance at this time, no matter that it has been moved by the Labor Party. I commend the motion to the House.

Question put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon J.A. Scott	Hon Ken Travers
Hon E.R.J. Dermer	Hon Tom Helm	Hon Christine Sharp	Hon Giz Watson
Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (15)

Hon E.J. Charlton	Hon Peter Foss	Hon Norm Kelly	Hon B.M. Scott
Hon M.J. Criddle	Hon Ray Halligan	Hon Murray Montgomery	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Helen Hodgson	Hon M.D. Nixon	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon Barry House	Hon Simon O'Brien	

Pairs

Hon Cheryl Davenport	Hon N.F. Moore
Hon Mark Nevill	Hon Greg Smith
Hon Kim Chance	Hon Derrick Tomlinson

Question thus negatived.

LOTTERIES COMMISSION AMENDMENT BILL

Returned

Bill returned from the Assembly with amendments.

RAIL SAFETY BILL

Second Reading

Resumed from 20 May.

HON TOM HELM (Mining and Pastoral) [8.36 pm]: The Australian Labor Party is proud to support this Bill. As members will be aware, it has been treated as though it were uniform legislation and therefore subject to Standing Order No 230. It was sent for consideration to the Standing Committee on Constitutional Affairs and Statutes Revision, of which I am a member. This afternoon the committee's report was tabled.

The Australian Labor Party agrees wholeheartedly with the concept of rail safety belonging to all Australians and it should not be compromised between States. It is to the advantage of everybody in Australia that all States have the same rail safety provisions. Members will have heard the Minister in his second reading speech inform them that the Bill contains nothing of a non-safety matter. The purpose of the Bill is to provide safe carriage of goods and passengers throughout Australia. The Bill was introduced as a result of a meeting of all Transport Ministers and bureaucrats from throughout the country. Some template legislation was drafted and this Bill is to form part of an agreement between all state Ministers, as well as the federal Minister for Transport.

Philosophically all political parties agree that the sooner uniform legislation of this nature exists throughout Australia the more efficient rail transport will be. This Bill is aimed at exactly that.

I am led to believe that South Australia and the Northern Territory have made some amendments to the legislation. That undermines its uniform nature. The other place moved an amendment to the Bill which also undermines its authority as a piece of uniform legislation. We must take those points into consideration when we discuss the uniform nature of this type of legislation.

I have already advised the House that I am a member of the Standing Committee on Constitutional Affairs and Statutes Revision. I take this opportunity to congratulate the chairman of that committee, Hon Murray Nixon, for his work in bringing this report to the House today. It is in line with the provisions of Standing Order No 230(c). The committee members worked very hard preparing this report. The chairman could not have presented the report without the work of his staff, Penny and Kelly, who also worked very hard to obtain the relevant information for the consideration of the committee. I reflect the committee's view that it did not have time to consult as widely as perhaps it might have done; however, some measures are being put in place that will address that lack of opportunity. In that way, the committee will be able to provide the House with more detailed consideration of Bills that are referred to it under Standing Order No 230(c).

It is a little disappointing to debate a Bill that has the uniform legislation stamp upon it when some States do not follow to the letter the provisions that were originally agreed to be included in it. If we are to keep to the multi-party, multi-state agreement that allows us to pursue the path of uniform legislation, there must be an understanding that

all States pass the same legislation. Of course, that is the whole thrust of uniform legislation. No State should alter a piece of uniform legislation, as we have been advised has occurred in the past. The intention of the various ministerial meetings that take place from time to time is to resolve matters that can be described as being of a uniform nature. It seems to me that we are unnecessarily tying up the time of the House, and perhaps of the committee, if we debate matters that we see as not being the same as those in the legislation that is passed in other States.

I put forward a word of warning at this stage to the relevant Ministers of other States, irrespective of which party they may be part of: There must be an understanding and agreement across the board that all States will treat uniform legislation in the same way. There can be no exceptions. If a matter is not agreed to, it should be withdrawn from legislation that may otherwise be presented to the Parliament. I do not want to lessen the congratulations I passed to the Minister for bringing this Bill to this place; however, I suspect that this Bill contains some differences from the legislation put forward in South Australia and the Northern Territory, and I presume those differences have been brought about by bureaucratic means, rather than ministerial decision making. Once all the major issues which have been put forward by the relevant State Ministers are addressed, there is no reason the uniform legislation should not gain the confidence and support of each and every Parliament throughout all the States. If there are exceptions in this sort of legislation, it merely undermines the uniformity that is sought.

That brings me to one of the issues about which the Labor Party has some concerns which was debated in another place. In the speeches during the second reading debate, I noticed some concerns were raised that exemptions can be given by way of notice in the *Government Gazette*. Members should be aware that matters of which notice is given in the *Government Gazette* are not disallowable and do not come before this Parliament. It is not left to this House to decide where exemptions should occur. That is not the proper way to proceed.

I will explain a few concerns that I have, in particular. We are advised that this Bill, when it becomes legislation - I am pretty sure it will be passed - will exclude iron ore companies. The committee felt somewhat frustrated that it did not get time to bring representatives from the north west iron ore companies to give evidence. Although I am not sure about the iron ore exported from Koolyanobbing, I am informed that the Robe River group, Hamersley Iron Pty Ltd and BHP Iron Ore will be exempt from this legislation; they will not be governed by it. That brings a number of issues to the fore. If this State is to be part of this uniform legislation, the Rail Safety Bill, which covers the responsibility for the provision of safety in the carriage of goods, why is a major rail line in this State excluded? The reason given to the committee was that such lines were owned and used by single operators. We did not have a great deal of time to research this matter; however, I understand that the initial agreement legislation covering the mines, the port facilities and the railways placed a responsibility on the railway owners to allow the rail lines to be used by appropriate people. Although the lines were single use in the first instance, paid for and owned by the iron ore companies, those companies could not preclude others from using the lines.

As I understand it, that reflects the view of Governments of all persuasions in this State that did not want a proliferation of railway lines in the north west and wanted the most efficient and effective use of the line that was in place. A railway line is a very expensive commodity, both in dollar terms and in terms of the environmental damage caused by building a railway line, especially in the sensitive environment of the remote area of the Pilbara. I am led to believe that we are close to having a railway line used by people other than the owner of the line at present. In fact, legislation may come before us quite soon which will see a major development in area C in the Pilbara and which will require either an additional line or the increased use of the line that is already in place in the Pilbara, which is what most people thought would happen when it was originally built. The argument that we are exempting these iron ore companies because there is only one user is not correct.

I am also advised that, in spite of the fact that the safety responsibilities come under the control of the Department of Minerals and Energy, on a regular basis Westrail inspectors check the lines in the Pilbara for insurance purposes. We believe the people who are inspectors working for Westrail will be accredited as inspectors under the provisions of this Bill. It seems incongruous that we would use those accredited inspectors, while proposing that the iron ore companies in the north west be excluded from the Bill.

I refer members to the clauses covering the responsibility of accredited rail users to ensure that the people under their control are capable of doing their job, both physically and mentally. One clause refers to encouraging accredited rail users to ensure that their employees are drug and alcohol free. That causes me some concern because, working and having an office in Newman, I am aware of the recent agreement signed between the employees and The Broken Hill Proprietary Co Ltd about the implementation of a drug and alcohol regime containing a number of responsibilities on the part of the employer and the employees. It also has a protocol and stipulates levels of drugs and alcohol that are seen to be appropriate for that workplace. BHP is excluded from the provisions of this Bill, but it already has an agreement about people being subject to random blood tests. I will cover that in more detail later.

The committee was not able to take evidence from the iron ore companies. However, it had a round table conference with two representatives from the Department of Transport - legal officer Trevor Maughan and policy officer Rob

Burrows. They went in cold to that meeting with Hon Fred McKenzie, Deputy President of the Friends of the Railway; Bob Wells, the State Secretary of the Australian Rail, Tram and Bus Industry Union; and Trevor Tobin, an ex-Westrail occupational health and safety officer. It was the first time the committee had conducted such an investigation. Those officers handled themselves well and answered the questions as honestly and as completely as they could; they were well versed in their responsibilities and roles. I understood that they undertook to provide the major reasons the iron ore companies should be excluded. The committee still has not received that information, but that must be a misunderstanding rather than anything sinister. Given the time frame in which we had to look at this matter, that was the best way to understand the concerns raised and to address our own concerns.

We were advised that the reason the Minister wanted the exceptions to the Bill to be published in the *Gazette* by notice was that a notice is a more expedient way to proceed. I have some concerns about that. Having been a member of the Joint Standing Committee on Delegated Legislation for seven years I am aware of the sophistication of departments in using regulations to bring about the results they require. We are now dealing with what can be described as template legislation. We can also have template regulations that do not necessarily need to go to the parliamentary draftsmen every time we want to do something in the best interests of safety on the railway. It will be interesting to hear the Minister's response about why there are complications with regulations, but not with notices. Nonetheless, we should be convinced beyond all shadow of doubt that regulations are not appropriate in this case. The Minister will respond as he sees fit during Committee.

Those at the round table discussion agreed that this thrust was a good idea and long overdue. Australia must abandon the different railway gauges and application of safety regulations. This Minister and the department should be congratulated for introducing some measures to achieve that. The Bill has about 70 clauses and only three cause some concern, and those concerns might be ill-founded. Everyone is hoping we can get around those problems. The exceptions are dealt with in clause 4; that is, what they mean and some of the problems the committee tried to address in the short time it had. Again, the committee is not saying that this is anything other than a set of events that presented themselves.

The committee is understanding its new role and is coming to grips with what is expected of it in the time frame allowed. I understand some provision will be made at a later date to expand that time frame if it is required. However, we have modernised our procedures to allow the committee to do all that it believes it should do. It is not doing too badly.

Clause 31 also causes some concern. BHP arrived at its iron ore drug and alcohol program on 13 August 1997, which is finding its way into practical application in the workplace. It took a long time for trust to be built between the employees and the employer and, I must be frank, between the union representatives and the employer representatives for this program to be put in place. As part of that program and that building of trust, the company provided urine and breath test kits for all employees who wanted them. No-one was trying to kid anyone; it was done up front in a most professional manner.

I am opposed to random blood and urine testing in the workplace. I have read on the subject as extensively as I can and I have attended as many seminars and lectures on the matter as often as I can. I have done that because I am from the Pilbara and I have had friends there who have been injured. I am aware that people have gone to work half stoned or half drunk - in some cases completely drunk - and they have brought drugs and booze on site. We want to try to get a grip on that and stop it.

With regard to alcohol, the breathalyser is used, and that can be followed by a blood test. That is easy to understand. Society has determined that the abuse of alcohol can lead to levels of impairment. I do not have a problem with that. The airline industry has had a zero alcohol policy for many years. We understand that the Rail Safety Bill will allow people who work in the railways to have a maximum blood alcohol content of 0.02 per cent. That is below the 0.05 per cent blood alcohol content which society in this State has agreed is acceptable for driving on our roads. My union has no objection to blood alcohol levels being determined, regardless of whether we agree with the scientific evidence. Society has said that alcohol abuse leads to impairment, and that is it.

Hon M.J. Criddle: Who should be responsible for that?

Hon TOM HELM: The person who has consumed the alcohol.

Hon M.J. Criddle: Are you saying the employer should be exonerated?

Hon TOM HELM: Yes. It cannot be his or her fault. It is the same with drugs. I suppose the person who is best able to develop a policy that will reduce the abuse of drugs in the workplace is the employer, but I would not blame the employer if one of his employees were found to have taken drugs.

The reason I am opposed to random blood and urine testing for drugs is that society has not determined what levels

of impairment are caused by the abuse of drugs. Some people who are stoned stagger about, but it depends upon the amount of drug that is consumed and upon the person. The matter is a lot more complicated. In addition, it costs a lot of money to run a true test of the level of drugs in the blood or the fatty tissue. We are asking employers to invest in something from which they will never get a return. What we are saying and what the experts appear to be saying across-the-board - even Western Mining Ltd, which is a pretty red necked organisation - is that $400 a pop to get a pathological report on the level of alcohol in a person's blood is an enormous expense. Employers are prepared, God bless them, to spend a lot of money because they are as concerned as we are as individuals and as the unions are collectively about reducing accidents in the workplace. However, we believe that a lot of money and technology will need to be available to enable us to find out which people are impaired by having cocaine in their blood and which people work better with cocaine in their blood. We are led to believe that some people operate better with certain drugs in their blood. We know that when we get a cold, certain prescribed drugs enable us to operate better. The protocols of BHP mention various prescribed drugs. How do we measure the level of impairment? BHP has done that; it has set down standards. This House may want to look at proposing regulations that will alleviate our fears about clause 31.

A lot of money and a lot of goodwill is available from employers to develop protocols that will reduce the abuse of drugs. At this stage, every effort should be made to not only educate the work force but also give the work force every opportunity to own up to drug dependancy. The committee was given an example. We were asked whether we would rather be in an aeroplane with a pilot who had just given up smoking or in one where the pilot was allowed to smoke. It was suggested that given the irrational behaviour, nervousness and bad temper of a person who had just given up smoking, we might be better off with a pilot who smoked; then again, we know that people who smoke have an impairment.

The emphasis should be on developing trust between employers and employees. That may come about by overstating the potential damage from alcohol and drugs. A Life. Be In It caravan visits every town in the north west at least once a year to teach children about the action of the lungs and the function of the blood, and about the effects of alcohol and drugs. Adults have missed out on that display, which demonstrates easily and simply something that people in the workplace need to know. In addition, we need to build up the trust of the work force so that employees can admit that they have a habit or an addiction, and everyone in the work environment can provide moral support, as would be the case if an employee broke his leg or was injured on the job, so that the employee can get himself together through rehabilitation and detoxification.

BHP has made a commitment to go down that track. Employees are now presenting to the nurse, the industrial relations officer or the people who are concerned about the welfare of employees and admitting to the habits and addictions that are affecting their lives; and if they affect their lives, they affect their jobs. BHP has not adopted the namby-pamby attitude that if employees are caught on the job not doing the right thing, they should get the sack. BHP has said that it will give people every opportunity to overcome the problem. However, if people are repeat offenders, it is goodnight and goodbye. The unions are clear about the fact that if people are not willing to change to suit the job, the job cannot change to suit them, and they must go. That is the hard-nosed, end result. BHP has put that into place on its rail line.

Again, if we are successful in getting the Minister to agree to put regulations in place that will define a regime that is similar to that of BHP - one with which, I repeat, I do not agree - we as members of Parliament will do our best to see that the safety aspects of this Bill are carried out.

Before August of last year when this proposal was first talked about, the work force of BHP had a great deal of suspicion. A lot of people thought it was another way of the boss giving the workers a bashing. There was a cultural change. I did not express my views in Newman because it was not appropriate to do so. The union expressed its views in another way. The Newman branch of the Australian Manufacturing Workers Union decided not to go along with the view of the national union that this was not a good approach to the use of the drug and alcohol random testing. The Newman branch departed from the national policy of the union and put its own policy in place. Good luck to it. That is democracy within the union movement, and the members will live or fall by departing from that national position. No disciplinary measures will be taken. It is a clear demonstration of the union's ability to work within different groups. At the same time, the union was able to identify the appropriate people - the safety representatives and the conveners - who were exposed to all the evidence BHP could muster to give them the tools they needed to make that decision. Credit must be given where it is due. It was not an inexpensive exercise. It took people off the job, and they were encouraged to go to various places throughout Australia to listen to the experts in the field and to BHP's version of these matters.

Clause 31 contains provisions that bother me somewhat. It may be that an amendment will be moved in Committee that will take care of my concerns. Perhaps the Minister will reconsider this. The committee spoke to Bob Wells who is the State Secretary of the Australian Rail, Tram and Bus Industry Union. In the short time I was able to talk

to him, he gave me an outline of the union's view on drugs and alcohol in the workplace. It is similar to the position of the Manufacturing Workers Union. It is also quite wise. They do not object to the Bill containing a provision that there should be no alcohol in the blood; in other words, they do not object to zero tolerance. The more high tech a mine becomes, and the more high tech the mining of ore becomes, the more there is a need for people to be alert.

I know the Minister for Mines is concerned about the ability of people to do their job being affected as a result of the number of hours they work in a shift. This Bill does not address that issue or prescribe an appropriate limit on the number of hours people should work in the industry, because that varies from place to place. Until someone grasps the nettle and defines the number of hours for which it is safe to work in various jobs, we shall be floundering for a while. I do not expect the Minister to revolutionise the way people work. However, although in the past there may have been jobs in the railway industry in which people could catch up on some sleep or work longer hours, society, business and the community are fast moving away from that situation. People are paid a decent wage and they are expected to work during the hours they are at the workplace. People are only now beginning to understand how the number of hours worked can affect the safety of the work carried out.

It can be said with some authority that although this Bill deals with non-safety matters, clause 31 provides an opportunity to highlight some safety matters. If random breath, blood and urine testing is applied, a culture of mistrust could develop. The Bill seeks to achieve trust between employers and employees and the development of a safe working environment. Should some mistrust develop, with a them and us mentality, people could substitute urine samples for testing and people might think it was smart to take drugs that would mask the detection of other drugs. That has happened in other areas and has been reported in the Press.

It is a matter of opinion, and I am still to convince many people, particularly in Newman, that the randomness of the test is not much use until there is an effective test of people's impairment from the use of drugs or alcohol. That is the danger. That rings the alarm bells and causes problems. It gets away from the thrust of the Bill, which is to be praised rather than criticised.

The other clause that caused some concern to me, the committee and the people to whom we talked, is clause 50. This clause deals with the gathering of evidence after an accident or incident. The clause was amended in the other place. The Opposition moved an amendment that was not acceptable to the Government, but a subsequent amendment was passed.

My understanding of uniform legislation is that it cannot be amended, but this clause, as amended, is not in the Tasmanian or South Australian legislation. The clause allows for a person to speak openly and honestly and to provide evidence, without exception, to an inspector when he or she is asked to do so. It is a perfect aim because the purpose is to find out how accidents happen and to involve everybody in that, so that procedures will be put in place to prevent similar accidents happening in future.

The clause states that if someone wants to tell the truth or wants to provide evidence, that person can do so without being subject to subsequent prosecution or hearings. The evidence the person presents - whether it is oral or physical by the presentation of equipment - cannot be used in any subsequent hearings unless that person tells lies or presents false evidence. That is the beginning and the end of the Government's aim.

I now paint a picture: One can imagine that it must be scary for a train driver to suddenly experience a derailment. It is scary enough to ride on the iron ore trucks from Hamersley and Chichester. Imagine if the brakes did not work - in some cases they do not cope with a 10 000 tonne load pushing the engine down the track. I find it scary to ride these trains, although the drivers are experienced. If something went wrong, and a couple of trucks were lost, or whatever the case may be, after the accident the driver would be asked what happened. What was seen? Why did the brakes not work? Why did the warning light not go on? The inspector should be entitled to take what is said at the time in the spirit in which it is given. Whatever the driver thought he saw at the time, or whatever his perception was of what happened, should be poured out immediately. Let the inspector determine the elements of true recollection or misunderstanding of the event. In that case a person would feel free to give information without someone like an insurance representative questioning him under oath. Under that pressure, the person might be reluctant to give information. He or she would want to be certain about the events and not tell everything; therefore, the investigator would not get to the core of the matter as quickly as should be the case. That would be contrary to the aims of the Bill.

The aim of clause 4 is perfectly obvious. However, it has two subclauses which indicate that a person must say, "Before I answer the question, give you the broken lever or provide the piece of evidence, I want you to understand that this cannot be used in evidence against me in a subsequent hearing." That person must give the information before speaking to the inspector. The inspector has the same power as fisheries inspectors, which are more than a policeman's power with a warrant. Such an inspector can do many things with a warrant, which may be appropriate, although I am not sure whether such powers are appropriate for fisheries inspectors. However, it is appropriate for

an accredited and authorised person to do what a policeman could not do by way of warrant. Such inspectors will have wide powers. They will be trained investigators.

By the same token, an inspector must deal with somebody who must be aware before speaking to the inspector that what he says is to be taken in the spirit it is given. The employee must be able to say what is on his mind. He can give an opinion, and produce what he thinks is relevant information relating to the accident. That is it. Unless he says certain words, the evidence may go to court and someone can use it. The person has a duty to say to the court, hearing, inquest or whatever that he was not warned that whatever he said would be taken down and used in evidence.

That raises the other area of mistrust. This undermines the whole intent of the Bill, and everything in the Bill of which the Labor Party is supportive; namely, developing trust between the parties so we have a safe rail operation throughout Australia without differing safety procedures between the States. However, that cannot be achieved until we build up the necessary trust.

It is fortuitous that when the Standing Committee on Constitutional Affairs and Statutes Revision was considering this Bill, it was made aware of the findings of the District Court into the accident at Hines Hill for which a prosecution was laid by WorkSafe against Westrail for negligence. The scuttlebutt was that WorkSafe was reluctant to take on that matter as the case was regarded as difficult to prove. It seemed to hinge on - perhaps I use parliamentary privilege here, but it does not matter - the warning light relating to the bypass loop carrying the Australian National train. The warning light changed from the red used to stop the oncoming train to amber to provide the driver with the discretion to use caution. In other words, it did not stop the train, but slowed it down. This saved some minutes. We know that minutes are important as they cost money, and that the transport of cargo and passengers needs to be on time. A decision was made by Westrail to change the sequence of lights to enable the train going into the bypass loop to slow down to allow the train on the main line to pass through. The engine of the train on the main line caught the back of the train on the loop. That is how I understand the accident occurred. We could not get a clearer illustration of these matters than that accident. I am not certain whether the Bill outlines the safety procedures. I suggest that in future the light colours and sequence will be altered to allow greater safety margins than those which applied prior to the accident. Therefore, we can have the safe carriage of passengers and goods right across the State.

Hon E.J. Charlton: That issue could be subject to appeal.

Hon TOM HELM: Fine. I refer to the findings of the hearing already held. That incident focuses the mind. I underlined the importance of this example to the standing committee and the House in ensuring that things are done properly. However, it appears that case could be subject to appeal, which is fine.

Hon E.J. Charlton: The procedure followed by Westrail is consistent with that of every other operator.

Hon TOM HELM: Maybe the lot need to be changed if the appeal fails. I take on board the Minister's comment. It is not only Westrail's procedure which is in doubt as uniform lighting sequence may be used across the nation. These may need to be changed. I only repeat the matter as its timing was coincidental. This accident homes the mind onto the objectives of the safe carriage of passengers and goods across Australia.

I return to clause 4 of the Bill. The Australian Labor Party has long argued that safety in mining should be a matter for WorkSafe. We have often argued that the Department of Minerals and Energy is not the appropriate department to look after safety in the mining industry. The mission statement of the Department of Minerals and Energy is to promote the mining industry. Power to it; I wish it the best of luck in that endeavour. However, on a number of occasions a conflict of interest arises in supporting and promoting the industry and taking care of the safety aspects of the industry. In the past - I do not know about currently - Department of Minerals and Energy inspectors did not have expertise to be able to satisfy insurance companies that the rail line and rolling stock were up to standard.

Having worked with Hamersley Iron for six years, I am sure that every mining company has so much money invested in both rail and rolling stock that there would be no skimping on safety. Nonetheless, it is worth noting that they use Westrail inspectors. Westrail is governed by the rules of WorkSafe. Rather than exempting the three iron ore companies north of the twenty-sixth parallel, we should include them in the WorkSafe fold so the inspectors are accredited and users of the rail are subject to the regulations and laws set by WorkSafe.

This is another example of the strange logic that is employed. My dealings with the Department of Minerals and Energy have been of the highest calibre. People I have dealt with in the department, in particular the Chief Mining Engineer, Jim Torlach, can explains things in a manner that even I can understand. They are always more than willing to bend over backwards to provide explanations of matters. It is true that they are determined, even though there has been a change of Government, to play a fair and good role. None of the criticism that I have about the Department of Minerals and Energy being responsible for safety in the mining industry is levelled at those inspectors or engineers who are employed by the department. However, with all the best will in the world, a Government of

any colour must be very careful about the amount of taxpayers' money that it spends. It may be that I am wearing my political hat; however, this Government has a very mealy-mouthed track record and is reluctant to give the inspectors, WorkSafe and DOME enough facilities for them to perform a proper and fair job of inspections and employing inspectors on the site.

I was talking to the works inspector for the Pilbara region last Friday and members would not believe that he has to do about half the mileage that I have to do to cover the Mining and Pastoral Region; however, he does it all in his car. He does it because when he gets to a minesite, not only does he have to front the mine manager, inspectors and the work force, but also he must answer concerns that may be brought to his attention. Generally, he has to stay overnight. Therefore, he cannot be dictated to by aeroplane flights and take-off and landing times whereas we can fit in our business to suit aeroplane schedules. It is horses for courses in this sense: This House should have an opportunity to have explained to it at length why iron ore companies should be excluded from the provisions of this Bill. We may argue that the Department of Minerals and Energy is responsible for safety at the mine, as it says it is - and possibly at the port - because there are ship loaders on the one hand, and reclaimers and stackers in open cut mines at both ends of the railway line. However, the evidence suggests that DOME officers are not the best people to look after safety on the railway. Even if we were convinced that the regulations that appear in the *Government Gazette* were proper and justifiable, we still have new technology used on these railways up north. We are talking of 240 cars in a train carrying 10 000 tonnes. One can imagine the tonnage that is being shifted on those trains. They are using now four of the biggest locomotives in the world. The signalling systems have to be invented to cover the distances, the bridges, the culverts and the rail itself.

Hon N.D. Griffiths: You are on track.

Hon TOM HELM: I feel sorry for Hon Simon O'Brien. I know he goes up north; however, if he spent a bit of time in the iron ore industry, he would understand that this opportunity is not presented to me very often; that is, the opportunity to talk about uniform legislation; to talk about the incongruous system that allows for safety throughout the whole of our State to be the responsibility of WorkSafe, except for that in the mining industry. However, it is not just iron ore mining, it is gold mining as well. People say that the deaths that occur in the goldmines are partly a result of there not being enough inspectors. I think that is a bit cruel. It may be true but one could not give this Minister more credit than I have given him for what he is trying to do.

Hon Simon O'Brien: My understanding is that this Bill does not apply to railways in a mine. The member is referring only to transport between mines and ports. Is that right?

Hon TOM HELM: That is the one that concerns me. I am glad the member mentioned this. My focus is on this because I have such a bias towards the iron ore industry and that is not a true reflection of what this Bill intends to do. However, there may be a horse drawn railway track somewhere. It may be that the Hotham Valley railway does not need to be subject to this Bill and the House may have before it a regulation that excludes those railways. We might take a different view altogether about the iron ore companies than we do of the Hotham Valley or any horse drawn railway enterprise in this State. Why should there not be a different view taken? Why should the Minister or the departments not have the ability to exclude those if there is a case for excluding them; and there may well be. I know I have used an argument for not excluding the iron ore companies; however, I do not want the House to think that nobody should be excluded. The main thrust of my argument obviously is that -

Hon N.D. Griffiths: It is an inclusive argument.

Hon TOM HELM: - we have the ability to comment on and disallow regulations which might exclude railway lines which should not appropriately be excluded.

I have covered all of the angles that concern me. I repeat that the Australian Labor Party - and it did this in the other place - congratulates the Minister for bringing this Bill before the House. We congratulate those involved in proposing this piece of uniform legislation to make all Australia subject to the same safety provisions. With the few exceptions, on which I may have spent a minute or two, I support the Bill.

Debate adjourned to a later stage, on motion by Hon E.J. Charlton (Minister for Transport).

[Continued below.]

SITTINGS OF THE HOUSE - EXTENDED AFTER 10.00 PM

Tuesday, 23 June

HON E.J. CHARLTON (Agricultural - Minister for Transport) [9.40 pm]: I move -

That the House continue to sit beyond 10.00 pm.

In view of my discussions earlier in the day with the Leader of the Opposition and other members of other parties, the arrangement is to complete the second reading debate of the Rail Safety Bill, cover quickly two other pieces of legislation and finish off with a speaker who is completing his budget speech.

Question put and passed.

RAIL SAFETY BILL

Second Reading

Resumed from an earlier stage of the sitting.

HON J.A. SCOTT (South Metropolitan) [9.42 pm]: The Greens (WA) support this Bill. In order to do so, we had to look at whether we thought the legislation would bring about an increase in rail haulage in the State and was a good thing. On our best guesses, it should certainly enable a greater movement of freight and passengers in this State. We hope that it leads to a much greater use of rail.

Hon Tom Helm has raised a number of issues which the Standing Committee on Constitutional Affairs and Statutes Revision thinks should be looked at during this debate. Before examining those issues, I will draw attention to part of the executive summary of the committee's report, which stated in paragraph 1.2 on page 1 that the standards to be applied will be based on industry best practice and subject to ongoing development through the work of the Standards Association of Australia. I have a little concern about the terminology of "industry best practice". It does not mean anything. Best practice in industry could be pretty mediocre in some cases. It tends to be applied to output rather than the safety requirement. I hope the terminology relates to safety rather than output. The element that undermines safety most of all is attempts to increase output. Hon Tom Helm has already mentioned the hours that mining industry employees are working. They are suitable for increasing the economic capability of those operations but they are not necessarily very good for mine safety. I hope that the Minister will give an assurance that industry best practice relates to safety in this case.

I agree basically with the committee that the clauses it put up should be debated by this House. As a member of the Delegated Legislation Committee, I get rather fed up with the idea of ministerial notice as a way of escaping proper scrutiny by the House or by the Delegated Legislation Committee. Probably the best way to fix that is to pass the subsidiary legislation Bill in this and the other House to ensure that entities like notices are treated in the same way as a regulation and are subject to proper scrutiny. We do not yet have that Bill, so I would prefer the idea of notices being done away with until such time as legislation is put in place. I urge the Attorney General to get on with looking at that.

I will not comment on the same matters as Hon Tom Helm did. Page 41 of the report of the Constitutional Affairs and Statutes Revision Committee says that as a separate argument it has been said that clause 50 should be amended by inserting a subclause (3) which would provide that for the purpose of subclause (2)(b) sufficient time includes adequate time to seek legal advice. I hope we do not go down that path. Like Hon Tom Helm, I believe the number one aim of any inquiry into any accident should be to ensure that the reasons for the accident come out as quickly as possible, so that the problem can be fixed rather than looking at punishing someone as the prime cause of the inquiry.

Hon Peter Foss: What did you say that I have to look at?

Hon J.A. SCOTT: The proposed subsidiary legislation Bill.

Hon Peter Foss: That did not come from me.

Hon J.A. SCOTT: I realise that. I was referring to the problem of ministerial notices which can escape scrutiny. That legislation would cut out ministerial notices appearing or, if they did, they would be treated as subsidiary legislation.

Hon Peter Foss: They would not be subsidiary legislation. They are the exercise of executive power. Why would you want to treat them as subsidiary legislation?

Hon J.A. SCOTT: The point of dealing with notices as subsidiary legislation is that in this case we are dealing with the safety of people using private and government railways.

Hon Peter Foss: Executive acts are executive acts and not subject to interference.

Hon J.A. SCOTT: A ministerial notice should have some sort of scrutiny if it has some legislative effect, in the same way as does delegated legislation.

Before being drawn into a debate with the Attorney General, I was saying that I would like to see in clause 50 that

the emphasis is on inquiries to find out the causes of an accident rather than who is to blame for it. The reason for carrying out such an inquiry should not be to blame somebody but to prevent such an accident from happening again. If we concentrate on blame, we will find that people tend to hide the truth. It is very good that the committee has raised that issue.

I turn now to the use of drugs in the workplace. I was impressed by the speech by Hon Tom Helm. I did not realise that testing for drugs was such an expensive exercise. I have worked in fairly dangerous jobs on oil rigs, and I have come into contact with people who were under the influence of drugs or alcohol. Neither I nor other workers felt very comfortable with the situation. We let those workers know that we did not like their using drugs, because it put our lives at risk. A good education program with an emphasis on the importance of safety in the workplace would go much further than undertaking random blood tests. I am uncomfortable with the idea of random blood testing, because I regard it as an infringement of basic human dignity, if not basic human rights. I would rather a different method of dealing with the problem. Random blood testing should be a last resort.

Returning to the provisions of the Bill, a railway line should be seen in the same light as any road or highway. I accept that a government railway line or any other should be used by a multitude of people. I also wish to comment about some railway lines being exempt from the provisions of this Bill, such as those at mine sites. I have mixed feelings about that requirement. During a trip to the eastern States with the Delegated Legislation Committee, it was interesting to hear about attempts by some people to make the regulations more flexible by allowing certain industries or individuals to be exempt from the regulations, and setting their own regulations to allow the industry some flexibility, while still arriving at the same outcomes. Such an accredited system could work well, although there could be a vast difference between particular operations. If an accredited system were introduced, it could be regularly reviewed to ensure safety in the industry and not simply be a financial saving. I support the Bill.

HON NORM KELLY (East Metropolitan) [9.54 pm]: The Australian Democrats support the general thrust of the Bill, which flows from an intergovernmental agreement in 1996 to adopt a nationally consistent approach to rail safety. It is important to adopt nationally agreed standards in the building, maintenance and operation of railways. The Bill will remove the regulatory function from Westrail and apply it to an independent authority, the Office of Rail Safety. Although this may be a preliminary step to privatise Westrail, which the Australian Democrats would question and at this stage would oppose, we do not oppose this Bill, which is a separate issue, as it relates to safety.

I wish to comment on the national register of independent investigators to deal with incidents and accidents. The register will provide a highly qualified pool of expertise on which to draw. It is interesting that the Bill does not specify a requirement for the placement of such people on a register. The lack of that requirement probably will dilute the effectiveness of the register and increase the possibility of that expertise diminishing over time. I am not fully conversant with the requirements for people to be registered. Therefore, I look forward to the Minister's comments in that regard.

The concerns held by the Australian Democrats in regard to this Bill have been mirrored by the concerns shown in the committee report which was tabled today. Our concerns are focused on clauses 4, 31 and 50. I wish to speak briefly on each clause. I seek the Minister's comments on how uniform the legislation will be, because this legislation was introduced under the banner of uniformity. I look forward to the Minister's comments on how this Bill compares with equivalent legislation in other States. Clause 4 provides exemptions to railways servicing north west mine sites and related ports. The exemption relates to lines servicing Tom Price, Paraburdoo, Mt Newman, and the like. The argument in support of that exemption is that the safety standards for those lines are adequately enforced by the Department of Minerals and Energy. However, I am concerned that the implementation of the exemptions perhaps will set up a structure which is not uniform with other States. For example, an iron ore mine in Queensland might not be covered by equivalent legislation, and railway workers moving interstate may assume that Western Australian legislation is the same as in their home State.

Clause 4(2) provides an exemption for some railways or rail systems. The subclause states that this Act does not apply to or in relation to a railway or system of a class prescribed as a railway or system to which this Act does not apply. The clause provides a regulatory power to make such exemptions. Therefore, it appears to be a double entrenchment in subclause (3) which specifies that, by notice to be published in the *Government Gazette* and on such conditions, specified railways or railways of a specified class can be exempt. It appears that one degree of power is provided in subclause (2), by way of regulation; and a similar power is provided in subclause (3), but subject to notice in the *Government Gazette*. That appears to obviate the possibility of parliamentary scrutiny.

Even though the Minister stated that the intention is to exempt these mine railways in the north, nothing is in the Bill to prevent the exemption of, for example, a transport company which was working in the metropolitan area at Kewdale freight yards and wanting to operate a spur line. It may come up with some arguments why it should be exempt from this Act. These powers exist by way of notice to exempt that line and that is why the Australian

Democrats have serious concerns about this. It is the broadness of that exemption which is not open for further scrutiny.

Clause 31 is the second clause of concern. As other members have already mentioned, it relates to taking reasonable steps to ensure that employees do not work while impaired by drugs. This raises the prospect of drug testing and the determination of the level of drugs that would be construed as impairing the abilities of the worker. The testing of blood alcohol levels and the determination of what amount of alcohol level in the blood system produces an impairment which can affect the ability of a person to work has been thoroughly researched and tested in this country over many years. The most common form is by way of road testing to determine any impairment to being able to drive. However, the same degree of research and thoroughness of information cannot be said for testing of other drugs such as cannabis, prescription drugs or opiates. Such testing of these drugs is still in the formative stage when it comes to determining what levels produce what types of impairment to being able to work. I understand an intention is to set such levels in regulations, but, as I said, such levels would be based on an insufficient amount of data at this stage to determine these levels. In the case of a drug such as cannabis, the psychotropic component of that drug, which is tetrahydrocannabinol, or THC, can be present in the bloodstream for up to six weeks. The correlation between the level of that drug and work performance can be extremely difficult to correlate. People who are familiar with blood alcohol levels know how different people can have the same blood alcohol level reading, yet be impaired to vastly different degrees. That is at least the same, if not more so the case, when it comes to drugs such as cannabis. We are looking at a new area in which we could be testing workers to determine their levels of not only drug use, but that impairment. As such, we could be going into a very dangerous area unless it has been thoroughly researched beforehand. The compulsory testing for drugs can also be highly intrusive and evasive and the results may not correlate to the ability of an employee to perform his work. It also leaves open the opportunity for employers to utilise that drug testing as a way of penalising employees for taking these drugs. It could be used as an excuse to sack an employee when testing finds even trace levels of cannabis. That would be very unfair given the very low levels of harm that cannabis and regular cannabis use has on people using that drug; and if that level of cannabis in the worker does not affect his ability to work, he should not be penalised by having that present in his system. A danger also exists in that employees could be penalised for taking prescribed medications as well in determining what medications are allowable.

Clause 50 is the final clause of some concern. It relates to evidentiary proceedings in investigations. Once again, I have not gone through this clause in great detail. I have to a certain degree awaited the outcome of the committee's report to provide myself with further information and evidence of whether the clause needs to be amended. I appreciate the committee's comments with regard not only to this clause, but to the other two clauses I have just mentioned. Obviously I need to do more work.

I appreciate the urgency of this Bill and I will be looking overnight at whether we need to make changes to it. It is very much a tight time line when we have a report tabled only a few hours ago and we need to determine our final position tomorrow. I have already formed the preliminary position for the Australian Democrats on this Bill, but I will do more work over the next day to finalise that position. I would appreciate the Minister's comments on the matters that I have raised. As I said before, we support the thrust of the Bill and we will support the Bill, but we do have concerns about these clauses, as I have outlined.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [10.06 pm]: I thank members for their support of the Bill and their comments regarding the areas of the legislation about which they have some concerns, such as the consequences for employees from some of the issues, such as evidence of drugs in the case of an inquiry, and the general safety of a railway operation.

It goes without saying that the safe operation of railways in Western Australia, as well as across the nation, must be paramount. As a consequence of the move by railways to have multiple operators on a given line, no matter who owns that line, it is even more important, essential and critical that an independent assessment can be undertaken of the safety operations that an operator will have in place. The whole thrust of this legislation is to ensure that any railway operator has a set of criteria in place to ensure the safe operation of that train. It is not about using the big stick approach when it comes to drugs or the operation; it is about having rules within the regulations to ensure the safety of the employees and to ensure they are in a condition to demonstrate their capacity and competence to deliver their task. When it comes to drugs, which Hon Tom Helm spent considerable time talking about, the issue is not simply about the fit state of the person. That person must also satisfy himself of his condition, because in any action that may be taken against him for an accident or for the compromise of safety, it would not only be the level of alcohol or drugs in his body that would be taken into consideration, but also the way in which the person carried out his task at the time. That needs to be taken into account and the same thing goes for the other comments by the other two members who spoke to the Bill.

With regard to the evidence given in the case of an inquiry, people are obviously required to respond to an inquiry

to ensure that action will be taken. The level of the inquiry will be such as to ascertain the reasons for and the consequences of the accident. The legislation is not setting out to trap somebody. The thrust of the legislation is that the people who have responsibility to conduct an inquiry into the causes of an accident can take the appropriate action. From the comments of the three members, they should revisit what has occurred in the past on the railways of Australia. Where there have been accidents they will see that the inquiries were not about taking action against individuals but to find the reason for the accident.

The three members who spoke compared this legislation with legislation in other States. New South Wales first adopted this safety legislation in 1993, and was followed by Queensland and Victoria about a year later. As a consequence of the experience in New South Wales, those States improved on the initial legislation. Then South Australia followed with legislation, and now Western Australia. The Western Australian legislation is based on the South Australian legislation. We expect that New South Wales will review its legislation as a consequence of its experience since 1993 and that of the other States. The Northern Territory does not have any similar legislation, although it is likely that it will concentrate its legislation on what we are now debating. That is the history of the legislation across Australia. The rail safety legislation has been developed over five years. As has been acknowledged, the Office of Rail Safety will be set up within the Department of Transport to ensure there is no connection with the owner of the infrastructure, which is Westrail.

Hon Norm Kelly queried whether there was any connection between this legislation and the proposed sale of Westrail. This legislation has nothing to do with any sale; that is a separate issue. This is a stand-alone action and whether Western Australia continues to operate a government owned railway will make no difference to this Bill, and the Office of Rail Safety will continue under any scenario.

While members wait for the report of the scoping study on the future of Westrail, they might like to dwell on the point that the Government would contemplate selling Westrail for only one reason; that is, to increase rail activity in this State. In other words, Westrail will be sold only if someone can operate the service better than it is currently being operated without some of the restrictions that any government operator has, whatever the field. The Government would insist that any other operator had the full capacity to improve, encourage and attract more business than Westrail is currently doing. That will be the only basis of any proposal to sell Westrail. It has nothing to do with the financial component other than to attract more business to our rail network. That is why countries around the world have gone down that path.

While the Government awaits that scoping study, I encourage members on both sides of the Parliament to consider the situation in Tasmania, where a private operator has just taken over Australian National's operations. I understand there has been a 30 per cent increase in Tasmania's rail freight since that occurred. The situation is similar in New Zealand. All the rolling stock in Tasmania and New Zealand is being replaced. I understand that the New Zealand operator is building its own ferry operation to transport the trains between the North Island and the South Island because of the increase in rail traffic. The situation is the same in the United States. Westrail has shown an enormous improvement in the past couple of years with an increase in rail operations and a reduction in freight rates. The Bill is solely about rail safety.

The time will come when the railways in the north west which are owned by the iron ore companies will come under this legislation. What was perceived to be an issue in the first place, if it has not already evaporated, might do so not too far into the future. Those railway operators do not want to be directed by two organisations - the Office of Rail Safety and the Department of Minerals and Energy. It would be unworkable to have two bosses. We respect that view, and that is why this legislation will exempt them.

Hon Mark Nevill: They have a pretty big incentive to run an efficient railway system.

Hon E.J. CHARLTON: That is right. However, in future there may be other users of their lines. If that came to pass we would require an independent regulator to assess the safety of that operation.

Hon Mark Nevill: What is the situation in the other States with mining?

Hon E.J. CHARLTON: The only rail lines that do not come under Queensland Rail's rail safety administration are the cane trains which are operated by the sugar mills. They are very different operations from the iron ore trains, and I am advised that in the future they could come under the rail safety administration in Queensland. There is always a fear that Big Brother will come over the top and impose conditions that one would find hard to live with. As we go through changes in the administration of safety in the workplace it has become more evident that organisations want to grab hold of the issue and operate in a safe working place. That is because of the benefits that will come from it: The financial impact from the reduction in injury and loss of life from accidents; and the increased efficiency of an operation. A well run business is a safe business. That is where we are headed.

I mentioned the situation with drugs. This is not about setting rules that will make life difficult for people or which

will impinge on people's privacy. It is about ensuring that people can carry out their jobs in a safe way. We will go into more detail during Committee. I have agreed with members opposite that we will not proceed to the Committee stage tonight.

I thank members for their contributions. It is a very straightforward piece of legislation to set up an Office of Rail Safety. It will deliver to all concerned with the rail network conditions that will ensure rail safety and safe working practices. I thank members for their support and commend the Bill to the House.

Question put and passed.

Bill read a second time.

ADVANCE BANK (MERGER WITH ST. GEORGE BANK) BILL

ADVANCE BANK (MERGER WITH ST. GEORGE BANK) (TAXING) BILL

Cognate Debate

On motion by Hon Max Evans (Minister for Finance), resolved -

> That leave be granted for the Bills to be discussed concurrently at the second reading stage in accordance with Standing Order No 256.

Second Reading

Resumed from 17 June.

HON MARK NEVILL (Mining and Pastoral) [10.20 pm]: Her Majesty's Opposition supports these Bills! The merger in this Bill is affected by a different mechanism from the last few bank mergers. We are finding new and novel ways of dealing with these matters.

Hon N.D. Griffiths: Her Majesty's loyal Opposition.

Hon MARK NEVILL: When we are talking about St George and the Dragon, the Patron Saint of England, what else could we be?

This merger is effected by the principle of succession in law. I know about the law of succession, which is the law of inheritance. When I first thought about it I wondered whether Advance Bank would die and somehow St George Bank would live on with the assets and liabilities. I presume the principle of succession in law is unrelated to the law of succession.

Hon Max Evans: It has almost the same effect.

Hon MARK NEVILL: I am not sure what the principle is. In five or 10 minutes of browsing through the legal tomes in the library I was unable to find anything concise about the principle of succession in law. The second reading speech does not enlighten us much. If the Minister knows -

Hon Max Evans: No.

Hon MARK NEVILL: He could let us know why the merger is being undertaken by this means. Is it being done this way because there is some difficulty in assigning the assets and liabilities of Advance Bank to St George Bank? The merger is a straightforward exercise and is not opposed by the Opposition.

The reason for this novel measure is moderately intriguing. The second Bill is a taxing Bill which will require St George Bank to pay the State taxes, charges and stamp duty that would be incurred if the mortgages and other assets were transferred separately, which has been a provision in the previous mergers. The Opposition supports the Bill.

HON HELEN HODGSON (North Metropolitan) [10.23 pm]: The Australian Democrats also support these Bills. This takes us back a year. I recall that the first Bill we dealt with on my arrival in this place last year was another bank merger Bill. It was a generic Bill that was intended to have effect on the merger before us and any subsequent merger. In that context I refer to the fortieth report of the Standing Committee on Legislation on that Bill in which the committee made some recommendations. Both recommendations have been adopted by this Bill.

One recommendation was that the amount to be paid to Treasury in lieu of taxes, fees and charges should be calculated by reference to those taxes and charges that would otherwise be payable. The taxing Bill was drafted to ensure a benchmark was provided to determine the level of fees and charges.

The second recommendation was also made by the twentieth report of the Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements. Both reports examined the way in which these mergers

should be undertaken. The Bill that came before the House last year suggested it should be done by regulation. The decision of the House was that regulation was inappropriate and therefore that method was limited to the single transaction before us at the time. It is therefore appropriate this Bill has been introduced as a separate piece of legislation relating specifically to the merger between Advance and St George Banks.

It is relevant to point out that there is a difference in the way this merger has been conducted. This time it has been done by the law of succession. I suspect the Attorney General would be the best person to enlighten us on the technical details of that; except I am sure that the solicitors in New South Wales have determined there are good reasons for that course being appropriate. However, given different mechanisms have been used in each of the most recent transactions that have come to Parliament, it highlights even more the need to examine these issues on a case by case basis, rather than have a set of regulations that would probably need to be redrafted for each merger in any event. I am pleased to see the recommendations of the Legislation Committee have been complied with in the legislation before us this evening.

I have one issue concerning these Bills which I hope the Minister will be able to clarify when he sums up the debate. A previous transaction of this nature, apart from the generic transaction last year, was the Westpac and Challenge Bank merger. I note that the legislation at that time made specific provision for employees' rights and obligations and that those rights were to be transferred from one entity to the other as part of the merger. I am sure both St George and Advance Banks have employees. However, these Bills are silent on that matter. I hope the Minister will be able to clarify whether any implications for employees have been addressed in this legislation.

The legislation is consistent with what has been done in the past. It picks up the recommendations of the fortieth report of the Standing Committee on Legislation. The Australian Democrats support the Bill.

HON MAX EVANS (North Metropolitan - Minister for Finance) [10.27 pm]: I thank the Opposition parties for their strong support for this simple piece of legislation. I noted Hon Helen Hodgson's comments on the work of the Legislation Committee. I agreed that two Bills were appropriate. Once it was brought to my notice I had no hesitation in ensuring that a separate taxing Bill was introduced. In any event, a single Bill which was to cover the mergers would not have worked in this instance because it is a succession Bill. Two new Bills would still have been required.

Having a succession Bill is a bit like changing a name by deed poll. All the assets of one bank become the assets of another by change of name. I am relieved to say that the banks are not trying to avoid stamp duty. The first time it occurred I wondered if it had been done for that reason. I do not know what happened in the other States. The stamp duty of $417 000 will be paid in accordance with the formula.

It is another simple Bill. One could take a punt on which banks are likely to merge in future. Mention has been made of the very large banks. It is difficult to say whether any of them will merge. State revenue will not be lost as a result of these two Bills. Perhaps I might get a nod from the Clerk if I am right in suggesting that it probably saves the problem of transferring the properties, mortgages and so on individually, which had to be done originally. Rather than those transfers being stamped separately, under this provision the name on all the documents will be changed to that of the new bank. I think a lawyer has probably suggested this method as a simpler process to effect this name change on the documents. I imagine in all future bank mergers, this process will take effect. I commend the Bills to the House.

Question put and passed.

Bills read a second time, proceeded through remaining stages without debate and passed.

ESTIMATES OF REVIEW AND EXPENDITURE

Consideration of Tabled Papers

Resumed from 18 June.

HON E.R.J. DERMER (North Metropolitan) [10.32 pm]: Members may recall that on Thursday of last week I was examining the Legislative Council Estimates Committee hearing in respect of the provision of computers in schools in Western Australia. I made substantial progress towards illustrating that the Government's commitment to information technology education was not in keeping with the urgent need for enhanced information technology in Western Australian schools. I will continue to refer to the uncorrected proof of the transcript of that Estimates Committee hearing. As the chairman, I asked -

> When will the first computer purchased through the extension program be in place and operating in a school?

Ms Vardon responded -

> The first round of funding will go out early next year in the February school grants - that is, in that part of the allocation to schools. Therefore, depending on the technology plans that schools have put in place by that time, and the general approval for them to begin buying against the technology plan, I expect the first computers to be in place in schools early in the year, in term one.

The transcript continues -

> The CHAIRMAN: None will be in place in this school year?
>
> Ms VARDON: That is correct.

I again stress the urgency of having those computers in place as soon as possible, and I was disappointed to learn that none will be in place during this school year. The transcript continues -

> The CHAIRMAN: I understand that the target is to achieve a ratio of one computer for every five secondary students and one computer for every 10 primary students.
>
> Ms VARDON: Yes.
>
> The CHAIRMAN: When is it anticipated that the target will be met?
>
> Ms VARDON: We anticipate that the target will be met at the end of the program in mid-2001.

It is very important for the Chamber to understand this point: It is too late for this program to be met by mid-2001. The Government has suggested that a ratio of one computer for every five secondary students and one computer for every 10 primary students is appropriate. I have no argument with that ratio; however, that ratio must be achieved immediately and not be left until mid-2001. The various questions I asked during the Estimates Committee hearing sought to establish what the ratios would be at an earlier time. I was unable to obtain any clear indication of what those ratios might be earlier than mid-2001. I need not remind the House that between now and mid-2001 a further three years of school leavers will graduate. If it is to be assumed that that ratio of one computer for every five secondary students and one computer for every 10 primary students is an appropriate target, the students in the next three years will miss out because the ratio will not be achieved until mid-July 2001. The transcript continues -

> The CHAIRMAN: What would you estimate the ratio to be today for the numbers of secondary and primary students per computer?
>
> Ms VARDON: The audit is an effort to determine those specific ratios at the moment. We would only be taking a bit of a punt on that. We have concerns about it because we know they are not sufficient.

In the Estimates Committee hearing the director general admitted that the provision of computers for information technology education today is not sufficient. Clearly, there is an urgent need for the enhanced provision of computers; yet we have no commitment for new computers to be in place in the current school year. I persisted in my questions in an effort to obtain further information about the ratio of computers to students. The transcript continues -

> The CHAIRMAN: I will be happy to receive that information from the department as soon as it is available. Receiving that information this time next year will be totally inadequate. I presume that no estimates are available for 1 July 2000. At 1 July 2001 we have the estimate of five high school students per computer and 10 primary school students per computer, but is it correct that we have no estimates for the intervening years leading up to 1 July 2001?
>
> Hon N.F. MOORE: That is because the program is very much in its infancy. I tried to explain to you a moment ago that in order to expend the funds, which are a significant contribution to the education of our children, it is necessary to go through a very detailed planning process. That is taking place now.

My point is that that planning process should have occurred many years earlier; that the Government's response may be adequate for 1 July 2001, but it is certainly inadequate for the students we have today and those between now and the time those ratios will be in place. In my speech on this matter last week, I made reference to the speech on the Budget delivered by the Treasurer. I refer to the document circulated with the budget papers in which the Treasurer said that the $100m to be spent on computer education is available now. It states -

> Our $100m computer initiative will provide, in our public schools, one computer for every five secondary students and one for every ten primary students. This is amongst the best ratios in the world. The money for this initiative is available now through the state development fund. However, to ensure the most efficient utilisation of this technology, a phased introduction will be necessary.

Clearly the Treasurer says that the money is available now. He puts forward an argument about efficiency for not providing money when it is urgently needed for today's school students and those between now and 1 July 2001. I return to the transcript of the hearing of the Estimates Committee, which states -

> The CHAIRMAN: If we cannot have a target for the ratio of students to computers by the end of July 1999, how can it be argued that the program is best utilised by not spending the money immediately if it is available?
>
> Hon N.F. MOORE: No-one said that the money is available to spend this year.

We have a clear contradiction: The Leader of the House tells us the money is not available but the Treasurer says it is. They cannot both be correct and I am not in a position to judge. I asked a similar question of the Director General of Education -

> The CHAIRMAN: Would that $100m be available immediately if that best suited the department's utilisation of the computers?
>
> Ms VARDON: No.

We have both the Director General of Education and the Leader of the House saying the money is not available but the Treasurer saying it is. We urgently need the best achievable information technology education. Our Premier and Treasurer said that the money is available, but the Leader of the House representing the Premier in this House says it is not. If the Treasurer has $100m available for information technology education and is holding back, that is grossly irresponsible and very shortsighted. Even from a strictly fiscal point of view, if we could enhance technology education, that would greatly benefit our economy and the State's capacity to raise tax revenue. For the Treasurer to hold back when the money is available is cruel to the students of today who need that information technology education urgently. I hope this Government will deal with these contradictions and resolve that the money is available. I urge it to take steps to introduce an expedited program for the introduction of computers in schools and to ensure that computers are effectively utilised for IT education as soon as possible.

The Opposition's objective, which I recommend to all members of Parliament, is to ensure that information technology combined with modern communications acts as a force for good in our community. It should give more Western Australians an opportunity and greater hope to improve their lot. It should provide more Western Australians with an opportunity to use this modern technology to advance their wellbeing. This can be achieved only by ensuring that the communications network is extended at minimum cost, at maximum geographical reach and at maximum bandwidth. That will provide access to more Western Australians. Equally important is good information technology education. I hope that the Treasurer is right and that the money is available immediately. I also hope the Government reviews its decision and has the most appropriate education available in information technology in Western Australian schools as quickly as possible.

I remind the House that understanding and skill in information technology are the new literacy and medium for modern commerce. For people to have any chance of competing for most positions in the modern employment market they need a firm grounding in those skills. The need is urgent. If information technology is to be a force for good in providing more Western Australians with opportunity and hope for enhancing social cohesion in our community, if it is not to be used only by those who can afford it and who have the understanding in a small initiated elite to advantage themselves at the cost of the community, we must work urgently to ensure affordable access to the telecommunications network for all Western Australians. We should ensure that all Western Australian students have an opportunity to acquire skills in information technology. I do not have time to go into the detail, but we should also ensure that current labour market participants - both the employed and the unemployed - have access to decent information technology education.

Debate adjourned, on motion by Hon Bob Thomas.

STANDING ORDERS COMMITTEE

Second Report on Proposed Amendments to Standing Orders incorporating Sessional Orders adopted 10 April 1997 - Order Discharged

HON E.J. CHARLTON (Agricultural - Minister for Transport) [10.45 pm]: I move -

> That Order of the Day No 46(a) be discharged.

That will deal with what will be motion No 12 on tomorrow's Notice Paper and will give us an opportunity to deal in detail with the consequences of what is now motion No 46(a).

Question put and passed.

ADJOURNMENT OF THE HOUSE

HON E.J. CHARLTON (Agricultural - Minister for Transport) [10.46 pm]: I move -

That the House do now adjourn.

Member for Mitchell, Defamation Action - Adjournment Debate

HON BOB THOMAS (South West) [10.47 pm]: Members may recall having read in last Friday's *The West Australian* an article in which the member for Mitchell, Mr Sullivan, was reported to have taken defamation action against one of my constituents, Mr Liam Barry of Australind, about a letter to the editor in the *Bunbury Mail* some time earlier this year. *The West Australian* reported that Mr Liam Barry had taken offence at Mr Sullivan's having claimed credit for the decision not to go ahead with the Kemerton port project. I do not intend to talk about that issue tonight, but I will address three claims made by Mr Sullivan that are palpably untrue. I believe they were made in an effort to mislead the public in the seat of Mitchell before the last state election. A very important issue in the seat of Mitchell -

The PRESIDENT: Order! I am aware that there is some civil action in respect of the matters that the member has raised. I am not sure whether the member intends to deal with those issues. If he does then clearly he may prejudice proceedings before a court. I would like the member to explain whether he intends to do so, so that I will know whether I should be particularly aware of that issue.

Hon BOB THOMAS: I do not intend to talk about the issues before the court; I will refer to three entirely different issues that are not the subject of the litigation.

It is extremely heavy handed for members of Parliament to take action to silence their constituents from making -

Hon Barry House: Brian Burke was good at it.

Hon BOB THOMAS: There is no place for it in Western Australian politics.

A very important issue within the electorate of Mitchell is the need to replace the Carey Park Primary School. It was a significant issue before the last state election and members on both sides of politics agreed about the need to find a replacement site. The then candidate for Mitchell, Mr Sullivan, made some claims both within the media and in pamphlets to the electorate about the need for this new school. In one of his pamphlets entitled "News and Views" he devoted half a page to the issue. Under the heading "Dan's Action Plan" it is stated -

> His first priority was to get a commitment from the Education Minister for a new $3.5 million school for Carey Park.

The next heading was, "Dan got that commitment! " It states -

> This means a new school will be built to replace the old Carey Park Primary - and work begins next year, with completion due in 1998.

He also put out a flyer headed "Carey Park News". The first big headline was "$3.5 million for Carey Park kids". It states -

> My first priority when I was chosen as the Liberal candidate for Mitchell was to get a commitment from the Minister for Education for a new school in Carey Park.
>
> That has happened.

I took up this issue in the Estimates Committee in the Legislative Council this year, when I asked the Director General of Education on Wednesday, 3 June 1998 -

Hon Barry House: You cannot even read the notes that David Smith has written for you!

Hon BOB THOMAS: I am quoting from *Hansard*. I asked -

> During your tenure as Director General of Education, have any schools been approved or been given a higher priority for renewal, upgrade or replacement because of an approach by a political candidate for the electorate in which that school exists?

Ms Vardon replied most emphatically -

> Certainly not.

The Leader of the House, Hon Norman Moore, then made it quite clear that that sort of thing was not done by this

State Government. I am pleased he made that remark, because it confirmed my view that Mr Sullivan had misled the public. I also put a question on notice about this issue, and I asked -

> (1) Are you aware of any new schools which may have been approved (or any upgrades) as a result of an approach from a political candidate for the electorate in which the school is located since 1998?

That was changed to 1996. The answer that I received was no. That is clearly in conflict with the statement by Mr Sullivan that he made an approach to the Minister and got a commitment for a new school. I asked also -

> (3) If a candidate for the 1996 election was to have said he " . . . got a commitment for a new primary school . . ." within his electorate:
>
> (a) is this correct?

The answer I received was -

> (3)(a) No commitment for a new school would be given unless it had already been prioritised for construction under the preceding criteria.

Clearly, the then candidate misled the public about having obtained a commitment from the Minister.

Mr Sullivan also took up the issue of the need for a new school in Eaton, which is to the north of Bunbury. He stated in a flyer headed "Eaton News Update", under the headlines "Eaton to get new primary school" and "New School Confirmed", that -

> Dan Sullivan met the Minister for Education recently to get an undertaking on a new primary school for Eaton.
>
> The Minister has confirmed that Eaton will get a new school.

The member then took up this issue in the Legislative Assembly Estimates Committee this year -

The PRESIDENT: Order! That is where Hon Bob Thomas and I will come into conflict, because he cannot refer to debate in the same session in the other place.

Hon BOB THOMAS: If members read the *Hansard* from another place, they would find that the Minister gave an emphatic answer that he had not given a commitment to a new school in Eaton. I understand from people who were present that the member became quite red in the face and flustered at this because he knew that he had misled the public into believing that he had secured a commitment from the Minister on that issue; and clearly that is incorrect.

Point of Order

Hon BARRY HOUSE: Mr President, I believe the member is reflecting on a member of another place in inappropriate terms. The member is breaching Standing Order No 97.

The PRESIDENT: Order! I have Standing Order No 97 open in front of me. It reads in the initial stages -

> No Member shall use offensive or unbecoming words in reference to any Member of either House, -

I do not think Hon Bob Thomas has breached that. However, it states also -

> - and all imputations of improper motives and personal reflections on Members shall be considered highly disorderly . . .

I assume that is the point that Hon Barry House is raising. I have been listening carefully to Hon Bob Thomas, and if he continues on the same course, he will be breaching Standing Order No 97, and I ask him to have regard to that.

Debate Resumed

Hon BOB THOMAS: Thank you, Mr President. This is a very serious issue, because as members of Parliament we are accountable to our peers if we make those sorts of statements in the House. However, if as candidates we make those statements in newsletters, newspaper articles and pamphlets in the electorate, members of the public do not have the same recourse to redress that we have in this place. It is with some reservation that I raise this matter in the House, but it is a matter that is gravely serious. I do not refrain from using the language that I have used.

The other issue that I will take up is live sheep exports. Mr Sullivan campaigned very strongly against live sheep exports in the lead up to the election. In fact, Tom Dillon tells me that Mr Sullivan begged him to be allowed to become part of that campaign against live sheep exports. He put out a newsletter entitled "Personal from Dan Sullivan" that went out to all of the suburbs in the east Bunbury area. It said -

Is your home in the firing line?

Dear Resident

Did you know the Bunbury Port Authority is considering a proposal to export live sheep from the inner harbour?

Residents of Eaton, Pelican Point, Clifton Park, East Bunbury and Glen Iris would be directly affected because the prevailing winds blow over these areas more frequently than any other established residential area.

As a local Councillor, I supported residents opposed to this trade from our port and I am determined to continue the campaign.

He put out flyers which said that people could participate in the campaign by filling out protest forms, displaying bumper stickers, attending meetings and telephoning their member of Parliament. However, when Mr Sullivan has had the opportunity to continue to oppose those live sheep exports now that he is in government, he has refused to do so. In fact, at a public meeting in Bunbury a couple of weeks ago, he equivocated on this matter and would not give an undertaking to continue to oppose these live sheep exports on behalf of his constituents. He is inconsistent on this matter, and I believe the public in Mitchell will treat him very harshly at the next election. They certainly will not believe what he says next time around.

Question put and passed.

House adjourned at 10.57 pm

QUESTIONS ON NOTICE

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

GOVERNMENT DEPARTMENTS AND AGENCIES

Information System Controls Recommendations

1694. Hon LJILJANNA RAVLICH to the Leader of the House representing the Premier:

Page 14 of the Auditor General's report into Ministerial Portfolios states that around 130 issues and recommendations have been raised with agencies in relation to the information system controls -

(1) What policies are being put in place to ensure that agencies respond to these recommendations by the Auditor General?

(2) Who, within the agencies, are responsible for ensuring that these issues and recommendations are acted upon?

Hon N.F. MOORE replied:

(1) Normal practice is for individual agencies to address these recommendations. The Auditor General usually follows up action in relation to recommendations as part of the following years audit.

(2) Relevant Accountable Officer or Accountable Authority.

MINING LEASE CONDITIONS

1747. Hon GIZ WATSON to the Minister for Mines:

In relation to the development of mines in Western Australia -

When a lease is covered by a (m) Mining Tenement what processes must be followed or what requirements must be met before mining can commence when the lease/tenement -

(a) exists over VCL;

(b) exists within a pastoral lease;

(c) exists within a reserve;

(d) exists within a national park; and

(e) contains -

(i) iron ore;
(ii) mineral sands; or
(iii) uranium?

Hon N.F. MOORE replied:

(a)-(e) See answer to Question Without Notice No 1608.

NATIVE TITLE FUTURE ACT APPLICATIONS

1779. Hon TOM STEPHENS to the Minister for Mines:

(1) How many staff in the Department of Minerals and Energy's Land Access Unit are involved in processing *Native Title Act* future act applications?

(2) What are the specific positions?

(3) How many future act applications have been processed to date?

(4) How many future act applications are processed each month by the Land Access Unit?

(5) What is the average and median length of time for the Department of Minerals and Energy to process future act applications?

(6) For each of the last three financial years, what has been the Budget of the Land Access Unit?

Hon N.F. MOORE replied:

(1) 12.

(2) Manager, Land Access Unit;
5 Senior Case Managers;
2 Liaison Officers;
3 Clerical Officers;
1 Cartographer.

(3) 223.

(4) 7 on average.

(5) Average is 8 months.
Median is 7 months.

(6)

1995/96	$1 000 000
1996/97	$1 158 000
1997/98	$1 196 000

LOT 560, MANAKOORA RISE, SORRENTO

1800. Hon KEN TRAVERS to the Minister for Transport representing the Minister for Local Government:

(1) Have the Commissioners of the City of Wanneroo submitted a response to the inquiry by the Department of Local Government into the handling of a development application for Lot 560, Manakoora Rise Sorrento?

(2) If yes, did the report challenge any of the findings of the inquiry?

(3) Which findings did it challenge?

(4) Will the Minister for Local Government table the report?

Hon E.J. CHARLTON replied:

(1)-(4) By Council resolution on 23 December 1997 the City of Wanneroo endorsed a formal response to the Department's report into Lot 560 Manakoora Rise Sorrento. That response was received on 24 December 1997 and as a matter of public record is available through the Council or the Minister's office.

CITY OF PERTH

Investigation into Declarations of Financial Interests by Councillors

1801. Hon KEN TRAVERS to the Minister for Transport representing the Minister for Local Government:

(1) In the last four years have there been any investigations into Councillors of the City of Perth for failing to declare a financial interest?

(2) If yes, what was the outcome of the investigations?

Hon E.J. CHARLTON replied:

(1) Yes, there has been one investigation.

(2) An allegation of an undeclared financial interest was not substantiated by the investigation.

MINISTERS OF THE CROWN

Departments, Authorities, Statutes and Votes Administered

1822. Hon MARK NEVILL to the Leader of the House representing the Premier:

(1) Which -

(a) departments;
(b) authorities;
(c) statutes; and
(d) votes.

are currently administered by each Minister of the Government?

(2) When was each Minister approved by His Excellency the Governor to administer each of those -

(a) departments;
(b) authorities;
(c) statutes; and
(d) votes?

(3) Under what legislation or other provision did His Excellency give his approval?

Hon N.F. MOORE replied:

(1) (a)-(d) [See Paper No 1736.]

(2) The consolidated document was last approved by the Governor on 25 February 1997. Amendments are submitted for approval by the Governor in Executive Council as required.

(3) The committal to a Minister of the administration of departments, authorities, statutes and votes by the Governor is a convention of the system of government in Western Australia and is not done under the provisions of any specific legislation.

Section 43 of the *Constitution Acts Amendment Act 1899* provides for the Governor in Executive Council to appoint up to seventeen principal executive offices of the government.

Following convention and in order to allocate responsibilities to each of those offices, the Governor, with the advice and consent of the Executive Council, formally commits to each of those offices the departments, agencies, statutes and votes for which the office will be responsible. In this way, the broad administrative structure of a government is created.

The process is reflected in Section 12 of the *Interpretation Act 1984* which provides that a reference in an Act to a "Minister" shall be construed as a reference to the Minister to whom the administration of an Act is for the time being committed by the Governor.

GOVERNMENT DEPARTMENTS AND AGENCIES

Millennium Bug

1917. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Works:

Will the Minister for Works provide for each agency and department, within the Minister's portfolio responsibilities, the estimated current expenditure levels to date, and over the forward estimate period of the current budget statements for -

(a) testing both equipment and procedures for Millennium Bug policy compliance;

(b) replacing or purchasing equipment as part of agency strategies to avoid or control the Millennium Bug issue; and

(c) adjusting or developing new procedures for the delivery of existing services?

Hon MAX EVANS replied:

I am advised that:

STATE SUPPLY COMMISSION

(a) Nil.

(b) The estimated expenditure both current and future for the replacement and/or purchasing of equipment as part of the State Supply Commission's Millennium Bug strategy is $5,000.00.

(c) Nil.

DEPARTMENT OF CONTRACT AND MANAGEMENT SERVICES

	Expenditure to Date	1998/99	1999/2000
(a)	$200,000	$100,000	$ 50,000
(b)	$ 0	$400,000	$ 50,000
(c)	$ 6,000	$150,000	$ 50,000
Total:	$206,000	$650,000	$150,000

All figures provided are estimates and include Office of Multicultural and Ethnic Affairs and Office of Youth Affairs.

QUESTIONS WITHOUT NOTICE

OVERSEAS TRAVEL BY MINISTERS

Reports

1736. Hon TOM STEPHENS to the Acting Leader of the House representing the Premier:

This is a question of which notice has been given.

(1) Are Ministers in this Government required to produce reports on their overseas taxpayer funded travels?

(2) If so, how long after the completion of an overseas trip are Ministers required to produce such reports?

(3) What action does the Premier take to ensure his Ministers comply with their responsibilities in this matter?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. I ask that it be placed on notice.

MINISTER FOR TRANSPORT

Report on Overseas Travel

1737. Hon TOM STEPHENS to the Minister for Transport:

I refer to an answer by the Minister last Thursday. I am relying on the fairly safe assumption that the Minister has not tabled the itinerary and reports relating to his trip to European bus manufacturers in July 1996 with Hon Murray Criddle and Graeme Harman or the trip by Dr Chris Whitaker and Greg Martin which he indicated he would table on Sunday afternoon at three o'clock. Will the Minister table the itinerary and the reports today? If not, when will he do so; or is this another example of a stalling tactic on the part of the Minister?

Hon E.J. CHARLTON replied:

I came by at three o'clock on Sunday and could not find Hon Tom Stephens anywhere. I have been carrying the report around in my hip pocket ever since. I now respond by seeking leave to table those documents.

Leave granted. [See paper No 1735.]

LEGAL COSTS

Ministerial Indemnities

1738. Hon N.D. GRIFFITHS to the Acting Leader of the House representing the Premier:

Some notice of this question has been given. With respect to the guidelines relevant to Ministers and officers involved in legal proceedings -

(1) Which Ministers have applied for indemnities for legal costs and/or damages since 14 December 1996?

(2) What was the result of each of those applications?

(3) Which of them were accompanied by an assessment prepared by the Attorney General?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. I ask that it be placed on notice.

PETROL PUMPS

1739. Hon NORM KELLY to the Minister representing the Minister for Fair Trading:

Some notice of this question has been given. In relation to the Auditor General's report on the Ministry of Fair Trading -

(1) Can the Minister explain why the ministry is unable to provide a breakdown of the 28 per cent of retail petrol pumps which were rejected under the Weights and Measures Act, into categories such as oversupply and undersupply?

(2) In the light of this extremely high rejection rate, why has the department decreased inspection by 62 per cent in the last three years?

(3) Can the Minister guarantee that inspection rates will be increased to restore public confidence in petrol pump supply in this State?

Hon MAX EVANS replied:

(1) A central register analysing rejections has not been kept for years as no requests have ever been made by consumers, retailers or other industry groups for information pertaining to such a register.

For the member's information, over the last 48 hours the ministry has done an analysis of the last 12 months and the break up is follows: Negative error, against consumer, 24 per cent; positive error, in favour of consumer, 22 per cent; error in indicator/display panel, 14 per cent; interlock errors, 8 per cent; sealing instrument errors, 7 per cent; NSC information, 5 per cent; leaks, 4 per cent; other, 16 per cent.

(2) The testing of retail pumps by trade measurement inspectors has not decreased by 62 per cent in the last three years. The figures for recent years are: 1993-94, 2 092; 1994-95, 2 063; 1995-96, 1 686; 1996-97, 626; and 1997-98, 1 435.

Significant resources have been used over the last 18 months to introduce the Weights and Measures (Exemptions) Regulations 1997. These regulations allow repairers to become "approved persons". These approved persons are able to test the instruments so they may be used in service until an inspector is available to re-verify the instrument. There are currently 83 approved persons in the fuel industry. It is estimated that they will conduct approximately 2 000 certification tests per annum. This arrangement provides a significant benefit to the owners of trade instruments.

(3) The Minister is confident that the above arrangement recently put into place will improve the integrity of the measurement system relating to fuel and other trade instruments.

GORDON ROAD INTEGRATED WASTE TRANSFER STATION

1740. Hon J.A. SCOTT to the Minister representing the Minister for Local Government:

(1) Did the Mandurah City Council own the site of the Gordon Road integrated waste transfer station prior to its becoming a waste transfer station?

(2) If not, was this land owned by Town and Country Land Holdings or some other private owner? If so, what was the purchase price of the land?

(3) Were any other deals or exchanges made as part of the purchase price of this land? If so, what were they?

(4) What is the total price of setting up the Gordon Road waste transfer station and how much of this will be paid by the State Government directly or as interest payments?

(5) Is this site in an industrial area? If not, what is the zoning of the site and of the adjoining land?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. The issues raised in these questions are not the responsibility of the Department of Local Government. The questions should be directed to the City of Mandurah.

STUDENT BUS FARES

Albany

1741. Hon MURIEL PATTERSON to the Minister for Transport:

The *Albany Advertiser* of 19 June had an article about bus fares for students and about parents possibly being forced to pay $30 a week for their children to travel on 25 year old buses.

(1) Will there be a fee for government school students?

(2) Will there be a fee for private school students?

(3) If so, how much?

(4) Will there be an upgrade of buses which would include seat belts?

Hon E.J. CHARLTON replied:

(1)-(4) I appointed a group of people with an independent chairman to carry out a review of school bus operations in metropolitan and country areas. They have been working for several months, travelling around country areas taking submissions from parents. A reference group made up of Department of Transport people, schools and school bus operators is also involved in that process. As a consequence of the submissions and the communication developed by this process a set of draft recommendations was put together by the

committee. The group is back in country Western Australia and the metropolitan area discussing the recommendations with the community, in particular with parents. This exercise was designed to ensure that parents could raise any changes they would like to see made to the school bus operations in the State.

The payment of fares by parents has been raised in the recommendations. The payment of fares refers to children who do not attend the nearest school but choose to go further to another school. The recommendation of imposing fares is based upon the fact that when parents choose not to send their children to their local school it has an effect on that school. I know Hon Kim Chance would verify that a lot of little schools throughout the wheatbelt are bypassed for several reasons, with consequences that are well known.

Hon Kim Chance: Has the Minister received my letter on this?

Hon E.J. CHARLTON: The Government has made no decision about charging fares. This is a recommendation by an independent committee. At the conclusion of the consultation period with parents, the committee will come back and put a set of recommendations to me in a final report.

Hon Kim Chance: Is this only a draft recommendation?

Hon E.J. CHARLTON: Yes. I will form an opinion of that report and, ultimately, it will go to Cabinet for a decision. That will be several weeks away, or a couple of months, at the earliest. No decision has been made about increasing fares. The level of fares has not been discussed.

A recommendation was made about the age of school buses. In other States, school buses are kept in service for longer. Some of our school buses run on very rough roads and, therefore, there is a need to keep them running to a minimum age. There may be an opportunity to extend the lifespan of some buses that run on only very good roads. Once again, that is part of the draft recommendations and no final decision has been made on that. We will ensure there is full consultation with the community before any final decisions are put to the Government.

ATTORNEY GENERAL

Report on Overseas Travel

1742. Hon LJILJANNA RAVLICH to the Attorney General:

I refer to the long awaited report by the Attorney General of his visit to the United States, Canada and London, and the growing public interest in this report.

(1) Is the Attorney General prepared to indicate when the report will be tabled?

(2) In the meantime, can he outline the initiatives he has undertaken in the Western Australian prison system which are a direct result of his experiences during this trip?

Hon PETER FOSS replied:

(1)-(2) In view of the fact that the draft is about 40 pages long, the invitation to outline some of the results in the prisons as a direct result of my experiences may engage the ire of some members. Once this long awaited report arrives, I hope members will read it. I was one of the first Ministers to table a comprehensive report on overseas travel. Only one person read it, and then only after I had challenged all members of the House to do so. I trust the member will also give me an undertaking that she will read it avidly and pay a lot of attention to it. It is important to make a report that -

Hon Tom Stephens: Table it, and we will read it.

Hon PETER FOSS: I would like to raise one matter -

Hon Simon O'Brien: He will answers questions at the end, too.

The PRESIDENT: Order! I have a list of a considerable number of members who want to ask questions. I accept what the Attorney General has said. He has referred to a 40 page report. I do not want a ministerial statement; however, if he wants to make a point, he should proceed.

Hon PETER FOSS: I will make just one or two points.

Hon N.D. Griffiths: Three?

Hon PETER FOSS: It depends on how long the House is prepared to listen to me. An interesting aspect relates to the Supreme Court building. As members are probably aware, we are looking at having a new Supreme Court and District Court building in Western Australia.

Hon Ljiljanna Ravlich: You didn't have to go overseas to look at that.

The PRESIDENT: Hon Ljiljanna Ravlich has asked a question. I suggest that she listen to the answer.

Hon PETER FOSS: In British Columbia a large complex has been built which reaches over three city blocks. It is a huge complex. A few significant advantages were obtained by bringing all the courts together in one complex. I have been proposing to collocate not only all the courts, but also the lockup within the court complex. As members may know, the lockup at East Perth is being closed. In Vancouver the remand prison and the lockup prison are alongside the major criminal courts. I have asked my department to see whether, when we close the East Perth lockup, we can place the remand centre, and possibly the prison assignment, and the central lockup next to the new courts which will be handling those matters.

Hon Mark Nevill: In Government House?

The PRESIDENT: Order! These interjections are not helpful.

Hon PETER FOSS: I will also look at the mode by which people are conveyed from those areas into the courts. In Vancouver the equivalents of our District Court and Supreme Court have been combined, and there is also an appellate court.

Hon Ljiljanna Ravlich: Given that you know so much about it, why has it taken you so long to write a report and table it for us?

Hon PETER FOSS: I am getting close to finishing my first point.

The PRESIDENT: Order! The question has been asked. I ask the Attorney General to draw his answer to a close. He has said that he will table a report. I am not trying to have him cut off his answer, but a number of members will miss out on asking their questions if we do not make progress.

Hon PETER FOSS: It is very difficult to obey the rules when dealing with something as large as this report. That is probably also the reason it has taken a while to prepare the report. As the member will probably know, I asked for the report to be prepared within the ministry. It was prepared and it came to me. It was a very large report. If anything, I am happy to cut it down, rather than to expand it. I am sure the member will be gratified by the report. Probably the best thing would be if we, and any other members who are interested in hearing about it, could get together and I could give a short lecture on it. I am sure all members will be interested in it.

Hon Ljiljanna Ravlich: That sounds a bit suss to me.

ENVIRONMENTAL PROTECTION ACT

Section 38 Referrals

1743. Hon GIZ WATSON to the Minister representing the Minister for the Environment:

In respect of section 38 of the Environmental Protection Act -

(1) What processes are followed for all referrals under section 38(1)(b)(ii) of the Act?

(2) Are there any criteria for referrals made under section 38(1), or part thereof, of the Act; if so, will the Minister table the criteria?

(3) How does the Department of Environmental Protection and/or the Environmental Protection Authority deal with referrals made under section 38(1)(b)(ii) of the Act?

(4) At what stage in the process is a referral established; is it the date of receipt of the letter of referral, the date of the evaluation of the referral or the date on which the referral appears in *The West Australian*?

(5) Once a referral, as defined, of a project development or activity is made, what are the requirements of the proponent of a project, development or activity, in proceeding with any works prior to any appeal in relation to any referral made under section 38(b), or part thereof, of the Environmental Protection Act?

Hon MAX EVANS replied:

I thank the member for some notice of this long question.

(1)-(5) As the answer requires research, I request that the member place the question on notice.

The PRESIDENT: Order! Standing Order No 140(a) commences with the words "Questions shall be concise", and goes on to detail what questions should not contain. If members ask questions with many parts, it is pretty obvious

that a fair bit of research will be required to provide an answer. As much as the question took some time to read, the answer did not. Perhaps members will realise questions are meant to be concise.

ELECTORAL ROLL

Removal of Names

1744. Hon J.A. COWDELL to the Acting Leader of the House representing the Minister for Parliamentary and Electoral Affairs:

(1) Has the Western Australian Electoral Commission made approaches to the Australian Electoral Commission for the early removal from the electoral roll of electors who are objected to?

(2) Will the Minister table any correspondence between the Western Australian Electoral Commission and the Australian Electoral Commission on this matter?

(3) Does the Minister realise some electors are receiving objections to their enrolment while their new enrolments are awaiting processing?

(4) What is the justification for running a weekly deletion of electors while a major habitation review is under way?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) No. The commission has not requested the removal of electors within a time frame that is shorter than the normal objection process.

(2) Not applicable.

(3) This objection process is mostly undertaken by the Australian Electoral Commission. It is possible that an elector could be removed from the electoral roll for a former address by a divisional office, prior to being enrolled for a new address.

(4) No elector's name is removed from the roll unless the legislative provisions for removal have been met. It is more efficient to undertake objection action on a regular basis than to allow numbers of deletions to build up. The Australian Electoral Commission has advised that deletions will now be undertaken monthly.

STANDARD GAUGE RAIL LINE

Perth to Kalgoorlie Upgrade

1745. Hon BOB THOMAS to the Minister for Transport:

In *The West Australian* today the Minister is quoted as saying audit work on the $175m upgrade of the standard gauge track from Perth to Kalgoorlie has been completed.

(1) Is the Minister saying that this $175m upgrade will be undertaken before the introduction of the new super train in 2001?

(2) If so, when has money been budgeted for and where does it appear in the budget papers?

Hon E.J. CHARLTON replied:

(1)-(2) Westrail has identified funding for the upgrade of the rail line between Perth and Kalgoorlie, particularly the section from Koolyanobbing to Kalgoorlie. The State Government established that as part of the one-stop shop for rail operations across Australia to ensure that lines across the country are upgraded to maximise their efficient use. That is part of a submission, together with the signalling upgrade, to implement one system across Australia to which the new Australian track regime may contribute funding.

This project involves both state and commonwealth funding. It will not necessarily be completed by the time the new train is introduced. We are purchasing a train capable of high speed to ensure that once the track is upgraded we can take advantage of it.

Hon Bob Thomas: How much state money is involved?

Hon E.J. CHARLTON: The total funding has not been allocated as yet; that is done on a yearly basis.

MARMION AVENUE

Speed Limit

1746. Hon HELEN HODGSON to the Minister for Transport:

(1) Is there any proposal to increase the speed limit along Marmion Avenue in the northern suburbs?

(2) On what basis is the increase proposed?

(3) Have any studies been conducted to establish the impact such an increase will have?

(4) Have the City of Wanneroo or local residents been consulted on the proposal?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Yes. A 12 month trial of an 80 kmh speed limit is to be implemented on the section between Karrinyup Road and Mermaid Way.

(2) The actual operating speed is currently 80 kmh and the road has a high level of safety.

(3) A speed zoning assessment survey was conducted which indicated that there would be minimal impact based on the current operating speed of vehicles.

(4) Discussions have been held at officer level between Main Roads and the City of Wanneroo. A number of requests have also been received from members of the public to increase the speed limit.

When the speed limit was increased by 10 kmh on the Mitchell and Kwinana Freeways the average increase in speed was 3 kmh. In other words, the road conditions were encouraging people to travel at that speed. The same approach is being applied to this section and other sections of road where the speed limit is being increased.

NELSON LOCATION 12897

Transfer

1747. Hon CHRISTINE SHARP to the Minister representing the Minister for the Environment:

Some notice of this question has been given. It relates to two documents - one from the Department of Land Administration and the other from the Department of Minerals and Energy. Both documents refer to Nelson location 12897, which will be transferred to the Executive Director of the Department of Conservation and Land Management once the excision has taken place and the C class reserve is created from the D'Entrecasteaux National Park.

(1) Has the excision taken place and the C class reserve been declared?

(2) Has Nelson location 12897 been transferred to the Executive Director of CALM?

(a) If yes, when did this occur?

(b) If no, does this mean that a breach of agreement between Cable Sands and CALM or any other department has taken place?

(3) What was the purpose of these two documents?

(4) Were any of these documents supplied to members of Parliament prior to the vote on the Reserves Bill 1995?

Hon MAX EVANS replied:

As the answer requires research, I ask that the member place the question on notice.

SUPER TRAIN

Report on Technical or Commercial Viability

1748. Hon TOM HELM to the Minister for Transport:

(1) Did the Minister or his department commission any report on the technical or commercial viability of the planned replacement of the *Prospector* and *AvonLink* services with a super train?

(2) If so, will the Minister table the report?

Hon E.J. CHARLTON replied:

(1)-(2) The Government has undertaken two investigations of the operations of the *Prospector*. One involved discussing with users the future demands on the operation and the other involved an assessment of the mechanical condition of the train. In both cases, the need for a new train was overwhelmingly stated. Members have heard me say publicly on a number of occasions that it is the Government's intention to ensure the replacement of that train within five years of the completion of the investigation. As a consequence of that investigation, the *Prospector* has been refurbished over the past few months. In fact, the last cars will be completed next week. That will ensure the maximum efficiency of the train for the next two or three years and the best performance possible until a new train is purchased. As I announced yesterday, the supply of the new train will go to tender in the near future. I will check to establish whether a report can be made available.

STRATAGEM ADVERTISING AND COMMUNICATIONS CONSULTANCY PTY LTD

1749. Hon E.R.J. DERMER to the Acting Leader of the House representing the Minister for Education:

(1) How many media releases and information brochures respectively have been prepared by Stratagem Advertising and Communications Consultancy Pty Ltd for the assistance of the district director of schools throughout the local area education planning process?

(2) What other services have been provided by this consultancy?

(3) What special public relations expertise has been available from the consultancy that would not have been available from Education Department employees or the Minister's staff?

(4) Why does the Minister consider this special expertise necessary?

(5) Will the consultancy be engaged in the presentation and explanation of final decisions pertaining to the future of specific high schools?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Sixteen media releases and nine information brochure response sheets.

(2) The consultancy has assisted districts in providing leaflets, advice and briefings, keeping parents and the community informed about the process and the options being considered.

(3) The consultancy has been able to provide an assessment of the community's requirements for information throughout the local area education planning process and also the extra personnel to support the district directors in the Education Department's communications and public relations branch.

(4) The Education Department recognises the importance of the consultation process and by using an expert in communication aimed to ensure that communication with the community was as effective as possible. District directors are education administrators with many and varied responsibilities. They do not have the time, training or support staff to meet all communications needs during the LAEP process.

(3) Yes, but only in the development of information pamphlets and brochures.

ELLIOTT, MR RICHARD

1750. Hon JOHN HALDEN to the Acting Leader of the House representing the Premier:

I refer to Mr Richard Elliott and his consultancy business.

(1) What work is Mr Elliott or his consultancy currently undertaking for the State Government?

(2) What is the nature of the work being undertaken?

(3) What is the cost of work being undertaken?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Mr Richard Elliott's consultancy company is under contract to provide his services to the Ministry of the Premier and Cabinet.

(2) Mr Elliott provides advisory services on a variety of matters including civil litigation arising from the WA Inc years.

(3) From 1 July 1997 to date, invoices totalling $91 532.50 have been paid by the ministry for these services.

ATTORNEY GENERAL

Legal Fees

1751. Hon KIM CHANCE to the Attorney General:

I refer to the answer given by the Attorney General last week to the effect that it was not in the interests of the public to know whether he has asked the Government to consider a payment of his legal fees and the Government's response to any such request.

(1) Is that still his answer?

(2) In which circumstances does he consider it appropriate for the public to know when and on what taxpayers' money is being spent?

(3) Does the Attorney General believe that he will ever be in a position to make this information publicly available?

The PRESIDENT: Order! The first question is very borderline in that it asks the same question that was asked last week. Questions (2) and (3) are in order.

Hon PETER FOSS replied:

(1)-(3) That is my answer also. This is a difficult situation. I do not wish to discuss the case, and what the member is asking me to do would be to do that, and would be sub judice anyway. I do not think that should be done. The member will have to wait until the matter is concluded, and then ask the same question to see whether the answer is the same. It is not appropriate at this stage to give an answer.

Hon Ljiljanna Ravlich: Very convenient!

Hon PETER FOSS: I am sorry that Hon Ljiljanna Ravlich does not like it, but that is the case. I do not believe it is in the interests of anybody at this stage for this matter to be aired in the Parliament.

ORDON PTY LTD

1752. Hon KEN TRAVERS to the Minister for Transport:

(1) Did the Department of Transport grant to Ordon Pty Ltd an exemption from section 16 of the Road Traffic Act on 25 March 1998, five days after the company had been charged by the Manjimup police for breach of that section?

(2) Was the Minister or his office approached by the company or by the Department of Transport with regard to the grant of this exemption?

(3) If an extension was granted, what were the reasons for doing so?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Yes. The Department of Transport was not aware of any charges against Ordon Pty Ltd.

(2) No.

(3) An extension has not been granted.

SHARK BAY WORLD HERITAGE INTERPRETIVE CENTRE

1753. Hon TOM STEPHENS to the Minister representing the Minister for the Environment:

With regard to the proposed Shark Bay World Heritage interpretive centre -

(1) Does the Minister support the Shark Bay Shire Council in its call for the centre to be built in the centre of Denham rather than near Little Lagoon?

(2) If not, for what reason?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Yes. However, the final selection of the site will be determined following consideration of advice from the World Heritage Property Community Consultative Committee and will require normal planning approvals. The matter is also of interest to the commonwealth Minister for the Environment, particularly as commonwealth funds are likely to be sought to assist with the building of the centre.

(2) Not applicable.

TERMINATION OF PREGNANCY

Informed Consent Requirement

1754. Hon CHERYL DAVENPORT to the Minister representing the Minister for Health:

(1) What resources have been made available to meet the informed consent requirement under section 334(5)(a)-(c) following the recent amendments to the Health Act 1911?

(2) Where will women contemplating termination of pregnancy be able to access appropriate counselling services?

(3) Will general practitioners offering women pre and post-counselling be informed of what independent professional counselling services are available throughout the State to ensure women are able to access such services?

(4) Will the service be free of charge to women given that no Medicare rebate is available for counselling services?

Hon MAX EVANS replied:

I thank the member for some notice of this question and ask that it be put on notice.

MINIM COVE

Giacci Bros Pty Ltd Tender

1755. Hon MARK NEVILL to the Minister representing the Minister for Lands:

I refer to the Minim Cove development by LandCorp. Will the Minister provide a breakdown of the costs and works required to be done by Giacci Bros Pty Ltd in its successful tender of $1 586 720 for the completion of clean up works and haulage of materials from that site?

Hon MAX EVANS replied:

I thank the member for some notice of this question. The works covered by the $1 586 720 contract with Giacci Bros include insurance, mobilisation, demobilisation, temporary site facilities, power and water supply, upgrade wash down facility, dust control measures, construction of haul roads, hydro mulching, removal and transport of material to Red Hill, back loading of material for cell capping, construction of cell capping, construction of temporary liner and moisture retention layer, subsoil drainage, settlement monitoring plates and site facility maintenance. Generally it is not industry practice to release contract rates, as the disclosure of that information may disadvantage a contractor competitively bidding for future contract works.