Legislative Council

Tuesday, 25 October 1994

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

MOTION - URGENCY

Commissioner for Occupational Health, Safety and Welfare, Conduct

THE PRESIDENT (Hon Clive Griffiths): Members will be interested to know that I have received a letter dated 25 October addressed to me in the following terms -

> The Hon Clive Griffiths MLC
> President
> Legislative Council
>
> Dear Mr President
>
> At today's sitting it is my intention to move under Standing Order No 72 that the House, at its rising, adjourn until 9.00 am on 25 December 1994 for the purpose of discussing the highly questionable conduct of the Commissioner for Occupational Health, Safety and Welfare and in particular the damage caused to the development of sound occupational health and safety practices in this State:
>
> 1) by his expressly vindictive refusal to provide funding for a union representative to be engaged full time for two months on the Government review of the occupational health and safety regulations;
>
> 2) by his single handed obstruction in the allocation and distribution of almost $2m of federal funding for occupational health and safety around Australia; and
>
> to express our concern that the Commissioner's actions are designed to advance the plans of the Minister for Labour Relations to undermine the integrity of occupational health and safety in Western Australia.
>
> Yours sincerely
>
> Alannah MacTiernan MLC

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

[At least four members rose in their places.]

HON A.J.G. MacTIERNAN (East Metropolitan) [3.39 pm]: I move -

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

I will cover in some detail the events surrounding the conduct of the Commissioner for Occupational Health, Safety and Welfare because it is necessary for members to understand precisely how these situations have arisen in order to understand the nature of our concern and complaint. It will then become evident that we have a major cause for concern.

In respect of the first item it all began around two years ago with a review of the occupational health and safety regulations. In June or July of this year a revised program for the review was presented for the construction regulations. To achieve the deadline set down under the revised program it became evident that it would be necessary for the health and safety officer of the Builders Labourers Federation to be engaged virtually full time in this exercise. In subsequent months the officer spent virtually all his time in the important government work of reviewing the occupational health and safety regulations. Some concern was expressed about this diversion of resources, albeit for important work, through the Assistant Secretary of the Trades and Labor Council to the Commissioner for Occupational Health and Safety. It was put to the commissioner this was a public function being provided by this officer. A request was made for that officer to be funded

for the remaining two or three months of the year, so that he could discharge those duties and so that the timetable set by the commission could be met. The commissioner's response was that he understood the concern and would be prepared to entertain the application. Some weeks later on 15 August 1994 a submission was duly forwarded by the Secretary of the BLF to the Commissioner for Occupational Health and Safety.

In the intervening weeks there was a horrific industrial accident at the Morley Galleria site in which two men in their thirties plunged six metres onto a marble floor when a scissor lift elevated work platform on which they were working fell over. Both men were severely injured. They were in intensive care for a week and have now just been released from hospital. Particularly in the case of one man, it is unlikely they will work in the industry again. There was outrage among construction workers over this event, because in their view it was not simply an accident. According to the manufacturer's specifications, the elevated work platform required outrigging, but none was on this platform because the Department of Occupational Health, Safety and Welfare had permitted this platform to be approved without outrigging, notwithstanding the fact that the manufacturers had determined that outrigging was required for its safe operation. This was a catalyst among the construction workers on this site. That responsibility for accidents is being laid fairly at the feet of a Government agency is something that should be given considered attention by the members opposite.

The anger of these construction workers must be seen in the context of the record of the construction industry. There have been some 40 fatalities over the last 10 years. Increasing concern, over the last year certainly, has been expressed about the diminishing enforcement of the regulations by the inspectors of the Department of Occupational Health, Safety and Welfare. The few figures calculated by the union from the small amount of material it has been able to recover show that if one calculates the number of inspections in the last year and divides it among the number of inspection officers available, the performance is one inspection on construction sites every two days. That is an appalling performance which compares badly with the three or four inspections a day which were routinely expected of officers when the Opposition was in office.

As a result of the anger over this accident at the Morley site, which was the final straw in a litany of concerns over the appalling performance of the department in the construction industry, the unions rallied at Parliament House. Members may recall that rally. Anger and frustration were vented over the understandable view that the Government had gone soft on enforcement. These concerns did not rest at the rally and the unions continued to agitate about their complaints.

In the September edition of the *Construction Worker* magazine the claims about the performance of the department and the Minister's and the Government's desire to go soft on occupational health and welfare were expressed again. It is evident that the Commissioner for Occupational Health and Safety does not like this. What is more, he is determined he will exact revenge on the BLF. He wrote to the BLF, which received this quite extraordinary letter yesterday. The commissioner complained that he had been described as the Minister's pussy cat - not poodle or lap dog, but pussy cat. He describes it as a fallacious allegation. He went on to say that he found it very offensive. He had considered the application for funding, and while he was considering it, people outside his office were criticising the Government and the department about construction safety. The cheek of it! He thought, "I'm getting angry about this, so I will put it to one side and hopefully my anger will die down and I will consider it again." He said that the *Construction Worker* repeated the claims that he was a pussy cat and the Government had blood on its hands in respect of construction safety. So he said, in effect, "With some bitterness I have determined that I am not giving you the funding for your officer" -

Hon Peter Foss: He said "Without some bitterness".

Hon A.J.G. MacTIERNAN: No. "I do not reach this position without regret and some bitterness." "I do not reach it." A double negative is a positive.

Hon P.R. Lightfoot: It is also bad English.

Hon Peter Foss: He does not say that he reached it with some bitterness. It says the opposite.

Hon A.J.G. MacTIERNAN: I will not get into a debate on grammar in my limited time.

Hon Peter Foss: You are misreading it.

Hon A.J.G. MacTIERNAN: I am not misreading it. We will have the debate about syntax later. The commissioner has clearly said that he does not like the fact that he and the Government have been criticised, and that he has been called a pussy cat. So in this very important area of reviewing the regulations on health and safety in the construction industry he has determined that he will change his mind and not support the provision of funding.

Hon Peter Foss: You are misrepresenting the letter.

Hon A.J.G. MacTIERNAN: Mr President, I wonder if you could advise the Minister that he will have his opportunity to speak. We have very limited time under these new standing orders.

Hon Peter Foss: You are misreading it.

Hon A.J.G. MacTIERNAN: I would appreciate the Minister giving me the time to put this argument forward. I have allowed myself to be distracted by the inane comments of the Minister.

Hon P.R. Lightfoot: They were not inane at all.

Hon Peter Foss: You are misreading it.

The PRESIDENT: Order!

Hon A.J.G. MacTIERNAN: It is quite extraordinary that even if this is what the commissioner felt, he was so irate he committed pen to paper. It is totally inappropriate for this sort of revenge to be exacted on the union. It is simple vindictiveness that ill-behoves a senior government official. It is antithetical to the democratic nature of our society; if a person criticises the Government, a public servant or the Commissioner for Occupational Health, Safety and Welfare, he will suffer and his union will not be helped to assist the Government in preparing legislation which is so vital to the working people in the construction industry. I need say no more on that subject; it is clearly quite pathetic.

The second area of concern relates to the commissioner's performance on the National Occupational Health, Safety and Welfare Commission, a body comprising representatives of the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. Each year the Federal Government makes some direct grants available to both the ACCI and the ACTU to distribute around Australia. Some of that money goes to the central bodies and is used to prepare formal submissions. The majority goes to important training in the occupational health and safety area. In Western Australia it is used in particular for specialist training in health and safety areas, and post-introductory training involved in such areas as chemical handling and noise management. The money is used basically to train workplace representatives, and I presume that the money allocated to the private sector through the ACCI does the same. This year the Federal Government is offering $1.9m to be divided between the ACCI and the ACTU. However, the money cannot be distributed because the Western Australian commissioner, who is Western Australia's representative on the board, is taking a recalcitrant stance. The allocation of the funding has been put before the board and, because of the pecuniary interest provisions, the ACTU and the ACCI representatives cannot vote on the matter. Therefore, it goes to the state representatives to vote. In order to satisfy the quorum requirement, all state representatives must vote in favour of this allocation for it to proceed. No other State, including those run by John Fahey and Jeff Kennett, has a problem with this. They are keen to get the money into their States to assist with the occupational health and safety training. They realise it is very important. Not so Western Australia; it stands alone as the State opposed to this money being allocated. The commissioner has put up a complicated argument - I will be interested to

have this clarified by one of the Ministers in this House - that he basically has another view about how the money should be dispensed. I understand he wants the money made available not simply to the unions and the ACCI but, in keeping with the tenor of this Government, he wants there to be broader, open competition for these funds. He is again obviously seeking to diminish the role of unions in this crucial area. Even if the commissioner had a valid point, there is no way at this juncture that he could persuade the other States to adopt his model. He is taking a highly recalcitrant approach and stopping any advancement in this area.

HON PETER FOSS (East Metropolitan - Minister for Health) [3.54 pm]: This motion discloses two gravy trains - two Ros Kelly-type endeavours typical of the former Labor Government in this State and the present Federal Government. The first gravy train almost does not need any justification - by expressly refusing to fund a union representative to be engaged full time for two months on the government review of the occupational health and safety regulations. This used to happen under the former Government. Other people had to fund their own contributions but the unions were paid by the Government, as if the Builders Labourers Federation were completely without resources. Quite apart from that, why did it need the funds?

In 1992 the Trades and Labor Council spat the dummy on the regulations review being carried out by the former Government. It withdrew from that review for 10 months. It got so far behind it had to do a huge amount of work to catch up. When it walked off the job, the TLC expected the Government to pay. When this matter was first raised with the commissioner, he quite rightly queried why the Government should pay. He did not say that the union could not make an application for assistance. The part of the letter not read by Hon Alannah MacTiernan made it clear that the commissioner did not think the union would have much chance, but there was no reason it should not apply. He wrote that he would have to be convinced that additional resources were justified beyond those granted annually to the council for a health and safety officer. Already the TLC receives $61 750 from the Government for a health and safety officer. The TLC receives an additional $200 000 for training.

During the period all this furore was going on, the commissioner quite rightly put the question aside. When the heat had gone out of the situation he made an appropriate decision. I can see his point. He indicated that he doubted the unions would get the funding, but if he had said that at the time they were all getting stuck into him, he might have been the subject of the nasty type of allegations made by Hon Alannah MacTiernan. He quite properly made the decision in a cool manner. I cannot understand why the unions in this State believe the Government should pay for everything they do, as though they are impecunious. It is extraordinary.

Hon A.J.G. MacTiernan: That is not the point. The point is whether decisions should be based on whether they criticise the Government.

Hon PETER FOSS: Hon Alannah MacTiernan certainly read selectively from the letter and certainly tried to twist the words as much as she could. Mr Bartholomaeus made it clear at all times that he could see no justification for it. In a calm moment, without rancour, he made the decision. He should have known that the nasty minds on the other side of the House, notwithstanding that he delayed making a decision for some time, would come to that conclusion.

I turn to the second gravy train. An amount of $600 000 is given by the Federal Government to the ACTU. In order that it cannot be accused of giving money to its own side, it also gives $600 000 to the ACCI. There are no strings attached to those grants. Of course, it is well known that it is a Ros Kelly move to pay money to keep people quiet. The Federal Government makes no attempt to determine whether that money is used for occupational health, safety and welfare. In this State the Government must provide $330 000 locally to encourage this. Does the Federal Government recognise that or encourage other States to act similarly? Does it try to improve the funding or to make sure there is a sustainable training effort after the funds are given? No, it passes the money around equally. Each State receives the same amount, no matter what it does.

The difference between Western Australia and the States run by Fahey, Kennett and others is that this Government puts in money. We would like that to be rewarded with some incentive for doing something for occupational health and safety.

One of the other differences relates to the number of inspectors employed in this State compared with other States.

Hon A.J.G. MacTiernan: They do not do anything. They should make an inspection every two days.

The PRESIDENT: Order!

Hon PETER FOSS: I know the Labor Party has made personal attacks on the hard working inspectors who work for that department.

Hon A.J.G. MacTiernan: They are not personal attacks.

The PRESIDENT: Order! Hon Alannah MacTiernan pleaded with me to protect her when the Minister for Health was interjecting. I did the best I could and I think I silenced him; however, I am having an awfully hard job silencing Hon Alannah MacTiernan.

Hon PETER FOSS: We have twice as many inspectors per employee in the construction industry as do New South Wales and South Australia. Only Queensland - the only other State that puts money into this area - matches our funding. The problem with that State is that it would not like to be seen to be accusing the Federal Government of doing another Ros Kelly. The commissioner said, "We would be quite happy to have a national training grant scheme that did these things. It should be applied to the development of sustainable training programs and products. It seems like a very worthy way of doing things. The grant funds should be accessible by all bona fide training organisations. The performance indicators for the grant scheme should be whether the grant has led to sustainable training programs and products"; that is, a scheme independent of Commonwealth funding.

The problem is that the present system is nothing but a slush fund, another of the slush funds operating within the Federal Government from time to time. The thought is that if the Federal Government gave only $600 000 to the ACTU, people might criticise it; however, if it gave another $600 000 to the ACCI, no questions would be asked.

Hon Tom Helm: What are you quoting from?

Hon PETER FOSS: All we are saying is that if people are certain about this - as is Western Australia, which has put in $300 000; Queensland is the only other State to have put in any other funds - it should try to direct the Commonwealth to get something useful to happen. That is a very worthy and worthwhile attitude to be taking. Interestingly the commissioner did vote against it and, as stated by the member opposite, it did not go through. What has been the reaction of the Federal Government to that? It will amend the legislation and will continue with the gravy train as before. There are two gravy trains: One that existed under the previous Government under which, whenever a union needed money, it would pass over some money. Why should the unions be the only organisations to have money allocated for people to put up submissions to government? All other bodies have to fund their own submissions. Already the unions get $200 000 and a specific allocation of $61 750 for a health and safety officer. That is needed because the unions spat the dummy in 1992 for 10 months and had to do this extra work to catch up.

When people walk off the job about a safety issue or during a demarcation dispute, the unions always ask that the workers be paid for it. That is a standard union tactic: When the unions spit the dummy, someone else should pay for it. In this instance the commissioner made it clear from the beginning that he could not see that any money should be given for this proposal. I support that decision. Most government members here found the first proposition in the urgency motion which was read out to be so extraordinary that it caused laughter in this Chamber. It is an extraordinary proposition that the Government should pay for everything for unions and yet all others should have to pay for themselves.

Several members interjected.

Hon Tom Helm: Sit down, you hypocrite.

The PRESIDENT: Order! The honourable member cannot call another member a hypocrite.

Hon Tom Helm: I apologise, Mr President.

Hon PETER FOSS: Hon Alannah MacTiernan quoted very selectively from the letter. I tried to have the member read out certain parts, which she did not, where Mr Bartholomaeus made it clear that he would find it difficult to be convinced. I refer to a selection of words in the second last paragraph. It is clear that Mr Bartholomaeus made every effort to ensure that the decision that he indicated in the first instance was made at a time when he felt cool, and it was not made at any other time. I support Mr Bartholomaeus. Very importantly, as he clearly acknowledged, this Government has offered even more resources for inspections. Our Minister is absolutely committed to making certain that there is no relaxation of the standards. He has made certain that any extra resources that are required are given. We support that; we endorse that. As a Government, we consider the safety of workers to be essential.

HON TOM HELM (Mining and Pastoral) [4.03 pm]: Let us look at the people who laughed when this motion was moved: Teachers, accountants, lawyers and farmers. I will refer to the farmers. Just recently they received funds from this Government for occupational health and safety training. They put out their hands and received those funds. No-one is complaining about that. However, what did the farmers do under the previous Administration? They refused to accept the provisions of the occupational health and safety legislation and asked to be exempted from the provisions of the regulations. Do members opposite remember? Do they have short memories? What a load of piffle!

The commissioner in this letter does not make any mention of the fact that the submission for funds is inappropriate. He does not say that it has not been accounted for. In the last paragraph he says, "I do not reach this position without regret and some bitterness." He is angry. The Australian Builders Labourers Federated Union of Workers has dared to say what is on its mind. It had the audacity to call him a pussy cat and say that there would be blood on the hands of the Government. As a consequence, this Administration has provided funds for occupational health and safety reasons. This same Administration, this commissioner, has refused to provide the same funds.

The question must be asked: Is this commissioner so secure in his job that he would make this decision unilaterally or would he consult with the appropriate Minister, the Minister for Labour Relations? I suggest that is exactly what he did. Why? Every State Government, including that in Western Australia, and the Federal Government has a pretty proud record in occupational health and safety. We have learnt from the rest of the world and in some cases we have led the world in providing that workers should have a healthy and safe workplace. That is a fundamental principle. Those opposite agree with it, except when the farmers do not want to be covered by the provisions. Now when a body calls the commissioner a pussy cat and says that the Government is at fault because a number of people got badly injured on a building site as a result of a workplace inspection being incorrect, all of a sudden not only are the State funds withdrawn but also the Federal Government funds for the provision of the occupational health and safety requirements are held back.

The motion is clear in what it is seeking to do. It is giving us the opportunity to discuss the matter. We are saying that everything was going along smoothly. Unions will stand criticism - and do constantly - as a result of the regular statements made by the Government and the Minister for Labour Relations that the Press finds attractive. The unions are always the baddies in doing their job; in trying to protect their members' interests they are always at fault; they always go on strike over some health and safety issue on behalf of their members.

It is a very cheap shot for a Minister to say that the funds will be withdrawn and the

union will get no government support. The Minister for Health believes it is a gravy train. It is a gravy train if those people who get on it do nothing and no accountability takes place. However, this letter contains not one skerrick of proof or accusation of a lack of accountability. Nowhere does the commissioner say that the funds have not been accounted for.

The people who are funded by the State Government and the Federal Government to teach the occupational health and safety provisions to be adhered to or those who merely talk about occupational health and safety provisions on a worksite work very hard - and it is certainly no gravy train. It is very hard to teach these provisions, and it is very difficult to make submissions. These people have a very hard job to do. It takes a dedicated person to do that job. Yet the Minister says that it is a gravy train; these funds go to people who do nothing. If this Minister is talking on behalf of his Cabinet colleagues - and he probably is in some cases - and if those opposite are stupid enough to give out funds for which there is no accountability, those members need to have their funds withdrawn.

These funds are well accounted for in two ways, and I refer to the individual dollars that go to the unions and the provision of these services. Those officers would not get a cent unless they had to look after the health of workers - unless farmers were involved. The Minister for Health is pushing a barrow full of nonsense in suggesting a lack of accountability for the funds.

How far does that go in terms of the accountability provisions and the petulant attitude of the commissioner? I say "petulant" because we are proud of the fact that it was the former Labor Government which put in place many of these provisions, which have been followed by this Administration in many ways, and I imagine that this Administration would be proud of that. However, if this Government wants to change that and to use the Orwellian *1984* newspeak concept, then we will get a pussy cat who is petulant and says that those funds will not be made available because someone has said something that he does not like. Had the Labor Administration taken that view in regard to many of the things that it funded, we would not have gone anywhere. The Labor Administration appointed to positions many people who are well known conservative supporters. We listened to those people who brought to our attention in this place the needs of the farming and pastoral industry, and we put in place programs to encourage people who wanted to be jackaroos and work in remote areas. We all know that pastoralists are not renowned for being Labor supporters. Had we followed the approach of this commissioner, who will not make funds available because someone has called him a pussy cat, the funds that were made available in those days would never have been made available.

The commissioner states in this letter to the BLF, in regard to the accusations that he claims have been made about him in *The WA Construction Worker* -

> That publication is loaded with offensive statements and untruths. It maligns and vilifies the Department's inspectorate and individual officers.

However, he does not use this document to in any way to respond to those accusations. He just says, "I do not reach this position without regret and some bitterness." The reason that the commissioner will not agree to the funding is not an accountancy reason, not that it is a gravy train, but that he feels bitter. I support the motion.

HON JOHN HALDEN (South Metropolitan - Leader of the Opposition) [4.13 pm]: Hon Tom Helm referred to the piffle of the Minister for Health. It is a tragedy that the Minister for Health should adopt such a line when clearly the issue here impacts also on his portfolio. It is appalling that the Minister makes statements that can be described only as blind prejudice in order to try to hide somebody else's prejudice about this matter. Where is the accountability of a chief executive officer in this Government when he cannot tolerate someone calling him "the Minister's pussy cat"? Is the basis on which decisions are now made by this Government whether we utter an offensive word about someone either in this Chamber or in public? If that is the new standard to which this Government will adhere, if that is the new standard which will apply to people who have

been injured in the workplace, there is no accountability by either this CEO or this Government.

Initially, I was not prepared to enter into this debate, but I found the comments of the Minister for Health offensive. The Minister should acquaint himself, if he has not done so already, with what it is like to see injured workers with mutilated hands or legs, or with injuries to their torso which mean that they will never work again and will have all sorts of social problems. The best that can be offered by this Minister for Health, who has now been called out on some other business, is that the union movement was on a gravy train. That is not acceptable. Even the CEO does not say it is a gravy train. His reason for not agreeing to this funding is -

> It would be irresponsible of me to release public funds, either directly or indirectly to an organisation that behaves so irresponsibly on a matter of public importance.
>
> I do not reach this position without regret and some bitterness.

Will public policy now be made on the basis of "some bitterness" because one person makes a statement about another which that person finds offensive? If that is the new standard that will be applied, no-one will ever get a cent out of this Government, because the moment people make the mildest criticism about this Government, they will be struck off the funding list.

Clearly, in this case this person is required to comply totally with whatever is going on. That was not the case, as was put eloquently by Hon Alannah MacTiernan. This union had seen two of its members injured severely - injuries which would have been avoided had the occupational health and safety standards been adhered to. Of course that person was annoyed. Anyone who thought about what would be the consequences to those people and to their families would be outraged. To say that someone happens to be the Minister's pussy cat does not in any way nullify that person's outrage, nor the hurt or injury to those two workers. However, they are not isolated cases. Anyone who listened to the Minister for Health would think they were the only injuries that have occurred this year. They are not. In the last 10 years, 40 workers have died on worksites in this State. Will the Government stop the funding of occupational health and safety on the basis that someone may be called a pussy cat? Will there be more deaths? Is that the logical extension of this policy? Of course it is not, and no-one would suggest that it is. This is the action of a capricious and supercilious CEO, supported by his Minister, presumably. This is not what we pay people in excess of $100 000 a year to do. We pay those people to make objective judgments about the validity of people's positions in certain matters.

The union movement requires funding in the same way that industry, the farming sector or social welfare organisations require funding. Does anyone suggest that is illegitimate? No. The Minister's approach was to do no more than defend the indefensible.

Hon Bob Thomas: It was theatrics.

Hon JOHN HALDEN: It was not even that. It was a second-rate performance if it was theatrics, but that is not what it was about. It was about defending the indefensible. This decision made by a senior bureaucrat shows no accountability and, more importantly, shows no humanity in regard to going through this process thoroughly and supporting those who want to put forward their views in a legitimate way. In regard to the curtailing of Federal Government funding, we are talking here about the occupational health and safety of people who have historically needed protection. That is on record. It does not require debate. It is known by everyone in the Chamber. Yet we have a Minister of the Crown, the Minister for Health, dismissing that in an absolutely vile manner and not even taking the matter seriously. We had the spectacle a few moments ago when this motion was introduced where the Government thought it was a bit funny. It is not funny at all. The Government's attitude to this matter is nothing other than disgraceful. Members should bear in mind that in the last 10 years 40 people in this State have lost their lives on industrial sites. Do members opposite think there is anything funny about that? Has the humour left members opposite now that they have realised their absolute stupidity by

behaving in the way they did 25 minutes ago? Do they realise that this motion may have some ramifications in terms of saving people's lives? Members opposite thought it was a joke because the Opposition wanted to support the union movement. There is no laughter from members opposite now because it may have dawned upon them that this motion is deadly serious. When members contemplate the seriousness of what is proposed in this motion they should not laugh at it. For the record, Government members did laugh at it, and that is a disgrace. It is a further disgrace that the Minister for Health should have advocated as a defence a gravy train defence. His defence did not deal with the central issue and it did not deal with the obvious consequences; that is, people injured at the workplace.

If, after this debate, the Government still thinks this motion is a joke and it is appropriate for it to stand by the Commissioner for Occupational Health, Safety and Welfare, it has lost track of what accountability is about. People are allowed to voice their views and they are allowed to call somebody a pussy cat. That is not the most offensive term I have heard used. I am sure many members have been called far worse than that. However, most members would have dealt objectively with the issue at hand and not with the name calling. To do otherwise is to seriously disadvantage workers in this State. For this Government to treat this matter in the way it did is nothing more than disgraceful. Someone should have a long, hard talk to the Minister for Health about his responsibility in regard to these matters because it has a direct consequence on his portfolio. The Opposition expects a little more from him than the tripe it heard a few minutes ago.

HON T.G. BUTLER (East Metropolitan) [4.22 pm]: I did not intend to speak to this motion, but when I walked into the Chamber a few moments ago I was confronted with the crude language the Minister for Health was using in reference to unions.

I have read the letter which caused Hon Alannah MacTiernan to move this motion. It is a response to an application by the Secretary of the Australian Builders Labourers Federation, Kevin Reynolds, for funding to allow Bob Bryant to carry out a review of the occupational health and safety regulations. I know Bob Bryant very well and he is very capable and well suited to carrying out this sort of review. There is a great deal of concern within the trade union movement about the actions and operations of the Occupational Health and Safety Commission and the commissioner.

It is a pity the commissioner showed his immaturity in his response to Kevin Reynolds' claim. From his response he appears to be a mite upset that the unions were rallying outside his office and had referred to him as the Minister's pussy cat. I can understand him being upset by that criticism, but I cannot understand that he has a very high position in the Public Service -

Hon Tom Helm: And he is highly paid as well.

Hon T.G. BUTLER: That is right. For those reasons I do not think he should allow that sort of criticism of him to get in the way of his dealing with Kevin Reynolds' application on the basis of merit.

When I walked into this Chamber the Minister for Health was indulging in what has become a favoured practice by this Government; that is, attacking unions and blaming them for the problems in the community. It would do government members some good to sit in a union office and hear the stories from workers who have been injured on the job to gain some understanding of the pain and suffering they have to contend with. They will also tell them that this Government's amendment to the Workers' Compensation Act has made it easier for insurance companies to get out of their obligations.

Members opposite must understand that the unions rallied outside Parliament House and the commissioner's office simply because they are upset at the way in which the commission deals with safety on the job. I do not care whether the commissioner is upset, but if he were doing his job he would be defending the unions and not acting in a bitter and regretful way. The Minister's language is regrettable and he should clean up his act. I support the motion.

HON A.J.G. MacTIERNAN (East Metropolitan) [4.27 pm]: Hon Tom Helm pointed out that unions certainly do not have a monopoly on being allocated government resources to further government objectives. He quite rightly pointed to the Farm Safe program through which considerable resources are directed to the farming community. The Opposition has no objection to that.

Hon W.N. Stretch: The difference is that farmers did not ask for that assistance.

Hon A.J.G. MacTIERNAN: The farmers do not need to ask for assistance because of pussy cat Governments. The issue is not whether they ask; the issue is whether it is proper for government resources to be spent in that way. I could use a plethora of examples of grants - such as export grants and best practice grants - which go to business to assist it to do what it normally does because it is recognised that is an important social and economic objective to be achieved. It is generally recognised that with grants to unions, as with grants to farmers, there is a disparity in resources. I refer Mr Stretch to some of the debates in this Parliament in 1902 when his conservative predecessors were somewhat more enlightened than are members opposite now and understood the disparity between income and the position of working people in this country and that of capital.

However, the propriety of the Government spending money to enable unions to assist in dealing with this important question of industrial health and safety is not the central issue. The central issue is whether it is proper for a senior government official to determine the applications for assistance on the basis of whether the union is critical of the performance of that commissioner or government. Notwithstanding the statements of the Minister for Health - as Mr Halden said, it was a complete disgrace that the Minister should adopt such a cavalier attitude to this issue - there is absolutely no doubt that not once, but twice, the commissioner determined this application on the basis of his hostility arising out of the criticism that had been directed at his performance by the union movement. That criticism is borne out by the appalling performance record of the Department of Occupational Health, Safety and Welfare in enforcing construction regulations over the preceding 12 months.

[Motion lapsed, pursuant to Standing Order No 72.]

RESERVES BILL (No 2)

Third Reading

Bill read a third time, on motion by Hon George Cash (Minister for Lands), and transmitted to the Assembly.

LOCAL GOVERNMENT (SUPERANNUATION) LEGISLATION AMENDMENT BILL

Report

Report of Committee adopted.

Third Reading

Bill read a third time, on motion by Hon George Cash (Leader of the House), and passed.

HEALTH SERVICES (QUALITY IMPROVEMENT) BILL

Second Reading

Order of the Day read for the resumption of debate from 17 August.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for Health) in charge of the Bill.

Clause 1: Short title -

Hon KIM CHANCE: The Opposition supports this Bill. It had its genesis in the days when Hon Keith Wilson was Minister for Health. I found that out from Hon Ian Taylor when I went to him seeking guidance on the Bill when I was unable to find the shadow Minister on the evening I thought the Bill was to be debated. Hon Ian Taylor told me the legislation predated his term as Minister for Health. It has a considerable history.

The purpose of the Bill is to provide a qualified statutory protection for quality assurance activities in the interests of better health care for patients. It became a stand alone concept in that it justified its own piece of legislation when Mr Wilson decided not to proceed with the hospital services Bill, which was initially intended to contain these principles. The Australian Medical Association strongly supports the thrust of the Bill. In the consultation process more than 20 submissions were received. In that process some amendments were made, including amendments to the title, which was originally the health services quality assurance Bill. The Minister may tell us why that change was made. My understanding is that the title was changed to the Health Services (Quality Improvement) Bill to reflect more accurately the intent of the legislation.

The short title adequately contains the objective of the legislation, which is to improve the quality of health care. The Bill recognises that competing interests militate against openness and freedom of information in a system as sensitive as health. The Bill handles this matter by allowing for generic unidentifiable information to be provided to the public. It attempts quite successfully to balance two opposing views; it acknowledges that there is a public interest in protecting information from scrutiny while at the same time increasing accountability of service providers in the health industry. The two clauses which could be said to be contentious to some extent, or at least the main active clauses of the Bill, are clauses 9 and 10. In clause 9, although established standards will be set for the release of information to other persons or, indeed, the public, this information will be limited to non-identifying data.

The Bill was formed from a Health Department of Western Australia discussion paper on protection against litigation as a result of quality assurance activities in health care. That paper dates back to 1990, although I thought the issue was somewhat older than that. The Bill was formed from that paper to some extent and from responses which were received to that paper from interested parties.

In clause 10, the extent of the public interest of protecting information from civil proceedings to ensure that quality improvement activities are effective is defined as being something quite different from providing the same protection from criminal proceedings; that is, there may be cases when opinions stated during quality improvement committee hearings may need to be disclosed in criminal proceedings even though the point has been made that in many cases such statements would be inadmissible in a criminal court. The quality improvement bodies established by the legislation can make comments or recommendations for change without the risk that such comments or recommendations will be used later as evidence of inappropriate practice by the former management. It is those few words which hold the crux of the legislation.

One of the changes that has taken place in the review process of the Bill is that the earlier reference to clinical competence has been removed. This has been done, I believe, because other more appropriate mechanisms exist to address the question of clinical competence. Therefore, while we are looking at the whole area of quality improvement in health services, that question of individuals' or even groups' clinical competence is not one which arises in the Bill.

A question about the guarantee of natural justice arises in clause 8. I was pleased to see that, given the degree to which we have noted recently in legislation that Bills have tended to include provisions which override the concept of natural justice. Without imputing for a moment that this is in any way something new, because presumably legislation in one form or another has always had clauses which tend to override natural justice, in this day and age where we are much more sensitive to human rights and the rights of the individual against authority, it is disappointing to see new legislation coming

forward in this climate that overrides the question of natural justice. It is no longer a defence for us to say that it is okay for legislation to contain clauses overriding natural justice because that has always been the case. We have to take an entirely new approach to our scrutiny of legislation in future to ensure that at least as we deal with new legislation, we are not compounding the errors which legislators have made probably since laws were first written. I believe that this is such a Bill. Given the sensitivity of the question that it is handling, that is possibly a reason that the question of natural justice arose. I am pleased to note the way in which that question has been handled in clause 8 of the Bill.

The Opposition is pleased to support the legislation and looks forward to its early implementation.

Hon N.D. GRIFFITHS: I do not propose going over the ground covered by Hon Kim Chance. I agree with the views expressed by the Minister in his second reading speech and I congratulate him and the Government for carrying on with the good work of Mr Keith Wilson.

This Bill goes a long way to achieving the objectives set out in clause 3. It is based on a philosophy which seeks to encourage the good in people rather than discouraging the bad. Again I congratulate the Government. I have some short observations in respect of some clauses and I will make those in due course.

Hon PETER FOSS: I thank the Opposition for its encouragement. Members opposite have identified correctly the genesis of the Bill.

I want to deal with the question raised by Hon Kim Chance about the change of the name. The term "quality assurance" or QA had its origins principally in the area of product production where one is producing a standard product and wants provisions in place to assure people that the quality of the product is consistently good. It has lost some of its charm as a term generally and the term "quality management" has become more favoured because assuring quality is a continuing process of interactive management rather than just a matter of procedure.

Quality improvement was chosen when dealing with areas of medicine because it is recognised that it is not a standard product at all that we are dealing with. Medicine is a continually changing skill. The medical profession is continually seeking to do better. It is not enough, as far as their professional ethics are concerned, merely to do what is considered at the moment to be a quality job; it is very much a matter of all the time trying to get a better result for the patients. Part of this is not just to pick up errors, but to ensure that the process of improvement in the quality of health care continues to exist. That is why the term "quality improvement" was chosen. It makes clear that we are not dealing with just a product, but rather that there is a professional desire to improve it all the time. It is better that we have an appropriate term rather than a common term.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Interpretation -

Hon N.D. GRIFFITHS: The definitions of health service contained in paragraphs (b) and (c) are extremely wide. I do not take issue with them being wide noting the tenor of the Bill, the safeguards in it and the fact that the Bill is a positive measure which in my opinion has a great opportunity to improve health services as defined in paragraph (a). I would be obliged, however, if the Minister enlightened the House as to why paragraphs (b) and (c) are worded in the wide manner that they are.

Hon PETER FOSS: The Committee notes suggest that the clause is self-explanatory! Medical services are now highly technical. For example, the largest growing area of medical practice is endoscopic surgery. The rate of development worldwide in endoscopic surgery is equal to the rate of development of computers. The sorts of operations which are now being carried out endoscopically with enormous benefits to the patient are extraordinary. The only two limitations are the imagination of the doctors and

the technical equipment associated with it. The imagination of the doctors now seems to know no bounds; the only bounds are set by the technical equipment. I refer to this only as an example, but this may be an area in which such a committee would be appropriate when considering the development of technical equipment for these procedures. Strictly speaking, that would not qualify as a medical service, but it may very well be important as part of what is done in dealing with associated technical equipment. Providing it meets the approval procedure outlined in clause 7 - it has to be for the valuation of a health service, and make recommendations related to a health service - it would then be appropriate.

Hon N.D. GRIFFITHS: I understand the Minister's point. I thought it to be very important that the Minister place those matters on the record.

Clause put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Disclosure of information -

Hon KIM CHANCE: This clause implies a degree of privilege associated with the disclosure of information. What is the depth and effect of the privilege implied within this clause? The information I had initially was sketchy; that is, it was clear regarding civil proceedings in that a privilege is granted in that case, but this did not apply in relation to criminal proceedings. To what extent does privilege apply in this case? I am a little confused about how something can be admitted in evidence in one court and not in another. How, rather than why, is that the case?

Hon PETER FOSS: It is necessary to read clauses 9, 10 and 11 together. I suppose that clause 5 could be included in that because evidence can be received directly or indirectly. Clause 10(1) reads -

> Without limiting section 9, but subject to this section, a person who is or has been a member of a Committee is neither competent nor compellable in civil proceedings -

However, it may be possible that if a person is able to disclose that information, it may become available through some other source; that is where clause 9 becomes important. If a person divulges information - which may be acquired through hearsay or interrogatory proceedings - clause 10 specifies that the information cannot be received directly through the committee. The member asked how we give evidence in one court but not another. Simply, if evidence is not admissible, it is not admissible. If it is admissible in criminal proceedings, and it is not allowed in civil proceedings, the evidence from the criminal proceedings cannot then be used in civil proceedings. The court ignores evidence given in other proceedings.

Clause put and passed.

Clauses 10 to 15 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Peter Foss (Minister for Health), and transmitted to the Assembly.

EAST PERTH CEMETERIES REPEAL BILL

Second Reading

Resumed from 29 September.

HON J.A. COWDELL (South West) [4.57 pm]: The Opposition supports the repeal of the East Perth Cemeteries Act, and the formal transfer of the management of the disused cemetery from the Department of Conservation and Land Management to the National

Trust of Australia (WA). I note the importance of the East Perth Cemetery, or Paradise Hill as it has been known in our history. In fact, this cemetery is often referred to as "cemeteries" because of the ownership being divided among separate denominations. Separate sections of the cemetery were provided for independents, Wesleyans, Roman Catholics, Jews, Presbyterians and Anglicans.

Hon Tom Stephens: Who were the independents?

Hon J.A. COWDELL: That is an interesting question; they were probably a variety of nonconformists.

Hon Peter Foss: Well said.

Hon Tom Stephens: Like Mr Davies.

Hon J.A. COWDELL: Sections of the cemetery accommodate deceased persons of Chinese and Japanese origin, as well as some Aborigines. The Royal Western Australian Historical Society estimated in 1986 that approximately only 20 per cent of the gravesites still exist: Many have been lost due to government policy.

Hon Derrick Tomlinson: How does one lose a grave?

Hon J.A. COWDELL: One loses headstones and the like. As Hon Derrick Tomlinson will be well aware, government policy in the past and present has involved the bulldozing of sacred sites.

So, we have the opportunity to better look after what is left of Paradise Hill, the East Perth cemetery site.

[Questions without notice taken.]

Hon J.A. COWDELL: Members should be aware that the East Perth Cemetery is the last resting place of many political luminaries of our State, such as Sir Luke Leake, although I might add, for Hon Nick Griffiths, not the last resting place of all political luminaries of this State.

Hon Graham Edwards: I reckon in this place he would have some stiff competition.

Several members interjected.

The PRESIDENT: Order!

Hon J.A. COWDELL: It is not that I want to express concern about the current management of the East Perth Cemetery under the Department of Conservation and Land Management. However, given CALM's budgetary imperative of reducing its community grant from $70m to zero by the year 2000, it may well have crossed Dr Syd Shea's mind there may be some hope for gold prospecting, subdivision or sale of indulgences from St Bartholomew's Church as long as it was under CALM's management. We are looking forward to the transfer of management to the National Trust. The existing role of the trust with respect to the cemetery is well known. Since the mid-1970s the trust has managed the restoration and refurbishment of St Bartholomew's Church. Other community organisations have also assisted in keeping the cemetery in a reasonable state of repair. I was privileged to participate in one of the organised walks around Paradise Hill that the National Trust conducts from time to time. The volunteers do a very good job in edifying the public as to the importance of that site. It is important that we acknowledge the contribution of those who support the National Trust and provide this public service. The National Trust manages 16 properties in Western Australia. If members look at Woodbridge, the Old Mill in South Perth and other sites managed by the National Trust, they will be impressed by their management and have every confidence in the new management of East Perth Cemetery.

This brings me to the funding of the National Trust. If we and the Government are serious about heritage matters the National Trust must be adequately funded. It is an investment by the Government in the community and our history. I must express concern at the level of government support for the National Trust. I have read in the latest issue of *Trust News* of a particular government initiative, under the heading "Art and Politics". I quote -

Be part of this exclusive Trust party visiting Parliament House to inspect the art collection on display in the corridors of power! Enjoy the experience of afternoon tea in the parliamentary dining room.

Your tour will be conducted by The Hon. William (Bill) Stretch MLC, Member of the Legislative Council representing the South West and Liberal Party Parliamentary Secretary.

Book early as numbers are limited. Cost: Trust Members $4, Non-Members $6.

Although I commend the initiative of the Government in securing the funding of the National Trust in this manner, I point out that the National Trust's grant has remained static for the past two years, at a level of $250 000. Indeed, we are giving the National Trust responsibility for more properties - as in this Bill - but we are not at the same time giving it the means to adequately handle those properties. Bearing in mind the restoration required to the East Perth cemetery, and the fact that it is such an important feature of the East Perth redevelopment site, the Government should pay attention to the funding of the National Trust, while at the same time vesting more properties in the care of the trust. I support the vesting of this site in the trust, and I look forward to the Government's giving the trust the means to adequately discharge this additional responsibility.

HON N.F. MOORE (Mining and Pastoral - Minister for Education) [5.42 pm]: I thank the Opposition for its support of this legislation. It is a simple Bill which changes the vesting. Most of the comments by Hon John Cowdell related to extraneous matters which are raised as a result of this Bill. I agree there is a need to thank the National Trust and those volunteers who have done such a good job in ensuring the cemetery has been restored to a reasonable state of repair. I also agree that the National Trust should be funded accordingly. I shall relay the member's comments to the Minister for Heritage and indicate to him that this transfer may require additional funding to ensure the work continues. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee and Report

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon N.F. Moore (Minister for Education), and passed.

TAXI BILL

Recommittal

HON E.J. CHARLTON (Agricultural - Minister for Transport) [5.45 pm]: I move -

That the Bill be recommitted for the purpose of reconsidering clauses 2, 3, 17, 20, 22, 29, 32, 36 and 38, and schedule 1.

The reasons for the motion to reconsider the clauses have been well documented. The Bill having reached the third reading stage, I received a submission from the Taxi Council of Western Australia indicating that it wanted a number of clauses amended. Between three and four weeks ago I indicated to the Taxi Council that I would be happy to consider its points of view, and that any amendments to be made to the Bill could be dealt with either in this House or in another place. Following my meeting with the Taxi Council last week, during which we went through its 30 points, it appeared that there were three main areas of concern. I sought Crown Law advice on some aspects of this legislation and have also communicated with the Taxi Council on these matters. It has indicated its agreement to the proposed amendments.

Hon Reg Davies: Did they put it in writing?

Hon E.J. CHARLTON: My proposal was in writing to the Taxi Council, and I received confirmation of its acceptance in writing also. Included in the written response was agreement to these amendments and identification of further areas of concern. I have responded in writing to those concerns indicating that I am not prepared to make any further changes. The Taxi Council has responded to that communication in writing, indicating its sorrow and disappointment. However, that is life.

The changes requested by the Taxi Council have no effect on the intent of the Bill and, therefore, I have moved for certain clauses of the Bill to be recommitted. The main thrust of the changes is simply to delete words in one clause, increase the penalty in another clause, and provide an opportunity for an appeal to the court in another clause. These changes result in consequential amendments to other clauses.

HON KIM CHANCE (Agricultural) [5.50 pm]: The Opposition will support the motion to recommit the Bill, and it welcomes the amendments that have been brought before the House. The mechanism by which these amendments have arrived is one of some concern to us. Allowing for the fact that this Bill may well have been rushed into Parliament because the Government was short of legislation - to some extent that may then preclude the Minister from dealing with the matter in the way in which he may have liked to deal with it; it is fair that I should say that - the Opposition is concerned with the way in which this Bill has been handled.

From the very start we said that we wanted to support the thrust of the legislation but the industry felt that in the time since the Bill became available the level of consultation which took place - that is quite separate from the consultation which took place prior to the availability of the Bill; it was adequate and even quite good - was deficient and the Government's handling of the legislation and the manner in which it was handled in this place was less than adequate. So much so that at a very early stage the Opposition warned that matters were involved in the legislation which it and industry were unhappy with. The fact that we were dealing with the final wash-up of the solution of those deficiencies in this House is entirely appropriate. That is why I am pleased that the Minister has chosen to deal with the matter in this manner rather than allowing the questions which remained unanswered to find solutions in another place.

It is my view - this is precisely why the Opposition moved on two occasions to send the Bill to the Standing Committee on Legislation - that the problems must be sorted out in this House. It is not a proper process for us to rely on the other House where the Minister is not present to sort out the problems which should properly be sorted out in the House in which the legislation was initiated.

It also points to another problem created by the large number of Ministers with key portfolios who are members of this House. We have been told, and it has become obvious enough, that this House is not a House of Review, and in its present construction it has gone further away than ever from being a House of Review. Five of the Government's senior Ministers who control a large part - far more than the majority - of the State's entire Budget are in this House. That is not a function of a House of Review; it is a function of a House of Government. Occasions like this simply demonstrate that we cannot rely on the other place to review the legislation which is initiated in this House. The other place was never structured to do that. It does not have the committee system that we have, even though we sometimes feel that our own committee system still needs a lot of development.

Hon Tom Helm: They would not send it to the committee anyway.

Hon KIM CHANCE: I am not trying to make excuses for the Minister. In part he has been the victim of a process which has made life more difficult for him than it should be for a Minister. I am not saying that the Minister has done a particularly good job in handling this legislation; nonetheless there are structural reasons in the way in which we have established our two Houses of Parliament which have made occasions like this next to inevitable.

The Opposition has said in the past, and in noting the recommendations in the second

volume of the report of the Royal Commission into Commercial Activities of Government and Other Matters, that having five Ministers in this House is inappropriate. Inevitably it will lead to the process of the legislation being less than it should be. This is a classic example of that. All members in this place, particularly the Leader of the House and the Ministers, need to bear in mind that whenever legislation is initiated in this House, we need an extensive period for consultation. We are stuck with the position we have now and there is nothing that the Government, and certainly the Opposition, can do to fix that problem. One way around that is to ensure that after legislation has been initiated into this place, it sits on the Table for a considerable time so that these problems can be sorted out and we can do our jobs as best we can in the circumstances.

In this case the legislation was initiated on 13 September, the second reading was debated on 27 September and the Committee stage occurred on 28 and 29 September. That is clearly not improper in the sense that the Minister has done anything wrong. In fact, he made the point that the legislation was introduced in the only and proper way that it could be; the tragedy is that he was right. However, that has not allowed the processes in this House to work in the way in which they should. In a House which is supposed to perform the role of a House of Review, we cannot expect to deal with legislation on that time scale. It is just inappropriate.

How many times have we been critical in this place of the processes of legislation in the other place - it does not matter who is in government at the time - where legislation has been rushed through; it has come into this House; and we have found considerable faults with it? A classic example is the five pearling Bills which were debated cognately in the Legislative Assembly. They got into this place; we had instructions to put the Bills through; and then we found something wrong with them. That is how this House is supposed to work: We are supposed to review the decisions made in another place. It is next to impossible to do so when the legislation is initiated in this place.

All I can suggest - I want to make this quite clear while the Leader of the House is in the Chamber - is that when the Government does initiate legislation in this place, it provides that legislation weeks before we have to deal with it. The Bill can go out and be dealt with and properly scrutinised by the industries and the persons who will be affected by it. A classic example of this - although this was done in the other place - was the largest of the five fisheries Bills. That Bill was in the community for nine months before it was dealt with by the Legislative Assembly. That Bill had the potential to be highly contentious; however, its passage through both the Legislative Assembly and this place was smooth as a result of good industry consultation. We did not have that with the Taxi Bill. It created significant problems for the Government. We will eventually end up with a much better piece of legislation now than we would otherwise have had; however, it was quite inappropriate for the Minister to have told a sector of the industry that problems could be sorted out in the other place. I do not believe we should be encouraging that attitude.

Hon E.J. Charlton: That is only because they did not have any suggestions as to how I could improve it for them while it was here. They only just gave them to me.

Hon KIM CHANCE: I have been as fair as I can be in this matter, and I will not go any further with it. It is just an inappropriate use. Our Houses of Parliament are not structured for that sort of handling of a Bill. Had we had time with this legislation, it could have gone through without anywhere near the pain that it has generated for the Government, the Opposition and indeed the industry. I thought I needed to make those comments. I believe we will put this legislation through tonight without any significant difficulties. The Opposition has only one amendment.

Sitting suspended from 6.00 to 7.30 pm

Hon KIM CHANCE: The Opposition has one amendment to add, of which I informed the Minister before the dinner suspension, and having had the opportunity during the dinner suspension of assessing the Government's proposed amendments, I believe the Opposition will be pleased to support them.

HON TOM HELM (Mining and Pastoral) [7.31 pm]: I agree that the Bill should be recommitted, but it should not be recommitted without our taking into account what has happened in this place. When I spoke to the Chairman of Committees after dinner, he reminded me of the words used by Hon Kim Chance; namely, that the Opposition supported the Bill, but with a few minor amendments. We did not think it would take very long to put this Bill through the House because we were informed that the industry had been consulted and, in the words of the Minister, had no problems with the Bill. However, it appears that it did have problems with the Bill, and that is the reason that we have to go through this exercise again. The House should be reminded also of the answer that the Minister gave to an interjection by Hon Reg Davies. When the Minister moved to recommit this Bill, Hon Reg Davies said, "Have you got the concurrence of the industry in writing?", and the Minister said, "Yes". He then said, "Has the industry got your response in writing?", and the Minister said, "Yes". It is important to remember that the Joint Standing Committee on Delegated Legislation has been considering for some time whether it is sensible and good government to have evidence of the consultation process which has taken place in regard to legislation that is before this Chamber or regulations that are before the Delegated Legislation Committee. Those people with whom we consult may not agree with the direction that we are taking, but at least evidence of that consultation will enable us to say in this place or in the committee room that consultation has taken place so that we are not left with egg on our face at the end of the day. Of course, although the Government may support the views of a particular interest group, it will not be dictated to by interest groups. The Government has an obligation to make decisions on behalf of the whole community, and those decisions will fit the philosophy of the Government of the day. The royal commission recommended that the community be advised and invited to make comments about legislation that is introduced into this Parliament. In that way, this Parliament can put together the best possible legislation for the community.

It is quite proper that a man of the Minister for Transport's experience in both life and politics be allowed to have his views pass through this Chamber, even though we may vote against him. Surely it is in our interests to use the time and resources that are available to us to go out into the community and ask people how they think this legislation will affect them or what suggestions they can make to improve this legislation. This Parliament is going down the same track that most of the democratic nations in the world are going down, where rather than be paternalistic or maternalistic and tell people what we think is best for them, we consult with people. Consultation does not necessarily mean agreement. One of the reasons that I am a proud member of the Delegated Legislation Committee is that the system of government that we have in this country today is one of the best in the world. Of course, it can be improved upon because we are human and make mistakes, but hopefully we learn from those mistakes. In comparison with other legislatures, what we have in this State and country is excellence, and we should not undermine that excellence. I say that as someone who has not only studied politics to some extent but also travelled the world - not as extensively as you, Mr President - and who like you and others in this Chamber has been invited to other countries to give views and advice so that the people in those countries can understand how we have developed to this stage. I warn members that if we are not vigilant and if we do not consult with the community about the legislation that we introduce, we will end up in the situation that we are in with this Bill. Sure, the Minister for Transport is embarrassed. Sure, mistakes have been made. However, we all pay for those mistakes, not just the Minister. We as politicians are all undermined in our legislative role. Not only should we consult with the community, as the royal commission recommended, but also we should present within this Chamber evidence of that consultation process. I hope the Minister has learnt the lesson, and I hope we have all learnt the lesson, from our experience with this Bill.

Question put and passed.

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon E.J. Charlton (Minister for Transport) in charge of the Bill.

Clause 2: Commencement -

Hon E.J. CHARLTON: I move -

Page 2, lines 5 and 6 - To delete the lines and substitute the following lines -

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

This amendment was not requested by the taxi industry and is not the result of an issue raised during the previous debate on this Bill. It is simply new wording regarding the proclamation of the Bill. This amendment is the standard wording used in other Acts to enable proclamation to be partial or total. The original clause was worded in such a way that the proclamation of all aspects of the Bill would take place on the same day. The amendment will give some sections of the taxi industry a little more time to come to terms with the changes.

Hon TOM HELM: Is it the Minister's intention to publish regulations under parts of the Bill that may not be proclaimed?

Hon E.J. CHARLTON: No. The regulations will be determined by the new industry board. When the board is appointed it will recommend a range of regulations to enable the industry to control its operations. The regulations will be recommended to me by the new board after consultation with the industry. The industry has already put proposals to me and I advised that they would be considered in consultation with it when the board is appointed. As soon as the legislation is passed work will commence on the regulations. The timing will depend on when the various sections of the industry are ready to implement regulations. If the particular part of the legislation has not been proclaimed the industry will not be required to abide by the regulations. The radio companies will have to be registered and they may need extra time to get organised and that is one of the reasons for this amendment. One way or another, it will not make any difference to that aspect of the regulations.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3: Interpretation -

Hon E.J. CHARLTON: I move -

Page 3, line 8 - To delete "or to employ,".

This amendment is the result of a concern raised by Hon Kim Chance during debate on this clause and by the industry. I had the wording of the clause double checked and I received an absolute guarantee that the word "employee" in this instance does not mean employing someone on a wage basis. It is covered in the Interpretation Act as an operator within the industry and not as an employee as such. However, some people in the industry did not want to accept that as a gilt edged guarantee and the matter was discussed on the ranks and it was the general opinion that the clause would lead to the demise of the industry and that drivers would be employed on an hourly basis rather than through a lease arrangement. I told the industry representatives who wanted this clause amended that I would move this amendment, but it would not have a bearing on the Bill. However, it will change the definition because people within the industry will not be considered to be employed as employees, but will continue to be employed in their current role.

Amendment put and passed.

Hon E.J. CHARLTON: I move -

Page 3, after line 10 - To insert the following definition -

"**operator**" means a person who operates a vehicle as a taxi;

The inclusion of the definition of operator is for the purpose of conditioning actions under clause 20 which requires the word "operator" to be defined.

Hon KIM CHANCE: Obviously, the Opposition supports the inclusion of the definition of the word "operator" in the Bill and it does not dispute it. However, it has occurred to me that under the definition of operator reference is made under paragraph (a) to own and drive; under paragraph (b) to be a plate owner and drive; and under paragraph (c) to cause by leasing or otherwise another person to drive; but there is no mention of a person who leases and drives. Where is the driver in that equation?

Hon E.J. CHARLTON: To operate means to own the vehicle and drive, to be a plate owner and drive, or to cause by leasing or otherwise any person to drive.

Hon KIM CHANCE: In the agreement between an owner and a lease driver I can understand how the part "to cause by leasing or otherwise" includes the owner; however, I cannot understand how that part includes the lease driver.

Hon E.J. CHARLTON: A person can own the vehicle and drive it; he can be a plate owner, but not own the vehicle, and drive it; and by leasing or otherwise he can cause a person to drive it.

Hon Kim Chance: Does that include both sides of the arrangement?

Hon E.J. CHARLTON: Yes.

Amendment put and passed.

Clause, as further amended, put and passed.

Clause 17: Form of tender -

Hon E.J. CHARLTON: I move -

Page 10, line 23 - To delete "$1 000" and substitute "$10 000".

This is one of the three amendments the industry required to be dealt with in the Bill. Clause 17 originally had a $1 000 penalty for false information given in the tendering of plates. The industry said that to ensure people did not give false information the penalty should be increased substantially - tenfold, in fact. The Government did not think there was any need to go to that level. However, we discussed the matter with other sections of the industry which had originally agreed to it. They did not have a problem one way or the other. Therefore, to satisfy the people who made that representation we have included in this amendment that increase.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20: Conditions -

Hon KIM CHANCE: I move -

Page 13, line 3 - To insert the following -

(i) leasing arrangements and lease price schedules.

Apart from one opinion on another clause, this is the last remaining issue the Opposition will raise. In itself it is simply a difference of opinion in law. The Minister and I disagreed on the regulatory line of clause 20 on page 13 that the director general may impose conditions on the operation of a taxi using specified taxi plates in relation to that group, and the line "and such other matters as may be prescribed by regulation". The Minister's view on the capacity of the director general, if at some later date he wishes, to impose a limit on the lease charges in commercial agreements between owners and lease drivers, is that the director general could use that regulatory line in clause 20 to achieve that aim. However, it has been my argument that he would not be able to use those regulatory powers to do that. I understand that the Minister will table Crown Law advice on the matter. I have been told that in broad terms that advice supports the view put to this Chamber by the Minister.

I offer an alternative view; that is, without the inclusion of a specifically enumerated subclause, such as I have moved to have included, which will include in the clause the reference to leasing arrangements and lease price schedules, we could not prescribe by

regulation any matter dealing with a commercial agreement on a lease between owner and driver, because there is nothing in paragraphs (a) to (h) which are ejusdem generis - that is, of the same family - to give the director general the capacity to prescribe a regulation dealing specifically with a commercial agreement and limitations on that agreement.

Clause 20 states that the director general may impose conditions on the operation of a taxi. In using the words "operation of a taxi" the clause specifically excludes any matter other than the operation of a taxi. Clearly, a commercial agreement has nothing to do with the operation of a taxi. Each of the paragraphs (a) to (h) - with the possible exception of (h), which is the transfer of plates - is specifically to do with the operation of a taxi. My argument - this is the argument that is different from that put by Crown Law - is that without making reference to leasing arrangements, the director general could not then prescribe regulations dealing with leasing arrangements. It is supported by a number of High Court decisions. I have tried to condense them as briefly as I can. The first is contained in the Commonwealth Law Reports, volume 74, page 613 and is a case of the King v Regos and Morgan in 1947. It defines pretty well the rule of ejusdem generis. It states -

> The *ejusdem-generis* rule is a rule of construction only; that is, it is designed to assist in ascertaining the intention of Parliament in the case of a statute and of the parties to a document in other cases . . .
>
> The rule is that general words may be restricted to the same *genus* as the specific words that precede it . . . Before the rule can be applied it is obviously necessary to identify some *genus* which comprehends the specific cases for which provision is made.

Those words say, in effect, that if we are to apply the rule of ejusdem generis, we have to be able to identify the family of clauses which comprehends the specific case; -

Hon John Halden: You are still wrong.

Hon KIM CHANCE: No, I am not. That is, in this case, whether the director general would be able to prescribe a regulation in respect of a commercial agreement. A later case in the High Court was Associated Newspaper Ltd v Wavish in 1956 and is contained in the Commonwealth Law Report volume 96 at page 526. It states -

> The question, however, is not free from a matter of law and I propose to state what, in the view of the court, is the construction to be placed upon s. 169 in its application to s. 171. Section 171 relates to what are called "articles". The word "articles" is the subject of what might be described as an inclusive definition contained in s. 169. It has been held in Victoria that, although the definition is inclusive, the word in s. 171 does not extend beyond what is ejusdem generis with what is stated in the inclusive definition in s. 169.

Again, we have the picture coming through clearly that, unless there is a clear statement of what is possible through the enumerated subclauses, the Minister cannot prescribe a regulation and he cannot make a ruling of any kind unless he has that family similarity with the other clauses. That is clearly lacking in clause 20 of the Taxi Bill. That case goes on to state -

> It therefore follows that s. 171 relates to the kind of publications and representational objects, and to things ejusdem generis therewith, which are described in the definition of "articles" and would not extend to matters and physical objects having no relation to representation.

That is the same theme coming through. A much later case in 1977 is the case of Maguire v Frend contained in the Federal Law Reports volume 32 at page 160. This deals with an independent matter. It states -

> The words "to be entered into" in s. 34 and, to the extent that it is relevant, the heading "Agreements" support, so the argument went, such a reading down of the very general words. Regardless of whether the ejusdem generis rule itself can

> properly be said to be applicable where only one specific clause is nominated ... there is obviously much force in the argument that the context requires that the words "or any other document" be read down in some such way.

While in that case it was noted that it was not necessary to decide that question for the purpose of the readings, nonetheless, the principle was established. While those explanations may seem tortuously worded and somewhat difficult to understand, I think the principle comes through relatively clearly; that is, unless the director general in this case is prescribing a regulation which has a family similarity, for want of better words, with the enumerated subclauses of the clause, then that regulation so prescribed could be struck down as ultra vires the Bill. I do not think that the Minister and I have any difficulty with what we are trying to achieve because the Minister is saying, or I believe will say later, that he has no difficulty with the Director General of Transport having the power to make such arrangements in respect of lease agreements, if it is deemed fit that he make those arrangements. Our amendment does not force the director general to do anything. It simply leaves it open to him to take those actions. If the Minister supports this amendment and includes the new paragraph (i), the director general can prescribe regulations in respect of any matter concerning lease contracts and not take the risk that, at some later date, those regulations could be struck down.

Hon JOHN HALDEN: The committee may have noticed that, by way of interjection to Hon Kim Chance, I suggested that he had got it wrong. He has not got it wrong; in fact, he has got it right but has not taken it far enough. The immediate problem is overcome by his amendment to refer to leasing agreements and lease price schedules. However, I point the Minister again to line 3, which reads "and such other matters as may be prescribed by regulations". My view of that is that it allows for him to prescribe by regulation things outside of paragraphs (a) to (h) and even to proposed paragraph (i) and therefore to a further amendment which I believe would have to read "and such other matters relevant to the foregoing provisions as may be prescribed by regulation". As Hon Kim Chance said, if at some stage a future director general or whoever is in charge of the department, or a Minister, decides to use this provision to regulate outside of those areas (a) to (h) believing that he or she has the power under the line "in such other matters as may be prescribed by regulation", open-ended, I suggest it would, on the basis of those high court decisions, be ultra vires. If we are going to have legislation, it should be clear legislation.

Hon Kim Chance cleared up the issue of the leasing arrangements and the lease price schedules. The Minister said originally that he felt he had the power to cover that area, I presume by the provision of line 3. Nevertheless, the Minister cannot have that power because it would be ultra vires the Act. Hon Kim Chance has read out the relevant part of the legislation. Therefore, the Minister must ensure that line 3 is carefully spelt out so that its intention is clear. Currently line 3 is not conjunctive, but disjunctive, in its nature. It must be rectified so that the capacity for the regulation making provision to be ultra vires the Act cannot exist.

Hon E.J. Charlton: Are you saying that following the amendment to line 3, it will be in conflict with the Act, or are you saying it is in conflict anyway?

Hon JOHN HALDEN: It is in conflict anyway. During the previous Committee stage of the Bill the Minister said that he would already have the power to do what is intended by way of Hon Kim Chance's amendment. If the Minister accepts Hon Kim Chance's argument and went to some area not covered by (a) to (h), or (i) if the amendment is accepted, that would be ultra vires the Act.

Hon Kim Chance: General regulations are referred to in clause 40.

Hon JOHN HALDEN: I understand that it relates to clause 40(g), which reads -

> prescribed matters with respect to which conditions may be imposed under section 20(1) or 29(1).

It applies to this amendment. That is why we need to close this loophole, any other loophole, as well as the one to which Hon Kim Chance referred. The Minister must be

sure that paragraphs (a) to (h), or to (i), cover all matters that he wants to be covered, because the provision of line 3 will not allow him to make regulatory control outside of the stipulated paragraphs. If a matter is not outlined in the Bill, and some regulation is to be applied at some subsequent stage, it will be ultra vires the Act. I foreshadow that regardless of whether this amendment is accepted, it is necessary to move an amendment to line 3 so that this matter is clear.

The CHAIRMAN: We will come to that when necessary.

Hon E.J. CHARLTON: A number of points must be reviewed and debated to determine who is right and who is wrong and whether the Bill will achieve what it sets out to achieve. This matter involves a number of aspects. First, we want the Bill to have the flexibility and benefits to enable the director general to prescribe regulations to cover a range of aspects relating to the operation of a taxi plate. Hon Kim Chance wants to have in the legislation, through his amendment, the requirement that the director general may in proposed paragraph (i) make regulations regarding leasing arrangements and the lease price schedule.

Hon Kim Chance: He may impose conditions.

Hon E.J. CHARLTON: That is right. That is contained in the first part of the clause. The Government did not place that provision within the legislation in the first place as we wanted the industry and the new board to determine what was required and wanted. We wanted to give the industry that flexibility. As I said a couple of weeks ago, the more conditions we place in the Act, the more possibilities we provide of restricting the new board in making recommendations to the director general. The director general, and the Minister in the final analysis, are required to take responsibility, but we want to ensure that the industry, through the board, will make recommendations on how the industry operates. That is crucial. Throughout all my consultation with the industry it was said that the problems existing today were the result of the fact that its members had no control of their own industry. The claim was that the industry was run by the Department of Transport, which chaired the board until recent times and controlled regulations and everything else. The claim was that people in the industry were totally restricted by how the system operates.

I have said consistently that, among other things, the industry wants regulatory control retained. We want to provide the opportunity for the industry to make changes to meet the changing demands and operations of the industry. It may involve types of vehicles, fees and leasing arrangements. Different systems are in operation in other parts of the world, and some of these are good - however, some are unacceptable to the local industry. The industry wants to be in charge of its own destiny, as it wants changes to come from within. That is why the clause contains this wording. It refers to the operations of taxi plates - and the words to which Hon John Halden referred - "and such other matters as may be prescribed by regulation". This matter may be answered in two ways. I have with me a Crown Solicitor opinion which reads -

> In response to your request for advice, I advise that as Clause 20 now stands, it provides for the prescribing of regulations related to the maximum amount for which plates can be leased. The power to so prescribe is provided in the words "and such other matters as may be prescribed by regulation".

I seek leave to table the opinion.

Leave granted. [See paper No 430.]

Hon E.J. CHARLTON: We can also refer to operating conditions of a cab. We discussed a little earlier a provision which refers to "by leasing or otherwise". In the case of operating a taxi, that matter is covered. It has been covered from two angles.

We want to do three things. First, we want to give the industry the chance to make recommendations to the director general and the Minister of the day about how it wants matters to be covered. Second, we want the capacity in legislation to impose regulations which cover the leasing fees. As I said before, we must remember that people must bend their minds to look forward to see that the industry will not be the same in two, five or

10 years' time. For example, different types of vehicles may operate at different rates. We want the industry to determine that. Finally, we have already inserted provisions to cover all the requirements to operate a taxi. We will come to the so-called ambiguities relating to the roles and responsibilities of those people. Members can have an opinion about areas they consider have not been covered. If some aspects are not covered and matters are taken to the High Court, and the lack of provisions impedes the industry, we will consider the situation further. Members may ask why we do not do that now, but I do not wish to insert anything in the Bill which will take away the role of the industry to make determinations. If we do that before the legislation comes into force in the market place, that could be an impediment. A board will be appointed; it will be different in that it will be an industry board. I want the board to be able to indicate to me and to the industry how it wishes to address other aspects, including "and such other matters" as prescribed by regulations.

Hon JOHN HALDEN: I understand the Minister's desire for flexibility, but based on High Court decisions the Minister is asking this Chamber to breach the Constitution. He wants us to breach the Constitution in the interests of flexibility, or something else. I refer here to the early part of the Constitution which states that the State is bound by the Federal Constitution. Here we have an interpretation of the Federal Constitution, and a Minister of the Crown is saying that we should breach that Constitution.

Hon E.J. Charlton: That is your opinion.

Hon JOHN HALDEN: Exactly. The Minister has already brought about changes to this Bill, but we should be very careful about what we should be doing. The Minister has a Crown Law opinion which fits my argument very well relating to the other amendments I propose. It does not go far enough because perhaps it did not consider those cases, but it is exactly the reason we should have a limiting clause. It is a very dangerous precedent to have a Minister of the Crown advocating a breach of the Constitution. We should consider very carefully the High Court ruling in Thames and Mersey Marine Insurance Co Ltd v Hamilton Fraser and Company (1887). It is an interesting ruling. I remember it well. It addresses our concerns. A member said that it is contemporary, referring I presume to the 1887 matter. It is not a new concept that we put forward. It may be odd and different, but we cannot advocate a breach of the Constitution willy-nilly. We should be very careful about this clause.

Hon KIM CHANCE: I am convinced by the Minister's comments about his wanting the industry to have maximum flexibility. That is entirely consistent with the whole thrust of the Bill. We disagree with very little on that aspect, but having accepted the Minister's argument that he wants the industry to maintain maximum flexibility, he then put an argument against flexibility. The Minister stated that he has a Crown Law opinion to the effect that the regulations can be prescribed. My argument is not that much different. To take any element of risk out of this matter, because there is a significant opinion, I will read again the short line from Thames and Mersey Marine Insurance Co Ltd v Hamilton Fraser and Company (1887): The rule is that general words may be restricted to the same genus as the specific words that precede them. The general words are the regulatory line "and such other matters as may be prescribed by regulation". In other words, we cannot regulate outside the meaning of the specific words of the clause. That decision was made in 1887 and it was used again in 1947. I will not go through the other cases. However, other cases from 1947 to 1983 have kept reiterating that we cannot prescribe regulations on the general words if the general words are not related to the specific words of the clause.

Hon John Halden raised a different point. In effect he is saying that the use of the regulations in the broader sense - that is, "and such other matters" - goes against the Constitution because it is required that we confine those words. It is another argument. It is relevant at this stage that rather than taking away flexibility the words in the amendment grant flexibility because they take away the legal argument about whether one may, as the director general, act in this way. Nothing in the words compels the industry, the director general, the Minister, or anybody else to prescribe regulations concerning leasing. Far from trying to constrain flexibility we seek to take away at least

what could be argued to be a constraint on flexibility. We are removing that constraint by providing a means of greater choice to the director general.

Hon E.J. CHARLTON: As the member said, our aims are not different. It is a matter of how we will realise those aims. The member stated that inserting the words would not constrain the provision because the director general may prescribe. We have legal advice to say that the word "may" increases the expectation that it must happen. They are the sorts of legal aspects that must be taken into consideration. We do not want to lock in that situation. The industry may find some other way to deal with this. The current Act requires a leasing fee, and in recent times we have seen problems caused by adhering to that. Immediately we prescribe this in the legislation it becomes an expectation, and the word "may" increases the expectation that it "must" happen. It is not saying that it "shall", which is another word that could be used, it is saying that it "may" because we do not want to tie the director general to doing something that the industry does not want done. Neither do we want to tie up the industry. Even though it may sound as though we are protecting the industry, if we legislate for these matters, the director general must police that because the Department of Transport administers the Act. That came out of my consultation with the industry. The industry does not want us involved in running the industry, but anything to do with the legislation must by law be administered by the director general, and there will be a cost to that.

I told representatives of the taxi industry who wanted a number of other things that they could have what they liked, but they must pay for them. They should not criticise me or the department as we are simply trying to get a balance between what needs to be done and what the industry wants done. We want the industry to have first bite of the cherry and to tell us how it wants to deal with such things as leasing. The industry wants to look after the interests of people who have been in the industry for a long time when it comes to new plates. Rather than our saying who should be in the industry, we want the industry to tell us what it wants. We want the industry to do the same thing on leasing fees.

Hon Kim Chance has put his case very well. I am not a lawyer. Members opposite know from their time in government that Crown Law advice is often disputed by the Opposition, which says it has obtained independent advice. The Government obtained Crown Law advice on this issue before it brought the legislation into the Parliament, and it has been referred back to Crown Law twice. I am going down this path because it gives the industry first shot at it.

Amendment put and negatived.

Hon JOHN HALDEN: As the amendment was negatived my foreshadowed amendment will cause considerable difficulty, because what I am proposing to do is to change the clause to read "and such other matters relevant to the foregoing provisions as may be prescribed by regulation". I want to move that way, so we do not have problems down the track of prescribing regulations to which we do not have the background to (h) to do that. I am still of the view, in spite of the Crown Law advice, that there will be difficulties because it is such an open ended provision. My intention is not to sabotage the Bill, but there is a general danger in the wording of "such other matters as may be prescribed by regulation". I know it refers to the operation of taxis using specific plates, but I am not sure whether paragraphs (a) to (h) should not be all encompassing so that we do not need this provision.

Hon E.J. CHARLTON: The words proposed by Mr Halden would restrict the director general. We want the director general, upon receipt of industry recommendations, to be able to regulate on such other matters as may be prescribed. As stated, the member's proposed amendment is not consistent as the previous amendment was negatived. We want to have flexibility so that we can respond to what the industry wants.

Hon JOHN HALDEN: My concern is that at the end of the day the flexibility may result in a regulation of that nature being ultra vires, and the Minister would not want that. We are two presumed bush lawyers talking to each other without knowing the facts. That will not assist the industry, the Bill, the Minister or anybody else.

Hon E.J. CHARLTON: We are trying to cover two steps rather than one. The Leader of the Opposition is suggesting there may be regulations that are automatically ultra vires or inconsistent. Of course the regulations must be consistent and must abide by the legal aspects of the Bill. Similarly, the drafting of this legislation must have the legal backup in order to be implemented. If I were to lay regulations on the Table here - I hope I cannot - that were inconsistent -

Hon John Halden: I saw the Minister for Education do it last year.

Hon E.J. CHARLTON: If it were pointed out that they were wrong, they could be amended or withdrawn or whatever. We cannot take a blanket approach and say that a range of regulations will be submitted that could be ultra vires. Although the point made by the member is valid, he seems to believe it will be an open ended season on regulations. It will not. A regulation must be in line with the provisions of the Bill.

Hon JOHN HALDEN: The Minister said that a regulation must be in line with the provisions of the Bill. However, the reading of the Bill says "and such other matters as may be prescribed by regulation in the operation of a taxi". As it is written, the Bill does not restrain itself to paragraphs (a) to (h) as we have agreed. Nonetheless, I am still concerned that if it is interpreted in the way it is written, there may be problems. People may interpret this for what it says and I still have the view that it may be ultra vires. The words in the Bill will allow the director general to do what they say, but I am concerned that the director general should not do what the words say.

Hon E.J. CHARLTON: I cannot add any more. In prescribing the conditions by regulation, the provision refers only to the operation of a taxi using specified plates to do so.

Hon John Halden: We agree on that.

Hon E.J. CHARLTON: It is restricted in that sense. A range of regulations to do with anything else in the taxi industry cannot be applied. The member may say that is still too broad, but we must agree to disagree. The day of reckoning may come when I lay the regulations on the table of the House and the member is able to say he told me so, and move to disallow them. I am keen to get the board appointed and let it show how it will run the taxi industry. I will be interested to see what it will do about leasing and the fees it will set, etc. The board will also be required to deal with various types of vehicles that will be introduced into the industry to meet the growing demand people believe will add much to the industry, such as Nightriders. The opportunities are unlimited. The Melbourne Cup will be run next week and, as with this, most of us will not pick the winner.

Hon JOHN HALDEN: Against my better judgment I will not move my amendment. I am still of the view the Minister is not right. However, I do not know that I can persuade him to my perspective with my minuscule legal knowledge. I am pleased to have put my concerns on the record. Obviously we will review the matter at some other stage if I am correct and he is wrong.

Hon E.J. CHARLTON: The advantage of being in Opposition is exemplified by the last comment of the Leader of the Opposition. If I am right and he is wrong there will be nothing more said. If it is the other way around, more will be said. I move -

> Page 13, lines 4 to 7 - To delete subclause (2) and substitute the following subclause -
>
> (2) A person who is -
>
> (a) a plate owner, shall comply with, or ensure compliance with, conditions imposed under subsection (1);
>
> (b) where the plate owner is not the operator, the operator, shall comply with, or ensure compliance with, conditions imposed under subsection (1) (a), (c), (d), (e), (f) or (h); or
>
> (c) where a taxi is operated using a taxi dispatch service, the

provider of that taxi dispatch service, shall comply with, or ensure compliance with, conditions imposed under subsection (1) (a), (b), (c) or (d).

Penalty: $5 000.

The amendment is to ensure that the operators are made responsible for ensuring conditions placed on owners are met and that the operators can be held accountable, if they are not. The provisions are also made to dispatch services. Accountability for conditions placed on owners has been moved from clause 29 to clause 20. This is to consolidate and clearly show the shared areas of responsibility, which is one of the problems some people had. The clause was written in a way that some people were interpreting was not specific. This amendment is to show it is. Under these provisions only the party responsible for the breach of conditions is liable. However, for the owner, responsibility includes ensuring that the operator and the dispatch service are aware of their responsibilities. Turning a blind eye to the third party behaviour is not acceptable. The phrase "jointly and severally liable" has been removed to avoid confusion. Provision to appeal to the courts over contested licence conditions has also been included, replacing the appeal to the Minister.

As I mentioned at the outset, we are including an appeal provision even though we believe it will add time and cost to the people who pursue an appeal. However, in this case that cost will be borne only by those people who participate in that appeal mechanism. Therefore, it will not be a cost on the industry as a whole. The amendment identifies the particular responsibilities and allows appeals to the court.

Hon KIM CHANCE: The Opposition is quite happy with the way this clause has been reworded. If the minister can clarify subclause (2)(b) in the way I hope - I spoke to the Minister's office earlier today and I was happy with the reply - he will have substantially addressed the Opposition's principal concerns.

The proposed wording in subclause (2)(b) reads -

> where the plate owner is not the operator, the operator, shall comply with, or ensure compliance with, conditions imposed by subsection (1) . . .

Then the subclauses are enumerated. Where the word "operator" is used for the second time in that line that operator is not a plate owner. Can it be taken from that that "operator" of the second part shall include a management company? Does the scope include the word "agent" under "management company"?

Hon E.J. CHARLTON: That is one of the things some people in management wanted identified, so the answer is yes. The point raised initially was that the owner would ensure that all those people down the line would take on their responsibilities rather than the other way up. When doing it the other way it only needs one to break down and then it cannot go any further because it does not say that the one at the end of the line must share any responsibility. We did it the other way. Now "the operator" means all the people contained in there. The lessee, the operator and the owner, whether of the taxi plate or not, are all covered by that. Therefore, yes, it does include the management company.

Hon KIM CHANCE: The Opposition is very pleased with that, because it is what it has tried to achieve. I should say briefly why we regarded that aspect to be so important. I am told that 46 per cent of taxis are under management of one form or another, and many of the owners are physically separated from those who use taxis. It seems to us and many people within the industry that it is absolutely vital that whoever has the day to day operation of a taxi as his primary responsibility should be clearly identified as being responsible under this Act. Whatever form of words is used is not really our concern provided that the end is met. Given the Minister's explanation, I believe this form of words has met that end and the Opposition is satisfied.

Amendment put and passed.

Hon E.J. CHARLTON: I move -

Page 13, lines 12 to 16 - To delete subclause (4) and substitute the following subclauses -

> (4) Where a plate owner is aggrieved by the imposition of a condition pursuant to subsection (3) that plate owner may, within 14 days of being notified of the imposition of that condition, appeal to a Local Court against the Director General's decision to impose such a condition.
>
> (5) A Local Court hearing an appeal under this section may confirm the Director General's decision or quash that decision and substitute its own decision and may make such other order, including an order as to costs, as it thinks fit.

This amendment deals with appeal procedures to the Local Court.

Hon N.D. GRIFFITHS: I have some concerns about the proposed substituted subclause. Proposed subclause (4) provides for an appeal within a 14 day period. I noted the Minister's comment a few moments ago in another context, which I do not think I am taking out of context here, that he wished matters to move fairly smoothly and that time should not be wasted in the operation of clause 20, if and when it becomes law. However, I suggest that the 14 day period may be somewhat short, bearing in mind the matters to be considered, which are set out in some detail in clause 20(1), which refers to "the area in which, and the hours during which the taxi may be operated and the hours during which the taxi must be operated". It sets out fare schedules, driver qualifications and standards, vehicle standards and inspection requirements, insurance requirements, record keeping, complaint resolution, the transfer of the taxi plates, and other matters that the Minister, Hon John Halden and Hon Kim Chance referred to a few moments ago. In essence they deal with the livelihoods of people, the operation of a business, and the fate of capital invested, as well as in the wider and very important sense of service to the public. In that context my concern is that 14 days may be somewhat short. I am not proposing to vote against this, but I ask that the Government give the matter some further consideration down the track.

The other aspect of this subclause (4) that concerns me is the question of an appeal to the Local Court. I do not wish my comments to be a reflection on the magistracy in any way, but I am conscious of what that interesting body that has been referred to constantly since I have been in the Chamber, the Royal Commission into Commercial Activities of Government and Other Matters, had to say on matters similar to this. At page 3-8 in the summary of part 2 of the report, the commission recommends -

> The recommendations contained in the Reports of the Law Reform Commission of Western Australia in Project No 26, Part I and Part II, be implemented forthwith, subject to the observations in paragraph 3.5.2 of chapter 3 concerning the establishment of an Administrative Appeals Tribunal.

I suggest that this is one of those areas where an administrative appeals tribunal would be of great service to the people of Western Australia rather than having an appeal to a Local Court. Local Courts deal with a variety of matters and more often than not tend to comprise persons who sit in Courts of Petty Sessions earlier or later in the day. Local Court magistrates engage in a variety of jurisdictions. They do not acquire great expertise on administrative law, not because of their lack of competence but because of the competing areas over which they have to preside. These important matters should not be dealt with in what may end up being a summary way if they are handed over to a Local Court. In that context it is appropriate that the Committee be reminded of the royal commission's comments on an administrative appeals tribunal. I am aware of the Commission on Government Act and what is taking place. The Minister should be aware of the Opposition's view on the administrative appeals tribunal. Once again, the lack of such a tribunal discloses a weakness in the operation of the systems of government. Paragraph 3.5.1 of the second report of the royal commission under the heading "Administrative Appeals Tribunal" states -

> The Law Reform Commission recommended the administrative appeals system

> should be located within the Supreme Court and Local Court and should involve judges and magistrates in appeal adjudication, although allowing for non-lawyer participation.

I hate reading those words! It continues -

> In essence, this would result in members of the judiciary engaging in a review of the merits of various administrative decisions made by public officials, including ministers.

I interpose to conclude that that means the director general. It continues -

> Such decisions will often involve a close consideration of discrete areas of commercial and economic activity and of relevant government policy, a responsibility going beyond the traditional function of the judiciary. There is a danger in such a process that the constitutional values inherent in a separation of judicial and executive power could be compromised. At the very least, the performance by the judiciary of such functions is not a traditional one for which it is uniquely qualified.

That point can be made more firmly with respect to the Local Court as distinct from the Supreme Court, because of the pressure of business Local Court magistrates find themselves under in most parts of the State. In paragraph 3.5.2 of the report reference is made to the Commonwealth and Victorian experience, underlining the relevance of the principle of separation of powers. The commission went on to conclude under that subheading -

> The Commission believes this principle to be of importance to the maintenance of a strong and independent judiciary. In consequence, we invite consideration to the adoption of the separate structure for administrative appeals. We believe an Administrative Appeals Tribunal should be established to meet the needs identified in the Law Reform Commission's report.

There is another aspect to the amendment which is of concern to me; that is, with respect to proposed subclause (5) which states -

> A Local Court hearing an appeal under this section may confirm the Director General's decision or quash that decision and substitute its own decision and may make such other order, including an order as to costs, as it thinks fit.

The phrase "as it thinks fit" is not an unknown phrase, and I am conscious that the implementation of that phrase will be guided by the wording of clause 20. However, as a general rule that type of wording is not desirable. It would be better if the criteria were more fully set out, bearing in mind that we are dealing with people's livelihoods, and the capital - for most people a very substantial capital - involved in an investment in taxi plates.

Hon E.J. CHARLTON: The comments made by Hon Nick Griffiths must be taken in the context that we are talking about conditions placed on this operator. Those conditions do not relate to whether his vehicle is on the road. At the end of the day the operator has the opportunity to appeal to the court. In the discussions with the industry no complaint was made about that condition being applied. It is in existence now. The industry wanted only the opportunity to go to the Local Court. That has not been agreed to because invariably in the past the court has referred these matters to the Minister. That is the reason for the amendment.

Hon N.D. Griffiths: I am suggesting an improvement.

Hon E.J. CHARLTON: With regard to the 14 day period, again, no complaint has been made about the time allowed although there were some discussions about it. Obviously, if someone were unhappy about a condition he would want to take it to the court as quickly as possible.

Hon N.D. Griffiths: Would it be better if the court had the capacity to extend the time from 14 days?

Hon E.J. CHARLTON: Once the appeal has been lodged with the court, it is up to the court to determine when the appeal will be heard.

Hon N.D. Griffiths: What if the appeal were not lodged in time? If the person were late in making the appeal, the court should have the capacity to extend the time. I am asking the Minister to consider this proposal. It will not be law today or part of the process today, but it should be taken into account to improve the situation for the taxi industry and to be fair to the people involved.

Hon E.J. CHARLTON: I have no problem in taking the comment on board, as I take on board all suggestions about better enabling the industry to flow, to be at peace with itself, and to deal with situations that inevitably will arise from time to time. I will make a note to see whether there is an opportunity to do something about this, although no complaints have been received from the industry in this regard.

Amendment put and passed.

Clause, as further amended, put and passed.

Clause 22: Variation of conditions -

Hon E.J. CHARLTON: I move -

> Page 14, lines 8 to 12 - To delete subclause (2) and substitute the following subclauses -
>
> > (2) Where a plate owner is aggrieved by a decision of the Director General under subsection (1) that person may, within 14 days of being served with the relevant notice, appeal to a Local Court against the Director General's decision.
> >
> > (3) A Local Court hearing an appeal under this section may confirm the Director General's decision or quash that decision and substitute its own decision and may make such other order, including an order as to costs, as it thinks fit.

This amendment is in line with the previous one dealing with the provision to appeal to the Local Court.

Hon N.D. GRIFFITHS: The points I made about the Minister's previous amendment are, for the most part, relevant to this amendment. It is an area which, in my view, cries out for the jurisdiction of an administrative appeals tribunal. I do not wish to say that the royal commissioners would be of the same view, but their report is consistent with what I have just said. The wording is clearly commonplace, but as a general rule it is preferable for legislation to set out principles upon which a body will base its decision. Having said that, I note the provisions of clause 20(1). I do not think they can go far enough, but I do not wish my colleagues and myself to be seen in any way to be impeding the progress of the Bill, which as I understand it has reached a fairly bipartisan stage. I make my comments with a view to the Bill being improved either in another place or perhaps on another occasion.

Amendment put and passed.

Clause, as further amended, put and passed.

Clause 29: Conditions -

Hon E.J. CHARLTON: I move -

> Page 18, line 25 to page 19, line 6 - To delete subclauses (3) and (4).

This amendment deletes subclause (3), the provisions of which have been transferred to amended clause 20. It is a consequential amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32: Powers of authorized officers -

Hon E.J. CHARLTON: I move -

Page 21, lines 23 to 28 - To delete subclause (3) and substitute the following subclause -

(3) An authorized officer may require a plate owner, an operator or the provider of a taxi dispatch service to produce any records, books or documents relating to -

(a) the operation of a vehicle as a taxi;

(b) any bonds referred to in section 36; or

(c) the taxi dispatch service,

and may take copies of, or extracts from, anything so produced.

This amendment will enable other amendments to allow for the regulation of operators to be introduced into clause 20, which we have dealt with previously at length.

Amendment put and passed.

Hon E.J. CHARLTON: I move -

Page 22, line 6 - To insert after "concerned" the following ", the operator".

This amendment is consistent with the previous amendment.

Hon KIM CHANCE: The amendment includes the word "operator" so that the first line would read "direct the plate owner concerned, the operator or the person providing the taxi dispatch service" etc. Do I take it that this is also a change aimed at including the managers of taxis and the agents within the responsibility of the Bill?

Hon E.J. CHARLTON: Yes. We have used this terminology throughout the Bill once the initial change was corrected. The word "operator" picks up all of the other people, the management companies and so forth. Some were proposing simply to define the management company, but the specific responsibility had to be in a particular clause. By doing it this way, we ensure there is continuity and the legislation picks up everybody all the way through the Bill.

Amendment put and passed.

Hon E.J. CHARLTON: I move -

Page 22, line 18 - To insert after "plate owner" the following ", an operator".

This is a repeat of the previous amendment.

Amendment put and passed.

Clause, as further amended, put and passed.

Clause 36: Bonds held by operators -

Hon E.J. CHARLTON: I move -

Page 27, lines 16 and 17 - To delete "or by employing".

This is complementary to and consequential upon the amendment moved to clause 3.

Amendment put and passed.

Clause, as further amended, put and passed.

Clause 38: Procedure on appeals -

Hon E.J. CHARLTON: I move -

Page 29, line 25 - To insert before "23(4)" the following "20(4), 22(2),".

This clause again refers to the Local Court and is consequential on the amendments to clauses 20 and 22.

Hon N.D. GRIFFITHS: I understand that the amendment moved by the Minister has the support of the industry, and I wish only to make the general point once again about the

administrative appeals tribunal and that when the Minister leaves the Chamber this evening he may be more encouraged to tell his Cabinet colleagues to forget about the Commission on Government Act and just get on with the job of making this Government and all administrative bodies in Western Australia more accountable to the people of Western Australia.

Amendment put and passed.

Clause, as amended, put and passed.

Schedule 1: Amendments to certain other Acts -

Hon E.J. CHARLTON: I move -

Page 43, lines 19 to 21 - To delete the lines and substitute the following -

Parliamentary Commissioner Act 1971	In the Schedule delete "Taxi Control Board constituted under the *Taxi-cars (Co-ordination and Control) Act 1963*" and substitute the following -
	"The Taxi Industry Board established by the *Taxi Act 1994*."

It has come to our attention that the Ombudsman is required to ensure that the Taxi Industry Board is accountable for its actions in the same way that all other boards created by Statute are accountable, and this amendment is in response to the Ombudsman's request that this board operate in the same way as all other boards that are created by Statute.

Hon N.D. GRIFFITHS: I do not oppose the amendment, but it is relevant to a weakness in the Parliamentary Commissioner Act 1971 which was pointed out by the Parliamentary Commissioner in his 1994 report, tabled last week, where he put forward the view - a view endorsed by other authorities - that all matters should be subject to the Act over which he has jurisdiction, rather than the current state of affairs where matters are stated to be under his jurisdiction and not otherwise. It is a matter of regret that such a reform in regard to fundamental accountability has not been put in place to date by this Government, which has been in office since February 1993.

Amendment put and passed.

Schedule, as amended, put and passed.

Bill again reported, with further amendments.

LOTTERIES COMMISSION AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon Max Evans (Minister for Racing and Gaming), and read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Racing and Gaming) [9.28 pm]: I move -

That the Bill be now read a second time.

The purpose of the Lotteries Commission Amendment Bill is to enable sports and arts organisations to benefit proportionately to other beneficiaries under the Lotteries Commission Act as a result of the increased sales turnover of the Lotteries Commission. The Lotteries Commission Act was passed in 1990. This Act completely replaced the former Lotteries (Control) Act 1954. The new Act made a number of changes to the way in which profits from the sale of lotteries products should be distributed. Under the former Lotteries (Control) Act, the beneficiaries of lotteries were only the public hospitals and quite a narrow range of traditional charities. In 1982, several amendments were made to this Act. One of these amendments provided that up to $6m in total per

year be given via State Treasury for the benefit of arts and sports from the sale of instant lottery tickets, a newly introduced lottery product; in other words, a flat amount of $3m each for arts and sports was made available. This was the first time that arts and sports were the beneficiaries of lotteries. As I said, prior to this the proceeds had been provided only to hospitals and charities.

In 1986 the Lotteries Commission began selling lotto "on-line". In the following years the commission's sales of lotto increased rapidly and, as a result, increasingly substantial funding was provided for hospitals and for charities. During that time sports and arts each continued to receive $3m per year from the sales of instant tickets.

During the 1980s Western Australia saw the emergence of a great many non-government organisations serving a wide range of community interests and seeking to contribute to the quality of life of Western Australians. Consequently, when in 1990 the Lotteries (Control) Act was replaced, the sections relating to distribution of funding reflected those changes which had taken place in the community since the previous 1954 Act and allowed for a much wider range of community groups to be supported. This Act, under which the commission now operates, provides that -

> Sixteen per cent of turnover goes to the Health Department - in the past financial year this amounted to $50.6m.
>
> Five per cent of turnover plus any surplus income goes to "eligible organisations" - these are not for profit community groups or local government authorities for "eligible purposes".

The Act defines "eligible purposes" as those which are benevolent or charitable and which reflect, as I said earlier, the very wide range of services which are set up to either address a social problem or enhance the quality of life in the community. Last year the commission contributed more than $30m to over 1 400 different organisations under this section of the Act.

The 1990 Act also provided, instead of the fixed amount of $6m in total to arts and sports which of course had been steadily reducing in real value, that 2 per cent each of sales turnover from lotto and instant ticket sales, and not only that from instant ticket sales, should be made available via Treasury for the benefit of arts and sports organisations. However, the section of the Act relating to sports and arts funding is qualified by section 22(3)(b) by which arts and sports are each guaranteed whichever is the lower of either 2 per cent of lotteries receipts or the amount received the previous year adjusted for inflation. The formula of that section of the Act is not easy to understand or to explain, but what it means is that, because of low inflation rates in recent years, in 1993-94 arts and sports each received $5.94m. Two per cent of sales from lotto and instant tickets which totalled $309.73m would have provided $6.17m, a difference of $230 000 each. In the forthcoming financial year the effect will be greater, assuming the lotteries sales target for lotto and instant tickets of $319m is achieved. I have every confidence that it will be.

Because of section 22(3)(b) arts and sports will each receive $6.055m during the current financial year, while 2 per cent of lotto and instant ticket sales, without the use of the formula related to the consumer price index, would present $6.34m each - a difference of $285 000. Until 1993-94 the formula worked well because annual sales of lotteries products did not increase at a higher rate than inflation, but with lotteries sales growing faster than inflation this section works to the disadvantage of arts and sports as their percentage share is in effect less than 2 per cent of sales. This discrepancy will continue if lotteries sales revenue continues to rise at a higher rate than the consumer price index. Our projections and the record of lotteries in this State suggest that will be the case.

I understand that in drafting the original legislation the Government of the day believed that the lotteries funding for arts and sports should be contained within a certain range. This Government believes that arts and sports organisations play an increasingly vital role in the community. They not only contribute to the cultural, artistic and recreational life of the community, but also generate employment for many and contribute generally

to the economy of Western Australia. Therefore, it seems only fair that arts and sports organisations should benefit proportionally, compared with the other beneficiaries, from the success of the Lotteries Commission. Funding from the Lotteries Commission is used by the Ministry of Sport and Recreation for sports development. Some 105 different State sporting associations receive funding from this source. Lotteries funding is also a primary source of funding for organisations such as the Western Australian Institute of Sport and the Coaching Foundation.

The Department for the Arts uses its funding from the Lotteries Commission to provide grants to 26 major organisations, to individual artists and to community groups. Last year lotteries funding comprised nearly 60 per cent of the $10.6m provided for these purposes. Clearly, therefore, arts organisations in this State rely enormously on lotteries for their very existence. The needs of arts and sports organisations continue to grow. This minor amendment to the Lotteries Commission Act will allow them some individual funding at this time which will be used to meet the needs of many worthy groups.

An additional minor amendment to clarify the definition of the meaning of the word "year" for the purpose of the Lotteries Commission Act is also included in this Bill. In accordance with the Financial Administration and Audit Act, the Lotteries Commission has always adopted the convention of the financial year for purposes of both statutory and discretionary funding allocation. It is the advice of the Parliamentary Counsel that the opportunity to clarify this formally should be taken so that it is clear that this amendment comes into effect from 1 July 1994 and that the "year" for the purposes of the Lotteries Commission legislation is defined as the "financial year".

These amendments are an appropriate response by this Government to ensure that the success of lotteries is enjoyed equally by all those who benefit. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

MINES SAFETY AND INSPECTION BILL

Returned

Bill returned from the Assembly with amendments.

Assembly's Amendments: In Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon George Cash (Minister for Mines) in charge of the Bill.

The amendments made by the Assembly were as follows -

No 1.

Clause 3

Page 2, line 10 - To delete "so far as is practicable,".

No 2.

Page 2, line 19 - To delete "where practicable,".

No 3.

Clause 4

Page 8, after line 8 - To add the following -

(h) borefields remote from the minesite but an integral part of the mining operation; and

No 4.

Clause 14

Page 22, line 22 - To delete the comma after "hazards" and substitute the following -

; and

(iv) the proper maintenance of the plant,

No 5.

Schedule 1

Page 112, line 36 - To delete "and".

No 6.

Schedule 1

Page 112, line 42 - To delete the full stop and substitute the following -

; and

No 7.

Schedule 1

Page 112, after line 42 - To insert the following paragraph -

(g) a third class certificate of competency issued under the *Coal Mines Regulation Act 1946* may be regarded and accepted in all respects as if it were an underground supervisor's certificate of competency issued under this Act.

Hon GEORGE CASH: For the convenience of the Committee it may be your desire, Mr Chairman, to deal with each amendment separately.

Hon Mark Nevill: The Opposition agrees with all the amendments. Therefore, it might be better to handle them together.

Hon GEORGE CASH: I am happy to agree with Hon Mark Nevill's suggestion because it may be that only a short comment is necessary in so much as the amendments were agreed to between the Opposition and the Government in the Legislative Assembly. In the main they are the Opposition's amendments and they have been agreed to by the Government. However, there are a small number of Government amendments and I understand they will be agreed to by the Opposition. I move -

That the amendments made by the Assembly be agreed to.

Hon MARK NEVILL: As the Minister handling the Bill has indicated, the Opposition supports all the amendments. The Mines Safety and Inspection Bill now will control safety in the mining industry in a far superior way to the Occupational Health, Safety and Welfare Act, which generally controls health and safety in other industries in this State.

Question put and passed; the Assembly's amendments agreed to.

Report

Resolution reported, the report adopted, and a message accordingly returned to the Assembly.

PAWNBROKERS AND SECOND-HAND DEALERS BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon George Cash (Leader of the House), read a first time.

Second Reading

HON GEORGE CASH (North Metropolitan - Leader of the House) [9.42 pm]: I move -

That the Bill be now read a second time.

This Bill will repeal the Pawnbrokers Act 1860, the Marine Stores Act 1902 and the

Second-hand Dealers Act 1906. This Bill makes provision for the licensing and regulation of pawnbrokers and second-hand dealers. In line with the Government's commitment to law and order, this legislation is primarily aimed at putting a stop to the trade of stolen goods through the pawnbroking and second-hand dealing industry which costs the community millions of dollars each year. In recent years there has been widespread community concern that pawnbroking and second-hand dealing premises are used extensively for the disposal of stolen goods. Indeed, in the last financial year, stolen property recovered by the Police Department's Criminal Investigation Branch dealers squad totalled more than $275 000, and since 1989 more than $1.6m worth of goods have been recovered. This does not include stolen property recovered by other sections of the Police Force, such as local police stations, the antitheft squads and general duty police.

To their credit, major sections of the industry have taken positive measures to address the problem of stolen goods being traded through their industry. Although any measures which are initiated by the industry are certainly most welcome, they do not overcome the problems caused by the inadequacy of the present legislation, some of which is more than 130 years old. The existing legislation is in desperate need of reform. The existing Statutes may have been adequate 100 years ago for the licensing and regulation of these industries; however, due to the increase in the number of licensed operators, the increase in our population and the quantity of stolen goods circulating in the community, this is no longer the case.

Various reviews have identified difficulties within these Statutes in respect of recording of goods traded, licensing, consumer protection, police powers and enforcement. The Law Reform Commission of Western Australia conducted a major review of the Pawnbrokers Act 1860 and in 1985 produced its report. In 1990-91 the Police Department conducted a review of the Marine Stores Act 1902 and the Second-hand Dealers Act 1906 which included invitations for the public to make submissions. That review contained recommendations for proposed amendments to these Statutes. In late 1993 a working group with representatives from the Police Department and Ministry of Fair Trading examined all previous reviews, submissions and recommendations and finalised a proposal which was submitted to the Minister for Police in February 1994.

This Bill will address the problems identified in these reviews by -

(1) establishing a clearly defined licensing process and ensuring that only suitable persons are licensed as pawnbrokers and second-hand dealers;

(2) detailing the rights and obligations of pawnbrokers and second-hand dealers;

(3) providing consumers with clearly defined rights, obligations and judicial remedies; and

(4) affording the police effective powers, which I will outline later in this speech.

The Bill will also significantly increase the penalties for offences against the Act. Currently the maximum penalty available under the Pawnbrokers Act is a fine of $50, under the Second-hand Dealers Act a fine of $20, and under the Marine Stores Act a fine of $20 and imprisonment not exceeding six months. This Bill provides for a range of penalties with the maximum for individuals committing offences being a fine of $5 000, and the courts having an option of handing down sentences of 12 months' imprisonment. For corporate bodies a fine of $20 000 is provided.

Part 1 contains the preliminary provisions of the Bill. There is authority in this part to exempt by regulation persons dealing in certain goods or classes of goods from all or any of the provisions. Consideration is presently given to providing such an exemption for the majority of goods, or marine stores, traded by marine collectors and marine dealers. This will have the effect of exempting the majority of marine collectors and marine dealers from the requirements of the Bill. Where a marine collector or marine dealer trades in goods not included in the exemptions, it will be necessary for a second-hand dealer's licence to be obtained.

Part 2 of the Bill provides that the Commissioner of Police is responsible for licensing pawnbrokers and second-hand dealers. This legislation will make it tougher for

pawnbrokers and second-hand dealers to get a licence and easier to revoke the licence if there are any breaches of the new laws. Extensive character checks will be conducted into both the individual and the business entity before a licence is issued or renewed. There is provision to suspend, revoke or disqualify a licence where the holder has committed an offence, or is found to be no longer suitable to hold a licence. This will overcome an anomaly that exists in the current legislation because in most circumstances a licence cannot be revoked until it is due for renewal. There is a safeguard in the Bill where there is a dispute in relation to a decision made by the Commissioner of Police concerning a licensing matter. That safeguard is the provision of an avenue of appeal for an aggrieved party through the Court of Petty Sessions. The court is empowered to maintain or vary a decision of the commissioner.

Part 3 of the Bill deals with matters relating to entering into a contract with pawnbrokers and second-hand dealers. Before entering into a contract the pawnbroker or second-hand dealer will be required to establish that the client is 18 years or older, and be satisfied as to the identity of the person by sighting a photographic driver's licence, a passport, a proof of identity document issued by the commissioner or other documents as may be prescribed by regulation. The pawnbroker or second-hand dealer will be required to maintain records of all transactions, including the details of the client and the identification documents produced, together with detailed descriptions of all goods received.

There is provision to allow the Commissioner of Police to require pawnbrokers and second-hand dealers to produce copies of their transactions in a manner and at a frequency prescribed by the regulations. This may occur by means of electronic data transfer.

Part 3 provides pawnbroking clients with the right of access to the commercial tribunal in respect of contracts that are considered harsh, unconscionable or oppressive, or where the interest rate is excessive. In such circumstances the tribunal may set aside part or all of the contract and make consequential orders for the repayment of money and redelivery of the goods. Pawnbroking and second-hand dealing clients will have access to the Small Claims Tribunal, provided the value of the goods is within the scope of the Small Claims Tribunal Act.

Part 4 of the Bill contains provisions that will enable police to enforce the legislation effectively. In the past, police have been hampered in their operations because the records which are currently required to be kept by pawnbrokers and second-hand dealers do not provide sufficient information about the goods or the identification of the person pawning or selling the goods. This Bill will enable police to enter and inspect the premises of a pawnbroker or second-hand dealer, including all storage areas. Police will also be able to inspect the transaction records of pawnbrokers and second-hand dealers, and be empowered to seize goods that are reasonably suspected of being stolen. It will also be possible for police to issue a notice to stop a pawnbroker or second-hand dealer from altering or further dealing with property which is suspected of being stolen.

Part 4 provides that a court of petty sessions may issue orders for the disposal of property in the possession of a pawnbroker or second-hand dealer where there is a dispute in relation to the ownership of the goods. Part 4 of the Bill also provides that a licensee is held responsible for any offence committed by an employee or agent as though he had committed the offence himself and is liable for the penalty as though he himself were the offender. Part 4 also allows for infringement notices to be issued for prescribed offences.

Part 6 deals with several miscellaneous matters including provisions to enable regulations to be made. Schedule 1 contains several important transitional matters which ensure that contracts entered into before the repeal of the existing Acts remain valid, and that licences issued under the repealed Act will continue to have effect until the licence expires.

The legislation will go a long way to ensuring that the pawnbroking and second-hand dealing industry cannot be used for the purpose of disposal of stolen property, and it will assist police in recovering stolen property and identifying those responsible so that they

can be properly dealt with by the courts. It is the intention of the Minister for Police that the new legislation will provide much improved licensing and regulation of pawnbrokers and second-hand dealers, and the added protection for consumers who utilise this industry. This legislation will have a substantial impact on crime throughout the State by making it more difficult for persons to dispose of stolen property. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

PUBLIC WORKS AMENDMENT BILL

Second Reading

Resumed from 29 September.

HON DOUG WENN (South West) [9.54 pm]: The Opposition supports this Bill. It is an interesting Bill, as I found out today. I thank the Minister for giving me the opportunity of speaking with an adviser only 20 minutes ago on a point about which I was concerned. I will come back to that a little later. The legislation has two purposes: First, to deal with the delegation of powers of the Minister for Works to the Minister responsible for administering the Department of Marine and Harbours; and, secondly, to rename the Building Management Authority as we know it today the Western Australian Building Authority - WABA. The Bill also provides for the streamlining of its financial accountability. The title of the Bill states -

> A Bill for an Act to amend the *Public Works Act 1902* and as a consequence to amend the *Financial Administration and Audit Act 1985*, to validate the purported exercise or performance of certain powers or duties on behalf of the Minister for Works and for related purposes.

I wondered when I read that whether I should deal with the Bill because it amends the Financial Administration and Audit Act. However, when one reads the Bill, the amendments are not that involved.

In 1985, the then Labor Government decided to disband what was known as the public works department. It created a number of departments, including the Department of Marine and Harbours and the Western Australian Water Authority. The Water Authority was amalgamated to include the country region water authorities and the city water authority. I understand a number of water bodies still exist in country areas including one in Bunbury and one in Busselton. They act on their own behalf and do a very good job. The Western Australian Water Authority brings into the consolidated fund some $80m a year. If I wanted to delve into the problems associated with water in this State, I would be here for hours. I do not intend to be here for hours so I will not delve into that area. However, I assure the House that, at some later date, water in this State will be a matter for urgent discussion by this House. The people of Western Australia are very concerned about the problems that we are experiencing with our water supply.

The transfer of the then rivers and harbour department to the Department of Marine and Harbours under the Minister for Transport then followed. The Department of Marine and Harbours is one of the better departments with which to deal. When we were in government, I had the opportunity of meeting with a number of people from that department about the needs of the port authorities and so forth and I spoke to them also about working to create a department such as exists today. I had the good fortune of seeing a number of Ministers for Transport controlling the Department of Marine and Harbours and I do not think too many of them, if any, would be put down by officers of that department. However, of all of them, Hon Julian Grill, in particular, was outstanding as Minister for Transport. I can only relay to the House his involvement with my electorate of South West Region. He was accepted by the people in that region and was able to contribute greatly to the Department of Marine and Harbours and transport authorities.

The trouble with that legislation was that, when it was enacted, it did not go far enough. In fact, the department continued to carry out its duties. However, problems experienced

over time are the reasons that we are here today. For example, there is no provision in the Act for the department to transfer duties from the Minister for Works to the Minister for Transport who is now responsible for marine and harbours and the old public works department; that is, roads, rail etc. It is unusual for the Minister for Works to be responsible technically for some works but for his advisers coming from another department being responsible to another Minister. Therefore, one department is telling another department how it will do the job, but the officers do not belong to that department. It is outrageous that we have allowed that situation to go on for so long. Someone has decided that it has all gone far enough.

Time has run out in that regard. The issue was brought to the fore with the Dawesville Cut. I was never a fan of that proposal for reasons I have discussed with many people in the south west, especially its effects on the estuary and its fisheries. I cannot accept the impact that the cut might have on the top end of the Mandurah estuary, but that matter will be determined in time. Work was conducted as a result of the algae problem, although some people say that the problem was a result of farmers fertilising land and runoff taking some fertiliser into the estuary. I hope that in time the cut will prove that it was the correct decision. It may not affect the breeding grounds, but it certainly has created a major fishing spot for locals between the original mouth of the river and the cut.

The Minister for Works, who had nothing to do with the job in operational terms, was required to be the principal to the contract. I am pretty sure that he would be rapt with that, as he had no say in what took place and how it operates; yet, at the end of the day, he is the responsible Minister. This Bill will correct that situation, and it is long overdue. Members can understand the Minister's trauma with a $55m contract, and that is why we are about to rectify the situation.

Nevertheless, I am concerned that we are dealing with a Bill retrospectively, as some major programs have been conducted in the past which will be affected by the measure. I believe that we will handle the Bill through all stages tonight.

Hon George Cash: Yes.

Hon DOUG WENN: What expenditure has been allocated in the past to major works affected by this Bill? In the other place the responsible Minister gave an undertaking that information on projects since 1985 would be made available. I do not want to put the Leader of the House on the spot, and I do not want to know about $2 or $100 jobs; however, the information should be provided on major work carried out since 1985.

For some reason the Building Management Authority's prices have always been higher than that for similar work carried out by a local contractor. As has been explained to me tonight, the BMA has two sections, with a finance and a building management side. I was not aware of that. I thought that the BMA had only one aspect; namely, building. The Standing Committee on Government Agencies at no time has been able to make inquiries into the BMA, and my initial thinking in that regard was that it must come under a Crown Law Department inquiry. It turns out that it is defined as a government department, but cannot be subject to scrutiny. That situation will be rectified tonight. In the past the BMA received funding from 13 to 15 different sources. Although I am not an accountant, I imagine that such accounting would be hard to justify.

Even tonight I was told that a member of the former Opposition - a current Minister - made a statement that money was being hidden; it was covered in one section and moved to other areas until the finances, and their use, had to be justified. The Bill will rectify that situation, and it is long overdue. My colleague in another place said about this Bill -

> In the past Ministers have certainly wondered about some of the additions made on the financial plans before reaching the bottom line. The bottom line always seemed to be considerably larger than the expectation held by the Minister and the agency at the start of the project. Some transparency of the accounts will increase the pressure on the BMA to come up to scratch with regard to competitiveness with the equivalent private sector operations.

That raises an issue which has always been a problem. The Building Management

Authority has not always been competitive. This is proved by my experience with the Education portfolio in the south west. Quotes were sought by a local parents and citizens organisation for a covered assembly area, and the private contractor produced a much lower quote than the BMA. Nevertheless, the P & C could not employ the private contractor. I believe this situation will change under this legislation. The south west region has a fair range of weather and, although it does not endure extremes of heat and rain, school children should have the opportunity to take advantage of undercover areas.

The department has changed names since the Government changed in this State. That occurs with nearly every new Government. I do not know why it is done, and maybe the new Government hopes to achieve a big "Gee" from it. At the end of the day I am concerned only with the competency of the department and that it does the right thing. This Bill will help that process. The Opposition supports the legislation.

HON SAM PIANTADOSI (North Metropolitan) [10.08 pm]: My biggest concern regarding this legislation is the request being made to validate actions which took place in the past. The Minister mentioned in his second reading speech bringing the Building Management Authority's property under the umbrella of the State by making it an entity and agency of the Crown. He also referred to removing its unsatisfactory current legal independence. It is a worry that that practice has been allowed to continue for a number of years. When I spoke earlier to the Leader of the House I was concerned that when changes were made to the BMA in 1992, the changes outlined in the Bill were not made at that time.

I am also concerned that the Minister for Works in another place gave certain assurances that matters would be attended to and information would be provided before the Bill reached this House. Assurances were given that the information regarding that for which validation was requested would be made available. I hope that the Leader of the House will provide that information following the undertaking of the responsible Minister. When Mr Ripper made that request on behalf of the Opposition, assurances were given. I ask the Leader of the House to clarify whether that is the case. We were led to believe that the information would be provided for us to peruse before the Bill came to this place. If we do not receive that information as promised by the Minister - I have not seen it and neither has Hon Doug Wenn - the Bill should be withdrawn until the information is made available to the members of this House and to opposition members in the other place. The assurance was given by the Minister in the other place in good faith, and we will keep him to his word. I wish to see that information; we need to validate it before we discuss the Bill further.

HON GEORGE CASH (North Metropolitan - Leader of the House) [10.11 pm]: I thank both Hon Doug Wenn and Hon Sam Piantadosi for their support of the Bill. Hon Doug Wenn covered the objectives and substance of the Bill. In offering his support he mentioned his intention to ensure that the delegation of power to the Minister for Transport or the Minister responsible for the Marine and Harbours Act would occur. Mention was made of the subdelegation of authority described in section 5 from the Minister to chief executive officers of the respective departments.

As to the question of how much expenditure has been carried out since 1985, as I understand it the Minister for Works in the other place said to Mr Ripper at the time that he would give an undertaking to seek from the Minister for Transport a list of the activities and actions taken through the Department of Marine and Harbours which he was being asked to validate. He said that when he had the list he would table it in that House for the benefit of members. After taking some advice in respect of the information, I understand that it has not been provided to the Minister for Works yet.

Hon Sam Piantadosi: He gave that undertaking before the legislation passed through the other place.

Hon GEORGE CASH: Can the member show me where that appears in *Hansard*?

Hon Sam Piantadosi: At page 31 of the daily -

The PRESIDENT: Order!

Hon GEORGE CASH: I am reading from a document that is entitled "page 32" where the Minister for Works said that he would seek from the Minister for Transport a list of the activities that had been carried out through the Department of Marine and Harbours, and that when he received the information he would table it in that House. I notice in respect of a question prior to those comments that the Minister for Works also said that he would give the information the next time the House sat and in the time available before the legislation passed to another place.

Hon Doug Wenn: That is what Hon Sam Piantadosi is saying.

Hon GEORGE CASH: That has not occurred. I have not received the information. From what can be said to be page 31, the information was given, and then later on the Minister for Works made it clear that he would seek the information from the Minister for Transport, and that when he received it he would table it in the House. I have checked, and the information has not been received by the Minister for Works. That is why he has not tabled it. The information is still outstanding; he is still pursuing the matter. I will ensure that that question is again addressed to the responsible Minister, and I will provide that information as soon as I can get it. At this stage I do not have it, so I cannot supply it to the member. We will discuss that point at the Committee stage.

Hon Sam Piantadosi: It is a difficult situation because it is not satisfactory. Assurances were given that the Bill would not come to this place until the information was provided.

Hon GEORGE CASH: I have not received the information. I have read the passage in *Hansard* and I understand it.

Hon Sam Piantadosi: The honourable thing to do would be to withdraw the Bill until we receive the information.

Hon GEORGE CASH: I could suspend the sitting and wait for someone -

The PRESIDENT: Order! What is said in another place has nothing to do with this place. It is not for us to discuss.

Hon GEORGE CASH: My point is that I can give a commitment to seek certain information.

The PRESIDENT: You can.

Hon GEORGE CASH: I have given that commitment, and when I receive the information I will see that it is provided to the member.

Both Hon Doug Wenn and Hon Sam Piantadosi raised the question of the cost of the work carried out. That is the information I am required to give. As to the change of name, members will be aware that the Public Works Act 1902 refers to the Western Australian Building Authority. However, for some time the authority has been known as the Building Management Authority. This Bill does no more than formally recognise the name that the authority has been known as and called for some time.

As to the question regarding the Building Management Authority being an agent of the Crown and of the State and, except as provided under section 9(c)(vii), enjoying the status, immunity and privileges of the Crown, that comes about because of an amendment made in 1984. I refer now to page 4612 of *Hansard* on 22 November 1984 when the Public Works Amendment Bill was being considered in another place. The then member for Floreat, the late Hon Andrew Mensaros, spoke at length about his concern regarding the amendment proposed by the then Government. In his comments, Hon Andrew Mensaros made it clear that if the amendment were agreed to the authority would be less accountable than previously. He was concerned that the moneys borrowed by the authority would not be the subject of scrutiny through the usual Budget process. Hon Andrew Mensaros moved an amendment at that stage -

> The Treasurer shall recommend every financial year in the Consolidated Revenue Fund Estimates that a sum of money (which may be nominal) be appropriated by Parliament to The Building Authority for the purposes of this Part.

The amendment was put, a division was taken, and it was lost on the numbers: 13 ayes -

of which I was one - and 21 noes. Regrettably the amendment was lost by a substantial majority. The reason that Hon Andrew Mensaros suggested that a need existed for some recognition to be made in the consolidated revenue fund estimates, even though it was a nominal sum, was that at least questions could be raised about expenditure and the loan raising of the department. As I indicated earlier, the effect of taking the department outside the usual process of government was that it could raise certain moneys and not be subject to the same scrutiny as other departments.

It is intended to ensure that the Building Management Authority is not seen as independent of the Crown and outside the overview of the Ombudsman. The original exclusion of authority as an agent of the Crown related to what are now superseded rules on statutory authorities. That is a general outline of the Bill and what it intends to do. I will seek to get the information that both members have requested.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon George Cash (Leader of the House) in charge of the Bill.

Clause 1: Short title -

Hon DOUG WENN: I thank the Leader of the House for his comments on the queries raised during the second reading debate. It is imperative that we have the figures mentioned. I did not go back to 1984, as Hon George Cash did, but the Chamber should know what projects have been entered into in the past. I would like an undertaking from the Leader of the House that as soon as that information is made available, it will be tabled in the Chamber.

Hon SAM PIANTADOSI: The Leader of the House has given his word to deliver that information. I am concerned that he quoted some of the concerns of the late Hon Andrew Mensaros on the need for certain actions, so that this new body should come under the scrutiny of the Ombudsman.

Hon George Cash: He argued that if the 1984 amendment were agreed to it would have taken the scrutiny of the borrowings away from this Chamber.

Hon SAM PIANTADOSI: I accept that point. Mr Cash is pointing out the concerns of other organisations and at the same time is asking us to validate something that we have not seen and which was promised to us. I am concerned that the Minister in the other place is not allowing that scrutiny that the Minister is saying should be observed. The Minister is saying that all the deals of the past should be scrutinised, but at the same time the Minister in the other place and the Minister for Transport have made no attempt to provide that information so that we can validate that information. What if something untoward happened with some of the purchases and some of the moneys spent within that organisation? The whole emphasis of the legislation is to bring the department under closer scrutiny, but we cannot scrutinise what has taken place in the past. We must accept the word of a Minister in the other place who has not kept his promise to provide certain information. I do not put the Leader of the House in the same category, because I have known him for many years and I am sure he would keep his word, but I am concerned that the Minister for Transport, who is directly involved, is silent on this and has made no attempt to provide that information. If we agree, and there are problems, we could all be deemed to be guilty of accepting a situation without giving it proper scrutiny. I appreciate Hon George Cash quoting the concerns of the late Hon Andrew Mensaros. I am sure he would have expressed concern that we are being asked to validate something that we have not seen. The public will find out what the Government is asking us to do, and in the light of WA Inc, the Minister should look at things a little more closely. People want things to be aboveboard and I do not think that is the case here. I will accede to the wishes of my colleagues in supporting this Bill, but I have grave concerns about validating legislation when information has not been forthcoming from the Minister.

Hon GEORGE CASH: I understand the concerns expressed by Hon Sam Piantadosi. However, I do not have that information tonight. I said to Hon Doug Wenn that I would ask for a list of the projects involved in this validation so that I can table them in the House. It is my neck on the line if I cannot get one of my ministerial colleagues to produce that project list.

Hon Doug Wenn: Sack him.

Hon GEORGE CASH: I cannot give that undertaking. The form of the validation clause in the Bill is the same as that in the Acts Amendment (Land Administration) Act 1982 sponsored by the previous Government. In the main, the projects the subject of validation were instituted by previous Governments.

Hon Sam Piantadosi: I understand that.

Hon GEORGE CASH: The fact is the member wants to know which projects they are.

Hon Sam Piantadosi: Or if there are any shortcomings.

Hon GEORGE CASH: I will provide a list of the projects and we can then work out whether there are any shortcomings.

Hon Sam Piantadosi: It will be too late.

Hon GEORGE CASH: On Thursday, 19 November 1987 - almost three years to the day after that earlier amendment was discussed - a similar question was asked of the then Minister. The answer was that the validation was being done on the recommendation of the Crown Solicitor's office. I cannot say whether a list was provided at that stage. With respect to the validation clause in this Bill, the list of projects as I understand it will cover groynes constructed for coastal protection since 1985. Those groynes, as I understand it - this is not said to be a comprehensive list - covered coastal protection at Albany, Busselton, Mandurah, Ledge Point and Cervantes. They were environmental works outside the harbour reserves covered by the Marine and Harbours Act 1981. There is also provision for general validation of some other minor action. That information is the best I can provide at this stage. However, as I said, I will provide a list of the projects that are being referred to. The fact is that if the Committee does not agree to the validation clause, there is every likelihood that the acts of the previous Government will be deemed to be outside the law and that will not help anyone. At this stage we are trying to tie up loose ends that were regrettably not tied up some years ago. I understand what Hon Sam Piantadosi is talking about concerning accountability.

Hon SAM PIANTADOSI: I guess the last few words of the Leader of the House before he sat down about what acts of a previous government may be exposed is of concern. If he was suggesting that there may have been some malpractice by the previous Administration, that would be my exact concern.

Hon George Cash: I am not suggesting that at all.

Hon SAM PIANTADOSI: Where do we go from here, if we validate and find there is a discrepancy with one of the projects? How would we fix it and who would be responsible? Would the Minister in the other place who gave the assurances about the projects resign because he did not give the information as promised? What will be the natural process? The Opposition will act in good faith and support the clause. If there is a discrepancy and some of the finances or the projects are deficient, who will take the rap for that, especially when promises were made about providing that information to the other place and in turn to us before that Bill came before this Chamber?

Hon GEORGE CASH: Tonight we are validating those acts that are said to be currently ultra vires. We are not in any way validating any discrepancies that might be found at any time. If a discrepancy can be found concerning a previous project, it is within the rights of this Chamber or any member to have that matter raised with the Auditor General, or whichever authority one likes, depending on the discrepancy. All we are doing is validating the previous acts. We are certainly not legalising any discrepancy. If any discrepancy can be found, we all have an obligation to make further investigation.

Clause put and passed.

Clauses 2 to 12 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon George Cash (Leader of the House), and passed.

MOTION - JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION, TRIP FUNDING

HON B.K. DONALDSON (Agricultural) [10.40 pm] - by leave: I move -

> That this House expresses the opinion that the Joint Standing Committee on Delegated Legislation be provided with the funds from the Legislative Council vote for the purpose of the tour set out in the fourteenth report of the committee tabled in June of this year.

Mr President, as you will be aware, the joint standing committee consists of four members from each House, which was agreed to at its inception. The unique aspect of this is that if members of this committee wish to undertake a trip, members of the other place would be funded from the Legislative Council vote. We should seek an opinion from this House on whether the tour should go ahead and those funds be expended from the Legislative Council vote.

Hon Mark Nevill: I have not had a trip in 11 years. I am hardly going to approve it.

Hon B.K. DONALDSON: The background is that in 1987 the original legislative review and advisory committee, which the Joint Standing Committee on Delegated Legislation took over, was not made up of members of Parliament. At that time the Parliament believed that, following the report of the select committee on the committee system of the Legislative Council in 1985, it would be more appropriate to establish an in-house committee to review delegated legislation. The royal commission took that up in part 2 of its report in paragraph 5.7.9, where it stated -

> The least visible law making activity in this State is that by which statutory rules are made. These have a pervasive effect upon the lives and livelihood the community. The Joint Standing Committee of Delegated Legislation and the Interpretation Act 1984 constitute significant checks in the process through which rules are given legal effect. The Commonwealth Administrative Review Council in its report No. 35, "Rule Making By Commonwealth Agencies", has been given extensive consideration to rule making procedures. We understand that the Joint Standing Committee had initiated consideration of this issue prior to that report and is currently pursuing the matter. Public participation in rule making is a goal which should be pursued in this State.

I have been a member of the committee since this Government was formed along with a number of members who were previously on that committee. The deputy chairman, Hon Tom Helm, was the previous chairman. Hon Reg Davies and Hon Doug Wenn were previous members of that committee. It is one of those committees that the Leader of the Opposition in this House always feels pleased about because it has more non-government than government members. During the 1991-92 years the committee had under scrutiny some 600 regulations. At present it is thought that in the 1993-94 years the number will be well in excess of that. The committee decided three or four years ago to look at the whole legislative effect of subsidiary legislation. In the light of the royal commission pointing out very clearly that there needs to be that scrutiny of government and the Executive, that process was put into place by both Houses. They started to draft some preliminary legislation to embrace greater accountability in that area.

The proposed study tour is to look at the system that prevails in the United States, and certainly in the United Kingdom to look at the House of Lords and the House of Commons and see how they deal with subsidiary legislation. This also has a parallel, because the House of Lords scrutinises the legislation from the European Parliament. The idea of going on to Paris came from discussions with Hon Peter Foss, who suggested it would be worthwhile for the committee to look at the civil law side.

Hon Mark Nevill: I thought you meant the Left Bank.

Hon B.K. DONALDSON: No, the civil law. He thought we should attend there. Since I have been here I have listened to many debates on the scrutiny of legislation. I looked back to a speech on Tuesday, 5 September 1989 at page 1649 from Hon Peter Foss.

Hon Graham Edwards: We are not going to hear that again, are we?

Hon B.K. DONALDSON: I will read just one paragraph. He said -

> Another problem I have seen worry people is that of delegated legislation. In my practice as a lawyer I have found that whereas lawyers dealt with Statutes, the person in the community was surrounded with a web of regulations. Regulations come through this House in vast quantities, and because there is such a quantity and there are so many for us to read, it is possible that many slip past. We also have a form of debate in this Parliament that is likely to pick up any undesirable characteristics in our legislation. If it is created by one side of the House, I am convinced the other side of the House would pick it up. I am afraid that most delegated legislation does not get that scrutiny.

He went on to talk about Rottnest Island. I guess he was alluding to the need to ensure that government by Executive should have a check for and on behalf of the people through the process of this Parliament. At odd times when considering regulations, after taking evidence and seeking alternative advice, we have had to approach Ministers and explain that under the terms of reference established by both Houses of Parliament, the regulations should be disallowed. I am pleased to say that in the time I have been chairman of the committee the Ministers concerned have taken that seriously and done what the committee has recommended. They may not always have enjoyed having to do that but have respected the work of the committee. That is positive, and I believe it applied to the previous Government as well.

Hon Mark Nevill: Have you thought about looking at the regulations and by-laws under the Local Government Act? Most are written by shire clerks.

Hon B.K. DONALDSON: Some of the areas we would like to look at, which were previously debated in a committee two or three years ago, concern the use of ministerial orders, for argument's sake. At present they are not subject to our terms of reference. We would like to look at some of the other jurisdictions to see how they handle these matters and how we can ensure an accountability factor in government by Executive and, in turn, ensure that the people of Western Australia are protected from some of these regulations which have an adverse effect on their civil rights and liberties.

I am sure the report that was tabled in this House in June will have been well read by members of this House. It came under considerable media scrutiny at the time. I ensured that after the document was made public the itinerary and the whole background to the information needed by the media was forwarded to them. It is important that this House decides whether that money should be expended from the Legislative Council vote, and hence the reason for this motion. I seek the support of the House in expressing that opinion.

HON TOM HELM (Mining and Pastoral) [10.50 pm]: I second the motion and, as deputy chairman of the committee, I support the reasons for it as indicated by the present chairman. He explained why it was necessary to make this trip to gather the information. It must be acknowledged that we encourage and recognise the usefulness of trade delegations going to different parts of the world to see what is on offer and to demonstrate the goods on offer from this State. The Commonwealth Parliamentary Association delegations travel to different parts of the world, and other parliamentary

delegations are also welcomed in this place. Not only do we pass information to those delegates, but also we pick up information from them. A fact finding mission by this committee is an opportunity to do the same thing. Our goal is not to impart or pick up information but to put together a legislative package to remove the uncertainty that surrounds the committee and its terms of reference, as pointed out by Hon Mark Nevill. The committee has the authority to look at by-laws, codes of practice and other matters that have appeared in the *Government Gazette* and, therefore, have not received the scrutiny they should. You, Mr Deputy President (Hon Barry House), will be aware that often in this Chamber I have said that the Executive should be scrutinised at all times. Certainly, there should be a responsibility on the Executive to ensure that people understand why legislation is passed. It is not necessary for them to agree with that legislation, but the committee considers it desirable that as many people as possible understand the democratic system and the reason the Executive acts as it does.

As explained by the chairman, the committee wants to go to the United States to examine the way that country deals with regulations. The committee has already travelled around Australia and has been in constant correspondence with people in various parts of Australia. It has also considered the legislation in Washington. The committee also wants to travel to France to examine how that country deals with laws and regulations, and its procedure for disallowing them. I am sure Hon Peter Foss knows more about that than we do. The committee also wants to examine the way the European Community deals with regulations. The bottom line is that since the committee has been in place it has been dealing on a regular basis with the procedures before it: When a matter is gazetted and comes to the attention of the committee, the committee goes about its business in the normal way. Nothing has changed. The new committee, under the chairmanship of Hon Bruce Donaldson, has the same problems I had as chairman; that is, it was a waste of time trying to explain to public servants that they had certain obligations to fulfil with regard to our committee. It would be far better if legislation were in place to which people could refer, so that they knew of their obligations with regard to regulations, by-laws, codes of practice and those sorts of things. It would not be an impossible task, but it would make for a more efficient, understandable and accountable system of government.

This eight-person Joint House Committee does not have a government majority, and is probably unique in that sense. It can be seen from the reports on regulations it has examined that the committee has an important role to play in the business of government. I hope that role will continue. That business will continue on the same track until we learn how to adapt and cope with the changes taking place. I have said on many occasions that more and more regulations, by-laws and codes of practice are being gazetted. They have become an integral part of the system of government. If we do not adapt as a House of Parliament to the way government business is being pursued, it will cause more confusion and further problems. Ministers will feel undermined in their authority to do the things they have been elected to do. If we introduce legislation that meets with the approval of not only this Parliament, but also public servants, parliamentary draftsmen, legal advisers and others, so that they understand where we are coming from, I can assure members that the mission will have been worthwhile. The motion should be supported. We have problems enlisting people to do this committee work at present. There is a great deal of work and that will increase as more and more regulations are published. It is understandable that public servants and Ministers will find it more convenient in future to move regulations to meet the changing demands. We must take this further step and match the way government business is conducted. The system is similar to that in place in other States. Western Australia has already taken the lead in some of these matters, without causing hiccups, alarm or despondency. Sometimes we have adopted procedures from other States which were totally inappropriate for this State. However, if the committee is able to pick up the best system in other countries, it will help us to be better legislators. It will also help the Administration to do its job better, and the money for that overseas trip for the committee will have been well spent. Obviously the members of this committee will not receive extra pay. They will be involved in extra work, and an extra effort will be needed to

encourage people to serve on this committee. They will not do so week after week and year after year. The problems, issues and aims are the same; that is, to put better legislation together, to involve the community more in the legislation introduced, and to give reasons for that legislation in the best possible way. Seminars and meetings are held on a regular basis. This Chamber has been full of public servants, draftsmen and legislators from other places who explained their points of view and listened to ours. This is the next logical step. Therefore, I support the motion.

Question put and passed.

MINISTERIAL STATEMENT - MINISTER FOR HEALTH

Metropolitan Region Scheme Amendment, Northern Bypass

HON PETER FOSS (East Metropolitan - Minister for Health) [11.00 pm]: Earlier today I tabled an amendment to the metropolitan region scheme. In September last year the State Government released for public comment plans for a northern bypass to reduce traffic congestion in the city. The Burswood bridge and road plan proposed a new east-west road link north of the city and a third city river crossing. The proposal was to connect this system with a tunnel under Northbridge linking up with the Mitchell Freeway in Leederville. The Burswood bridge and road proposal involved reserving a section of the bypass in the metropolitan region scheme from Orrong Road, Rivervale to Lord Street in East Perth.

The State Government was keen for the public to debate all options and set about a wide and open public consultation process. The metropolitan region scheme amendment attracted nearly 270 public submissions and as a result has led to modifications of the route. The road will now be lowered in East Perth and moved closer to the railway line to provide better access to Northbridge and the city, thereby reducing the impact on private property. The new alignment for the bridge and bypass will free up for redevelopment land in East Perth that had been previously affected.

Widespread debate was also generated about whether the Northbridge section of the bypass should be constructed as a surface road or a tunnel. Following this extensive public consultation, the Metropolitan Planning Council recommended a full tunnel as the preferred option for the bypass. A report on the public submissions confirmed that neither a partially covered tunnel nor a surface road had community support. These options were dismissed because of their perceived divisive nature and concerns about noise levels and air pollution. The report indicated that the sensitivity of Northbridge justified a full tunnel and that the aesthetic, environmental and social benefits were likely to far outweigh any extra expenditure. The State Government will now have to consider the important funding issue as to when to proceed with the full option. Nevertheless, the amendments to the MRS mean that this important Burswood bridge and road is now a step closer to reality. The necessary land can now be secured to ensure a speedy start when the decision is made to proceed.

We are not simply talking about a new bypass road and bridge north of the city. Perth, with its population expected to reach two million by the year 2015, faces the risk of becoming choked by commercial and private traffic that has no east-west route other than through the streets of the city. We need to guarantee the accessibility and long term future of Perth so that it continues to grow as the financial, entertainment and cultural centre of the State. As the Premier said last week in launching his vision for Perth, we have a rare chance to turn Perth into one of the most beautiful cities of the world. Solving the problem of a northern bypass is vital to helping breathe life back into the city. The plan will also allow Northbridge to develop to its full potential, whereas the other options would have inhibited its growth. As a government we have recognised the need for the northern bypass to preserve the amenity of the city, and I call on the Opposition to be constructive and supportive of this Government's efforts to make Perth a better place in which to live.

Consideration of the statement made an order of the day, on motion by Hon Tom Helm.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON GEORGE CASH (North Metropolitan - Leader of the House) [11.02 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Bullying and Violence in Schools; Nightrider Scheme

HON JOHN HALDEN (South Metropolitan - Leader of the Opposition) [11.02 pm]: I take this opportunity to raise two matters, both of which reflect on issues that we have discussed in Parliament today. The first relates to the Minister for Education, of whom I asked a question about the Government's policy on bullying. As is his wont from moment to moment he gave me a flippant, supercilious and offensive answer to the question. He tried to make the point that the incident that was referred to in today's *The West Australian* was outside of the school. The Minister might look at the commercial news tonight in which a number of allegations were made involving alleged cases of bullying, and I presume assault, in the confines of the school. To make such stupid statements is beneath the Minister. In talking to an expert, whose name eludes me at the moment, who was recently in Perth from the United Kingdom, I learned that the incidents of bullying that are reported represent the tip of the iceberg. From my recollection of the discussion, the incidence of bullying was ten times the figure reported.

Although the Minister had the audacity to ridicule what I had put forward as a proposal, I understand that on 20 June 1994 at a meeting at the Midland Town Hall, he said that he would do the same thing. He said that he would announce initiatives to deal with violence in state schools. I offered the Minister the opportunity to peruse what the Opposition had done on that matter. If the Minister is to treat us with such disdain in the future on such an important matter, he will not receive that information; he will merely receive a blast whenever I can give it to him in the Press. This is a serious matter. It needs more than the contempt with which it was dealt by the Minister this evening. People from as far away as Mt Barker in the south and Geraldton in the north have visited me because the department refuses to take this matter seriously. I am sure they will be interested in the comments made by the Minister for Education in this place tonight.

Another issue concerns the Nightrider scheme. I make a simple request to which the Minister might accede. Would the Minister be prepared either at tomorrow's sitting or the day after to make a statement to the House to describe in some detail the arrangements that are being put in place by Transperth about the Nightrider scheme; particularly, where it will operate, the details of the subsidy, the arrangement entered into between Transperth and a proposed service provider, and any other matters that might be considered to be of interest to the House? I am not in any way suggesting by this request that I do not accept the Minister's answers about his lack of knowledge in this matter. It just seems to me that this matter needs to be clarified and this might be a way of doing that, not only for members but also for those outside the House. This could be a constructive way of resolving the issue.

Hon E.J. Charlton: As soon as Transperth has the arrangements in place and it makes them known to me, I will take pleasure in making those details available to the House.

Hon JOHN HALDEN: I understand that is the case. That is why I asked that the Minister provide this information within the next two days while the House is sitting. My office has been in contact with a representative of Transperth, whose name and title have escaped me, and I understand that details were set for printing last Thursday. I am not suggesting that the Minister has knowledge of this matter. Rather than pursuing this question and answer situation, perhaps the Minister might make a statement and advise us of what is going on; we could then discuss the matter on an equal footing and not on the basis of information that we receive by telephone which may or may not be true, based on the various interpretations that may be placed on it. This is a way of perhaps settling this matter. I hope my request is taken in the constructive way in which I mean it. It is a request that might assist in the process of developing this issue. Both Hon Kim

Chance and I have had the same interest in this matter. We do not oppose the scheme; we are more concerned about the process of which we have been advised. On that basis a statement might be helpful.

Adjournment Debate - Wittenoom, Treatment of People

HON MARK NEVILL (Mining and Pastoral) [11.07 pm]: I do not believe the House should retire tonight until I reveal some of the disgraceful treatment of the people in Wittenoom by successive Governments and public servants who have been entrusted with the job of harassing the people of Wittenoom over the past four or five years. In one case a married couple lost their life savings and their marriage has split up directly because of action by public servants, and in another case a person has been working at the airport and has not been paid for 13 months.

First I will mention the case of Mr and Mrs Courtney. On 1 November 1989, they were appointed managers of the Hotel Fortescue for the Auski organisation. In early February 1990 that organisation told them it was withdrawing from its government contract. I am unsure of the name of the department at that time but Ross Guyton representing the interdepartmental committee and the department of regional development - for want of a better name for the department at the time - begged these people to stay on and manage the hotel. He was a special project officer. Mr and Mrs Courtney thought about it and were offered a two year lease. They discussed the viability of the proposal with their accountant, Tony Slee in Perth, who prepared a projected cash flow on the information supplied for coach bookings to February 1991. The figures were a two year projection. The fax to me from Meg Courtney states -

> At our request, Tony Slee then liaised with the dept on our behalf. We commenced trading on the 2nd March 1990. An application for a protection order was refused by the director of liquor licencing on the grounds we had no tenure and so we had to close the hotel on 7-4 and 8-4-90. Ross Guyton told us to submit an invoice to his dept for losses suffered - $2785.00 which we did on 5-6-91. We were never paid.

Hon E.J. Charlton: Who was the Minister at that time?

Hon MARK NEVILL: It was during the time of the previous Government. I am not sure who the Minister was. As I said when I commenced, this occurred under successive Governments. Frankly, I do not think it matters who is in government. The public servants and bureaucrats have been running this debate for the last 10 years. It continues -

> In March 1990 tour operators started cancelling bookings. I phoned one operator, Sunbeam Tours and was told the W.A. Tourist Commission was no longer selling tours to Wittenoom.

These people had entered into this lease on the basis of projected bookings, and the people on the interdepartmental committee then turned around and pulled the rug out from underneath them. It continues -

> I phoned other tour operators with the same result, but none would give it to me in writing, as one operator said "for fear of losing their franchise".

That is because they were having pressure put on them by the Western Australian Tourism Commission, which has a member on that interdepartmental committee. It continues -

> In June 1990 Ross Guyton gave me a letter from the D.R.D. NW. regarding health risks to residents in Wittenoom and also setting out various guidelines regarding advertising. I was required to provide written acknowledgement of the letter, although I objected to its contents, or my lease could be terminated. I was also requested not to talk to the media about Wittenoom health issues. Gary Slee discussed this letter with Ross G. and was told the W.A.T.C. was refusing to take bookings for Wittenoom. I believe the dept was aware of the commissions attitude at the time we were negotiating our contract, and they failed to notify us.

> Had I known of the commissions actions I would not have touched a lease on the hotel with a ten foot pole. I've worked in the hospitality industry for years and I'm fully aware of the importance of the coach tours to the viability of the business. Clause 13.01 of the lease said "the lessee shall peacefully and quietly hold and enjoy the leased premises during the term without any interruption by the lessor or any person rightfully claiming through, under or in trust for the lessor". After we became aware of the commission's actions we continued to run the hotel in the hope we could trade out of our difficulties. However the losses suffered through the tourist cancellations caused us to sell a property in Gidgegannup in order to meet our commitments. The stress and pressure also caused the breakup of my marriage. After a series of short extensions beyond the original term, I decided my position was untenable as I couldn't guarantee bookings beyond a few months and I gave notice to the department that I would be terminating my lease.

They were given one and two month extensions, because the Government was fiddling around. The tourist bus service to that hotel was absolutely essential to its viability, but they could not book in tourist buses when they could get only one and two month extensions. That is a case of disgraceful treatment of Wittenoom residents by the people on this interdepartmental committee.

The other case that I want to draw to the attention of the House concerns the caretaker of Wittenoom Airport, Frank Timewell, a man whom I know quite well. He is an honest and hard working person, who takes people at their word and tries to do the right thing. I asked him to write to me, and he states -

> I had been employed by the Commonwealth Dept of Transport and Communications for 18 years, as groundsman, officer in charge and then caretaker at the airport in Wittenoom. On the 1st of October 1993 that dept officially withdrew their involvement from the airport. The shire told me they had spoken to Hendy Cowan and I was not to close the airport but to continue as caretaker. Apparently Hendy Cowan decided not to be involved so the shire then negotiated with Eric Charlton.
>
> I contacted Terry Baker -

He is the President of the Ashburton Shire-

> - a few times over the following months regarding payment of wages and he said I would be paid eventually. It was just a matter of which department would be dealing with the Wittenoom airport, either Dept of Commerce + Trade Hendy Cowan or dept of Transport Eric Charlton. In late June I was asked to write to Eric Charlton regarding caretakers duties etc which I did, copy attached, but didn't receive a response.

I will table that. It continues -

> I heard Terry Baker on A.B.C regional Thursday the 20.10.94 and he said the airport equipment was being moved to Onslow and the Wittenoom airport would no longer be maintained. I've been caretaking the airport now for 13 months on the understanding that I would be paid. However I feel that may not be the case and I'm bloody angry about it. At one point Eric Charlton and Terry Baker were negotiating something like a $10,000 per year caretaking contract until the select committee report came out and the negotiations were dropped like a hot spud and I haven't heard anything since.

Hon E.J. Charlton: What does Larry Graham think about this?

Hon MARK NEVILL: The Minister has not answered the letter that this man wrote to him. That is disgraceful. Will the Minister pay him?

Hon E.J. Charlton: It is nothing to do with me.

Hon MARK NEVILL: The Minister does not care about little people. He is as bad as the bureaucrats.

The DEPUTY PRESIDENT: Order! The question is that the House do now adjourn. The Minister for Education.

Point of Order

Hon MARK NEVILL: Mr Deputy President, I sat down because you were speaking. You called for order.

The DEPUTY PRESIDENT: Okay. You still have one minute and 19 seconds.

Debate Resumed

Hon MARK NEVILL: I wanted to table this letter addressed to Hon Eric Charlton, dated 1 July 1994. I know why the Minister is embarrassed.

Hon E.J. Charlton: I am not embarrassed at all.

Hon MARK NEVILL: No; the Minister does not care. The Minister led this man to believe that he would be paid, and the Minister does not care. If this man lived in the wheatbelt, the Minister would care. The Minister is too parochial.

Hon E.J. Charlton: We are going to build a road across there for them. That is more than you have done.

Hon MARK NEVILL: Yes, and if the Minister rolled his car, he would be flown out of Wittenoom airstrip.

The DEPUTY PRESIDENT: Order! Let us conduct the debate according to the rules of the House, through the Chair, with no interjections.

Hon MARK NEVILL: The letter addressed to Hon Eric Charlton states -

> From March 1992 to March 1994 there have been twenty one flights into Wittenoom taking out patients by the R.F.D.S. and there have been four more from March to June this year, not including three separate cases taken by car because the doctor could not be available for several hours due to other emergency flights.

I hope members read that letter and I hope the Minister responds to it. The Minister is disgraceful. He does not care about people. I seek leave to table the paper.

Leave granted. [See paper No 431.]

Adjournment Debate - Bullying and Violence in Schools

HON N.F. MOORE (Mining and Pastoral - Minister for Education) [11.18 pm]: I want to make a few comments about the contribution made by the Leader of the Opposition about bullying and violence in schools. The tone of the question that was asked of me in question time results in a similar tone in the answer. If one read Hon John Halden's question and the implied criticism attached to it and the ridicule involved in it, one could understand why my answer might not have been quite as considered as it might have been otherwise. The bottom line is simply that the education system is doing all it can about bullying and violence in schools. To suggest that somehow this is a new phenomenon and has happened only in the last 18 months is absolute rubbish. We have had bullying and violence in schools for many years - as I said today, probably ever since there have been schools. For Hon John Halden to start carrying on in this place about the fact that the education system does not care or that the Minister is treating this matter in some light-hearted fashion is absolute rubbish. We are doing everything possible to curb this problem.

I am told that at South Fremantle Senior High School, where this particular problem occurred, there are a number of competing groups within the school community, which fight each other on a regular basis. That is one of the problems that many schools face these days, because there is tension, and often racial tension, within a number of our schools. However, it is a terrible pity when individual schools are made an example of, which is what occurred in this instance. I understand a story about it was on television tonight. It is a shame that Hon John Halden seeks to make political points out of this situation. This issue does not require television reporters making a big deal out of it, but

it does require people sitting down with the young people involved to try to sort out their problems. It is simplistic nonsense for Hon John Halden to suggest that the Government should write a new policy and the problem will go away. He believes that a policy of fewer children in the classroom will eliminate bullying and violence in the classroom. That is absolute stupidity and it demonstrates his total lack of understanding.

I read an interesting article in the *Education Circular* of October 1994 in which Curtin University PhD student Elizabeth Parry, who is studying this issue, said -

> School bullying is not increasing, according to preliminary findings of a new research report.

She said her findings were based on six months of research in several Western Australian government schools on students with aggressive behaviour. The article quotes her as follows -

> "My preliminary findings so far show that there hasn't been an increase in violent behaviour in schools," she said.
>
> "We're dealing with adolescence and adolescence is turbulence. It can't ever disappear because it is a part of life for them."

Elizabeth Parry has been teaching for 30 years and she started her research by interviewing students who were referred to her because they had a record of aggressive or disruptive behaviour. The findings of that report is that there is no increase in violence, but she made the same point that I do; that is, this sort of behaviour cannot be eliminated from society. If it could we would be delighted, but regrettably it is not possible.

Hon Tom Helm: Would smaller class sizes reduce violence in schools?

Hon N.F. MOORE: I do not think so.

Hon Tom Helm: Why not?

Hon N.F. MOORE: If there were one person in each class and there was no-one for that person to talk to or be aggressive towards then, of course, there would be no violence. That is what the member is indicating by way of interjection. As this researcher indicated, there will always be some level of bullying and violence wherever people live and work together or come together in particular circumstances. To suggest, as Hon John Halden did, that we can get rid of this problem by having another policy to reduce class sizes is simplistic nonsense.

Hon John Halden: It will help.

Hon N.F. MOORE: It may help, but it will not eliminate the problem. One of the problems that Hon Tom Helm and his party never understood when in government is that one simply cannot solve problems by simplistic solutions like that. The cost of reducing class sizes by one in Western Australian schools is $16m. Members opposite do not think about that, but they were happy to blow hundreds of millions of dollars of taxpayers' money on activities in which they were involved.

Hon P.R. Lightfoot: The Opposition cannot be trusted with money.

Hon N.F. MOORE: That is exactly right. I am sorry Hon John Halden had to leave the House, as it is his wont to do when he comes into this place and pours a bucket on someone.

The bottom line is that I take this matter seriously. The Education Department is doing all it can to do something about it. I remind Hon John Halden and Hon Tom Helm that this problem did not start when we became the Government. The evidence is that the problem has not increased in the last 18 months. This problem will always remain with society. The only way to try to solve this problem is by talking to the young people involved and working through their problems. To make a political issue out of this, as Hon John Halden is seeking to do, will exacerbate the problem. The regret that I and most people in the education system have is that Hon John Halden retained his job as shadow Minister for Education, because he wants to make every issue he can get his

hands on into a political issue. He wants front page headlines for himself and to constantly be on television criticising someone by pouring a bucket on that person. He raises issues in the public mind which do not need to be raised. That is the way he operates and all he does is to exacerbate the problems and not solve them.

Hon Bob Thomas: Ask the teachers what they think about you.

Hon N.F. MOORE: I know what they think of me and members opposite will find that out in due course.

Hon John Halden will not help this problem by emphasising it in the way he has done. He would be far better placed if he were to sit down with the people involved and ask what they are doing and give them some encouragement instead of pouring a bucket on them as he did tonight.

Adjournment Debate - Murchison River Mouth, Kalbarri

HON GRAHAM EDWARDS (North Metropolitan) [11.25 pm]: I draw to the attention of this House and particularly to the Minister for Transport a situation which came to my attention last weekend. I preface my remarks by reminding the Minister of his political attacks on the Federal Government over roads. I will not address this matter in a political way, but the issue is very much in the Minister's court and I earnestly ask him to examine it.

I was in the very delightful coastal fishing town of Kalbarri last Saturday and Sunday and I had the opportunity to go out to sea on a professional fishing boat and to give the skipper the benefit of my advice. I was absolutely appalled at the condition of the mouth of the Murchison River and the dangerous situation which confronts professional fishermen who have to negotiate it in order to put out to sea and to return to that port. To put to sea, boats must negotiate a very shallow channel bordered by a sand spit on one side and shallow water on the other. This channel is very narrow and there is little room for error. Once the boats pass the sand spit they have to make a left turn and once again negotiate another channel with shallow water on one side and exposed reef on the other. The skipper of the boat I went out on had to bounce the boat out over shallow water and at one stage the bow was swung around by the tide. The boat was actually straddling the channel with reef very close to the bow and shallow water off the stern. The skipper then had to swing the boat around so that the stern was pointing out to sea and the propeller was actually ploughing a channel for the keel of the boat to follow. It is a tribute to that person's skill as a skipper and to his boat handling nous that he was able to negotiate the boat through the mouth, despite its becoming bogged on occasions. The following day on returning through the mouth similar problems were encountered. The skipper had to bounce the boat over very shallow water to find his way back into safe water. I saw the skippers of three other boats negotiating that sand bar and encountering the same problems as those faced by the skipper of the boat I was on.

I remind the House and the Minister of the very robust nature of wet lining and crayfishing and stress that injuries to fishermen are not infrequent. I would hate the situation to arise whereby a skipper or a deckhand was injured and there was a need to quickly get that person back to shore. If boats were trying to negotiate that mouth during inclement weather, low tide or at night, they would be confronted with a life threatening situation.

Given the tremendous focus on wet lining and crayfishing out of Kalbarri and the financial contribution the industry makes to the economy of this State, is the Minister prepared to examine the status of the mouth of the Murchison River at Kalbarri to ascertain whether something could be done to assist the fishermen? It impacts not only on the fishing industry, but also on the tourism industry.

I understand that a dredge is due in Kalbarri about December this year. However, given that the crayfishing season starts about 17 November I ask the Minister whether he would be prepared to ask his department to expedite the location of that dredge into that area to see whether the channel can be improved between now and the start of the season. I understand that the barge can add to the hazard of that narrow mouth when the boats are

going in and out, particularly when Big Bank is operating, given the greater focus that is occurring with the heavy catches at Big Bank, coupled with the fact that there is no longer home porting.

I raise this matter not in a political way, but in an earnest endeavour to have the Minister consider it. The ball is very much in his court. He has control over the resources. Those resources could be applied to assist those fishermen in that way. I do not know of another fleet that must negotiate such a dangerous river mouth and bar to get out. I know that the situation in Augusta can at times become quite hairy; however, the situation in Kalbarri is intolerable. In fairness to that community and to those fishermen - wet liners and crayfishermen - who must negotiate that river mouth, the Minister should consider the matter to see what he can do.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [11.33 pm]: I take the member's comments on board, so to speak. He does not have to bring the matter to my attention. I have already had discussions with the people in Kalbarri about the problems with the mouth of the river. The problem is an annual event. I would like the member to give me a suggestion about how he thinks the problem could be overcome. I have been going to Kalbarri for some time - a long time when I was in Opposition.

Hon Graham Edwards: There are local views as to how it can be done. I would not purport to have the knowledge your department or those fishermen have.

Hon E.J. CHARLTON: It is not a matter of having a local view. A range of views have some severe consequential problems. There is one view that we could put a cut through the reef and another that we could change the mouth to some extent. Another view is that there is only one solution; that is, to go along the coast and make a fishing boat harbour in the creek. That is the only real solution. Obviously, blasting a track through a reef would not be supported by too many people on the other side of the House because of the environmental problems. The other suggestion is a significant and costly operation of putting a groyne into the ocean to enable the ships to get into the channel. The movement of waves and the swell make it nigh on impossible -

Hon Graham Edwards: What about the idea of expediting -

Hon E.J. CHARLTON: Hang on. I am letting the House know about the other options. I have done more than any other Minister for Transport in the past few years -

Hon Graham Edwards: I'm not attacking you. You don't have to be so sensitive.

Hon E.J. CHARLTON: The member asked me about expediting. I am telling him that the Government expedited work to have the channel cleaned out for the boats. I had discussions with people in the area about a month ago about doing the same thing. In addition to that I had discussions in Esperance when the channel was closed there and the boats could not get in and out. No money was allocated for that in that particular year, but I brought forward the work sooner than it was to be done.

Hon Graham Edwards: Is there any chance the barge could get there earlier?

Hon E.J. CHARLTON: Discussions were held last week to see what could be done about that; however, the barge can only be in one place at one time. The member would be aware that a number of other problems are associated with Kalbarri, such as the area to park the boats, getting fuel, and having a lift to get the boats out. Those problems have been going on year after year, but nothing has happened about them. The Government's legislation last year gave an opportunity for trust accounts to be set up where people can pay in money for their own benefit, knowing that the money will stay there. I am encouraging that along the coast so we can do some of those things to address the problem.

Everything that can be done to enable the situation to be improved is being done. However, at the end of the day it is a matter of pouring in money so we do not have to do the same thing over and over again. The area silts up with the movement of the water in and out of the river. A big rain could clean out the area and the channel could be right for some years; however, that sort of big wash has not occurred for some time. I thank

the member for his comments. I spoke to the people at Kalbarri about the issue a week ago when Cabinet met in Geraldton.

Hon Graham Edwards: The fishing industry?

Hon E.J. CHARLTON: Yes. The Government is doing whatever is humanly possible.

While I am on my feet I will set the record straight about a couple of things Hon Mark Nevill had to say. He knows the background of what the Government inherited at Wittenoom. He also knows that Larry Graham, the local member, chaired a committee about what should happen with Wittenoom. His committee has given its report. I have visited the area on two occasions and spoken to the people about continuing with the airstrip for emergency landings, which people will use because there is no other option, and about facilitating a caretaker operation there. The problem I have come up against, because of the Federal Government's decision to hand over the airstrip to the shire, is that the shire tells me it does not have the resources to do anything about it. Additionally, it cannot employ anybody because of the legal consequences. I have tried to come up with some options for the person to be paid on a contractual arrangement to facilitate that caretaker status. I have tried everything I know to hand over some assistance for him and others. The people from the State Energy Commission of Western Australia and the Water Authority are on a contract. I thought there may be an opportunity to have a caretaker at the airstrip on a similar arrangement. The situation is not my fault. I have done everything I can to enable him to carry out that operation. I am sorry I have not been able to succeed in doing that for no other reason than legal reasons.

Hon Mark Nevill: Someone should write to him and explain there are difficulties you are still looking at.

Hon E.J. CHARLTON: I do not accept the personal criticism levelled by Hon Mark Nevill about my not caring about the individual.

Hon Mark Nevill: That was in response to some of your interjections. Have a look at *Hansard*.

Hon E.J. CHARLTON: That is right. Hon Mark Nevill started on a charade that nobody cares or is interested in doing anything about the people in Wittenoom. I also said by interjection that the Government was doing something about putting in a road in the Karijini national park to make it a tourist settlement for the long term benefit of the people. All the problems to which Hon Mark Nevill referred occurred in the time of his Government and also resulted from the Federal Government's attitude towards airports around Western Australia. It has thrown every airport back on local government to look after. The Civil Aviation Authority does not care about navigation or anything else.

Hon Mark Nevill: He hasn't been paid for 13 months. Look at it from his point of view.

Hon E.J. CHARLTON: The State Government has had to assist people with navigational aids around Australia. The Feds rip out every dollar and cent. Hon Mark Nevill talked about road funds in the system. The Minister for Finance and I were talking about that only a short while ago. The Federal Government has taken every opportunity away for the State Government to raise money, but it has handed every responsibility back to the State, yet Hon Mark Nevill criticises us for what the Federal Government has been doing. He should have a look at his own people before he stands here and criticises us.

Question put and passed.

House adjourned at 11.40 pm

QUESTIONS ON NOTICE

BANKWEST - OFFICES IN OTHER CITIES

798. Hon P.R. LIGHTFOOT to the Leader of the House representing the Premier:

(1) In what cities in Australia, other than Western Australia, does BankWest have offices?

(2) In what cities in Australia, other than Western Australia, does BankWest have agencies?

(3) What banks, if any, act for BankWest officially, in cities other than in Western Australia?

Hon GEORGE CASH replied:

(1) BankWest has offices in the following cities outside Western Australia -

Adelaide, South Australia - limited services provided;
Brisbane, Queensland - limited services provided;
Melbourne, Victoria;
Sydney, New South Wales.

(2) BankWest does not operate any agencies in Australia outside Western Australia.

(3) BankWest, like other banks, has extensive reciprocal arrangements with those other banks which allow BankWest customers to transact freely in other States using, for example, their ATM and EFTPOS networks.

STEEL MILL - AND POWER STATION, ROCKINGHAM AREA PROPOSAL

841. Hon J.A. SCOTT to the Leader of the House representing the Premier:

(1) Is the Premier aware that the community based group called CORE has demonstrated that there is large community resistance to the siting of the steel mill and power station in their "backyard"?

(2) Is the Premier further aware of their petition containing in excess of 11 000 signatures against the proposal?

(3) Will the Government support the electors and their local government in the Rockingham district on this issue?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

(1) The Premier is aware that there is both support for and opposition to the Compact Steel project in the Rockingham community.

(2) Yes.

(3) The Government has not given consideration to the Compact Steel project proceeding, and will not do so until all the relevant information has been obtained.

TELECOMMUNICATIONS - MANAGEMENT TENDER, BUDGET FUNDS

862. Hon KIM CHANCE to the Leader of the House representing the Premier:

What funds have been allocated from this year's Budget for the proposal to call tenders for telecommunications for the whole Western Australian public sector?

Hon GEORGE CASH replied:

The funds allocated for the telecommunications management tender for the whole Western Australian public sector is $240 000 in the 1994-95 Budget year. This comprises $120 000 for contingencies and $120 000 for salaries.

DAMS - CARTER PROPERTY, MT BARKER ROAD, DENMARK

871. Hon BOB THOMAS to the Minister for Education representing the Minister for the Environment:

(1) Did the Wilson Inlet Management Authority consider the issue of the recently constructed dam on the property of Ric and Sandy Carter on the Mt Barker Road, Denmark?

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

Hon N.F. MOORE replied:

The Minister for the Environment has provided the following reply -

(1) Yes.

(2) The Wilson Inlet Management Authority has sought advice from the WA Water Authority on its assessment of the dam.

PORT KENNEDY DEVELOPMENT - POOLE, MAX; ADVISER

881. Hon J.A. SCOTT to the Minister for Health representing the Minister for Planning:

With respect to the answers to question on notice 141 of 12 May 1994 and relating to Mr Max Poole -

(1) Who is the person with wider experience with project management?

(2) What experience has this person in projects of this type?

(3) What new role has Mr Poole been given in the Department of Planning and Urban Development?

(4) Was Mr Poole dismissed for giving incorrect advice to the Minister for Planning?

Hon PETER FOSS replied:

(1)-(2) The scope of the project is such that no one officer is responsible for providing advice; it is a joint effort involving staff from the ministerial office and the Department of Planning and Urban Development.

(3) Mr Poole is employed in the strategic planning division of the Department of Planning and Urban Development.

(4) No.

PORT KENNEDY DEVELOPMENT - LOT 605
Fleuris Pty Ltd, Sale and Profit

882. Hon J.A. SCOTT to the Minister for Health representing the Minister for Planning:

With respect to the joint purchase of Lot 605 at Port Kennedy, is it correct that -

(a) Fleuris Pty Ltd paid only its share of the purchase price when it sold its holdings to LandCorp;

(b) without outlaying any of its own capital Fleuris Pty Ltd made a windfall profit of $734 750 on the sale; and

(c) this profit came from the taxpayers of Western Australia via LandCorp?

Hon PETER FOSS replied:

(a)-(b) No.

(c) LandCorp purchased the land.

STEPHENSON AND WARD INCINERATOR - GOVERNMENT ASSISTANCE

891. Hon J.A. SCOTT to the Minister for Health:

With respect to the Stephenson and Ward incinerator, situated at 422 Welshpool Road, Welshpool -

(1) Is/are -

(a) any government department/s; and

(b) any Minister/s

assisting the owner of the incinerator to obtain finance for the building of a new incinerator and/or installation of a scrubber?

(2) Has the Government or any government department been involved in -

(a) financial discussions with Mr Stephenson and/or any other party; or

(b) discussions and/or negotiations over financing of -

(i) a new medical waste incinerator to be operated by Mr Stephenson; and/or

(ii) an acid gas scrubber to be fitted to an incinerator?

(3) Is the Government providing any financial assistance to Mr Stephenson to install a scrubber to the Stephenson and Ward incinerator?

(4) If yes, how much is the Government contributing?

Hon PETER FOSS replied:

(1)-(3) No.

(4) Not applicable.

FEMALE GENITAL MUTILATION - HOSPITAL TREATMENT CASES

895. Hon P.R. LIGHTFOOT to the Minister for Health:

(1) Have any cases, either directly or indirectly, involving female genital mutilation required hospital treatment during the past five years?

(2) If yes, how many cases and when?

Hon PETER FOSS replied:

(1) The Health Department has no knowledge of any recorded cases of female genital mutilation requiring hospital treatment in Western Australia in the past five years.

(2) Not applicable.

LAND VALUERS LICENSING BOARD - LICENCE FEES; REPORT

897. Hon J.A. SCOTT to the Minister for Fair Trading:

(1) What total amount in licence fees has been paid to the Land Valuers Licensing Board during each of the years 1992 to 1994?

(2) What has been the board's total accumulated surplus as at 30 June for each of the years 1992 to 1994?

(3) What is the amount of sitting and incidental fees paid to each board member?

(4) From what source are these fees paid?

(5) What annual charge is levied on the board in light of the administrative support provided to it by the Ministry of Fair Trading?

(6) If no charge is levied, why not?

(7) Is it the board's intention that an auditor's report on its financial statements will form part of the report on activities during 1993-94 when tabled in Parliament?

(8) Given that the board has a statutory requirement to provide an annual report on its activities, why was there no statement of accounts included as part of the board's report for 1992-93?

(9) Why does the Land Valuers Licensing Board continue to be exempt from the provisions of the Financial Administration and Audit Act 1985?

Hon PETER FOSS replied:

(1)

1991-92	$68 000
1992-93	$75 000
1993-94	$72 000.

(2) Nil.

(3)

Chairman	half day $97, full day $145
Members	half day $73, full day $108
Incidentals; parking fees	$2.40 per half day meeting (six per year).

(4) Ministry of Fair Trading, budget item 149 amount provided for recurrent expenditure.

(5) Nil.

(6) The Land Valuers Licensing Board has no financial resources of its own. It is an "affiliated body" (as defined in section 3 of the Financial Administration and Audit Act 1985) of the Ministry of Fair Trading and is dependent on the ministry for 100 per cent of its funding.

(7) No. See answer to question (6).

(8)-(9) See answer to question (6).

HOMESWEST - BEELIAR HEIGHTS, LAND AUCTION

909. Hon JOHN HALDEN to the Minister for Finance representing the Minister for Housing:

(1) Why is Homeswest auctioning the land at Beeliar Heights?

(2) Are all the lots in the subdivision to be auctioned?

(3) If not, when will the blocks be available for sale?

(4) What is the reserve price on the blocks?

(5) How does auctioning the land assist low income earners?

(6) Has there been any delay in the land becoming available?

(7) If so, what is the reason?

Hon MAX EVANS replied:

The Minister for Housing has provided the following reply -

(1) Sixty-six of the 289 lots produced in stage 1 will be auctioned as these have city skyline views. This is considered the fairest method of disposal for prime lots.

(2) No.

(3) Approximately February 1995.

(4) Not yet determined.

(5) Land proceeds and profits assist Homeswest in providing ongoing programs for low income earners and public housing.

(6) Yes.

(7) Resolution of issues regarding the -

(a) WANG easement;

(b) midge covenant conditions;

(c) overpass requirements of the local authority; and

(d) delays in the completion of major retaining walls.

INCINERATORS - MEDICAL WASTE

910. Hon J.A. SCOTT to the Minister for Health:

(1) Is any medical waste being imported into Western Australia for incineration?

(2) If yes -

(a) how much is being imported;

(b) from where is such waste being imported;

(c) who is importing such medical waste; and

(d) what is the precise nature of the waste?

Hon PETER FOSS replied:

(1) No.

(2) Not applicable.

MEDICAL WASTE - COLLECTION COMPANIES, AUTHORISATION

911. Hon J.A. SCOTT to the Minister for Health:

(1) Which companies are authorised to collect medical waste in Western Australia?

(2) Who authorises them to collect this waste?

(3) What is the procedure involved in authorising the collection of this waste?

Hon PETER FOSS replied:

(1) The following companies are registered to collect medical waste -

BFI	Pathwaste
Cleanaway	South West Waste Disposal
Integrated Sharps Disposal	(pending).
Medicollect	

(2) The Office of Waste Management registers these companies.

(3) Before registration the OWM ensures companies comply with guidelines for the collection and transport of medical waste. This includes inspections of premises and vehicles and an interview with management to ensure the guidelines are clearly understood.

HOMESWEST - WITTENOOM, PROPERTY RENTED BY RUBY FRANCIS

913. Hon MARK NEVILL to the Minister for Finance representing the Minister for Housing:

Further to the answer to question on notice 851 of 1994, in respect of the Homeswest property rented by Mrs Ruby Francis in Wittenoom until her death -

(1) On what occasions was the property inspected since 1978?

(2) Who undertook each of the inspections and what was their capacity or position?

Hon MAX EVANS replied:

The Minister for Housing has provided the following reply -

(1) The property has been inspected four times since 1978 with the most recent being September 1994.

(2) On the first three occasions the officers involved were Homeswest's Regional Manager and a senior technical adviser. On the latter occasion the officers were Homeswest's Director of Rental Operations and the Regional Manager.

HOMESWEST - WATER ACCOUNTS

991. Hon J.A. SCOTT to the Minister for Finance representing the Minister for Housing:

(1) Are Homeswest tenants going to receive a separate account for their water use when previously this was part of their rent payment?

(2) Will amounts equivalent to the water account now be taken from their rent or will they be given a rent increase?

Hon MAX EVANS replied:

The Minister for Housing has provided the following reply -

(1) Homeswest tenants will receive a separate account for water consumption. However, water consumption has never been a component of rental charges.

(2) There is no link between the issuing of water accounts and rent increases. A separate account is established for each tenant on whose behalf Homeswest has paid statutory water consumption charges as assessed by the Water Authority.

QUESTIONS WITHOUT NOTICE

NIGHTRIDER SERVICE - PROGRESS

532. Hon KIM CHANCE to the Minister for Transport:

When will the Minister give details of his proposal for a Nightrider service and its starting date?

Hon E.J. CHARLTON replied:

I have not received any additional information from the MTT regarding the progression of the Nightrider service. As I said last week, I am looking forward to the introduction of the service within a month. I hope that happens. Obviously much work must be done to provide the bus service and the routes to ensure that people can maximise use of the service. I cannot provide any dates because I have had no further discussions. As I have said before, I am looking forward to receiving the information after the final determinations are made.

NIGHTRIDER SERVICE - SWAN TAXIS, DISCUSSIONS

533. Hon JOHN HALDEN to the Minister for Transport:

To what extent, if any, has Swan Taxis been involved in the negotiations for the provision of the Nightrider service?

Hon E.J. CHARLTON replied:

I do not know what discussions have been held with Swan Taxis. Swan Taxis is an independent company, so whatever discussions it may have with the MTT or anyone else regarding the Nightrider service is up to the company.

KALGOORLIE NICKEL SMELTER - SULPHUR DIOXIDE POLLUTION

534. Hon J.A. SCOTT to the Minister for Health:

In answer to question 122 regarding the extremely high levels of sulphur dioxide emitted by the Kalgoorlie nickel smelter - that is, up to 5 000 micrograms a cubic metre - the Minister's answer included the statement that "grave health problems are not expected".

(1) Is the Minister aware of a six year study by French researchers reported in the *New Scientist* of 15 October 1994 which states that "there is a definite health risk with pollution" and that a rise of only 100 micrograms a cubic metre of sulphur dioxide was linked to a rise of 10 per cent in deaths from heart attacks, and that the number of asthma attacks rose by 30 per cent?

(2) In the light of this study, does the Minister stand by his previous statement and does he regard death as a serious enough health problem to act to protect the people of Kalgoorlie?

Hon PETER FOSS replied:

(1)-(2)

I am not aware of the report nor of whether it has the content that the member suggested. I suggest that the member write to me with the information, and I will refer it to my department for information on it.

NIGHTRIDER SERVICE - TAXI INDUSTRY NEGOTIATIONS

535. Hon KIM CHANCE to the Minister for Transport:

(1) Has any formal agreement been made between Transperth and any taxi company regarding the Nightrider system?

(2) If so, when was it made?

Hon E.J. CHARLTON replied:

(1)-(2)

As I stated last week, when I was advised that it was possible that the MTT would enter negotiations to coordinate with the taxi industry on the Nightrider service, I immediately advised Swan Taxis. However, I have had no further discussions with the MTT about any negotiations with anyone in the taxi industry.

NIGHTRIDER SERVICE - SUBSIDY

536. Hon JOHN HALDEN to the Minister for Transport:

(1) Is a subsidy involved with the Nightrider service?

(2) If yes, how much is the subsidy?

(3) Who will pay the subsidy?

Hon E.J. CHARLTON replied:

(1)-(3) I do not have that information. The scheme has been worked out by the MTT to try to provide a Nightrider service. I have encouraged the MTT to ensure the scheme is up and running as soon as possible in the lead-up to the Christmas period so that the people who will be out late at night will have a public transport system at their disposal. Last year when we brought in the system for a short time, it was based on a $5 flat fare. I have not received advice from the MTT whether it intends to continue that arrangement or to introduce some other arrangement. Subsidisation will depend on the number of people being transported. The public transport system is heavily subsidised to the tune of about 80 per cent; so if the number of fare-paying people does not meet the overall costs, perhaps it will be subsidised in the same way.

NIGHTRIDER SERVICE - CONSULTANTS

537. Hon KIM CHANCE to the Minister for Transport:

In an earlier question time the Minister referred to a quick consultancy that was carried out in respect of the Nightrider service. Who were the consultants and how were they appointed?

Hon E.J. CHARLTON replied:

In that previous question I covered two matters. As I recall it, I talked about the Nightrider scheme and about a consultancy. The consultancy concerned the Wellington Street and Fremantle bus stations and the problems associated with Northbridge and Fremantle and our desire to ensure that taxis operators were not exposed to unruly behaviour in the late hours of the night. I cannot provide information about the consultancy at this time. The consultancy related to the bus stations only; it had nothing to do with the Nightrider scheme - although I touched on the Nightrider scheme because the matters are related.

NIGHTRIDER SERVICE - VEHICLES

538. Hon KIM CHANCE to the Minister for Transport:

(1) Will the vehicles used in the Nightrider scheme, other than MTT vehicles, be exclusively taxis with unrestricted licences?

(2) If not, what type of vehicles may be used?

Hon E.J. CHARLTON replied:

(1)-(2)

As far as I am aware, the only vehicles to be used are taxis. I have not been advised of the possibility of any other vehicles being used.

In regard to the previous question about Wellington Street, the taxi industry will need to be involved. It will take a two pronged approach to cater for people, particularly during the festive season. Therefore, some taxis will coordinate with the buses and some will coordinate from a central division, which will be under extra security to protect both the industry and the travelling public.

NIGHTRIDER SERVICE - SECURITY

539. Hon JOHN HALDEN to the Minister for Transport:

I refer again to the Nightrider scheme.

(1) Will the Northbridge business community provide security in the Northbridge area?

(2) Will the MTT provide security at the Wellington Street bus station?

(3) If yes to (2) -

(a) at what cost;

(b) who will provide the service; and

(c) was the service put to tender?

Hon E.J. CHARLTON replied:

(1)-(3)

It is my understanding that security is simply part of the improved security for the entire City of Perth. I do not have any information regarding how the security is to be provided. As I understand it, we took the initiative in consultation with the taxi industry to respond to the problems being experienced in Northbridge both by the industry and by the travelling public when they could not get a cab. Cabs will not go to the area because

of the unruly minority which create problems, with the result that decent people cannot find a cab. Our response was to suggest that the Wellington Street bus station could be the location in Perth, and that another location could be provided in Fremantle for people to pick up a taxi. That was the reason that consultants were brought in.

I cannot comment on the cost of surveillance, although I understand that security will be part of the overall improved surveillance program for the city to ensure that members of the public, when moving around the city, feel safe because they know that the surveillance cameras are operating. That is, they would feel safe whether walking across to or away from Northbridge, whether in the bus station area or other parts of the city where the surveillance cameras operate.

NIGHTRIDER SERVICE - SWAN TAXIS, DISCUSSIONS

540. Hon KIM CHANCE to the Minister for Transport:

Why has Transperth delayed involving Swan Taxis Co-op Ltd in the Nightrider service until 1 November, which is the first scheduled date of a meeting between Mr Wadsworth of Transperth and Swan Taxis?

Hon E.J. CHARLTON replied:

I am not aware of the dates of meetings between Swan Taxis and Transperth. I mentioned last week that I telephoned Swan Taxis to advise it that there would probably be an opportunity for it to be involved in the service. It is not up to me to direct Transperth or even to make recommendations. I simply wanted to make Swan Taxis aware of proposals for the Nightrider service. I was surprised that Swan Taxis had not taken that initiative.

Hon John Halden: It has, but that was the only date it was given for a meeting.

Hon E.J. CHARLTON: I do not know anything about that. When I found out that Swan Taxis did not know about the service, I contacted the company and mentioned that Transperth was attempting to put a service together and I suggested it should make contact. In response to questions on talkback radio about transport in Northbridge and concerns that cabs were not available and public transport was not available after midnight, I stated that Transperth was trying to get the Nightrider service going. I am still surprised that Swan Taxis did not take the initiative to make contact with Transperth. It is a free enterprise company, and if it wanted to be involved it should have contacted Transperth. I do not know what happened about that.

NIGHTRIDER SERVICE - MEETING, TRANSPERTH BOARDROOM

541. Hon JOHN HALDEN to the Minister for Transport:

Is the Minister aware that at a meeting in the Transperth boardroom on 11 October, Mr Wadsworth, whose title I am unsure of, announced to a group of people from Transperth, the Public Transport Union, Black and White Taxis and the Swan Brewery Co Ltd that the Nightrider service would be announced on 1 November and would commence on 4 November?

Hon E.J. CHARLTON replied:

No, I am not aware of any such meeting.

MINES SAFETY AND INSPECTION LEGISLATION - AMENDMENT

542. Hon A.J.G. MacTIERNAN to the Minister for Mines:

(1) Is the Minister aware that Minister for Labour Relations has said he proposes to introduce legislation in the next few weeks which will amend

the mines safety and inspection legislation in respect of the election of health and safety representatives?

(2) Does the Minister agree that the mines safety and inspection legislation should be changed in this way?

Hon GEORGE CASH replied:

(1) Yes, I am aware of some comment by the Minister for Labour Relations on that matter.

(2) My position is very clear. Any changes will require consultation with the industry, and I will seek the advice of the industry in that regard when such proposals are put before me.

PRISONS - WYNDHAM REGIONAL
Closure; Aboriginal Prisoners, Kimberley

543. Hon TOM STEPHENS to the Minister for Health representing the Attorney General:

(1) Does the Attorney General accept that her premature closure of the Wyndham Regional Prison last year has led to overcrowding at the Kununurra lockup and in the Broome Regional Prison?

(2) Does the Attorney General accept the statement of the Royal Commission into Aboriginal Deaths in Custody that "isolation of Aboriginal prisoners from their home country can have a spiritual and psychological impact" and its strong recommendation against the removal of Aboriginal people from their home areas and away from their families for the purpose of custodial sentences?

(3) What steps is the Attorney General taking to ensure that Aboriginal people from the Kimberley are not being transferred away from that region to other prisons in other parts of the State?

(4) Has the home detention scheme been expanded to Aboriginal communities in the Kimberley region as promised by the Attorney General in May 1993 during a visit to the region?

(5) What alternative sentencing and custodial options have been developed by the Attorney General and put in place within the Kimberley region in fulfilment of her commitments given at the time of the closure of the Wyndham Regional Prison?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(5) The closure of Wyndham Regional Prison was fully justified by very small prison numbers and the opportunity to address through a community development approach the social and cultural problems which have traditionally been associated with offending patterns in the Wyndham area. Funding has been provided, after extensive consultations with the local communities, for residential and non-residential alcohol rehabilitation, a sobering-up centre, a women's refuge and a youth centre.

Community Corrections continues to expand the number of communities participating in the community detention program and its officers are actively involved in preventive community programs. This also includes training at the local level in the application and administration of the Aboriginal Communities Act 1979 which serves to deal with justice issues within particular communities.

The Ministry of Justice is actively implementing recommendations

of the Royal Commission into Aboriginal Deaths in Custody and supports the retention of prisoners in their home areas, subject to security considerations. The desirability of holding Kimberley and Pilbara Aboriginal prisoners in the north west has been acknowledged by the provision of planning funds in the current Budget to upgrade Roebourne Regional Prison to medium security, which will further relieve accommodation arrangements at Broome Regional Prison.

SCHOOLS - RATIONALISATION
Voting System

544. Hon JOHN HALDEN to the Minister for Education:

Is the Minister prepared to change the one vote per family voting system for the school rationalisation process? It is my view that this voting system is both discriminatory and likely to produce a distorted result. For example, who gets the vote in a family where there is a joint custody arrangement or if the parents within the family disagree about the future of a school?

Hon N.F. MOORE replied:

I am happy to take on board any suggestions that might be made in the spirit of reaching a sensible decision about the future of each of the schools in question. For the first time ever parents will have a say on the closure of schools. In endeavouring to provide an opportunity for them to have a say, it is necessary to have a voting system. If the Leader of the Opposition wants to be constructive, and I suspect he does by the tone of his question, I am happy to take on board any suggestions he may like to make. The commitment I gave when I made the decision about this was that parents should have a vote in schools suggested for closure. Those parents will be the only people who will vote. People in the general community will not have a vote. I am happy to discuss the issue of custodial arrangements to try to find an compromise so that we can determine the view of the community. In my view, the community is the school parents. If there are some problems, I am happy to listen to them and work out a solution.

SCHOOLS - VIOLENCE

545. Hon JOHN HALDEN to the Minister for Education:

With reference to the article in today's *The West Australian* headed "Bashings leave girls scared of school" -

(1) Will the Minister inform the House when he will announce the initiatives to deal with violence in state schools that he first referred to at the meeting held at Midland Town Hall on 20 June 1994?

(2) As it seems the Minister and his department are incapable of producing a policy decision on this very important matter, is he prepared to accept the Opposition's policies on these matters?

Hon N.F. MOORE replied:

(1)-(2)

It is extraordinary that the proposition being put by the Leader of the Opposition is that somehow or other these problems started 18 months ago. The bashing took place outside the school grounds. If the Leader of the Opposition is suggesting that in some way the school is responsible for that, I suggest he is drawing a very long bow. We are as concerned as he is about the situation that has developed in some parts of Western Australia with students being bashed or bullied. This problem has been

around ever since schools have existed. It is not a new phenomenon. It has probably been much of a muchness for many years, but that does not give me any satisfaction. The school has undertaken significant programs to work out the problems which have resulted in a number of clashes and disputes between groups and which have taken place for a variety of reasons. To the best of its capacity, the school is trying to solve these problems. However, when those problems spill over to violence outside the school, one can hardly blame the school or the Minister for Education. We will provide whatever support we can to schools to overcome those problems.

Hon John Halden: Where is your policy?

Hon N.F. MOORE: Is the Leader of the Opposition suggesting that if we write a policy the matter will suddenly go away?

Hon John Halden interjected.

The PRESIDENT: Order!

Hon N.F. MOORE: The Leader of the Opposition was a member of a Government which was in power for 10 years.

Hon E.J. Charlton: Long years.

Hon N.F. MOORE: It was 10 long, difficult years for Western Australia, during which time those problems were in abundance as, regrettably, they are now. If they would simply go away as a result of government policy, the Opposition would already have done that when it was in power. However, it did not do that because the matter cannot be resolved by simply writing a policy. The Government is using every vehicle and avenue available within the school system to overcome the differences of view between various groups in schools in the hope those differences will not spill over to outside the school system. As I said, at the end of the day, if groups want to become involved in those activities outside school hours, one can hardly blame the school.

KALGOORLIE NICKEL SMELTER - SULPHUR DIOXIDE POLLUTION

546. Hon J.A. SCOTT to the Minister for Health:

In answer to question without notice 122 regarding sulphur dioxide levels in Kalgoorlie, the Minister stated that "The health of individuals is monitored as necessary."

(1) What does the Minister mean by the term "as necessary" and what level of monitoring is occurring?

(2) Does this monitoring include the people living in the area most exposed to the pollution at the Kurrawang Aboriginal area?

Hon PETER FOSS replied:

(1)-(2)

If the member is asking me to provide specific details of what is happening in Kalgoorlie I will necessarily have to take the question on notice. It must be obvious that I am not skilled in knowing appropriate levels of monitoring, nor do I have sufficient scientific background to interpret them, even if I did know the results.

BURROWS, PHIL - INQUIRY BY EDUCATION DEPARTMENT
Education Act, Section 7C

547. Hon JOHN HALDEN to the Minister for Education:

(1) Is the Minister aware of any departmental investigations into a Mr Phil Burrows?

(2) If yes, what is the basis of these investigations?

(3) Can the Minister explain to the House what is the content of section 7C of the Education Act?

(4) How and on what basis is it implemented?

Hon N.F. MOORE replied:

(1) To my knowledge no inquiries are being undertaken by the Education Department. I will find out if there are any.

(2) Not applicable.

(3)-(4)

Section 7C of the Education Act was included in the Act a number of years ago to provide for problems concerning teachers who were accused of behaviour unbecoming to a teacher. It gives the Director General of Education the discretion to deal with teachers prior to any further action by the police or by a court. Its aim is to enable removal of a teacher to avoid a situation where that teacher continues to behave inappropriately. In recent times a few teachers have been dealt with under section 7C but subsequently have been found by a court to be innocent. That has raised some questions about that section.

It has always seemed to me that, from time to time, in a sense decisions made by directors general have been of an arbitrary nature. Some months ago I met with all the directors general who are still alive to discuss the matter. All the former directors general, together with the current director general, advised that there was a need for them to make those arbitrary decisions from time to time because the overriding concern must be ultimately the safety of children in school. I was prepared to accept that advice. However, Mr Burrows has raised a legitimate complaint; that is, he was dealt with under section 7C and ultimately found to be innocent. Perhaps more attention should have been paid to his side of the argument before any action was taken.

I accept that section 7C is contentious, but I also accept the advice given by the current and former directors general that it should be retained. If Hon John Halden has views on how that section might be changed, I would be happy to take them on board. I acknowledge that when the current wording of section 7C was first included in the Act by Hon Peter Jones as Minister for Education during the Sir Charles Court Government, it was vigorously opposed by the then Opposition. Nonetheless, it was not changed during its recent term in office. I suspect there is no alternative to the way in which that section operates.

ROADS - MITCHELL FREEWAY, CONTRACTOR; REPAIR COSTS

548. Hon DOUG WENN to the Minister for Transport:

(1) Which company or companies were involved in the construction of the recently opened section of the Mitchell Freeway?

(2) Were quality standards rigorously imposed by the Main Roads Department?

(3) At the date of completion of the new section, was the work considered to be satisfactory to the MRD?

(4) What costs, if any, have been incurred by the Government for the repairs that are under way on the northbound section of the new freeway?

Hon E.J. CHARLTON replied:

(1)-(2)

Off the top of my head I cannot provide the name of the company which

had the contract. A contract for the design of the road was given to one company and a contract to construct the road was given to a different company under the supervision of the Main Roads Department. The contracts were carried out in line with the contractual arrangements.

(3) Work has been carried out satisfactorily. The cause of the problem on the north bound lane has been identified as moisture from the subsurface base. Following completion of construction, maintenance must be carried out by the contractor over a certain period. In cases such as that which has arisen on the Mitchell Freeway, assessment must be undertaken by the contractor to see whether he is responsible for the problem or whether it is a situation beyond his control. That assessment is now taking place on completion of which it will be determined who will be liable for the cost of overcoming the problem.

(4) No costs have been incurred by the Government.

HIV - STATISTICS, ERROR

549. Hon KIM CHANCE to the Minister for Health:

With respect to the article in the *Sunday Times* of 23 October 1994 headed "Health chiefs admit AIDS bungle" -

(1) Will the Minister indicate whether computer or doctor error was involved in the presentation of incorrect HIV statistics to the AIDS advisory committee this month?

(2) In particular, can the Minister indicate to the House what errors were involved in the presentation of misleading statistics for the mid-west region where five cases were originally reported when the true figure was 13 cases?

(3) Has the Minister satisfied himself of the accuracy of the figures that are now being presented?

(4) Can the Minister assure the House that no attempt was made to cover up the extent of the disease, particularly in the non-metropolitan areas?

Hon PETER FOSS replied:

(1)-(4)

I can assure the member there was no cover-up. I think the headline was a little unfair and unfortunate. When the statistics on certain people were keyed into the computer, their postcodes were incorrectly recorded. I am not sure whether that could be called a doctor or computer error and I do not regard it as all that serious. Everybody occasionally makes mistakes. The effect of the incorrect postcodes was to show people in an area to which they do not belong.

The total figures were correct but they did not match up with some of the reported occasions of incidents in other places. They popped up in the wrong place. I am a little concerned about the way it was reported. It came to the notice of the *Sunday Times* because it thought there had been a cover up, and obviously that would be an interesting story. It turned out to be merely a keying in error, which could happen to anybody. We need to understand that the statistics are purely a record of discovered cases of diseases which have been notified. They do not represent the actual number of cases, which is presumably something greater. Of course the statistics can vary; for example, if five cases came in the day before the figures were closed off they would be shown in those statistics and if they came in the day after they would be in the next lot. The degree to which they represent the incidence of disease depends on many other factors, including the habits of the people in the area, what may be happening in

some other areas and whether it is detected. If I may give an analogy, it is something like the weather report. It is certainly useful information, and we should ensure as much as possible that data is correct. I do not for one moment say that we should not worry about the fact it was incorrectly recorded. The department is putting in measures to make certain it is checked so that keying-in mistakes do not happen again. It is important to get the data right because it is imprecise anyway as it is only a minimum. It is like the weather report which says that it will be 23.5 degrees and it will not rain, and then it is 25 degrees and does rain. Because the reliability is not necessarily that great in terms of what one can do with it, it does not mean that one does not try to get the prediction as close as possible. We must try to get the information as accurate as we possibly can in order for people to draw some conclusions, but it is not life critical and does not tie in directly with something else. It is part of the overall information given to the health professionals operating in that area. It will not make a vital difference to the way people behave.

One thing in the article with which I took issue is that this would be critically likely to make a difference in the policies. The department knew about and was operating with those cases. Perhaps the reason the department did not pick up the error was that it was dealing with the cases and not the statistics. It is not a big deal in terms of the consequences that flow from it. It is at a distance from direct action. It is data which leads to predictions which may lead to some sort of accurate result. However, it is in the same area as the weather forecast, which dictates action. A farmer would like the weather forecast to be as accurate as possible, but if it is not he says he is glad of the forecast even if it is not quite correct in this instance. Measures are being taken in the department to make it correct.

Hon Mark Nevill: Is this a Bill or question time? I arrived a little late.

Hon PETER FOSS: The effect has been exaggerated. I do not think keying in a postcode the wrong way is the world's greatest problem.