



WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
THIRD SESSION
1999

LEGISLATIVE COUNCIL

Tuesday, 14 September 1999

Legislative Council

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

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Overview of Petitions, August 1998-August 1999 - Report

Hon M.D. Nixon presented the forty-first report of the Standing Committee on Constitutional Affairs in relation to the "Overview of Petitions - August 1998-August 1999", and on his motion it was resolved -

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

[See paper No 157.]

ARSENIC LEAK INTO COCKBURN SOUND

Urgency Motion

THE PRESIDENT (Hon George Cash): I have received the following letter addressed to me and dated 14 September 1999.

Dear Mr President

At today's sitting it is my intention to move an Urgency Motion under SO 72 that the House at its rising adjourn until Friday 24th December 1999 for the purpose of discussing the issues that arise over the state government's handling of the recent arsenic leak into Cockburn Sound and related matters.

Yours sincerely

Tom Stephens, MLC
Leader of the Opposition in the Legislative Council

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 TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.35 pm]: I move -

That the House at its rising adjourn until Friday, 24 December.

I rise to express my concern about this issue, which concern has not been abated by the ministerial statement delivered by the Minister for Health in another place. If anything, my concerns are accentuated. They arise in direct, inverse proportion to the level of assurances the minister seems to want us to take from her statements. The statements contain claims with reference to this issue that fill me with increased concern.

Members will know, from media reports in particular, that there was a serious spill of arsenic solution into Cockburn Sound. That arsenic solution has been leaking into Cockburn Sound from the CSBP installation adjacent to the sound for perhaps six weeks. I say "perhaps" because no-one can be too sure. Regrettably, there is a self-regulation regime in place in that area and no-one seems to be fully cognisant of the parameters of that self-regulation. The Minister for the Environment, whom one would expect to know the details of those parameters, was today unable to table any details on how that self-regulation operates. I say to the minister handling the debate in this place, that one of the most important aspects of this issue is for the minister to make available to the House today details of the methods by which CSBP's operations are the subject of self-regulation and self-monitoring.

It appears that on or about Saturday, 24 July, the CSBP ammonia plant was decommissioned. Soon after that date - we have not been advised precisely when - the employees of CSBP noticed that a substantial quantity of arsenic solution was missing from the tank at that site. Around 17 or 18 August - we are not clear about the exact date - operators at the site noticed a drop in the level of the tank contents. An investigation was conducted, but we do not know by whom. I ask the minister to advise the House who conducted the investigation at that time. The investigation confirmed CSBP's view that the arsenic leak had been confined to an area protected by the bund. Subsequently, two more investigations were conducted on dates unknown, and the conclusion was again reached by CSBP that the arsenic which had been leaking from the tank had been confined to that bund.

I seek from the minister representing the Minister for the Environment in this place, an assurance that the Department of Environmental Protection was involved in those three investigations conducted by CSBP; and if not, why not. What is it about the loss of a substantial quantity of arsenic from CSBP's storage tank that would justify its not advising the Department of Environmental Protection of the observations of the operators on or around 17 or 18 August and of the three subsequent investigations in which it engaged? What is it about the advice that was received by the DEP around 5.00 pm on Tuesday, 7 September that convinced the department that it was dealing with only a minor spill? What was the nature of the communication between CSBP and the Kwinana office of the DEP at 5.00 pm on Tuesday, 7 September that allowed the department and, more importantly, the Minister for the Environment to go to bed that night without having initiated any investigation or inquiries of their own and to leave this matter basically unattended for 48 hours before the Health Department was finally advised by the DEP that it had received formal advice alerting it to a significant spill of arsenic solution into Cockburn Sound from the CSBP installation - a spill of 900 kilograms of arsenic in solution that was spewing out into the Cockburn Sound area of this State? For 48 hours, no action was taken until, at 2.34 pm on Thursday, 9

September, a media announcement was finally fax-streamed out to indicate to the community at large that there was a problem. Some action was taken the night before, which involved sampling the mussels on the shelves of retailers in the vicinity. There was some alert to the mussel farmers that there was a problem, but there was no public notice to the wider community that 900 kilograms of arsenic had spewed out into Cockburn Sound from this facility. What is it about this Government that it thinks that that sort of regime is appropriate for the environmental protection strategies of this State? What is it about this Minister for the Environment that she should think that that is good enough? Where are the self-management regime parameters that exist for this operation?

I also seek the Government's assurance that the flow of arsenic from the CSBP facility into Cockburn Sound has been stopped. When did it stop? How was it stopped? How was it finally confirmed that there was no further leakage of arsenic into Cockburn Sound? Just as importantly, what impact have the heavy rains this week had on any further leakage through the stormwater drains into Cockburn Sound? Will the minister table CSBP's written report that was delivered to the Department of Environmental Protection on Thursday, 9 September? Will he deliver that report into this House today; and, if not, why not? What is it about the CSBP report that would justify its being kept secret from the people of Western Australia? I call upon the minister representing the Minister for the Environment to table that report from CSBP today. Does the Government have copies of any other reports written by CSBP following its discovery on 17 or 18 August that a large quantity of arsenic solution was missing from the storage tanks on site? Was CSBP obligated to advise the Department of Environmental Protection of the details of the discovery on that date; and, if not, why not? If it was obligated to do so, did it? If it did not, what is the Government doing about it? Who carried out the three investigations into the missing arsenic? One does not just lose 900 kilograms of arsenic without making a substantial report to the Department of Environmental Protection and then more widely to the community. Did the DEP give CSBP any advice, either formally or informally, about the observations of CSBP's operators that arsenic was missing in such vast quantities from its storage tanks? What obligations did CSBP have to ensure that the case of the missing arsenic was independently and competently investigated? Is that part of the monitoring regime, the self-regulation, that CSBP is obligated to have over its operations in that area?

Has the Government sought from CSBP copies of the reports that relate to the initial observations and the three subsequent investigations; and, if not, why not? Why did the arsenic storage tanks not have a leak detection system that could have been an early warning system to the people of Western Australia that 900 kilograms of arsenic had just gone missing in an area adjacent to Cockburn Sound? Where is the monitoring system? Why is it not in place? What is this Government doing about a monitoring arrangement for this type of industrial site? If it has monitoring devices, why did it not pick up the missing arsenic and the flow of the arsenic into the storage area prior to the advice that was finally given to the Government on the afternoon of Tuesday, 7 September, at least six weeks into the spill? On what basis does the Government conclude that the spill has been happening for only six weeks? I can see nothing in the minister's statements to the other place that give us even that assurance. It seems that the leak has been happening for six weeks, but perhaps it has been longer. Who knows? Obviously not the Minister for the Environment, nor the agency - for which she has responsibility - that polices these events.

What method did CSBP eventually use to assess whether arsenic had leaked off site into the sound? Why was the method not used in advance of the eventual discovery that arsenic had leaked into the sound? On what basis did CSBP conclude in its initial investigations and the three subsequent investigations that the arsenic was contained by a bund? One is entitled to ask whether arsenic was discovered within the bund system. Was that the basis upon which it concluded that there had been no flow of the arsenic through the stormwater channel into Cockburn Sound? If that was the basis of its conclusion, why was it so wrong? On what basis could it conclude that, just because arsenic was or was not within the bund, it had not gone down the stormwater drain? We are talking about a minimum of six weeks in which arsenic of this vast quantity travelled into Cockburn Sound. Can the minister assure the House that only 900 kilograms of arsenic solution has gone missing, having leaked from the storage tanks? On what basis can the community be certain that the leakage of arsenic did not start before 24 July? What inspections were carried out, on what dates and by what agency to certify that the arsenic had been safely and securely stored in the tanks at the CSBP plant?

What type of operation is this Government running that allows a major industrial complex such as CSBP to suddenly announce that it has been leaking 900 kilograms of arsenic into Cockburn Sound for over six weeks? What monitoring sites and strategies exist, are required or will be required around this and similar industrial sites to protect the environment and the public from such serious leakages in the future? We have been told that the arsenic was discovered in a drain from a steam line outside the bunded area. Was the arsenic discovered at a regular monitoring site, or was it the result of random testing? If it was discovered at a regular monitoring site, how often are samples taken at the site? If it was discovered from random testing, why was the testing carried out at this time and location? How did the arsenic get to the drain from the steam line outside the bunded area? What monitoring was in place to detect the contamination moving via ground or service water from the site? What monitoring was in place to detect leaks from the operation system? What assurance can the minister give that the current monitoring program operated by CSBP represents best-practice monitoring management?

These are assurances and advice to which the people of Western Australia are entitled by way of reply from the minister representing the Minister for the Environment. Does the self-regulation regime for industry that has been devised by the Department of Environmental Protection for companies such as CSBP include obligations to put in place a comprehensive monitoring system? If not, why not? Is such a monitoring scheme in place to help identify such leakages? Is such an identification opportunity available to ensure that it operates within short time frames? One would then have more confidence in self-regulation as the framework of a diligent regime for the protection of the people of Western Australia and their environment. What steps is the Government taking to establish the Cockburn Sound trust that was promised in the past? What role will such a trust play in overseeing the self-regulation that exists in this environmentally sensitive area? The

minister representing the Minister for the Environment in this place must answer these questions. In particular, he must assure the House that the Department of Environmental Protection has in place the resources and facilities so that, when serious concerns are expressed by a group such as CSBP, steps are taken to protect the people of Western Australia. That does not appear to be the case on this occasion.

HON MAX EVANS (North Metropolitan - Minister for Finance) [3.52 pm]: It is interesting that we have before us a motion to discuss these issues, but I heard about 100 questions without notice. I am not the minister responsible for this portfolio -

Hon Tom Stephens interjected.

Hon MAX EVANS: The member asked nearly 100 questions and this is not my portfolio area.

Hon Tom Stephens: You represent the Minister for the Environment in this place.

The PRESIDENT: The Leader of the Opposition has had his opportunity.

Hon MAX EVANS: These were direct questions and the House does not expect a representative minister to have the answers. The member should put the questions on notice.

Hon Tom Stephens: You insisted on that when we were in government.

The PRESIDENT: The minister will address the Chair.

Hon MAX EVANS: The Minister for Health made a statement in the other place today in which he pointed out that initial results for total arsenic in seafood showed values of between one and eight milligrams per kilogram. Further tests were required to determine the proportion of toxic inorganic arsenic, which is the worst factor. My farmer friends tell me that at one time they dipped their sheep in arsenic. It was a very effective strategy and better than others because the arsenic was yellow and they could tell which sheep had been dipped and which had not. The safe level is one milligram of inorganic arsenic per kilogram of flesh. Results received earlier today showed that the levels of inorganic arsenic were less than 0.04 milligrams per kilogram. This is well below the maximum permitted concentration for seafood. Water samples were also taken after CSBP advised that the release of contaminated stormwater into Cockburn Sound had stopped. These samples indicated values of one microgram per litre, which is consistent with background levels for seawater. These results suggest there is no ongoing water contamination from the arsenic leak and that the spilled material has dispersed. On the basis of this information, the Health Department is satisfied that there is now no risk to public health and safety. It has advised the public and industry that fishing can resume in Cockburn Sound. While results suggest no long-term contamination, further analysis of the fate of the spilled material is being determined. This may result in more sampling.

The departments involved are to be commended for acting promptly to protect public health and the environment of Cockburn Sound. The DEP is continuing its investigations in relation to enforcement procedures under the Environmental Protection Act.

I have been informed that the DEP's Kwinana office was contacted by Cameron Schuster of CSBP at 5.00 pm, the time the member quoted, on Tuesday, 7 September to advise a minor spill. The advice was that a vetrocoke tower in the old ammonia plant had leaked outside a bunded area, but that the situation was under control. No detailed information was provided as CSBP said that it was not available and that a report would follow in two days. In other words, CSBP provided advice about a minor leak. The member referred to 17 and 18 August and the DEP's being involved. I have no comment; I am not sure where he got that information. I am advised that the first knowledge the department received was on 7 September at 5.00 pm.

The DEP contacted CSBP at 3.30 pm on Wednesday, 8 September about a media inquiry and was informed by Cameron Schuster that 900 kilograms of arsenic had leaked into Cockburn Sound over a six-week period commencing on 24 July 1999.

Hon Tom Stephens: Will you table this document?

Hon MAX EVANS: I will read it.

Hon Tom Stephens: But will you table it as well?

Hon MAX EVANS: Yes. The DEP was informed and the Health Department also received a inquiry from Channel Seven. The Health Department and DEP contacted Fisheries WA to inform it of the leak. Mussel farmers were advised at 4.00 pm by the Health Department, and industry made a voluntary decision to withdraw stock.

On 9 September, DEP officers and ChemCentre staff went to the site to take samples of the water, sediment, mussels, fish and crabs. Investigation of the CSBP site is ongoing. DEP and ChemCentre staff are taking samples and interviewing CSBP staff.

A strategy meeting was held at 11.00 am on the Thursday to discuss the assessment and validation of the information. The Health Department and the DEP issued a joint public health warning for Cockburn Sound at about 1.00 pm and advised people not to eat seafood caught in the sound. A media conference was held at 2.00 pm to inform the public of the Government's actions. As we all know, the issue was well covered in the media that day and the next day. At 4.00 pm, the DEP requested an interim written report into the arsenic event from CSBP, which issued a media statement at 5.00 pm that it was continuing its investigation, that it regretted the incident but that no comment would be made until the test results were

known. CSBP faxed the interim report to the DEP at 9.00 pm. I will not table that report; the member can make a direct request to the minister for a copy.

At 12.30 pm on Friday, 10 September, Fisheries WA issued a statement advising that Cockburn Sound was closed to recreational and commercial fishing pending test results. Signage was installed warning recreational fishers that the sound had been closed for fishing. Maps detailing the sampling regime put in place by the DEP were provided to the media at a news conference at 2.00 pm. On Saturday, 11 September, the Health Department issued a media statement and an updated map detailing the first seafood sample results. A media conference was held at 11.00 am following the receipt of the sample results earlier that morning. Fisheries WA officers and volunteers patrolled the area to warn potential recreational fishers. On Sunday, 10 September, a media statement was issued at 7.00 pm providing water and sediment sample results received by the DEP that afternoon. A media conference was held at 2.00 pm on Monday to provide the latest information. A media conference was held at 10.30 am today to release the sample results from Sydney detailing organic and inorganic arsenic levels. The Health Department, the DEP and Fisheries WA announced that Cockburn Sound is all clear for fishing, swimming and recreational activities. The results were received by the Health Department earlier this morning. All relevant departments have worked together during this period.

The member referred to 17 August and DEP inspections. I do not have any information about that. The first the DEP knew about it was 5.00 pm on 7 September.

The spill was 900 kilograms. I have worked out that over 42 days - or 1 000 hours - just less than one kilogram per hour leaked.

Hon Tom Stephens: Put it in your water supply instead! We can take it to the heights of Mosman Park.

The PRESIDENT: The Leader of the Opposition will come to order and control himself. The minister will address the Chair and not individual members. If he does so we will not have these outbursts.

Hon MAX EVANS: Less than one kilogram per hour was leaking during that period.

Hon Ljiljana Ravlich: And you do not think that is worth worrying about!

Hon MAX EVANS: It is not a big leak. It can seep at that rate from a tank or the bund into the stormwater drain and not be noticed.

Hon Tom Stephens: So it is not a serious issue.

Hon MAX EVANS: It is a serious issue. The member should not say that! Less than one kilogram per hour was leaking into the sound. The Minister for Health and the Minister for the Environment and their staff have done the job required of them. As soon as they knew what was going on, they pieced together the information and took the necessary action.

HON J.A. SCOTT (South Metropolitan) [4.00 pm]: Hon Tom Stephens was wrong in one aspect of his speech: Arsenic has not been leaking from the CSBP plant for six weeks! In fact, a five-hectare plume of arsenic extends from under the plant into Cockburn Sound. It is five to 15 metres deep and it has a concentration of 180 parts per million. That was first picked up in a test bore in 1996. It has been leaking into Cockburn Sound since that time.

Hon Tom Stephens: I did not say that it has been leaking for six weeks. How would anyone know?

Hon J.A. SCOTT: The plant has a long history of leaks. The recent leak came from a storage system which involved the arsenic being kept in an unlined bund in ordinary drums which were half buried in sand. They were left for many years until they began to rot and the contents leaked into the soil and eventually into the marine environment. Another incident occurred when drums of arsenic were being moved to Mt Walton. The company was fined after the truck driver discovered that, upon inspecting his load before he had gone very far, arsenic was pouring out of the drums en route to Mt Walton.

The recent arsenic spill came from an ammonia plant. It was one of the byproducts from the process of using ammonia to make nitrogen for cropping. There have been five serious releases of a very poisonous gas, ammonia 23, between May 1998 and June 1999. CSBP has been prosecuted four times since 1990. It caused releases of nitrogen into Cockburn Sound for which it was fined. In 1993 there were releases of sulfur dioxide; in 1996 nitric oxide was released; and in 1998 arsenic leaked from those drums. CSBP has also been responsible for significant mercury pollution in the Princess Royal Harbour in Albany. Everybody knows about the pollution problems at Minim Cove. CSBP was a significant player in causing that pollution. The loss of seagrasses in Cockburn Sound has been put down largely to raised nitrogen levels from the dumping of waste materials from that plant. From the time the plant moved to Kwinana - in combination with reduced flushing of the sound caused by the causeway to Garden Island - nutrient levels have risen so much that around 90 per cent of the seagrass in Cockburn Sound has been wiped out. CSBP has an appalling record of environmental management.

CSBP should be looked at closely by the Department of Environmental Protection. I agree with Hon Tom Stephens that underlying the pollution problem in this State, and very much so in the Kwinana strip, is the self-monitoring environmental process. It is a joke. It is responsible for more pollution problems than have been brought to the public's attention. Most of the problems that are brought to the public's attention are reported by people in the community rather than through the Department of Environmental Protection process. It is unusual for the DEP to inform the public about these issues, and the under-funding of the DEP is largely responsible for the sorry state of affairs. As I have said, environmental funding in this State is very poor and it seems to be getting worse.

Instead of the management processes dealing with the prevention of pollution and health risks to the community, those opposite are about making things easier for industry. I have heard numerous examples of members of the community raising

concerns about pollution at not only that plant but also a variety of plants around the State. The result has been that the DEP has amended the environmental conditions under which these plants operate so that offences are no longer offences. That has made it much harder for the department to control these incidents. A very poor culture has developed in the DEP. Its auditing branch is so run down that there are only two people to deal with all the environmental problems in this State. The auditing process is a joke in environmental circles. Even members of the DEP acknowledge that the department is run more on a political basis than on an environmental basis.

The monitoring system in the DEP should be changed and a more rigid licensing process should be put in place. That plant, which had been operating for a great many years, had been run down for many years. It was decommissioned when this leak occurred but it should have been decommissioned years ago. The DEP should have insisted on first-class facilities to prevent pollution in an area so close to the ocean. The community is very concerned because it seems that the Government intends to cram as much industry into the Kwinana area as is possible, without ensuring the safety of the ecology of Cockburn Sound and the people who live in the vicinity. I have referred already to the ammonia gas releases. The Government now wants to put a speedway at a site nearby at which ammonia gases could wipe out thousands of people who attend speedway events.

If the Government were serious, it would put in place similar provisions for these industries that continually pollute as the three-strikes juvenile justice legislation. These companies should be fined twice and then lose their licences on the third occasion they cause pollution. We might then get some action from companies such as CSBP, which has a terrible record. The Minister for the Environment should also be removed from the prosecution process. On many occasions, political decisions have been made on environmental infringements because the minister has the final say under the Environmental Protection Act. Although the department recommends prosecutions, that may not happen in all instances. A provision in the Environmental Protection Act allows for a breakdown in the separation of powers. Under no other law in this State or anywhere else would somebody be able to cause injury to another person and get away with it. A minister would not have the prerogative to determine whether somebody should be prosecuted for injuring another person with a knife; why, therefore, should he or she have the prerogative not to prosecute somebody under environmental legislation? The Parliament should get the minister out of the prosecution process. The system should take politics out of the process.

As much as anything, the funding of the DEP should be significantly increased to make sure that it can carry out its duties properly. What is happening today is the result of the Government neglecting to provide adequate funding to this process for a long time, and a lack of will by the Government to deal with this problem.

HON J.A. COWDELL (South West) [4.10 pm]: The motion moved by the Leader of the Opposition refers to the issues that could arise due to the handling by the State Government of the recent arsenic leak in Cockburn Sound. As members will be aware, a number of issues do indeed arise. The Leader of the Opposition concentrated on some of the more immediate procedures.

This issue highlights the need for overall government planning for Cockburn Sound and for a Cockburn Sound trust. Members will be aware that from time to time the Government seeks the approval of this House for the establishment of new industries in Cockburn Sound. It does that on the basis that Cockburn Sound can accommodate industries in addition to those that already exist there. It is instances of this nature that clearly harm the case for the development of any new industries in Cockburn Sound. If the level of pollution from existing industries is not adequately controlled there is no way that this House can approve the development of new industries.

I remind members that on 16 March in this House I said that an Environmental Protection Authority report suggesting a Cockburn Sound trust had the full support of the Australian Labor Party. That report reads -

A comparable situation which now has a clear management presence is the Swan River. Prior to the establishment of the Swan River Management Authority under the Waterways Commission Act, management responsibility for the river was dispersed and lacked coordination. The present Swan River Trust has dedicated legislation which provides for the integration of planning and management consistent with a range of other statutory processes.

That was during the debate regarding Jervoise Bay. I indicated that the Government's response was inadequate and that we required an assurance from the Government that it recognised that a bottom line exists in Cockburn Sound for water quality and that it was taking remedial action to ensure that the quality did not further deteriorate. Specifically, we sought an initiative towards establishing that type of overall authority in the form of a Cockburn Sound trust. This is a significant issue that highlights the need for comprehensive planning and oversight.

The second issue is obviously self-regulation, which, in this and other instances, is inadequate. Not only should the Government address the issue by considering the establishment of a Cockburn Sound trust that would have a comprehensive overview and would coordinate all the agencies but it should also examine the efficiency of its own agencies. It must make changes in the level of environmental protection, address the inadequacies in funding and reintroduce a level of supervision and regulation.

How adequate was the immediate government response to this spill? There was much rattling of sabres. The minister was reported in *The West Australian* as saying -

Wesfarmers CSBP could lose its right to regulate its own environmental performance if it was found to have broken environmental laws over the Cockburn Sound poison spill . . .

It was further stated that the company was to build a new plant on the same site and that the Department of Environmental Protection would look closely at issuing a licence there. In addition, the minister stated that the DEP could become more

involved in monitoring the company because of this incident, but the company would have to pay for that. It was sabre rattling and speculation. CSBP could be fined up to \$1m if it were found to have been negligent in causing the pollution and it could be subject to a fine of \$10 000 a day. Members will be aware that these are the new penalties that were recently passed by this Parliament. No clear indication was given of government action.

What was disturbing today was the representative minister's comments. He played down the seriousness of the threat. He commended the Government and the department for their actions. He almost went so far as to commend the company for its action!

Hon Max Evans: I didn't.

Hon J.A. COWDELL: No; but almost. My colleague Hon Cheryl Davenport said at the time, "I bet he won't be eating the mussels from there." It is a very serious matter to see the Government downplaying this whole incident and any immediate action that it proposes to take. If it is downplaying the significance of this very serious case of pollution it will certainly not progress to improve the regime of supervision, regulation and financing of the DEP. It will certainly not proceed to a more adequate structure such as a Cockburn Sound trust. As Hon Jim Scott pointed out, how many apologies can be made for environmental disasters such as those caused by CSBP over the years before the Government introduces some regulations and takes a close look at the company's activities?

I do not have time to cover the third issue concerning the immediate events at hand. However, we must get to the bottom of whether the leak was first detected on 24 July, whether it came to the attention of management on 10 August, whether it only then came to the attention of the DEP on 9 September, and whether it was brought to the attention of the authorities by a member of the public and not by the company at all. From the perspective of this House and this Parliament, the important issues are the reintroduction of an adequate level of government regulation and supervision and long-term planning for Cockburn Sound.

HON NORM KELLY (East Metropolitan) [4.18 pm]: I refer first to the talk of possible penalties if Wesfarmers CSBP were found to have breached the Environmental Protection Act in the recent polluting of Cockburn Sound. It is very easy for the Minister for the Environment to talk about a possible \$1m fine. However, in the past decade, the level of fines against CSBP has been far short of \$1m. From my understanding, since 1990 at least 11 charges have been laid, each with an average fine of \$10 000. That is one of the reasons this Parliament substantially increased the amount of fine that could be imposed. It was clear that the fines were trivial compared with the economic power of a company such as CSBP. I am sure that in the boardroom of CSBP it is a case of weighing the cost of such fines against the benefits of not implementing stronger and more stringent protections for Cockburn Sound and the surrounding area.

I am concerned about the public relations exercise into which CSBP has entered with regard to this spillage. It is trying to imply that because it notified the Department of Environmental Protection of the spillage immediately it is eligible for a modified penalty under section 99A of the Environmental Protection Act. A modified penalty is a mere 10 per cent of the maximum penalty that CSBP may be required to pay. Section 99A provides that strict criteria must be met before a company is eligible for a modified penalty. One criterion is that the chief executive officer of the DEP must be notified of the offence promptly. It must still be determined whether an offence has been committed, but it is clear from CSBP's media release of 10 September that it did not notify the DEP at the earliest possible time. Another criterion is that there is no overriding reason for prosecution rather than a modified penalty, one such reason being the commission of repeat offences, particularly serious offences. This latest spillage by CSBP definitely falls into the category of being a repeat and serious offence.

The CSBP media release of 10 September outlines the way that the company handled this spillage. That media release came the day after a previous media release which to my mind tried to trivialise the incident and referred to the low concentration of arsenic that had been released into Cockburn Sound. Of course, this was before it had been determined what level of arsenic had been released into the sound. The media release of 10 September states that CSBP deeply regrets the incident. I am sure that is the case, and that if CSBP were found guilty of this offence, it would regret it to the point where it would realise the economic imperative to take proper action rather than continually have to pay a smaller fine. The media release then outlines the facts about the history of this spill, starting with the shutdown on 24 July. It states -

The arsenic solution was contained in a tank standing on a concreted area surrounded by concrete bunds . . .

Three and a half weeks after shutdown, operators noticed a drop in the level of the contents in the tank.

One would think that when the company had first become aware of a drop in the level of the tank, it would have taken the precaution of notifying the responsible authority of what had occurred. However, it might have appeared to the company from the actions that had been taken against it previously that that was not necessary.

The media release continues -

An investigation then and on two subsequent occasions concluded that any loss of arsenic solution had been confined to the area protected by the bund system.

At no stage was it suspected there had been a leak outside the bunded area.

The company does not provide any information to back up that statement. It then states - I believe this is critical to the media release -

On Monday 6 September arsenic solution was discovered in a drain from a steam line outside the bunded area.

On 6 September, the company had the first definite proof that the arsenic solution had escaped from that containment area. It continues -

Immediate action was taken to isolate the line and to determine whether any release has occurred through the stormwater system into Cockburn Sound. These investigations took place over the next 24 hours.

It states also that it was not until it had become clear on Tuesday that this had happened that the company notified the DEP. CSBP has said that it contacted the DEP immediately. However, it contacted the DEP at least one full day after it knew that arsenic solution had escaped from the bunded area. To my mind, that is totally counter not only to the intent but also to the wording of the Environmental Protection Act.

This matter is of serious concern, as other members have pointed out, particularly when this company is still operating under self-regulation and is proposing to increase its production of ammonia from 300 tonnes per day to 650 tonnes per day, thereby increasing the potential for hazards and environmental damage. Given the recent history of this company and its latest pollution of Cockburn Sound, it is high time the Government stepped in and stated categorically that self-regulation for CSBP must end. It is probably premature to say whether the Government, through the Health Department and the Department of Environmental Protection, has responded adequately to its first knowledge of this pollution -

Hon Simon O'Brien: It is also too early to say that it has not. You seem to have conducted your own investigation already.

The PRESIDENT: Order! Hon Simon O'Brien will get his opportunity in a moment, if he gets the call.

Hon NORM KELLY: Thank you, Mr President. Hon Simon O'Brien seems to lose the plot a bit when he thinks that all the members on this side are of one mind. That is definitely not the case, as he would have known had he been listening. It is premature to say whether the DEP and the Health Department have responded adequately to this pollution. We need more figures and more details. It is also a matter that should not be determined within the realms of this urgency motion. It would be more suitable to have that matter determined by an independent inquiry, perhaps through a parliamentary committee such as the Public Administration Committee or the Ecologically Sustainable Development Committee, so that the people involved could be called in and we could get to the bottom of the matter.

It is interesting that the report provided by CSBP to the DEP last week to give a fuller account of what has happened is not available to the public. Wesfarmers Limited, a company that does a lot of hard work on public relations, probably because it is an environmental vandal for so much of the time, and the same company that has brought us Bunnings Forest Products Pty Ltd, has also brought us CSBP, which is also causing environmental damage to Western Australia. In spite of that, it is totally unwilling to release to the public information about how it responded to this act of pollution. The DEP, the Government or the minister should make that information available to the public.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.28 pm]: I have about two minutes in which to categorically assure the House that the Government was advised by this company on Tuesday afternoon of a serious spillage, but it failed to react quickly and adequately to that advice. More importantly, the Government in this debate has failed to deliver adequate assurances to this House. Where are the details of the self-regulatory regime for CSBP? Why are they not tabled in this House so that the people of Western Australia can judge for themselves the appropriateness of the licence conditions that apply to the monitoring of the disposal of arsenic into the waterways that discharge into Cockburn Sound? Presumably, the minister takes great interest in the affairs of Wesfarmers when it comes to his shareholdings and his portfolio responsibilities in that regard. Why does he not show the same regard for his responsibility as minister representing the Minister for the Environment in this place? It is not good enough for him and his friends in the corporate sector to run as vandals over this State, its environment and the lives and conditions of the people of Western Australia, and to show no regard for his statutory responsibilities as minister. The minister has a responsibility in this place to cough up the information to which the people of Western Australia are entitled.

The PRESIDENT: Order! I ask the Leader of the Opposition to slow down so that I can understand what he is saying. He is supposed to be addressing the Chair. I also advise members that there is too much audible conversation in the Chamber.

Hon TOM STEPHENS: It is time for this Government to make sure that the environment of this State is protected for the people of Western Australia. When honest explanations of problems that occur are given to the agencies of government, the Government should act on advice from those agencies. It has not happened in the case of CSBP, and it should have. It should lead to the resignation of the Minister for the Environment, who has not done her job in protecting the environment or heritage of this State.

Motion lapsed, pursuant to standing orders.

ADDRESS-IN-REPLY

Amendment to Motion, as Amended

Resumed from 9 September, after the following amendment had been moved -

And further advises His Excellency of the Legislative Council's concern with the failure of the Liberal National Party coalition Government to properly handle the RFA process and, in particular, its failure to meet the needs of timber industry workers, their families and their communities who are adversely affected by the outcome.

HON MAX EVANS (North Metropolitan - Minister for Finance) [4.33 pm]: Last week Hon Barry House made an excellent, long and detailed speech on the amendment moved by Hon Bob Thomas. Hon Barry House has great knowledge and experience of the south west area, and he defended the action of the Government in relation to the Regional Forest

Agreement and the statement made on 27 July. The Government announced in that statement that logging of old-growth and tingle forest would end when the current contracts expired, and that the woodchipping industry would move through a rapid transition to become a predominantly plantation-based industry.

The coalition Government had been listening to many of the comments made in the community - in both the city and country - about the logging of old-growth and tingle forest, and had decided that some changes should be made in that regard. It also decided that it was important to maintain the viability of the timber industry for the future. It is an important industry, which began in the first 10 or 20 years of the foundation of this State. Timber was an important product in the early days, and jarrah logs were carted from the Kalamunda area along the wooden railway lines to Shelley, and then by barge along the river. Sleepers for the Indian and Chinese railways came from this area. It is the oldest industry in this State, and was an important industry before the discovery of gold at Halls Creek in about 1872. It has been very well looked after over the years. There is a tendency to forget that this State has a great deal of knowledge and experience of this industry.

The move will be made to plantation timber industries. In the south west, plantation timber is growing faster and better, and it will be the main timber used for woodchipping in the future. In recent years Korean companies have set up big plantations for their long-term supplies of woodchips for their paper production industry. These changes complement the RFA, but will require some major changes to logging practices and forest conservation measures in WA. At the same time we will maintain a viable timber industry.

The Government has helped timber workers affected by the closure of the Whittakers mill. The Government made funds available to ensure workers at the Whittakers mill at Greenbushes received their retrenchment entitlements, in addition to a top-up payment negotiated with the union. It was important to get those workers on their feet because the mill closed through no fault of the workers. The company was put into receivership, and the only job of the receiver is to sell the assets of the company. In this case it was the plant and machinery, and I do not anticipate that the buildings will be sold. The assets were sold to repay any debts owed to the banks. The person appointed as receiver determined that Whittakers was not in a position to carry on trading. The receiver has a personal liability in the case of any losses incurred while running the company and he would need the indemnity of the person who appointed him. I do not believe that would have been forthcoming, and that is why Whittakers was closed down after it had been maintained for a short time. The Government looked after the workers.

To assist in minimising that impact on workers, a timber industry restructure and compensation package has been developed. This includes increased levels of community support, including personal and financial counselling. This will be available to people who change or lose their jobs. It is an important part of the package and it is going on now. The package also includes a special redundancy top-up package for workers displaced as a result of the Government's decision to fast-track the industry restructure. That is part of the deal done with the Federal Government, and money will be available for it. The package also includes fast-tracking, restructuring, retraining and employment opportunities. It was most important to move quickly through the transition period to change from where the industry has been for many years to where it will be in the future, following the changes announced on 27 July. Worker assistance guidelines are currently being finalised between the State and Federal Governments to assist all parties in the south west timber industry.

Business will be assisted by special measures put in place to maintain confidence and to encourage investment in local communities. These measures include an assessment panel to fast-track business and investment proposals. That is important. When one door closes, another opens. Many new opportunities will be found in the south west timber industry, as well as in tourism and other industries. There are still great opportunities in the timber industry in this State. The industry has been operating since the first years of the colony.

Processes have been established to identify local needs and opportunities. This will continue and the process will be accelerated, because once the needs have been identified, some successes will follow. Business exit guidelines are currently being finalised between the State and Federal Governments.

The Premier has established a ministerial task force to fast-track the changes and to ensure a coordinated approach across government to implement the measures outlined above. That is important. All departments within government have some say in what goes on and in finding future jobs to protect the workers in that area. Some of the workers come from second and third generation families in the south west and the Government intends to look after them.

An independent inquiry into plantations has been announced, and the terms of reference have been approved by Cabinet. A public process will see an independent expert inquire into the future of plantations. The consultant will be required to report by 31 December 1999. The steering committee for the consultancy will include officers of Agriculture Western Australia, the Department of Resources Development, the Department of Conservation and Land Management and Treasury.

Assertions have been made by Dr Judy Clark in Canberra that there is no stockpile of plantation timber, and that it is all planned to be used in the expansion of existing and new processing industries. Dr Clark's analysis is simplistic. On the one hand she says there is a surplus and, on the other hand, she interprets the national plantation inventory to infer that the Western Australian Government cannot meet its supply commitments to Wesfi under the Wesply (Dardanup) Agreement Authorization Act. This agreement Act expires in May 2000 and is presently being renegotiated. There is no question that the Department of Conservation and Land Management will not meet the commitments under the Act.

The Government stands by the statement of 27 July in the Regional Forest Agreement to look at what has been done all round Australia. Changes had to be made, and we are now fast tracking alternatives to logging old-growth karri and tingle forests because that is necessary. Pine plantations have been in existence for years and we will now accelerate how we use those plantations for the benefit of the industry. Businesses must make profits to employ people, and that will lead to

employing more people. There will be a great future for the south. It does not have a large work force, but it an important work force. It is an important part of the towns in those areas which use schools, hospitals, nurses and so on, and we will protect them. A group of experts will look at the end of large-scale clear felling in the karri forest, the logging in old-growth karri and tingle forests after 2003 and the end of woodchipping of old-growth karri and tingle forests from 2003 and will review the forestry codes of practice, contractors' coupe management and logging plans for 1999-2003.

The Government refutes all of the comments made by Hon Bob Thomas in his amendment to the Address-in-Reply. We believe it is not warranted for the Government to make such an amendment. We believe we are on the right track in what will be done. We support the actions of the minister accordingly.

HON KIM CHANCE (Agricultural) [4.41 pm]: I have not contributed to the debate on the Regional Forest Agreement so far. I would have liked the opportunity to listen more closely to the comments made by the Minister for Finance. They were interesting so far as I could hear them, but I had a few other things on my mind. I look forward to reading the minister's comments in *Hansard* tomorrow. I have not contributed to this debate for a number of reasons, but principally because this is a complex matter and I am always extremely nervous if I am required, for one reason or another, to speak on a matter which is outside my normal range of interests. Certainly it is outside my electorate and, similarly, it is outside my specific portfolio responsibilities. However, it is also a matter that my colleagues have been handling with great skill and they have a deep understanding of the process. At the same time, however, I do not think any of us can be divorced from the issue of the Regional Forest Agreement and, indeed, of forest management generally and the aftermath of the changes which have been made to the RFA.

In a sense I was representative of the broad spectrum of the general public on this issue - no better or less informed than the average person on the street. That was true until I was required to form my own view as a delegate to the Australian Labor Party state conference in May this year. At that point I was required to learn a little more about the process. The process that we went through at the state conference in May was not an easy one for me, nor was it easy for the Australian Labor Party. This has not been an easy issue for anyone. However, as with the other matter which we will be dealing with later today - that is, workers compensation - I am intensely disappointed that, rather than trying to work through a sensible and bilateral resolution which can benefit the whole State, the Government has chosen instead to use the issue as a political football.

What attracted me to this motion when moved by Hon Bob Thomas is that it goes to one of the most important issues which is before us in respect of the RFA and the issues surrounding it; that is, in the decisions that had to be made, it is apparent that the last persons to be considered were the timber industry workers and their families. For that reason, I am grateful for the motion moved by Hon Bob Thomas and the opportunity it provides this House. This motion draws attention to their plight and gives us an opportunity to constructively discuss ways in which their future can be made more secure. Obviously, as with the RFA decision, these means of resolution lie principally with government. I find it bizarre that the Government's response is simply to blame the Opposition for everything. We must get something quite clear: The Opposition did not take these actions; they have been a function of government. Governments are paid to make decisions, and sometimes not easy decisions. For workers or employers in the timber industry to be told that their problems are not the Government's responsibility, but the Opposition's, when the Government made the very decisions that caused their problems, can hardly be reassuring for those people involved in the timber industry.

The fact is that the Government is caught in the same bind that Labor was forced to address in May this year. Both parties were somewhat wrong-footed by a substantial shift in public opinion, which related to the mood change in the proportion of the public that indicated a priority need to preserve what old-growth forest we had left. I know from the position of a fringe observer on the issue in respect of the Labor Party's position that, prior to the decision in May and what drove the decision in May, the Labor Party thought it had a progressive position on forest management. We thought we were ahead of public opinion. When we looked around, we found that we were actually trailing public opinion - we were behind it. That caused the party to face the question in May - the question which the Government had to face a little later.

When we looked at the RFA, we found that the answers we thought would be available from the RFA process, which we had supported, were no longer appropriate to the altered climate of public opinion. It is as simple as that. Labor's response in May was to face that painful issue and to find a resolution. That was not an easy process. It is never easy to hear from people whose lives will be radically changed as a result of a decision that one is about to make.

Notwithstanding the reporting of the issue at the ALP conference in May, I did not find the timber workers' arguments before that conference in any way inarticulate; in fact I found them compelling. They were arguments that caused me a great deal of difficulty in knowing that I was on the other side of the fence from them. Despite that, Labor did make the decision that reflected the view that is held by what appears to be a vast majority of the Western Australian public. The decision was clear and unequivocal: Old-growth forest, or what remains of it, would be protected. Labor did not make the decision in isolation of the interests of the timber workers whose futures would be compromised by the decision. A comprehensive policy was being designed at that stage and remains an important issue for the Australian Labor Party. Faced with the same decision, the Government vacillated. It made one decision, then changed its mind in response to an expression of public opinion from a quarter from which it had not expected challenge; that is, from within its own ranks. The Government realised too late that it had not read the situation accurately in the first instance, and in its later response it forgot about those who had been caught in the middle - the forest industry workers. From that point on the Government has retreated into a corner and thrown stones at the Opposition. It is difficult for me to see how that helps the timber industry or the workers. We have a serious regional employment problem which involves, but is not limited to, the forest industry.

Other issues form a part of the overall problem: The collapse of Simplot Australia Pty Ltd, the closure of Beenyup, job losses

at Renison Gold RGC, downsizing by Western Power at Collie and Bunbury - 250 jobs there alone - and further downsizing by Main Roads WA in Bunbury costing 92 jobs. All of these form a pattern of gloom for the south west.

Hon M.J. Criddle: Work remains for the road-based workers.

Hon KIM CHANCE: Not necessarily work based in Bunbury. The jobs might be far away from Bunbury and the nature of the work, as the Minister for Transport is well aware, is that it may well be carried out by metropolitan-based contractors.

Hon M.J. Criddle: May well.

Hon KIM CHANCE: May well. Even within the forest industry the situation is not as clear as it seems on the surface. Job losses will flow from the decisions that have been made subsequent to the Regional Forest Agreement. It would be a serious mistake to attribute all these job losses to those changes. Without the changes, job losses were clearly inevitable. We knew that we had a huge oversupply of sawn karri chip logs. Whittakers has been on the verge of collapse for a very long time and the onset of technology, particularly the adoption of mechanical harvesting, was inevitably going to cost jobs in the timber industry even if the RFA had gone through in its original format. This kind of regional employment collapse is not without precedent in Western Australia. It is part and parcel of the inherent risks of business, particularly when industry relies on finite resources and fickle international markets. Those of us who have seen the mining industry suffer from the convulsions of international metals markets are familiar with the sad process in regional communities of workers and business people and their families being torn apart by changes over which they have no control whatever, and which we, as a broader community, are powerless to do anything to mitigate. This phenomenon is not new to my own neighbourhood - the eastern wheatbelt. I recall the finding of a Legislative Assembly select committee in the 1980s chaired I think by Hon Julian Grill. It pointed to the fact that the north eastern wheatbelt had lost one-third of its total population in the preceding decade. However serious the problems of the south west are, they cannot be compared to the type of depopulation pressure that we have seen and will see again in our more arid regions. The reason is not that the south west is facing a lesser problem, but that the south west is a much more diverse region and has the capacity far beyond that of either the mining and pastoral or the agricultural regions to regenerate itself. It has done that before; it is certainly able to do that again. It is important that, faced with change for which we have to take a direct responsibility, we put in place what is required to allow that regeneration to occur. We cannot expect the south west to pull itself up by its bootstraps. We have to be able to see, and for the life of me I cannot see, evidence of initiatives put in place by government which tailor employment plans for each person who has been displaced by the change in timber industry policy. They may be being formulated somewhere, but as yet I have seen none of the detail.

We have not seen evidence of assistance towards fast-tracking or of increased emphasis on value adding and manufacturing. I have heard general comments, and Hon Barry House referred to some encouraging work being done by Jensen Jarrah and that is the kind of activity I would like to see the Government specifically assisting. I believe far more jobs are available in the timber industry than we currently have. There is huge scope to generate further jobs. As legislators and administrators as well as business people in the industry know, generating the jobs takes time and patience and no small measure of good luck.

Hon Derrick Tomlinson: It also requires the markets. There would be limited job opportunities because of the limited opportunities within the market for the creation of the industry.

Hon KIM CHANCE: I am sure the member would agree that market development is a function of planning and good administration.

Hon Derrick Tomlinson: One would hope so, but it is also about the function of the capacity of the consumer to buy.

Hon KIM CHANCE: It is, and we are already large importers of furniture.

Hon Derrick Tomlinson: And large exporters of Jensen Jarrah.

Hon KIM CHANCE: It is a unique product, make no mistake about that. Where do we look to find a government plan to assist in the reopening of Simplot? I am satisfied from what I have heard that the Government is working hard to get Whittakers' plant reopened. I am encouraged by that, but I do not see any movement to get Simplot re-established as a food processor. Why was the downsizing of Western Power and Main Roads allowed to proceed at a cost of 342 jobs in the region when the south west was already clearly facing employment pressure in the private sector? These are all functions of government but the Government seems to be dragging its feet. It has created a situation in which all of the bad news has descended on south west communities after it had given them false hope. It has done too little to show people in the south west that it cares sufficiently about them to be able to present a properly developed plan to secure their future. That is the essential difference between Labor's approach to this issue and the Government's: Labor took a decision to heart and set about designing the mechanisms needed to mitigate the downside of this decision.

[Leave granted for speech to be continued.]

Debate adjourned, on motion by Hon Muriel Patterson.

[Questions without notice taken.]

WORKERS' COMPENSATION AND REHABILITATION AMENDMENT BILL 1997

Motion

HON PETER FOSS (East Metropolitan - Attorney General) [5.31 pm]: I move -

That it be an instruction to the Committee of the Whole House that it have power to consider and adopt any

amendment moved in substitution for Assembly amendment No 3 contained in its Message No 139 if such amendment is otherwise cognate to the matter that is the subject of the Assembly amendment.

My understanding is that because of the question of the relevance of the matters that are to be dealt with, this motion is necessary to enable us to consider the matters that are referred to in that message, and once this motion has been dealt with, we can proceed to the substantive matters that are contained on the Supplementary Notice Paper. I commend the motion to the House.

HON J.A. COWDELL (South West) [5.32 pm]: I do not oppose the motion, but it is worth my commenting on this device. We are embarking upon a course of amendments on amendments on amendments, and I think some members will find it very difficult to follow how we can amend messages which we have half dealt with before and which have then been withdrawn. Given that we have had a prorogation since we last considered this matter, it would have been far better if the Government had presented a new measure rather than try to resuscitate a previous measure in this way and completely re-amend it. I presume, Mr President, that this motion is an admissible instruction to the Committee. It is certainly a very wide ranging instruction to the Committee of the Whole, and one may wonder whether the objects are consistent with the decision of the House at second reading, whether it seeks to replace the previous decision of the House with an alternative scheme or attempts to introduce into the Bill a subject which should properly constitute a distinct measure. I make those comments in passing, not to oppose the measure but to indicate that there is another way in which the House can consider this matter.

The PRESIDENT: Order! Before I put the question, Hon John Cowdell has asked me formally for any advice or ruling with regard to whether this motion is in order. I have considered the motion. It is in order. It is a permissive instruction which, if carried, would enable the Committee to consider amendments of a wider scope than would otherwise be permissible. I should add that any amendment must still be cognate to the purposes of the Bill. The good news for Hon John Cowdell is that on the assumption that he is Chairman of Committees at the time, that decision will be his.

Question put and passed.

The PRESIDENT: Order! We now move into Committee, knowing that we have a permissive instruction to the Committee in the terms that have been outlined.

Assembly's Message

Message from the Assembly notifying that it had disagreed to the Council's amendments Nos 1 and 2, and disagreed to amendment No 3 and substituted a new amendment, further considered

Committee

Resumed from 16 December 1998. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

The CHAIRMAN: Members will recall that the Legislative Council has already resolved that it does not insist on amendments Nos 1 and 2. We are now considering amendment No 3. For the information of members who have Supplementary Notice Paper 9-3, the Attorney General's amendments appear first on that Notice Paper followed by the amendments of Hon Helen Hodgson and Hon Nick Griffiths. We will deal with amendment No 3 clause by clause so that the members who wish to amend a clause may move to do so. Members will have the printed form of the amendments if they go to the relevant section of Supplementary Notice Paper 9-3.

Hon N.D. GRIFFITHS: I will make some general observations with a view to making the debate shorter and hopefully easier for people to follow - and I include myself in that, having seen the crisp Supplementary Notice Paper 9-3. As you, Mr Chairman, have quite properly pointed out, the proposed amendments of the Attorney General are listed first followed by those of Hon Helen Hodgson and then my amendments. I have a number of amendments and those listed under my name are reproduced to include the wording of the relevant part of the Attorney General's amendment but with the amendment that I propose to those words. In some cases there will be deletions and in others additions. The same applies to the amendments under the name of Hon Helen Hodgson. However, in no case is there before the Committee a piece of paper which shows what is proposed by the Attorney General with the amendments proposed by Hon Helen Hodgson and me. Therefore, it will be a matter of dealing with it one by one. In that context, I propose to refer to the part of the amendment of the Attorney General that I am seeking to change making reference - I trust accurately - to the changes which I have proposed and explain to the Committee how that part of the Attorney General's proposed amendment would read if that adjustment were made by reference to the message. I assume that in due course the Attorney General will move his amendments. When he does, I will make a number of general observations and then move through the aspects consecutively with Hon Helen Hodgson when her proposed amendments are reached. In making my general observations, I will probably deal with the reasons for the changes I will be seeking to make.

Hon HELEN HODGSON: I refer to the comments made earlier about the process of dealing with this. I agree that at this stage the only way we will make any sense of this amendment is to go through it clause by clause. However, it would have been more appropriate for the matter to have been addressed as a new Bill. We could have then ensured that the amendments all fitted without destroying the texture of the scheme and the way it is meant to work. I found when working on the drafted amendments that it become very complex and difficult. I note that the Attorney General is probably still at the stage I was at 11 o'clock this morning; that is, of trying to work out where the amendments fit because of the complexities of working with a message following an instruction to the House that it could be handled in this way. The way the Supplementary Notice Paper has been constructed means it incorporates my amendments separately from those of Hon Nick Griffiths and we will need to overlay one lot on top of the other in a way which will make it very difficult and complex to handle in the Chamber.

Hon N.D. Griffiths: It was suggested to me that the three of us will suffer from psychological overlay by the end of the evening.

Hon HELEN HODGSON: I concur with the comments made earlier about a far easier and less painful way of doing this. I do not think this will gain us much time because if everybody had been happy with the process, we could have expedited the Bill's passage through the Chamber. Having said that, the debate has been narrowed to about half a dozen core issues which will arise as we work our way through the message. As we deal with those, we will be able to see what proposals have been made, whether the Government's proposals are acceptable, and how the whole thing fits together. The most logical way to handle this is to go through clause by clause. As it is, I feel for those members who have not been intimately involved in this and are now facing a new Supplementary Notice Paper which is very difficult to follow if one has not been intimately involved in the details of what is taking place. This is not a reflection on any individual; this is a reflection on the process and a suggestion that process has probably not served the Chamber well in terms of ensuring that everybody can be prepared to participate in this debate.

Hon J.A. SCOTT: I concur with the comments made by Hon Helen Hodgson. Some reasonably substantial changes have been made to the Bill through this message, especially with the more recent amendments. That makes it different from the beast we first saw. In that case, it should have been introduced as a separate amendment Bill which would have given members some opportunity to speak holistically about it rather than just in a clause by clause description. However, in so saying, I recognise that with the history and its wish to speed this process, the Government believes this will be a faster process. I do not believe it will be a better process. It may be faster - I am not sure how it will end up - but it is not the better process.

Hon PETER FOSS: I move -

That the Legislative Council resolve to inform the Legislative Assembly of the proposed following new amendment as alternative to amendment No 3 -

“ Amendment No. 3

Clause 32, page 19, line 19 to page 20, line 10 - To delete the clause and substitute the following clause -

“ Amendments about awarding of damages and related matters (sections 5, 61, 84ZH, 84ZR and 192, Part IV Division 2 and Schedule 1), and saving and transitional provisions

32. (1) Section 5(1) of the principal Act is amended by deleting the definition of “prescribed amount” and substituting the following definition —

“ **“prescribed amount”** means —

(a) in relation to the financial year ending on 30 June 2000, \$119 048;

Note: This is the nearest whole number of dollars to the amount obtained by multiplying by 208 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August and November 1998 and February 1999.

(b) in relation to any subsequent financial year, the nearest whole number of dollars to —

(i) the amount obtained by varying the prescribed amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the “WCI”) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or

(ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the prescribed amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars; ”.

(2) Section 61(7) of the principal Act is amended by inserting after paragraph (b) the following —

“ (ba) if section 93E(7) applies to the payment of compensation; or ”.

- (3) Section 93A of the principal Act is amended by deleting the definitions of “Amount A”, “Amount B”, “future pecuniary loss” and “non-pecuniary loss” and inserting, in the appropriate alphabetical positions, the following definitions —

“ **“annual average weekly earnings amount”** means —

- (a) in relation to the financial year ending on 30 June 2000, \$29 762;

Note: This is the nearest whole number of dollars to the amount obtained by multiplying by 52 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August and November 1998 and February 1999.

- (b) in relation to any subsequent financial year, the nearest whole number of dollars to —

- (i) the amount obtained by varying the annual average weekly earnings amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the “WCI”) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or

- (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the annual average weekly earnings amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars;

“prescribed level”, in relation to the degree of disability of a worker, means —

- (a) the degree of disability that would, if compensation were to be paid in accordance with Schedule 2, give rise to a payment equal to the annual average weekly earnings amount; or

- (b) if a lesser degree of disability is prescribed by regulations, that lesser degree.”.

- (4) After section 93B(3) of the principal Act the following subsection is inserted —

“ (3a) This Division does not apply to the awarding of damages if the disability results in the death of the worker.”.

- (5) Sections 93D, 93E and 93F of the principal Act are repealed and the following sections are substituted —

“ **Assessment of disability**

93D. (1) In this section —

“relevant level”, in relation to a question as to the degree of disability of the worker, means —

- (a) if the question arises for the purposes of section 93E(3)(a), (8) or (11), a degree of disability of 30%; or
- (b) if the question arises for the purposes of section 93E(4), the prescribed level of disability.

(2) For the purposes of section 93E, the degree of disability of the worker is to be assessed —

- (a) so far as Schedule 2 provides for such a disability, as a percentage equal to —

- (i) if only one item of that Schedule applies to the disability, the percentage of the prescribed amount provided for by that item, as read with section 25; or
- (ii) if 2 or more items of that Schedule apply to the disability, the sum of the percentages of the prescribed amount provided for by those items, as read with section 25;
- (b) to the extent, if any, that paragraph (a) does not apply, as the degree of permanent impairment assessed in accordance with the AMA Guides;
- (c) to the extent, if any, that neither paragraph (a) nor (b) applies, in accordance with the regulations,

or if more than one of paragraphs (a), (b) and (c) applies, as the cumulative sum of the percentages assessed in accordance with those paragraphs, but no regard is to be had to any mental ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker.

(3) If section 25 applies, the percentage under subsection (2)(a) is calculated in accordance with the formula —

$$\frac{PD}{100} \times TD$$

Where —

PD is the percentage of the diminution of full efficient use.

TD is the relevant percentage set out in Column 2 of Schedule 2.

Example 1

A worker loses 40% of the full efficient use of one eye. The percentage under subsection (2)(a) is —

$$\frac{40}{100} \times 50 = 20$$

Example 2

A worker loses the little finger of the left hand, 30% of the full efficient use of one eye and 10% of the full efficient use of the right arm below the elbow. The percentage under subsection (2)(a) is —

$$6 + \left[\frac{30}{100} \times 50 \right] + \left[\frac{10}{100} \times 80 \right] = 6 + 15 + 8 = 29$$

(4) If the worker and the employer cannot agree on whether the degree of disability is not less than the relevant level, the worker may, subject to subsection (5), refer the question to the Director.

(5) A question can only be referred under subsection (4) if the worker produces to the Director medical evidence from a medical practitioner indicating that, in the medical practitioner's opinion, the degree of disability is not less than the relevant level.

(6) As soon as practicable after receiving a referral under subsection (4) the Director is to notify the employer in accordance with the regulations.

(7) If within 21 days after being notified under subsection (6) the employer notifies the Director in accordance with the regulations that the employer considers that the degree of disability is less than the relevant level, a dispute arises for the purposes of Part IIIA.

(8) The Director is to consider the dispute in consultation with the parties.

(9) Except in a case to which subsection (10) applies, if the dispute is not resolved by agreement the Director is to refer the question for resolution under the provisions of Part IIIA (other than Division 2).

(10) If the dispute relates to a disability mentioned in section 33, 34 or 35, the dispute is to be referred to a medical panel for determination as described in section 36 and so far as applicable this Act applies in relation to the reference as if it were a reference under section 36 except that the only question to be considered and determined on the reference is the question that was referred.

(11) Unless notification is given by the employer under subsection (7), the employer is to be regarded as having agreed that the degree of disability is not less than the relevant level.

Restrictions on awarding of damages and payment of compensation

93E. (1) In this section —

“**agreed**” means agreed between the worker and the employer, whether under section 93D(8) or otherwise;

“**degree of disability**” means the degree of disability of the worker assessed in accordance with section 93D(2);

“**determined**” means determined or decided on a reference under section 93D(9) or (10);

“**termination day**” means the day that is 6 months after the day on which weekly payments commenced.

(2) Weekly payments of compensation ordered by a dispute resolution body to commence are to be regarded for the purposes of this section as commencing or having commenced on -

- (a) the first day of the period in relation to which weekly payments are ordered to be made; or
- (b) the day that is 5 months (or such shorter period as is prescribed) before the day on which the order is made,

whichever is later.

(3) Damages can only be awarded if —

- (a) it is agreed or determined that the degree of disability is not less than 30% and that agreement or determination is recorded in accordance with the regulations; or
- (b) the worker has a significant disability and elects, in the prescribed manner, to retain the right to seek damages and the election is registered in accordance with the regulations.

(4) For the purposes of subsection (3)(b) the worker has a significant disability if it is agreed or determined that the degree of disability is not less than the prescribed level and that agreement or determination is recorded in accordance with the regulations.

(5) Subject to subsection (6), if weekly payments of compensation in respect of the disability have commenced an election cannot be made under subsection (3)(b) after the termination day.

(6) Despite subsection (5), if —

- (a) medical evidence complying with section 93D(5) was produced to the Director not less than 21 days before the termination day; and
- (b) a dispute arising under section 93D(7) has not been resolved before the termination day,

an election can be made under subsection (3)(b) within 7 days after the dispute is resolved.

(7) Subject to subsections (8) and (10), if an election has been made under subsection (3)(b) compensation under this Act is not payable in respect of the disability, or any recurrence, aggravation or acceleration of it, in relation to

any period after the day on which the election is registered or any expenses incurred during such a period.

(8) Subsection (7) ceases to apply if, after the election is made, it is agreed or determined that the degree of disability is 30% or more and that agreement or determination is recorded in accordance with the regulations.

(9) Subsection (8) relates only to the degree of the original disability, and any recurrence, aggravation or acceleration of it is not to be taken into account.

(10) If an agreement or determination under subsection (8) is recorded, the worker may apply for any compensation which, but for subsection (7), would have been payable under this Act in relation to a relevant period or expenses incurred during a relevant period.

(11) In subsection (10) —

“**relevant period**” means any period —

- (a) which is after the day on which the election is registered and before the agreement or determination under subsection (8) is recorded; and
- (b) during which the degree of disability is agreed or determined to have been not less than 30%.

(12) If the liability for an incapacity resulting from the disability has been redeemed under section 67, damages are not to be awarded in respect of the disability.

Restrictions on awarding and amount of damages if disability less than 30%

93F. (1) Unless an agreement or determination that the degree of disability of the worker is not less than 30% is recorded for the purposes of section 93E —

- (a) the amount of damages to be awarded is to be a proportion, determined according to the severity of the disability, of the maximum amount that may be awarded; and
- (b) the maximum amount of damages that may be awarded is a sum equal to twice the prescribed amount, but the maximum amount may be awarded only in a most extreme case of a disability of less than 30% in degree.

(2) In assessing the severity of the disability for the purposes of subsection (1), no regard is to be had to any mental ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker.

(3) Subsection (1) has effect in respect of the amount of a judgment before the operation of section 92(b).

(4) No entitlement to damages is created by subsection (1) and that subsection is subject to any other law that prevents or limits the awarding of damages.

(5) If —

- (a) section 93E(3) does not allow damages to be awarded in respect of the disability; or
- (b) damages in respect of the disability have been awarded in accordance with subsection (1),

the employer is not liable to make any contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (the “**Contribution Act**”) in respect of damages awarded against another person in relation to the disability.

(6) If section 93E(3)(b) allows damages to be awarded in respect of the disability —

- (a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against other persons in relation to the disability are not to exceed the damages that could have been awarded in accordance with subsection (1); and
- (b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against another person in relation to the disability, the amount of damages that may be awarded in accordance with subsection (1) is reduced by the amount of that contribution.

(7) This section applies regardless of whether the damages are awarded against one or several employers.

(8) An issue as to the amount of damages that may be awarded, is to be determined by reference to the prescribed amount as in effect on the date on which the determination is made.

Regulations

93G. Regulations may provide for —

- (a) the notification to be given to workers of the effect of the provisions of this Division;
- (b) the form and lodgment of elections under section 93E(3)(b);
- (c) the registration by the Director of elections under section 93E(3)(b) if an agreement or determination for the purposes of section 93E(4) has been recorded, and the power of the Director to refuse to register an election if not satisfied that the worker has been properly advised of the consequences of the election;
- (d) the recording by the Director of an agreement or determination under section 93E as to the degree of disability of a worker;
- (e) the way in which applications under section 93E(10) are to be made and dealt with. ”.

(6) In subsections (7) and (8) —

“amended provisions” means Part IV Division 2 of the principal Act as amended by this section;

“assent day” means the day on which this Act receives the Royal Assent;

“former provisions” means Part IV Division 2 of the principal Act before it was amended by this section.

(7) The amended provisions do not affect the awarding of damages in proceedings —

- (a) commenced before the assent day; or
- (b) for the commencement of which the District Court gave leave under the former provisions before the assent day,

and the former provisions continue to apply in relation to those proceedings.

(8) If weekly payments of compensation in respect of a disability -

- (a) commenced before the assent day; or
- (b) were ordered by a dispute resolution body to commence before the assent day,

and the termination day referred to in section 93E of the amended provisions would be within 3 months after the assent day, the termination day is postponed by this subsection so that it is the day that is 3 months after the assent day.

(9) Section 84ZH(2) of the principal Act is inserting after “that loss” the following —

“ , and as to the degree of disability assessed in accordance with section 93D(2) ”.

(10) Section 84ZR(2) of the principal Act is inserting after “Schedule 2” the following —

“ and as to the degree of disability assessed in accordance with section 93D(2) ”.

(11) Before Part XIII of the principal Act the following section is inserted —

“ **Publication of prescribed amount and average weekly earnings**

193. (1) On or before the 1 July on which a financial year begins the Minister is to publish a notice in the *Gazette* setting out, in relation to the financial year —

- (a) the prescribed amount;
- (b) the annual average weekly earnings amount for the purposes of section 93A; and
- (c) Amount C for the purposes of Schedule 1 clause 11.

(2) Publication under subsection (1) is for public information only and the operation of this Act is not affected by a failure to publish or a delay or error in publication. ”.

(12) Schedule 1 clause 7(4) to the principal Act is amended by deleting “the items referred to in clause 11(3), (4) and (5)” and substituting the following —

“ overtime or any bonus or allowance ”.

(13) Schedule 1 clauses 11 and 11A to the principal Act are deleted and the following clause is substituted —

“ **Weekly earnings**

11. (1) Subject to clauses 12 to 16, for the purposes of this Schedule “**weekly earnings**” has the meaning given by this clause.

(2) In this Schedule —

“**Amount A**” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus —

- (a) any over award or service payments paid on a regular basis as part of the worker’s earnings;
- (b) overtime; and
- (c) any bonus or allowance;

“**Amount Aa**” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus any over award or service payments paid on a regular basis as part of the worker’s earnings;

“**Amount B**” means the worker’s average weekly earnings (including overtime and any bonus or allowance)

over the period of one year ending on the day before the disability occurs in the employment that the worker is in when the disability occurs or, if the worker is then in more than one employment at the end of that period, the sum of the average weekly earnings (including overtime and any bonus or allowance) in each employment, but if the worker has been in an employment for a period of less than one year, the worker's average weekly earnings in that employment are to be determined over that lesser period;

“Amount C” means, during a financial year —

- (a) the amount obtained by multiplying by 1.5 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August, November and February preceding the financial year; or
- (b) if any relevant amount of earnings is not published, the amount obtained by varying Amount C for the preceding financial year in accordance with the regulations;

Note: During the financial year ending on 30 June 2000 Amount C is \$852.52.

“Amount D” means the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation;

“Amount E” means the minimum weekly earnings to which the worker would have been entitled, at the time of the incapacity, under the *Minimum Conditions of Employment Act 1993*;

“bonus or allowance” means any bonus or incentive, shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance;

“earnings” includes wages, salary and other remuneration;

“overtime” means any payment for the hours in excess of the number of ordinary hours which constitute a week's work.

(3) In the case of a worker whose earnings are prescribed by an industrial award when the disability occurs, weekly earnings are —

- (a) for the 1st to the 4th weekly payments: Amount A but not more than Amount C or less than Amount D;
- (b) for weekly payments after the 4th: Amount Aa, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount D.

(4) In the case of a worker to whom subclause (3) does not apply, weekly earnings are —

- (a) for the 1st to the 4th weekly payments: Amount B but not more than Amount C or less than Amount E;
- (b) for weekly payments after the 4th: 85% of Amount B, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount E.

(5) Subject to subclause (6), the references in the definition of Amount A in subclause (2) to overtime and any bonus or allowance are references to those items averaged over the period of 13 weeks ending at the time of the incapacity.

(6) If the worker was totally or partially incapacitated from working or for any other reason did not work during any part of the period of 13 weeks mentioned in subclause (5), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.

(7) Regulations made for the purposes of subsection (3)(b) or (4)(b) may provide for lesser amounts (but not less than Amount D or E, whichever is applicable) to be determined in respect of weekly payments after the 4th, 12th, 26th or 52nd, or after such other numbers of weekly payments as are prescribed. ”.

(14) Schedule 1 clause 12 to the principal Act is amended by deleting “11(1) or (2)” and substituting the following —

“ 11(3) ”.

(15) Schedule 1 clause 13 to the principal Act is amended by deleting “11(1) or (2)” and substituting the following —

“ 11(3) ”.

(16) Schedule 1 clause 13(1) to the principal Act is amended by deleting “or agreement”.

(17) Schedule 1 clause 13(2) to the principal Act is amended by deleting “the exclusions referred to in clause 11(3) and (4)” and substituting the following —

“ overtime or any bonus or allowance ”.

(18) Schedule 1 clause 16(1) to the principal Act is amended by deleting “11(5)” and substituting the following —

“ 11(4) ”.

(19) Schedule 1 clauses 12, 13(2) and 16(1) and (2) to the principal Act are amended by deleting “or industrial agreement”.

(20) In subsection (21) —

“**amended provisions**” means Schedule 1 to the principal Act as amended by this section;

“**former provisions**” means Schedule 1 to the principal Act before it was amended by this section.

(21) If weekly payments commenced before the coming into operation of this section —

- (a) the amended provisions do not apply to the first 4 weekly payments after the coming into operation of this section and the former provisions continue to apply to those weekly payments; and
- (b) for the purposes of the amended provisions the 5th weekly payment after the coming into operation of this section is to be regarded as the 5th weekly payment and so on. ”.

Hon N.D. GRIFFITHS: When the Attorney General moved the amendment, for the record I thought he would set out precisely what that it means. This is the first occasion on which the Government has had an obligation formally to put its position on these matters. The Attorney General should explain what is proposed to be achieved by this amendment. With respect to each particular, he should explain the saving that will be achieved. He should explain the impact on premiums

of each measure. He should say whether this guarantees a stabilisation in the system or otherwise and, if it does not, the extent to which it does not. He should explain whether, or otherwise, this measure is in accord with the report of the Pearson Premium Rates Committee. We know it is not. He should explain why it deviates from that report and where it deviates from that report. In that regard, he should also explain the ramifications it has on premiums. He should explain precisely on what actuarial basis he is relying. He should confirm that the Government is relying on the actuarial basis of the Pearson report. If it is not, he should say where the Government differs, and why. If the Government differs from the actuarial basis of the report, he should provide to this Chamber the documents setting out the Government's point of view.

Shortly the proceedings will be suspended for the dinner break, and I will have an hour and a half in which to look at those documents. These matters are very important. We are dealing with a workers compensation system with a common law impact, which must be stable, sustained, which has affordable premiums and is fair to all concerned, particularly those who find themselves injured and, in many cases, very seriously injured. The Attorney General should explain the answers to these questions not just for the record, but for the benefit of all members who are to consider what is being proposed. At the moment, an examination of Supplementary Notice Paper 9-3 will show that when matters are narrowed down, there is very little difference in the precise matters being debated between that proposed by the Government and that being counterproposed by the Opposition and the Australian Democrats. Those differences are significant, because we are of the view that what we are proposing relies on the actuarial basis of the Pearson report and our countermeasure will involve a greater degree of savings and, overall, will provide a greater degree of fairness than that being proposed by the Government, and we trust it will not impact on premiums. We are proposing stability, sustainability and fairness. We are clearly relying on the Pearson report in terms of the actuarial finding and, on the available evidence, our proposal should work to provide that stability, sustainability and fairness.

I must make a number of points in looking at the matter overall. Although those general observations at the commencement may seem relatively lengthy, they will shorten the debate. I will explain the reasons I have certain matters under my name on the Supplementary Notice Paper, which, taken in isolation, would be very difficult to understand. However, when taken together, they can be readily understood. I have posed a number of questions to the Attorney General. It is his duty to answer them.

Hon Peter Foss: You sit down, and I will do it.

Hon N.D. GRIFFITHS: I look forward to the explanation of the Attorney General, which I hope will be a very full and reasoned one. We need the figures and the confirmation with respect to the actuarial matters.

Hon PETER FOSS: I have just inquired and I understand the Pearson report has not been tabled in this place, but in the other House. I am sure every member in here has read it keenly. For the record of this place, I will ensure we get a copy of it, and I will table it. I do not know whether I can do it today, but I will ensure it is on the record. It is important. The member has referred to the Pearson report. These amendments carry out the Pearson report's recommendations so far as they relate to statutory benefits and common law. There are other matters, but not in that part of the scheme, which will be dealt with at a later stage. Generally speaking, obviously the intent is to try to halt the incredible increases that have taken place in workers compensation premiums. The actuarial estimates of these combined measures is a saving of 9.7 per cent, a total of \$70m, in premiums. Some of the basic materials contained in the report include that there should be an election six months after injury, that there should be a cap of \$238 000, and a threshold of 25 per cent. It increases the prescribed amount to four times the annual weekly earnings; that is, \$119 048. Those are the principal elements of the changes. They form the significant part we must deal with, and the elements we will discuss during this debate.

Obviously they constitute a package and any alteration to that package can bring about changes in the overall result. The Government has been trying to look at the amendments proposed by the Opposition and the Australian Democrats to get an actuarial estimate on each of those. They are not merely amendments, but are matters that will have an impact on the actuarial estimate.

Hon Kim Chance: Is that in terms of the four areas?

Hon N.D. Griffiths: Pearson makes reference to them.

Hon PETER FOSS: For the sake of completeness, rather than relying on the fact that the report has been tabled in the other House, I will get a copy of it and will table it here so that it will be available in this place. I draw the attention of members to page 94. I am sure a number of members have a copy of this report, but the Chamber does not.

Hon N.D. Griffiths: I want to know what are the savings with respect to the proposals that the Government is putting before the Committee by way of amendments to the message. I have read the Pearson report and have page 94 open in front of me. As we all know, the Attorney General is not exactly proposing what is contained in the Pearson report.

Hon PETER FOSS: We think we are, so far as the statutory benefits and the common law are concerned.

Hon N.D. Griffiths: Do you believe you are carrying out the Pearson recommendations insofar as the common law and statutory benefits are concerned?

Hon PETER FOSS: Yes. The elements referred to on page 94 of the Pearson report are contained in amendment No 3. Each of the estimates of its effect is contained there. As I said, I will get hold of a copy of the report, although I am not sure how soon I can do that. I know members have a copy of the report available to them. I will ensure the Chamber has a copy available to it, so that we can refer to it as a tabled document in this Chamber, rather than referring generally to the Pearson report.

Hon N.D. Griffiths: Do you confirm that you are relying on the actuarial basis of the Pearson report, or are you relying on another basis? If so, what is that?

Hon PETER FOSS: The Pearson report relies on other actuarial bases.

Hon N.D. Griffiths: I think it is the same actuarial basis.

Hon PETER FOSS: I think it is the one from PricewaterhouseCoopers.

Sitting suspended from 6.00 to 7.30 pm

Hon LJILJANNA RAVLICH: I want to put on record my disappointment that this legislation has been in the pipeline for so long and, more importantly, that it has been changed so many times. We have before us further amendments to this legislation. It is a bit rich of the Government, once again, to put forward substantial legislative changes a matter of hours before they are to be discussed. The bottom line is that we have had amendment after amendment and the legislation has been reworked time and again. This is key legislation that will have some major impacts not only on the rights of workers but also on small business, the insurance industry and industry generally. The Government has gone about this process in a sloppy manner. I am amazed the Government has not given more attention to the detail which is required to bring good legislation before this place. The Government's efforts have been nowhere near good enough. At best the amendments can be described as a fairly patchy approach to a key policy area.

Hon PETER FOSS: I welcome Hon Ljiljanna Ravlich to this debate. The reason we have a new Supplementary Notice Paper today is that the Government has made further amendments - our amendments have been before the Chamber for three weeks or more. These amendments have been put on the Notice Paper by Hon Helen Hodgson and Hon Nick Griffiths. If Hon Ljiljanna Ravlich wanted to stick to one proposition, perhaps she should accept the Government's amendments and ignore those of Hon Nick Griffiths and Hon Helen Hodgson. However, I suspect that is not what has been decided upon by her party. It is nice to have Hon Ljiljanna Ravlich here, and I am pleased that she is following the debate. Her contribution is greatly valued.

Hon J.A. SCOTT: I agree with the remarks of Hon Nick Griffiths about the need for the Government to point out the savings that will result from this amendment and other amendments that we will debate tonight. I have been given actuarial figures, which I am pleased to have. We are aware that community concern relates not only to the premium price increases but also to the erosion of human rights - if one considers an action at common law to be a human right. We need to understand how each of these amendments will save the system money and from where that money will come.

Hon Nick Griffiths omitted to mention who will miss out as a result of a reduction in insurance company premiums. That is very important because, as we have seen from the Pearson review of the workers compensation system and the inquiry by the Legislation Committee into the workers compensation legislation which considered a range of options and reasons for the blowout and possible solutions to the cost rises that have occurred, what is striking about this amendment and all the other amendments that have been put before the Chamber by the Government is that it is narrow in focus and it does not deal with a number of areas such as the price savings for the system. I am disappointed that this amendment and all the other amendments put forward by the Government have not dealt with those other areas of cost savings; rather we have been given a nebulous promise that we will look at those sometime in the future. Those inquiries found that the people who will pay for this will be those people who have a reduced right at the end of the process - the injured workers. I cannot remember one person who appeared before the Legislation Committee who said the price increases were the fault of the injured workers - except in the case of people who might be defrauding the system. I am very disappointed that much wider efforts have not been made on possible savings to be achieved through amendments relating to medical costs, more open redemptions and so on. However, that does not really fit into this provision.

Hon Peter Foss: We did redemptions last week - remember?

Hon J.A. SCOTT: It is hard to relate to this area. It seems fairly clear that the most vulnerable people in our society are asked to pay. The minister must point out with each provision the savings involved and from where they will come. That is the key. I hope some thought will be given to the human impact; namely, the effect on the people at the end of the process. I place those comments on record before we consider these amendments and the message. We are in a fairly difficult position as we started with the message, and have not had ample opportunity to express our views.

Hon N.D. GRIFFITHS: This debate tonight may last a little while, not because the Opposition will filibuster. Such claims have been stated before, but they relate to actions between members of political parties rather than between the public in general. The Australian Labor Party has agreed to the proposition that the House sit beyond 10 o'clock until this matter is completed. We are dealing in committee with a message. However, the Supplementary Notice Paper relating to this message has grown to 34 pages, so consideration will take some time. The length of consideration will not change in any way how Western Australia will be governed nor will it affect anyone's pocketbook by a sum approaching one cent. The matter will be resolved tonight unless the Government decides otherwise. We agreed to sit until midnight, dawn or, dare I say, Christmas Day as a continuation of today's sitting to ensure that this Chamber makes a decision.

I trust all concerned will forgive me if I take a little longer than normal in dealing with a matter in committee. This is almost a unique situation: The message presents amendments which are substantially different from this Bill of some vintage.

The Attorney General made a number of points, and I foreshadow that I will also make a number of general points. In doing so, I hope not to spend long dealing with specific amendments - I indicated how I intend to deal with specific amendments prior to the dinner suspension.

My colleague Hon Ljiljanna Ravlich made an observation, in response to which the Attorney General said that he had had his amendments for some time. That is not my recollection of the matter. Any examination of the Supplementary Notice Paper will disclose my recollection to be correct. This is Supplementary Notice Paper No 9-3. The first Supplementary Notice Paper on this message was No 9, followed by 9-2 and 9-3. Supplementary Notice Paper No 9-3 was delivered to the Chamber around 5.20 pm today. It is difficult to follow the amendments, and that is why before dinner we went through the foreshadowed procedures outlined.

Supplementary Notice Paper No 9-2 emerged about a week ago; it contained amendments, some in the name of the Attorney General, but most in the name of Hon Helen Hodgson. As late as less than a week ago some new government amendments were placed on the paper. Supplementary Notice Paper No 9 is dated Thursday, 19 August, which was four sitting days ago. It is not a matter which has been around for a substantial period, as the Attorney General suggested.

Hon Peter Foss: The only changes were those requested by you to address difficulties.

Hon N.D. GRIFFITHS: I am always pleased when the Government makes adjustments requested by the Opposition to make the system fairer. Supplementary Notice Paper 9-2 was presented less than a week ago.

Two major concerns confront our community: First, and of extreme importance, is the unprecedented continual rise in premiums experienced over recent years; and second, the very unfair treatment of injured workers foisted on our community post-1993, which continues today. Our task as legislators is to deal with those issues. Hon Jim Scott properly foreshadowed what should have occurred.

The Pearson report has to a degree also dealt with this matter. I refer to its executive summary on pages vii to x, which refers to the so-called cost driver of weekly payment, common law damages and medical and other treatment costs. It makes reference to the weekly payments and what it considers to be a weakness in the 1993 legislation; namely, not foreshadowing the impact on weekly payments of structural and compositional changes in the labour market and increases in wages as a trade-off in work conditions, which is not an improvement in living standards. Therefore, we had the nominal view of the world.

The Pearson report refers to common law costs, which are purportedly dealt with in this legislation, and to medical and other treatment costs, which are not referred to in the legislation. The issue of redemptions was dealt with last week, and history will record that the Australian Labor Party has pushed for that for a number of years. It certainly assisted the Government with the relatively expedited passage of that matter. One need only recall the expedited committee debate on redemptions. Again, miscellaneous costs have increased by 13.1 per cent over the past four years.

A number of other matters are referred to in that report. Those matters are not dealt with, and are not purported to be dealt with, in the Government's proposed amendments contained in the message before us. When it comes to the crunch, this is not an employee-friendly Government, and it is using some of the most vulnerable people in our community to pay for its mistakes. At the heart of this matter we have a serious error by the Government in 1993 and failures to rectify that error post-1993. I note Hon Jim Scott's observation that in my comments I did not mention who would pay. However, I was making procedural comments previously in seeking information from the Attorney General, some of which has been provided.

This has been referred to as a package, and it was brought before the Chamber prior to its adjournment in August, following a ministerial statement by the Attorney General. I trust that he will recall his ministerial statement, in which he said -

It is my intention to recommend to the House that it reject amendment No 3 of Legislative Assembly Message No 139 and replace it with a counter proposal based on the recommendations of the report of the review of the Western Australia workers compensation system chaired by Mr Des Pearson which related to common law and benefits. The amendments contained in the proposal will be incorporated in the Supplementary Notice Paper -

We are told that is what we are dealing with. It continues -

- and will address the issue of access to common law which will remain unfettered for injuries of greater than 30 per cent, but subject to an election, threshold and cap for those workers with disabilities of less than that level.

I will return to the issues of election, threshold and cap shortly. However, the essential point of that ministerial statement was that the counter proposal was based on the recommendations of the report of the review, to which I refer as the Pearson report, and to which I and others have referred previously.

Before we adjourned the Attorney General said, I think, on more than one occasion that his amendment was designed to implement the Pearson report recommendations as they relate to statutory matters and common law. Pearson's report is yet to be tabled in the House. However, that does not matter because we all have copies.

Hon Peter Foss: As soon as it is available I will table it.

Hon N.D. GRIFFITHS: That is not a problem. Pearson's report is dated 30 June 1999. It was presented by the chairman Mr Pearson, Mr Brendan McCarthy and Mr Robert Guthrie, who are the people who carried out the review. I understand why the Attorney made the comment that what he was proposing implemented the Pearson report as far as it relates to statutory matters and common law, because members of Parliament were provided with a report by the Minister for Labour Relations, with a nice covering letter, dated 14 July. Some of us have read her media release of 6 June 1999, wherein great reliance was placed on the recommendations of the Pearson review. The media release deals with that and promises new legislation, that being the amendment contained in the message.

Following on from the review was an addendum. However, that is not part of the review, and any proposition to the contrary would be false. What the message represents is not the Pearson review insofar as it relates to statutory matters and common law. It is a view, but it is not the Pearson review. Having read out the names of those who carried out the review, I refer to a media release of 7 September 1999 from Mr Guthrie. I should read it out because it gives the lie to the proposition that the Attorney, I think uncomfortably but no doubt with a sense of bona fides, relied upon when he made his assertion. The media release, which is headed "Academic Critical of Government's Proposed Workers Compensation Legislation", states -

A Senior Lecturer in Industrial Law at Curtin Business School, and a member of the Pearson Committee on Workers Compensation, said today that the Government's proposed workers compensation legislation does not reflect the recommendations of the Pearson Committee Report.

Mr Rob Guthrie said that the provisions relating to the election of common law rights have been extended well beyond the proposals of the Report. The provisions which the Government has now included in effect almost abolish common law rights and that was not the intention of the recommendations, he said.

The Government released the report to all major stakeholders when it was completed at the end of June this year. Mr Guthrie said that some of the feedback has been adopted by the Government and tacked onto the Bill.

"Tacked" is an interesting word because what the Government is doing is somewhat tacky. It continues -

Mr Guthrie said that the Minister, Mrs Cheryl Edwardes, has been very selective in the manner that she has adopted the comments of the stakeholders.

"Mrs Edwardes appears to have only taken notice of employer and insurer interests", Mr Guthrie said. "A number of submissions made strong arguments for easing some of the restrictions on common law rights and these appear to have been ignored."

"The report attempted to consider all the interests of the parties, including workers, and the Bill before Parliament at present has tilted that balance in favour of employers and insurers. It appears that this Bill is being used as a negotiating tool, to try to overcome some of the impediments that have been around since the last round of discussions. This is negotiation by legislation."

That was the media statement of a member of that committee. It considerably tests the credibility of the Government when the Government asserts that it is on all fours with the Pearson review with respect to common law. One need not rely only on Mr Guthrie's statement, as one can look at the content of the proposed amendments to the message and look at the Pearson committee's recommendations. We will go through the message this evening, how late I do not know and I do not think it matters; what is important is what needs to be said is said. Recommendation 1 - not recommendation 29 which is the last, it is nothing hidden away - states -

All injured workers to have the flexibility to pursue common law damages if they believe they can prove that the employer, its agents or employees were negligent.

Recommendation 2 states -

There be no monetary threshold, test or leave of the District Court required to seek damages outside the statutory system (s.93D and related sections be repealed).

I do not need to go through each and every one of the recommendations of the Pearson committee. I would have thought it was patently obvious to anyone with any understanding whatsoever that those recommendations relate to common law, that they are inconsistent with what is contained in the amendments to the message and, dare I say it again, they are inconsistent with the observations of the Attorney General before we suspended. This system is in a mess. It is in a mess because it has been mismanaged. It has been badly managed and it is obvious that it has been badly managed for a number of years. The Government has known about it. It has brought proposals forward but not proceeded with them for a long time. We could start with the Government's Bill in 1995. We dealt with the redemptions issue last week and I do not want to go over it again. Even the Government now acknowledges that redemptions need to be fixed up. Of course, the Bill the Chamber so gleefully passed last week is dependent on the other matters before it can be enacted and is yet to proceed through the other place - I trust it will proceed through the other place in due course if reason prevails. However, Hon Ljiljanna Ravlich made observations about how the Government had managed the matter and she got to the substance of it - mismanagement, recognition of mismanagement and delay in fixing it up. One need only look at one instance; that is, the strange method of proceeding last June. The matter was dealt with quite properly by the Standing Committee on Legislation of this Chamber.

Hon Peter Foss: You ripped the guts out of it; that's what happened.

Hon N.D. GRIFFITHS: The Attorney General interjected and said we ripped the guts out of it. Last June, this Chamber made a decision to refer the matter to the Standing Committee on Legislation, a respected committee, which deliberated on the matter and brought forward a constructive report. In June last year, the matter went through the Legislative Assembly in the late hours by the usual tactical force of numbers manoeuvring that occurs in the other place, without proper notice, without allowing time for proper debate and without time for informed comment to be received from people with a concern about what was happening. When the Bill arrived in the Legislative Council late in the session, the Opposition sought the agreement of the Chamber to refer the matter to the Legislation Committee comprised of well-respected members of this Chamber. I am not making a cheap political point in saying this, but the Government has, and had at that time, a majority on the Legislation Committee. However, the committee does not operate on a political basis, so I am not having a go at the

Legislation Committee. It is grossly inappropriate to suggest that that manoeuvre involved ripping the guts out of the measure.

Eventually the matter came back from the relevant minister, the Minister for Labour Relations, with lots of fanfare. In a media release dated 18 November 1998, the minister said that the matter would be reviewed, that she wanted the system to be reviewed and in fact it was urgent that the system be reviewed. The minister stated -

"I have requested the review as a matter of urgency to examine Western Australia's workers' compensation system.
...

She continued -

"The review will commence next month -

This was dated 18 November -

- and is expected to be completed by February next year.

"A report will be provided to the Government by the end of March, with a view to having changes ready for the 1999 Spring session of Parliament.

The report was to be completed by February this year and provided by the end of March but the review did not commence until March. That is this minister's sense of urgency. The review did not commence until the end of March so when people talk about delay, leaving premium payers out to dry and the passage of time, this Government has a lot to answer for in terms of its incompetence. It is true that the issue came before this Chamber in December 1998. Prior to it coming before this Chamber, we had a Supplementary Notice Paper. I have explained to members how Supplementary Notice Papers are numbered. We had Supplementary Notice Paper No 11 which was dated 18 November. Members need to remember that the Government always has control of the Notice Paper; it decides when matters will come on. Supplementary Notice Paper No 11 was dated 18 November 1998.

Hon Ljiljanna Ravlich: It can't have been a high priority.

Hon N.D. GRIFFITHS: This mob is very decisive! We had Supplementary Notice Paper Nos 11-2 dated 26 November 1998, 11-3 dated 7 December 1998, and 11-4 dated 10 December 1998.

Hon Ljiljanna Ravlich: They couldn't make up their minds.

Hon N.D. GRIFFITHS: We put a few amendments on the Notice Paper. The member is right, those opposite could not make up their minds. Eventually we dealt with Supplementary Notice Paper 11-5, dated 10 December 1998. There was a bit of toing and froing with respect to that. A true reading of history will show that, although there were disagreements, in terms of a willingness and a preparedness to compromise, Labor gave away quite a bit. We sacrificed quite a bit of fairness to look after premiums. We tried to redress the balance very seriously. When the matter was debated last December, the Government spat the dummy, said that it was all or nothing and that if we did not agree with it, that was it - and it pulled it off the Notice Paper. We are back here in September, with this message coming on for debate today.

Hon Peter Foss: What about when you rejected what was agreed to by the TLC? You could have agreed to that then, but you did not.

Hon N.D. GRIFFITHS: The Australian Labor Party was, and remains, very concerned indeed to have a stable, sustainable and fair system. If the Attorney General had the same concerns, this system would not be in the mess it is in now.

Several members interjected.

The CHAIRMAN: Order! Only one member has the call, and that is Hon Nick Griffiths.

Hon N.D. GRIFFITHS: I am trying not to raise my voice, Mr Chairman. The Australian Labor Party has at all times been concerned to have a sustainable, stable and fair system of workers compensation, and it has always been very important to us that premiums levels remain -

Point of Order

Hon PETER FOSS: We have heard a lot this during debate on a previous Bill that dealt with the ability to redeem. I had hoped that after the grandstanding on that Bill, we would need it again on this Bill.

Several members interjected.

The CHAIRMAN: Order! If other members wish to raise a point of order, they can seek the call.

Hon PETER FOSS: We are now dealing with a motion to delete in the current definition the prescribed amount in subsection (1) and substitute a new one. I believe that we have now reached a stage in committee where we should be dealing with the particular provisions, not having more general comment. I have sat here for a fair bit of time hoping we would get around to dealing with the amendment. I do not want to have to stand up and reply to this nonsense. I think we should get on to dealing with this clause, as opposed to the general remarks. We might then make progress.

The CHAIRMAN: There is no point of order. We are considering the amendment relating to the deletion of all of clause 32, page 19, line 19 to page 20, line 10. That allows a considerably wide-ranging debate. I recognise that such a debate should not stray to cover redemptions or other matters not dealt with in the scope of that deletion.

Debate Resumed

Hon N.D. GRIFFITHS: I quite agree with your observations, Mr Chairman. It is appropriate that one mention, by way of an aside, the context of what is taking place. Members will recall that before the dinner suspension I sought to give the government spokesperson on this issue the opportunity to put on the record the rationale for this amendment, to put its view of the effect of premiums, to assure us that if the package was presented in total that stability would be achieved, and that no longer would there be any horrendous premium increases, to particularise, but the Attorney General has failed to do so. That is because he has been caught short.

It is evident that what is proposed in the amendment to the message will generate a number of areas of unfairness. To engage in a pre-emptive strike and placate an uneasy Attorney General, I pointed out that I would make comments at this stage with a view to shortening my remarks as I went through the amendments one by one. Some people should acquire a degree of patience - and not necessarily when they are occupying a hospital bed!

There is unfairness in a number of areas in this system proposed by the Government. I think some stand out particularly. I will speak in general terms. First, to succeed in getting up a claim for damages, it will be necessary for people who do not have a disability of 30 per cent to have a disability of 25 per cent. That is by reference to the formulae set out in the words of the amendment to the message, which are rather complex in their application. I am endeavouring to simplify them. The fact is that if what is proposed by the Government with respect to this threshold issue takes place, effectively common law will be abolished for most injuries where there is not a 30 per cent disability. Then there is the question of making an election if people are not in the 30 per cent category, and the timing of that election. Experience has shown that that is extremely unreasonable: It is extremely unreasonable to expect a person to elect to go to common law or to stay in the statutory system. At six months, there is real concern that this will prevent people from exercising a reasonable election. If people were to elect to go to common law, they would cease to have the statutory entitlements. They would be taking a punt on not only their future, but that of their family.

That is a concern of some substance which has been expressed. The issue of a cap is always difficult; the cap is raised; we accede to the cap. The calculation of the claim for a 30 per cent disability is of concern. The Government proposes a restrictive definition to exclude consideration of matters which the Australian Labor Party believes should be properly taken into account when determining a 30 per cent disability. There are matters dealing with retrospectivity and a number of other matters of detail which must be addressed. We in the Australian Labor Party have a great deal of difficulty with this issue because we must strike a balance. We will never be confident that we have struck the right balance, particularly with respect to fairness. If this Government had not mismanaged the workers compensation system in Western Australia so badly in past years we would not be in this predicament. Regrettably the Australian Labor Party does not run the State of Western Australia; it does not purport to. We hold only 11 seats - about one-third of seats - in this Chamber of 34. Whatever occurs is not our doing; we do not have the numbers. However, we have a duty to state what we believe is appropriate. We also have a duty to take into account and act on matters which we may be uncomfortable acting upon; nonetheless, we have a duty to the community as a whole.

We regard our duty in these terms: First, we must act in the interests of the community as a whole. Those interests are served by seeking to encourage the Government to provide measures which will have the effect of reducing premiums. We regret that the Government has failed to act in so many areas for so long. We also have an important duty which is not inconsistent with keeping down premiums, and that is to ensure that the system is fair. The reality is that if a system is fundamentally unfair, many people in our community are committed to ensuring that adjustments will occur either through judicial interpretation, because courts are traditionally averse to the taking away of common law rights; or they will occur politically, apart from the public morality of fairness being intrinsically appropriate in any event.

To relate that back to the specific government amendments to the message and the proposals that are before us, the essential differences on the Supplementary Notice Paper between the Government and the Opposition are, first, with respect to the threshold issue. We do not wear the Government's proposal of the threshold concerning significant disability; it is fundamentally unfair and wrong. We suggest that we can achieve significant savings by another mechanism which we do not like, but which is fairer; that is, by a process of what I loosely call deductibles along the line of that which took place with respect to third party claims for injuries sustained in motor vehicle accidents. The Government has a tough, unfair threshold test. We say it is not right. We will provide deductibles based on the motor vehicle third party insurance model. It is something we do with reluctance but, unfortunately, it must be done. We will wear the cap, but not the extended definition which will restrict claims for 30 per cent disability. We are extremely uncomfortable with the election period.

I summarise by saying there will be the 30 per cent disability. If there is less than 30 per cent we will go along with the cap but we do not go along with the significant disability threshold. The amendments on the Notice Paper in my name suggest a scheme similar to that adopted by the Motor Vehicle (Third Party Insurance) Act 1943. In putting that forward I am not suggesting perfection. However, it is a better model which is preferable to the model suggested in the recently tabled report of the Insurance Commission of Western Australia, which report made observations at page 22 -

that amendments to the Motor Vehicle (Third Party Insurance) Act 1943, which introduced a \$10 000 threshold amount to all claims resulting from motor vehicle accidents occurring after 30 June 1993, continued to have the desired effect on claim numbers; and the number of claims lodged in 1998-99 totalling 5 558 had fallen from 10 254 in 1992-93.

That measure has had a significant effect on the number of claims and it is the Australian Labor Party's view that it will have a significant effect on common law claims. I say that with regret. However, it will have a significant effect on relatively minor claims and will ensure that those people who must be compensated for very serious injuries are compensated.

That, in a nutshell, is our approach to the matter. I have taken a little time but there are a number of amendments. I do not intend to repeat myself at any length in the course of the debate, save to make specific references. I note the Attorney proposes to do something when I conclude my general observations.

Progress reported and leave granted to sit again.

[Continued on page 1058.]

SITTINGS OF THE HOUSE - EXTENDED AFTER 10.00 PM

Wednesday, 8 September

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

That the House continue to sit beyond 10.00 pm in order to deal with Order of the Day No 4, the Workers' Compensation and Rehabilitation Amendment Bill 1997.

PRISONERS (INTERNATIONAL TRANSFER) BILL 1999

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Minister for Justice), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Minister for Justice) [8.32 pm]: I move -

That the Bill be now read a second time.

The Prisoners (International Transfer) Bill 1999 will open the way for Western Australia to join a commonwealth-state scheme for the international transfer of prisoners. As a consequence of the enactment of the commonwealth International Transfer of Prisoners Act 1997, it is necessary for Western Australia to enact "model" state legislation to give effect to the scheme. The Bill is relatively straightforward. It provides a framework to allow the commonwealth Act to operate in Western Australia and complements the commonwealth Act, which contains most of the core elements of the transfer scheme.

In 1996 the Standing Committee of Attorneys General reached agreement on the legislative basis for the international transfer of prisoners. The international transfer of prisoners scheme provides for Australians imprisoned in foreign countries and for foreign nationals imprisoned in Australia to be returned to their home countries to complete the serving of their sentences. It also enables persons who have been convicted by international war crimes tribunals in relation to the former Yugoslavia and Rwanda to be transferred to Australia to serve their sentences.

The benefits of returning prisoners to their home jurisdictions have been recognised in Australia since 1983, when the interstate transfer of prisoners scheme took effect. Many hundreds of prisoners have since been transferred around Australia to benefit from serving their sentences in a location that will better promote their rehabilitation.

The international transfer of prisoners scheme was agreed to on the basis that -

the Commonwealth will administer the scheme, provide an administrative structure for transfers, and regulate the status of prisoners who are transferred;

States and Territories will pass legislation providing the necessary authority for the transfer of state-territory offenders out of the jurisdiction and to permit the detention within their prisons of persons outside their jurisdiction;

jurisdictions agree to accept prisoners on transfer to their prisons on the basis of demonstrated community ties;

the Commonwealth will meet the costs of administering the scheme and the receiving State or Territory will meet the costs of transfer from overseas to Australia and of maintaining that person while in prison; and

the scheme will apply to all offences without exception.

Although this Bill is modelled on the commonwealth legislation, it varies in several ways due to concerns Western Australia has with aspects of the commonwealth legislation. Specifically, while the commonwealth legislation allows for probationers and parolees to participate in the scheme, and allows prisoners with sentences of six months or more to be eligible for transfer, the Western Australian Bill does not follow with these approaches. Following consultation and endorsement by the federal Minister for Justice, the Bill adopts a policy of different consent criteria, being -

not to allow probationers and parolees to participate in the scheme; and

to allow only prisoners with two years or more of their sentences left to serve to be eligible to apply for international transfer.

Reflecting this, the threshold criteria for the state minister's consent will be provided for under the administrative arrangements which are being formulated under section 50 of the commonwealth Act. No-one will leave Western Australia, or be returned to Western Australia, to serve a sentence without the agreement of the Western Australian minister. Consent must also be obtained from the prisoner, the foreign Government and the Commonwealth Government.

Prisoners transferred to Western Australia are deemed by the commonwealth Act to be federal prisoners. This is for reasons

of administrative convenience. The commonwealth Attorney General determines the way in which the sentence of the foreign court is carried out in Australia. Before a prisoner can be transferred the Western Australian Government must agree with the commonwealth Attorney General's determination.

There are two methods of sentence enforcement in the commonwealth Act. One is continued enforcement, which means keeping as close as possible to the sentence of the foreign court. The other is converted enforcement, where a different sentence is substituted. It is expected that the continued enforcement method will usually be used in Australia. However, the method used in a particular case may depend on an agreement with a foreign country.

Apart from providing a framework for general transfer of prisoners, the commonwealth legislation also enables persons who have been convicted by certain international war crimes tribunals to be transferred to Australia to serve their sentences. Two international war crimes tribunals were established in 1993 and 1994 by the United Nations Security Council to deal with war crimes committed in the former Yugoslavia and Rwanda. Persons convicted by the tribunals are to serve their sentences in countries designated by the tribunals from a list of countries which have indicated to the security council their willingness to accept such prisoners. A number of countries have already agreed to accept tribunal prisoners, and Australia's acceptance is subject to the qualification that the prisoner has a connection with Australia.

The costs to the State will include those involved in sending escort officers and returning prisoners - including airfares - and the costs of maintaining prisoners during the terms of sentences in Australia. The cost arrangements will be different in relation to transfers of tribunal prisoners, since that responsibility arises from international relations and Australia's membership of the United Nations. The Commonwealth will be responsible for the costs associated with transfers arising from sentencing by the tribunals.

In relation to general prisoner transfers, there may be significant cost savings to the State if there is a net outflow of prisoners. However, it is difficult to predict the number of prisoners likely to be moved in and out of Western Australia once the scheme is operating and, of course, any financial savings will depend upon the number of transfers. Therefore, the cost implications are unable to be precisely quantified at this stage, but will be examined as part of the agreed evaluation strategy. This will entail a review of the legislation, both commonwealth and state, after the scheme has been in place for 12 months, to determine the extent to which it has been utilised and to assess its resource implications.

The commonwealth and state legislation, taken together, will not be sufficient to enable prisoners to be transferred to and from Western Australia. Once all the participating States have passed legislation, the Commonwealth Government will negotiate transfer treaties with foreign countries. Administrative arrangements will also have to be entered into between the States and the Commonwealth, defining the relationship between, and the responsibilities of, the Commonwealth and States in administering the scheme. Once these treaties and administrative arrangements are in place, transfers will then be possible. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

CORONERS AMENDMENT BILL 1999

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [8.37 pm]: I move -

That the Bill be now read a second time.

I am pleased to now present to this House the Coroners Amendment Bill 1999. The provisions contained within the Coroners Act 1996 have been successful in addressing a range of issues that were of concern under the earlier legislation. However, the practical operation of the legislation has led to the identification of some provisions which require amendment. The Bill addresses these provisions and also provides for a Deputy State Coroner.

The Coroners Court presently comprises two full-time judicial officers located in Perth, being the State Coroner and the Perth City Coroner. In country areas local magistrates perform the day-to-day coronial work with assistance and direction provided by the State Coroner. Prior to the proclamation of the Coroners Act 1996 and the appointment of the State Coroner, the coronial system was based on a magisterial system and there were nine clearly defined coronial districts - eight country districts and Perth. Stipendiary magistrates acted as ex-officio coroners in the country districts and a stipendiary magistrate was appointed by the Chief Stipendiary Magistrate as a full-time Perth City Coroner.

With the proclamation of the new Coroners Act 1996 and the appointment of the State Coroner, the coronial system has become a coordinated statewide system under the supervision and guidance of the State Coroner. Inquest hearings are becoming more frequent and complex. This has resulted in almost all inquest hearings, whether arising in Perth or in the country, being conducted by the State Coroner or the Perth City Coroner. As a result of the increasing demands on the State Coroner it is appropriate that the position of Perth City Coroner, a position established in the context of the Coroners Act 1920, be abolished and replaced with the position of Deputy State Coroner. This Bill provides for a Deputy State Coroner who will assist the State Coroner with coronial work throughout the State.

Where the State Coroner is absent from duty or that office is vacant, the Deputy State Coroner is to act in the office of State Coroner so as to ensure that the functions of the State Coroner continue to be performed. The person appointed as the Deputy State Coroner would be a person who already holds the appointment as a stipendiary magistrate and is thereby a

coroner, and would be appointed by the Attorney General, following consultation between the State Coroner and Chief Stipendiary Magistrate. Due to the importance of this position to the Coroners Court, the Bill provides that the Deputy State Coroner is to be appointed by the Attorney General on the recommendation of the State Coroner.

As the legislation will provide for the Deputy State Coroner to act as the State Coroner during the absence of that officer, or during a vacancy in that position, the present provisions which provide for the appointment of an Acting State Coroner are not required and are to be deleted. In order to provide for the absence of the Deputy State Coroner, the Bill provides for an Acting Deputy State Coroner who would also be appointed by the Attorney General on the recommendation of the State Coroner.

Also contained in the Bill are a number of provisions which extend the time limits for applications to the Supreme Court in relation to various decisions of a coroner. The applications are in respect of a decision by a coroner to refuse a request by any person that a post-mortem examination be performed on a body; a decision by a coroner to direct that a post-mortem examination be held in spite of a request by the senior next of kin that no such direction be given; and an order by the State Coroner that a body be exhumed contrary to a request by the senior next of kin that a body not be exhumed. These provisions are contained in sections 36, 37 and 38 of the Act. The current legislation provides in each case for a time limit of two days for making the application. This time limit has been found to be unduly restrictive, particularly where family members live in remote country locations. The Bill provides that time in which an application can be made be extended to two clear working days. By virtue of the Interpretation Act, the two days will not include the day when notice of the coroner's decision was received or the day when the application is filed in the Supreme Court.

In addition, the Bill provides for the Supreme Court to grant an extension of time in exceptional circumstances. The original provisions were based on the Victorian legislation and the time limits do not appear to have caused major problems in that State. In Western Australia, however, the size of the State and the remoteness of some country areas have presented problems not experienced in Victoria in making applications within the time requirements. The Bill recognises these difficulties although still allows for a final decision to be reached in a timely manner because of problems such as possible deterioration of the bodies concerned and family wishes to make definite funeral arrangements.

The Bill also provides that if the senior next of kin has requested that a post-mortem examination not be performed, the senior next of kin can withdraw that request and the coroner may then direct that a post-mortem examination be performed. In the vast majority of cases since the commencement of the 1996 Act, where the senior next of kin has objected to a post-mortem examination, the senior next of kin has later wished to withdraw the objection. In some cases the change has followed receipt of the coroner's reasons and in others there have been concerns expressed as to not otherwise knowing the cause of death. In these cases the senior next of kin often wishes to have the post-mortem examination conducted without delay so that an early funeral can be held. In many cases cultural or religious beliefs require the family to make arrangements for the funeral as quickly as possible. In these circumstances, particularly with the period of time for an application to the Supreme Court being extended, the coroner should be specifically empowered to order that a post-mortem be conducted immediately on receipt of clear advice from the senior next of kin that the objection has been withdrawn.

Section 36 of the Coroners Act deals with applications by persons who are seeking that post-mortem examinations be performed, and provides for a power to apply to the Supreme Court if a coroner refuses such an application. The Bill increases the powers of the Supreme Court in dealing with such an application so that if a body has already been buried, the Supreme Court can order that it be exhumed so that a post-mortem examination can be conducted.

The Bill also provides for amendments to section 29 so that where an application is made for a post-mortem examination pursuant to section 36, a certificate permitting burial, cremation or other disposal of the body must not be issued until the application has been disposed of or the time for making an application to the Supreme Court has expired. It also covers the situation in which an application has been made for an extension of time to the court. The Bill also removes from section 29 the reference to section 24 and substitutes references to section 36 to correct a drafting error in the 1996 Act.

The coalition Government's commitment to improve the coronial system, as a result of community concerns, gave rise to the Coroners Act 1996. The Coroners Amendment Bill 1999 is in line with the objective of this commitment. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ACTS AMENDMENT (FINES ENFORCEMENT) BILL 1999

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [8.44 pm]: I move -

That the Bill be now read a second time.

Members would be aware that a fundamental purpose of the Fines, Penalties and Infringement Notices Enforcement Act 1994 is to ensure greater certainty and more expeditious enforcement of fines. Since the introduction of that Act, some difficulty has been experienced in respect of the enforcement process, including the execution of fines enforcement warrants. In particular, the lack of flexibility of the fines enforcement process, involving rigid adherence to the legislation, at times inhibits fines enforcement.

The application of the Fines, Penalties and Infringement Notices Enforcement Act 1994 can therefore be problematic for particular persons or groups in that when the processes of the Act are applied, they result invariably in either the serving of a work and development order or imprisonment. However, this is often many months after the imposition of the original fine. This is a reasonably common problem and it is in the interests of all concerned that it be addressed. The carrying out of obviously futile enforcement action is a waste of time and money so far as government is concerned. This leads to the charging of further enforcement fees so far as the fine defaulter is concerned. It also increases the period of time between incurring the fine and enforcement, which is clearly an undesirable punishment practice.

One group that has complained in this regard is the communities in the Central and Western Deserts. They say that the delay in enforcing community imposed fines detracts from the effectiveness of the punishment, and they are concerned at the accrual of fines because of the increased difficulty of enforcement when there is a delay. Problems have been encountered there due to the dispersal and remoteness of the population, coupled with the fact that the majority of the population is tribal Aboriginal with minimal income and few or no assets upon which a fine enforcement warrant can be levied. Moreover, the itinerant nature of the population causes further delays in enforcement. In particular, the police have considerable difficulty in making contact with fine defaulters for the purpose of serving orders to attend work and development or execute warrants.

These amendments will address such problems and support local communities that want a punishment system that community members can connect to a particular offence. A system that operates months later is not regarded by them as satisfactory or one meeting their cultural needs. However, this Bill has much wider application to both urban and non-urban communities and to members of the public who have little chance of paying their fines.

The Bill seeks to allow for fines to be converted to a work and development order, either in court or by the Registrar of the Fines Enforcement Registry. This conversion will be in circumstances in which an offender has no capacity to pay and licence suspension is likely to be ineffective, and will ensure that the court's order will be dealt with in a timely manner and enforced while still fresh in the offender's mind.

The proposed amendments pertain to those persons who meet all the criteria set out in the Bill, including that of having no means to pay. There are other difficulties with people who have no means to satisfy fines while their vehicle or drivers licence is under suspension, and these will be addressed in later amendments. In the meantime, at the suggestion of the Auditor General, I have instituted a broader fines write-off policy, particularly relating to fines under the old system. This should also ensure the system is more up to date and effective.

The Fines, Penalties and Infringement Notices Enforcement Act 1994 is a reflection of the principle that the expeditious enforcement of court orders is a critical factor in maintaining an effective justice system. The amendments now before the House are sensitive and practical measures designed to achieve a more expeditious enforcement regime, to which targets groups can better relate. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ACTS AMENDMENT (EVIDENCE) BILL 1999

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [8.47 pm]: I move -

That the Bill be now read a second time.

The Evidence Act and the Justices Act were enacted in 1906 and 1902 respectively and have been the subject of a number of amendments since. To facilitate the more effective prosecution of offence, further amendments are now necessary. The changes are part of this Government's recognition of the community interest in an equitable and efficient legal system.

The Bill proposes a number of separate reforms, primarily to the Evidence Act and the Justices Act. Consequential minor amendments are also proposed to the Criminal Code and the Children's Court of Western Australia Act. In particular, the amendments effected by the Bill will -

facilitate the admission of documentary and foreign evidence in trials involving complex commercial crime;

allow for the admission of documentary evidence created using modern information technology;

permit child and vulnerable witnesses to give their evidence on videotape to save them from the trauma of giving evidence in open court;

remove inappropriate requirements for the tendering of statements of child witnesses at the early stages of the prosecution process;

allow the use of witness statements in prosecutions for crimes in the Children's Court and where there is an ex officio indictment, and if the witness has died, is too ill to come to court, or simply cannot be found before the trial;

restore an element of fairness when an accused person makes unsubstantiated assertions against the character of a deceased victim of a crime;

extend certain provisions in the Evidence Act to the prosecution of offences where the offender has been charged with repealed Criminal Code sections; and

allow a complainant in a sexual offence to authorise the publication or communication of their name without being held to be committing a crime.

I now address each point in turn.

Admission of documentary and foreign evidence in complex commercial proceedings: The inherent complexity of commercial trials makes the litigation or successful prosecution of business-related matters difficult to achieve. Currently, the Evidence Act requires that before a document may be admitted as evidence, a witness must be called to testify as to the truth of any statements in the document. In commercial trials, the strict adherence to this principle requires that parties must call witnesses to prove matters which are not genuinely in dispute. This is exacerbated in complex fraud trials involving voluminous business records where an uncooperative party simply objects to every document that is sought to be produced. Under the Bill, business records can be tendered as evidence without calling as witnesses persons who supplied the information in these records unless the court considers it in the interests of justice to do so. This will reduce the length and costs of the trial and aid in the jury's comprehension of the issues.

In addition, the Bill will give trial judges the discretion to allow or direct the use of charts, summaries and other aids to explain, follow or review complex and voluminous evidence. The use of these devices will not be restricted to simplifying business documents, as they will apply to allow evidence in summary form of any type of complex evidence when the trial judge considers it to be appropriate to do so.

The Bill also seeks to redress a limitation in the Evidence Act relating to the admissibility of evidence obtained in foreign jurisdictions, and more specifically in bankers' books. The Evidence Act contains provisions that allow for a more relaxed method of proof where evidence is composed of bankers' book entries. However, this Act limits the use of these provisions to bankers' books of banks in any State or Territory of Australia. This restriction does not take into account the fact that many commercial trials involve financial transactions in foreign banks. The Bill removes the restriction so as to facilitate the admission of the financial records of foreign banks, where they are relevant, in complex commercial trials.

Admission of documentary evidence created using modern information technology: It is a general legal principle that a party seeking to prove the contents of a document must produce the original document. This rule was developed before the advent of photocopiers and has, to a large degree, been superseded by developments in technology. Previous amendments to the Evidence Act have sought to modify that rule so as to make possible the admission of reproductions in court. However, advances in modern information technology have meant that the existing criteria for admitting such reproductions are no longer appropriate. The Bill replaces the current outdated regime governing the admissions of reproductions with a new regime that is far simpler and broad enough in its scope to achieve the admission of reproductions made with modern information technology. The new provision is modelled upon section 44(c) of the South Australian Evidence Act, which does not require the loss of the original document to be established before the reproduction can be admitted into evidence.

Use of video-taped evidence given by child and vulnerable witnesses: In 1992 the Evidence Act and the Justices Act were amended to allow the videotaping of evidence given by children and other vulnerable witnesses. The effect of one of those amendments was to make mandatory the videotaping of pre-trial evidence. However, there was no obligation imposed to record evidence given by children or vulnerable witnesses through closed circuit television or through a screen that was not part of pre-trial proceedings. Furthermore, the court was not given the power to allow the use of videotaped evidence at the first trial, or pre-trial hearing, at any subsequent re-trial or trial. This required the child or vulnerable witness to give evidence again, and subjected them to unnecessary distress.

The Bill will overcome this problem by requiring the videotaping of evidence given through closed circuit television or through a screen. The Bill also allows the court to order that where the child or vulnerable witness has already given videotaped evidence, that evidence can be used again in any trial or subsequent re-trial.

Inappropriate requirements for the use of child witness statements in court proceedings: An amendment to the Justices Act in 1992 empowered the courts to allow children's evidence to be received at a preliminary hearing in the form of a previously made written or electronically recorded statement. Where the statement is admitted, the child complainant should not be called to appear unless the justices are satisfied that there is good cause to do so. However, in order for such a statement to be admitted it must be accompanied by a declaration made by the witness as to the truth of the statement. In practice, prosecutors and police officers have found that this declaration is entirely inappropriate for children under the age of 12 years because these children have great difficulty in understanding the declaration. The Bill removes the requirement for a declaration for children under the age of 12. Whether such a child ultimately gives evidence will be dependent on the presiding judge or magistrate being satisfied that the child is competent to give evidence.

Use of witness statements where the witness has died, is too ill or cannot be found: The Children's Court of Western Australia Act currently enables a child who has been charged with an indictable offence to elect to be dealt with in a hearing in the Children's Court as if it were a trial on indictment. However, there is no procedure for the prosecution to use witness statements in this situation if the witness has died, become too ill to attend or simply cannot be found prior to trial.

There have been at least two cases in the Children's Court involving serious charges where the prosecution case has been dependent on the evidence of a deceased person. In both, the Crown's inability to tender statements of the deceased was a severe limitation. There is a similar restriction in the case where a witness dies, becomes ill or disappears prior to the trial of an accused who is being tried on an ex officio indictment. An ex officio indictment is an indictment where an accused has not been committed for trial but the Director of Public Prosecutions has filed an indictment. The Bill will allow the use

of witness statements made in accordance with section 69 of the Justices Act if the court is satisfied that the witness is dead, too ill to attend court or cannot be found.

Unsubstantiated imputations cast on the character of a deceased victim of crime: The Evidence Act currently prevents an accused person, when giving evidence, from being asked questions that would reflect badly on his character. However, where the accused personally, or by his advocate, presents his case in such a manner as to cast imputations upon the character of a prosecution witness, he then loses this protection. The problem arises, particularly in homicide cases, where an accused makes allegations of misconduct against a deceased victim of crime, who, naturally, is unable to answer. The accused is free to cast unsubstantiated imputations against the character of the deceased without calling into question his own character. The Bill will amend the Evidence Act so as to allow the prosecutor the ability to call into question the character of an accused where he makes such allegations against a deceased victim of a crime. The amendment is based upon section 31 of the United Kingdom Criminal Justice and Public Order Act 1994, which has proved effective in giving judges the discretion to allow an accused to be cross-examined as to his character if he raises imputation on the character of the deceased.

Extension of the Evidence Act provisions to prosecutions where the accused is charged with repealed code sections: The Criminal Code was amended in 1992 to change the law relating to sexual offences. The result was to replace the existing chapter XXXIA of the code with the current chapter XXXI. However, the consequential and subsequent amendments to the Evidence Act have failed to take into account the fact that offences under the repealed code section are still being brought before the courts. This is in relation to the evidence of child and special witnesses, the evidence of a defendant in criminal cases and the protection of the identity of the complainant in sexual offence cases. The Bill contains several provisions that will extend the operation of these various Evidence Act provisions to trials where the accused has been charged under a repealed code section.

Decriminalisation of the complainants authorisation of the publication of their name in sexual offences: Section 36(c) of the Evidence Act currently provides that it is an offence to publish the names of complainants in sexual offences. However, if a complainant decides to communicate or publish the fact that he or she is a victim, the complainant would be breaching this section. The Bill will allow complainants in sexual offences to reveal their identity if they so choose. The Bill also increases the maximum penalty for publishing the names of complainants in sexual offences to a fine of \$5 000 for individuals and \$20 000 for corporations. The present maximum penalty of \$500 is too low to be effective in deterring a person or corporation from publishing material that breaches this section.

Conclusion: Given the technical nature of many of the amendments contained within this Bill, I urge all members of the House to closely read the explanatory clause notes provided. This Bill will implement a number of long overdue reforms to the law of evidence in this State. These changes are consistent with the Government's goal of making our legal system simpler, more efficient and more accessible. The reforms also reflect the Government's response to community concern over issues relating to the legal system, including its unnecessary complexity, its slow recognition of changing technology, and its perceived insensitivity to the distress experienced by child and vulnerable witnesses when giving evidence in court. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ACTS AMENDMENT (FIXED ODDS BETTING) BILL 1999

Receipt and First Reading

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

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Racing and Gaming) [8.55 pm]: I move -

That the Bill be now read a second time.

The main purpose of this Bill is to allow the Totalisator Agency Board in Western Australia to conduct fixed odds betting; to accept electronic and other commercially acceptable forms of payment for a bet; to supplement dividend pools; and to validate a dividend declared by the TAB where a bet that should not have been accepted is included in a betting pool or where the outcome of a race or sporting event, once declared, is later disputed.

The TAB's traditional operation is based on a totalisator system where a set amount of commission is deducted from each bet and the remaining pool is divided among winning bets. With this system the amount of the winning dividend is not determined until after the winner of the event is known. However, many punters prefer to bet at fixed odds, where the amount of the winning dividend is known at the time of making the bet.

The TAB has been able to expand its totalisator business in the absence of any real competition in the off-course wagering market. However, there have been rapid changes in the wagering market in recent years through the development of communications technology and the privatisation of off-course wagering institutions in other States. The TAB's traditional wagering market is being targeted by a large number of interstate bookmakers and TABs offering a wide range of wagering products, including fixed odds services. In addition, over the past 10 years the number of licensed bookmakers in Western Australia has declined from 102 to less than 60. Numbers are critically low at metropolitan trotting meetings and many country race meetings. Metropolitan greyhound meetings and some country gallops and trotting meetings are unable to attract the services of a bookmaker.

Currently, the TAB does not have the legislative authority to offer fixed odds products to punters. It has identified the ability to conduct fixed odds betting as a key strategy aimed at ensuring that it is well positioned to keep pace with the rapidly changing wagering market. It will also be well placed to fill any reduced fixed odds services caused by declining bookmaker numbers. The development of a fixed odds product is seen by the Western Australian TAB as critical to its ability to compete on an equal footing with other state TABs and competitors offering similar products. If the TAB does not keep pace with these organisations it risks losing its share of the wagering market, which could substantially impact upon the financial returns to its beneficiaries. These beneficiaries are the three racing codes and the Government.

The TAB wishes to offer fixed odds betting in a similar manner to the services offered by TABCORP in Victoria, the New Zealand TAB, licensed bookmakers throughout Australia and, in the near future, other state TABs. These services offer betting on horse and greyhound races, sporting and other events and provide punters with a guaranteed return at the time of making the bet.

The proposed amendments are designed to allow the TAB to offer its own fixed odds betting service or to enter into a contractual arrangement with another fixed odds betting service provider. This approach is similar to the arrangements for combined interstate totalisator pools and is a natural progression from the existing SuperTAB pooling arrangements. In the case of the TAB entering into an arrangement with another organisation, the TAB will be permitted to adopt the rules and commission structures pertaining to the service operated by that organisation. As a safeguard, the TAB will be required to gain the approval of the Minister for Racing and Gaming, acting on the advice of the Betting Control Board, before entering into the arrangement. While there will be some fixed odds race betting, this will be offered only by the TAB on selected major races so as not to detract from the more profitable totalisator business. Fixed odds betting on horse and greyhound racing will be contemplated only where new business can be generated, rather than directly transferring betting turnover from the higher return totalisator betting service.

The TAB intends to concentrate its fixed odds betting activities on sporting events. Totalisator sports betting accounts for approximately 1 per cent of the TAB's total turnover. With the introduction of fixed odds betting, sports betting turnover is expected to account for up to 5 per cent of total turnover within five years. The range of sporting events will be the same as those currently approved for totalisator betting, such as Australian rules football, cricket, golf and tennis tournaments, athletic championships, etc. As a safeguard, the Betting Control Board will have the authority to veto either fixed odds or totalisator betting on any event considered not to be in the public interest.

Fixed odds betting will be operated as a separate business within the Totalisator Agency Board's operations and structured so that it is not subsidised by the TAB's principal totalisator business to the detriment of its beneficiaries; that is, the racing codes. In fact, the racing codes will benefit through the fixed odds betting service being incorporated into the existing totalisator network, with a share of the network operating costs being met from sports betting profits. This will increase the amount of profit available for distribution to the racing industry.

An impact study commissioned by the TAB concluded that the addition of fixed odds betting to its range of betting products is not likely to establish an observable impact on the Western Australian community. The study concluded that the introduction of fixed odds betting by the TAB is unlikely to give rise to an increased incidence of problem gambling, due principally to the discontinuous nature of betting on sporting events. Members should also note that both of the TAB's major competitors in the State - that is, the Burswood International Resort Casino and the Western Australia Bookmakers Association - have not objected to the TAB offering fixed odds betting.

Unlike some other Australian States, taxation revenue does not drive gambling policy in Western Australia. The Government's responsible attitude to gambling in Western Australia has seen a fall in the level of per capita gambling expenditure in the State. Figures produced by the Tasmanian Gaming Commission show that from a high of \$594 per adult person in 1995-96, the level of gambling expenditure in Western Australia fell by 11 per cent to \$527 per adult person in 1997-98. This compares with the national average of \$818 per adult person in 1997-98. These outcomes are supported by research undertaken by the Australian Bureau of Statistics, which shows that Western Australia is the only State to have enjoyed a decline in net takings from gambling over the past three years. The Productivity Commission's recently released draft report on Australia's gambling industries also highlighted that the extent of problem gambling in Western Australia is the lowest in the nation.

The TAB currently pays a tax of 5 per cent on its totalisator turnover. This tax is paid from commission deductions that average approximately 17.2 per cent. However, commission on fixed odds betting cannot match this level of return. Bookmakers operate on a much lower commission range, which is usually around 5 per cent. Therefore, a lower rate of tax for fixed odds betting is appropriate. Accordingly, it is proposed to match the tax rates applied to bookmakers; that is, 2 per cent on horse and greyhound racing and 0.5 per cent on all other betting, including sports betting. This taxation arrangement will be implemented through the Totalisator Agency Board Betting Tax Amendment Bill 1999. After meeting turnover tax obligations and recovering all the expenses associated with the development, promotion and operation of fixed odds betting, profits from fixed odds race betting will be distributed to the racing codes in the same manner as profits from totalisator race betting are currently handled. Profits from fixed odds sports betting will be paid into the TAB sports betting account for distribution as directed by the Minister for Sport and Recreation.

Currently, the TAB is constrained by the Totalisator Agency Board Betting Act from accepting payment for a bet in any form other than notes or coins. This restriction prevents the TAB from accepting cheques or utilising new payment technology, such as smart cards, EFTPOS, etc. This places the TAB at a competitive disadvantage by limiting its ability to satisfy the demands of its customers for new services and products. In addition, the current restriction means that TAB agents must carry large amounts of cash. This creates a high security risk and makes TAB agencies targets of crime. This Bill amends

the Totalisator Agency Board Betting Act to remove this restriction by allowing other methods of payment to be prescribed. It is important to note that this change will not impact on existing provisions that prevent the TAB from conducting credit betting. To reinforce this important control, the Bill also includes an amendment to the Betting Control Act to establish a dedicated offence provision relating to credit betting, rather than rely on the general unlawful betting provisions.

The TAB does not currently have the power to supplement betting pools with additional funds. A dividend pool for a particular event can only include investments made on that event, less the prescribed commission deduction. In some instances when there is no winning bet in relation to an event, the dividend pool is jackpotted to the next similar event. This provides the TAB with a valuable marketing tool and stimulates betting turnover. However, jackpots occur only rarely. The ability to supplement dividend pools from funds set aside for the purpose will allow the TAB to regularly market guaranteed pool sizes. To remove any uncertainty in the declaration of dividends, a provision will be inserted to validate a dividend declared by the TAB in instances where a bet that should not have been accepted is included in a betting pool, or where the outcome of a race or sporting event, once declared, is later disputed.

In keeping with increased emphasis on the TAB's ability to compete, clause 8 of the Bill establishes a requirement for the TAB to prepare a strategic development plan and statement of corporate intent on an annual basis. The measures I have outlined will greatly improve the ability of the TAB to compete in the gambling market. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

TOTALISATOR AGENCY BOARD BETTING TAX AMENDMENT BILL 1999

Receipt and First Reading

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

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Racing and Gaming) [9.05 pm]: I move -

That the Bill be now read a second time.

The Totalisator Agency Board Betting Tax Amendment Bill 1999 complements the Acts Amendment (Fixed Odds Betting) Bill 1999. The main purpose of the Acts Amendment (Fixed Odds Betting) Bill is to authorise the conduct of fixed odds betting by the TAB. The TAB is currently authorised to conduct totalisator betting and is required to pay tax on its totalisator betting turnover at the rate imposed by the Totalisator Agency Board Betting Tax Act. With the proposed introduction of fixed odds betting by the TAB, it will be necessary to establish a rate of tax payable on fixed odds betting turnover.

The TAB currently pays a tax of 5 per cent on its totalisator turnover. This tax is paid from commission deductions that average around 17.2 per cent. However, commission on fixed odds betting cannot match this level of return. Bookmakers operate fixed odds betting on a much lower commission range - usually around 5 per cent - and a lower rate of tax is appropriate. Accordingly, it is proposed to match the tax rates applied to bookmakers; that is, 2 per cent on horse and greyhound racing and 0.5 per cent on all other betting, including sports betting. This will establish a level playing field in terms of taxation and help to stimulate competition in the fixed odds betting market. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

CRIMINAL CODE AMENDMENT BILL 1999

Returned

Bill returned from the Assembly without amendment.

WORKERS' COMPENSATION AND REHABILITATION AMENDMENT BILL 1997

Assembly's Message

Message from the Assembly notifying that it had disagreed to the Council's amendments Nos 1 and 2, and disagreed to amendment No 3 and substituted a new amendment, further considered.

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

The CHAIRMAN: The question is that clause 32 be deleted.

Hon PETER FOSS: We have heard many preliminary words. I will say one thing: It appears that, continually, members opposite forget that this Government brought to this Chamber last year a Bill which had been agreed to not only by the Chamber of Commerce and Industry of Western Australia but also by the Trades and Labor Council. The only group against it was the Australian Plaintiff Lawyers Association. It was on the basis of its advice that members opposite defeated that Bill.

For all the protestations about what has happened, we have made several attempts to bring in legislation to deal with the increase in premiums. The first attempt was in 1993 when we knew that common law was causing the problem. We know

perfectly well that the legislation we put forward, which had the support of the TLC, would have balanced the interests of both employers and employees. That was rejected by this Chamber, and amendments were made which would have worsened the situation.

For the benefit of employers and employees, we should have a system which strikes a balance and which not only gives employees a fair statutory system of compensation if they are injured in their work, but also is such that there will be work and an opportunity for workers to remain in employment because their employers will not have gone out of business as a result of the unbelievable cost of workers compensation. Workers compensation is not paid for by money that appears out of the ether. Workers compensation is all part of the system, which should be a mutually beneficial system for employers and employees. The cost should not be so high as to be impossible to be afforded by employers; it should not be so low as to not give adequate compensation to workers. There must be a balance between the two, and we know that balance has been continually put the wrong way. It has been unduly compensatory due to changes that have taken place in the common law - not in the law relating to workers compensation, but in the common law.

The fact that the changes to workers compensation are in the Act when they deal with common law simply recognises that the common law is out of kilter. That is not something which is within the purview of the Parliament. Common law is in the purview of the courts and it has got out of hand. This Parliament has made a number of attempts to restrict that common law liability because we know it is beyond the capacity of our economy and the mutually beneficial system of employers and employees to maintain. In 1993, the Government made an attempt which lasted for a short period. It was subverted by the system, as often happens to laws of this Parliament when they get before the courts. It happens because there is a way courts deal with these things; there is a way the adversarial system deals with them. That has never really been the preferred system for workers. Workers compensation was introduced in the first place because it was felt there was a necessity for workers to have a no-fault situation. The Government supports that; it does not have a problem with it. The Government enthusiastically endorses the idea of a no-fault system. Nobody wants workers to be involved in a large amount of litigation. The fact is we now have two no-fault situations; we have common law and workers compensation. We are trying to have a system with one form of no-fault compensation; that is, workers compensation with a fall-back position with regard to common law. We are trying to get something which is affordable and, therefore, workable.

Each time the Government brings before this Chamber legislation which tries to deal with the problems of common law, it is seeking to address a problem which is occurring outside the statutory system. It is trying to put a statutory brake on that problem outside the statutory system. That is the only reason the Government is bringing forward this legislation. We will not make the common law situation worse by doing this; all we are doing is trying to restrict it so it is reasonable. Any statement about making the system worse is nonsense. One does not make common law worse; it gets worse on its own without any involvement of the Parliament. We know what we must do. We have known for some time because of what we have seen happening in the eastern States. We know that a brake must be placed on the common law system. The Government tried to do this in 1993, 1995, 1997, twice in 1998 and is trying again now. It is essential that we get some sort of resolution - the time has come. We cannot pussyfoot around any longer. We cannot listen to the Plaintiff Lawyers Association; we must listen to employers and employees who are saying a change must occur.

A change must occur and I am pleased we will resolve this tonight. I hope that will be done instead of members opposite trying to pass the blame because they failed to pass this legislation on a number of previous occasions and moved amendments which have made a nonsense of the attempts to restrict common law and which have made the situation worse than what the Government tried to do in 1993. It is time now to face up to that and deal with the single fact that we have a common law system which is too expensive. It is so expensive that it is likely to bring to an end the employment upon which people depend. It is likely to bring to an end the mutually beneficial relationship between employers and employees. I hope we can now get on with dealing with the measures before the Chamber. Are they or are they not good? Do they address the problem we all know exists? Seeking to say the Government has made it worse is just nonsense. The problem exists in common law; it is not in the statutory scheme.

Hon MARK NEVILL: I agree with the Attorney General that we must put a brake on common law but I am not sure that the brake being proposed will be effective. I am quite certain that we will have another Bill before us, probably within 12 months, further seeking to fix the current scheme. I spoke on the Bill last July and I said a major problem was looming. The number of outstanding common law claims had increased from 35 in 1993/94 to 2 100 applications in 1998/99. The consequence has been a blowout in the premiums being paid. The amendments before the Legislative Council do not offer a long-term solution to this problem. They continue the stopgap measures of trying to fix a workers compensation scheme the design of which is inadequate. The current system is beyond repair. If members think of the scope of the problem as being a metre wide, the Pearson report dealt with about 60 centimetres of that metre and this Bill deals with an even smaller portion of it. It basically focuses on reducing workers' entitlements. I can see that the motive for that is to decrease premiums. However, it does not address a broad range of issues such as medical and pharmaceutical costs, rehabilitation, lawyers' fees and those sorts of things. The amendments do not focus on early injury management and it is doubtful whether the Bill promotes an early return to work. We can have different views about the effects of the amendments; for example, the election at six months. Some people may say that encourages an early decision. However, it could work in the opposite way; it could result in people who elect to get involved in litigation - and they will not make that decision at six months; they will see a lawyer earlier than that - taking longer to return to work. The whole system should be focused on getting people to return to work. This Bill seems to promote the lump-sum mentality and that impacts negatively on the return to work. It also has the effect of increasing the claim duration.

It has been painfully obvious in this debate that not a lot of information is available. WorkCover has some excellent statistics but much more research needs to be done on that database to find out what happens when people see plaintiff lawyers. Does that result in a longer period before the return to work? What happens when people see rehabilitation providers early in the

piece? How does that affect the situation? I have seen a couple of reports or research papers but no scheme which works off empirical evidence and delivers a system that works. One of the problems with the current scheme is the number of categories into which we put injured workers. They are quite discriminatory. If someone falls below a threshold, he misses out. If someone gets into another category, he is in a position to do something about it. We know there is the threshold for economic loss, the gateway, of \$109 000. Lawyers and doctors have all sorts of techniques to stretch out a person's period off work to get him up to the gateway. We have judges who, if someone falls below the threshold, will feel sorry for him and push him over it. For the past five or six years we have had redemptions. A lot of those have been going through as common law claims.

Hon Peter Foss: They used to go through the court. There is certainty with common law claims, whereas there is not with the other.

Hon MARK NEVILL: The more categories and thresholds that are made, the more the system and the judgment of people are distorted.

Hon Peter Foss: Capping is actually the safest way.

Hon MARK NEVILL: There is a better way than that, and I will outline it. I spoke to the manager of an insurance company today, who told me that premiums are now 3.44 per cent of wages. If that figure is right, it is pretty high. It is 1.7 per cent in Victoria, where there is no access to common law. Blind Freddy knows that if the premiums get too high, it costs jobs. We must have some mechanism of keeping premiums stable, while allowing people to sue under a common law system when there is negligence. We must look at the whole problem in a global sense to get a fair and equitable system for all parties - the employers, the insurers and the employees. There is a way to do that. I know it will not resolve the problem the subject of this debate tonight. I did not speak on the previous Bill and I will not speak at any great length on this one. We would be better off having no restrictions on common law claims and having a levy on all common law lump sum payments. The levy might be 30 per cent, but it would be designed to bring the figure back to a certain percentage of wages that we decide is a healthy level to cover the workers compensation system. It might be 2.6 per cent of wages, or a bit higher or lower. In this way there would be a cap on the premiums, but it would not interfere with the right of people to sue an employer who is negligent.

Hon Peter Foss: I lost that. Who is paying?

Hon MARK NEVILL: I will get to that in a moment. There is a mechanism to keep the costs and premiums in check. The problem at the moment is that the premiums are going through the roof. We must have a mechanism. Under my proposal, we would have a levy on all common law claim payments which would bring the figure back to the threshold. It might be 30 per cent on every common law claim. Within that system - we are not creating all these artificial categories, caps, thresholds, percentages and barriers - there must be a healthy set of schedule 2 payments in the Act as an enticement for people to take up that system.

Hon Peter Foss: Schedule 2 has always been the best method.

Hon MARK NEVILL: We must make it as attractive as possible to get people off the common law track.

Hon Peter Foss: They used to be separate. Now the increase pushes up the common law damages. It is like a dog chasing its tail. We can never get a good schedule 2 system.

Hon MARK NEVILL: Under this system I am proposing, it does not matter what happens; the levy keeps bringing the figure back to a percentage of wages overall.

Hon Peter Foss: Someone has to pay the levy.

Hon MARK NEVILL: The levy would go back into the pool.

Hon Peter Foss: I know, but someone has to pay the \$100 000. Someone has to get the funds to pay the \$100 000.

Hon MARK NEVILL: The funds will come out of the premiums.

Hon Peter Foss: What happens to the common law damages to compensate for a gap of \$130 000, for example?

Hon MARK NEVILL: The levy brings the figure back to that point. If the judges want to go above the awards, that does not affect it. The levy becomes 50 or 60 per cent. It comes back to whatever the figure is set at; for example, 2.5 per cent of wages.

Hon Peter Foss: I see.

Hon MARK NEVILL: As the accident rate comes down, so should the levy. That is happening in the mining industries in my electorate. The lost time injury rate is coming down. The work force numbers are fairly stable and the workers compensation premiums are going through the roof. That is a little simplistic.

Hon HELEN HODGSON: I will not take too much of the time of the Committee in preliminary comments; however, it seems to be the best time to canvass the issues as presented as a package. Because of that, to take these comments in isolation as we progress through the Supplementary Notice Paper would not give a clear view of the outcomes being sought. I looked at this package and had a number of concerns. Early last week I wrote to the minister expressing them. They have not yet been addressed and that is why there are so many amendments on the Supplementary Notice Paper, some of which are in my name. Some of my concerns have already been aired by other members, but I want to put fairly and squarely on

the record why this package on the whole is not only unfair, but also goes beyond what the Pearson review recommended in its report.

To begin with, I am very concerned that within six months people must make an election whether to proceed down the statutory path or the common law path. My main reason for that concern is that for a number of significant injuries a prognosis cannot be determined within that time. When the minister responded to me, she indicated, firstly, that she believed most injuries stabilise at five months and, secondly, if it were subsequently proved that a person was more than 30 per cent disabled, the six-month election period would no longer apply. That is not the point; the point is that here we are dealing with the people who must make these decisions on the best information available to them at a particular time. If the injury has not stabilised at five months and they do not have the information to make a decision, it puts an intolerable level of pressure on these injured workers.

I am reliably informed that the more serious types of injuries do not necessarily stabilise within six months. The most common would have to be back injuries. If surgery is warranted, it requires a lengthy waiting period until people get the surgery, an issue I will not go into here; however, the state of the hospital waiting lists, in itself, creates pressure when people must make an election within six months. Putting that to one side, people with a back injury may have to wait months before they can have surgery. They then have months of rehabilitation before a prognosis can be formed. Six months would not be adequate with those sorts of injuries to determine where people stand.

I am very concerned about the issue of psychological overlays. I have had reliable advice that the way the legislation is drafted means that if the psychological injury is the primary one, people are not excluded. That allays one of my concerns; however, we must all acknowledge that the psychology of an injured person is very sensitive and must be considered as a part of the whole equation. To ignore that is simply not doing the right thing by an injured worker.

Further, I am very concerned that the lump sum cap that is proposed of twice the prescribed amount is significantly reduced once we take into account other things that are taken out of it. Once the award is made, it is reduced by not only the weekly payments but also by rehabilitation and medical expenses. That can bring down the cap of \$238 000 very quickly. Let us take that figure. The weekly payments after six months would be, on average weekly earnings, approximately one-eighth. Then we take out the statutory levels for rehabilitation and medical expenses, which can be another \$30 000 or \$40 000. A provision does provide that people can have another \$50 000 of medical expenses in special circumstances. Not an awful lot is left of this amount that is meant to help re-establish these people for their future, in whatever they are able to do, given the severity of their injuries.

There is the issue of whether matters raised in the review were properly addressed in the legislative response. I appreciate that the minister made a statement in the other place which indicates all of that. It is also interesting that the procedures in this place are such that a ministerial statement is made in the other place and it is assumed that we in this place have access to and a knowledge and understanding of what has been said. As we were debating the Bill in this place, perhaps it would have been appropriate to have a procedure whereby a statement could have been made on behalf of the minister. It is only by reading the *Hansard* that we find out that statements have been made in the other place. It is something of which we should be aware procedurally, given that the debate is occurring here and now and the ministerial statement was made last week in the other place. That is another procedural issue that concerns me. There is the question of retrospectivity. Will the way in which the new tests are designed affect workers who have been injured but have not yet gone through the former section 93D processes at the time of assent, which means they could well be shortchanged and lose out under both systems?

Those are some of my concerns. However, the most important one that I have not yet raised is the 25 per cent threshold, as it has become known. The proposal incorporates a threshold before an injured worker can access common law that gives rise to a schedule 2 payment, the equivalent of average yearly earnings which is currently \$29 762. I have particular concerns with that. Firstly, it is very unfair and was not included in the original Pearson report. I note also in the addendum there is reference to a threshold but that addendum is not a unanimous recommendation of the Pearson committee. It is not only noted in the addendum that one committee member was not wholeheartedly in support of that recommendation but also that committee member has issued a press release indicating that he was not in support of that recommendation. Be that as it may, it is in the addendum to the report, not in the report itself. The addendum was prepared on 30 July 1999. I asked for copies of any actuarial information used in costing out all of these figures. This evening I have been given a copy of a document prepared by an actuary at PricewaterhouseCoopers. I note the document is dated 7 September 1999. That is a very important date because the amendments were tabled in this place on 19 August. They were tabled prior to 7 September and this document is dated 7 September, so the amendments were certainly subsequent to the addendum to the Pearson recommendations.

Hon N.D. Griffiths: Supplementary Notice Paper 9-2 is dated 7 September.

Hon HELEN HODGSON: Yes, I believe it was 19 August. My concern is that at no time has the actuary costed in the impact of the 25 per cent threshold. It is not in the Pearson report and it is not in the set of costings prepared on 7 September. The actuary gave a reason for that. I read from page 2 of his report -

Our costing assumes that most of the less than 25% impaired claimants are likely to remain in the Statutory system due to the combined influence of the election option and open capped redemptions (Attachment E3.2).

Attachment E3.2 states -

The effectiveness of the election option will also be impacted on by *the level of alternate Statutory benefits* eg if open redemption is available, claimants are less likely to elect to go to common law because the prospect of obtaining a lump sum redemption will appear attractive especially to those claimants whose common law action

may not succeed. This is true even though the redemption cap . . . is 31% lower . . . than the . . . cap for second gate common law claims.

We are continually told that we need the 25 per cent threshold and that Pearson recommended it. Firstly, the original Pearson report specifically said not; secondly, the addendum was only a majority report and that said yes; thirdly, the actuary said that it is not necessary because the other measures will ensure that most of the people affected by the 25 per cent claim will, presumably, adopt other methods. For those reasons, I am concerned that the 25 per cent threshold is not only unfair but also unwarranted, unnecessary and will not impact on the system.

Hon MARK NEVILL: I mentioned in my previous remarks that there should be no constraints on people's right to sue a negligent employer. A levy would reduce the costs to a certain agreed percentage of payroll. The question is: How do we pay for the system? In my view, employers should continue to insure through private insurers, contributing to those lump sum payouts. We should also consider a system of co-payments by workers who could contribute 0.3 per cent of their gross salary, probably \$50, \$80 or \$100 a year, into the Insurance Commission of WA, which would also contribute to payouts. That could be used either to share the costs or increase the pool of funds to improve the system. The injured worker's lawyer should not be represented in court under a co-payment system; only the insurers should be represented in court so that there is only one party involved.

Hon Peter Foss: If we improved workplace safety we would then drop that percentage of total wages.

Hon MARK NEVILL: Yes. There was one misleading point when I said many mining companies' lost time injury rates are decreasing. As the Attorney's adviser would know, an insurer can still have many long-duration injuries which cost an arm and a leg but it does not necessarily mean that the cost -

Hon Peter Foss: You improve work safety but there is no benefit.

Hon MARK NEVILL: Yes. One of the problems relates to long-duration injuries which the threshold system encourages when people have to try to meet hurdles and barriers. We should consider a compulsory co-payment scheme for workers. We insure for third party claims and many other things. Why should workers not make a contribution to workers compensation injury claims while they are at work as they are the beneficiaries of that scheme?

Hon Peter Foss: That may also drop if there is an improvement in work safety.

Hon MARK NEVILL: Yes; and if an employer has a bad record, it will pay more than the average 2.8 per cent premium. Employers with a good record will pay a lower premium. Not all employers will pay the same premium. However, under a system such as that, employers' liability for common law judgments could reduce by 50 per cent.

The more I look at these amendments the more I believe we are looking to the current system for an answer and I believe we must look a lot wider. I disagree with the Attorney General; I believe that plaintiff lawyers must be a part of the solution and should not be isolated. They are a group of people who know the system inside out and know it better than the vast majority of us. It is important to have them involved as part of the solution.

The other aspect which I would like to see built into the system relates to rehabilitation providers whose goal it is to encourage people to return to work. Often the goal of plaintiff lawyers is to obtain large sums of money for their clients. We should be giving plaintiff lawyers a bonus if they return their clients to work. We must have a fundamental look at the system. These amendments are not going anywhere. Most of us are flying blind. We do not know what the effect of the amendments will be. We do not know how much insurers are putting away for future claims. There is not much transparency in the system. The levy needs to be reviewed every year to bring the system back into balance. That is what it is all about: Getting people back to work and having reasonable premiums.

Hon PETER FOSS: The member's contribution is very interesting. I agree that a break point such as this is always attractive to lawyers because it enables them to work against that point. Any system with few break points is easier to administer because it is less likely to lead to legal dispute. However, whenever one makes a fundamental change, everyone looks at it from a personal point of view. There is nothing like self-interest to motivate people. People will look to see whether they will be better or worse off under the new system. What the member proposes might be ideal if we were setting out a new system - if we had neither a common law nor a workers compensation system. In that case, he might find it easy to get it adopted. However, human nature is such that a radical proposal such as this will attract opposition from anyone who believes he or she will be worse off. Whether it is right or wrong in absolute terms, people will oppose it if they think they will be worse off.

The proposal has a certain attractiveness. The member is suggesting that, actuarially, we should work out the total amount of common law and statutory benefits and determine where that stands in relation to a percentage of wages. We may work out that the projected figure will be 2.8 per cent, but we want it to be 2.7 per cent, and there would be a levy on common law to bring it down to 2.7 per cent. Presumably as it stabilises we could bring it down to a reasonable amount, perhaps by increasing the levy so it represented a lower proportion of wages. If we get it down to what we believe is a reasonable amount and there is a significant improvement in the quality of safety in the workplace, we may again reduce the levy to reflect that. It certainly has an excellent charm and simplicity.

My only concern as a first blush consideration is that the major payments to that system would come out of the larger damages payments. They would all be the same percentage, but the largest amount of money would come from the people most severely injured. If one were a quadriplegic, one would receive more but pay the same percentage and the amount paid would be significantly larger. That may cause some concern. However, the logic behind it is interesting. I will ensure that it is referred to the minister because it is a point worth discussing. It is not dealt with in this legislation, and we are not in

a position to deal with it at the moment. It is such a fundamental reappraisal of the way the workers compensation system operates that it would require considerably more public discussion than that undertaken in this House.

The member's proposal also does not deal with some other points. The member says that people involved in rehabilitation have an interest in people being rehabilitated. One of the big concerns in 1993 was that the people involved in rehabilitation often had an interest in keeping those being rehabilitated in the system for as long as possible. It does not necessarily follow that if one's job is to rehabilitate one will complete the task quickly. It is the same scenario as the dingo hunters who never shoot the female dingos. They always shoot the males because they can retrieve many ears on which to claim the bounty, but they maintain their business by allowing the females to live.

Hon Mark Nevill: You should never commercialise vermin. You will never get rid of it.

Hon PETER FOSS: Perhaps some other part of the anatomy should be redeemable.

There will always be people who can work the system and who have an interest in doing so. There will always be people working in the system who strive for the ideal. There will always be lawyers who see it as their role to bring matters to a rapid conclusion for the benefit of their clients. There will also always be rehabilitators with a similar approach. Unfortunately, self-interest sometimes comes to the fore and matters will drag out for an extended period in litigation or rehabilitation. We will also have people who play the medical system. Those matters are not dealt with by this proposal.

Hon Mark Nevill: I did say you had to screw down the system.

Hon PETER FOSS: Yes, but one disadvantage is that it would enable us to ignore those issues. An employer or employee who knows that the rate is fixed at 2.7 per cent of wages will know that no matter what the system does - no matter how inefficient it might be in paying lawyers, rehabilitators or doctors - he will not have to pay any more. With the current system, when things go wrong in those areas everyone screams because the premiums increase.

Hon Mark Nevill: The average would be 2.7 per cent.

Hon PETER FOSS: It enables the system to ignore it. It would certainly solve the contribution problems for employers and employees, but it might remove some of the incentive to deal with other faults in the system, such as excessive medical, legal and rehabilitation costs and excessive periods of time before people get back to work. It removes the financial pain from the system.

Hon Mark Nevill: You are advocating higher premiums.

Hon PETER FOSS: I am not. I am pointing out that although the system addresses one of the points, and that is good, it is probably seen very much from the insurers' point of view. They know that they will not pay more than a certain amount as outgoings because that figure is fixed. They also know there will be no screams from the employers because they know how much they will pay in premiums. It turns into a predictable actuarial exercise. The one danger is that it may end up as a very inefficient system that no-one worries about because it is not costing very much. It is terrible the way the premiums have escalated. However, I do not want to substitute this system with a system that leads to our not caring when too much money is taken out. Although this proposal addresses one of the problems, it does not address others.

It all comes back to the one problem we all have, and members say we will be back here with another amendment shortly. We are dealing with people and, whatever we do by way of amendments, we cannot predict the way human beings will react. We are saying that if we do this, this will be the result.

Hon Ljiljana Ravlich: That is what your amendment is predicated on. You are defeating your own arguments.

Hon PETER FOSS: No, I am not. We are dealing with human beings, who have the capacity to behave in the most diverse ways, and with the interpretations of courts.

Hon N.D. Griffiths: This Chamber gets perverse after 10.00 pm. I would like to move on.

Hon PETER FOSS: I would like to deal with Hon Mark Nevill's proposal. The member has made a very good point.

Hon N.D. Griffiths: I am not sure you are.

Hon PETER FOSS: I am. When we pass legislation, it sometimes leads to an unpredictable change in behaviour. The member's proposal assumes that everyone will do the right thing.

Hon Mark Nevill: I am not assuming that. You will not have the thresholds of this system.

Hon PETER FOSS: It will avoid one set of problems and create other set, some of which we may not be able to predict. That is the problem with all legislation. We legislate on the basis of the predictions currently available. That is what we are doing now. We have had some experience of human behaviour in respect of this legislation. In the light of that, these amendments are being proposed. Just dealing with Hon Helen Hodgson's point, if members look at the report, they will see that it is Mr Des Pearson's report. The other two were made by reference groups to him. So it is his report and recommendations.

The CHAIRMAN: I have allowed a certain amount of latitude in what one could call introductory remarks, but I remind members that we have before the Chair a motion that the words proposed to be deleted be deleted; that is, the proposal that clause 32 as it appears in the 1997 Bill is suitable or unsuitable for some reason and should be retained or deleted. I will require that members address that question and not go around the subject. If members have particular comments on particular clauses, they can wait until we deal with the clauses.

Hon J.A. SCOTT: During my previous remarks, I wanted to ask the minister an important question but had forgotten to do so. It relates to one of the earlier parts of Hon Mark Nevill's remarks on the failure of this legislation to deal with the wider implications and factors which affect the cost of the system. I understood that there is supposed to be an ongoing review. I agree with Hon Mark Nevill's remark that we will be back here in another year or so amending this legislation again.

Point of Order

Hon PETER FOSS: Having taken the earlier point of your ruling, Mr Chairman, we should be addressing this clause. The member is not addressing this clause.

The CHAIRMAN: I am sure the member is about to promptly address the clause.

Debate Resumed

Hon J.A. SCOTT: I certainly am. Before we go on and agree to substitute the clauses that are to be substituted, I was seeking some assurances from the minister. One of them was that there will be a review of the other costs on the system. We have heard nebulous statements about it. As I said previously, I see the impact of what is being introduced here as rather narrow. In debating deleting the clause and substituting what is proposed to be substituted, we are dealing with a very narrow part of the workers compensation costs. I wanted some indication from the Attorney General of what the process will be when this Bill passes through this Chamber and the other place, if it does. Like Hon Mark Nevill, I am worried that this will be a very stopgap measure. I believe many people are in the same position. They believe that a lot of other matters need to be dealt with fairly promptly. For that reason I am asking the question on this clause because I can see no other place in the Bill at which I could ask this question before the clauses are decided. When will further measures or a review be carried out?

I had also forgotten to add to a previous statement. This relates to what we are talking about, because the introduction of these changes will result in a reduction in the ability of workers to access common law if they are below 30 per cent impaired.

Point of Order

Hon PETER FOSS: We are getting tedious repetition. We have not even directed ourselves to the prescribed amount. I am happy to answer the member's question which he has asked 20 times. If he will sit down, we can move on.

The CHAIRMAN: There is no point of order. It is not tedious repetition. I have carefully listened to Hon Jim Scott. He has referred to the fact of hesitating about voting for the deletion of the existing clause 32 on the basis that the 15 pages of substitution proposed here will not necessarily solve the problem and he is looking for comments about a wider review. Hon Jim Scott is in order.

Debate Resumed

Hon J.A. SCOTT: I have serious concerns which I wish the Attorney General would take seriously. They are shared by people who have come to see me about this legislation. One of the concerns with the reduction of the ability of people to access what was the second gateway, which access will be changed in the proposed section, is that as soon as the ability to go to common law is eroded, it is taking away that part of the workers compensation system which puts an onus on the employer to maintain a safe workplace. If the whole system were based on no-blame to either side, there would be very little incentive for the employer to keep a safe workplace, because it would not matter whether it was safe or not; he would pay his premium and away he would go. The insurance companies can take some measures but the legislation puts in place no mechanism to ensure the safety of the workplace. We must ensure that any legislation we pass through this Chamber encourages a safe workplace and discourages one which may cause accidents. I do not know the extent of the accuracy of the figures in some academic studies about which I have read, but it appears that 92 per cent of accidents in workplaces are avoidable. Therein lies the biggest ability for reducing the cost to the system. I am very concerned to see that whatever legislation we put in place has that as its ultimate aim.

Hon PETER FOSS: The minister has indicated that the remaining matters be dealt with.

Question (deletion of clause 32) put and passed.

Substitute clause 32(1) and (2) put and passed.

The CHAIRMAN: The question is that substitute clause 32(3) be agreed to.

Hon N.D. GRIFFITHS: I move -

To delete all the words after "non-pecuniary loss".

Subclause (3) would then read -

Section 93A of the principal Act is amended by deleting the definitions of "Amount A", "Amount B", "future pecuniary loss" and "non-pecuniary loss".

The reason for this amendment relates to the definition of "significant disability". I made a number of observations earlier this evening, and I propose to deal with these matters in a relatively shorthand way. If one were to deal with this in isolation, it would not make any sense, and one would then have to relate it to other matters. Therefore, in dealing with the question of significant disability and the 25 per cent threshold, if members support the proposition of the 25 per cent threshold, they

will vote against this amendment; if they disagree with the proposition of the 25 per cent threshold, they will vote for the amendment.

Hon PETER FOSS: Hon Nick Griffiths has stated the situation. The Government opposes the amendment.

Amendment put and passed.

The CHAIRMAN: The question is that clause 32(3), as amended, be substituted.

Hon N.D. GRIFFITHS: Mr Chairman, you will appreciate that this Supplementary Notice Paper is somewhat complicated. I take it the question is not subject to an amendment.

The CHAIRMAN: It is not subject to an amendment; it is just incorporating what we have done.

Question put and passed.

Substitute clause 32(4) put and passed.

The CHAIRMAN: We are now dealing with substitute clause 32(5), and the question is that proposed section 93D(1) be substituted.

Hon N.D. GRIFFITHS: This proposed section deals with the definition of "relevant level" in relation to the degree of disability. We say that that should be 30 per cent and not the more draconian test. It is the same principle essentially to which the Committee agreed in the previous amendment that I moved. I move -

To delete everything after the words "**relevant level**" and substitute the words "means a degree of disability of 30%".

Amendment put and a division taken with the following result -

Ayes (13)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon E.R.J. Dermer

Hon N.D. Griffiths
Hon Tom Helm
Hon Helen Hodgson

Hon Norm Kelly
Hon Mark Nevill
Hon Ljiljana Ravlich

Hon J.A. Scott
Hon Giz Watson
Hon Bob Thomas (*Teller*)

Noes (12)

Hon M.J. Criddle
Hon B.K. Donaldson
Hon Max Evans

Hon Peter Foss
Hon Ray Halligan
Hon Barry House

Hon Murray Montgomery
Hon N.F. Moore
Hon M.D. Nixon

Hon Greg Smith
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Christine Sharp
Hon John Halden
Hon Ken Travers
Hon Tom Stephens

Hon W.N. Stretch
Hon Dexter Davies
Hon Simon O'Brien
Hon B.M. Scott

Amendment thus passed.

Proposed section 93D(1), as amended, put and passed.

The CHAIRMAN: We are now considering proposed section 93D(2).

Hon N.D. GRIFFITHS: I move -

To delete all words after the word "paragraphs" where it last appears.

I am moving to delete the words "but no regard is to be had to any mental ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker." The Opposition believes those matters are relevant in assessing a disability and should not be excluded from an assessment of a disability.

Hon PETER FOSS: The Government does not accept this amendment and will divide.

Amendment put and a division taken with the following result -

Ayes (13)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon E.R.J. Dermer

Hon N.D. Griffiths
Hon Tom Helm
Hon Helen Hodgson

Hon Norm Kelly
Hon Mark Nevill
Hon Ljiljana Ravlich

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Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Christine Sharp
Hon John Halden
Hon Ken Travers
Hon Tom Stephens

Hon W.N. Stretch
Hon Dexter Davies
Hon Simon O'Brien
Hon B.M. Scott

Amendment thus passed**Proposed section, as amended, put and passed.****Proposed section 93D(3) to (11) put and passed.**

The CHAIRMAN: The question now is that proposed section 93E(1) be agreed to.

Hon HELEN HODGSON: I move -

In the definition of "termination day" -

To delete the figure "6" and insert the figure "12".

To insert after the word "commence" the words -

or 60 days after the disability has been determined to be sufficiently stable to allow an accurate medical prognosis to be made, whichever period of time is the longer

This proposed new section contains definitions that are relevant to the election process. I have already indicated my concern about the period of six months that is proposed to be granted under the election process. This amendment will extend that period to 12 months, and, in addition, where an injury has not stabilised within that 12 month period, to extend that period for a further 60 days beyond stabilisation. That means that a person will not have less than 12 months, but if the injury has not stabilised within that 12 month period, the person will not be locked into making a decision until 60 days after the stabilisation has occurred.

Hon PETER FOSS: This amendment strikes at the major saving identified by the Pearson report. If we do this, we will virtually undermine the whole intent of this legislation. People need to understand how large an impact this amendment will have. We will oppose the amendment and will divide.

Hon N.D. GRIFFITHS: The current number is six. The proposed number is 12. A period of six months is too short. I note that the addendum to the report states that the crucial issue in an election is making a decision about whether the employer has been negligent. That is wrong. The crucial determining factor is the extent of the injury, and the likelihood of receiving serious compensation for a serious injury. A period of six months is very unfair and has the capacity to cause great injustice. It is very difficult to say with any degree of certainty that a period of 12 months is appropriate. This whole process is wrong. However, 12 is a great improvement on six. I do not think people would wear the proposition that the period be six months.

Hon J.A. SCOTT: I believe also that a period of six months is too short, for the reasons put by Hon Nick Griffiths. I have received letters from constituents who have pointed out to me that three years after the date of the accident, they have not even had the full extent of exploratory X-rays. In cases like that, it would be fairly difficult for people to decide accurately what their future would hold. The other problem with the six month proposal is that it goes against the spirit of what the Government is trying to do. The people whose injuries are less serious and who can go back to work sooner, are those who will be ready in six months to make a decision on what their future will hold. The more seriously injured people, who may not be in a position to think about elections at that point and who need to make a decision about whether to go to common law, will be cut out of the system. The six months period is unfair for these people.

Hon LJILJANNA RAVLICH: The minister said that the changes proposed by Hon Helen Hodgson will undermine the savings proposed by the Government, as a result of the introduction of this choice at the six months point. This is about the removal of common law rights for workers. Can the minister at least tell us how much was anticipated to be saved as a result of this six months requirement? What does this component represent from the total savings for the whole package?

Hon KIM CHANCE: It is my understanding in the context of the importance of the election in this package, that the election itself is important. The Attorney General has indicated to us that the point of election at 12 months, rather than six months, makes a fundamental difference. Is the Attorney General able to quantify the fundamental difference? I am also interested in his response to the query raised by Hon Jim Scott about cases in which the preliminary diagnostic procedures have not been completed as late as three years after the accident. What happens then in either case, whether it be six months or 12 months?

Hon PETER FOSS: I draw members' attention to page 94 of the Pearson report. That is his recommendation. He sees the election as providing an immediate saving of 7 per cent, with a steady saving of 3.5 per cent.

Hon Kim Chance: How is 12 months different?

Hon PETER FOSS: The 12 months provision reduces it by 2.6 per cent. Currently there is a six year election, and many of the eastern States had a three year election before they got rid of common law. They had a three year time limit and found that it was not sufficient. It needs to be short if people are to make their decision. By six months they should know whether they will be on workers compensation or will go to common law. That is a clear situation. If people do not think about going back to work after six months' absence, the opportunity is often lost. This is to encourage people to think differently. It is hard to get people to think of themselves as employed persons, as opposed to unemployed persons, after 12 months' absence from work. After 18 months, it is totally hopeless. If people take workers compensation because they are thinking in terms of going back to work, there is a far better chance of getting them back to work than if it is left for a longer period.

Hon Kim Chance: What about the reply to Hon Jim Scott?

Hon PETER FOSS: On his basis, the period would extend to three years, and we might as well not bother with an election.

Hon Kim Chance: Surely you must get the diagnostic procedures finished.

Hon PETER FOSS: We are trying to get a system that will work. I am sure there will be some exceptions. The diagnostic procedures for some people will not work out for 10 years. Under the current system, people must make up their minds within six years, because of the statute of limitations to commence an action. Somewhere along the line we must pick something that will satisfy the needs of the majority of the people and those of the system. That requires people to make a decision at about six months.

Hon J.A. Scott: How will you know when they have a figure of impairment?

Hon PETER FOSS: We may not know for 15 years. Then there is the law of diminishing returns. That is how we got the concert pianist situation. We had a theoretical argument to allow the second gateway for the concert pianist whose hands were injured. Although it is only a minor injury, he may never be able to play again. We can always come up with a concert pianist example; however, if we run the whole process for the injured concert pianist, we will end up with an impossible system. We must get a system that looks after the majority of people. We must keep in mind that we are trying to achieve a fair and just system to look after the majority of workers. Obviously, it will deal with some better than others, but it does not cause them to lose their jobs because it is all too expensive. We are trying to arrive at a system that does not cause businesses to close down and people to lose their jobs. If we start running the whole process on the basis of compensation - I will put this as a generic type - for concert pianists who get injured hands, we will have a completely impossible system. That is where we got into trouble last time. Somebody came up with a wonderful example, which we cannot deny is a possibility, of the concert pianist with injured hands. We are not running a system for people like that, but one which we hope will work for the majority of workers, will keep people in employment and keep the employers in business.

Hon HELEN HODGSON: I will ask the minister to comment on another issue - the election. Basically, once people make the election, they are no longer eligible for their weekly payments. Has the minister given any consideration to how injured workers who no longer receive weekly payments can support themselves after the six months, given that it can take another six, eight or 12 months to stabilise the injury, let alone their going through the court? What safety net is there for the injured workers to fall back on to achieve support for themselves and their family during that time?

Hon PETER FOSS: This is the same process as we have with compulsory third party insurance. The changes to that system have worked. Let us take the people who are injured when they are not at work. How is that funded? If people cannot support themselves, they are funded through the social security system. We have that system to support those who cannot support themselves. We have a good social security system. If people get social security payments and subsequently they recover damages, obviously they must repay those payments they received during the relevant time. At least we have a social security system that looks after people. That is the whole intent. That is one reason to have an election. People must think very seriously about whether they think they will go back to work and, therefore, be compensated under workers compensation, or whether they see themselves as being so injured that common law is the only way they will proceed. There are good arguments for abolishing the common law and having a system based purely on no-fault, statutory support, and it has been done in many other States. Under this system, if we are to keep the common law, people must make a decision at some stage about which way they will go. If they take the common law path, they put themselves in the position of choosing whether to support themselves or using social security.

Hon LJILJANNA RAVLICH: It would appear that the requirement of an election within six months undermines the whole rehabilitation process. I am interested to know who picks up the cost of rehabilitation for the worker who decides to go down the common law path. I would assume it is the individual. Basically, the Attorney General is telling us that some people, in having chosen the common law path, will have no access to rehabilitation. If that is the case, quite clearly there will be a further saving to the system, because it means that the volume of workers who might have accessed the rehabilitation services will no longer be accessing those services and, therefore, there must be a saving. Can the Attorney General enlighten us about whether there has been some calculation on how much of a saving this election within the six-month time frame may cause to the rehabilitation component of this package?

Hon N.D. GRIFFITHS: We are concerned with two issues: The cost factor and the fairness factor. I have dealt with the fairness factor in my initial observation, and I want to make some brief observations about the cost of this. A reference by the Attorney General is made on page 94 of the Pearson report. That reference is about the Pearson review of an election in the six-month period at a saving of 7 per cent. During the dinner break, the assessment by PricewaterhouseCoopers was provided and is very highly qualified. On the second page, it makes reference to a 12-month election plus extension if not

stable. The footnote on that page states that the election option is extended from six months plus claimants remain on statutory benefits if their conditions have not stabilised. That does not go into any great detail and raises an air of uncertainty. However, it seems that it is based on a worse-case scenario and the impact of that is minus 2.6 per cent. We have gone from 7 per cent to 2.6 per cent. It is appropriate that we bear in mind what is said in this document in terms of relying on the costings. This document is fascinating. It is dated 7 September, but was obviously faxed from somewhere today. The six-month proposal which was put on the Notice Paper on 19 August relies on the Pearson report. The impact is set out on page 8 under the reliance on costings. Among other things, at the bottom of that page it states that the actuarial valuation of workers compensation risks is subject to a high level of uncertainty. We are engaged in a lot of guesstimation. Page 9 sets out a number of matters to take into account. In the costings of this nature, it states that it is not possible to calculate exact outcomes with precision, because the current cost of the system cannot be estimated with certainty since it is based on future uncertain events. It goes on to list a whole range of matters. Before dinner the Attorney General was invited to say whether the Government's package will fix the mess. He could not give that undertaking. The fact of the matter is that we are engaged in a lot of speculation with respect to price. One thing we know for certain is that the six-month proposal will operate very unfairly. At its essence, it is unjust and that is why we do not go along with this limited six-month proposal. For the moment, we are supporting the proposal of Hon Helen Hodgson.

Hon PETER FOSS: When this House rejected it, the agreed position between the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia was that the premium would go up at least 20 per cent. It went up 35.3 per cent. Again I tell members that if they reject this, they will see an increase of about 50 per cent in premiums. We can argue all we like, and I know they will not accept responsibility when it happens, but if they reject this, they will see a 50 per cent increase in premiums and they must take responsibility for that. We can argue all we like, as long as members understand that this nice idea they have will cost. We would all like to have a system in which anybody who was injured could get \$1m. It would be wonderful if money grew on trees and there was no negative financial impact. That is not what we are talking about. We are talking about fixing a system which is costing so much that it will cost jobs, it will cost businesses and it will cost this State economic development.

Hon N.D. Griffiths: If your package is passed, by how much will premiums increase?

Hon PETER FOSS: We have tried to tell that to the Opposition. All the figures are in the Pearson report which shows the savings in the same way as I told the member last time.

Hon N.D. Griffiths: You can't answer the question because you are not dealing with the causes.

Hon PETER FOSS: The main problem is that the Opposition has already mucked up the package by the amendments it has made.

Hon N.D. Griffiths: Don't spit your dummy!

Hon PETER FOSS: No. The Opposition has already mucked up the package and every time another amendment goes in, it costs the people of Western Australia more money. I want the Opposition to understand what it is doing. It will cost money, it will cost employment and it will cost businesses. The Opposition was told last time that that would happen, and it happened. The percentages are in the report and the Opposition knows what they are. This report is not all about words; it shows what will happen to premiums. The Opposition knows what will happen. It may be nice to do all the things it wants to do.

Hon N.D. Griffiths: By how much will premiums increase if your package is passed?

Hon PETER FOSS: The Opposition has the Pearson report. The prediction in the Pearson report is for a reduction of 9.7 per cent in that increase.

Hon N.D. Griffiths: By how much will they increase if your package is passed, bearing in mind your package is not the Pearson report?

Hon PETER FOSS: Our package is the Pearson report.

Hon N.D. Griffiths: What a load of rubbish.

Hon PETER FOSS: All the recommendations made by Pearson to reduce the premiums are included in there and the Opposition has the figures. The biggest problem is that the Opposition has had opportunities since 1997 to do something about it; it rejected the Bill in 1997.

Hon N.D. Griffiths: You have had opportunities since 1993 to fix this legislation.

Hon PETER FOSS: We brought into this place something that was agreed between the Chamber of Commerce and Industry of Western Australia, the Government and the Trades and Labor Council; and the Opposition rejected it. Winding that back is extremely difficult. We are trying to stabilise the situation to achieve some reductions. Year after year the Opposition has rejected very reasonable measures.

Hon N.D. Griffiths: Come on!

Hon PETER FOSS: How can the Opposition possibly deny that what we brought before the Chamber, which was agreed to by CCI and the TLC, was not reasonable?

Hon Kim Chance: The Pearson report was a denial of it. The Pearson report was not the same recommendation.

Hon PETER FOSS: The only people who criticised that were members of the Plaintiff Lawyers Association to whom the Opposition listens.

Hon Kim Chance: Why didn't Pearson find that recommendation? He came up with a different finding altogether.

Hon PETER FOSS: One can come up with all kinds of solutions to this; it does not mean that there is only one solution. However, we do need a solution that is fair.

Hon N.D. Griffiths: That's right, and you came up with this one.

Hon PETER FOSS: The Opposition is trying to gut this solution so that there are no savings in it.

Hon N.D. Griffiths: You have no sense of fairness.

Hon PETER FOSS: The Opposition disregarded its own TLC and it knows why it did that. It is time it faced up to it. It disregarded the TLC because it listened to the Plaintiff Lawyers Association and it will have to face that point. This time the Opposition has taken out substantial parts of this package. Do it by all means but the Opposition should forget the words and just note what it is doing. Is the Opposition sincere about this or not? It knows the people who are affected by this, those working in aged care homes in particular, and it knows what will happen to them.

Hon N.D. Griffiths: And you haven't cared since 1993. You sat on this for years.

Hon PETER FOSS: Nonsense. The Opposition, while knocking off things and making wonderful statements, must start to realise the impact of what it has done. I told the member last time what the Labor Party had done, and it happened as I said it would. It is doing it again. Words will not change the premiums.

Hon N.D. Griffiths: Your words certainly will not.

Hon PETER FOSS: The member makes these wonderful distinctions about reading this and that. In the end, members opposite will be judged by the result. They have just knocked off the major part of the savings.

Hon N.D. Griffiths: Not so.

Hon PETER FOSS: Members should not forget it and let everyone know that that is what is happening. All these fine words and persiflage do not change anything. In the end, members opposite are removing a substantial part of recommendations of the Pearson report. No-one should miss that point.

Hon N.D. Griffiths: If the package is passed, by how much will the premiums increase?

Hon J.A. SCOTT: We have just heard a rather unusual explanation. It is interesting that the Attorney General, who is responsible for the administration of justice in this State, wants to include a clause that will mean that a person who has suffered an injury due to the negligence of some other person will be made to suffer even more. If he does not elect within six months to go to common law or the statutory system, his statutory entitlements will be discontinued and he will be a cost to taxpayers even though he did not cause the injury. The person who caused the damage will not suffer. Using some nifty mental contortion, the Attorney has convinced himself that that is a perfectly just thing to do.

He also says that we are dealing with the recommendations in the Pearson report. Mr Rob Guthrie, a member of the committee, said that the provisions relating to the election of common law rights have been extended well beyond the proposal in the report, that the provisions the Government has included almost abolish common law rights, and that that was not the intention of the recommendations.

Hon Derrick Tomlinson: To what are you referring?

Hon Peter Foss: Could you be referring to the wrong provision?

Hon N.D. Griffiths: He is referring to Mr Guthrie.

Hon J.A. SCOTT: We are talking about the election relating to common law rights. The minister is talking about the wrong provision.

Hon Peter Foss: No.

Hon J.A. SCOTT: The Attorney has it completely wrong. That is not the recommendation in the Pearson report.

Hon PETER FOSS: We are not talking about 12 months but an indefinite period. Page 17 of the Supplementary Notice Paper states -

"termination day" means the day that is 12 months after the day on which weekly payments commenced or 60 days after the disability has been determined to be sufficiently stable to allow an accurate medical prognosis to be made, whichever period of time is the longer.

I can see that provision being used effectively to draw out cases for 12 billion years.

I refer members to the page xi of the Pearson report which details what Mr Guthrie signed off and which states -

Injured workers to "elect" no later than 6 months from the commencement of compensation payments or an order for weekly payments, whether to sue for damages under common law.

I do not know what he put in his press release, or how serious it was. That is what Mr Pearson recommended, and what members opposite will take out. They are substituting 12 months or perhaps 12 years for six months. That is how vague it will be. I will be surprised if we cannot drive a truck through that. Let us stop kidding ourselves; the recommendation in the Pearson review is that injured workers will make an election, no later than six months from the commencement of the compensation for an order for weekly payments. That is what all three parties signed off on. Members opposite are proposing to remove that, and to substitute not just "12 months" but "at least 12 months or 60 days" after some barely indeterminate statement of when an accurate medical estimation can be made. Members opposite should stop all the nonsense that will take out of the recommendation of the Pearson report a fundamental and significant part of the proposal that will make a change to those premiums. If they take it out, they will gut the legislation. Let us stop all this. Members opposite do not want to do that. If members opposite do not want that six months' election why not say that? They are trying to dress up what they are doing as if they are making the period a bit longer. The reality is that they are destroying it.

Hon N.D. GRIFFITHS: The Labor Party does not like the six months' period. We know it is in the Pearson report. It is not on, because it is substantially unfair. The 12 months' period is more attractive. I am not sure it is appropriate, and I am also uneasy about the other aspects of this proposal. However, the reality is that negotiations are taking place between the Government and the Opposition, and the Government in its usual take-no-prisoners approach has failed to listen to reason or reach a consensus, and so far has failed to go along with overtures from the Opposition. We want this mess fixed up. We want it fixed up in a just way not an unjust way. For the moment, Hon Helen Hodgson's proposal will have our support in its entirety.

Amendment (figure to be deleted) put and a division taken with the following result -

Ayes (13)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon E.R.J. Dermer

Hon N.D. Griffiths
Hon Tom Helm
Hon Helen Hodgson

Hon Norm Kelly
Hon Mark Nevill
Hon Ljiljanna Ravlich

Hon J.A. Scott
Hon Giz Watson
Hon Bob Thomas (*Teller*)

Noes (12)

Hon M.J. Criddle
Hon B.K. Donaldson
Hon Max Evans

Hon Peter Foss
Hon Ray Halligan
Hon Barry House

Hon Murray Montgomery
Hon N.F. Moore
Hon M.D. Nixon

Hon Greg Smith
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Christine Sharp
Hon John Halden
Hon Ken Travers
Hon Tom Stephens

Hon W.N. Stretch
Hon Dexter Davies
Hon Simon O'Brien
Hon B.M. Scott

Amendment thus passed.

The CHAIRMAN: The question is now that the words proposed to be inserted be inserted.

Hon Peter Foss: Could I just find out which ones are being inserted?

The CHAIRMAN: Yes, it is the numeral "12" and the words "or 60 days after the disability has been determined to be sufficiently stable to allow an accurate medical prognosis to be made, whichever period of time is the longer".

Hon Peter Foss: Could we take the two propositions separately?

The CHAIRMAN: Certainly. The question is therefore, first, that the number proposed to be inserted be inserted - that is "12".

Amendment put and passed.

The CHAIRMAN: The question is that the additional words proposed to be inserted be inserted after the word "commenced".

Question put and a division taken with the following result -

Ayes (13)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon N.D. Griffiths

Hon Tom Helm
Hon Helen Hodgson
Hon Norm Kelly

Hon Mark Nevill
Hon Ljiljanna Ravlich
Hon J.A. Scott

Hon Ken Travers
Hon Giz Watson
Hon E.R.J. Dermer (*Teller*)

Noes (12)

Hon M.J. Criddle
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Hon Greg Smith
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Christine Sharp
 Hon John Halden
 Hon Bob Thomas
 Hon Tom Stephens

Hon W.N. Stretch
 Hon Dexter Davies
 Hon Simon O'Brien
 Hon B.M. Scott

Amendment put and passed.**Proposed subsection, as amended, agreed to.**

The CHAIRMAN: We are now dealing with proposed subsection 93E(2).

Hon HELEN HODGSON: I suggest that proposed section 93E(2) not be substituted. It is no longer necessary, given the decision we just made in respect of the definition of "termination day". The only purpose of the definition in 93E(2) was to determine the starting point to calculate the termination day. The calculation is no longer necessary and the substitution is not required. I move -

That proposed section 93E(2) be deleted.

Amendment put and passed.

The CHAIRMAN: We are now dealing with proposed section 93E(3).

Hon N.D. GRIFFITHS: I move -

Proposed section 93E(3)(b) - To delete "has a significant disability and".

This relates to the issue of significant disability, on which I commented earlier. It is one of several amendments which relate to that aspect. It means little in isolation, but when combined with other amendments, it is part of the process of removing the proposed 25 per cent threshold injustice.

Hon PETER FOSS: I am not sure I fully understood the purpose of Hon Nick Griffiths' amendment. Will he explain exactly how it will work?

Hon N.D. GRIFFITHS: The Attorney General will note the words that I am seeking to delete; that is, reference to "significant disability". The amended provision will read -

- (3) Damages can only be awarded if -
 - (a) it is agreed or determined that the agreed disability is not less than 30% and that agreement or determination is recorded in accordance with regulations; or
 - (b) the worker elects in a prescribed manner to retain the right to seek damages and the election is registered in accordance with the regulations.

The Opposition has said people should retain the right to elect to seek damages, but the question of the significant disability does not come into it. It does not go along with the proposition that a threshold of significant disability should apply. The first amendment I moved related to that aspect. A number of amendments in my name on the Supplementary Notice Paper deal with significant disability, which is an unjust threshold.

Amendment put and passed.**Proposed subsection, as amended, put and passed.**

The CHAIRMAN: We are now dealing with proposed section 93E(4).

Hon N.D. GRIFFITHS: I move -

To delete proposed section 93E(4).

This is the significant disability issue and the matter flows on from the previous decisions made by the committee.

Amendment put and passed.

The CHAIRMAN: If Hon Nick Griffiths proposes to move a new section after 93E(3), that would be appropriate given that the existing subsection (4) has been deleted. I think there is a proposal in the name of Hon Nick Griffiths for a new 93E(4).

Hon N.D. GRIFFITHS: I move the amendment on the Supplementary Notice Paper. This subsection relates to a proposal to provide a deductible regime, which is one method of providing substantial savings to the system. It will take out significant numbers of small claims. We trust it will have a similar effect to that which this type of regime has had in dealing with motor vehicle personal injury claims. I remind the committee of the recently published report of the Insurance Commission to the effect that in 1993 this sort of regime led to a decline in claims from 10 254 in 1992-93 to 5 558 in 1998-99.

This option, along with a number of other options, was canvassed in the Pearson process. It is a fairer method of dealing with the matter as compared with the Government's 25 per cent disability threshold approach. It is a positive measure put forward by the Australian Labor Party with a view to reducing the cost of the system. I note the actuarial document provided to me during the dinner break and its words to the effect that when we are dealing with these types of matters there are many

variables. The one certainty is what has occurred in respect of motor vehicle third party claims. There is no reason to believe that the same result cannot be achieved in respect of the interaction of workers compensation and common law. We are being positive, we want to fix up the system, and this is a fairer and more just way to do it.

The CHAIRMAN: Before the Attorney General gets the call, I see that Hon Nick Griffiths is proposing a range of new subsections in the substitution. Is he proposing that the new sections be 93E(4) to (16) or 93E(4) to (24)? In clarification, in Supplementary Notice Paper No 9-3 there seem to be amendments running from subsections (4) to (24), but on the running sheet I have, which I think was also provided to the minister, it indicates proposed new subsections running from (4) to (16). That is why I seek clarification of what the member is moving to insert, having removed the previous subsection (4).

Hon PETER FOSS: I draw attention to the fact that the subsections run from (4) to (16), but it is then said that renumbering of subsequent subsections will be required. That may explain the discrepancy.

Our actuarial assessment of this change is that the initial impact will be a reduction from 9.7 per cent to 1.4 per cent, and that in time even that 1.4 per cent will be lost. Therefore, despite the words of Hon Nick Griffiths, apart from the initial change of a 1.4 per cent drop, there would be no change. We are now back to the position in which we would have been had we not made any changes to the legislation. That is quite distressing when one realises the impact of these amendments.

The CHAIRMAN: I have now clarified the situation. Hon Nick Griffiths is moving proposed new section 93E(4) to (16). The additional subsections arose by virtue of a renumbering of the remaining subsections. The question is that proposed new sections 93E(4) to (16), as follows, be inserted -

(4) In this section "**Amount F**" means twice the prescribed amount.

"**Amount G**" means -

- (a) for the financial year ending on 30 June 2000, \$10 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount B under subsections (11) and (13);

"**Amount H**" means -

- (a) for the financial year ending on 30 June 2000, \$30 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount H under subsections (11) and (13);

"**non-pecuniary loss**" means -

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

(5) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.

(6) The maximum amount of damages that may be awarded for non-pecuniary loss is Amount F, but the maximum amount may be awarded only in a most extreme case.

(7) If the amount of non-pecuniary loss is assessed to be Amount G or less, no damages are to be awarded for non-pecuniary loss.

(8) If the amount of non-pecuniary loss is assessed to be more than Amount G but not more than Amount H, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over Amount G.

(9) If the amount of non-pecuniary loss is assessed to be more than Amount H but less than the sum of Amounts G and H, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over Amount G - [amount so assessed - Amount H].

(10) No entitlement to damages is created by this section and this section is subject to any law that prevents or limits the awarding of damages.

(11) By operation of this subsection and subsection (12) or (13) each of Amounts F, G and H is recalculated for each financial year with effect from 1 July (the recalculation date), commencing on 1 July 2000, by varying the respective amounts for the preceding financial year -

- (a) by the percentage by which the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Statistician varies between 1 April in the calendar year preceding the recalculation date and 31 March in the calendar year of the recalculation date; or

(b) if the relevant information is not so published, in accordance with the regulations.

(12) If an amount recalculated under subsection (11) as Amount F is not a multiple of \$1 000 it is to be rounded off to the nearest multiple of \$1 000 (with an amount that is \$500 more than a multiple of \$1 000 being rounded off to the next highest multiple of \$1 000).

(13) If an amount recalculated under subsection (11) as Amount G or H is not a multiple of \$500 it is to be rounded off to the nearest multiple of \$500 (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500).

(14) On or before 1 July in each year the Minister is to publish a notice in the *Gazette* setting out Amounts F, G and H as they will have effect on and from that 1 July.

(15) Failure to publish, or late publication of, a notice under subsection (14) does not affect the operation of subsection (11), (12 or (13).

(16) Issues as to whether damages for non-pecuniary loss may be awarded and as to the amount of those damages that may be awarded are to be determined by reference to Amounts F, G and H as in effect on the date on which the determination is made.

Amendment put and a division taken with the following result -

Ayes (13)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon N.D. Griffiths

Hon Tom Helm
Hon Helen Hodgson
Hon Norm Kelly

Hon Mark Nevill
Hon Ljiljanna Ravlich
Hon J.A. Scott

Hon Ken Travers
Hon Giz Watson
Hon E.R.J. Dermer (*Teller*)

Noes (12)

Hon M.J. Criddle
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Hon Greg Smith
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Tom Stephens
Hon Bob Thomas
Hon John Halden
Hon Christine Sharp

Hon Bill Stretch
Hon Dexter Davies
Hon Barbara Scott
Hon Simon O'Brien

Amendment put and passed.

The CHAIRMAN: The question now is that proposed subsections (5) to (12), having been renumbered as subsections (17) to (24), be agreed to.

Question put and passed.

The CHAIRMAN: The question now is that proposed section 93F(1) be agreed to.

Hon N.D. GRIFFITHS: I move -

Paragraph (a) - To delete the paragraph.

Paragraph (b) - To delete all words after the words "prescribed amount".

We are of the view that given the existence of a cap, the proposed proportionality will operate too harshly.

Hon PETER FOSS: We will oppose this but not divide.

Amendments put and passed.

Proposed subsection, as amended, put and passed.

The CHAIRMAN: The question now is that proposed section 93F(2) be agreed to.

Hon N.D. GRIFFITHS: I move -

To delete subsection (2).

Proposed subsection (2) states -

In assessing the severity of the disability for the purposes of subsection (1), no regard is to be had to any mental ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker.

Where there is a direct causal connection, what is proposed by the Government should not take place. Therefore, this

subsection should be deleted. This issue has been the subject of comment on the part of many. It is our view that if these words remain, there will be a clear injustice.

Hon PETER FOSS: The Government will oppose this but not divide.

Amendment put and passed.

Proposed section 93F(3) put and passed.

The CHAIRMAN: We are dealing now with proposed section 93F(4).

Hon HELEN HODGSON: I move -

To insert a new subsection (4) as follows -

(4) Notwithstanding subsection (3), in assessing the total amount of damages under subsection (1), no regard is to be had for the matters contained in clauses 9, 11, 17, 18 and 19 of Schedule 1.

The purpose of this proposed subsection is to limit the cap so that certain compensation payments are not taken into account when determining how the cap will be applied. Specifically, it refers to the medical and rehabilitation payments and it means the \$238 000 cap would not be reduced by those amounts, as required in existing section 93(b).

Hon PETER FOSS: This will have a negative effect of 1.6 per cent with respect to the actual impact, and the Government will oppose the amendment.

Hon N.D. GRIFFITHS: The Australian Labor Party supports the proposal by Hon Helen Hodgson. She has referred to the sorts of matters about which we are talking. I will mention those with which we are dealing by reference to the Act. Reference is made to medical expenses, which are expenses a worker is obliged to incur. Weekly earnings are referred to in clause 11 of the schedule. Clause 17 covers payment of medical and other expenses, and the matters detailed include first aid and ambulance or other service to carry the worker to hospital, medicines and medical requisites, and medical or surgical attendance. A whole range of treatments is referred to and these are matters over which a worker has no control. I do not intend to take up the time of the Committee by referring to all of them, but clause 18 relates to hospital charges and clause 19 to travelling. Clause 19 commences with the words "Where a worker is required by his employer, his employer's duly authorized agent or medical, or like adviser". A worker may be required to do something that he does not wish to do and yet it will have an effect on the cap. It is another example of the essential unfairness in the patronising package the Government has brought before the Committee.

Hon HELEN HODGSON: I seek clarification of a point made by the minister, because I do not want there to be any suggestion of a misunderstanding. The minister commented on the 1.6 per cent negative impact of the measure. Is he referring to the page of the document from PricewaterhouseCoopers dealing with option one? My reading is that the figure is 1 per cent, and the figure of 1.6 per cent relates to the item below it. I am sure it is simply a matter of misreading the fax.

Hon PETER FOSS: The member is correct; it is 1 per cent.

The CHAIRMAN: The question is that proposed new section 93F(4) be added.

Amendment put and passed.

The CHAIRMAN: The question now is that proposed new subsections (4), (5), (6), (7) and (8), which will be renumbered as subclauses (5) to (9), be agreed to.

Question put and passed.

Proposed section 93G put and passed.

Substitute clause 32(6) and (7) put and passed.

The CHAIRMAN: We are now dealing with substitute clause 32(8).

Hon HELEN HODGSON: I move -

To insert after the word "If" the words "liability for".

To delete all words after "assent day" where it first appears and insert -

The provisions of section 93E of the amended provisions apply to a worker to allow him to seek damages and the termination day referred to in section 93E may be a date after the assent day.

This is a transitional subclause. The proposed subclause provides that workers injured before the assent date would have a mechanism for entering into the election provision, but that would apply for only three months after the date of assent. That would still have a retrospective effect in that the injured persons would come under the new provisions; whereas we think that if they were injured before the assent date, they should come in under the old provisions, that being the legislation in force at the time of the injury. A couple of insertions are required in the legislation for a mechanism to achieve this. First, we must ensure we refer to the date of the injury rather than the date of compensation. That is the reason for the insertion of the words "liability for" after the word "if". The proposed substitute subclause would then read "If liability for weekly payments of compensation" etc. I believe existing section 21 says that liability commences at the date of injury. We felt that would avoid any argument over whether payments had commenced or had not commenced at a certain time. Proposed

substitute subclause (8)(a) goes on to refer to liability for weekly payments of compensation in respect of a disability commenced before the assent day. The amendment applies the provisions of proposed section 93E to injured workers, to allow them to seek damages, and the termination day referred to in proposed section 93E may be a date after the assent day. That ensures that although proposed section 93E will still apply, the injured workers are still under the election provisions. It sets a totally new termination day and says that they still come under the six months provision, no matter when the injury occurred, even though it may take them beyond the termination day. We are trying to ensure workers still get the same deal. We believe it improves the equity of the legislation.

Hon PETER FOSS: The effect of this amendment is that, if passed, there will be no beneficial impact on premiums for two years. I do not think the employers of Western Australia can wait for two years to get even the minimal impact, which is still left in the Bill. I do not know how this can be contemplated.

The CHAIRMAN: The question is to insert after "If" the words "liability for".

Amendment put and passed.

The CHAIRMAN: The question is to delete all words after "assent day".

Amendment put and a division taken with the following result -

Ayes (13)

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

Hon N.D. Griffiths
Hon Tom Helm
Hon Helen Hodgson
Hon Norm Kelly

Hon Mark Nevill
Hon Ljiljanna Ravlich
Hon J.A. Scott

Hon Ken Travers
Hon Giz Watson
Hon E.R.J. Dermer (*Teller*)

Noes (12)

Hon M.J. Criddle
Hon B.K. Donaldson
Hon Max Evans

Hon Peter Foss
Hon Ray Halligan
Hon Barry House

Hon Murray Montgomery
Hon N.F. Moore
Hon M.D. Nixon

Hon Greg Smith
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Christine Sharp
Hon Bob Thomas
Hon John Halden
Hon Tom Stephens

Hon W.N. Stretch
Hon Dexter Davies
Hon Simon O'Brien
Hon B.M. Scott

Amendment thus passed.

The CHAIRMAN: Members, the question now is that the words proposed to be inserted be inserted.

Hon PETER FOSS: After that last change and what has been proposed we should appreciate at this stage that there will be no savings. We have been through this exercise to absolutely no avail for the people who were hoping to have some sort of relief from the increase in workers compensation premiums. I oppose the next amendment obviously, but I will not divide on it because the point has been thoroughly made on the deletion of those words. I despair that we have been through this exercise to end up with nothing.

Amendment put and passed.

Substitute clause, as amended, put and passed.

Substitute clause 32(9) to (21) put and passed.

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

That the Chairman do leave the Chair until the ringing of the bells.

Sitting suspended from 11.34 pm to 12.01 am (Wednesday)

Resolutions reported.

House adjourned at 12.03 am (Wednesday)

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

EDUCATION DEPARTMENT, ABORIGINAL EDUCATION BRANCH

40. Hon TOM STEPHENS to the Leader of the House representing the Minister for Education:

Can the Minister for Education reassure the House that there are no plans to abolish the Aboriginal Education Branch of the Education Department in Perth and replace it with a policy unit?

Hon N.F. MOORE replied:

I am advised that there are no plans to abolish the Aboriginal Education Branch of the Education Directorate, as this Directorate remains a priority within the structure of the Education Department of Western Australia.

The Department has recently made adjustments to the delivery of support in Aboriginal Education in accordance with policy directions designed to locate support services and advice closer to districts and schools:

- Responsibility for management of the Perth and Geraldton Centres for Aboriginal Education has been placed with the respective district directors. The centres provide operational advice and support, and will be more responsive in assisting schools to initiate and implement programs for Aboriginal students.
- The Aboriginal Education Directorate in central office will continue to focus on high level strategic planning and policy. It is responsible for system-level accountability, monitoring of national and state initiatives, and system-level measurement and reporting of the educational outcomes being attained by Aboriginal students, in accordance with Commonwealth/State Indigenous Education Agreement reporting and monitoring requirements.

CAREY PARK PRIMARY SCHOOL, LAND

83. Hon BOB THOMAS to the Leader of the House representing the Minister for Education:

- (1) What is the usual area of land for a primary school?
- (2) What is the area of the Carey Park Primary School site?
- (3) What area of land did the department endeavour to obtain from the Bunbury Trotting Club?
- (4) Who undertook the negotiations on behalf of the department?
- (5) What role did the Member for Mitchell play in those negotiations?
- (6) What price did the department offer for the land and what was the club's asking price and condition's attached to the sale?

Hon N.F. MOORE replied:

- (1) 4 hectares.
- (2) The size of the school site is 2.35 hectares.
- (3) Initially the Education Department sought 5 hectares from the Trotting Club. This area was sought to allow for community and education support facilities, as well as primary school buildings, on the site. Final negotiations centred on 4 hectares.
- (4) The District Director for the Bunbury Education District Office led the negotiations for the Education Department.
- (5) The Member for Mitchell strongly supported the suggestion the new school be built on Crown land leased by the Trotting Club at Donaldson Park, and attended a meeting between the Minister for Education, the Trotting Club and the Education Department, at which this matter was discussed. However, he did not participate in the discussions between the Bunbury District Director and the Trotting Club.
- (6) Initially the Department offered \$250 000 to pay for any expenses incurred as a result of the building program for the new school. This included rebuilding stables, relocating fences and developing a car park. The Trotting Club rejected this offer. At a subsequent meeting chaired by Hon Barry House, MLC, the Minister for Lands advised the Bunbury Trotting Club that he would be prepared to offer the Club conditional tenure on the land it leases if it agreed to the construction of the school on Donaldson Park. The Bunbury Trotting Club then approached the Education Department seeking \$810 000 and conditional tenure as discussed with the Minister for Lands. This proposal was not agreed to by the Education Department.

GOVERNMENT VEHICLES, NUMBER LEASED AND OWNED

99. Hon NORM KELLY to the Minister for Finance representing the Minister for Services:

As of June 30, 1999, for all agencies under the control of the Minister for Services -

- (1) How many vehicles are leased or owned by those agencies?
- (2) Of these, how many are -
 - (a) passenger vehicles; and
 - (b) commercial vehicles?
- (3) Of the total number of vehicles, how many are -
 - (a) petrol or diesel powered;
 - (b) LPG powered; or
 - (c) powered by other means?

Hon MAX EVANS replied:

- (1) Four.
- (2) (a) Four passenger vehicles.
(b) Nil.
- (3) (a) Four petrol powered.
(b)-(c) Nil.

GOVERNMENT VEHICLES, NUMBER LEASED AND OWNED

110. Hon NORM KELLY to the Leader of the House representing the Minister for Education:

As of June 30, 1999, for all agencies under the control of the Minister for Education -

- (1) How many vehicles are leased or owned by those agencies?
- (2) Of these, how many are -
 - (a) passenger vehicles; and
 - (b) commercial vehicles?
- (3) Of the total number of vehicles, how many are -
 - (a) petrol or diesel powered;
 - (b) LPG powered; or
 - (c) powered by other means?

Hon N.F. MOORE replied:

Education Department of Western Australia

- (1) 432.
- (2) (a) 283.
(b) 149 (includes 4x4 vehicles).
- (3) (a) 432 (2 petrol vehicles also LPG).
(b) 2.
(c) Nil.

In addition to these vehicles, there are a number of vehicles owned and managed by schools. These are predominantly buses that are diesel powered.

Department of Education Services

- (1) 4.
- (2) (a) 4.
(b) Nil.
- (3) (a) 4.
(b)-(c) Nil.

Country High School Hostels Authority

- (1) 19.
- (2) (a) 19.
(b) Nil.
- (3) (a) 19.
(b)-(c) Nil.

Curriculum Council

- (1) 13.
- (2) (a) 13.
(b) Nil.

- (3) (a) 13.
(b)-(c) Nil.

HIGH SCHOOLS, ENROLMENTS

355. Hon KEN TRAVERS to the Leader of the House representing the Minister for Education:

- (1) What were the enrolment figures for the years 1995 to 1999 at the following high schools -
- (a) Ocean Reef High School;
(b) Belridge High School; and
(c) Clarkson High School?
- (2) What are the projected enrolment figures for those schools for the years 2000 to 2005?
- (3) Which primary schools are designated feeder schools to those high schools?
- (4) What were the enrolment figures for those feeder schools for the years 1995 to 1999?
- (5) What were the enrolment figures for those feeder schools for the years 2000 to 2005?
- (6) Are any new primary schools anticipated to be built between 2000 and 2005 which will feed existing high schools?
- (7) If yes, what are the expected enrolment figures for these schools?

Hon N.F. MOORE replied:

- (1)-(2) The student enrolments for the years 1995 to 1999 and the projected enrolments for the years 2000 to 2002 for Belridge Senior High School, Clarkson Community High School and Ocean Reef Senior High School are provided below. The same data is provided for the main contributory (feeder) primary schools. Due to variations in retention rates and uncertain future residential growth, projected enrolments are only made for the next three years.

Secondary Schools:

	Historical Enrolments					Projected Enrolments		
	1995	1996	1997	1998	1999	2000	2001	2002
Ocean Reef SHS	1 432	1 470	1 409	1 360	1 350	1 322	1 346	1 330
Belridge SHS	1 009	1 037	1 024	1 064	1 107	1 103	1 082	1 060
Clarkson CHS	0	208	468	730	966	1 161	1 239	1 342

- (3) The main contributory (feeder) primary schools to the above secondary schools are as follows:
- Belridge Senior High School: Beldon, portion of Connolly and Currambine, Eddystone, Edgewater, Heathridge and Joondalup.
 - Clarkson Community High School: Clarkson, Kinross, Merriwa, Mindarie and Quinns Rocks.
 - Ocean Reef Senior High School: Beaumaris, portion of Connolly and Currambine, Mullaloo Beach, Mullaloo Heights, Ocean Reef and Poseidon.

- (4)-(5) Primary Schools (including Kindergarten and Pre-Primary):

	Historical Enrolments					Projected Enrolments		
	1995	1996	1997	1998	1999	2000	2001	2002
Beaumaris	659	696	585	594	708	748	747	803
Beldon	528	523	509	489	466	443	401	395
Clarkson	763	822	867	858	1 033	1 116	1 141	1 213
Connolly	507	569	492	561	572	573	510	527
Currambine	0	0	333	492	561	641	726	755
Eddystone	458	418	407	377	377	365	339	321
Edgewater	729	654	598	628	581	554	529	508
Heathridge	375	362	342	417	401	387	362	364
Joondalup	695	755	770	734	851	873	812	803
Kinross	506	645	657	791	904	1 008	1 047	1 138
Merriwa	473	611	687	751	880	935	931	976
Mindarie	0	0	197	288	450	577	660	765
Mullaloo Beach	398	386	359	374	376	392	398	378
Mullaloo Heights	444	434	381	337	346	315	302	274
Ocean Reef	525	489	469	521	496	470	435	432
Poseidon	422	355	337	312	288	276	272	251
Quinns Rocks	504	589	525	637	703	786	507	521

- (6)-(7) Yes. In 2001 a new primary school will open in the northern part of the locality of Quinns Rocks. The proposed school is expected to open with approximately 350 students. The school will contribute to Clarkson Community High School.

Relief of each of Clarkson, Kinross and Merriwa Primary Schools is being considered under the Local Area Education Planning consultation process.

QUESTIONS WITHOUT NOTICE

TIDAL POWER, EMISSION REDUCTIONS

181. Hon TOM STEPHENS to the Leader of the House representing the Minister for Energy:

Will the minister table any comparative data available on the emission reductions achieved through the use of tidal power over liquid natural gas, with diesel backup, for the west Kimberley? If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

No. Emissions data is properly an element for consideration in the environmental approval process, which remains a responsibility of project proponents.

WEST KIMBERLEY POWER PROJECT, LNG-BASED TARIFF

182. Hon TOM STEPHENS to the Leader of the House representing the Minister for Energy:

In view of the changes in the oil and gas markets -

- (1) Will the LNG-based tariff for the west Kimberley power project be subject to rise and fall provisions and will there be any cap on future price increases?
- (2) Can the minister confirm that power generation in the west Kimberley using LNG will result in a tariff in the range of 16¢ to 20¢ per unit of electricity?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) The two preferred bidders are currently in commercial negotiations with the Regional Power Procurement Steering Committee on terms and conditions of supply of electricity to Western Power, and it is not appropriate to divulge information involved in those negotiations.
- (2) The tariff to be charged by Western Power to its tariff customers in the west Kimberley will continue to be in accord with uniform tariffs offered across the whole of the Western Power system in this State. These tariffs for business users are in the range of 16¢ to 20¢ per kilowatt hour depending on usage.

FINES ENFORCEMENT LEGISLATION

183. Hon N.D. GRIFFITHS to the Attorney General:

- (1) Is the Attorney General aware of the observations of recently retired stipendiary magistrate Mr David Brown in respect of the fines enforcement legislation that it made it difficult to carry out the judicial oath to do equal justice to the rich and the poor?
- (2) Is he aware of Mr Brown's reported comments that it was wrong to lump people who drove under suspension because of non-payment of fines with criminals whose licences have been suspended for serious driving offences?
- (3) What is the Attorney doing about this state of affairs?

Hon PETER FOSS replied:

- (1)-(3) There are a number of aspects to this issue, and I will tackle each one. One of the factors that led to Mr Brown's statement was the provision in the Road Traffic Act of a minimum mandatory sentence of either a \$1 000 fine or one month's imprisonment for a third offence of driving without a licence. Because it was a minimum mandatory sentence, the other options available under the Sentencing Act were not available. I have already mentioned in this House that Hon Murray Criddle has agreed to an amendment to the Road Traffic Act to allow further options.

Hon N.D. Griffiths: When will he do that?

Hon PETER FOSS: Unfortunately, as sometimes happens when people seize on an interesting legal point, it takes on an inappropriate degree of importance. If a person is poor and cannot afford to pay a \$1 000 fine, under the present system of fines enforcement the magistrate has an alternative. People are not required to go to jail because they cannot pay a fine; they can serve a seven-day work and development order. If the offender were so recalcitrant that he did not want to undertake a work and development order, he could serve a seven-day jail term. Mr Brown's statement is incorrect. If a magistrate decided that a fine could not be paid and jailed an offender for a month, he would be incorrect in doing so. I hope magistrates do not do that. They have the option to impose a \$1 000 fine and, if the offender cannot pay, he or she can serve seven days in prison or undertake a seven-day work and development order.

The next important issue is that we are looking at the possible difference between driving under suspension and driving without a licence. There is already that distinction in the Road Traffic Act. If a person drives having not renewed his or her licence, there is one type of penalty. However, if a person drives having had his or her licence suspended, that attracts another type of penalty. It may be more appropriate for people driving while under suspension for non-payment of fines

to be dealt with first. Even if we do not, it is most important to remember that the significant fines and penalties are not imposed until the offence has been committed for a third time.

On a previous occasion I read out in this House the statistics relating to these offences. They illustrated that those appearing in court regularly are not doing so simply for driving under suspension for non-payment of a fine but, rather, they are appearing after having been charged seven or eight times for drunk driving.

The PRESIDENT: I ask the Attorney to conclude his answer.

Hon PETER FOSS: It is not a question of people driving under suspension for failure to pay fines. Most of those who regularly disobey the law - those who appear in court time and again - often do so because they have a drinking problem. They drive while under suspension for -

Hon Tom Helm: Do you have those statistics?

Hon PETER FOSS: I have read out them in the House.

Hon Tom Helm: Not with this detail.

The PRESIDENT: We will now go off on a tangent and some member will be prevented from asking a question.

Hon PETER FOSS: This data is not currently kept in statistical form. We must go to individual magistrates and ask them for their records. One magistrate was keeping a record and it was very interesting in that it illustrated that the people who lose their licence for non-payment of fines tend to be more responsible than those who lose their licence for drunk driving offences and speeding. We are dealing with so many of these offences because of the increased enforcement as a result of the use of Multanovas and booze buses. These people have always driven without a licence while under suspension, but they have been able to get away with it. They still cannot resist speeding, so they are picked up by Multanovas; and they still cannot resist drinking and driving, so they are picked up by officers operating booze buses.

GENETICALLY MODIFIED CROPS, TRIALS

184. Hon J.A. SCOTT to the minister representing the Minister for Primary Industry:

With regard to Agriculture WA trials and private trials -

- (1) What types of genetically modified crops are being and have been grown?
- (2) What types of buffer zones are in existence around GM crop trials?
- (3) Are any GM crops within six kilometres of other same-species crops; if so, which ones?
- (4) Have farmers in the areas of these crops been notified in each case?
- (5) What approval process was undertaken in each GM crop trial?
- (6) Has Agriculture WA sought Crown Law advice in relation to its liability in the event of contamination of non-GM crops?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

I am advised by the Minister for Primary Industry that the member has already been briefed on these matters by staff from his office and Agriculture Western Australia, and an invitation is outstanding to provide any further briefing or information required.

Hon Kim Chance: I would like to know as well.

Hon M.J. CRIDDLE: I am sure that the invitation could be extended.

- (1) Trials in Australia of genetically modified crops are approved by the national Genetic Manipulation Advisory Committee. In relation to Western Australia, this committee has advised that the following GM crops have been approved for experimental purposes only: Lupin, canola, cotton, field pea and clover.
- (2)-(5) These matters should be directed to the Genetic Manipulation Advisory Committee.
- (6) No.

SALE OF ALINTAGAS, WORKING GROUP TO CONSIDER IMPACT ON EMPLOYEES

185. Hon HELEN HODGSON to the Leader of the House representing the Minister for Energy:

- (1) Has a working group been formed to consider issues that may impact on employees as a result of the proposed sale of AlintaGas?
- (2) If yes -
 - (a) how many members are there of that working group;

- (b) how many members of the working group are employees of AlintaGas and what positions do they hold in the corporation; and
- (c) are there any union representatives in the working group?
- (3) If no to (1), how are the issues that may impact on employees as a result of the proposed sale of AlintaGas being considered or addressed?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) Yes. The AlintaGas Sale Steering Committee has established the Employee Issues Working Group to monitor issues relating to the transfer of employees from the Gas Corporation to AlintaGas Ltd and to carry out necessary matters relating to due diligence.
- (2)
 - (a) Presently, the EIWG comprises six regular members.
 - (b) Two members of the EIWG are employed by AlintaGas. Those individuals include the manager, human resources, and manager, public affairs.
 - (c) No.
- (3) Not applicable.

SAFETY HOUSES

186. Hon MURIEL PATTERSON to the Attorney General representing the Minister for Police:

Will the minister detail the process by which safety houses are vetted and the efforts that are made to ensure that houses are evenly spread across communities?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

The Safety House Association of Western Australia is an incorporated, independent body which regulates the provision of safety houses in the country and metropolitan regions of Western Australia. It is assisted in this process by district committees comprising volunteer members, all of whom are responsible to the Safety House Association. The Western Australia Police Service, through the Community Services Branch, provides a role of assistance to the association and its district committees. Upon application, all safety house applicants are first interviewed by the district committee, according to the neighbourhood location. Upon interview of both the applicant and nominated referees, a security check is performed by the Police Service on all members of the applying household over the age of 10 years. Providing all checks are clear, the application is forwarded to the Safety House Association for approval. Promotion of the safety house program generally is performed by the district committees, in conjunction with primary school parents and citizens committees and local councils. Statewide promotion of the program is conducted by the Safety House Association of Western Australia, via Safety House Week. Currently, 300 primary schools participate in the program with over 7 700 houses in operation.

LANDCORP, RELOCATION OF HEAD OFFICE

187. Hon KEN TRAVERS to the minister representing the Minister for Lands:

I refer to the minister's answer to question 125 on 7 September 1999.

- (1) Will the minister table the analysis on which the estimated annual operational cost savings of \$250 000 will accrue from the move to a Perth location?
- (2) If not, why not?
- (3) How many staff will be located in the new Perth office?
- (4) How many will be located in the Joondalup project office and what will their function be?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The minister will ensure a copy of the analysis is provided to the member.
- (2) Not applicable.
- (3) Forty-six full-time staff equivalents.
- (4) 1.5 contract staff to service a sales and project office dealing with the ongoing commercial and residential subdivision in Joondalup.

WORKERS COMPENSATION PREMIUMS, STAMP DUTY REVENUE

188. Hon J.A. COWDELL to the Minister for Finance:

- (1) What revenue was received from stamp duty on workers compensation premiums in the 1997-98 financial year?

- (2) What revenue was received from stamp duty on workers compensation premiums in the 1998-99 financial year?
- (3) What is the estimated revenue from stamp duty on workers compensation premiums in this financial year?
- (4) Will the Government help reduce workers compensation premiums by decreasing its stamp duty levy on these premiums?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(2) Stamp duty collections for insurance are receipted at the aggregate level rather than by the type of insurance.
- (3) The 1999-2000 budget estimate for stamp duty on insurance was prepared at the aggregate level rather than by type of insurance.
- (4) The stamp duty rates on insurance will be reviewed as part of the budget process.

SCARBOROUGH SENIOR HIGH SCHOOL SITE, COMMUNITY FACILITIES

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

What proportion of the money raised by the sale of the Scarborough Senior High School site will the Minister for Education commit to the provision of a gymnasium, a swimming pool or other local facilities for the community, which had previously been provided by that high school?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. Arrangements are being finalised to assist the City of Stirling with additional community recreational facilities using some of the funds raised by the sale of the Scarborough Senior High School site.

SHARK BAY, AQUACULTURE PLAN

190. Hon GIZ WATSON to the minister representing the Minister for Fisheries:

With reference to the proposed aquaculture plan for Shark Bay -

- (1) Has Fisheries WA contracted a consultant to develop an aquaculture plan for Shark Bay?
- (2) When will this plan be finalised?
- (3) Will applications be assessed against such a plan?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) It is intended to release the draft plan for public comment in October. The plan will then be finalised and released following the outcomes of the public comment process.
- (3) The plan will not be a statutory document, but will serve as a useful guide to assist potential proponents and to guide the executive director as the decision maker in respect of the assessment of aquaculture applications.

PERTH CONVENTION CENTRE AND SOCCER-RUGBY GROUND SITE

191. Hon NORM KELLY to the Minister for Tourism:

With regard to the proposed Perth convention and exhibition centre and soccer-rugby ground, what is the estimated unimproved value of each of the two preferred crown land sites, referred to as the Northbridge site and the Mounts Bay Road bus port-car park site?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. The market estimates - desktop, highest and best alternative land use basis - by the Valuer General's Office for the two preferred crown land sites are -

Northbridge site - 10.5 hectares	\$52.5m
Busport site - 7.5 hectares	\$75m

The evaluation criteria of the competitive process that the Government has put in place encourages respondents to the request for proposal to minimise their use of crown land. In assessing submissions, the task force will consider the net value of the present value of cash incentive requested, the current market value of the crown land nominated by the respondent and the net present value of the proposed rent to be paid to the State for crown land occupied by ancillary facilities.

FREMANTLE MARITIME MUSEUM, CONSTRUCTION

192. Hon RAY HALLIGAN to the Leader of the House representing the Premier:

- (1) When exactly will construction of Fremantle's new maritime museum take place?

- (2) How long will construction take to complete?
- (3) Are any interruptions expected to the operations of the port?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) Construction will commence in March 2000.
- (2) The construction program is 18 months.
- (3) There is not expected to be any interruption to the operations of the port.

GOVERNMENT'S LIGHT VEHICLE FLEET, FUNDING

193. Hon LJILJANNA RAVLICH to the minister representing the Treasurer:

I refer to the funding facility for the Western Australian Government's light vehicle fleet -

- (1) What interest rate benefits does the State lose in the event that less than \$200m of the \$250m facility is used?
- (2) How many vehicles must be leased annually to ensure the level of funding is maintained at over \$200m?
- (3) What is likely to be the impact of further outsourcing on the vehicle fleet size?
- (4) What monitoring procedures does the Department of Contract and Management Services have in place to signal early warning of the fleet size falling below the agreed usage?

Hon MAX EVANS replied:

- (1)-(4) The arrangements for recalculating economic benefit, should the fleet facility utilisation fall below \$200m, are set out in the contract and are commercially confidential. However, as at 15 August 1999, facility utilisation was \$235m for the 9 549 vehicles in the fleet. Trends in vehicle numbers and the facility utilisation level are monitored closely. At present, no factors are apparent that would cause facility utilisation to fall below the \$200m limit.

YARRAGADEE AQUIFER

194. Hon KIM CHANCE to the minister representing the Minister for Water Resources:

In relation to the allocation of water from the Yarragadee aquifer to Moltoni Holdings Pty Ltd -

- (1) When was the application for an allocation received?
- (2) When was the letter of intent issued?
- (3) What conditions, if any, were associated with the allocation?
- (4) Over what period does Moltoni Holdings have a licence to take water from the aquifer?
- (5) What is the licence fee payable by Moltoni Holdings?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) 15 June 1999.
- (2) 20 April 1999.
- (3) I seek leave to table the attached conditions.

Leave granted. [See paper No 158.]

- (4) 23 July 1999 to 3 June 2000.
- (5) No licence fee is payable.

MINING TENEMENTS, FORM 5 REPORTS

195. Hon TOM HELM to the Minister for Mines:

- (1) With regard to expenditure claimed on form 5 reports required to be completed for all mining tenements, what procedures does the Government have in place to ensure that the amounts claimed are true and correct and that they are verified by the Department of Minerals and Energy before being accepted?
- (2) In the matter of GHK v Peko regarding plaint M/L 27/40, advice from the Department of Minerals and Energy dated 23 March 1998 addressed to the director, mineral title division, from D.F. Blight, acting director, geological survey, which the minister received, was that this deposit was uneconomic, and at the time the gold price was approximately \$A450 an ounce. Given that the current gold price is approximately \$A400 an ounce, can this deposit be economically mined at prevailing gold prices?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) In signing a form 5 the tenement holder or agent certifies that the statement of operations carried out and the moneys expended is a true statement. Any form 5 lodged is vetted after receipt and additional information is sought when an inconsistency or incomplete information is apparent.
- (2) The advice of the acting director, geological survey, dated 23 March 1998 supported the claim by Peko Exploration Ltd that the Mayday North gold deposit was uneconomical for the reasons claimed by Peko. I understand that this deposit was recently purchased by another mining company which, I assume, considers that it can economically mine the deposit at prevailing gold prices.

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT, PINE CONTRACTS

196. Hon CHERYL DAVENPORT to the minister representing the Minister for the Environment:

- (1) Does the Department of Conservation and Land Management have, or has it ever had, any contract or arrangement for the supply of plantation pine to a Japanese corporation or consortium such as Sumitomo/Sekisui for a laminated veneer lumber plant? If yes, to which consortium?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

The Executive Director of CALM has not entered into a contract with any company to provide timber resources for a laminated veneer lumber plant. However, negotiations have been held and are continuing with a number of companies contemplating a joint venture to establish an LVL plant in Western Australia based on public softwood resources.

YARRAGADEE AQUIFER

197. Hon KIM CHANCE to the minister representing the Minister for Water Resources:

- (1) Did the Minister for Water Resources receive any correspondence on the allocation of water from the Yarragadee aquifer to Moltoni Holdings Pty Ltd?
- (2) If so, from whom did he receive that correspondence?
- (3) Did the minister have any contact with groups or individuals associated with the allocation?
- (4) If so, who were those groups or individuals?
- (5) In each case, when was that contact made?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

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

TOWN OF EAST FREMANTLE, COMPLAINTS

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

- (1) How many complaints has the Minister for Local Government or his department received regarding the performance of the East Fremantle Town Council between May 1997 and April 1999?
- (2) How many of these complaints were regarding -
 - (a) administration; and
 - (b) town planning issues?
- (3) How many separate complainants were involved in the above issues?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

I request that this question be placed on notice as it has only just been handed to me.

WORKSAFE WA, FINES

199. Hon HELEN HODGSON to the Attorney General representing the Minister for Labour Relations:

- (1) Has the WorkSafe Western Australia Commission considered a proposal to increase the scale of fines that may be imposed against employers found to be negligent in relation to the death of an employee in the workplace?

- (2) If so, has the WorkSafe Commission supported the proposal and what will be the new fines?
- (3) If no to (1), when will WorkSafe consider such a proposal?
- (4) Has the commission considered a proposal for fines to be increased against company directors of employer companies found to be negligent in relation to the death of an employee in the workplace?
- (5) If so, has it supported the proposal and what will be those new fines?
- (6) If no to (4), when will the commission consider such a proposal?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1)-(2) The WorkSafe Western Australia Commission resolved on 1 September 1999 to examine the adequacy of the current penalties under the Occupational Safety and Health Act. The penalties that applied for breaches of occupational safety and health legislation in other Australian States and Territories and the fines awarded in Western Australia and other jurisdictions for breaches of the legislation will be covered in this process.
- (3) Not applicable.
- (4) In relation to fines, see (1).
- (5) In relation to the directors, WorkSafe has resolved that the Occupational Safety and Health Act be amended to make clear that a conviction against the person under section 55 carries the same maximum penalty as that which would apply for the body corporate under the relevant section of the Act.
- (5) Not applicable.
- (6) WorkSafe has resolved to deal with this matter and formulate recommendations to the minister in relation to the penalties as expeditiously as possible. The WorkSafe Commission meets monthly.

SCARBOROUGH SENIOR HIGH SCHOOL SITE, PUBLIC OPEN SPACE

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

When the Scarborough Senior High School site is redeveloped, what proportion of that site will be reserved for public open space?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

The Education Department does not determine the proportion of public open space that is required. Any development would need to adhere to local government requirements regarding public open space for the site.

CULTURE, LIBRARIES AND THE ARTS BILL

201. Hon TOM STEPHENS to the Minister for the Arts:

- (1) Does the minister share the view of the National Director of Museums Australia, Mr Paul Costigan, that the minister's proposed Culture, Libraries and the Arts Bill proposes to reduce, if not eliminate, the responsibilities of those involved in the governance of Western Australia's museum, art gallery and library.
- (2) Is the minister of the view that Mr Costigan is yet another arts operative who does not understand his Bill?
- (3) On how many occasions did the Association of Western Australian Art Galleries approach the minister to discuss the proposed Bill?
- (4) Will the minister table, by close of business tomorrow - preferably more quickly than the Minister for the Environment has tabled her list of 500 Regional Forest Agreement scientists - a list of all the people who he claims have strongly supported his legislation?
- (5) What polling exists showing support for or against his Bill?
- (6) Is the minister as dismissive of the views of the President of the Friends of the Art Gallery as he is of those of Sir James Cruthers?

Hon PETER FOSS replied:

- (1) No.
- (2) Yes.
- (3) None.
- (4) No.
- (5) None.
- (6) No.

THERAPEUTIC GOODS LEGISLATION

202. Hon NORM KELLY to the minister representing the Minister for Health:

- (1) Does the minister intend to introduce therapeutic goods legislation during this session of Parliament?
- (2) If not, what are the reasons for the delay in this legislation?
- (3) When will the legislation be introduced?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(2) The Minister for Health will introduce the therapeutic goods legislation as soon as possible after it is drafted.
- (3) The date of introduction of this legislation will be dependent on the Government's legislative priorities generally.

DIODE RED LASER POINTERS, BURSWOOD RESORT CASINO

203. Hon GIZ WATSON to the minister representing the Minister for Fair Trading:

It has come to my attention that diode red laser pointers are being misused around the State by youthful patrons, in particular at Burswood Resort Casino venues.

- (1) Is the minister aware of reports of misuse of diode red laser pointers within the precincts of Burswood casino venues?
- (2) Is the minister aware that some staff of Burswood casino venues have had diode red laser pointers shone in their eyes?
- (3) Is the minister aware that the staff of Burswood casino venues have been issued with written instructions to confiscate diode red laser pointers from clients?
- (4) If yes, what action has the minister taken to try to combat the misuse of these pointers at Burswood and other entertainment venues?
- (5) If no, does the minister intend to investigate these reports?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(3) No records of any complaints to the minister or ministry were located with regard to the misuse of laser pointers at Burswood Resort Casino.
 - (4) Not applicable.
 - (5) If the member has any specific complaints, it would be appropriate for the details to be forwarded to the Ministry of Fair Trading, which will consider the circumstances.
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