WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1999

LEGISLATIVE COUNCIL

Thursday, 18 March 1999

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 11.00 am, and read prayers.

STANDING COMMITTEE ON LEGISLATION

Appointment of Hon Tom Stephens

On motion by Hon N.F. Moore (Leader of the House), resolved -

That Hon Tom Stephens fill the vacancy on the Legislation Committee.

STANDING COMMITTEE ON ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Inquiry Into Management of Western Rock Lobster Fishery - Motion

Resumed from 17 March on the following motion -

That the Standing Committee on Ecologically Sustainable Development inquire into the management and sustainability of the western rock lobster fishery having regard to-

(1) The accountability of the Department of Fisheries and its rapid rate of expansion.

(2) The potential conflict of interest of the department in being a regulator and having involvement in projects and marketing.

(3) A proportional redirection of better interests development funding to the Western Australian Rock Lobster Fishers Federation to enable it to better represent the interests of lobster fishers.

(4) The ability of Western Australian fishers to store, feed and sell their product anywhere within Australia.

(5) The establishment of a seafood exchange in Fremantle.

And that the ESD Committee report its findings and recommendations to the House on or before 2 June 1999.

HON KIM CHANCE (Agricultural) [11.03 am]: At the conclusion of yesterday's allocated time for dealing with motions, I had said in support of this motion that a difficulty in the consultative process is entrenched within the rock lobster industry, a process which we know as the coastal tour series of meetings; that is, the series of meetings which occur along the west coast providing the grassroots consultation between industry participants and industry managers. I said that although that process works well in small centres - I named Dongara in particular as I was impressed with the way it worked - there seems to be a problem in the larger centres. In that context I mentioned both Geraldton and Fremantle. I have witnessed the failure of the consultative process and I have witnessed what seemed to be, on the face of it, an attempt to manipulate these meetings personally.

I will mention one particular instance, which was an issue touched on by Hon Jim Scott. I know he did not witness this instance because he was not at that meeting, but it is the same issue. At a Geraldton coastal tour meeting, a fisheries officer clearly misrepresented the views of fishermen on the proposed extension of the season into the winter months. I was absolutely stunned to hear an officer of Fisheries WA say that opinions were turning on the question of the extended season and that the opposition to the extension of the season which had been expressed was now beginning to turn into support. I had just returned to Geraldton from a meeting in Fremantle at which people had expressed their absolute opposition to the extension of the season. I wondered whom this fisheries officer was talking about when he said that opinions were turning: The very people who had indicated their opposition to the extension of the season from the very start were now actively lobbying for it. Indeed, during a meeting with Hon Jim Scott, adjacent to his office, we were told in very clear terms why the extension of the season was not an option preferred by a large component of fishermen in Fremantle. However, the Geraldton fishing community was being told that the negative opinion of that initiative in Fremantle was turning around. It seemed to be either a clear attempt to misinform the Geraldton fishing community about what the Fremantle fishing community was thinking or an example of an appalling breakdown in communication between Fisheries WA and fishermen in Fremantle.

I have addressed only that part of the motion which deals with the industry's management, and specifically with the management structures and processes that are in place. I have not yet addressed the question of sustainability except to mention it briefly. I understand why the reference to sustainability has been made. I have mentioned already that I would have been happier if the future sustainability of the industry had not been dealt with in the context of this motion. It is fair to say that the west coast rock lobster industry biomass is unquestionably in a sustainable condition. I doubt whether anyone would seriously dispute that statement. Indeed, it is a credit to the industry's management that we probably have the world's best sustainable rock lobster fishery. That is a subjective statement and one that has been claimed frequently by both the

fishing industry and Fisheries WA. There is some objective evidence to establish that. I refer to a letter which I received on 16 March from Kailis and France Foods Pty Ltd. It states in part -

> Our concern is that the issue of ecologically sustainable development has also been raised -

That is in the context of this motion. To continue -

> - which is not an issue as the sustainability of the fishery has been proven over the past 30 years, both scientifically and in actual results.
>
> This has attracted the attention of the Worldwide Fund for Nature (WWF), the peak conservation group that monitors the world's marine resources to determine sustainability. WWF, together with Unilever, has established the Marine Stewardship Council (MSC) as an independent group to identify sustainable resources and give official accreditation to resources that meet their stringent conditions.
>
> Western Rock Lobster have been accepted by MSC as one of the few resources that are worthy of accreditation and this is proceeding. The value of accreditation is that Western Rock Lobster would be the only lobster that meets the ECO labelling requirements of supermarkets in Europe.
>
> Unilever, who service over 80,000 supermarkets and food service outlets worldwide, together with major European supermarket groups, adopted a policy that gives preference to ECO labelled items.
>
> The MSC accreditation is a major factor, giving western rock lobster ready acceptance in Europe at a time when the industry is seeking new markets to reduce their reliance on Asia.

I believe the industry should have been doing that decades ago. The letter continues -

> It would therefore be most damaging if the sustainability is questioned, or the proposed enquiry proceeds and it could result in delaying the MSC accreditation and make it much more difficult to progress into Europe.

I do not agree with the last paragraph, because I do not believe the Standing Committee on Ecologically Sustainable Development's inquiry will do anything other than reinforce the subjective and objective information that is available about the industry's sustainability. However, I will be meeting with Kailis and France Foods tomorrow to discuss that aspect. Nevertheless, I thought it best to read the whole comment in context because it is something about which we have been subjective. It has made us feel good to claim that we have the best managed fishery in the world. However, it is always nice to see objective proof, particularly proof which has that kind of credibility.

I believe the inclusion of reference to sustainability in the motion is due to concern about management decisions that have had more to do with marketing options than with optimising sustainability. Hon Jim Scott has commented on this issue as well as having read a letter that addressed the impact of sustainability of market-driven initiatives, such as the extension of the season. I share his concern about some of the things that have been done by the industry management in the name of marketing and some that do not appear to have been given sufficient thought in respect of their potential and real market influence.

We are able to predict the future stocks of rock lobster with remarkable accuracy using the puerulus count mentioned by Hon Bruce Donaldson. When I first heard about the predictions that can be made from the puerulus count I must admit that I thought it was black magic; I did not believe we could rely on predictions as far as four years ahead based on the level of puerulus settlement. I have had to eat my words because Fisheries WA backed a winner. The department spent a lot of time, intellectual effort and money on proving the system. We now seem to have a system that, despite my early scepticism, is able to predict future stock levels with remarkable accuracy. That is a matter of nothing but praise for the skill of the researchers.

However, once that information is collected, which is vital to our industry, obviously to some extent it must be shared with the industry. However, telling the world that we will have a bumper season next year, the year after and so on is doing one thing and one thing only: It is telling the world it can drop the price of rock lobster. Everyone knows we supply the market for only a certain period during the year. We do not yet supply over the full year and I agree with Hon Bruce Donaldson that that is the line we should be taking - we need the shop to be open for 12 months. The world, and in particular New Zealand, knows that when the west coast stops fishing, their boats can go out. New Zealand has a quota system that allows the lobster to be caught over 12 months if the weather conditions allow. Anyone with an ounce of intelligence will wait for us to stop supplying and then send out their boats. As soon as Western Australia stops fishing, the world price rises. Telling the world that in this part of the year there will be a supply factor of last year's catch plus 15 per cent is telling it that the price can drop. Two situations could result: Firstly, we could have a price drop as a result of the release of that sensitive market intelligence; or, secondly, we could also be wrong about the projection. We could have a reduced price and a reduced catch. The consequences for the industry would be extremely serious.

I do not know how we will manage the way in which we release those market predictions, because it appears that the industry

needs that information to make its judgments about planning for the future. However, to tell the world in the overt way that we have seems to be undermining our price structure. That issue must be addressed. I do not have any quick fix, because the distribution of market intelligence around the world these days is such that it might not be possible. However, we should not tell the world what our future production levels will be.

I have no further comment to make on that aspect of the motion, other than to underline the fact that the biomass is in a strong and sustainable condition, and we can look forward to that continuing in the long term. I prefer that the matter of sustainability be largely set aside as an issue of inquiry by the ESD Committee.

The Labor Party intends to support this motion to establish an inquiry. Dealt with properly, the inquiry can make a positive contribution to the industry. I look forward to asking the committee whether I can give evidence should the House decide to support the motion.

HON HELEN HODGSON (North Metropolitan) [11.19 am]: The question of the rock lobster fishery has been bubbling along ever since I took my seat. A number of people have approached me with concerns about the way in which the fishery is being run. It will be difficult to identify whether there are problems in the fishery and in its management unless the inquiry takes place. Just looking at the file in which I have kept the documents that have been given to me on the rock lobster fishery, I see the history of the matters that have been raised with me started when people approached me to talk about the question of the prolonged season that was raised in June 1997 by the Fremantle Professional Fishermen's Association. I have a document that contains a petition of over 120 names. It says that they had some concerns about the proposed extension to the fishing season. I raise that because it was brought to my attention but in fact the concerns raised with me have been taken on board by the Western Australian Fishing Industry Council, the Rock Lobster Industry Advisory Committee and Fisheries WA. I understand that the proposal has not gone ahead and is still on the drawing board. I have a discussion paper of June 1998, which is the fisheries management paper No 113, appendix 5 of which refers to industry views and raises the issues that were raised with me a year earlier. It is true to say that there are some concerns but I am not sure that those concerns have not been taken on board by the people making the decisions and putting the discussion paper out for review.

That seems to be some of the history of the way the contact with me has gone on these issues. People have come to me and said that they are worried about an aspect of the rock lobster industry. I have found out what is going on and found that decisions have not been made or the decisions that have been made have been a result of listening and considering those points of view. Having said that, it is quite clear to me there is a definite communication problem within the industry. The very fact that it has now reached the stage where there is a breakaway organisation calling itself the Western Australian Rock Lobster Fishers Federation suggests that there is a question mark over the communication and management strategies and the ability of the people who are setting directions in the area to explain to the fishermen on the boats what is going on and the reasons for the decisions that are being made.

I have here a memorandum of a discussion that I had with a representative of the federation in April of last year. This I gather was issued shortly after the federation formalised its constitution and set itself up as a representative body of sorts. Some of the issues that were raised with me concern the fact there is a close connection between the Rock Lobster Industry Advisory Committee and the Government. It says the ties between the Government and the committee appear to be strong and people feel that RLIAC rubber-stamps recommendations of the minister and the department, often against the express wishes and the advice of fishermen. There were complaints about cronyism and corruption and insider trading. However, it appears that none of those allegations has been substantiated. It is one of those instances where rumour thrives but nobody is able to bring sufficient evidence to substantiate any of the allegations. There was criticism of the Western Australian Fishing Industry Council and its role as an advocacy body because it is not exclusive to the rock lobster fishery. It was said that it has conflicting interests because it is representing all of the fisheries up and down the coast. It was said that a conflict of interest exists between members and the functions of RLIAC. Fishers believe that they are being treated with contempt by RLIAC because they are paying a resource tax for the committee to function but the committee is ineffective and unrepresentative. The federation believes that the industry is operating on a 1950s model and needs to come into the modern age. It fears that RLIAC is too far behind the times to address some of the modern methods.

I do not in any way say that I endorse those comments that were brought to me. I am bringing them to this place as an indication of some of the concerns that are out there among parts of the rock lobster industry. Those same themes run through a number of documents that have been presented to me. I believe that most of those documents have also gone to the minister. These circumstances have led to the point where this federation has now set itself up as a representative body of fishers and is seeking independent funding under the Fish Resources Management Act, which I believe allows funding for these sorts of bodies.

Hon Kim Chance: It is the Fisheries Research and Development Corporation.

Hon HELEN HODGSON: The federation is applying for specific funding so that it can represent this group of rock lobster fishermen, which it believes is not represented by the current structure.

Some issues need to be explored by a committee, even if it is simply to find out whether there is any merit in the matters that

have been raised. If it is basically an issue of people feeling that the communication structures need to be revamped, the committee should take that on board and consider whether there are serious structural deficiencies. At the same time, I find the attitude of the federation to be extraordinary at times. For example, a recent review has been conducted under the auspices of WAFIC in which the federation specifically indicated that it would not participate. I have copy of the review of the Rock Lobster Industry Advisory Committee correspondence dated 17 September 1998. It indicates that WAFIC has set up a process to review the committee and that the federation was invited to attend meetings but chose not to do so. I understand that the federation basically says its constitution is such that it should not be in meetings conducted under the auspices of WAFIC. I have a copy of a letter dated 15 September 1998 to the minister from the federation. It indicates that, as the minster has previously been advised, the federation will not attend or support WAFIC or RLIAC-organised meetings, and that the federation members desire effective co-management through dealing directly with the minister in keeping with the spirit of the Fish Resources Management Act 1994. I was also present at a meeting last year to which the WAFIC representative was not admitted.

If it is a case of trying genuinely to do the best for the industry, there is nothing wrong with bodies being set up each to represent part of an industry in the way they consider best. There are myriad examples. If the Minister for Finance were here, he could tell members that he is familiar with what is going on in the accountancy profession. There are two organisations in it, the Institute of Chartered Accountants in Australia and the Australian Society of Certified Practising Accountants. They recently tried unsuccessfully to merge. However, the two organisations cooperate and work together on issues. They have regular meetings to ensure that when submissions go to the Minister for Finance on matters of tax, they are fairly well coordinated. There is nothing wrong with having two bodies, but when there is such a level of animosity between the bodies that they cannot possibly work together and coordinate what they are doing, there is a deficiency that needs to be looked at to see what are the root causes of that deficiency.

I note with interest Hon Kim Chance's comments about the sustainability of the fishery. I missed part of the debate in the Chamber this morning as I was on the telephone to someone who filled me in on the Marine Stewardship Council, which was briefly addressed by Hon Kim Chance.

I recently received by fax a copy of the Worldwide Fund for Nature's most recent newsletter which contained an article outlining that the Western Australian rock lobster fishery was being examined. I see that the Minister for Transport has a copy. This indicated that we were on the verge of achieving recognition as a sustainable fishery. Others in this place are far more qualified to speak than am I on matters of marine science. I must weigh up competing evidence and say: "There are two conflicting scientific views and I am not qualified to judge between them." We are on the verge of international recognition for the work being done in our fishery.

The rock lobster fishery, as a result of its commercial implication, has been heavily researched. Science in rock lobsters is well ahead of that in many other fisheries in this State and elsewhere in Australia. It is a highly marketable commodity, which we learnt long ago we need to monitor and conserve. In common with farmers, some fishermen are green at heart as they know they must conserve the resources with which they work in order to maintain their livelihood.

Hon Kim Chance: What is the conflicting scientific view?

Hon HELEN HODGSON: I said it applied in many fisheries matters. The federation states that sustainability is a matter which should be examined, and that some of the science is wrong. I am not in a position to agree or disagree, except to note that we are about to be given a tick by the Marine Stewardship Council, which has made a good, independent assessment of the science in our fishery. A little of the information about the Marine Stewardship Council that I obtained off its website reads -

> The Marine Stewardship Council . . . is a charitable, not-for-profit, non-governmental international organisation set up to promote sustainable fisheries and responsible fisheries practices worldwide, through developing long term, market-based solutions which meet the needs and objectives of both the environment and commerce.
>
> Central to the purpose of the MSC are its principles and criteria for sustainable fishing against which independent certification companies may certify fisheries on a voluntary basis.

The fisheries are then entitled to use the MSC logo, which conveys to consumers the assurance that the fish or fish product is from a well-managed and sustainable fishery and that it has been fished responsibly. We will gain a competitive edge if we comply with those requirements in the WA rock lobster fishery. Discussions over the past year or so with people in the rock lobster industry indicate that we marketed in huge quantities to Asia before the Asian meltdown. Therefore, the fishery was able to sell all the catch. However, as the Asian market is not doing so well, we are suffering more from competition from lobsters produced in other countries. I understand that Cuba is an up-and-coming producer of lobsters. If we could gain a competitive edge with the European market by showing we have an ecologically sustainable fishery, we could counter some of the weaknesses in the market resulting from the Asian meltdown.

The Marine Stewardship Council's mission statement reads -

The Marine Stewardship Council's aim is to work for sustainable marine fisheries by promoting responsible, environmentally appropriate, socially beneficial and economically viable fisheries practices, while maintaining the biodiversity, productivity and ecological processes of the marine environment, through:

conserving marine fish populations and the ocean environment on which they depend

promoting responsible management of fisheries, ensuring the sustainability of global fish stocks and the general health of the marine ecosytem

establishing and promoting the application of a broad set of principles and criteria for sustainable fishing

providing certification and accreditation services.

The crux, as put to me this morning, is that it will send mixed messages if a parliamentary inquiry examines the stainability of the fishery at the same time as we are undertaking the accreditation process with the MSC which states that we are an environmentally sustainable fishery. The terms of reference of the motion do not refer to the sustainability of the fishery. They refer to the accountability of the Fisheries WA and its expansion rate; the potential conflict of interest of the department; redirection of funding to the Western Australian Rock Lobster Fishers Federation; the ability of WA fishers to store, feed and sell their product anywhere within Australia; and the establishment of a seafood exchange in Fremantle. Sustainability is mentioned only in the preamble, which refers to the management and sustainability of the western rock lobster fishery. I would have discussed my proposed amendment with the mover of the motion prior to entering the Chamber if I had had the opportunity. I ask the Council to consider amending the motion.

Amendment to Motion

Hon HELEN HODGSON: I move -

In line 2 - To delete "and sustainability".

This change does not limit the ability of the ESD committee to conduct the inquiry. The terms of reference are sufficiently broad to allow it to look into the other matters raised. An inquiry of sorts has good reason to consider some of the underlying issues in the industry itself, and the structure of the Rock Lobster Industry Advisory Committee and whether these apparent communication difficulties can be dealt with. It is clear that the sustainability question is not really on the table. Raising that matter at this time could work against the interests of resolving any disagreements between two sectors of the industry; namely, the fishers federation and RLIAC. If the inquiry were to extend into the sustainability question, it would have an adverse impact on the inquiry's achievements. I will be interested to hear the response of the other parties to the sustainability question.

HON KIM CHANCE (Agricultural) [11.39 am]: The Australian Labor Party will not support the amendment. Firstly, we have not had sufficient time to consider the amendment, and our commitment is to the motion in its original form. Notwithstanding that, I have indicated my concern about the matter of sustainability. Nonetheless it is for the standing committee to make a judgment about the depth at which it looks at that question of sustainability. I believe some questions must be asked about the relationship between the management of the industry and the mixing of the treatment of the issues of marketing and sustainability. Additionally, in terms of the value of the committee's advice to this House and, in a less direct sense, to the Minister for Fisheries, we must consider the role of the minister.

When we strip back all of the roles and functions of the Minister for Fisheries, and in a sense the Parliament, in respect of that fishery, we find the final and most important function of the Minister for Fisheries is to ensure it continues to be sustainable. That is the minister's ultimate responsibility. The other various functions of Fisheries WA, for which the minister is responsible on behalf of the whole Parliament, are all lesser issues than sustainability. On two bases - first, that the sustainability and marketing issues should be looked at and, secondly and most importantly, with respect to the relevance of not only this committee but also the Parliament - I believe the reference to sustainability should be retained in the motion, albeit with a caveat. My advice to the committee is that it should not be a major issue for its inquiry, taking account of the subjective and objective evidence of good management which exists.

HON J.A. SCOTT (South Metropolitan) [11.42 am]: I have concerns with the amendment, which spring from the issues put forward by fishermen about management practices which have been proposed by the department; for example, a proposal to allow the catching of setose females. The reason for allowing the catching of these large female crays was that it would be done at a specific time of year when they were attractive to a particular market. That is overriding an ecological imperative for a marketing reason. Many proposals come forward from fishermen including those about the number and size of the openings in the cray pots. There are a whole raft of propositions the fishermen feel they cannot get the department to look at seriously. They relate to the management, in this case, of how many crays they will be allowed catch, and also the sustainability of the industry. The fishermen fought for a long time to prevent tar spotters from being taken. The department has now taken the view that it is right to prevent tar spotters being taken. They do not want that decision to go backwards to where the fishery could be placed under threat. It is very important that this committee look at those issues

as part of the overall management. I urge Hon Helen Hodgson to withdraw her amendment. It is widely recognised by the fishermen - including those in the Western Australian Rock Lobster Fishers Federation - that this is the best managed fishery in the world; however, they believe many areas can be improved further.

I inserted the word "sustainability" in the preamble of the motion to allow a deviation into this area where the ecological principles come up against the marketing and management principles of the fishery. It is not the major item, but will allow the committee to dabble in that area when necessary. It is impossible to separate the management of the fishery from that specific area. At the very least, the committee should have the ability to do that. If the member is seeking to take out the word "sustainability", I suggest a clause be added to say that the committee can look at any other related matters, or something similar. That would enable the committee to do that.

In this industry the question of sustainability arises. I point out that scientists have put forward the view that the western rock lobster industry is a very sustainable one, but not necessarily an ecologically sustainable one. We are talking about two different matters: One is about the whole marine environment; the other is about sustainability of lobster. This is similar to the argument about the forests. In general, people say we have a sustainable forestry industry; however, conservationists say we do not have a sustainable ecology in the forest areas. This motion is not trying to address that specific issue, but rather the fact that the department is suggesting management practices which would put at threat the sustainability of the industry.

The fishers - that is how they prefer to be known - want the committee to have the ability to discuss those issues as well. It is a mistake to take out that ability, and not allow this committee to delve into those areas. Perhaps Hon Helen Hodgson could give an indication whether she will withdraw the amendment. It is probably easier to leave the wording as it is. If she continues with the amendment, I will ask my colleague Hon Christine Sharp to seek to move a further amendment which will allow the committee to retain the ability to look into the areas where sustainability and management practice come into conflict. I do not support the amendment.

HON B.K. DONALDSON (Agricultural) [11.50 am]: I am rather amazed at the turn of events in 24 hours, although I should not be surprised; parliamentary debate is always a moveable feast. I am against any inquiry.

The PRESIDENT: I know Hon Bruce Donaldson is, because he raised that in his initial comments on the main question. He has spoken to the main question. As he knows, he is restricted to commenting on the deletion of the two words "and sustainability".

Hon B.K. DONALDSON: Thank you, Mr President. I am pleased you drew that to my attention in case I strayed onto issues I should not touch on.

Hon Bob Thomas: He knows you well.

Hon B.K. DONALDSON: To remove those words from the substantive motion would result in the lesser of two evils. It has been clearly indicated in this House, particularly by Hon Kim Chance, that it would not be desirable to debate too deeply the sustainability of the rock lobster industry at present. The figures and catch numbers clearly indicate the situation.

The word "sustainability" has a couple of meanings to me. I have always been a great believer that if an industry is sustainable it usually means it is being well managed. In one sense the amendment would make a nonsense of the motion. It is really saying -

Hon Kim Chance: One is the outcome of the other.

Hon B.K. DONALDSON: That is right. Unsustainability means poor management. By removing the words "and sustainability" we would be implying that management must be crook. That is not the case. One must go with the other. It is difficult to fathom what has prompted this amendment. If we are talking about management we are also talking about sustainability.

With reference to the management of the rock lobster industry, the chairman of the Rock Lobster Industry Advisory Committee has been addressing an issue that has plagued the industry for some time; that is, the perception that the fishermen are not being listened to. As I said yesterday in the debate on the motion, that occurs in all primary industries.

A lengthy annual planning cycle has been implemented by RLIAC. It commences in February of each year when RLIAC considers the latest fishery data and develops a plan which is then released. In May it considers many of the submissions put in by lobster fishermen and people with ideas and proposals, some of which it then finalises. By September most fishermen are fully aware of the proposals. I agreed with Hon Kim Chance when he said yesterday that better interaction occurs between fishermen and RLIAC in the smaller fishing centres. The large meetings that I, Hon Kim Chance and many of my colleagues have attended, such as the one at Geraldton where the whole of the Queens Park Theatre was full, do not lend themselves to interaction with management. I hope I am on the right track, Mr President. I am sure you will pull me up if I stray too far.

The PRESIDENT: Order! If Hon Bruce Donaldson mentions the words "and sustainability" now and again I will know that he is on the right track.

Hon B.K. DONALDSON: I am linking management with sustainability. The final stage of the RLIAC plan is in October when RLIAC advises the minister of the strategy and he, in turn, makes an announcement in November prior to the season's commencing. I am trying to emphasise that RLIAC has been making a big effort in that managerial capacity, which in itself contributes to sustainability.

Although the amendment would result in a motion that would be the lesser of two evils, it would send the wrong signal to our overseas markets. Hon Kim Chance did not see this as a problem; however, the world is watching closely some of our policies, such as our clean oceans program. I think it will be fortuitous for our export markets to develop the Jurien marine reserve because it is a sustainable area and is well managed environmentally. We may not think this is a big deal because we understand what we are talking about. However, in the eyes of the world the word "sustainability" could mean environmentally sustainable. We must be aware of the signals we send out. A news item may receive little coverage here, but it can be a front-page story in Singapore or somewhere in Europe. Competitors in any export industry -

Hon J.A. Scott: It might drive up the price.

Hon B.K. DONALDSON: We are talking about sustainability rather than the environment. I find it difficult not to link management and sustainability.

Hon N.D. Griffiths: Keep talking about sustainability; you will be right.

Hon B.K. DONALDSON: Sustainability has been well proved. I can understand Hon Helen Hodgson's wishing to delete that from Hon Jim Scott's motion. She has acquired a large file on the rock lobster industry and has come to the same conclusion as Hon Kim Chance; that is, we have a very sustainable biomass in which catches can be predicted to within 5 and 1 per cent. That is not a bad effort when the biomass itself is not even visible. We rely on many other factors to ensure sustainability. I can understand why Hon Helen Hodgson is trying to remove these words, although I am not sure whether it is for the right reason. She did not indicate her full reason for removing these two words as clearly as I would like. I am still a bit mystified. However, she has acknowledged what we all appreciate; that is, we have a sustainable rock lobster industry in Western Australia. If, by moving the amendment she acknowledges that, she must also remove the words "the management". That would leave a motion to have just an inquiry.

I would find it difficult to support this amendment, although, as I indicated earlier, the amended motion would be the lesser of two evils.

HON CHRISTINE SHARP (South West) [11.58 am]: I have not been involved in this debate because if the motion is passed there will be time enough for me to be involved then. However, I wish to speak to the amendment moved by Hon Helen Hodgson and oppose it mainly from the perspective of good committee management. People involved with committee inquiries surely appreciate that if committees are too constrained by narrow terms of reference because broader terms have not been foreseen when the terms of reference were set, that may detract from the value of the findings of the inquiry and, as it were, undermine the potential of the inquiry.

We all agree - speakers in this debate have covered the points repeatedly - on the record of sustainability of this fishery. Nevertheless, the proposed inquiry would be held by a committee called the Standing Committee on Ecologically Sustainable Development. As Hon Bruce Donaldson said, an intrinsic relationship exists between management and sustainability. In addition, that committee has an intrinsic interest in issues of sustainability. It is therefore inappropriate that the committee should be constrained.

Debate adjourned, pursuant to standing orders.

PORT AUTHORITIES BILL

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon M.J. Criddle (Minister for Transport) in charge of the Bill.

Progress was reported after clause 7 had been agreed to.

Clauses 8 to 13 put and passed.

Clause 14: Chief executive officer -

Hon KIM CHANCE: I draw the attention of the Committee to the discussion on clause 6. I asked why the protection of the Public Sector Management Act was not afforded to employees of the authority, under the clause headed, "Port authority and officers not part of public sector". In a sense, my question on clause 14 relates directly to the issue I raised on clause 6.

In the light of the answer provided by the minister, which I found quite satisfactory, why in clause 14(2)(b) are the chief executive officers' terms and conditions of service subject to the Salaries and Allowances Act?

Hon M.J. CRIDDLE: The provision allows the Salaries and Allowances Tribunal to set the terms and conditions of the CEO if he requests it.

Hon KIM CHANCE: What provisions of the Salaries and Allowances Act will affect the package that can be offered to the CEOs?

Hon M.J. CRIDDLE: If it is asked to include certain things, the Salaries and Allowances Tribunal can determine those issues.

Hon KIM CHANCE: That being the case, does it mean the tribunal established under the Salaries and Allowances Act will have the power to set the salaries for the CEOs?

Hon M.J. CRIDDLE: If they are allowed and listed under the Act, it can. That is to provide uniformity across the CEOs.

Hon NORM KELLY: The minister is saying that port authorities have a choice as to whether they use the Salaries and Allowances Act.

Hon M.J. Criddle: The minister has the choice.

Hon NORM KELLY: Therefore, the Salaries and Allowances Act can be bypassed if the minister so chooses and that would allow the authority to set the terms and conditions of the CEOs' salaries.

Hon M.J. CRIDDLE: Essentially, yes if the minister wants to bypass it.

Clause put and passed.

Clauses 15 to 29 put and passed.

Clause 30: Functions -

Hon GIZ WATSON: I move -

Page 20, after line 16 - To insert the following new paragraph -

(f) to protect and enhance the environment of the port.

In moving that amendment, I am seeking to reinsert in this Bill a provision of the Dampier Port Authority Act 1985 which makes it clear that one of the functions of the port authority is to ensure that the environment of the port is protected and enhanced. I do not seek any new provision; I am merely ensuring that the legislation is consistent with the most recent port authority Act produced in this State. Members will be aware that this Bill will supersede and, therefore, repeal a number of port authority Acts already in existence. I acknowledge that some of those Acts are very old and definitely are in need of updating. However, in my assessment of the impact of this Bill I looked in some detail at the Dampier Port Authority Act, particularly as it was formulated immediately before the Environmental Protection Act in this State. In my opinion the Dampier Port Authority Act anticipated the provisions of the Environmental Protection Act and, therefore, included the requirement for the port authority to protect and enhance the environment of the port within its functions.

It is very important that this function be listed as well as all the commercial and managerial functions listed. I think it puts beyond doubt that the port authority has an obligation to manage the environment as well as the commercial operation of the port. The minister says that this amendment is not necessary; however, the Dampier Port Authority Act expresses modern thinking in environmental management. I can see no reason to remove provisions that would bind all future port authorities to a commitment to environmental management. Those provisions comply with the spirit of the Bill that environmental management is a high priority.

Hon M.J. CRIDDLE: The Government does not agree with the amendment. Clause 30 sets out the principal functions of port authorities. There is no argument that the port authority should have regard to environmental issues. In fact, clause 51 requires port authorities to address environmental issues in their strategic plan. However, environmental management for the purpose of enhancing the environment of the port is not a primary function of port authorities, and should be handled under the Environmental Protection Act. We have enhanced the provisions of the Environmental Protection Act since the Dampier Port Authority Act was passed. The Environmental Protection Act now contains provisions which are better able to protect the environment than those in the Dampier Port Authority Act. I assure Hon Giz Watson that port authorities must abide by the Environmental Protection Act.

During the second reading debate Hon Giz Watson touched on issues such as ballast water, anti-toxic paints on vessels, and some of the fouling that comes off the hulls of vessels. I was fortunate to be in the port of Fremantle yesterday and I asked about this issue. Australia is a member of the International Marine Organisation, and the ballast board of management

advisory council has a role in that in Australia. The Australian Quarantine Inspection Service is responsible for ensuring that shipping adheres to the ballast water guidelines. The indications are that the IMO regulations are strict. The Fremantle Port Authority is at the forefront of initiatives to prevent pollution and to comply with environmental standards such as ISO 14000 environment management system standard. Notwithstanding that, clause (2) of schedule 7 regulates the taking in, management, discharge and delivery of ballast.

Hon Giz Watson also stated that vessels of over 22 metres are still allowed to have their holds coated with anti-fouling paint containing trybutyltin. She also raised the sandblasting and recoating of vessels and stated that she would like provisions that acknowledge the need for a uniform approach to those issues for all port facilities, including vessels in dry dock. She asked for assurances that the environmental management issues associated with the ports are fairly enshrined in the Bill. The issue of large vessels being coated with anti-fouling paint is being considered at the international level and is way beyond the scope of the Port Authorities Bill. The containment of sandblasting residue and associated chemicals and paints at dry docks and other marine facilities is covered by legislation administered by the Department of Environmental Protection The DEP has considered tightening up controls in recent years, and licenses all facilities engaged in such work. Clearly the DEP legislation is more appropriate for that than is this Bill. The Bill is about corporate governments within the port areas only. Small boatyards and boating facilities do not feature within the confines of port authorities. International covenants on the prevention of pollution from ships are very strong. Western Australia adopts these conventions and takes them seriously. The Pollution of Waters by Oil and Noxious Substances Act applies these conventions as law. Penalties of up to $250 000 apply to vessels which pollute our waters. If ports are to be effective in achieving the prime function of trade facilitation, it is essential that clause 30 relates specifically to their core functions, leaving other important issues to the relevant regulatory authorities and statutes. Port authorities exist for trade purposes not environmental purposes, and are not conservation and wildlife agencies. It is not their primary function to enhance the environment of the port.

Hon KIM CHANCE: The Opposition has carefully considered the points that the minister has made both here and in our negotiations outside this place. Without derogating anything the minister has said, we have made a decision to support this amendment. We do so while acknowledging the point the minister has made in pointing to the Government's proposed amendment to clause 51; however, we need to consider the context of that proposed amendment. An amendment to clause 51 requires only that a board consider, in the context of its preparation of a strategic development plan, the issue of the environmental management of the port. It is important to notice that this appeared as an amendment before this Chamber. It was not a component of the original Bill or an amendment made in the other place; it has come to us at the last stage of the legislative process as a throwaway, possibly for no other reason than to counter Hon Giz Watson's amendment.

Hon M.J. Criddle: This is a result of debate in the other place.

Hon KIM CHANCE: Setting that aside, the context of the minister's amendment to clause 51 is that it would merely be considered by the board in its deliberations on what shall be in the strategic development plan. The Minister's argument is cogent, but subclauses (1) and (2) relate to the fundamental functions of the port authority.

I acknowledge the truth of what he has said, but clause 30(1)(e) states that a primary function of the port authority is "to be responsible for the maintenance and preservation of vested property and other property held by it." That is quite reasonable; however, what are we saying if we argue that that is a prime function of the board or the port authority, but taking account of the impact on the environment is not? In other words, it is a prime function for it to look after its own property, but it is not a prime function to look after the common property of the people of Western Australia. No-one can argue with me, and no-one would attempt to argue with me, that a port cannot have a substantial impact on the environment; of course it can and we know that. The minister has acknowledged that by correctly pointing to the bulk of those environmental monitoring issues as being the function of commonwealth or international law, covenant or agreement. That is true; matters such as ballast water are better looked after by the Commonwealth.

Hon M.J. Criddle: It is better to have it across all shipping.

Hon KIM CHANCE: Yes, and by international covenant. Apart from the anti-fouling issues which are properly commonwealth, such as ballast water, issues which are entirely within the control of the port authority are involved in a port's function. I will refer to an important issue: Members should visit any working port and look at one of the lesser known, but important, functions of the people who operate the incinerator at that port. Ships, by their nature, come from other countries which have pathogens that we do not want in Australia. Those pathogens might affect the health of humans, animals or plants and we must be extremely careful in the way in which we deal with waste from those ships, and that includes food waste and some industrial waste. It is no more sophisticated than domestic trash; not to mention the furry animals that live on those ships. Little furry animals are all very nice, but some little furry animals are rats. Rats carry disease and other animals on their bodies which must be kept out of the Australian ecology. It is a small and dirty task but it is an incredibly important one. It is also a task which, the Australian Quarantine and Inspection Service responsibilities aside, falls directly on the port authority. AQIS has an important role; it works with the port. At the end of the day, it is the port's responsibility to ensure it is done. AQIS might tell the port authority how to do it -

Hon M.J. Criddle: That is incorrect; that is the job of AQIS, otherwise we may as well not have AQIS.

Hon KIM CHANCE: Nonetheless, the ports carry out that function.

Hon M.J. Criddle: That is different from what you said.

Hon KIM CHANCE: I know the people in the port authority who operate the incinerator.

Hon M.J. Criddle: That is not what you said. You said it was the port authority's responsibility to do that.

Hon KIM CHANCE: It is the port authority's responsibility to carry it out. It is the responsibility of AQIS to ensure it is carried out.

Hon M.J. Criddle: That is the very point we made. All of these functions and rules are in place.

Hon KIM CHANCE: The minister is saying that if the particular port authority did not carry out that task, AQIS would have to find someone else who would. Perhaps the minister is right; nonetheless the working part of that function is carried out by the port authority. It ensures that the incinerator is at the port. It must be a particular type of incinerator because it must burn at a predetermined temperature to ensure the pathogens are destroyed.

Hon M.J. Criddle: None of that is to do with this particular clause.

Hon KIM CHANCE: It is a matter concerning the environment.

Hon M.J. Criddle: It is; I do not argue with that.

Hon KIM CHANCE: A number of issues - perhaps I do not even know about them and I will not bore the Committee by mentioning them - fall to the port authority's management of its part in the environment. It is sufficiently important to be dealt with as a function of the port authority rather than, as proposed by the Government in its amendment to clause 51, simply a matter which is considered by the board in the construction of its planning.

Hon NORM KELLY: Hon Kim Chance referred to clause 51 and the minister considers that a sufficient amendment to deal with environmental management and protection. I also draw members' attention to clauses 33 and 34 of the Bill. Clause 33 relates to the duty to act in accordance with policy instruments and clause 34 relates to the duty to act on commercial principles. Clause 34 states that the "authority must act in accordance with prudent commercial principles" and "endeavour to make a profit". Subclause (2) states that if there is inconsistency between this and the duties imposed by policy instruments, as in clause 33, the policy instruments prevail over that commercial imperative to make a profit. Therefore, clause 33 would prevail. I will read clause 33 because it is relevant to the proposed amendment. It states -

> A port authority is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

The performance of its functions overrides that commercial imperative to make a profit. That is another reason why it is important to have an overriding function, such as that proposed by Hon Giz Watson, over that commercial imperative to make a profit so as to protect and enhance the environment of the port. In addition to what Hon Giz Watson said when moving the amendment, that is also a strong reason why the amendment should be supported.

Hon GIZ WATSON: I was heartened to hear that the Government does not argue with the need to protect the environment; however, that only increases my argument for having this as a primary function of the port. I firmly argue that environmental management responsibilities should be entrenched in all major pieces of legislation.

Hon M.J. Criddle: We have legislation to deal with that.

Hon GIZ WATSON: I understand that. On that matter, does the minister know whether any legal advice has been sought on whether this Bill would override the Environmental Protection Act?

Hon M.J. Criddle: It will not.

Hon GIZ WATSON: Has any legal opinion been taken?

Hon M.J. Criddle: I will give you that assurance.

Hon GIZ WATSON: It has been taken. What was the response?

Hon M.J. Criddle: That this Act will not override it.

Hon GIZ WATSON: Is that correct? Does the legal advice indicate that this will not override it?

Hon M.J. CRIDDLE: The Environmental Protection Act applies. These ports must comply with the Acts that are in place. Hon Giz Watson should have listened to my opening remarks when I went through those issues and pointed them out one by one. The ports must comply, just as anyone else must comply and just as they must comply when other development takes place. We must abide by this Act from the environmental point of view.

Hon GIZ WATSON: I seek an answer to that specific question.

Hon M.J. Criddle: I have given it to you.

Hon GIZ WATSON: Was legal advice taken? What was the answer? I have not heard the answer.

Hon M.J. CRIDDLE: Crown Law has advised that the Port Authorities Bill does not cut across anything in the Environmental Protection Act. We must abide by the Act. What more can I say?

Hon GIZ WATSON: Will the minister table that Crown Law advice?

Hon M.J. CRIDDLE: It is not usual for the Government to table Crown Law advice. That understanding has been going on for years.

Hon GIZ WATSON: The minister seemed to be confused about which Act came first; whether it was the Dampier Port Authority Act or the Environmental Protection Act. The Environmental Protection Act was enacted about 12 months after the Dampier Port Authority Act.

Hon M.J. Criddle: That is exactly right.

Hon GIZ WATSON: Perhaps I was confused about the minister's comments.

Hon M.J. Criddle: That is what I meant.

Hon GIZ WATSON: I just wanted to clarify that matter.

On the point raised by Hon Kim Chance about matters that more logically come under the federal jurisdiction, I understand that the management of matters such as ballast water and international agreements on anti-fouling must be covered by overriding federal legislation. However, when I mentioned the matter of sandblasting I was not referring to only the sandblasting of hulls in dry dock operations. All the standing facilities are coated with paint materials and, when sandblasted, a percentage can end up on the bottom of the ocean. I realise that the facilities are covered as much as possible. However, there are issues concerning the physical structures different from the issues related to managing dry docks which are managed under the Environmental Protection Act through licence. There is a general issue concerning chemicals and paints and the actual physical structure of ports. The port authority board must have the environmental concerns of those issues very much at the forefront.

Two other issues affect state considerations and ports. One is the impact of activities on the immediate marine habitat and any adjacent areas, which may be affected by such things as dredging. I am aware that the dredging proposals go through an environmental assessment process. However, the functions and powers, as they stand now, are very much about just the commercial functions and powers and not the environment, which should rank equal with those matters. What has happened historically, which we must avoid, is that there has been a trade-off of profits at the expense of the environment. It is not unreasonable for us to ask the port authority board to put this matter up with other considerations at that level. The minister said that other laws cover the environmental protection questions that I am raising. I am interested to know to which laws he is referring.

Hon M.J. CRIDDLE: We could probably debate this matter endlessly. Every time we move, wherever we live, we create dust and every time we start a car we create emissions. Yesterday I saw the walls underneath the port being repaired; I am sure dust came from that work. Every time we move or breathe we create a problem. We have rules that govern the emissions and damage that is done across the board for every function. We say that the ports are in place to perform a commercial job; and that is the function of this Bill. Clause 51 provides that the strategic development plan must outline the way that the port authority boards will handle that function. The rules exist and we must abide by those rules. Now and again things go wrong. However, the operation of ports must go ahead and obviously the primary function of the boards is to carry out the work of the ports. The boards must abide by the Environmental Protection Act and all the other rules that have been put in place that I mentioned, including the International Marine Organisation's rules. We cannot cross every "t" and dot every "i" on these matters. If we went through that process we would never start up a boat or do anything. We say that we will abide by the Environmental Protection Act and other Acts and rules that are in place. However, it is not a port authority board's core function to do that; its core function is to ensure the port is operating.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Bob Thomas *(Teller)*
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Tom Stephens	

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon John Halden	Hon Max Evans
Hon Mark Nevill	Hon Dexter Davies
Hon Ken Travers	Hon Simon O'Brien

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 31 and 32 put and passed.

Hon KIM CHANCE: Mr Chairman, it would be easier to deal with clauses 33 and 34 cognately.

The CHAIRMAN: With the concurrence of the Chamber, or its lack of objection, I will revise the question. The question is that clauses 33 and 34 be agreed to.

Clause 33: Duty to act in accordance with policy instruments -

Clause 34: Duty to act on commercial principles -

Hon KIM CHANCE: The interrelationship between clauses 33 and 34 is interesting. It seems that a commitment in the statement of corporate intent might clash with the duty to act on commercial principles, as outlined in clause 34(1)(b). Clause 33 reads -

> A port authority is to perform its function in accordance with its strategic development plan and its statement of corporate intent . . .

Clause 34(1) contains the requirement to act in accordance with prudent commercial principles and to endeavour to make a profit. These are almost contrary to the minister's argument regarding other legislation because these points are dealt with in Corporations Law and need not be re-stated here. These are requirements of directors under due diligence. Nevertheless, I am pleased to see it outlined in this provision, as I like to see legislation written in this way. The board's duty is made clear in its own Act. Clause 34(2) reads -

> If there is any conflict or inconsistency between the duty imposed by subsection (1) and the duty imposed by section 33, the duty imposed by section 33 prevails.

This is why I wanted to deal with the clauses cognately. In other words, the statement of corporate intent prevails over the normal meaning of due diligence. The normal expectations of what a director shall do are set aside. The requirements of due diligence outlined in the Corporations Law are set aside because adherence to the statement of corporate intent prevails. We know from the second reading stage that the minister has the power to direct that a matter be included in the statement of corporate intent. Therefore, the direction of the minister overrides the due diligence requirements of the board. That needs to be clearly understood.

The minister said earlier today that litigation against the board flowing from litigation against the minister on behalf of the Government of Western Australia was a distinct possibility. He conceded that where it could be shown that the minister's direction caused something to occur which damaged the litigant, the State could be deemed to be liable, or at least the case could be heard. The Labor Party does not propose any amendment, nor does it oppose either of the clauses, but members need to be clear about their impact.

When we talk about commercialisation and the new role for the port authorities, we must be certain that we are not confounded by the rhetoric. The duty of the boards will be carried out at the direction of the minister. It is a fact now. One can almost ask the question, and perhaps this should have been raised in the second reading debate: Why do we have this legislation at all? No-one can argue that the port authorities are not commercial in their structure. They are certainly always subject to the direction of the minister. The Ports (Functions) Act and the Act relevant to each port authority require that such directions be noted in the port authority's annual statements. That is the only difference. It has gone. Consider what we have now, and what we will have once the legislation passes. That matter should have been raised in the context of the Bill's policy, but I raise it when considering the detail to ensure that the Chamber understands how clauses 33 and 34 relate to ministerial direction.

Hon M.J. CRIDDLE: The member realises that the statement of corporate intent is an arrangement between the board, the

minister and Treasury. If a case arises for the inclusion of a community service order or something else which is in the best interests of the State, the State will then override.

Hon Kim Chance: We support that 100 per cent.

Clauses put and passed.

Clause 35: Powers generally -

Hon KIM CHANCE: I move -

Page 23, after line 22 - To insert the following new subclause -

(6) In —

(a) entering into or negotiating a contract or arrangement for the purposes of subsection (2) (b) to (f); or

(b) issuing, or dealing with an application for, a licence authorizing the holder to provide port services,

a port authority must not —

(c) impose, or purport to impose, an obligation on any person; or

(d) seek an undertaking from any person,

as to the method by which, or manner in which, the person's employees are to be employed other than an obligation or undertaking that the method or manner be lawful.

This amendment has been negotiated to some extent. It is in a different form from that which was introduced by the Opposition in the other place. I am delighted that some mutual understanding has been found on this amendment. If one considers the issues I raised in the second reading debate, I regard this as the most important issue raised by the Port Authorities Bill.

I seek leave to table a two-page document, the cover page of which reads "Information Memorandum for Applicants for Licences to Supply Stevedoring Service at the Port of Geraldton", and the second page of which is page 3 of the memorandum document.

Leave granted. [See paper No 891.]

Hon KIM CHANCE: I tabled that document as it is necessary to demonstrate my exact concerns in this matter. This matter goes close to subjudice relating to the matter before the Federal Court. I will be as careful as I possibly can in my comments, and I would certainly appreciate the minister's and the Chairman's advice should I stray over the line. I draw the attention of members to the requirements set out on page 3 of that document under the subheadings in paragraphs (a) to (e). This document was provided by the Geraldton Port Authority by way of advice. As the title suggests, it is an information memorandum to those who are seeking contracts under licence to supply stevedoring services at the Port of Geraldton. My reading - my best protection is to put it in that way - of those articles in paragraphs (a) to (e) makes it very clear to me that any potential applicant for preferred tenderer status for this contract at that port would get a very clear message that there is a limited range of legal employment options with which the applicant can come back to the Geraldton Port Authority as part of its proposal to be treated as a conforming tenderer; in other words, I believe that the advice in paragraphs (a) to (e) to prospective tenderers limits the legal forms of employment arrangements being proposed by the intending contractor. I do not think I will go any closer to the bone than that, given the issue of sub judice. I have been as oblique as I can be, while attempting to refer to the issue before us. I have had no part in the federal court case or, similarly, in the content or the compiling of the Bill. I find it extremely limiting to have to debate a Bill which has a direct influence and impact on a case coming before the court. Acknowledging that there has been a significant delay in our handling of the Bill since it came over from the other place - presumably that delay had to do with the fact that the matter was before the court - and that we have a live case in the Federal Court of Australia at the moment, we must deal with issues which go almost directly to the matters involved in that case. I have found it extremely limiting.

Hon M.J. Criddle: So have I.

Hon KIM CHANCE: I am sure the minister has had the same problem; however, I find it extremely limiting, given that I am as conscious as the minister is of not wanting to breach the standing orders of this place regarding sub judice. In my view, paragraphs (a) to (e) had a limiting effect - they excluded legal forms of employment, such as the award and enterprise bargaining arrangements, and made it clear to prospective tenderers that unless documentation could be presented to the Geraldton Port Authority that they had in place employment arrangements which met the approval of the port authority, they could not be considered as conforming tenderers. That raised very real concerns in my mind and in those of the Maritime Union of Australia and the current port employees represented by that union.

As an outcome of that, the Opposition moved amendments in the Legislative Assembly that sought to address that point. Since that time and as a result of negotiations which have been carried out in excellent spirit, we have a set of amendments before us which I thoroughly commend. The effect of the amendments is that there shall be no limitation on the legal form of employment contracts with which a prospective applicant may come back to a port authority and still be a conforming tenderer; in other words, a person who wants to contract to supply stevedoring services at any port in Western Australia can come back with the option of employing integrated port labour force, IPLF, labour under an agreement with the Maritime Union of Australia; an enterprise bargaining arrangement; the award, should that be applicable; a state workplace agreement; or an individual contract or agreement. None of those options is removed. All legal forms of contract are on the table and no tenderers can be deemed to be in non-conformance with the tendering requirements if they opt to provide evidence that they will be employing labour under those arrangements. In that sense, I commend the amendment.

Hon M.J. CRIDDLE: An essential feature of the operation of ports is the ability to secure the continuity of the service provision for the port users. Imposing limitations on matters which might be included in contracts for the provision of service at any port under the control of the port authority will restrict the ability of that authority to examine the proposals of any potential contractors and the ability to ensure continuity of the service delivery. Including in legislation provisions that limit the ability to impose terms and conditions will place the port authorities at a relative disadvantage compared with private port operators.

An essential feature of this Bill is the removal of limitations on port operators and their placement on equal footing, regardless of whether they are government owned or private. This legislation intends to provide a more commercial footing for the operation of the port, not to address industrial or trade practices issues. These matters are already capable of being addressed under existing legislation. At all times the commercial and industrial activities of port authorities can be scrutinised under other legislation which properly relates to the type of activity addressed by such legislation. There is no need to include the provisions proposed here. To achieve desirable tender process outcomes, it is essential that a port authority be able to acquire continuity of service, commitment to continuous improvement, benchmarking, achievement of international standards - that is, world-best practice - and commitment to mechanisms to ensure competitive pricing is maintained throughout the terms of service contracts. I must emphasise that this Bill is about corporate government, not industrial relations which is a matter properly covered in other state and federal legislation.

Amendment put and a division called for.

Bells rung and the Committee divided.

Point of Order

Hon TOM STEPHENS: Mr Chairman, I draw to your attention to the fact that there is a problem with the bells operating outside the Chamber. I wonder whether the volume of the bells could be investigated during the luncheon break.

The CHAIRMAN: Order! I take the point the Leader of the Opposition makes, but it is not a point of order.

The division resulted as follows -

Ayes (12)

Hon Kim Chance	Hon N.D. Griffiths	Hon Norm Kelly	Hon Tom Stephens
Hon J.A. Cowdell	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon E.R.J. Dermer *(Teller)*

Noes (12)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Peter Foss	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*

Pairs

Hon John Halden	Hon Max Evans
Hon Mark Nevill	Hon Dexter Davies
Hon Ken Travers	Hon Simon O'Brien
Hon Bob Thomas	Hon Greg Smith

Amendment thus negatived.

Sitting suspended from 1.00 to 2.00 pm

Clause put and passed.

Clauses 36 to 50 put and passed.

Clause 51: Matters to be included in strategic development plan -

Hon M.J. CRIDDLE: I move -

Page 34, line 26 - To insert after "facilitation" the words "and the environmental management of the port".

Amendment put and passed.

Clause, as amendment, put and passed.

Clauses 52 to 60 put and passed.

Clause 61: Statement of corporate intent to be agreed if possible -

Hon KIM CHANCE: I note that this is a further indication in the legislation of the capacity of the minister to influence, if not direct, the board in the construction of the corporate intent. In effect it ties the board's operations to the Government's objectives.

Clause put and passed.

Clauses 62 and 63 put and passed.

Clause 64: Minister's agreement to draft statement of corporate intent -

Hon NORM KELLY: I move -

Page 41, after line 8 - To insert the following new subclause -

(4) Any copy of a statement of corporate intent to which subsection (3) applies must contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear and be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.

During the second reading debate I referred to the need to have independent scrutiny of matters deleted from the statement of corporate intent based on commercial sensitivity.

Point of Order

Hon KIM CHANCE: It seems to me that the amendment standing in my name should be dealt with before this one.

The CHAIRMAN: I am informed that they appear on the Supplementary Notice Paper in the wrong order because Hon Norman Kelly had his amendment in first.

Hon KIM CHANCE: It is not a problem in that case.

Debate Resumed

Hon NORM KELLY: The subject of the article by Tony Harris, the New South Wales Auditor General, to which I referred in the second reading debate, lies at the heart of the Democrat's amendment. It reads -

> Those in the private sector who wish to deal with the public sector have to accept that there is a higher degree of accountability in the public sector which will be applied to their arrangements. Secrecy is simply not compatible with democracy, and secrecy should only be involved when those advocating secrecy can prove their case.

I consulted the Western Australian Auditor General, who believes that my proposal is strong, workable legislation and that there is a need for criteria to be developed in this case. A strong basis exists on which to develop such criteria based on existing legislation in the Freedom Of Information Act. The Victorian Public Affairs Committee is also about to table a report on this issue. At long last people around Australia are acknowledging the need for separation from the Government to make independent decisions about matters that should be deleted. We are talking about what is still a publicly owned, and for all intents because of the minister's involvement, a publicly managed operation of the State. For those reasons we must ensure those commercial dealings are carefully examined before we allow them to continue in total secrecy; therefore it is important that the amendment be supported.

Hon M.J. CRIDDLE: This amendment achieves nothing. The Auditor General is not in the public arena; he is being drawn into the public process here. At the end of the day it is the minister's responsibility to deal with these issues and that is where it should lie.

Hon KIM CHANCE: The Opposition will support this amendment. I would have been happier to deal with this amendment after we dealt with my amendment which deals with the previous subclause. Notwithstanding how much notice was given of the amendment, it seems strange and it places me in a difficult position to argue a case on an amendment to subclause (4) when the Committee will deal with an amendment to subclause (3) afterwards. I am sure there is a very good reason for that!

Hon M.J. Criddle: Defeat this and we will deal with the other one afterwards.

Hon KIM CHANCE: I do not intend to do that.

Hon M.J. Criddle: Why not?

Hon KIM CHANCE: The minister's suggestion that the Committee should defeat this amendment and then deal with the other implies that the two amendments cover the same ground and are not supportable together. In my view, a later reading of the two amendments indicates that they are not mutually exclusive. I, along with my colleagues, intend to vote for both. The proposed amendments to subclauses (3) and (4) do not touch the same ground, albeit the amendment to subclause (4) refers to subclause (3). In view of the difficulties presented to me, I will support Hon Norm Kelly's amendment on the basis that we have clearly established, in both the second reading debate and the committee stage so far, the commercial significance of the statement of corporate intent. It is not some kind of meaningless glossy document; it overrides the directors' requirement for due diligence. It can be a straight direction from the minister; in fact, it sets the entire corporate direction of the port authority.

With regard to the matters relating to commercial confidentiality, notwithstanding the later amendments which appear on the Notice Paper and reference to the matter of commercial confidentiality insofar as section 58C of the Financial Administration and Audit Act has effect, leaving that aside -

Hon M.J. Criddle: You cannot leave it aside.

Hon KIM CHANCE: It has not yet been dealt with. I concede that they are important issues and I sincerely hope the Committee will carry them. Notwithstanding that, the issue of commercial confidentiality in the context of a statement of corporate intent becomes absolutely crucial because the statement of corporate intent is the instrument which sets the whole direction for the port authority.

Hon M.J. Criddle: You are saying they should operate on an open basis.

Hon KIM CHANCE: No, I am not. I recognise that these are to be commercial boards. I have argued that I do not see a great deal of difference between a board which is an outcome of this legislation and a board which is an outcome of the current legislation.

Hon M.J. Criddle: That is the problem; we will not allow them to go into the commercial field.

Hon KIM CHANCE: I believe they are already commercial but this amendment does not prevent them going into the commercial field. We all accept that boards must have negotiations which involve confidentiality aspects that could compromise the interests of a third party, and there is every reason that those issues should be regarded as confidential. Members want a matter that is deemed to be confidential to be subject to checks and balances to ensure that it is kept out of the statement of corporate intent on legitimate commercial confidentiality grounds. It goes no further than that, and it certainly does not provide that matters can be opened up in a manner which could damage a third party's interests.

Before lunch I referred to the effective difference in the commercial nature of a board established under this Bill and one established under the current Act. I am still unsure of the precise difference between the products of each piece of legislation. I do not think one product will be very different from the other. I am beginning to wonder what the legislation is about.

Hon M.J. CRIDDLE: We are getting to the point at which the checker is checking the checker and will check again. It is the responsibility of the minister to the ports, his electorate and the Parliament. How many more times do members want it checked?

Hon NORM KELLY: One of the reasons for this amendment is that decisions to delete information from the statement of corporate intent should be based on the ground of commercial confidentiality and not political expediency or some other ground.

Hon M.J. Criddle: You are bringing the Auditor General into the political arena.

Hon NORM KELLY: I am suggesting that the Auditor General should make a determination on the basis of the commercial confidentiality. That is an appropriate task for the Auditor General. If that port authority board and the minister determined that a matter should be deleted from the SCI -

Hon M.J. Criddle: Why can the minister not make that decision? Is it because you want someone to check him?

Hon NORM KELLY: That is right. If the minister makes that decision, it could be to hide a commercial deal which may not necessarily be sensitive but may be embarrassing to the Government. If such a decision were made shortly before an election, and knowledge of that decision did not become public until after the election, it would be an inappropriate use of the minister's power. If the information had been deleted on the basis of the commercial sensitivity of the material, the

Auditor General's assessment of that would strengthen the minister's role. It would back up the minister's decision by saying there was a need to remove the material from the statement of corporate intent.

Hon M.J. CRIDDLE: The board requests the minister to delete the material, and then the minister acts.

Amendment put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Mark Nevill	Hon Ken Travers
Hon J.A. Cowdell	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan	Hon M.D. Nixon		

Pairs

Hon John Halden	Hon Max Evans
Hon Christine Sharp	Hon Dexter Davies

Amendment thus passed

Hon KIM CHANCE: I move -

Page 41, lines 5 to 8 - To delete the subclause and substitute the following subclauses -

(3) A board may request the Minister to delete a matter from the copy of a statement of corporate intent that is to be laid before Parliament if the board believes, on reasonable grounds, that the disclosure of the matter would compromise the competitiveness or commercial operations of another person.

(4) The Minister may comply with the board's request despite subsection (2).

The difference between what is proposed in this amendment and the Bill before us relates to the deletion of subclause (3). Subclause (3) provides that the board may request the minister to delete from the copy of the statement of corporate intent that is to be laid before the Parliament any matter that is of a commercially sensitive nature, and the minister may comply with that request. The decision on whether the matter is a matter requiring the judgment of commercial sensitivity is in the hands of the minister. If this amendment were accepted, that would be set aside. In its place would be alternative wording providing that a board may still request the minister to delete a matter of that nature from the statement of corporate intent if the board believes, on reasonable grounds, "that the disclosure of the matter would compromise the competitiveness or commercial operations of another person". It is in those final words that the differences appear.

The key trigger mechanism in the Bill is whether a judgment is made about the commercially sensitive nature of the material. The amendment proposes that that sensitiveness be further defined and somewhat limited to a judgment on whether the disclosure of the matter would compromise the competitiveness of a third party. In a sense, this is a less radical proposition than that with which we have just dealt. The minister may even agree with me that it is a better proposition. Given the unusual way in which we have dealt with the amendments to clause 64, it is appropriate that we continue with this amendment. In addition, the other place may deem one amendment to be more favourable than another, which is something we will learn at the appropriate time should the other place choose to send us a message. I commend the amendment.

Hon NORM KELLY: Hon Kim Chance and I have had many discussions in the past few days about this clause. During those discussions we have been clear about what we want to achieve. Having my amendment debated earlier has changed the situation slightly. My reading of the amended Bill suggests that new subclause (4) provides very strong scrutiny of any deletions from the statement of corporate intent. That would cover whether those deletions relate to affecting or aggrieving a third party. Therefore, if a matter that the minister and the board wish to delete from the statement is then brought to the Auditor General's attention, the Auditor General will give his opinion on whether that matter is commercially sensitive. The minister can still have the statement modified by clause 65, so it still allows him scope to consult the authority and to determine whether the material should be deleted.

I address my comments particularly to Hon Kim Chance. The amended Bill still achieves what he is trying to achieve; that is, any matters that would compromise the competitiveness or commercial operations of another person are already covered

under the existing clause along with the scrutiny that would be achieved by my amendment. New subclause (4) relates not only to scrutiny by the Auditor General but also to the notation in the document showing, if not all the details, at least where in the statement of corporate intent that deletion has been made. I am interested in not only the minister's but also Hon Kim Chance's comments. Even though the Government may not be happy with the amended clause, it is far stronger for the Democrats' and the ALP's purposes.

Hon KIM CHANCE: I am happy to oblige Hon Norm Kelly. Two issues are relevant to the question. Firstly, I have already answered one in that I believe that his amendment to subclause (4) and my amendment to subclause (3) are not mutually exclusive. Secondly, the principal reason for the Labor Party's amendment is to define and confine those matters that might be excluded to matters which could compromise the interests of a third party alone. The wording currently in the Bill simply refers to matters of commercial sensitivity. Commercial sensitivity is a much wider field than the information that might compromise the interests of a third party, which is a subset of what could fit the broader description of commercial sensitivity.

We disagree with the Government that a range of commercially sensitive matters should be kept out of the statement of corporate intent. The only legitimate reason for keeping a commercially sensitive matter out of the statement of corporate intent is that it might damage the interests of a third party.

Hon NORM KELLY: I appreciate Hon Kim Chance's comments. They probably highlight the difficulty in dealing with subclause (3) after inserting subclause (4).

Hon M.J. CRIDDLE: These amendments deal with matters that can be deleted from a statement of corporate intent prior to lodgment in Parliament. The suggested wording would include matters that are sensitive to a port authority or its subsidiary, thereby placing a port authority at a competitive disadvantage which is contrary to the objectives of the national competition policy and the intent of the Port Authorities Bill. The increasingly competitive environment in which port authorities will be competing with private sector ports requires a considerable degree of commercial confidentiality. Generally the port authority operating confidentially should not be required to disclose publicly any information that an organisation would not have to disclose to the Australian Securities and Investment Commission under corporate law, nor should a port authority be required to disclose publicly any information it would be exempted from disclosing under the provisions of the Freedom of Information Act. Examples of commercially sensitive matters which the port authority, operating in a competitive environment, might justifiably wish to have excluded from public scrutiny of the Parliament could include pricing variations, which in a competitive environment might provide an unfair competitive advantage to a privately operated port, trade facilitation, as it relates to new or potential opportunities which could provide an unfair competitive advantage to the privately operated port, and planning matters or land usage alternatives which are subject to evaluation and a permanent public debate.

Hon KIM CHANCE: I need to respond to that briefly. The minister raises in defence of the Government's position a very important issue which goes to those matters raised in the second reading speech concerning trying to build a set of protocols to make an entity fit where it was never intended to go. I drew the parallels between trying to keep a horse in a sheep yard and a sheep in a horse yard. One must be very careful that one modifies the legislative yard so that the correct animal can be maintained in it. This is where we run into a problem. The Australian Labor Party concedes, as we conceded in the debate in the other place, that to adopt our wording would be placing the port authority or corporation itself at a relative disadvantage to a competitor such as a private port. Conceding the charge, our answer is, as it was then, that there will always be some price to pay for making a publicly owned corporation try to fit a commercial model. We are at least identifying the fact that is the price that must be paid. The reason we believe that we must pay that price is because it is not a private corporation. It is still a horse and not a sheep. Because one calls a horse a sheep, it does not make it a sheep; it is still a horse, just as this is a publicly owned corporation and is still owned by the public. It may be operated commercially and be saying "baa" but it is still a horse -

Hon M.J. Criddle: Until you try to shear it or fleece it!

Hon KIM CHANCE: Exactly. It is a publicly owned corporation run very much under the direction of the minister representing the public. We have no dispute about that being the right way to do it, but if we are to have a publicly owned corporation run at the direction of the minister and pretending to be a commercial operation, we must expect some conflicts in the public administration outcomes. That is my interest, because this is about public administration. The Government is trying to make things do what they were never designed to do, just like shearing a horse or riding a sheep. This will have some costs. We are trying to identify what those costs might be. All we have here is a difference in degree with the Government. We are saying that a publicly owned corporation must pay that cost.

Hon M.J. Criddle: I understand what you are saying.

Hon KIM CHANCE: It must say that it is public and it must reveal this kind of information because it is public. In its commercial operations if it were privately owned, we would have no dispute that as a privately owned corporation it should be able to conceal that information, but it is not a privately owned corporation. That is about as clear as I can put it.

Hon NORM KELLY: The minister related two scenarios in which this amendment would not be beneficial to the State. If there were a situation with a publicly owned port in a monopoly position, such as Esperance port, which has no private ports to compete against it -

Hon Kim Chance: Geraldton does.

Hon NORM KELLY: Geraldton does not compete terribly well in certain sectors of the port's activities. I am talking about a hypothetical situation in which there is a contract between a private provider of services and the port. We are not talking about third parties but about a private service provider in the port. When a contract for those services was first tendered that company got that contract. Nobody else is fully aware of why that company got that contract and why it was able to outbid other companies. If for whatever reasons the company won that contract, that is its commercially sensitive information. It could use that information every time the contract came up for renewal and could entrench itself in that port. If other companies were aware of more of the detail, it would make future tendering more competitive because the port would be able to open that competitiveness to other companies. One would therefore expect the prices to reduce and the people of the State to benefit. The argument is about the fact that if the private sector is wanting to do business with the public sector in the form of the Government, there is a price to pay. There are huge benefits in developing good relationships when providing services to the State but there are some pay-offs. People must be more open in their dealings with the State. That is one possible scenario I can see in which the Bill as it stands now amended would be beneficial to the State.

Hon M.J. CRIDDLE: I have been in private business for a long time. There is no way in the wide world that if I won a tender I would want the reason that I won that tender and got the very best deal disclosed to other tenderers. That goes right to the heart of the whole private enterprise debate. Hon Norm Kelly is asking the winning tenderer to disclose how he won the tender, so the next time the other tenderers can knock him off. I find that extraordinary.

Hon Kim Chance: That would compromise the competitiveness of the other people.

Hon M.J. CRIDDLE: That is what Hon Norm Kelly is saying.

Hon Kim Chance: That is not what the amendment says.

Hon M.J. CRIDDLE: That is what he says.

Hon NORM KELLY: The scenario that the minister just gave would mean that if the initial winner of the contract were to get knocked off by a cheaper tenderer the next year or when the contract next came up, the State would benefit. The detail of what is released in the statement of corporate intent is under the scrutiny of an independent person through the Auditor General. We are not necessarily saying to port tenderers that they should lay open all their contracts. That decision not only should be made by the authority, the minister and the Treasurer, but also it should be independently assessed through the Auditor General.

Hon M.J. CRIDDLE: We accept that amendment, but not for the reasons to which the member has referred.

Hon J.A. SCOTT: Ted Mack, the famous Independent in the New South Wales Parliament and then in the Federal Parliament and the Mayor of North Sydney, completely opened up his tender process. He was told at that time that people would not tender to local government if they had to reveal their data. He said, "That is the price you will have to pay." He said that he never had problems getting people to tender to local government on that basis when he was the Mayor of North Sydney. It was a very open and fair process and it worked very well.

My concern is that the board will repair that statement of corporate intent in the first place and then a draft will be tabled in Parliament. The board could never include that information in the first place as part of its corporate intent. Can the board do things which are outside the statement of corporate intent?

The CHAIRMAN: I will put the question.

Hon J.A. SCOTT: Will the minister answer that question? The statement of corporate intent is provided by the board and the draft of that document will be tabled in Parliament. Can the board choose to leave out of the statement of corporate intent something which it intends to do and still do it? Can it do things outside the matters contained in the statement of corporate intent?

Amendment put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Mark Nevill	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer			

Noes (16)

Hon M.J. Criddle	Hon Helen Hodgson	Hon N.F. Moore	Hon Greg Smith
Hon B.K. Donaldson	Hon Barry House	Hon M.D. Nixon	Hon W.N. Stretch
Hon Peter Foss	Hon Norm Kelly	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Ray Halligan	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*

Pairs

Hon John Halden	Hon Max Evans
Hon Christine Sharp	Hon Dexter Davies

Amendment thus negatived.

Clause, as amended, put and passed.

Clauses 65 to 68 put and passed.

Clause 69: Contents of annual reports -

Hon GIZ WATSON: I move -

Page 43, after line 29 - To insert the following new subparagraph -

(f) include a commentary on compliance by the port authority or the subsidiary with the environmental management plan in respect of its port.

The intent of this amendment is to acknowledge that the Government has inserted the requirement for an environmental management plan in the strategic plan, and that is to be welcomed. From my reading of the Bill, it did not seem apparent that there was an obvious feedback mechanism for reporting progress and compliance with the environmental management plan. It did seem obvious that the annual report was a logical place to have a commentary on compliance with the environmental management plan. Since the Government has moved the amendment to include an environmental management plan, I thought that it would have made it clear that there be some compliance or requirement for regular reporting on progress within an environmental management plan. It supports my argument that the inclusion of an environmental management plan was a last-minute addition. The other reason it is reasonable to have a section in the annual report which covers compliance and commentary on the environmental management plan is that other bodies, such as Western Power -

Hon M.J. CRIDDLE: This clause is dependent upon whether new clause 35 on environmental protection is put in place. I bring that point to the Chairman's attention.

Hon GIZ WATSON: I cannot see that. We have already passed the minister's amendment to include an environmental management plan. Even if the amendment to which the minister referred does not succeed, there is still every reason to include the environmental management plan in the annual report by way of a commentary and a comment on compliance.

I was indicating examples of organisations such as Western Power which include comments in their annual reports about their environmental objectives. Most progressive organisations would acknowledge that environmental management is very much part of their corporate responsibilities. I fail to see how the amendment could be opposed. It is a reasonable inclusion in the annual report.

Hon NORM KELLY: I am rather confused about this amendment's relation to the minister's earlier amendment to clause 51. Although the Australian Democrats will support Hon Giz Watson's amendment, an environmental management plan is still not part of the Bill at this stage. The minister's amendment was for the authority to consider the environmental management of the port in developing its strategic development plan. Hon Giz Watson's proposed new clause on the Supplementary Notice Paper mentions an environmental management plan. The Democrats support the inclusion of such a plan, if it exists, in the annual report. After all, it is a function of the authority to protect and enhance the environment. It seems strange to be debating this prior to the environmental management plan being incorporated as part of the Bill.

Hon GIZ WATSON: I seek some clarification as it seems that we have agreed that an environmental management plan be part of the strategic development plan. I refer to the Government's earlier amendment to clause 51 to insert after "facilitation", "and the environmental management of the port". The amendment was passed so the environmental management plan is part of the strategic development plan.

Hon M.J. CRIDDLE: It did not state that there will be an environmental management plan.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 70: Deletion of commercially sensitive matters from reports -

Hon KIM CHANCE: I move -

Page 44, line 4 - To insert after "delete" the words "a matter".

Page 44, line 6 - To delete ", a matter that is of a commercially sensitive nature" and substitute the following -

if the board believes, on reasonable grounds, that the disclosure of the matter would compromise the competitiveness or commercial operations of another person

Page 44, lines 11 and 12 - To delete "of a commercially sensitive nature".

Page 44, line 12 - To insert after "it" the words "under this section".

The argument for these amendments is practically identical to the argument I had on the last amendment I moved - I need not go through it again. The difference is that these amendments relate to clause 70 of division 3 of the Bill; namely, that part dealing with half-yearly and annual reports. The earlier amendment I moved related to the statement of corporate intent. The same argument applies to the half-yearly and annual reports. Rather than having an exclusion from the annual report on the basis that the matter is of a commercially sensitive nature, it would be excluded on the basis that disclosure of the matter would compromise the competitive and commercial operation of another party. In other words, the field of issues which would lead to a lack of disclosure is narrowed to those which are judged to potentially compromise the competitive and commercial operation of a third party. Any other issue which falls within the broader parameters of "commercially sensitive" would not be dealt with by this provision and could be included in the half-yearly and annual reports.

Hon M.J. CRIDDLE: This is the same argument as Hon Kim Chance mentioned in relation to clause 64(3). I need not go over them again.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 71 to 89 put and passed.

Clause 90: Limited application of the *Financial Administration and Audit Act 1985* -

Hon KIM CHANCE: I move -

Page 57, line 13 - To insert after "in" the following -

subsection (2) and

Page 57, after line 15 - To insert the following new subclause -

(2) The Minister and the board of a port authority must comply with section 58C of the *Financial Administration and Audit Act 1985* as if -

(a) the port authority were a statutory authority; and

(b) the board were its accountable authority,

within the meaning of that Act.

The important arguments on this matter have been put, although not all that strongly. I do not intend to go through them again. All members understand the significance of section 58C of the Financial Administration and Audit Act, which was one of the most significant legislative flow-ons from the Burt Commission on Accountability. It has effect on a public authority's capacity to agree that a matter shall be commercially confidential. The Government and the Opposition regard this as an important accountability outcome from the Burt commission; in fact, it is probably the most important single legislative outcome from the Burt commission or the Royal Commission into Commercial Activities of Government and Other Matters. Therefore, the amendments, particularly the expression of the second amendment, are crucial. This means that in addition to the provisions which are applied under the Bill through clause 90, section 58C of the FAAA will be applied to the board as though it were a statutory authority, and as though the board were its accountable authority. I believe that is absolutely essential. Again, it is an effort by this part of the Parliament at this stage to try to tailor the legislative offence which contains this corporation. It makes it a more appropriate offence than it otherwise would have been.

Hon M.J. CRIDDLE: We are prepared to support this amendment.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 91 to 99 put and passed.

Clause 100: Immunity from liability for pilot's negligence -

Hon KIM CHANCE: The immunity matter was raised in the very interesting committee debate in the other place, which I have read. Effectively neither the State nor the port authority is liable for any loss or damage resulting from an act or omission by an approved pilot operating within the port. I must ask: Why not? We all know that pilotage is an important function of a port. We also know that maritime law has some unique and arcane conventions and laws all of its own. When dealing with brand-new legislation which reflects all the functions of the port, I am interested to know how the legislation can completely divorce itself from any liability which may arise out of an action of a key functionary of the port - the pilot.

Of all the persons who operate within a port, the pilot probably has the most responsible job that exists there in terms of the safety of people and the vessel. People who think the job looks easy - the pilots just wander out into gauge roads, jump on the vessel and have a cup of coffee while the skipper brings the vessel in - must never have worked alongside a pilot. Having seen first-hand the tasks pilots do and, in particular, the difficulties involved in their getting onto the vessel in heavy seas, and bringing it in when there is very little draught underneath the vessel and getting out in similar circumstances, I know this is an extremely responsible job. When I looked at the location for the proposed port of Oakajee, the first person I thought of was the pilot. Any design I have seen for that port seems to require that the empty vessel has to be brought into the port, broach on to the sea on a very narrow angle of entry. All members will be aware that that harbour, unlike the Port of Geraldton, would have to be a very still water port; yet it faces the open sea. Achieving still waters in those conditions requires a very narrow entry to the harbour complex. The pilot's job in those conditions - it requires minimum speed because of the narrow entry and broach on circumstances - would be extremely difficult. I did not mean to rabbit on for so long. Why is no liability accepted?

Hon M.J. CRIDDLE: These provisions go back to the early 1900s, and this is accepted practice throughout the international shipping industry. If there was a serious accident, it could reflect very heavily on the State or the ports. The master is responsible for the vessel and can override the pilots.

Hon Kim Chance: Even inside the ports?

Hon M.J. CRIDDLE: Yes, that is the indication I have.

Clause put and passed.

Clauses 101 to 113 put and passed.

Clause 114: Marine safety plans -

Hon M.J. CRIDDLE: I move -

Page 72, lines 14 and 15 - To delete the lines.

Page 72, line 17 - To delete the words “Director General” and substitute the word “Minister”.

Page 72, line 21 - To delete the words “Director General” and substitute the word “Minister”.

Page 72, lines 26 and 27 - To delete the words “Director General” and substitute the word “Minister”.

Amendments put and passed.

Hon M.J. CRIDDLE: I move -

Page 73, after line 2 - To insert the following new subclause -

(5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 115 to 121 put and passed.

Clause 122: Averment in respect of port -

Hon KIM CHANCE: I make it a habit always to raise a question on averments when I find clauses relating to them in legislation. This is very much a personal thing. I do not think this matter was raised by the Opposition spokesperson on transport in the other place. I feel extremely uncomfortable with the concept of averment. I recognise it is an accepted legal concept, but we do not have to like every element of the law as it applies. This averment means that if there are proceedings for any offence under this legislation, any averment that that offence was committed in a port is sufficient proof that the act

or omission alleged to constitute that offence occurred in the port, unless the contrary is proved. It is a classic example of averment where the whole concept of the law as we understand it - that is, the burden of proof rests with the accuser and not accused - is turned on its head. I forget when I first raised this. I probably first noticed it in a debate on the soil and land conservation legislation in about 1993. I thought it was wrong then, and I think it is wrong now. I do not know whether I will ever get anybody else to agree with me. I believe legislation should not overturn the accuser's responsibility for the burden of proof.

Clause put and passed.

Clauses 123 to 132 put and passed.

Clause 133: Supplementary provision about laying documents before Parliament -

Hon M.J. CRIDDLE: I move -

Page 81, line 6 - To insert after "84(5)" the following -

"or 114(5)"

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 134 to 144 put and passed.

New clause 35 -

Hon GIZ WATSON: I move -

Page 21, after line 18 - To add after clause 34 the following new clause to stand as clause 35 -

35. Duties in respect of environmental protection

(1) This Act is subject to the *Environmental Protection Act 1986*.

(2) A port authority shall formulate and maintain an environmental management plan for its port.

(3) In formulating and maintaining an environmental management plan for its port under subsection (2) the port authority shall —

(a) comply with the *Environmental Protection Act 1986* and any policy or plan made under that Act;

(b) consult with, have regard to and endeavour to give effect to any advice given by the Environmental Protection Authority; and

(c) take into account principles of ecologically sustainable development.

(4) In formulation of an environmental management plan for its port, the port authority shall make reasonable endeavours to consult such public authorities and persons as appear to be likely to be affected by the environmental management plan.

(5) In the event of a dispute arising between the Environmental Protection Authority and the port authority, that dispute shall be referred to the Minister responsible for the *Environmental Protection Act* for determination.

(6) The port authority shall implement the environmental management plan formulated and maintained by it under subsection (2).

The proposed new clause will ensure that there are environmental protection duties. It is simply the reinsertion of a clause which appears in the Dampier Port Authority Act, with a couple of additional aspects. I will not repeat my argument about concerns that environmental provisions have been removed from the Bill. Exactly the same argument holds in respect of the insertion of the new clause. It simply seeks to insert a clause which appears in the Dampier Port Authority Act. As has been clarified, we have not yet debated an environmental management plan, so I guess this is the appropriate point at which to raise that as a specific mechanism to ensure sound environmental management in the port. I would like the minister's response to assurances that I seek from the Government as to what an environmental management plan would include.

Environmental management within a port would include matters such as consideration of cumulative impacts; consideration of the management of livestock, including noise and odour; the provision of waste reception facilities for solid, oily chemical waste and sullage; ballast water and the possibility of ballast water treatment; aspects of dredging and impacts on marine

habitats; water quality; and the minimisation of impacts of anti-fouling materials. That seems to be a reasonable outline of the key environmental issues that occur within a port facility.

I understand that the Department of Environmental Protection is working on some guidelines to be provided to the various port authorities by which they would formulate their environmental management plans. I seek from the minister a commitment that the guidelines provided by the DEP will be regarded as instructions by the port authorities. I commend the new clause to the Committee. It will put beyond doubt that the Environmental Protection Act is the dominant Act.

Hon M.J. Criddle interjected.

Hon GIZ WATSON: The minister believes that the Environmental Protection Act will be the dominant Act, so there will be no problem in making that clear in the Bill. It is not the only legislation that clearly spells out that matter. Therefore, if one is to be consistent, there will be no problem with stipulating that the legislation is to be subject to the Environmental Protection Act. The proposed new clause states -

> (2) A port authority shall formulate and maintain an environmental management plan for its port.
>
> (3) In formulating and maintaining an environmental management plan for its port under subsection (2) the port authority shall —
>
> (a) comply with the *Environmental Protection Act 1986* and any policy or plan made under that Act;
>
> (b) consult with, have regard to and endeavour to give effect to any advice given by the Environmental Protection Authority; and
>
> (c) take into account principles of ecologically sustainable development.

Proposed new clause 35(4) makes provision for consultation with authorities and people who might be affected by the environmental management plan. That is a simple requirement which is already clearly accepted by the community. The preparation of an environmental management plan should be a public process and the community should be able to have input, comment on and be aware of such environmental management plans. The proposed new clause goes on to state -

> (5) In the event of a dispute arising between the Environmental Protection Authority and the port authority, that dispute shall be referred to the Minister responsible for the *Environmental Protection Act* for determination.

Again, the proposed new clause makes it clear that the spirit of the Environmental Protection Act will be adhered to. It goes on to state -

> (6) The port authority shall implement the environmental management plan formulated and maintained by it under subsection (2).

Those are reasonable requirements on a port authority. They will ensure that environmental best practice is attained in ports.

Hon M.J. Criddle: Do you want the port to operate?

Hon GIZ WATSON: Of course. Many authorities accept environmental protection as part of their mandates.

Hon M.J. Criddle: They already do that.

Hon GIZ WATSON: In that case there will be no problem with the proposed new clause.

Hon M.J. Criddle: There is - it goes a long way. There are stipulations.

Hon GIZ WATSON: It is agreed that environmental management requirements should be followed by corporate bodies and should be clearly spelt out so that they know exactly what the requirements are.

Hon M.J. CRIDDLE: It is suggested by Hon Giz Watson that the Environmental Protection Authority and the port authority should get together and agree on a plan. We have the Environmental Protection Act and other Acts that I spoke about earlier which must be complied with. Hon Giz Watson's proposed new clause states -

> (4) In formulation of an environmental management plan for its port, the port authority shall make reasonable endeavours to consult such public authorities and persons as appear to be likely to be affected by the environmental management plan.

I wonder how far we must go with such a plan. Surely to goodness if state Acts are in place and we must comply with the requirements of other organisations overseas, as I pointed out earlier, we will go a long way to doing better than we have done before. Hon Giz Watson insists that we comply with the Dampier Port Authority Act. The latest Environmental Protection Act is far superior to the previous one, so we have gone a long way anyway. We are being required to put in place

an environmental management plan which goes outside the duties of the ports. The guidelines have not been developed yet. I understand that the Environmental Protection Act has been put in place in state agreements and not in other Acts because that Act overrides all other Acts.

Hon GIZ WATSON: The minister referred to other Acts which need to be complied with, but he did not answer my question about which Acts provide the protection that I am requesting. I also sought an assurance about a range of matters that should be included in the environmental management plan, and while the Government is saying, "Trust us", I have received no assurance that those matters will be included.

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

Ayes (16)

Hon Kim Chance	Hon N.D. Griffiths	Hon Norm Kelly	Hon Tom Stephens
Hon J.A. Cowdell	Hon John Halden	Hon Mark Nevill	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon J.A. Scott	Hon Bob Thomas *(Teller)*

Noes (15)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith	

Pair

Hon Christine Sharp Hon Max Evans

New clause thus passed.

Point of Order

Hon KIM CHANCE: Mr Chairman, I seek your advice. When would be the appropriate time to move for the recommittal of clause 35?

Hon N.F. Moore: You could not organise your numbers?

Hon KIM CHANCE: Precisely.

Hon N.F. Moore: That is a disgrace. Why not accept the will of the Chamber and leave it as it is?

Hon KIM CHANCE: There is a technical problem -

The CHAIRMAN: Order! A recommittal must be moved before the report is adopted. It cannot be done at this stage.

Hon KIM CHANCE: Thank you, Mr Chairman. That answers my question.

Debate Resumed

Schedules 1 and 2 put and passed.

Schedule 3:

Hon KIM CHANCE: I move -

Page 98, after line 11 - To insert the following new subclause -

(3) It shall be a defence to a charge laid, pursuant to paragraph (1), that it was in the public interest to disclose the information which is the subject of a charge.

This is the classic whistleblowers amendment. Schedule 3 deals with the duties of the CEO and staff. It is important to understand that this amendment will not detract in any sense from subclauses (5) and (6) of the schedule, which provide that the CEO and staff shall not make improper use of information, nor make improper use of their position, in order to gain, directly or indirectly, an advantage for themselves or for any other person, or to cause detriment to the port authority. This amendment will not remove the opportunity for a person who is suspected of having made improper use of information or of his position to be charged. All it will do is place upon the person so charged the onus of proving that he carried out that function in the public interest.

I am not at all sure whether the defence of the disclosure being in the public interest could be used under another Act of Parliament. I am not qualified to give an opinion on it; my function here is to try to ensure that the legislation provides that a plea of public interest can be lodged in defence. This is an important provision, and I do not believe it seriously, if at all,

detracts from the Government's intention in this matter. The Opposition supports the Government's view that information held by a person in a matter of trust is the property of the Government and should not be disclosed to any other person. We do know that on occasions it is in the broader public interest that some disclosure be made. It would be a serious offence if that information were obtained for the person's sole benefit. In that regard it is notable that the Opposition does not seek to modify the extremely heavy penalties which attach to this offence.

Hon M.J. CRIDDLE: Should this go in subclause (5) or (6)?

The CHAIRMAN: We are putting it in (6).

Hon Kim Chance: It should have been in both; that is my error.

The CHAIRMAN: We are considering it in (6), as indicated here.

Hon M.J. CRIDDLE: Subclause (1) provides that a former officer of the port authority must not whether within or outside the State make improper use of information acquired by virtue of his or her position, or gain advantage directly or indirectly to cause detriment to the port authority. The Opposition moved the amendments in the Legislative Assembly so it shall be a defence pursuant to subclause (1) that it was in the public interest to disclose the information which is the subject of a charge. This type of defence is not available to employees in the private sector or in any other public sector organisation and the provision as drafted is consistent with Corporations Law and the Criminal Code that applies to the Public Service. If whistleblower legislation is to be introduced, this is not the appropriate vehicle. It should be addressed in a comprehensive way.

Hon PETER FOSS: I agree with the minister that we should not deal with those issues in a piecemeal way. The disclosure should be to those people who have an obligation to investigate it, such as the Anti-Corruption Commission, the Auditor General and the Ombudsman; in other words, those people who have a right to obtain that information and incur no liability as a result of it. That person can then act on it. The duty would better be phrased as a duty to tell those people. The Government has already included these points in the Public Sector Management Act. There is a positive obligation on public servants to report misdoings up the line. Many people are not aware of those positive obligations in the Public Sector Management Act, whereby they have not only a right to report but also a positive obligation to do so. It would be unwise to change legislation without addressing the issue in comprehensive whistleblower legislation.

Hon KIM CHANCE: I have clearly made a mistake in the line item that I have addressed. The page number is right, but the reference should be "after line 2" not "after line 11". I seek leave to alter my amendment.

Leave granted.

Hon KIM CHANCE: I move -

Page 98, after line 2 - To insert the following new subclause -

(3) It shall be a defence to a charge laid, pursuant to paragraph (1), that it was in the public interest to disclose the information which is the subject of a charge.

Hon NORM KELLY: In response to the Attorney General's comments that disclosure should be made to the proper authority such as the ACC, the Ombudsman or the like, I point out that there are situations in which it is not convenient or possible to report information to those authorities; for example, the scenario of intentional breaches of the Environmental Protection Act through the discharge of ballast water in a port, or some occurrence in which time is of the essence. That may not be the best example. There are times when it is important that public disclosure is in everybody's interests; for example, if one were in Port Hedland and needed to contact the ACC in Perth about a certain matter, it may be so imperative that it is necessary to disclose that information publicly. The amendment will provide a safeguard in those situations in that disclosure was made in the public interest.

Hon J.A. SCOTT: I know that in fact the relevant Act that covers this aspect is the Public Sector Management Act; however, it is not always effective. Hon Ken Travers reminded me of the case in Main Roads involving a person releasing information which was clearly in the public interest and that person was harassed.

Hon Ken Travers: He wasn't harassed.

Hon J.A. SCOTT: Everyone else was harassed. Even in the Attorney General's department or in the Ministry of Justice a person was subjected to improper behaviour. I asked the minister about this and I do not think I ever got an answer.

Hon Peter Foss interjected.

Hon J.A. SCOTT: It related to the showing of pornographic movies in the Ministry of Justice when they were supposed to be looking after people who were victims of sexual offences. That is the example, if the minister wants it brought out in the open. The person involved left on stress leave and was harassed over and again by various departmental people and great efforts were made to get rid of her. That is actually what happens in these situations. Therefore, these types of clauses are imperative.

Hon M.J. CRIDDLE: Here we go again! This amendment will just put in place another one of these so-called safety mechanisms and by the time we have finished with safety mechanisms we will not be able to do anything in this country. We seem to be putting rules upon rules.

Hon J.A. Scott: But what if it is in the public interest?

Hon M.J. CRIDDLE: If the member wants to do that sort of thing, he can draft legislation and do it right across the board.

Hon Norm Kelly interjected.

Hon M.J. CRIDDLE: That is the crux of the matter. I and the Government totally disagree with this amendment. It would be best if we could get on with debating the Bill.

Hon PETER FOSS: The Government must be efficient. That is one of the important things about Government.

Hon Norm Kelly: It is about time it was.

Hon PETER FOSS: I agree. It is almost impossible for government to be efficient because it cannot sack inefficient employees or make changes because of the -

Hon Ken Travers: Or ministers!

Hon PETER FOSS: It can. The people of Western Australia sacked the member's mob.

The CHAIRMAN: Order! Members should direct themselves to the clause at hand. The Attorney General has the call.

Hon Ken Travers interjected.

Hon PETER FOSS: I know Hon Ken Travers loves sitting back there making statements of personal abuse but never making the slightest contribution to any debate that I have heard.

Hon Ken Travers: I just asked you to resign. That is a positive contribution.

Hon PETER FOSS: I do not think he has made a useful statement in his whole life.

The CHAIRMAN: Order! Members should not incite each other. The Attorney General should address the chair and the clause.

Hon PETER FOSS: I will, of course, respond every time Hon Ken Travers shows his ability to hand out abuse without making the slightest positive contribution to the debate.

It is hard for Government to be efficient. We cannot sack people, we cannot reorganise a workplace to make people fully redundant and we cannot appoint people who are efficient because of the limitations -

Hon Ken Travers: What about the requirement?

Hon PETER FOSS: Why does the member not be quiet for a little while and let me speak?

One of the things the Government needs to do is to get a team of people together and get things going. I remember a particular case because it related to courts. About 20 years ago there was an obsessed quarantine officer in the port at Fremantle who spent his entire time going around making statements to the Press. I do not know how they ever managed to get anything done down there because that person had it in his mind that he knew best. Every now and then it is important that people be allowed to get a team together, get a job done and make it happen. By putting this exception into the Bill means we will have to prosecute the person and go through the whole court process while the person argues that there is a public interest. Frankly, we will end up with constant little fights in one corner and a very undignified state of a chief executive officer having to prosecute one of his employees because that employee cannot keep his blooming mouth shut. One of the important things about getting something done in business - and, I hope, in Government - is having someone in charge who says, "We will get on with the job." If that person makes a mistake, fine; he makes the mistake and has to buy it.

Hon Kim Chance: But you cannot tell anybody about it.

Hon PETER FOSS: No, it will become obvious if they make a mistake. However, what we do not want is everybody in the team saying, "I disagree. In the public interest this bloke is making a mistake."

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon PETER FOSS: The result of this amendment would be that employees would make statements in the belief that they were justified by this defence, and the only way that could be tested would be by prosecution. I believe that would invite

prosecution as a method of management, and that would not be appropriate. It would be more appropriate for whistleblowers to go to the relevant authorities, which could investigate and do something about the matter. This amendment would lead not only to bad management but also to bad industrial relations, because we should not create a situation where people were led to believe that they could justify anything they wanted to do by saying it was in the public interest. Not every person who claims to be a whistleblower is truly a whistleblower or truly of sound mind. A large number of the so-called whistleblowers tend to be nut cases; and I suspect most members have seen those people in their offices. Hon Kim Chance might envisage that a whistleblower is a pure and simple, honest, downtrodden and right- thinking person, and that might be the type of person for whom he has written this amendment. However, the people who will end up doing the whistleblowing will be the nut cases. There is no way of keeping those people under control now, and under this amendment, instead of quietly listening to them and throwing them out the door, the only way of dealing with them will be to prosecute them.

Hon KIM CHANCE: I have a lot of sympathy for the Government's arguments on this amendment. However, the minister and the Attorney General are arguing against each other. On the one hand, the official line put by the minister is that it is not appropriate to include whistleblowers' provisions in this Bill in isolation and that if there were a proper role for whistleblowers' legislation, it should be in whole-of-government legislation. I agree with that argument. However, I know that we will never get to that point, because the alternative view just put by the Attorney General will prevail in Cabinet; and that takes us back to an argument that was put by Hon Norm Kelly. I acknowledge what the Government has said about whistleblowers and about how people who perhaps have a grudge about or an obsession with an issue may wish to take advantage of this amendment, but I repeat what I said when I moved this amendment: It will not detract from the Government's legislation at all. It will not prevent the person from being charged, nor will it remove the heavy penalties that are imposed in the legislation. All it will do is provide for a defence.

I believe that the wording of the legislation creates exactly the same problems as have been imputed to the Opposition's amendment. I remind the Chamber of clause (5), which refers to the duty not to make improper use of information. Surely that would leave it open to any person to argue in a court that the use of the information in respect of which a charge has been laid was not improper. That is the defence. One could reasonably argue that the Opposition's amendment will add nothing to that, and I will listen to that argument, because all that the Opposition's amendment does is say that it shall be a defence to the charge laid pursuant to that clause that it was in the public interest; therefore, it was not improper. I do not accept the Government's argument that a snowstorm of whistleblowers will emerge to claim a defence under proposed subclause (3), because I believe the law already provides for that to occur.

I support this for a more progressive reason than that, which is a technical, even regressive reason. The progressive reason concerns the way the codes of conduct are established in government agencies. One example that springs to mind relates to the rules which apply to Westrail employees. At a public meeting established for no other reason than to discuss a problem with Westrail, a rule prevents a Westrail employee from saying anything at all about the way Westrail policy is constructed or implemented. It is an offence against those rules.

Hon Ken Travers: The Government is doing the same with teachers.

Hon KIM CHANCE: Exactly. The advice from the minister's office when I asked whether the minister would enforce that rule against any Westrail employee was in the affirmative and that that rule would be applied. I was forced to advise Westrail employees at that meeting that that was the case and to temper any criticism they may make, or at least to get their neighbours to make it on their behalf. It is that kind of crushing of initiatives which are good public administration that the Opposition hopes to forestall by moving this amendment. The current wording of the Port Authorities Bill and, in particular, its reference to improper use of information leaves the door wide open for such litigation in any case.

Hon M.J. CRIDDLE: If a person is prosecuted, the information is already in the public arena. If the person has a gripe or wants to get the information out, he will get it out and prosecution will follow.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Norm Kelly	Hon Tom Stephens	Hon E.R.J. Dermer *(Teller)*
Hon John Halden	Hon Mark Nevill		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Pairs

Hon Christine Sharp	Hon Max Evans
Hon J.A. Cowdell	Hon Barry House
Hon Bob Thomas	Hon B.M. Scott

Amendment, as altered, thus passed.

Schedule, as amended, put and passed.

Schedules 4 to 7 put and passed.

Title put and passed.

Bill reported, with amendments.

PORT AUTHORITIES (CONSEQUENTIAL PROVISIONS) BILL

MARITIME FEES AND CHARGES (TAXING) BILL

Committee

Bills passed through Committee without debate, and reported without amendment.

PORT AUTHORITIES BILL

Recommittal

HON KIM CHANCE (Agricultural) [4.50 pm]: I move -

That the Bill be recommitted for the further consideration of clause 35.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Norm Kelly	Hon Tom Stephens	Hon E.R.J. Dermer *(Teller)*
Hon John Halden	Hon Mark Nevill		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Pairs

Hon John Cowdell	Hon Max Evans
Hon Bob Thomas	Hon Barry House
Hon Christine Sharp	Hon Barbara Scott

Question thus passed.

PORT AUTHORITIES (CONSEQUENTIAL PROVISIONS) BILL

MARITIME FEES AND CHARGES (TAXING) BILL

Report

Reports of Committee adopted.

[Resolved, that the House continue to sit beyond 5.00 pm.]

PORT AUTHORITIES BILL

Committee

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon Murray Criddle (Minister for Transport) in charge of the Bill.

Clause 35: Powers generally -

Hon KIM CHANCE: I move -

Page 23, after line 22 - To insert the following new subclause -

(6) In —

(a) entering into or negotiating a contract or arrangement for the purposes of subsection (2) (b) to (f); or

(b) issuing, or dealing with an application for, a licence authorizing the holder to provide port services,

a port authority must not —

(c) impose, or purport to impose, an obligation on any person; or

(d) seek an undertaking from any person,

as to the method by which, or manner in which, the person's employees are to be employed other than an obligation or undertaking that the method or manner be lawful.

Hon M.J. CRIDDLE: The Government continues to oppose this clause.

Amendment put and passed.

Clause, as amended, put and passed.

Report

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

MARKETING OF MEAT AMENDMENT BILL 1999

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon M.J. Criddle (Minister for Transport), read a first time.

Second Reading

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [5.00 pm]: I move -

That the Bill be now read a second time.

On 13 October 1998, the Minister for Primary Industry advised the Legislative Assembly of a framework for the State's export lamb industry which would allow the Western Australian Meat Marketing Corporation to continue as a grower-owned and controlled organisation, and allow lamb acquisition to be phased out. The new framework is aimed at providing direct benefits for Western Australian producers, and to introduce more competition and increased opportunities into the meat processing sector. The corporation advised the minister in December 1997 that it was experiencing problems regarding trading conditions and processing arrangements. The corporation has posted successive financial losses of $1.368m in 1996-97 and $2.49m in 1997-98. This financial position is untenable to maintain.

The corporation subsequently recommended two future possible options: A joint venture arrangement with an existing meat processor, or the wind-up of the corporation. Having approved the corporation undertaking due diligence and feasibility studies with a potential joint venture partner, the minister supported the corporation's proposal for the establishment of an organisation which is farmer-owned. This will enable farmers to manage and control the direction of their own industry. Subsequently the minister appointed a transition advisory group to plan and guide the transformation of the corporation to a new entity. The group included representatives of key farming organisations and the business community. It liaised with private consultants with experience in commercial restructuring, including financial and taxation matters. It also consulted extensively with officers of the Crown Solicitor's Office and Treasury.

The Bill before the House is the culmination of an extensive process of investigation, examination, review and assessment of the proposed new industry framework. Of critical importance is the agreement that has been reached between the industry's peak bodies, the Western Australian Farmers Federation and the Pastoralists and Graziers Association, and the Western Australian Meat Marketing Corporation regarding the creation of a formal cooperative organisation.

Let us now turn to the essential philosophies behind the new framework. The Bill proposes to amend the principal Act to enable the transfer of the corporation's net assets by way of sale to a new cooperative company to be called the Western Australian Meat Marketing Co-Operative Ltd. It also confers on the new cooperative the corporation's "single-desk" export lamb marketing arrangements until no later than 31 December 1999.

As the Bill extends the current monopoly that arises from the single-desk status for a defined and limited time, it does not contravene national competition policy principles with respect to new or amending legislation. The Bill does not preserve existing powers of, or obligations on, the corporation that relate to matters than can reasonably be dealt with without statutory support. For example, the cooperative will trade openly in the marketplace in competition to purchase and sell lambs on the domestic market with other traders. As the principal purpose of this legislation is to put in place the new framework for the State's export lamb industry without the need for further government intervention, the Bill provides that all outstanding liabilities and tasks of the corporation will be met by the cooperative.

In summary, the steps that will be taken to give effect to the proposed new framework for the State's export lamb industry include -

the formation and registration of the co-operative by the inaugural board members;

the formation of a discretionary trust, with the trust deed providing that the beneficiaries will be the lamb producers of Western Australia; the sole function of the trust will be to hold shares in the cooperative for the benefit of Western Australian lamb producers and distribute those shares among lamb producers;

the trustees will be the board members of the cooperative;

on proclamation of the Act, the transfer of the assets, liabilities and rights of the corporation to the cooperative by way of sale and without the need for any conveyance or assignment;

the determination by the minister, after consultation with the cooperative, of the net value of the business of the corporation on proclamation of the Act;

the allotment and issue by the cooperative to the trustees of fully paid shares in the cooperative, equal to the value of the net assets of the corporation; and

the statutory process to be enacted will give the trustees an ability to distribute the shares to lamb producers, without any government involvement.

A range of safeguards has been built into the proposed legislation. These include requirements that before the transfers and allotments can occur the minister must be satisfied that -

the cooperative and the trust arrangements are in existence;

the provisions of the memorandum and articles of association of the cooperative and of the trust deed are appropriate;

the shareholding in the cooperative is appropriate;

suitable trustees have been appointed;

the cooperative has agreed to the proposed transfer arrangements; and

the future employment of the staff of the corporation has been considered and arrangements have been made to ensure that all persons are either carried forward into the new organisation, or are offered appropriate alternative employment.

In addition, the corporation is required to issue and publish a statement in the *Government Gazette*, for public information, which describes and values the assets and liabilities transferred to the cooperative on proclamation of the Act. The Bill also provides a mechanism whereby the principal Act is repealed no later than 31 December 1999 when the temporary single-desk export lamb sales arrangement terminates. In housekeeping mode, the Bill provides for the continuation of the corporation insofar as this is required to perform necessary transitional functions and to report on its activities for that part of the financial year from the preceding 1 July to its wind-up. It also deletes reference to the corporation in four other pieces of legislation; namely, the Constitution Acts Amendment Act 1899; the Financial Administration and Audit Act 1985; the Government Employees Superannuation Act 1897: and the Statutory Corporations (Liability of Directors) Act 1996.

I commend the Bill to the House.

Debate adjourned, on motion by Hon E.R.J. Dermer.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.07 pm]: I move-

That the House do now adjourn.

Report on Government Consultancies - Adjournment Debate

HON LJILJANNA RAVLICH (East Metropolitan) [5.08 pm]: I could not let the day go by without commenting as the

opposition spokesperson for public sector management on a report tabled in this House and the other place. This report is titled "Report on Consultants Engaged by Government for the Six Months Ended 30 June 1998". It outlines that it contains a summary on all consultancies engaged by government detailed in returns submitted from agencies. That is totally incorrect. I am very disappointed and concerned at the lengths to which this Government will go to hide what is truly happening regarding the engagement of consultants.

Hon Tom Stephens: Are they telling porkies?

Several members interjected.

The PRESIDENT: Order! Members are talking down their own member.

Hon LJILJANNA RAVLICH: This report purports to outline consultants engaged by the Government, and the total value of such services over the past six months is supposedly $10.6m. I have grave concerns that this is, first, an under-representation of the true figure. One need not be too smart to work out that it must be considerably higher, given the extent to which this Government has contracted out since it took office.

Hon N.F. Moore: Have you got some evidence about what you are saying? Do not just make an assertion and leave it hanging in the air like a bad smell. Give us some facts!

Hon LJILJANNA RAVLICH: The report does not indicate the full extent of contracting out, honourable minister. I will give the minister an argument.

Hon N.F. Moore: Give us some facts - not an argument!

Hon LJILJANNA RAVLICH: The minister should sit patiently and listen and he might learn something. It is time he did!

Hon N.F. Moore: Your assertions mean nothing!

Hon LJILJANNA RAVLICH: This Government contracts out $1.9b in supply services alone. It contracts out $2.7b in construction, and $0.9b in transportable goods. The value of contracting has increased 300 per cent from 1994-95 to 1996-97. Total contracting out adds up to $5.5b.

Members should consider this point: If any one of those contracts has a consultancy component attached to it - I argue that 90 per cent do - which is usually a substantial component of about 20 per cent of the contract, the Government has underestimated by hundreds of millions of dollars the extend to which it employs consultants. I suggest that this has been a deliberate act by the Government to present a picture to the Western Australian taxpayers of responsible government in the use of consultants; however, the Government has been irresponsible in that regard.

This Government has $5.5b of contracting out and it has the nerve to say that it has hired consultants to the value of only $10.6m. That is very misleading. I would like to know why the value of the consultants involved in the 75 multi-million-dollar, across-government contracts, and those 75 across-government contracts over and above the government contracting out agenda, has not been presented in the report. Had it been presented in the report we would not be looking at a report which states that the Government contracts out to the value of $10.6m. We would be looking at a report which would probably indicate that the Government is contracting out - even if it were 1 per cent of $5.5b - at $55m. The Government has been very misleading. Quite clearly this report does not include the consultants who are part of the Government's overall contracting arrangements. One has only to look at across-government contracts, such as computing contracts which are pretty widespread throughout the state Public Service. One in the Education Department I understand is starting to run close to $100m because the consultants have never got it quite right. The consulting component is an enormous part of that contract and it is not showing up here. One has only to look at the disaster of the Matrix Finance Group contract. There would be a consulting component in that contract which is not represented in the report.

Hon Ray Halligan: Was it not part of the contract price?

Hon LJILJANNA RAVLICH: Until the member knows what he is talking about, he should be silent. This Government has been less than honest in tabling this report because it does not include all consulting services.

I also have some concerns with the process which is used to gather data from government agencies. My concern is that I believe the system is not as efficient as it could be. One has only to look at the responses that I have had - for example, in response to chief executive officers submitting performance agreements, let alone anything else - to know that the system is not foolproof. Many government agencies under this devolved system see themselves as being a law unto themselves. I am also concerned that some government agencies may not be putting forward all the information relating to their use of consultants in an accurate way. This Government clearly needs to have a defined policy regarding who is a consultant and who is a contractor. It also needs a definition of who is an independent inquirer. The other day I was reading a report of the Commissioner for Public Sector Standards. He was looking into breaches of standards. He in fact subcontracts that work to an independent inquirer. I do not know what others might call him, but I would define the independent inquirer as a consultant, yet such consultants do not come up in the Government's report in the use of consultants. Quite clearly there is

a real need to get the definitions right and have a very real policy on what should be included in this report. The report is not a full or proper summary of all consultants engaged. It is more a summary of selected consultants engaged by the Government. This report is close to useless and misleading. It gives the wrong impression to the Western Australian public and taxpayers, who would be outraged at the extent of the use of consultants by this Government. This Premier does not move without a consultant indicating in which direction he should go. His ministers do not move without hiring consultants to show them where to go. Quite clearly Western Australian taxpayers have a right to know the full extent of this Government's use of consultants.

I put it to you, Mr President, that what is being tabled on this occasion and what has been tabled on numerous other occasions does not reflect the truth. It is misleading. I would go so far as to say that it is intended to be misleading. I have picked up the last few reports. It is interesting, because with this report to June the use of consultants cost $10.6m. In the report to 31 December 1997 the figure was $9.5m and in the report to 30 June 1997 the figure was $11m. Something does not add up. The Government is obviously working towards a benchmark of what it wants the public to know. If the Government could manage leave liability in the way in which it has managed these outcomes, it would probably not have such a problem with leave liability. This report is an absolute disgrace. It is an untruth and a bad reflection on this Government and its wanting to intentionally mislead Western Australian taxpayers.

Dual-Use Path - Adjournment Debate

HON GIZ WATSON (North Metropolitan) [5.16 pm]: Members may be aware that this week is Bike Week, which is an awareness campaign. Indeed, some members had a jolly nice cycle the other morning.

Hon Ken Travers: Some are too scared to go out on the track with you.

Hon GIZ WATSON: Is that right? Everybody survived this year. It has been brought to my attention by some of my constituents that the Town of Cambridge is planning to remove approximately 200 metres of dual-use path from Powis Street to the cul de sac at the end of Dodd Street; indeed, it was planning to do this last Tuesday, which would have been exceedingly ironic in the middle of Bike Week. The dual-use path is a cycle and walk path. The Town of Cambridge claimed that it needed to remove this section because of an apparent conflict between commuting cyclists and pedestrians on the dual-use path. I do not dispute that. I understand that there have been some accidents and that somebody had been injured on the dual-use path. What worries me is that the solution does not seem to be to dig up that dual-use path; in fact, the solution needs to be much more positive than that.

When members rode around the other side of the river earlier this week, we were on a piece of path which was exactly the type of solution that would apply to the situation near Lake Monger. There was a dual-use path and adjacent to that another lane which people could use if they were on a faster ride through. I acknowledge that dual-use paths can be hazardous for pedestrians and elderly people. I am an advocate of encouraging cyclists to stay on the road and that commuter cyclists should be seen as rightful users of the road and that roads should be modified to be more cycle friendly.

It seems ironic that if we had a problem with a road, the solution would not be to pull up the road if there were a conflict between motorists who wanted to drive slowly and those who wanted to drive quickly. The solution would not be to get rid of the road. The issue could well be resolved by the fact that there are currently in place works to duplicate the commuter cycle path on the other side of the freeway.

However, that work is still in progress and may not be complete for a number of months. I am suggesting that the Town of Cambridge wait a couple of months to ensure that the commuter cyclists who make good use of that connection through to the city are not disadvantaged. It has been noted that this path is the only safe non-motorised access to Lake Monger from the northern suburbs. It is popular with pedestrians from Glendalough and Mount Hawthorn and is a vital link for cyclists travelling into the city.

Hon Ken Travers interjected.

Hon GIZ WATSON: It is not yet connected and that is the issue. New tunnels and a bridge are scheduled to be built on the dual-use path on the opposite side of the freeway at Vincent Street. Once completed, that would provide a safe alternative. Meanwhile, it is important that that section of track does not get dug up. A local resident has also pointed out to me that it would make it difficult for people to access the park with prams and other things. I am surprised that the Town of Cambridge has taken such a position because I have found it to be an exceedingly reasonable council to deal with on other matters. I am asking it to reconsider. I also understand that the Town of Cambridge received requests from BikeWest and Main Roads to not dig up this dual-use track. They have even offered to help the funding for a second path to facilitate the through-cyclists. It seems to me that it is a nonsensical solution to do away with a path, especially in the week when we are encouraging people to get out of their cars and on to their bikes.

We must encourage the use of cycles for commuting. I fully support people enjoying cycling as a recreational activity, but if we are to address issues of reducing private car usage and improving air quality in Perth, we must do everything we can to support those people who wish to use cycling as a means of commuting in and out of the city. It has infinite advantages

for the city and for Perth's air quality. Digging up dual-use cycle paths will not help that. I request that the Town of Cambridge reconsider this drastic measure and consider a more win-win outcome.

Workers Compensation - Adjournment Debate

HON RAY HALLIGAN (North Metropolitan) [5.23 pm]: In the adjournment debate yesterday, certain things were said about workers compensation claims and insurance companies. I felt it was important to place some of my experiences on record. Yesterday, Hon Kim Chance said that he felt no sympathy for insurance companies that dealt with workers compensation and he did not believe a word that they said. I admit it was some years ago that I worked at one of the larger insurance companies in the workers compensation claims field. That insurance company had its own clinic and doctor. We saw hundreds of people every week. I assure members that it was recognised that time was of the essence and people who were off work needed to be compensated if their claim was genuine according to the law, whether that was considered adequate or not at that time. The doctor in our clinic had been there for 20-odd years, not just as an MD, but as an insurance doctor. I can assure members that those claims considered legitimate were paid with extreme haste. One might ask how to determine what is legitimate.

Hon Ken Travers: How many were seen as legitimate?

Hon RAY HALLIGAN: I do not know the percentage, but I will try to explain that.

Hon Tom Stephens: You have misrepresented what Hon Kim Chance said last night.

The PRESIDENT: Order! Hon Ray Halligan has the floor.

Hon Tom Stephens: It is about time you apologised, Mr Halligan.

The PRESIDENT: Order!

Hon RAY HALLIGAN: The only time the insurance company had any concern - because it had some considerable experience with workers compensation claims - was when the information provided to it did not add up. Not all claims were investigated. The simple ones such as lacerations whereby it was obviously done at work according to a time frame were paid immediately. Other types of sprains, breaks and the like, if they were adequately witnessed, were also paid quickly. Further investigations were undertaken only on those claims when some doubt arose.

I can tell members about some claims that used to be received first thing on a Monday morning. It happened with monotonous regularity. They involved fractures to the metacarpals; the bones in the hand just between the knuckle and the wrist. A number of employees would come in with their claim form and say, "I just arrived at work and tripped on the step, put my hand down, and therefore broke these bones in my hand." The doctor would look at them and say, "That did not happen this morning. That happened some time ago." When any number of these were checked, it was often found that they had an altercation in the hotel on a Saturday night, a bit of punch up, because that is what happens to those bones when one tries to hit someone in the mouth. It was decided at that time that the claim was not legitimate and therefore the people were not paid.

Hon Ken Travers: Even if there were 10 witnesses.

Hon RAY HALLIGAN: It was usually their friends, but the medical evidence stated that could not have happened. We could have gone to any number of doctors, and normally did, who stated that injury had not occurred that morning; it had to be at least 48 hours old. What would one say to one's witnesses then? The member asked the question, does he know an answer?

Hon Tom Stephens: Were they toadies?

The PRESIDENT: Order! The Leader of the Opposition will get his opportunity in a moment. He can have the balance of the time. Like others, he must have regard for the standing orders.

Hon Tom Stephens: The member was asking a rhetorical question.

Hon RAY HALLIGAN: Not of Hon Tom Stephens, but of his colleague because he was the one who asked the question. The legitimate claims were paid with considerable haste. Thousand of workers used to come in and be proud of what they did to be able to get back to work as soon as possible. I recall one gentleman who came in and who had lost two phalanxes of the finger; that is, two joints of a finger. The doctors had to put a flap over the end of the damage. He used to come in each week and explain how he used to punch that finger into a balloon to start to harden it. He then used a pillow, then a mattress, and he was back at work in a very short time. I do not have enough time to tell members about all the claims that were obviously not legitimate, but I will tell of one; one who used to come in about a so-called back problem. There were many of those. He used to come in and bang on the counter and insist on being paid. All the information associated with his claim suggested that it had not occurred at work. This claimant was also claiming for his wife, and of course claiming that they were incapacitated. Upon investigation, it was found that he was not simply working while he was claiming to be

incapacitated, and not simply claiming for his wife who had left him years before, but in fact he was far from incapacitated. In that instance, he was taken to the police station, where he eventually broke down and admitted all that he had done wrong.

Whether or not we like it - it does not appear to be recognised by members on the other side of this House - an element in the community will try to do the wrong thing. The insurance companies more often than not want to pay legitimate claims. I admit that on occasions they are at fault. It happened when I worked for them as well. However, I can assure the House that when a fault was recognised, an apology was given. It did not necessarily help that person, who had to try to live on very little money in the interim, but it was recognised that the person certainly needed monetary support. In all the instances I can remember, these people were assisted as quickly as possible. It is wrong to blame indiscriminately, whether it be workers who do not submit legitimate workers compensation claims or insurance companies, which try to do the right thing more often than not.

Question put and passed.

House adjourned at 5.32 pm

QUESTIONS WITHOUT NOTICE

ROAD TRAFFIC ACT, HEAVY HAULAGE LICENCES

975. Hon TOM STEPHENS to the Minister for Transport:

(1) Are the Government's proposed changes to the Road Traffic Act regarding heavy haulage licensing currently in draft form?

(2) Will this draft be the basis of amendments to the Act?

(3) When will the relevant legislation be introduced into Parliament?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) No. Parliamentary counsel is currently drafting the amendments.

(2) Yes.

(3) It is anticipated that relevant legislation will be introduced during the autumn session.

MANDURAH SENIOR COLLEGE

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

(1) Will the Mandurah Senior College be built in two stages?

(2) What buildings and facilities will be included in stage 1, and at what cost?

(3) What buildings and facilities will be included in stage 2, and at what cost?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(3) The final design and staging of this facility will shortly be released to the Mandurah community.

DIRECTOR GENERAL OF MINISTRY OF JUSTICE, APPOINTMENT

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

(1) Does the Attorney General recall that Mr Gary Byron resigned from his position as Director General of the Ministry of Justice in January 1998 and Mr Alan Piper was appointed Acting Director General in February 1998?

(2) Why did it take until February 1999 for Mr Piper to be appointed Director General?

(3) Did the treatment of Mr Piper's predecessors, Mr Grant and Mr Byron, have an effect on the time it took to make the appointment?

(4) What process was undertaken in making the appointment?

Hon PETER FOSS replied:

(1) Of course I recall it.

(2)-(4) After what had happened I was keen to have a period which would allow us to have a bit of quietness and recovery time and would also allow some of the things that had not been happening to start happening. Under Mr Piper, all of the things for which I had been asking for a long time suddenly became capable of happening, whereas previously they seemed incapable of being moved. Advertising was used in the process for Mr Piper's appointment; there also may have been an executive search. This process is not handled by the office of the minister whose CEO it is. The Commissioner for Public Sector Standards carries out that process and then makes a recommendation to the Premier, as Minister for Public Sector Management, who then consults the responsible minister. That process is out of my hands entirely. I was aware that it was occurring, but I was not aware of the details of how Mr Piper came to be recommended and who else was involved in the process.

Hon N.D. Griffiths: Were you concerned that it took a year?

Hon PETER FOSS: No, quite the contrary. We were keen not to move suddenly from a situation in which Mr Piper was doing an excellent job. He has been a very good CEO and has achieved things which people normally believe the Government incapable of achieving. Anyone who has watched *Yes Minister* or *Yes, Prime Minister* will realise that the

bureaucracy has an amazing capacity to stop things from occurring. I give Alan Piper credit for the fact that he has managed to move matters in a way in which previous CEOs could not. It made a great deal of sense for that period to elapse before calling for a permanent appointment and it has proved to be a sensible decision.

JAMES POINT, PRIVATE PORT

978. Hon J.A. SCOTT to the Minister for Transport:

(1) At what stage is the proposed private port at James Point?

(2) Who are the tenderers?

(3) When does the Government expect the tendering process to be finalised?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The tenderer evaluation committee has made a report to the Government.

(2) Due to the tender process being in progress, I am not in a position to identify individual companies.

(3) Within the next four months.

JOHN CLARKE, NATIVE TITLE CONSULTANCIES

979. Hon HELEN HODGSON to the Leader of the House representing the Premier:

(1) How many separate contracts has the Ministry of the Premier and Cabinet entered into with John Clarke to act as a consultant to the native title unit, and on what dates were those contracts entered into?

(2) On any of these occasions, was the position advertised or tendered?

(3) What remuneration is set under each of the last two contracts with the Ministry of the Premier and Cabinet, and how much has Mr Clarke been paid to date?

(4) Does Mr Clarke still act as a consultant for mining companies at the same time he is working for the Premier's native title unit?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) One. 19 October 1998.

(2) No.

(3) Since 1994 the Government has published six-monthly reports on consultants engaged by the Government. These reports provide comprehensive details of the consultancies undertaken in each government agency, including the amount paid to each consultancy. Full details of Mr Clarke's consultancy will be provided in the relevant report on consultants engaged by the Government.

(4) I am advised that Mr Clarke acts for a variety of clients including mining companies.

SCHOOLS STAFF SHORTAGES

980. Hon MURIEL PATTERSON to the Leader of the House representing the Minister for Education:

Can the minister indicate to the House whether any schools in the south west regional area currently suffer significant staff shortages?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. No schools in the area have significant staff shortages; however, four schools have one vacancy each. They are: Pingelly District High School, Society and Environment/Physical Education; Manjimup Senior High School, English/Science; Australind High School, Society and Environment; Narrogin Agricultural College, Agricultural Science/Biological Science. These vacancies have emerged only in the past month as school enrolments have been confirmed and staffing entitlements adjusted. They are all being covered by internal relief and every effort is being made to fill the vacancies. The position at Australind High School is currently under offer.

HOME AND COMMUNITY CARE, INDUSTRY FEE SCHEDULE

981. Hon CHERYL DAVENPORT to the minister representing the Minister for Health:

The recently announced home and community care safeguards policy, which is in fact a compulsory fees policy, alludes to the preparation of a recommended industry fee schedule. Will the minister table a copy of the fee schedule; and, if not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. Yes, I am happy to table the schedule.

[See paper No 892.]

ILLEGAL LAND CLEARING

982. Hon CHRISTINE SHARP to the minister representing the Minister for Primary Industry:

Following on from my question on Tuesday about illegal clearing, I ask -

(1) How many cases in total have been inspected or are undergoing investigation?

(2) How many hectares of illegal clearing are involved in the total of these cases?

(3) Have any prosecutions occurred?

(4) If not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The Minister for Primary Industry has advised that the information sought will take some time to collate and asks that the question be put on notice.

WESTERN AUSTRALIAN FOREST ALLIANCE PROPOSAL

983. Hon NORM KELLY to the minister representing the Minister for the Environment:

(1) Can the minister confirm media reports that the Western Australian Forest Alliance Regional Forest Agreement proposal will cost at least 3 000 timber industry jobs?

(2) If so, how can the minister reconcile this figure against the RFA total figure of 2 400 jobs in the timber industry, as quoted on page 14 of the RFA social impact assessment?

(3) Will the minister table the basis of the Government's rejection of the WA Forest Alliance proposal?

(4) Can the minister confirm that coalition members of Parliament and timber industry representatives were briefed yesterday on possible outcomes and impacts of the RFA?

(5) If so, why have non-government members of Parliament not been offered similar briefings?

(6) Will the minister table details of the refined options that have been provided to selected members of Parliament?

(7) If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) An analysis of the WA Forest Alliance proposal was prepared in July 1998. This analysis showed that the combined effect of new reserves and silvicultural changes contained in the proposal would impact on employment in the native forest-based timber industry to the point of first sale by 3 039 direct jobs and 3 647 indirect jobs, a total of 6 686 jobs. The estimated impact on populations, mostly in rural communities, is 16 715 people.

(2) The figure of 2 400 people refers to those people employed in the private sector by industry in logging, haulage, milling and timber dressing. A further 900 people are employed in the public sector on forest growing and management and activities funded from timber royalties. It is estimated that 6 000 people are directly employed in the manufacturing sector. The figure of 3 039 jobs lost is based on the direct employment reductions in both the private and public sectors up to the first point of sale.

(3) I seek leave to table a copy of the analysis.

Leave granted. [See paper No 893.]

The WAFA proposal has not been rejected. This proposal, along with many others, is being considered by both the State and Commonwealth Governments.

(4) Coalition members were invited to a briefing by the Minister for the Environment yesterday, which was an update on the RFA.

(5) Briefings have been provided to the Parliamentary Labor Party and to Hon Norm Kelly in recent weeks.

Hon Norm Kelly: It is not on the information that the coalition is receiving.

Hon N.F. MOORE: What is not?

Hon Norm Kelly: The information being provided to other members can be a bit misleading. However, we will deal with that later.

Hon N.F. MOORE: I think it is very nice that members are being briefed. It was not the case previously.

Hon N.D. Griffiths: You just could not understand.

Hon N.F. MOORE: The member is probably right - nor could anybody else for that matter. That was half the trouble. I continue with the answer -

The Minister for the Environment will be pleased to arrange RFA briefings for non-government members on request.

(6) The set of approaches being discussed by coalition members of Parliament range from the WAFA proposal tabled to the approaches A, B and C outlined in the RFA public consultation paper. An analysis of the WAFA proposal, along with a copy of the public consultation paper, are available to the member.

(7) Not applicable.

HOMESWEST, CAPITAL EXPENDITURE

984. Hon JOHN HALDEN to the minister representing the Minister for Housing:

(1) Is there a current capital deficit in Homeswest's expenditure for this financial year?

(2) If yes, what is the capital deficit?

(3) Why has this deficit occurred?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) No.

(2)-(3) Not applicable.

DISABILITY SERVICES, PRIORITY ONE ACCOMMODATION

985. Hon RAY HALLIGAN to the minister representing the Minister for Disability Services:

Can the minister provide to the House the number of individual priority one applications for accommodation that were lodged for accommodation in the north metropolitan area?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. The Minister for Disability Services advises that from 1 January 1998 to 18 November 1998, 43 priority one applications for accommodation services funding were lodged from within the Disability Services Commission's north metropolitan boundary.

MAIN ROADS, TENDER REIMBURSEMENTS

986. Hon LJILJANNA RAVLICH to the Minister for Transport:

With reference to Main Roads' decision to reimburse $750 000 between the five tenderers for the contract for five traffic bridges over the Kwinana Freeway -

(1) Who are the five tenderers who will receive these payments?

(2) From what source of funding did this $750 000 come?

(3) How much has Main Roads paid out to unsuccessful tenderers -

(a) in 1997-98; and

(b) since 1 July 1998?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Barclay Mowlem-BGC Consortium
Baulderstone Hornibrook Engineering Pty Ltd
Leighton Contractors Pty Ltd
Thiess Contractors Pty Ltd
Transfield-Macmahon Joint Venture.

(2) Main Roads' funds.

(3) (a) $160 000; and

(b) $900 000. This figure includes the above amount of $750 000.

HOME AND COMMUNITY CARE SAFEGUARDS POLICY

987. Hon KEN TRAVERS to the minister representing the Minister for Health:

In relation to the recently announced home and community care safeguards policy, compulsory fee for service, I ask -

(1) How will the income assessment for clients with dementia be conducted?

(2) What will be the weekly fee cap for clients who have high needs and are multiple users if they are -

(a) full pensioners;

(b) part pensioners;

(c) self-funded retirees?

(3) How will HACC agencies be protected from net revenue decreases?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I can understand why he is taking such an interest in this matter.

Hon Ken Travers: I care for you.

Hon N.F. MOORE: I thought he would be interested in this. The question is about dementia, and I think that has already set it.

(1) The HACC service provider will conduct an income assessment with the nominated representative identified on the clients' personal care plan. In the absence of a nominated representative, the provider will request assistance from the Office of the Public Advocate, as is current practice.

(2) The weekly fee cap for clients receiving multiple services will be -

(a)	Full pensioners	Maximum pension or equivalent income	$20 per week
(b)	Part pensioners	Part pension or equivalent income	$30 per week
(c)	Self-funded retirees	Up to $75 500 per year (twice average weekly earnings)	$50 per week
		More than $75 500 per year	Up to the actual cost of delivering 5 units of service to the client

However, there is the capacity for reduction and waiver if the client has high costs associated with his or her disability or condition or is faced with circumstances resulting in financial difficulties.

(3) Recommendation 13 of the working group's report states that quarterly returns from services are monitored; and, if required, subject to relative need, a compensation package is developed to redistribute funds from services with a net revenue increase to those with a net revenue decrease. The working group, with provider, consumer and government representatives, is developing a methodology for a compensation package.

ROAD TRAFFIC ACT, HEAVY HAULAGE LICENCES

988. Hon TOM STEPHENS to the Minister for Transport:

In answer to question without notice 908 of 10 March 1999, the minister told this House that initially the Government had been advised that changes to the Road Traffic Act for a new heavy haulage licensing system could be implemented by regulations, but it was later advised that the changes would have to be included in the Act.

(1) In respect of the advice that changes could be made by regulations, can the minister state -

(a) who provided the advice;

(b) when was the advice provided; and

(c) will the minister table the advice?

(2) In respect of the advice that changes would have to be included in the Act -

(a) who provided the advice;

(b) when was the advice provided; and

(c) will the minister table the advice?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) I am advised that officers of the Department of Transport informed the previous Minister for Transport that it could be done by regulation.

(2) (a) Parliamentary counsel.

(b) Following receipt of drafting instructions from the Department of Transport.

(c) No.

PRISON MUSTERS

989. Hon GIZ WATSON to the Minister for Justice:

In respect of muster numbers within prisons throughout Western Australia -

(1) How many people were imprisoned as at 30 November 1998?

(2) How many people are imprisoned today?

(3) What is the projected number of prisoners for 31 December 1999?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) As of 26 November 1998, the closest reporting date to 30 November 1998, the muster was 2 618.

(2) 2 818.

(3) In November 1998 independent statistical consultants, Data Analysis Australia Pty Ltd, projected the prison population to be between 2 660 and 2 715 at the end of calendar year 1999, with 10 per cent statistical variability. This would mean a prison population of between 2 419 and 2 955. More recent projections taking into account short-term variations indicate that the higher figure is more likely.

SUPPLY CHAIN MANAGEMENT SEMINAR

990. Hon KIM CHANCE to the minister representing the Minister for Primary Industry:

In relation to the Supply Chain Management: Building Partnerships and Alliances in Food and Agribusiness Seminar, which was held at the Hotel Rendezvous on 3 August 1998, will the minister advise -

(1) How many representatives of Agriculture Western Australia attended the seminar?

(2) What was the cost per head of the Agriculture Western Australia representatives at the seminar?

(3) What was the total cost to Agriculture Western Australia of its representatives' attendance?

(4) How many of the Agriculture Western Australia representatives who attended the seminar have any commercial input into decisions that affect supply chain management?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Forty-nine staff out of a total attendance of 220 representatives of a wide cross-section of the Western Australian farming and agribusiness sectors.

(2) $140 per head.

(3) $6 860.

(4) Agriculture Western Australia has a major focus on assisting agriculture, food and fibre businesses with supply chain management, particularly the development of an understanding of export market requirements, strategic alliances and quality assurance schemes. All staff attending had an involvement in projects and activities which are required to deliver outcomes to improve Western Australian agriculture, food and fibre supply chains. It was a unique opportunity for staff to hear from an international panel of experts on the subject.

BUNBURY DISTRICT LOCAL AREA EDUCATION PLAN

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

(1) Does the local area education planning document state -

> When the Drafting Committee is satisfied that it has met its Terms of Reference, the District Director (Schools) will submit the draft Local Area Education Plan for consideration by the Education Department's Senior Executive?

(2) Has the Bunbury district local area education plan been submitted to the senior executive?

(3) Was the drafting committee satisfied that it had met all its terms of reference?

(4) If not, which terms of reference does the committee feel it did not properly meet?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) Yes. On 18 August 1998 senior executive considered the Bunbury district draft local area education plan. Senior executive resolved to approve the draft plan for community consultation.

(3) Yes. The drafting committee assisted the district director in meeting the terms of reference which are: Consider and analyse all information; refine the grouping of schools; and develop options and make a recommendation. The draft plan contains all the options developed by the committee, and the district director made a recommendation.

(4) Not applicable.

INFORMATION TECHNOLOGY INDUSTRY, SKILLED PERSONNEL

992. Hon E.R.J. DERMER to the Leader of the House representing the Minister for Commerce and Trade:

(1) Has the Minister for Commerce and Trade assessed the present and future supply of appropriately skilled personnel for the information technology industry and electronic commerce in Western Australia?

(2) If yes, what was the outcome of the assessment and what action has the Minister for Commerce and Trade taken to attend to any shortage of supply assessed?

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

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The Minister for Commerce and Trade established the Office of Information and Communications in the Department of Commerce and Trade. The OIC is working with various public and private sector stakeholders to help to assess the present and future skills base for the information and communications technologies industry areas in Western Australia.

(2) The assessment is an ongoing process due to the rapidly changing nature of the information and communications environment and the need for constant reskilling. The OIC is participating also with the information technology and training skills task force, a national peak-level forum involving 50 industry leaders, including Telstra, the Australian Telecommunications Industry Association and the Australian Information Industry Association. The forum is addressing a potential skills crisis in ICT industries and it has commissioned a national survey to identify demand for skills and the number of students currently training in those fields. Industry will lead on the issue in cooperation with government and the higher education sector to ensure that skills development matches industry needs.

(3) Not applicable.

WESTERN POWER, REDUNDANCIES

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

(1) Did the Minister for Energy direct Western Power that there are to be no forced redundancies in the corporation during "downsizing"?

(2) If so, why is Western Power seeking to terminate the Enterprise Bargaining Agreement (General Division) 1994 in the Australian Industrial Relations Commission?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) No.

(2) Not applicable.

ADMINISTRATIVE APPEALS TRIBUNAL

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

I refer to the report of tribunals review to the Attorney General dated August 1996.

(1) Has the Government decided what recommendations it intends to implement?

(2) In particular, has a decision been made to set up an administrative appeals tribunal?

(3) If not, why not?

(4) If so, what is the timetable for that to take effect?

Hon PETER FOSS replied:

(1)-(4) I have instructed the department to prepare legislation to allow all current administrative appeals to be referred to one or other of the current courts. Hon Nick Griffiths might recall that there was a recommendation from the Law Reform Commission and there have also been recommendations from the courts themselves. I have said that should be the first process to try to draw together current administrative appeals. The legislation is currently being drafted by the Ministry of Justice and it is also being referred to the bodies to which those appeals would be taken. I have deferred any further action on the report until such time as I have found out whether it is possible to put in place such a reform. Hon Nick Griffiths might recall that under the previous Labor Government a similar effort was made which came to naught. It appears to me that the best way to get somewhere is at least to take current appeals and give them a rational approach, and once we have that we can consider any further expansion. When Hon Joe Berenson tried a more radical approach, bureaucratic delay sank it totally without trace.

Hon N.D. Griffiths: Is that happening now?

Hon PETER FOSS: I hope not. I am trying to do it in such a way that I think I will get it through.

Hon N.D. Griffiths: When?

Hon PETER FOSS: I do not know. The big problem with all these things, as Hon Nick Griffiths knows, is that although once it is passed it is legislation under the Attorney General, because the appeals are currently under multiple ministers, the proposition must come up through each department so that it can be put forward, as I will be dealing with and amending other ministers' legislation. That is why the efforts sank without trace last time. It required many people to accept that they should have appeals and to agree to hand them over to one central area.

I am saying that where there are current appeals, let us bring them within one portfolio and bring them to the courts. When that is done, whoever is the Attorney General will have the capacity to deal with them under one piece of legislation. When

it is in one portfolio it can be dealt with more expeditiously. While every portfolio, department and body, both within government and established by statute, although not necessarily within government, is involved, the number of people to be consulted and signed off is just too great to get matters through. I am trying a gradual approach. I am confident that by following that approach I will get something together; then it will be for, I suspect, another Attorney General to take it further. The timetable, based on the history of the matter under successive Governments, is slow. I am certainly pushing to try to put something together.

PRISONS, ADDITIONAL

995. Hon GIZ WATSON to the Minister for Justice:

I refer to the increasing prison population numbers and ask -

(1) Does the minister have plans to build another prison other than Wooroloo South? If yes -

(a) What is the projected FTE staff budget for the additional facilities;

(b) what is the projected programs budget for the additional facilities;

(c) what is the projected administration budget for the additional facilities; and

(d) what is the projected estimated construction cost of the additional facilities?

(2) If no, does the minister propose to lift the capacity of existing facilities?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The Ministry of Justice has commenced planning for an additional prison after Wooroloo South is commissioned. However, no firm decision has yet been made, nor has any location been identified. We have identified that, as a matter of good planning, we should be planning for the next 25 to 30 years by identifying land and rezoning it under either the metropolitan region scheme or a rural scheme so that we have a process for the building of prisons well into the future; and I hope that as time goes by, successive Governments will keep that 25 to 30-year horizon. It appears from current projections that a major prison-building may need to occur every five years, with alterations in capacity between those times. Whether that would increase or decrease that five-year period would depend on what were to happen with the prison population, but at least planning should be in place so that if it were necessary, the locations would have been identified and it would be possible to go ahead. We are saying that the building of Wooroloo South is not the end of the matter. Proper planning requires the zoning and acquisition of land, and a process for dealing with the building of prisons into the future.

(2) Yes.

TOURISM, EVENTS, ECONOMIC BENEFITS

996. Hon TOM STEPHENS to the Minister for Tourism:

I refer to the minister's reported comments that four events last year created $37.7m in economic benefits, including $21.2m from Rally Australia, and ask -

(1) What were the other three events that created the remaining $16.5m in economic benefits?

(2) In what year did each of these four events, including Rally Australia, commence?

(3) What total economic benefits have been created by each of these four events since their inception?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The events - all independently researched - are as follows -

Rally Australia	$21.2m
Rugby Union Test Match - South Africa v Australia	$8.4m
Hyundai Hopman Cup	$1m estimate
Heineken Classic	$7.1m

(2)

Rally Australia	1988
Hyundai Hopman Cup	1988
Heineken Classic	1993
Rugby Test Match	1998

(3) The Heineken Classic was measured for the first time last year, but up until then EventsCorp had conservatively estimated the economic impact of the event at $2m.

The Hyundai Hopman Cup was measured for the first time this year, but the report is currently being finalised. Previously EventsCorp had estimated the economic impact of this event at $1m.

The Rugby Test was a one-off event last year.

Rally Australia has not been measured every year since its inception but the following table details the result of the years measured -

1998	Not measured
1989	Methodology unclear and no comparison able to be given
1990	$9.8m
1991	$13.9m
1992	$14m
1993	$19.1m
1994	$11.9m
1995	$16.6m
1996	Not measured
1997	$18.8m
1998	$21.2m

If the Leader of the Opposition wanted to claim some credit for those events, I believe he should, because those figures indicate that a number of events were commenced during the term of the previous Government, and I congratulate it for that.
