

# Legislative Council

Thursday, 2 December 1993

**THE PRESIDENT** (Hon Clive Griffiths) took the Chair at 2.30 pm, and read prayers.

## **BURT, RICHARD PAULL SEPTIMUS - REMEMBRANCES, LETTER OF APPRECIATION**

**THE PRESIDENT:** I have received the following letter today -

Dear Mr Griffiths

Thank you for your recent letter and notification of the adjournment debate in the Legislative Council concerning my late husband.

Please convey, on behalf of myself and family, appreciation to Mr Lockyer and other members of the Council for their kind remembrances in the adjournment debate.

Yours sincerely

Pauline Burt

## **PETITION - COMO SENIOR HIGH SCHOOL, GYMNASIUM-PERFORMING ARTS CENTRE**

The President presented a petition from 779 citizens of Western Australia requesting the Legislative Council to recommend to the Government that it give a firm undertaking to approve an appropriate allocation in the 1994-95 Education budget for a gymnasium/performing arts centre at the Como Senior High School.

[See paper No 908.]

## **STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION**

### *Fourth Report on City of Perth Petition*

**HON M.D. NIXON** (Agricultural) [2.36 pm]: I am directed to present the fourth report of the Standing Committee on Constitutional Affairs and Statutes Revision, being a report on a petition requesting the Legislative Council to investigate whether the proposed dissolution of the City of Perth contravenes the Constitution Act 1889 or any other Act or Statute. I move -

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

Question put and passed.

[See paper No 909.]

## **MOTION - URGENCY**

### *Legislative Process, Use of Guillotine*

**THE PRESIDENT** (Hon Clive Griffiths): I have received the following letter today -

Dear Mr President,

I write to give notice that at today's sitting it is my intention to move under standing order No 72 that the House at its rising adjourn until 9.00am on December 25th 1993, for the purpose of expressing alarm at recent events in this House, and in particular;

(a) The effect on the quality of legislation emanating from this House due to the Government's mishandling of the legislative process.

(b) The blatant breach of commitments given by the Government in respect of promises of better management.

(c) The abrogation by the Government of its responsibilities to ensure that the proper process of Parliament is applied to all legislation dealt with by this House.

(d) The breach of commitments given by the Leader of the House in respect of the promise of consultation given in conjunction with the introduction of the sessional order/guillotine.

(e) The gross abuse of the conventions of the Legislative Council and its perceived role as a House of review.

Yours sincerely,

John Halden MLC  
2nd December 1993.

Before we can deal with this proposition, it is necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

**HON JOHN HALDEN** (South Metropolitan - Leader of the Opposition) [2.39 pm]: I move -

That the House at its rising adjourn until 9.00 am on 25 December 1993.

Recent events in this House could lead to the conclusion - and no other conclusion - that the Government has lost control of the business of this House. In recent days the Government has tried to justify the need for the guillotine. Let us look at why the Government might want to use the guillotine. It has been suggested that Opposition members have been filibustering, and that the Notice Paper is blocked by a logjam of legislation. Let us peruse today's Notice Paper to check the veracity of those comments.

Disregarding the motions, the first two Orders of the Day are disallowance motions. Of course, the Opposition has been prepared to debate these items at any stage and they would not take up a great deal of time. The next item is an urgency motion carried over from 30 November, and not dealt with because the Minister for Health has been at a Health Ministers' conference. On the Notice Paper are six Bills which were second read on 25 November and would be dealt with, under normal conventions - although I do not know whether they exist any longer - today. Another six items were second read on 30 November, and four were second read yesterday, 1 December. Only six Bills on the Notice Paper were second read prior to last Thursday. An analysis reflects clearly that there is no backlog of Government business. On that basis, there is no rational or empirical evidence to suggest that the Opposition has been filibustering or that it is not going about its business as a constructive and analytical Opposition.

I will continue this exercise, because the paper thin disguise for the real reason that the Government might want to use the guillotine becomes even more obvious as we go through the Notice Paper. The only other legislation of note on the Notice Paper is Order of the Day No 10, the Environmental Protection Amendment Bill, which had its second reading on 15 September. The Opposition is prepared to debate that legislation at any time on any occasion. The Disability Services Bill was referred to the Legislation Committee and is now back from that committee. The Opposition is ready to debate that Bill. The Acts Amendment (Ministry of Justice) Bill was not handled because the Minister for Health was at a Ministers' conference. We accept that, but we are ready to debate that Bill. The Government made great claims about the urgency of the workers' compensation legislation. The Workers' Compensation and Rehabilitation Amendment Bill is now Order of the Day No 13 on the Notice Paper, and I assure the Government that the Opposition is ready to confront it on that legislation whenever it is ready.

The motion to appoint a select committee on the Cape Range national park and Ningaloo marine park, which was moved by Hon Graham Edwards on 11 August, is Order of the Day No 14 on the Notice Paper, and was adjourned on 11 August by the Government Whip. That matter has caused considerable concern in the community, but because it is an Opposition motion it will never see the light of day.

The PRESIDENT: Order! Opposition members, your leader is addressing the House and I cannot understand how you can be so rude as to ignore him and carry on audible conversations. I suggest you listen to him.

Hon JOHN HALDEN: That motion is languishing at the bottom of the Notice Paper, despite that public concern. Of course, the Government has no intention of looking at that motion. The Planning Legislation Amendment Bill, again a responsibility of the Minister for Health, is Order of the Day No 15. We are ready to look at that Bill whenever the Minister is ready. The Acts Amendment (Student Guilds and Associations) Bill is the responsibility of the Minister for Education, and we are ready to discuss that Bill whenever the Minister is ready.

Order of the Day No 27, the Horticultural Produce Commission Amendment Bill, can be described only as the highlight of Government incompetence. We were asked to assist the Government in the passage of that legislation, and we did that, yet what did we find? Having amended that Bill, we found that the Minister responsible, Hon Eric Charlton, had received an amendment from the Minister for Primary Industry in the other place, and when he read to this House the reasons for that amendment, the difficulty was that those reasons were diametrically opposed to what the amendment said. That was very smart! Members opposite have really done well! Therefore, that amendment got to the Legislative Assembly and had to be sent back. That highlights that when the Opposition is expected to cooperate with the Government, and is delighted to do so, the Government cannot even get it right. That places in question the role of this House of Review.

I have spoken to the Opposition member who is responsible for our control of that Bill in this place and have told him that is not to happen again. I advise the Government that, in future, all Government Bills will be scrutinised in the same way that we have scrutinised the more significant Government Bills. There will no longer be any sweetheart deals where we agree to the passage of legislation because the Government thinks it is important, non-controversial, or whatever.

Hon Tom Stephens: Because they keep messing it up!

Hon JOHN HALDEN: Yes. The Government could not have messed it up much better than that. That is a disgrace. I will not say any more, because I believe the Opposition member responsible has clearly got my message about that legislation and the necessity that this never happen again. I do not know whether the Leader of the House could ever get the Minister for Transport to change his habits or perhaps talk to the Minister for Primary Industry, but these sorts of situations should not ever happen. It leads to the downgrading of this House. Of course, the actions of the Government in recent weeks make that problem insignificant. There will no longer be those sorts of arrangements.

Order of the Day No 28 is the Consolidated Fund Estimates 1993-94 and related papers. We cannot deal with that matter because the Budget has not come back from the Estimates Committee, and of course it has not passed through the Legislative Assembly. Order of the Day No 29 is the City of Perth Parking Facilities Amendment Bill that I introduced. The Minister for Transport, when he spoke in the second reading on that Bill, guaranteed that the Government would bring legislation into this Parliament that would supersede my Bill. That legislation has not seen the light of day at this time, and it will not, because in essence the Government wanted to support that Bill only to fulfil the conditions of the second reading, and then bury it. The Minister for Transport's words about that Bill were glowing, and his endorsement was superb, but we will not see another Bill that in any way mirrors that Bill that I introduced.

I think it is fair to say that Orders of the Day Nos 30 to 44 are mostly, with one exception, noncontroversial. They relate to the consideration of ministerial statements made in this House. The only item of note in that list is Order of the Day No 36, a motion by Hon Tom Stephens for the appointment of a select committee on the use of north west airports.

Hon Peter Foss: What about Order of the Day No 35? That is significant.

Hon JOHN HALDEN: Bring it up on the Notice Paper if it is so significant! Speak to

the Leader of the House, or is the Minister for Health running the House? Order of the Day No 36 will not come on for debate because every member opposite hates Hon Tom Stephens. It does not matter how important that issue is; members opposite cannot get over the personality issues involved.

Hon Mark Nevill: He is a charming lad.

Hon JOHN HALDEN: Indeed, and he is most unfairly treated by the likes of members opposite. I know that members opposite do not like what I am doing, but I am doing it because it is important. I said earlier that six Bills which had their second reading prior to last Thursday are on the Notice Paper. Only one of those six Bills appears in the top 10 Bills on the Notice Paper, and it is the last of those 10 Bills. Where is the filibustering? Where is the lack of cooperation from the Opposition? I ask members opposite to show me in an empirical way where it exists. Of course, it never existed. The Opposition wanted to get a certain piece of legislation and some other controversial legislation through this House and it used its numbers and the blunt instrument of the guillotine. When one addresses it analytically, the Government is shown to be the fraud that it is. I will not even talk to members opposite because they are such charlatans.

Several members interjected.

The PRESIDENT: Order! The interjections have to cease. The member who is addressing the Chair should be more temperate in the language he is using. He should ignore all the interjections and direct his comments to me. I can guarantee him, as usual, that I will not interject. He will be heard in silence.

Hon JOHN HALDEN: As I said last night when the guillotine was used in the way it was, the Opposition is prepared to debate the Government on the land titles Bill or any other Bill at any time, day or night. If the Government has a problem and it wants to sit in this place for more hours to overcome that problem the Opposition will accommodate it, but it will not be intimidated by the guillotine. The Opposition will do the job that is expected of it in this place.

I can give no better example of what happens when that does not occur than the Horticultural Produce Commission Amendment Bill. What a disgrace! The debate on that legislation reminds me of a Monty Python movie. The Minister was outlining why A, B and C should not be included in the legislation and then he moved an amendment which stated that A, B, and C would be included! That sort of thing will not happen again. I suggest to the Leader of the House that he should speak to the Minister for Transport to try to persuade him to take a certain line. The Minister for Transport has the nerve to suggest that people should take tablets to control themselves; he should take a tablet to ensure that his brain is engaged.

I will refer to the notes which I took when the Leader of the House was speaking about the use of the guillotine motion. His comments are very interesting, based on the events of the other night. He said, "It will enable discussion to take place with the Opposition regarding the management of the legislation of this House." I can assure the House that there was not too much discussion last night. We were told the guillotine motion would be moved and there was no discussion about what time that would happen. When I saw the motion I was absolutely stunned that the debate was to conclude in one and a quarter hours.

Hon George Cash: We did have discussions yesterday.

Hon JOHN HALDEN: I said that the Opposition expected the debate to finish close to breakfast.

The Leader of the House also said, "I'm saying that if the Leader of the Opposition wants to talk, I am more than happy to talk." Hon Graham Edwards was the Leader of the Opposition then.

Hon George Cash: Quite so, and then you sacked him.

Hon JOHN HALDEN: Talking on that occasion meant nothing. There was to be no consultation or cooperation on the Government's part. Discussions can take place, but at

the end of the day the guillotine motion will be moved and that is the end of it. I recall the Leader of the House saying, "There will be no need for the Leader of the Opposition to run into the Chamber and say that the Government has stopped consulting with him." I know that he did not consult much with him yesterday and I certainly did not have too much influence. The Leader of the Opposition also said, "The present Leader of the Opposition is not a person who seems to want to consult, discuss or cooperate." Fancy the Leader of the House making that statement, especially when one considers the events of yesterday and the second reading debate on the Mabo legislation. The Leader of the House said, "For the orderly running of the House Hon Graham Edwards will find that in the end, we need to work together." I could apply that statement to the Leader of the House. He also said, "We are more than happy to sit down with the Opposition and talk about programs of time management." I did not see the time management program last night until after the Leader of the House had actually moved the appropriate motion. What a sham!

A very interesting comment that the Leader of the House made when speaking about the use of the guillotine motion was, "The opportunity will exist on the carriage of this motion for a Minister to be able to table a program in respect of the various stages of a Bill, but the motion does not preclude discussions with the Opposition." That is when I said that it does not necessarily mean that there has to be discussion or that it has to be fruitful. The discussions have not been fruitful. The Opposition is just told what will happen and that is it. The Leader of the House said "When I want to negotiate with other members of the Opposition I find they are quite happy to sit down and discuss the matter. In fact, I want to encourage the orderly management of business through this House." I did not say that, the Leader of the House said it. He also said, "All the talk in the world about the Opposition wanting to discuss, consult and cooperate fall on deaf ears because the Leader of the Opposition is not dinkum." Who is dinkum? It is all summed up by the saying that actions speak louder than words. The Opposition's real fear about the Leader of the House not wanting to consult it has come to fruition. There is not a scintilla of doubt that what the Opposition said would happen, has now happened.

I also recall the Leader of the Opposition saying, "The Government is more than happy to discuss, consult and cooperate with the Opposition, but it is a two way street. In the end there is such a thing as goodwill." Can members imagine him talking about goodwill? I have to have goodwill not to be bilious at the thought of it. The Leader of the House then went on to say, "When the Leader of the Opposition works out what that is, he will be able to negotiate with me and Hon Eric Charlton in the same way that Hon Joe Berinson used to negotiate." Hon Eric Charlton is the Minister for muck ups. I can assure members that Hon Joe Berinson would never have been a party to what has taken place in this House. He would not have given this Government, when it was in Opposition, 45 minutes' notice of a second reading debate on a Bill, for which the responsible Minister had made his second reading speech the previous day. The previous Government would never have debated 36 clauses of one of the most controversial pieces of legislation presented to this place in one minute.

Hon Peter Foss: For the financial institutions legislation we did not even have the Bill.

Hon JOHN HALDEN: The Minister agreed with it.

Hon Peter Foss: I did not.

Hon JOHN HALDEN: The then Opposition did.

The Leader of the House said, "The time management the Government is proposing would enable discussion and consultation with the Opposition; I think it is a very positive move." History certainly will not recall that. It was the most brutal act this House has ever known. I am sure that the people in the community will have a very different definition of the meaning of "positive" after yesterday's debacle.

The Leader of the House then said, "If the Leader of the Opposition wanted to consult, the Government is available. Quite clearly these are responsible motions."

Hon George Cash: Do you know where my office is?

Hon JOHN HALDEN: Yes, does the Leader of the House know where mine is?

Hon Tom Stephens: You had better take a Hansard reporter with you.

Hon George Cash: Do you know where I sit?

Hon JOHN HALDEN: Yes. I repeat that the Leader of the House, when he moved the use of the guillotine motion, said it was a responsible motion. He said that the Opposition was filibustering and blocking the Government's legislation. However, there is no evidence of that on the Notice Paper and there is no evidence of consultation and cooperation by the Government with the Opposition.

Hon W.N. Stretch: You are waffling now when we could be debating legislation.

Hon JOHN HALDEN: Hon Bill Stretch is a silly little man.

The PRESIDENT: Order!

Hon JOHN HALDEN: Last night there was no consultation and the Opposition was given five minutes' warning that a time management motion would be moved.

The Leader of the House also said, "The guillotine clearly provides the opportunity for the Government and Opposition to engage in meaningful discussions on the progress of legislation though this House."

Several members interjected.

The PRESIDENT: Order! I spoke last night about the noise emanating from Ministers on the Government's bench, who ought to be setting some sort of reasonable standard for this place. Today they are carrying on from where they left off last night. The rules apply today as they did yesterday. I do not want to sound repetitive, but I must keep reminding members that in this place people are allowed to say what they have on their minds and they are allowed to say it without interruption. It is not compulsory to like it and it is not compulsory to agree with it, but it is compulsory to obey a few very simple rules, one of which is to keep quiet while a member is addressing the Chair. It is not always possible, and I do not come down on everybody when they interject from time to time when it has something to do with the fundamental matter of what the person is speaking about, but carrying on with interjections simply because members do not like what a member is saying is starting to get on my nerves. I do not know whether I am getting too old, but the point I am making, honourable members, is that this is what we do for a living. We all have to work together, and we should all accept the need to conform to the rules which we make. The standing orders were not forced upon us by some other organisation but were agreed to by people in this place, and if we are to start ignoring them we have gone further down the track to anarchy than I care to think about.

Hon JOHN HALDEN: Mr President, may I concur with your comments about the standard of the Ministers in this House?

The PRESIDENT: You do not have to do that.

Hon JOHN HALDEN: I am only too delighted to, Mr President. The situation last night needs to be gone through again. The time allowed for debate on clauses 11 to 46 of the Land (Titles and Traditional Usage) Bill was one minute, and the schedule and consequential amendments, which entailed 36 clauses relating to seven other Bills, was 20 minutes. The worst thing about that, Mr President, is that those clauses were amended in the other place and not debated either. The tragedy for the Opposition is that Hon Mark Nevill spent many hours looking at those consequential amendments, because he has an expertise in that area, and, of course, the Opposition wanted to use it. It might have been nice if the Government had been able to consider that expertise. After researching the matter for a number of days, he spent all day writing notes for the speeches that he wanted to make, and then the Government guillotined the whole matter in 15 minutes. None of those 40-odd pages of the Bill has been debated in this Parliament, although the Bill becomes law today. We had then the debate on the title of the Bill taking five minutes; the final adoption taking five minutes, and the third reading taking five minutes. In the third reading the Opposition wanted to make the point about

the legislation the Queensland Government introduced into the Queensland Parliament today which is complementary to the Federal Government's legislation. I would have thought that most appropriate in the third reading but, no, one cannot say too much in five minutes. The point was made by one of the Opposition backbenchers that the Opposition had a choice: It could have a member make a few minutes' speech or it could divide and vote on the issue. That is how fine the line was. What an outrageous atrocity to the processes of democracy. Members would probably get better choices in Upper Volta than in this Parliament.

Mr President, I would never want to criticise or reflect on you but, Sir, by virtue of that standing order, which said that the matter had to be finalised at 15 minutes past one, you breached the sessional order because you did it at 19 minutes past one. That is how savage it was. The Parliament could not even get through dividing and one minute speeches in time to fit the absolute stringency of that stupid motion. I do not reflect on you, Sir, because you had no choice other than to do what you did, but that is how stupid it was. The actions last night of this Government mean that the Parliament's ability to perform its role is curtailed. It means that the fourth estate will have to become the Opposition.

Also, the Mabo Bill that we were debating cuts down on the other avenue of scrutiny of this Government's Bills, and that is of course the Supreme Court. The Mabo Bill cuts the ability of the Supreme Court to correct administrative abuses and improper, questionable exercises of ministerial discretion and puts it in a position where the Government must always win regardless of the rule of law. That presupposes the Government administration will be neutral and provide aggrieved citizens with proper and effective access to the courts to correct the abuses or misuses of the State power. What this Bill does is shunt the Supreme Court to one side and open up the whole area of native title and traditional usage almost to the Government's whim. That is not a sound basis on which any democratic society should expect its elected representatives to act, without the thought that they are dominated by self-invested interests. The Parliament is being closed down by this Government, and the Supreme Court's ability to scrutinise the Government is limited by that piece of legislation. Now we have only one saviour - the fourth estate. No matter what the Government says or thinks, all we are left with is the Press. I do not necessarily think that is such a bad thing, but I have always thought that the democratic processes and their checks and balances implied the fourth estate, the Parliament and the courts. Yesterday we did away with two of those in this place, which is really an outrage.

The commencement of the Mabo legislation is by Royal assent. We could have debated that Bill, as the Opposition was prepared to do, until six o'clock tonight with no breaks. The Opposition would have been quite happy if that had been the Government's desire, although it would not have needed that length of time, and the Royal assent could still have been given to the legislation today, as it will be. The Government was not prepared to do it because it did not want its legislation scrutinised. There would have been no difference whatsoever, but those opposite wanted to go home to bed happy in the knowledge that they had the numbers. Members opposite did not want us to attack the legislation, to probe it or expose the controversial clauses within it, and they did not want us to do any damage to the Government or the ego of the Premier or any other Minister in this place. They wanted to go home to bed, but we did not.

The Government can use the guillotine as many times as it likes, but we assure it that we will make every effort possible to go through legislation clause by clause in an appropriate way. Last night a Government member told me that the difficulty was that we did not use Hon Tom Stephens to represent our cause but had the temerity to put other people forward. I will have to chastise Hon Kim Chance for the second time today for wanting to have input into the Bill. Fancy that as a criticism - that we wanted to have two, three, four or five speakers? The Government will face this Opposition of 14 people getting up and down and exposing the Government's stupidity as often as is possible. The Opposition will not get to a situation where it is only allowed to use one lead speaker to put forward its views.

The Leader of the Government gave an assurance that the guillotine would not be as severe as that used in the Legislative Assembly. However, the Bill was debated in the Legislative Assembly in Committee for 20 hours and 21 minutes before the report of the Committee was adopted. On the other hand we debated it for 14 hours. Members should bear in mind we also wanted to debate that extra 20 pages of amendments given without notice to the Opposition in the other place. When Hon Joe Berinson, who has been referred to in this debate, was Leader of the Government, we did not have the numbers but we never resorted to these tactics. I can remember the filibustering of Hon Peter Foss, Hon Derrick Tomlinson and Hon Reg Davies when we dealt with the Port Kennedy Development Agreement Bill. Debate on the short title went on for days. I was in the unfortunate position of having to listen to the inane remarks of three, if not four or five, Opposition members. We did not use the guillotine - we could not because we did not have the numbers -

Hon Tom Stephens: If we did we would not have.

Hon JOHN HALDEN: We could have attempted to gag debate, but we did not. During debate on some of those difficult pieces of legislation I approached the Leader of the House believing I had the support of the one vote that was critical to the use of the gag, but he would not let me use it.

In conclusion it is now the case that the mentally impaired are running the impaired institution. If members opposite want a definition of "impaired", the 17 of them might look at the Mabo legislation where there is a very good definition. I think members opposite looked at the Bill and did not want to debate it. All they wanted to do was guillotine this legislation. There is no doubt that the lunatics are in charge of the asylum.

HON TOM STEPHENS (Mining and Pastoral) [3.11 pm]: I support the motion moved by the Leader of the Opposition. In doing so, I indicate that there is another way; that is, by running this place to a format of consensual Government.

Hon George Cash: You do not want to do that!

Hon TOM STEPHENS: We do. We are interested in accommodating all the participants in this parliamentary process. In the 10 years in which we were in office we participated in Government by consent, firstly with the people and then with this Parliament. We accommodated the various members of the Chamber in both this and the other place by ensuring that people's viewpoints were heard and that they did not face the guillotine or the gag or any other device to silence them. Unfortunately, this is what I hope is only a breaking-in period for this Government. As it has come into the Parliament with the numbers in both Houses, it may be arrogantly under the impression that it does not have to listen to the viewpoints of the various members of this Chamber or accommodate them in the various structures of the Parliament.

The committees of the Parliament, which are dominated by Government members, are a classic example of that. One example of this Government's mismanagement is the membership on the Select Committee into the Western Australian Police Service. The Government insisted on a Liberal member being in the chair, that only one Labor member could sit on it and that the Independent, ex-Liberal member is to join the other three Liberals. The effect was to compound the problem created in this Chamber and to force the Opposition into almost a death roll with the Government where the two sides lock horns and fight to the death over the processes and formats of the House.

However, there is another way. I have watched the arrival of the new members of this Parliament, particularly Hon Jim Scott. I have been pleased to see that despite what has been unleashed on this Chamber, he at least has continued to demonstrate a real commitment to and interest in the parliamentary processes. He has tried to engage in the debate as best he could within the constraints that have been shoved onto the House. I acknowledge that so often Opposition members beat him to the call because of the forceful way they jump to their feet. The end result is that he does not get the call because the gag or guillotine is in place before he can speak. I regret that, but it is one of the unfortunate new realities in this Chamber. I have also watched with interest the



arrival of new members on the other side of the House and I have considerable sympathy for them. I do not know them too well yet.

Hon George Cash: They are very nice people; you should get to know them. You must spend more time in the House.

Hon TOM STEPHENS: I would like to hear from them in the debates in this Chamber. I want to know what makes them tick. I see Hon Murray Criddle, who seems to be a nice bloke.

Hon George Cash: He is a very successful farmer and a gentleman.

Hon TOM STEPHENS: He may well be. Physically, he reminds me very much of our former Deputy Leader of the Tonkin Government, David Evans. He seems to have his gentle ways and may also have his fine mind. However, the constraints the Government has on this House mean I will not have the benefit of hearing what Hon Murray Criddle has to say about any of the legislative programs the Government is ramming through his House.

Hon George Cash: I am sure he would be pleased to take afternoon tea with you this afternoon.

Hon TOM STEPHENS: I want to hear him in the House; I am looking forward to that. I am also dying to hear Hon Barbara Scott on the other side.

Hon George Cash: A delightful lady.

Hon TOM STEPHENS: Hon George Cash may be right. I have no way of knowing that because, through the gag, he has denied her the opportunity of contributing to the debates in this place. I have not had the opportunity of appreciating that fine mind of which Liberal Party members are no doubt proud. I am waiting for the Scott report which I believe the Minister has and from which we have not benefited.

Hon B.M. Scott: It is coming.

Hon TOM STEPHENS: It is coming? So is Christmas! I am waiting to hear what people like Barbara Scott have to say on the legislative program which the Government is ramming through this place. In the absence of hearing from her, except by a vote, I assume that there may be some dissent on some of the issues.

Hon George Cash: Hon Barbara Scott makes her position very clearly understood to all.

Hon TOM STEPHENS: Let her do it in this House. Then we can receive the benefit of her wisdom which could perhaps be a source of erudition for members of the Opposition.

Hon George Cash: If you guys stopped talking for a short time, perhaps some of our members could speak.

Hon TOM STEPHENS: The problem seems to be that the Government has garrulous members on the front bench from whom we have heard too much; for example, Hon Peter Foss who jumped into the debate and caused most of the problems last night, which eventually caused the guillotine. If the Leader of the House had been able to keep his front bench in check -

The PRESIDENT: I remind the honourable member of Standing Order No 80.

Hon TOM STEPHENS: Thank you for reminding me of that standing order Mr President.

The PRESIDENT: You expressed a great deal of interest in it the other day.

Hon TOM STEPHENS: I remember the standing order. Mr President, I will address the Chair. I encourage the Leader of the House in the remaining weeks of this year to pull back from the style that the Government has adopted in this Chamber to date. There is another way.

Hon George Cash: If you sit down and give me a few minutes to speak -

Hon TOM STEPHENS: The Minister will recant of all the things that he has done?

Hon George Cash: I will reconfirm the earlier things that I have said. I will be delighted to cooperate and consult.

Hon TOM STEPHENS: We will give the Minister that opportunity.

Hon George Cash: There are not many minutes left.

Hon TOM STEPHENS: I look forward to hearing from the Leader of the House in this place.

Hon John Halden: He has a lot to answer for.

Hon TOM STEPHENS: He does have a lot to answer for. Earlier today, I had a conversation with a member of the Government. I was expressing my concern about the way in which things have developed in the Chamber this year. I suggested to that member that the temperature of the debate has now risen and the political stakes have escalated to the extent that the Government considers it would suffer a loss of face if it were to pull back from the use of the devices it has put in place.

Hon George Cash: You enjoy the cut and thrust of this place, don't you?

Hon TOM STEPHENS: I enjoy the cut and thrust.

Hon Doug Wenn: But not of the guillotine.

Hon TOM STEPHENS: That is right. The guillotine is far too brutal a cut. There is another way. The Government could adopt the style of Hon Joe Berinson who, without the numbers in this place, adopted a conciliatory approach.

Hon George Cash: Do you know why? Hon Joe Berinson, Hon Eric Charlton and I used to sit around that table and work out an orderly legislative program. We worked closely together.

Hon TOM STEPHENS: That is that is not what Hon Joe Berinson used to say about the now Leader of the House.

Hon George Cash: We had the numbers. I can assure you it was a fact that Joe Berinson appreciated it.

Hon TOM STEPHENS: The numbers used to escape from under the leader and, as a result, Mr Berinson was able to continue to manage the processes of the House. The leader was not able to keep his members in line. As a result, with his formidable style, Joe Berinson was able to adopt a consensual approach to the running of this place.

Hon George Cash: Cooperative.

Hon TOM STEPHENS: He was cooperative.

Hon George Cash: We worked together.

Hon TOM STEPHENS: The Leader of the House has never demonstrated that spirit of cooperation that Joe Berinson demonstrated as Leader of the Government in this place.

Hon George Cash: I have made the point even on radio today - it could have been when you and I were on the same program - that I am hoping now that there has been a change in leadership in the Opposition there will be a change of attitude and we will be able to consult, cooperate and get on with the business.

Hon TOM STEPHENS: There is no need for a change of attitude on the part of the Opposition. It would not matter whether Hon John Halden or Hon Graham Edwards were Leader of the Opposition in this place; the problem is with the Leader of the House. The problem is not with his members; they are all reasonable people.

Hon Doug Wenn: What do you mean?

Hon TOM STEPHENS: Well, many of them are reasonable people. I know that the parliamentary team that Hon George Cash leads would like to see this place operating in a better way. However, as long as he adopts the bully boy style that he is adopting today, we have a substantial problem. Members opposite might have noticed that many of the Opposition team are wearing on their lapels this week a sticker which was supplied to us by the member for Perth, Diana Warnock.

Hon George Cash: You are the only one with it on.

Hon TOM STEPHENS: I am the only one left with it on. The rest of them must have fallen off.

The PRESIDENT: Order! Let us stop the interjections. For the benefit of the member, I point out that, in days gone by, he would not have been permitted to wear that sticker.

Hon TOM STEPHENS: Mr President, I appreciate the increasing leniency of the House.

Hon John Halden: That means Hon Ross Lightfoot would not be able to wear his RSL badge.

Hon TOM STEPHENS: This is a badge that I wear with pride this week in the House because it demonstrates my commitment to opposition to the guillotine. It would be an odd irony if the House were to guillotine the use of a badge that protested about the guillotine.

Hon George Cash: Are you going to give me any time to reply before 3.30 pm?

Hon TOM STEPHENS: Absolutely. We will give the Leader of the House leave.

Hon George Cash: I have said that we are starting another matter at 3.30 pm.

Hon TOM STEPHENS: If the Leader of the House does not interrupt any more, I will not delay him from replying. I believe that another member on this side of the Chamber wishes to speak to the motion. The Leader of the House might extend him the courtesy of being heard.

Hon George Cash: No way. I said we are going on to something else at 3.30 pm.

Hon TOM STEPHENS: I am sorry about that.

The PRESIDENT: Order! If the member will concentrate his remarks through me and address the proposition that Hon John Halden moved, we might get to the end of it.

Hon TOM STEPHENS: The proposition moved by Hon John Halden deals with the use of the guillotine, which is the issue on which I wish to focus. As long as the guillotine is in place and this Government takes no notice of protests of members on this side of the House about it, we will be locked into a death roll on these issues. There is another way. The guillotine is a very famous symbol of oppression from France. It was erected and used most infamously during the time of the French Revolution. However, when the guillotine was finally removed from its position in Paris, what sprang up in its place? The Place de la Concorde. That is what could happen in this House if the leader would remove the draconian sessional order that puts in place the guillotine. Just as in Paris, there is now this opportunity for concorde - peace and harmony in the French community that flowed from the removal of the guillotine - in this House if we could get back to a style of consensual operation. This place too can be a Place de la Concorde.

Hon P.R. Lightfoot: You are Robespierre, I suppose?

Hon TOM STEPHENS: No, that is the role of the Leader of the Government. All of us would have an opportunity to participate in the parliamentary process. All members would have an opportunity to contribute to the House and to the committees of the House so that we have better processes of parliamentary democracy that you, Mr President, have advocated with passion, as you have for the years in which you have served the Commonwealth Parliamentary Association and presided over this House. That is a proposition that no-one can gainsay, although some do from time to time in the heat of the moment. In that context, we know that we could have again a Chamber that could usefully contribute to the parliamentary tradition, the best traditions of the Westminster system in which all of us can ensure that better legislation comes out of this Parliament.

HON GEORGE CASH (North Metropolitan - Leader of the House) [3.27 pm]: I regret that Hon Tom Stephens took as much time as he did. Although it was his entitlement, I regret that because it allows me only two and a half minutes to respond. As the member knows, the Government intends to move onto other business at 3.30 pm.

Hon John Halden: You don't have to.

Hon GEORGE CASH: I say again very clearly to the Leader of the Opposition that I am more than happy that we enter into some form of consultation, that there be cooperation and that we extend each other the normal courtesies that one would expect between a Government and an Opposition in this House. The Opposition has deliberately set out to frustrate, waste time, filibuster and to obstruct the Government business in this House.

Hon John Halden: The Notice Paper does not prove that. That is fallacious.

Hon GEORGE CASH: I will not have much time to advance my argument. However, being on my feet at 3.30 pm, at least I will be able to continue next Tuesday. Members should remember the old saying - as you sow, so shall you reap. The reason that the guillotine has been introduced into this House and the reason that we have time management is directly related to the manner in which the Opposition has been carrying on in this House over recent weeks. If the Opposition wants to sit here all night, it does not worry me at all.

Hon John Halden: We will take you on.

Hon GEORGE CASH: At times, members of the Opposition get very irritable when they have to sit long hours. Hon Sam Piantadosi should not shake his head; he becomes very irritable at late sittings.

Hon Sam Piantadosi: What do you mean, Mr Cash?

Several members interjected.

The PRESIDENT: Order!

Hon GEORGE CASH: In the time available to me -

Several members interjected.

The PRESIDENT: Order! I have called order three times. Hon Tom Butler is continuing to interject, and Hon Doug Wenn is nearly as bad. Members must stop this interjecting.

Hon GEORGE CASH: I am more than happy to sit down with the Leader of the Opposition and discuss the flow of business through this House - no trouble at all.

[Debate adjourned, pursuant to Standing Order No 195.]

## **CRIMINAL PROCEDURE AMENDMENT BILL**

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon Peter Foss (Minister for Health), read a first time.

### *Second Reading*

**HON PETER FOSS** (East Metropolitan - Minister for Health) [3.32 pm]: I move -

That the Bill be now read a second time.

The Criminal Procedure Amendment Bill incorporates amendments to the Bail Act, the Child Welfare Act and the Crime (Serious and Repeat Offenders) Sentencing Act. The coalition's law and order and law and justice policies contain a commitment to restore a strong focus on juvenile crime. The coalition in its election pledge gave a strong commitment to address this issue constructively. The policies emphasise early intervention and the diversion of juveniles away from the criminal justice system. However, the Government will not ignore the community's need for protection from repeat offenders.

The recent spate of dangerous motor vehicle chases resulting in the deaths of innocent victims, burglaries and unprovoked assaults on vulnerable victims, such as senior citizens, has prompted wide community outrage. The public feels unsafe and has little faith in the justice system. What is disconcerting is that many of these offences are committed by a small group of recidivist offenders, and in a number of cases are

committed while on bail. The State Government, in line with its pre-election commitment towards restoring law and order in Western Australia, places before the House the Criminal Procedures Amendment Bill. These amendments represent only part of the Government's legislative strategy for criminal justice on behalf of the people of Western Australia.

**Amendments to the Bail Act:** This Act was assented to in November 1982 but was only proclaimed to come into operation on 6 February 1989. Although the Bail Act was the first piece of legislation to provide a comprehensive code to deal with all aspects of bail, it has been subject to many procedural difficulties. In part the delay between assent and enactment was caused by the significant training requirements for all those officers responsible for bail throughout the State. It is clear that although the Act granted a child a qualified right to bail, some of the conditions governing the release of a child to bail were inadequate. Subsequently they have not been used to their fullest effect to promote the interest of the child, his or her family or the community. This is clearly manifest in the phenomenon of the "revolving door" at the Children's Court. This term was coined to describe the situation whereby a small number of juvenile recidivists show blatant disregard for the law by committing other offences while on bail.

There is growing concern that allowing juveniles bail on their own undertaking undermines parental control and contributes to offending behaviour. Offences such as unauthorised driving of motor vehicles are likely to occur when juveniles find themselves stranded without transport. This is further exemplified in the following case taken from the records of the juvenile justice division of the Ministry of Justice. A youth aged 15 years was released from Longmore on 16 August having served a detention sentence. On 26 August he was charged with stealing a motor vehicle and for not having a driver's licence. He appeared in court and was remanded till 13 September for a conditional release order report and was released on a personal recognisance. While on bail he stole two more motor vehicles on separate occasions and was also charged with wilful damage. When he appeared in court on 13 September on all of these charges, the magistrate expressed concern at the number of offences committed while on bail and sentenced the boy to a further period of detention.

The Government is intent on ensuring that this pattern of repeat offending, which is often associated with juvenile offenders, is broken. Further, the role and responsibility of parents and significant adults for children must be strengthened and these amendments can be seen as the first step in this process. These amendments will give parents support in regaining disciplinary control over their children. It will also have the added effect of providing an early opportunity to recognise and support a dysfunctional family and/or child.

A study conducted at the Perth Children's Court during a six week period in January-February 1993 revealed that some 54.8 per cent of offenders who entered into new bail undertakings during the period were granted personal recognisance. During this time a very high proportion, some 7.9 per cent of all appearances, involved breach of bail actions. Although the majority of breach actions were for non-appearance - 94 per cent - the study showed that 46 per cent of offenders who appeared in court on a breach of bail charge had committed new offences during the period they were released on bail. Of the 46 per cent of juveniles who re-offended while on bail, 41 per cent were charged with prescribed offences, as described in schedule 1 of the Crime (Serious and Repeat Offenders) Sentencing Act.

The Government intends that the amendments to the Bail Act contained in this Bill will prohibit the regrant of bail to an offender who is charged with committing a further serious offence while already on bail for a serious offence, other than in very exceptional circumstances. A serious offence is defined in the Bill by the inclusion of a new schedule 2 to the Act. Schedule 2 consists of a list of offences as provided for in the Criminal Code, the Bush Fires Act and the dangerous driving provisions of the Road Traffic Act.

The amendments will also provide that any child released to bail will require the written undertaking of a responsible adult to ensure the provision of supervision and support and

compliance by the child with the conditions of the bail undertaking. The judicial officer or authorised officer will have the option of releasing the offender on his or her own recognisance in those cases where a juvenile has attained the age of 17 years and, in the opinion of the judicial officer or authorised officer, has sufficient maturity to live without the guidance and control of a parent or guardian, and has been living independently in a manner generally acceptable to the community. This provision acknowledges that there are juveniles in the community who are children by law but have reached an acceptable level of maturity and independence. These amendments, while closing the revolving door, will also reinforce to juvenile offenders and those adults responsible for their wellbeing, that a release to bail is a process in law that must be viewed very seriously and treated with respect. Available records suggest that juvenile offenders do not fully appreciate the concept of bail. The amendments should also dispel the notion held by some juveniles that a release to bail is a licence to re-offend. For those juveniles who are homeless, or whose family is not able or prepared to provide support, the Government intends to establish a supervised bail program. This will consist of a community-based bail supervision program staffed by paid sessional workers and volunteers. It will be the responsibility of the paid workers and volunteers to undertake the supervision and support role for juveniles released on bail and to ensure their compliance with the bail conditions.

The main thrust of the amendments is to change the principles governing the grant or refusal of bail. The amendments provide that there will now be a further requirement that any child released to bail can only be so released if a responsible person undertakes in writing to ensure that the child complies with conditions of the bail undertaking. The responsible person has been defined to mean a parent, relative, employer, or other person who in the opinion of the judicial officer or authorised officer is in a position to both influence the conduct of the child and provide the child with support and direction. The amendments also provide that, with the exception of a financial commitment, the responsible person will have the same rights and obligations as a surety under the principal Act. However, a monetary surety can still be imposed if the court considers it appropriate.

Part D of the schedule, which deals with conditions which may be imposed on a grant of bail, is also amended to provide for additional conditions aimed at ensuring compliance with the bail undertaking in the case of the child defendant. These are curfew conditions, conditions as to non-association, conditions of non-attendance - for example, prohibiting a child from frequenting certain places; and compulsory attendance at school or other educational institutions.

The Government is confident that the amendments to the Bail Act will achieve the objectives of this Bill, which are to close the revolving door, ensure that a child is adequately supervised in relation to his/her bail undertaking, ensure the child defendant and the adult giving the undertaking understand the seriousness of a release to bail, and reinstate public confidence in the justice system.

**Amendments to the Child Welfare Act:** The Government is committed to ensuring that parents are more responsible for the behaviour of their children. This commitment is not, and cannot be, manifest in legislation alone. The Ministry of Justice is working to encourage more parental involvement and responsibility in preventive programs; diversion programs - for example, the recently established juvenile justice teams which encourage an active role for parents of minor offenders in negotiating an outcome to a mediated settlement and supervising it; the management and supervision of court orders - for example, requiring parents to be involved in some aspects of community service order supervision; and even in detention centres with parents becoming involved in the case planning process.

Increased parental involvement in the juvenile justice system will not be achieved overnight. However, it is imperative that the current system, where many parents can abrogate their responsibility to their children when they get into trouble with the law, should stop. For those parents who have always wanted to be involved, these amendments will serve to support and encourage them. It is this Government's intention

to start this process now. I can foreshadow that there will be further legislative changes in this area when the new young offenders Act is introduced to the House early in 1994.

It has become clear to the Government that use of the power contained in section 34E of the Child Welfare Act, to order a parent to pay a fine in lieu of the child, has been severely restricted in court by the phrase "conducted to the commission of the offence by neglecting to exercise due care or control of the child". The court in effect must find that the degree of failure to exercise due care and control of the child actually conducted - that is, served to promote or contribute to - the child's law breaking behaviour. This amendment will give the court the power to fine or order compensation, restitution or costs against the parent or guardian of the child offender without having to make such a finding against the parent. In a sense this amendment brings the Western Australian legislation closer to new legislation introduced in Britain recently whereby the court can fine a parent/guardian in lieu of the child without making any finding against the parent/guardian. The British legislation contains a duty of the court to fine or order compensation against the parent/guardian when the child is aged under 16 years. This power becomes more discretionary when the child involved is over 16 years of age. Of course, a number of exceptions would arise; for example, when the child is temporarily not residing with the parent or guardian.

The Government's intention is that this amendment be applied more rigorously the younger the child. It is a community expectation that children be in the proper care and under the proper control of a parent or guardian. Some exceptions may be involved based on information supplied to the court. Where the child is over 17 years of age and living in a stable, independent, alternative environment with parent/guardian approval, it would be inappropriate for the court to order the parent/guardian to pay a fine or compensation for an offence committed by a child. This amendment is only one part of a comprehensive strategy to support and encourage parents to be more responsible for their children's behaviour. It will be accompanied by an educational campaign, as well as concerted efforts by those officers working with young offenders and their families, to involve parents, guardians, relatives and significant adults in decisions regarding their children.

**Amendments to the Crime (Serious and Repeat Offenders) Sentencing Act:** This Act is clearly one of the most controversial pieces of legislation to be introduced in many years. At its introduction the then Premier stated that the Bill "provides a clear and precise means by which hard core offenders can, firstly, be identified and, secondly, be removed from the community so that the public can be protected". The third aim was that rehabilitation was to be effected by subjecting the offenders to "intensive and more effective programs of rehabilitation". Clearly, none of these aims has been achieved.

I deal with the second aim first: In my discussions with numerous citizens throughout the State genuine concern was evident that these serious repeat offenders had not been "removed from the community so that the public could be protected". The fact that only one juvenile and one adult have been sentenced under the Act in the 19 months of its operation is evidence in itself. Its deterrent effect can be equally dismissed. The number of juvenile offenders who will be eligible to be dealt with as a serious repeat offender on their next conviction for a prescribed offence has not decreased on a month by month basis over the past 19 months; in fact, it has increased slightly.

I turn now to the first of the objectives of the Act outlined in its second reading speech; namely, that "it provides a clear and precise means by which hard core repeat offenders can be identified". Clearly, the criteria for determining whether an offender is a serious repeat offender in terms of the Act are able to be manipulated so that the number of conviction appearances can be reduced by accumulating appearances into a single appearance in which the defendant pleads guilty. This results in one conviction appearance which could consist of numerous prescribed and violent offences committed days, and in some instances months, apart which clearly did not emanate from one set of facts or one crime spree. This situation is further compounded as the Children's Court, under the Child Welfare Act, does not have to record a conviction unless the sentence passed is one of detention.

The whole question of the recording of Children's Court convictions will be addressed in the proposed young offenders Bill to be introduced to the House early in 1994. The proposed amendments more clearly identify the time span in which prescribed offences can be included to enable the court to deal with them as one conviction as defined in the legislation.

[Quorum formed.]

Hon Tom Helm: It is a disgrace. It is the Government's Bill.

Hon George Cash: This is not cooperation, and members opposite complain.

Hon PETER FOSS: Specifically, convictions for prescribed offences will be regarded as separate convictions except where the offences, first, were committed within a period of 24 hours and, second, arose out of one set of facts. This will equally apply to violent and general offences as specified in the Act.

A hypothetical example will illustrate the difference in the way the criteria for eligibility will change with these amendments: Suppose a juvenile committed two prescribed violent offences on Sunday; let us say they emanate from the same high speed chase. He is arrested on the Sunday night and when he appears in court on Monday, he pleads not guilty and is remanded to a certain date two weeks hence. He is released to bail and commits another prescribed offence - unrelated in any way to the previous one - and pleads not guilty, and again is remanded to the same date as previously mentioned. Again he is released to bail - however, that will not happen following the passage of the Bail Act amendment mentioned previously. On the said court appearance the offender pleads guilty, and although sentenced for three prescribed offences, has only one conviction appearance recorded for the purposes of the Crime (Serious and Repeat Offenders) Sentencing Act.

*Sitting suspended from 3.45 to 4.00 pm*

**[Questions without notice taken.]**

Hon PETER FOSS: Under these amendments this offender would have one conviction recorded for the two offences which occurred on the Sunday - as they occurred within a 24 hour period and emanated from the same incident - and another conviction recorded for the offence on the Tuesday. This simple hypothetical example clearly shows that the amendments will ensure that multiple convictions, where the offences relate to entirely different matters, will be recorded for the purposes of the Crime (Serious and Repeat Offenders) Sentencing Act. This will ensure that the intent of the Act - namely, to identify and deal with repeat offenders - is applied in full.

A preliminary analysis of the data which lists those offenders eligible to be dealt with under this Act at their next court appearance indicates that the application of these amendments will significantly increase the number of offenders who could be dealt with under the Act. Data indicates that 17 juvenile offenders are currently eligible to be declared a serious repeat offender on his or her next conviction in court for a violent prescribed offence. A study of all juveniles who have two or more previous prescribed violent convictions indicates that up to 48 of these offenders may be eligible for sentencing as repeat offenders under these amendments.

The third objective of the serious and repeat offenders Act that the then Premier outlined in the second reading speech related to more effective rehabilitation. However, because these offenders have not been effectively dealt with under this legislation, they have not been in detention for sufficient time to allow rehabilitation programs to be effective.

Other amendments to the Act relate more to procedural matters as well as some changes to offence eligibility; these include -

A clearer definition of the Act's relationship with other legislation;

the removal of paragraphs (c), (d), (e) and (f) of section 318(1) of the Criminal Code - dealing with serious assaults - from those offences defined as prescribed offences under schedule 1, part 2 of the Crime (Serious and Repeat Offenders)



Sentencing Act. These offences have been described in various reports published on the legislation as the ones most able to be manipulated by the police, and ones which generally do not involve issues of community protection;

it will allow the court discretion regarding whether offences under the Criminal Code outlined in section 317 - relating to assaults occasioning actual bodily harm - and paragraphs (a), (b) and (g) of section 318 - relating to serious assaults - should be recorded as prescribed offences depending on the circumstances and nature of the offences. These amendments relate to concerns expressed regarding the scope of the offence categories in that they can range from a playground fight to a street mugging or vicious assault. The intent is to allow the degree of aggravation, the circumstances, the nature of the assault and the nature of the injury incurred to influence the decision of the court regarding whether the offence should be recorded as a prescribed offence;

it will provide for retrospectivity in the commissioning of the offence. The amendments provide for a conviction to be counted whether the offence was committed before or after the commencement of this Act. The amendments further specify that those offences removed from schedule 1, part 2 are not to be counted if the conviction occurred before the commencement of this Act. Finally, these amendments clarify the status of the offences contained in section 317 and the remaining subsections of section 318(1) of the Criminal Code by ensuring that if convictions for these offences occur after the commencement of this Act, they are to be counted as convictions only if the court so directs;

it will allow for the defendant and the chief executive officer to seek review of a sentence imposed under this Act;

it will allow for the Act to be extended for three months to June 1994. This will allow the young offenders Bill and the sentencing Bill to be introduced prior to the expiration of this Act; and

it will clarify the issue of the tabling of reports to Parliament, particularly when Parliament is not sitting.

In summary, the coalition Government is determined to restore confidence in the criminal justice system. The amendments before Parliament today go part of the way towards that process. The sentencing Bill and the young offenders Bill, which will be introduced into the House next year, will consolidate and strengthen these reforms. I commend the Criminal Procedure Amendment Bill to the House.

Debate adjourned, on motion by Hon Cheryl Davenport.

### **MOTION - URGENCY**

*Free Speech, Suppression of; Health Department, Alleged Intimidation of Nigel Beckett*

Debate resumed from 30 November.

**HON PETER FOSS** (East Metropolitan - Minister for Health) [4.38 pm]: My concern about this matter is that it could have been looked into had the member indicated some concern, and we could have avoided this debate altogether.

Hon Kim Chance: You had a few days' notice.

Hon PETER FOSS: I realise that. This matter should not, strictly speaking, have been brought up in the House because there are other methods by which this matter could be dealt with. Many problems occur in the Health Department from time to time, principally interpersonal problems, and I would hope that most of those interpersonal problems could be dealt with by the ordinary methods. It would be inappropriate for them to be aired in this Parliament because, strictly speaking, there would be factual differences. Members of Parliament are not the people to decide those factual differences. In this context the person involved is a union official and it would have been appropriate for the processes of the Industrial Relations Commission to be used.

It is unfortunate that this matter has been brought to this House because it is not the appropriate place to deal with it. My advice is that the people with whom Mr Beckett was dealing were clinical managers; that is, they were selected as managers principally for their clinical skills, rather than their management skills. The attitude taken by Mr Beckett was such that the officers felt they were being harassed and the matter was originally taken up by the two nurses as an equal opportunity complaint. They felt it was the type of harassment that was quite upsetting and their immediate reaction was that the appropriate place to take it was to the Equal Opportunity Commission. I do not think it was the appropriate place to take it, but it gives members an indication of the type of conflict that took place. I know that some people do not see their attitude as being aggressive or harassing and they believe what they are doing is perfectly right. The people on the receiving end of that behaviour often do not regard it in the same manner. In this case, Mr Beckett was seen as an employee and the people he was dealing with were managers and again that does not indicate what the situation really was. The unusual situation with psychiatric nurses is that instead of being members of the Australian Nurses Federation, they are members of the Civil Service Association.

I have a different account from Hon Kim Chance of the events which took place. He pointed out when he moved this motion that he has in his possession a letter which is signed by two people who put forward their view of the matter. However, members must keep in mind that other people were at the meeting who have given their account of what took place. I do not believe that it is necessary to give any greater credence to the notes prepared by the other people at the meeting than one can give to the letter that was specifically written. I do not know when Hon Kim Chance received that letter, but obviously it and the notes were written to record what those people saw was the outcome of that meeting. In addition, we have what Hon Kim Chance called the contemporaneous note from Mr Beckett. Some of the comments in that note are quite consistent with the view outlined on page 21 of the documents to which Hon Kim Chance referred.

The House has before it what purports to be a contemporaneous note, what purports to be one person's minute of what happened and what purports to be other people's minute of what happened. Obviously, they do not agree on all the points. Members who have had the opportunity to deal with any dispute would find that on occasions people do not always remember things in the same way as other people remember them. For example, if I asked every member in this House to give an account of what has happened in this place since 2.30 pm, I would be very surprised if I got a consistent account from every member present. That is not unusual. All sorts of things come to a person on recollection - some things are more important to some people than they are to others. I have heard disputes in this House within seconds of a statement being made. An argument has arisen about what was said and what was the real meaning of what was said. It does not surprise me that people have different impressions and put different interpretations on what occurred in this instance.

As Minister, I could instruct people to investigate the matter and reach a conclusion. I understand that the matter has been dealt with, but if it has not there are more appropriate forums than this Parliament to deal with it. I know that Hon Kim Chance takes up the cause of the ANF from time to time and I urge him to resist from doing that because it is inappropriate for what are essentially management matters to be raised in this Parliament. Other mechanisms are available to deal with these sorts of complaints. I note that Hon Kim Chance took the opportunity when moving this motion to talk about the expression of free speech. In the words of Mr Beckett, in this case the managers felt oppressed. Perhaps managers should never feel oppressed, but the fact is that the clinical managers felt oppressed by a union person. It may have been one of those cases where the approach by a male was aggressive and it was felt to be an attack on those people.

Hon Reg Davies: There are some very forceful women around.

Hon PETER FOSS: There are, and I am not saying that it cannot work both ways. The essence here is that these women took it as a harassment case to the equal opportunity officer. I do not believe it was the correct action to take, but it is interesting that that was their first preference.

Hon Kim Chance: How did the equal opportunity officer report on that?

Hon PETER FOSS: I do not think he was allowed to deal with the case.

Hon Kim Chance: That happened, but I cannot table the report because it is confidential.

Hon PETER FOSS: I do not think there was a basis for it and that is what management decided. I mentioned it because that was the way it was regarded by them. I am trying to indicate to members that like many stories there are two sides to this story. There can be a situation where two people feel they are oppressed by each other. Anyone in a position of responsibility would, when he hears a story, find out whether there is another side to it. Parliament is not the appropriate place to consider this issue. It should be sorted out by management and that is what has happened, although Mr Beckett did not like the way it was done. If management is unable to reach a conclusion, the Industrial Relations Commission will.

The longbow drawn by Hon Kim Chance is his statement that we are suppressing free speech. He quoted the operational instruction from the Health Department, but he moved off it very quickly. He quite rightly conceded that it is almost identical to the instruction issued by a Labor Government, and there are very good reasons for it. Firstly, both are based on the law as expressed in the Public Service Act, the Criminal Code and the ordinary law of master and servant. The Public Service is no different from any other service in terms of the duty that is owed by employees to their employer. We had a classic example today in a question asked by Hon Kim Chance about the sexually transmitted diseases clinic. Why are people obliged to keep the confidence of their employer? For the very good reason that it is appropriate in Government, as in private enterprise, that the proper process take place. It is wrong that as soon as someone starts contemplating some action another person immediately spreads it in the public arena and causes alarm and dissension. Even when a decision has been made there are appropriate ways for that decision to be communicated and certain people are entitled to hear about it first in a properly presented way. A couple of times I have struck situations where information has gone out to the Press about decisions that have been made and I have said, "I will not comment on that." Generally speaking, I try not to comment because the first people who have to be spoken to are the members of staff involved.

I take a very dim view of people who release these matters before the members of staff who are involved have been informed. There is a proper way to deal with these things. It is proper that a decision be arrived at and communicated in a way that causes least concern to the employees involved. For instance, I usually try to make sure that the union is alerted at once. The first thing that employees do is to go to the union and say, "Where are we? What is it all about?" If the union has not been alerted and has not had an opportunity to understand things, it will not be in a position to answer the concerns of its members. It is important to tell unions of the situation so that they can be ready to deal with the concerns of their members immediately. It is important that the staff members are advised but not in an alarmist way by rumours which tend to exaggerate or distort or cause distress. It is very important that people are reassured, that they have the full facts properly presented and at a time when they can discuss the matter. That is only good management in the public sphere as much as it is in the private sphere. It is good management so much as it refers to not only employees but also the public. For every one of these things it is appropriate that there be due process.

All matters stated here are quite clear. I will give an example. During the Bunbury Hospital matter a lot of people from the hospital made public comment about what they thought of the arrangements - and they are entitled to. All members of the civil service are entitled to have their views and to express them. However they are not allowed - it is quite appropriate that this is the case - to use information gained in their employment for the purpose of supporting their argument. For instance, it is not permitted - this is the law - to use confidential information gained in the course of employment as a means of supporting an argument. An employee cannot say, "I, as a Government employee, am of the opinion and therefore this is an opinion of Government." Only Governments can have that view. Employees cannot put forward policy views which are different from

those of Government. Employees cannot start running their own policy contrary to that of Government. Employees can disagree with the policy of the Government. They can say in a private capacity - it has to be made quite clear that it is being said in a private capacity - that they disagree with the Government. That is perfectly acceptable. I do not have a problem with that. However, when people are employed and carrying out their employment, they are required to carry out the policy of the Government. That is the whole point of public service. The politicians set policy and it is for the public servants to carry it out.

Hon Tom Helm: You are a genius in your supper time. You know everything about everything: Public servants, law, health. You name it, and you know about it.

Hon PETER FOSS: I am glad that Hon Tom Helm mentions that because he happens to be correct.

Hon Tom Helm: I would not have said it if I was not correct, you fool.

Hon PETER FOSS: I hope that over time Hon Tom Helm has learned a lot by listening.

I concern myself about the proprieties of Government and what is its proper role. I have spent a lot of time working on this sort of thing. It does interest me and I think it is important. I have no hesitation in saying that so far as the law, the Public Service Act and the Criminal Code are concerned, I do not have any problem with that being enforced if people do not observe their legal duties. That is why the law is there, and that is why the law was reached. We have to write to people to advise them of the situation and not just say, "Go and read the Public Service Act or the Criminal Code or try to get a legal opinion on it." It is important that they understand what are their respective duties.

People seem to think that open government means that every single part of the process before a decision is arrived at has to be open for public discussion. That is not correct. People have to understand that, as in any other matter, there is a time of preparation when we work out what we should do. It would be alarming for the public if every single concept that was raised by Government instantly became a matter of public debate. Many things come up on a hypothetical basis as part of the process of trying to arrive at some proposition to put to the public. We owe it to the members of the public to try, at least, to give them a firm proposition before we ask them what they think about it.

Hon Reg Davies: You would have supported the royal commission being able to keep its working papers.

Hon PETER FOSS: For 30 years - that is entirely appropriate. Once we have made the decision, there is no need to keep matters private. I do not have any problems with documents becoming public after that time. There is an appropriate time for matters to become public and there is an inappropriate time. Once the decision has been made, there is no problem with people seeing how that decision was arrived at. Until such stage as a proposition is put forward, all we are likely to do is to cause considerable unnecessary concern while going through the decision making process.

Hon Reg Davies: Judges do that.

Hon PETER FOSS: They give their reasons.

Hon Reg Davies: Yes.

Hon PETER FOSS: No-one is suggesting that all of the cogitation that takes place in the judges' chambers and all of the drafts of their reasons should be released. We do have an obligation to put those matters on the record. On most occasions that is available under the Freedom of Information Act; although, for certain individuals it is not possible. There is a difference in the time when information should be released, either before or after a decision. After the decision has been made it is important that people should be able to see the process by which it was arrived at. Up to that time it is quite appropriate that Government, like any other decision making bodies, be given the opportunity to make decisions.

Hon Tom Helm: Make a decision and keep it a secret? That is a good idea. You are stating the obvious. You are pretty good at doing that.

Hon PETER FOSS: No. On the contrary, a decision is made and it is then made public, and the reasons are published for that decision. That is most appropriate. I am in the process of preparing some draft legislation about records keeping. One of the problems we have is that we do not have a foolproof system to ensure that public records are conveyed to the Archives. There has been a lot of emphasis on the Archives; namely, once the documents have been put there they should be kept until the end of time. Unless the full record is put into the Archives, we are wasting our time. I am in the process of getting some public records management legislation that ensures that documentation is kept so that it goes to the Archives and is available to people to know it is there.

The process of government has to be looked at. If the information was correct in the time when Labor was in power, it is correct now. Public servants owe a duty to the public and to the process of public decision making just as much as any other person owes a duty. That duty is to distinguish between the private and public roles and to use private time to exercise private rights and public time to exercise public duties. For instance, what has been said in this document appropriately states the law. I do not think it has ever been suggested that the law be changed. As the member has admitted, this statement was the same when the Labor Government was in power.

To summarise: We had a matter which was raised by Hon Kim Chance. I gave him the opportunity to come back to me and ask me to investigate it further had he wanted me to do so. He did not ask me to do so and in this House he raised it by handing me a set of documents without handing me the motion. If there was a genuine wish to deal with the matter, the appropriate way would have been to ask me to investigate it further. Had I done that before it came into this House I think I would have reached an impasse. I find that the account given to me differs from that given to Hon Kim Chance. Having read the two accounts and what purports to be the contemporaneous notes, I do not find anything sinister about that. I can see the usual difference between the matters that occur in a dispute situation. This debate has not helped the situation. I do not believe that bringing an interpersonal relationship problem into this arena helps one bit to resolve a problem; in fact I think it aggravates the situation. In this instance, it has probably drawn more strongly the lines between the people involved. There is a better way if it was felt that management had not resolved the matter, and one I thought the Opposition clearly supported; that is, the use of the Industrial Relations Commission.

I regret that this place has been used to make a very broad statement regarding supposed repression of freedom of speech which was, rather, quite plainly an incident involving a small number of people in a very large department. If every small personal relationship dispute among the 24 000 plus people working for the Health Department were to end up in this Parliament it would make both the Parliament and the Health Department impossible to run. I regret it has been raised in this forum. Although I believe it should go back to the area from which it arose, I am still willing to try to deal with the matter if Hon Kim Chance believes it should be persisted with, even though I believe that if there are still problems the dispute should go to an independent third party to resolve. We have not assisted the situation one bit. I cannot think of a worse way of solving such a dispute than in Parliament.

Hon Kim Chance: I can - that meeting on 17 September.

Hon PETER FOSS: I am not saying Hon Kim Chance is wrong. He can raise the matter with me by all means. I would be prepared to quietly inquire and subtly bring it back to proper communication. However, sometimes it is very difficult for a Minister to quietly inquire into a matter in one of his departments. No matter how quiet a Minister tries to make an inquiry, the tempo down the line gets stronger and stronger. The situation would have been easier if Hon Kim Chance had raised it with me and asked if I could quietly inquire. I might have been able to keep down the tempo and have everybody quietly resolve their personal differences. Raising the matter in Parliament in what is in some ways a censure of the Government on free speech was not exactly likely to enable me to quietly deal with the matter. Frankly, the member could hardly have made it more public or more difficult for everybody to quietly resolve. How can people quietly resolve their problems at work if everyone knows that a dispute had been the subject of a debate

in the Parliament with the Minister having to defend his involvement and having to somehow find out what had happened without causing total disturbance throughout the system? If the member really wants to resolve an interpersonal relationship I suggest he read some Dale Carnegie rather than raise it as an urgency debate in the Parliament.

I understand that Mr Beckett has gone on some sort of temporary assignment to the ANF which has taken him out of that area for a period. That may resolve the matter. However, if Hon Kim Chance has such faith in my capacity to smooth the difficulties, I will be quite happy to do my best. I will try to keep it low key and to do it in a most conciliatory and mediatory way. As he knows, whenever matters are raised with me I always try to deal with them. However, I am a little reluctant to become involved in this matter because I think, to some extent, it may not assist. I have always been conscious of occasions where it does not assist for a Minister to become directly involved. However, if he wishes to raise it with me outside the Chamber I will be very happy to discuss with him what he thinks will be the best thing for me to do. If he believes I can take some other measures I would be very pleased to do that. I do not think this is the place for us to engage in our plan on how we can create industrial harmony in the conflict between staff at Lemnos Hospital. However, I assure Hon Kim Chance I would like to see harmony there. Any union people who have dealt with me will know that it is certainly not my wish to remove unions from the workplace. I think I have always been cooperative with the unions, apart perhaps from the Australian Medical Association.

Hon Kim Chance: I support you on that one.

Hon PETER FOSS: Generally speaking I make a point of recognising their role in the workplace and using that role. I have always made a point whenever an issue has arisen to make sure they are properly advised. However, I do not think this is the way to raise this point. I know of Hon Kim Chance's connections with the ANF. I urge him to say to its members that sometimes Parliament is not the appropriate place to bring disputes like this; there are better ways of dealing with them. I am sure he will find me cooperative. I am also sure he will find there has been no attempt to suppress free speech.

I stand by what is in the memorandum from Dr Brennan. I believe it is correct and that the employees of the Health Department and every other Government department should recognise their legal responsibilities and stick by them. I make no apology for that. I do not think I must apologise for the law being expressed to its staff and for their being advised it will be enforced. It is my job, as a Minister, to ensure that within my department the law is observed and that Government policies are carried out appropriately.

Somehow an industrial matter has ended up in the highest court in the State. As I said, it is not an appropriate place for us to determine who is correct about the dispute or to conciliate or mediate the matter here. If that still needs to be done - maybe it does not in view of the new appointment Mr Beckett has - I suggest it would be more appropriately done through the normal channels with the caution of sending along the transcript of what was said by both sides. Maybe there are some interpersonal relations that are not capable of being resolved because of the character on one side or the other, or both. To that extent, it will be up to the human resources people to resolve the dispute. It is certainly not a matter for parliamentarians to resolve in this place.

**HON KIM CHANCE (Agricultural) [5.08 pm]:** There are two ways of looking at this issue; the Minister has chosen one way and I have clearly chosen the other. For that reason many of the things he said are not relevant to the points I have made. To be clearer, one way is to see it as an interpersonal dispute in the workplace, which stand the Minister has clearly taken. The other way is to see it as a deliberate attempt by Health Department management to intimidate one of its employees, which is the manner in which I have chosen to look at it.

If the Minister's view that it is simply an interpersonal problem in the workplace were correct, all his comments would be correct and I would support every one of them; as well, the solutions he offered would be correct and I would support them. But I do not see the issue as an interpersonal problem. The papers which have been tabled prove that

it is not simply an interpersonal problem. If the issue is, as I see it, an issue of Health Department management seeking to intimidate one of its employees, the solutions offered by the Minister amount to Caesar appealing to Caesar, except to the extent that the Minister said that the Industrial Relations Commission is an option. That is a relevant point of view.

Hon Peter Foss interjected.

Hon KIM CHANCE: The Minister might well be right, except that there are political overtones to this matter. There are a couple of reasons that I have no regret for having brought this issue before Parliament.

Hon Peter Foss: You might be right and I might be right, but neither of us knows. Wouldn't it be better to go to the IRC so somebody else can decide?

Hon KIM CHANCE: When I have finished, perhaps we can talk about that. I have two requests of the Minister, which I will make towards the end of my speech. They are matters that need to be done, and I believe that the Minister will feel that they need to be done.

One of the principal reasons that I have no regrets in raising this matter in the manner that I have is that it is not the only case in which members of the Australian Nursing Federation and members of the union that covers enrolled nurses have told me about clear cases of intimidation which have occurred in the workplace. Sadly, in every one of those cases except one - the case of Mr Nigel Beckett - the employees have been so intimidated that they have refused to allow me to do anything about it. They have refused to allow me to take matters to Parliament, even though one case involved a breach of parliamentary privilege. As well, they have refused to allow me to take matters to the Industrial Relations Commission. In other words, they have not been able to say to their union that they want the matter raised in the commission.

When a case arose in which a man of some courage, Nigel Beckett, said, "Look, I don't care what the results are. I think it's time we had this out in the open", I am going to be the last person to say, "No. I think I had better have a quiet word to the Minister to see if we can resolve it." If I had made the same judgment as the Minister, that it was simply an interpersonal problem, I would have gone to the Minister or the Director of Health to try to reach a peaceful resolution. I did not see it that way and Mr Beckett did not see it that way; we both saw it as a deliberate attempt to intimidate a union member.

Hon Peter Foss: Doesn't it still end up as a management problem, unless you are insinuating that I had something to do with it?

Hon KIM CHANCE: No, I am not. I had hoped I had made that clear. I do not believe the Minister is involved.

Hon Peter Foss: That means that it is still a management problem, which you have made more difficult for me to solve.

Hon KIM CHANCE: I will tell the Minister why I believe it is a matter that flows over into the political arena. This is not a concept that we grasp easily. Sometimes management forms a view of what its political masters want it to do. Its members form the view that their careers depend on their performing in the manner in which they believe their political masters would approve. That often leads management to perform in a manner in which it normally would not perform and can lead to the impression that it is carrying out the work of its political masters without even the knowledge and consent of those same masters. If members believe that that does not happen, they have never worked in or close to middle level and upper level management in the Public Service. It does happen. Unfortunately, in the Health Department it seems to be a real problem. This was a blatant attempt by elements of the Health Department management to intimidate this worker. Letters in the file show that this was not an interpersonal problem. To consider whether it was an interpersonal problem it is necessary to turn to letters at pages 5 to 16 of the file relating to three issues raised at a meeting on 17 September. Those three issues were raised as evidence of Mr Beckett's intimidation or his interpersonal problems - his lack of Dale Carnegie skills with management.

In attempting to cover a fairly large area in a limited time, I tried to paraphrase my view of those letters. I think I said that the letters were direct and frank to the point of being blunt, but they showed due respect. They simply told management, in the way one would expect a union representative to tell management, what the problems were and how they could be resolved. I had to go back through the file to find what I regard as the worst example of bluntness in the letters written by Mr Beckett and cited by Health Department management as examples of his attempted intimidation.

Hon Peter Foss: There is mention of a large amount of oral abuse in those letters.

Hon KIM CHANCE: These were the matters raised.

Hon Peter Foss: Following reports of oral abuse, there were things to do with harassment. It is in that context, isn't it?

Hon KIM CHANCE: That could have been applied in only one case as far as the equal opportunity officer was concerned, and that was ruled out of order. There was no question of a breach of the equal opportunity legislation.

Hon Peter Foss: It was in a context of oral abuse.

Hon KIM CHANCE: In one case, that is true.

Hon Peter Foss: In a context of what was seen as persistent oral abuse which then resulted in a complaint being lodged. I agree there wasn't one.

Hon KIM CHANCE: It was ruled that there was no oral abuse.

Hon Peter Foss: That is the context in which it was lodged.

Hon KIM CHANCE: We are referring to matters which are not in the files, although I have evidence of them in other material.

Hon Peter Foss: I only raise it for the context.

Hon KIM CHANCE: The principal cause of the equal opportunity complaint was an allegation by one nurse that Mr Beckett had said she was talking nonsense. That was said after she had used an obscenity to describe Mr Beckett. After that, he said that she was talking nonsense. That is why the administrator of the hospital determined that there was no case to answer. In fact, he was appalled that the case had been raised at all. That is the one case of oral abuse that was alleged.

Hon Peter Foss interjected.

Hon KIM CHANCE: Unfortunately, the letter I have relating to that matter is confidential and I do not intend to use it here. The only one of those three complaints which has any currency - the others were simply two line letters - was a letter by Mr Beckett to Ms Lewis, who is the day/afternoon relief manager at Lemnos Hospital. Mr Beckett stated -

Further to our telephone conversation of 3 August 1993 regarding the above -

That referred to a health and safety training course. The letter continues -

... please be advised that I wish to be granted time off with appropriate rates of pay to attend this course.

As you are aware, the original course I applied for - at your request which I happily met - was fully booked. I asked the TLC Training Unit when the next available course was, to be told that due to a cancellation a place was vacant in the course 30th August - 3rd September 1993. I told them to hold that place for me and I would confirm with my employer that time would be made available to me. All of this was discussed by myself with you. At no time did you indicate to me that there was a problem with my request or ask that I put it in writing to you. Had you so requested, I would have done so willingly. You made no such request about the course you wished me to attend on 23rd - 27th August 1993.

It was therefore a shock to me that you had taken it upon yourself to ring the TLC Training Unit and ask them to place me on a course from 27th September -



1st October 1993. You did not even have the courtesy to consult me first as to whether such time was suitable, nor inform me of your actions. I find such behaviour inexcusable.

Please find enclosed a copy of a letter from the TLC Training Unit accepting me onto the course for 30th August - 3rd September and accept this letter as a formal request to attend the same. This provides in excess of the 21 days notice requirement.

I would like to take this opportunity to remind you that my health is a personal matter -

Presumably the issue had been raised earlier. The letter continues -

- and no business of yours, unless I choose to make it so. If you have perceived any problems with my work performance related to my health, you have failed to bring it to my attention. Many nurses study on their days off. I am no different, except perhaps in what I choose to study.

I trust that you will now process the matter without further delay in order that both the hospital and I can be prepared well in advance.

Hon Peter Foss: I did not raise this matter because it was not worth doing so. I have been briefed on an extensive history of other matters prior to this period which were raised with him to which his response was less than helpful. Perhaps this is some ground for dissatisfaction,

Hon KIM CHANCE: But they were not to be produced as evidence at the 17 September meeting.

Hon Peter Foss: I realise that. Again, the thing must be put in context. I said you should not have raised it. If you want to raise all the evidence, we can do that. All we will establish is a clear difference of opinion regarding what Mr Beckett has been doing. It is not very helpful.

Hon KIM CHANCE: I will finish the letter and return to the Minister's comments. It reads -

As to your actions to the TLC Training Unit, I will reserve judgment as to what action, if any, I shall take in that regard.

The Minister has suggested that other evidence is available, but the point is that this was the evidence produced at the 17 September meeting regarding the "less than helpful" attitude to management.

Hon Peter Foss: It may be the evidence which ends up before the Industrial Relations Commission.

Hon KIM CHANCE: I am not aware of the other evidence, apart from what the Minister has told me. However, the issue of the training courses could not go back too far in history because of the dates involved.

Hon Peter Foss: If you wanted to resolve the matter, all the history would have to be raised. The IRC will raise all that history prior to this time.

Hon KIM CHANCE: I would have thought it was not a problem because the letter is dated 4 August 1993. It refers to a training course which was due to commence at the end of the same month. This issue could not have had much history. If other written or perhaps verbal evidence preceded the letter, I am sure that matter would have been raised at the 17 September meeting.

I am sorry that I have clearly bored members by reading that letter, but I had a purpose in doing so. I did not go through all the correspondence, and when I first raised the matter I said that it was minor. I read the letter to indicate the man's style of approach; it is frank and direct, to the point of being blunt. He shows proper respect but conveys the meaning he intends. That is clear. That style is shown through the lengthiest correspondence made available at the meeting as evidence which showed disrespect for management.

The other issues are much more petty and less relevant to the issue of any interpersonal conflict. The allegation that Beckett was seeking to intimidate management is just absurd. That letter cannot be interpreted - nor can the other correspondence hand-picked by management for the 17 September meeting - as evidence of harassment. It is too absurd for words. The interpersonal problem is not the issue.

Hon Peter Foss: Look at your page 10.

Hon KIM CHANCE: I had hoped that we would not go through this too much. However, if the Minister wants to go to page 10, I will.

Hon Peter Foss: All this is showing is that like any of these areas of dispute, if you really want to get to the recent matter, you must go through what is here and all the background information. We are not supposed to do that, Mr Chance.

Hon KIM CHANCE: I agree with the Minister on this issue, and that is why I went to the trouble of tabling the written evidence and not going through it all.

The issue is whether this is a matter of intimidation or interpersonal conflict. I have produced evidence in support of my view that it has nothing to do with interpersonal conflict; it has everything to do with management trying to heavy a union member.

The Minister raised the point that the note was kept by one group of people at the meeting between management and the union. Mr Beckett does not agree on all points. I could understand that if they were minor points. The Minister's example in that regard is a good one. We do not necessarily remember everything that happens at a meeting of equivalent size - for example, a standing or select committee - and we leave the meeting perhaps with a different view on one or two minor points discussed at the meeting. However, we have disagreement in this case on a fundamental issue; namely, whether Mr Beckett was threatened with legal action. A meeting attended by five to seven people would result in people remembering clearly whether one person present at the meeting threatened legal action against another.

Nevertheless, we have the signed statement from the Australian Nursing Federation officer and one from Mr Beckett, and his contemporaneous notes, that a threat was made, and the people who are supposed to have made that threat absolutely reject the assertion. Such a fundamental difference in views about what happened at that meeting on an issue of such magnitude will not arise unless someone is lying. The question of whether the principal industrial officer of the Health Department said that it was a legitimate aim of Government to de-unionise the workplace is another such statement. How can anybody make such a statement in the context that it was made and not remember whether it was made? A person would not leave a meeting without firm knowledge of whether that was said, again, unless someone is lying. It could not just be a question of a different understanding, because the issues were so central to the meeting. There was only one reason that the 17 September meeting was held. It had nothing to do with solving interpersonal relationship problems; it had everything to do with the intimidation of a Health Department employee.

The Minister said that I left the issue of the operational instruction fairly early. That was simply because I was running short of time on that occasion. I did not find the operational instruction objectionable, but the way in which it was used. On just about every occasion that I raise an issue in Parliament somebody close to me gets an operational instruction pressed into his or her hands with these sections heavily highlighted. I find that objectionable in the extreme. It does not matter whether those people had anything to do with the information that I have raised in this place, and as often as not it comes from the Opposition health spokesman. Nonetheless, somebody close to me one way or the other will get one of those operational instructions heavily highlighted pressed into their hands. That is not something I take lightly.

Hon Peter Foss: I will certainly follow that up.

Hon KIM CHANCE: I am not making a formal allegation here, simply because some people would rather that that not be raised.

Hon Peter Foss interjected.

Hon KIM CHANCE: I am sure the Minister would not endorse behaviour like that. The Minister needs to assure himself that he was not lied to about the information supplied by the Health Department to answer questions 439 and 440 and that he did not convey misleading information to the Parliament.

Hon Peter Foss: How do you suggest I go about doing that?

Hon KIM CHANCE: That is something between the Minister and the administration.

Hon Peter Foss: Cross-examine them?

Hon KIM CHANCE: The Minister needs to determine whether a threat was made to use legal action, and a statutory declaration may be a useful means of determining that.

Hon Peter Foss: In the end it becomes a bit of a judgment thing. Strictly speaking, as a Minister I am not placed to go around making those inquiries. It is more appropriately done through some other organisation.

Hon KIM CHANCE: The issue is that the Minister has supplied information to the Parliament. I know how the Minister feels about the kind of information he supplies to Parliament. I know he takes it extremely seriously. I am suggesting to the Minister that he may have inadvertently supplied information to the Parliament which may be inaccurate, and the Minister should want to satisfy himself that he was told the truth.

Hon Peter Foss: Too right, and the supplementary information indicated to me a long running dispute and gave me more information about Mr Beckett's attitude, which is noted in these contemporaneous notes. To some extent, what I heard fitted in more with those contemporaneous notes, and my immediate reaction is that what I heard since is confirmed by what Mr Beckett has written. I am not really in a position to deal more with that.

Hon KIM CHANCE: Given that the issues of de-unionisation of the workplace and threatened legal action were so fundamental to the meeting, and that as a result of that they were unlikely to have been forgotten or misunderstood by either party -

Hon Peter Foss: They are quite likely to be misunderstood.

Hon KIM CHANCE: - if the Minister can tell me at some future date that he is totally satisfied that as far as he can determine he has not been lied to, I will accept that statement.

Hon Peter Foss: All I can say -

The DEPUTY PRESIDENT: Order! I ask the member on his feet to address the House through the Chair, not one particular member.

Hon KIM CHANCE: If the Minister is able to assure the House that he has satisfied himself as most thoroughly as he practically can -

Hon Peter Foss: You know I cannot do that.

Hon KIM CHANCE: The Minister can read the *Hansard* tomorrow to get my precise words. If the Minister can assure us he has done that and he has satisfied himself that the information given to him and which he conveyed to this House in answer to questions 439 and 440 was correct, I will be satisfied and I will let the matter drop.

Hon Peter Foss: So would I.

Hon KIM CHANCE: The probability of that being the case is remote.

Hon Peter Foss: I cannot do it. Even as a judge I could not do it.

The DEPUTY PRESIDENT: Order! Let us get on with the debate without the interjections.

Hon KIM CHANCE: The Minister still must tell us why a principal industrial officer of the Health Department of Western Australia was under the apparently mistaken belief that it was a legitimate concern of the Government to de-unionise Health Department

workplaces. When I first raised this matter I felt it was impossible for so senior a person to be so woefully misinformed on what Government policy was in this matter.

Hon Peter Foss: She is not saying it is Government policy.

Hon KIM CHANCE: The Minister has confirmed even today that it is most definitely not Government policy to de-unionise the Health Department workplace. Why then does a principal industrial officer of one of the Government's largest employers believe that it is?

Hon Peter Foss: If she does.

Hon KIM CHANCE: All right, if indeed she does. I have made my point clearly on that matter. If the Minister is not convinced perhaps we can talk about it later or he can read my views in the *Hansard*. Those two concerns need to be met. It is important that they are met.

Motion, by leave, withdrawn.

## CITY OF PERTH RESTRUCTURING BILL

### *Second Reading*

Debate resumed from 25 November.

HON A.J.G. MacTIERNAN (East Metropolitan) [5.38 pm]: It will come as no surprise to members opposite that the Opposition does not support this Bill and like the vast majority of the residents of the City of Perth is implacably opposed to it. I will summarise our reasons and those of the vast majority of residents and ratepayers of the City of Perth for this opposition. The carve-up proposal which divides the City of Perth into four municipalities, four tiny towns, has the following defects: The proposal does not deliver the prospect of better planning for the central area of Perth; it fails to recognise the interdependence of the central business district and its surrounding residential hinterland; it fails to provide any guarantee of an equitable distribution of the existing resources of the city; and it fails to provide any corroboration to the claims that the new towns will not be required to massively increase rates to maintain existing or adequate services, and the figures show the exact opposite.

The tiny town of Vincent is the only one which will not be the recipient of some modification of the original proposal. The proposal requires the wasteful depletion of resources in replicating administration and work centres and functions, resources that could well be spent elsewhere in providing facilities that the residents and ratepayers who have contributed to those funds want, rather than using the funds of the residents and ratepayers to engage in this folly to satisfy some sort of favour owed by the State Government. Very importantly, the thing that has outraged residents right across the State, and certainly right across the municipality and within the larger local government community, is that there has been a complete absence of any consultation whatsoever. This is a diminution of a democratic right of the residents and ratepayers of Perth and a threat to the local government across the State.

Lastly - this is a mere summary; we could go on forever about the problems that this proposal will generate - is the problems that the municipalities will face during the interregnum. There will be no accountable government for 18 months in the municipality of Perth. It is very unfortunate that the Minister with the carriage of this Bill appears to be on parliamentary business and is not able to be in the Chamber to respond to the debate. This shows yet again just how cavalier -

Hon George Cash: You are wrong; at the moment I am handling it.

Hon A.J.G. MacTIERNAN: I am sorry. Hon George Cash mentioned to me the other night that he was only reading the Bill at the second reading stage because Hon Eric Charlton had been caught short.

Hon George Cash: At the moment I am handling the Bill. I am listening to what you are saying.

Hon A.J.G. MacTIERNAN: We have a tag team. I hope there is more liaison and coordination between Hon George Cash and Hon Eric Charlton than has gone on between the State Government and local government. This is an extremely important Bill and it is a pity that parliamentary business has required Hon Eric Charlton to be away.

Hon P.H. Lockyer: Hon George Cash is handling the Bill. He has said that he is handling the Bill.

Hon A.J.G. MacTIERNAN: For the time being, I think. It is very important not to take statements out of context but to listen to them in their fullness.

Hon P.H. Lockyer: You have been told that the Leader of the House is handling the Bill.

Hon A.J.G. MacTIERNAN: At the end of this period we will have a response from Hon Eric Charlton.

Hon T.G. Butler: Maybe we will get a contribution from Hon Phil Lockyer.

The DEPUTY PRESIDENT (Hon Barry House): Order!

Hon A.J.G. MacTIERNAN: I anticipate that we could well have problems very similar to those we experienced the other night when parliamentary business intermittently required Hon Peter Foss not to be present particularly during the discussion on clause 7 of the Land (Titles and Traditional Usage) Bill. As a result, he came into the Chamber not having any idea of what the level of the debate had been.

Hon George Cash: Are you going to speak to the City of Perth Restructuring Bill?

The DEPUTY PRESIDENT: Order! The member on her feet is addressing the City of Perth Restructuring Bill. I ask her to address her comments to that Bill.

Hon A.J.G. MacTIERNAN: I appreciate that. We are just concerned that we do not get a situation where we set out our objections to and problems with this piece of legislation only to find that, when it comes time for the Government to respond, the Minister who may be handling the Bill has not in any way been privy to the debate.

Hon George Cash: I will be sitting down with him and discussing the matters that you have raised. To date you have raised nothing but criticism.

Hon A.J.G. MacTIERNAN: I have raised seven major objections in summary first so that the Government can get the structure right.

Hon George Cash: That was for the first five minutes; in the next 10 you did not do anything but criticise and carp.

Hon A.J.G. MacTIERNAN: This is an extremely important piece of legislation. I have expressed quite properly the regret that the Minister has been unable to be here because of his urgent parliamentary business. I will set out in detail the points that were summarised. Our first objection to this legislation is that it does not deliver the prospect of better planning for the central area of Perth. The Labor Government recognised that there were planning concerns within the City of Perth - Hon Bruce Donaldson is nodding his head - as we have discussed before. There were grounds for those concerns. There was fairly widespread support for the notion of a central area planning authority. That is not what we have here; we have a proposal that does not address any of the planning concerns that have been raised by any independent bodies.

In the second reading speech the Minister said that the decision to arrive at a carve up to solve the alleged problems of the City of Perth was the result of many reports that have been prepared highlighting the inefficiencies of the City of Perth since 1986. He then referred to some of those reports and claimed that the content of the reports led people to the decision that has been made. I would like members to have the benefit of an analysis of these statements. I do not think the Government has had the benefit of those reports.

The Government has had the benefit of the extraordinary Carr-Fardon report, a report which has very little credibility. Carr-Fardon selectively quoted in a quite shameful way from these reports on which it is said they based their recommendations. As we well know and as we will see later Carr-Fardon very definitely and very clearly got the

financial figures totally wrong in terms of how these municipalities would be able to fund themselves, the rating basis which they would retain and the expenditures that they would be likely to incur. It is a highly flawed report. I would like to read an analysis that has been done by the town planning committee of the City of Perth on the Carr-Fardon report in so far as it deals with these reports which are supposedly at the heart of the carve up plan. It states -

Without exception, and not surprisingly, the consultants -

Carr and Fardon -

- have failed to include any extracts from the documents which would not support their case. There are in fact many instances where the other documents -

The reports -

- recommend against the sorts of actions which are contemplated by the consultants and the other supporters of the Government's decision . . .

Generally, the consultants have used the other documents for their own purpose. Reading the extracts in the consultants' report does not give an accurate representation of the purpose, content or tenor of the other documents.

Most notably, of the ten documents referred to by Carr and Fardon, only four discuss the municipal boundaries of the City of Perth and of those only three recommend changes to the boundaries. The other one recommended AGAINST changing the boundaries, pointing out that changes could not sensibly be confined to the City of Perth.

The report continues -

The common thread linking the documents is their reference to town planning in the city. Some of them are concerned with the implementation of planning policy and development control and call for some form of change - ranging from minor modifications or strengthening of the existing structure, to the creation of a Capital City Planning Authority. Others concern themselves only with discussion of various urban issues that impact on the city.

The changes proposed by the Government do not effect the existing planning legislation or the relationships between Council, Government and the private sector other than to introduce a third non-statutory committee (this with commercial industry representation). The restructuring does not address the existing problems of intergovernmental coordination in the central area.

The report concludes -

. . . the justification for the restructuring of the City of Perth cannot be found in the "numerous previous reports on the Central Area".

To return to the fundamental problem of this Government, the Government based its report on the Carr-Fardon report, for which it paid some \$40 000. The Carr-Fardon report claims to have been based on 10 previous reports, but when we get to the detail we find that it has not accurately represented those reports at all and certainly not the major thrust or recommendations of the majority of those reports. We have a proposal here which is fundamentally and deeply flawed, based on totally wrong premises. It is time that the Government looked at these reports itself, rather than simply relying on the flawed analysis of the previous 10 reports by Carr-Fardon.

I want to look in particular at two of the reports which could be said to be the most independent, and that might in some way address those sorts of issues. The central Perth policy document quoted by Carr-Fardon had nothing really to do with the planning processes of Perth but how Perth should be planned in terms of what should go where and what uses should be encouraged. It is not the sort of report that in any way, shape or form could be used to justify any of the sorts of things we have here.

The Mant report, which surely must be one of the key reports, was commissioned in 1989

by the State Government and identified two planning cum structural problems within the City of Perth. The first problem it identified was what could be described as the lack of soul problem, where the sorts of planning decisions that had been made had not taken into account sufficiently the notions of heritage, amenity and the collective values on streetscapes, and there was far too much rugged individualism and maximisation of economic returns guiding the sorts of planning approvals that were given. I have to say that during and before the property boom I would agree that was the case. I was one of a number of people on the Perth City Council who was very concerned about that. Gradually the complexion of Perth City Council changed and became more responsive to those sorts of issues.

The second problem identified in the Mant report relates to the exercise of discretion, and it identified concern in the handling of awarding bonus plot ratios and the waiving of standards and development requirements. Again that is not a criticism that I resile from, especially up until the end of the property boom. The hot potato question in urban planning is the way in which discretions are exercised and whether they are exercised within a policy environment. We had some very unfortunate statements from the Minister for Health the other week, which suggested he believed discretion is something which should range fairly freely and be exercised fairly well in the absence of any such policy environment. That is a very dangerous attitude and one that has led from time to time to the more restrictive planning legislation, which is not necessarily what we want.

We have identified in the Mant report the two problems: The lack of soul problem and the exercise of discretion problem. This new structure for the City of Perth does not in any way go within a cooee of addressing either of those problems. If anything, it will make it far worse. The first problem of the exercise of discretion, we have in charge of planning decisions within the Perth central area, on which the Mant report and other reports have focused, a municipality which will clearly be in the hands of almost exclusively business interests. We have defined the boundaries in such a way as to virtually exclude any residents. We have an authority which will not even have any of the moderating influences that prevailed beforehand when a number of councillors were not as subject to the pressures from commercial interests seeking to maximise profit. We have a situation now where those commercial interests are even more deeply entrenched than before.

The lack of soul problem arises from the very individualistic development approvals, where developments are aimed solely at the maximisation of the return to the developer with very little regard to their impact on the streetscape and general enhancement of the overall amenity of the area. We now have the proprietors of the land and the business operators who will have even more control and say over those sorts of planning decisions. It is impossible to see how this in any way could address the lack of soul problem.

The vast majority of these reports, certainly the Mant report and a number of others, suggest that the input to planning should be broader rather than narrower. In this proposal we have a couple of secondary, non-statutory committees proposed, and we will talk about those later. They are not bodies with any sort of statutory control and do not regulate the town planning scheme or make approvals of the individual development applications. In terms of altering the sorts of planning decisions made on a day to day basis that have a very significant impact on the area of Perth in terms of heritage and amenity, there is not an expansion of the number of people who will have a say but a contraction. It is a contraction to that group of people who, perhaps we could say, have an even worse track record than Perth City Council as a whole in dealing with those sorts of issues. Every council has these sorts of problems, and we accept the view that the central area of the City of Perth is not just the province of the businessmen who operate there, nor is it just the province of those residents immediately surrounding it. We recognise that it has significance for the greater metropolitan area and for the State as a whole. Therefore, we have recommended a central planning authority to enable the State Government to have some real statutory input into those planning decisions.

*Sitting suspended from 6.00 to 7.30 pm*

Hon A.J.G. MacTIERNAN: Before the suspension I had told the House that it was no surprise that the Opposition, like the vast majority of residents and ratepayers of the City of Perth, is implacably opposed to this legislation. I then set out the major objections to the legislation and had commenced to detail those objections. Our first objection is that this proposal does not in any way deliver any prospect of better planning for Perth. Indeed, it does the opposite. This proposal is based on the Carr-Fardon report commissioned by the Government which in turn claimed that the need for such a restructure of the City of Perth was based on some nine or 10 planning reports that have been prepared since 1989. The Opposition, when it was the Government, believed that it could improve planning matters in the central area of Perth and proposed that be done by way of a central area planning authority.

I have referred already to the way the Carr-Fardon report has quoted selectively from those reports and indeed misrepresented the findings, the thrust and the very tenor of the vast majority of those 10 reports which are being used as justification for this proposal. I think I have demonstrated that this proposal is based on very shaky ground and that the rationale for proceeding this way is based on the Carr-Fardon report which, in turn, is based on the report which, according to the Carr-Fardon report, shows grave problems exist within the City of Perth. We do not believe those problems are great. Problems certainly exist and things could be improved as with any local authority. However, we believe there is a special case with the City of Perth; that we need to recognise that the city centre has an interest to a broader constituency, certainly than the businessmen in the central area and it also has a broader interest than just those suburbs that surround it, although I believe they are more intimately focused towards the city centre; it also is important for the whole of the metropolitan area and indeed for the entire State. This proposal contracts rather than expands the basis from which decisions are made. It will not address in any way the lack of soul problem and the exercise of discretion problem highlighted in the Mant report. Indeed, it will do the reverse. It will exacerbate those problems that have been highlighted in that report.

The CityVision report has also been quoted selectively by the Carr-Fardon report and its tenor has not been reported accurately. CityVision is comprised of a group of interested professionals and others in the city. Architects, planners, persons of artistic persuasion, and people who like to think of themselves as urbanists formed themselves into a group called CityVision. The group has been around for a couple of years. Its members are very articulate and interesting exponents of various facets of fabric of urban life. We do not resile from the fact that they have objected from time to time to planning decisions of the Perth City Council and have put forward proposals for improvement. It is important to understand what the report says; it is not accurately reflected in the Carr-Fardon report. The CityVision report criticises the inappropriate system for planning and reconciling the different perceptions and needs for State and local government and the community at large. It points out that, while a better system will not guarantee a good city, it will make it more possible. It then identifies what it believes is the solution to that problem and proposes that the State Government places the responsibility for planning of the central area in an independent central city planning commission. It outlines what its function will be and it says that the commission will be comprised of equal representation from the State Government, the City of Perth, and the wider community, the latter being chosen by the Government from names submitted by professional, institute, business, unions and community and welfare based groups.

The CityVision proposal is very similar to the proposal that was considered by the Dowding Government and by the Lawrence Government. However, it was rejected outright in the negotiations with the then Opposition which dominated this Chamber, even during the Labor Government, and without whose support the Labor Government could not realistically expect any change to occur. In fact, I understand from the former Minister for Planning, Bob Pearce, that every time he raised the issue with the respective Planning and Local Government Ministers from the Opposition he was told hands off the City of Perth and that it would not support anything the Government did.

Far from this Government being able to claim that it has the imprimatur of these various



reports, it does not, and it has positively rejected proposals that have emanated from anyone other than the business groups. It is certainly the case that the Building Owners and Managers Association report was prepared late last year and early this year and, surprisingly, that report was prepared by Dr David Carr, the same person involved in the Carr-Fardon report. BOMA engaged a consultant, who drew up a plan recommending the carve up of the city, and the Government employed that same Dr Carr to prepare a non-biased and neutral report on the future of the centre of Perth. Another of the reports that supposedly has been taken into account, is that by the Chamber of Commerce and Industry of Western Australia in 1990. We understand that the report went out under the name of none other than Colin Barnett. Two of the 10 reports that give any support to the Government's proposals are reports reflecting only the business interests and interests that are clearly closely connected with the Government. None of the reports quoted here in any way supports this proposal.

It is important to consider the comments that have been made by the officers of the town planning department of the City of Perth. After a detailed analysis of these reports and their contents, tenor and recommendations, the department came to the conclusion that the justification for the restructuring of the City of Perth cannot be found in any of the numerous previous reports on the central area. Therefore, we have a proposal which is not given any authority by these reports.

This proposal ignores the realistic solution that could be available; that is, to develop a central area planning authority where the State Government would have some real input into the planning decisions of the central area. The Government points to these committees which will be set up. They are non-statutory and, as far as we can see, they have no legislative basis whatsoever and no actual and direct powers. At this stage, these committees cannot have anything other than a consultative role. We note the composition of these committees, in particular the composition of the capital city development authority which will look at the broad brush items. It is interesting to look at the structure of this committee: It will be the Lord Mayor, the President of the Chamber of Commerce and Industry, the President of the Building Owners and Managers Association, the President of the Housing Industry Association, and the Under Treasurer.

Hon T.G. Butler: Will there be any women on the committee?

Hon A.J.G. MacTIERNAN: Let us hope that in the fullness of time there will be women in some of those positions but, more relevantly to me, the committee represents only business interests. The whole concept of this city and who properly has input into guiding its development is in the hands of business interests. Not even a token effort is made to include people who might have an interest in heritage matters, arts, broader aesthetics or, perhaps, the very important social equity and general social issues. The President of the Housing Industry Authority is a member, but where is the Convenor of the Perth Inner City Housing Association? Not there. Where is anyone from the National Trust? Not there.

The composition of this committee reveals the very narrowly focused view this Government has of urban life. It is reflective and perhaps provides the explanation for the Government choosing the path it has; that is, it is handing back our city to a group of businessmen. For many years the Perth City Council was dominated by business interests, many of whom represented substantially residential wards, although they were not residents in the City of Perth. The City of Perth has broadened its base to provide a far better representation, and now the business interests say it is time for a change. The business interests have persuaded the Government to take this action. The Government certainly could not have been persuaded by any realistic analysis of the reports. These very interests which are now to be given responsibility for our central city are those interests which have created the problems by and large.

The lobbying and the desire of various building developers to maximise their profits has been at the heart of the planning problems people point to in the City of Perth. While I do not oppose without reservation tower blocks, the style of the development of the towers in Perth is pointed to by a number of residents of the greater metropolitan area as

one of the disasters of the central city area. That development has occurred at the behest of the Chamber of Commerce and Industry, and BOMA. Those sorts of business people, who lobbied, unfortunately successfully, for concessions during the years leading to the mid and late 1980s, and are responsible for the problems, are now being handed the entire control of the city so that they can, supposedly, rectify the problems. It is an extraordinary proposal.

The second point which, of course, is interrelated is that this proposal fails to recognise the interdependence of the central business district and the broader central area, which includes Northbridge and West Perth, with their surrounding residential hinterland. This is particularly relevant to those areas that circle the city, such as East Perth, Perth, Highgate, Mt Lawley, North Perth, Victoria Park and Leederville. The interdependence is a two-way process.

Hon Sam Piantadosi: Some have fared better than others.

Hon A.J.G. MacTIERNAN: Certainly, those who did not vote Labor may have fared better. The front-line suburbs I have named experience massive traffic, planning and parking problems generated by their proximity to the central area. They are a funnel through which all traffic to the central area flows.

Hon Sam Piantadosi: Perhaps there should be a toll charge.

Hon A.J.G. MacTIERNAN: There may well be a toll charge.

Hon E.J. Charlton: Do you support that?

Hon A.J.G. MacTIERNAN: The mendicant municipality of Vincent de Paul must seriously contemplate tollgates at Beaufort, William and Fitzgerald Streets because the only way it can possibly meet its budget is to do something of that order. I suppose it could also try the Poi Pot solution, and shoot all its people or send them out to the country.

An Opposition member interjected.

Hon A.J.G. MacTIERNAN: We will send them to Manjimup and save some money. That will aid development in the Manjimup area, which I am sure is of great interest to certain members of the Government.

Hon E.J. Charlton: Do you know where Manjimup is?

Hon A.J.G. MacTIERNAN: I have been there. There are apples there. Does the Minister know where Highgate is, or where East Perth is?

Hon T.G. Butler: I doubt he would know where Manjimup is. It is a long way from Tammin.

Hon A.J.G. MacTIERNAN: An example of those sorts of problems is an area immediately north of Northbridge, in the ward that I have represented in the City of Perth. That area is of considerable historic importance. The structures date from around 1880, and the streetscapes are very well preserved. It is medium density, terrace style housing, plus semi detached housing. The people in that area face a problem which would not be faced by people in Manjimup or Tammin who might not appreciate it until it was pointed out to them. It is a very practical problem; namely, that they are not able to park a motor vehicle on their properties and have to rely on street parking. That area is very close to Northbridge, and it is quickly parked out, both during the day, now that Northbridge has become more of a commercial centre as well as an entertainment centre, and during the evening.

Hon E.J. Charlton: We could develop a car park on top of the new road.

Hon A.J.G. MacTIERNAN: I do not think those people would want to walk that far down; and even under the Government's plan, I do not think it would have people live on top of the proposed trench. I know that the point I am making is fairly complex and that possibly the Minister has not had a lot of experience in urban environments, but I ask his indulgence to listen and to come to terms with the point that I am making. Parking is a

major concern for those people. It is not simply the parking problem that one finds in other places, where people do not like other people's cars being parked outside their homes; but that to retain a motor vehicle - and even though they live close to the city, most of them want to retain a motor vehicle - those people need to have access to parking. The crucial time in that area is between 10.00 pm and 3.00 am or 4.00 am on Thursday, Friday and Saturday nights. It is an expensive operation for the Perth City Council to patrol that area. It is not possible to send out one officer; officers have to be sent out in tandem. It is only because the Perth City Council has access to the moneys generated by inner city parking that it can afford to police areas like that sufficiently to ensure the essential quality of life and availability of some sort of parking for those people.

Hon E.J. Charlton: That is still part of the City of Perth.

Hon A.J.G. MacTIERNAN: No; it is not. I can understand why the Minister has made that mistake, because the map that the Government has produced -

Hon E.J. Charlton: It is not a mistake. You are talking about Northbridge. Northbridge is part of the City of Perth.

Hon A.J.G. MacTIERNAN: I said the residential area immediately north of Northbridge. The address of that area is Perth, and the postcode is 6000, and I note that even some of the supporters of the Government's proposal, such as Geoffrey Summerhayes, have expressed great concern that the border has come as far south as Newcastle Street, because that area is so clearly part of Perth that it is ludicrous to cut it off in that way.

The point I am making is that these front line municipalities experience certain problems because of their proximity to the city; problems which can be addressed realistically or properly only if they have access to the sorts of funds to which a central city municipality has access. The Perth City Council will certainly not be able to provide the protection of the amenity, the traffic management, the parking protection and the planning controls that are necessary if it does not have access to that funding. The real concern is that the quality of life in that residential area will diminish rapidly and the area will end up like West Perth and cease to be a viable residential area. We will then see pressure for it to be converted to a further commercial area. Had the Government any understanding of what is required to keep a central city area viable, particularly in these last decades of this century, it would realise that we are going down a dangerous road.

There have been developments in technology in particular and a basic thrust of decentralisation toward regional and subregional centres on the outskirts or edges of urban centres. There has been a massive movement of residential populations and businesses away from the central city area. The Building Owners and Managers Association states in its report that even if the nation's economy continues to improve, it projects that over the next 10 to 20 years there simply will not be any real growth in commercial activity within the central business district. Therefore, the central business district will need to develop its other characteristics as both a retail and an entertainment centre. It will be successful in attracting people away from places such as Booragoon, Midland, Wanneroo and Armadale - those subregional centres - only if it is able, initially, to offer something that those centres do not have. We are concerned that if the city is run purely by businessmen, it will lose that larger civic sense that is necessary for developing a good quality city.

It is clear from looking at examples throughout Europe and North America that the other essential requirement - perhaps the most essential requirement - is to have a strong residential base immediately surrounding the city, because without that residential base, one has to rely purely on people living in outlying suburbs to utilise the city, and one finds that they are easily seduced away to regional and subregional centres which are much closer to their area. Perhaps I could refer the Minister to some texts which set out that problem quite clearly. Therefore, it is in the interests of the owners of property within the central city area to ensure that those front line suburbs are maintained as healthy, viable residential areas, because if they do not continue to grow as residential areas - and they have been growing over the last decade as people have come back into

the city - people will not stay. I know this because I represent this area and I have seen people move in, stay a while, and move out. Unless traffic management and parking control in the central city improves, there will not be viable residential suburbs surrounding the city. The city will become isolated and will be irrelevant. If city business is serious about surviving it would want to have a healthy residential base. It is practical that the resources of the central area be used to assist in rectifying the problems caused to the front line suburbs by their proximity to the central area.

The Opposition's third concern is that this proposal fails to provide any guarantee of an equitable distribution of the existing resources of the City of Perth. It is something which has captured the imagination of the residents and ratepayers throughout the municipality. Perhaps some of them are only as interested in the planning issues, as is the Minister for Local Government. The principal issue which has captured the imagination of the residents and ratepayers of the municipality is the failure of this proposal to provide any guarantee of an equitable distribution of the existing resources of the city.

The Carr-Fardon report quite wrongly analyses the planning and structural issues and it is flawed in its analysis of the economic issues. The report reaches some extraordinary conclusions on how the assets of the City of Perth should be divided. Some of the major liquid assets of the City of Perth include a municipal reserve of \$14.6m, a parking reserve of \$20.3m, and an endowment lands reserve fund of \$11.6m, a total of \$46.5m. In addition, the tip site at Mindarie, which is situated north of Wanneroo, comprises a couple of hundred hectares of potential residential land. The City of Perth's share of that tip site is approximately \$20m, and that is a conservative estimate. On the basis of those liquid assets and the Mindarie tip site, the City of Perth has a total asset base of \$66.5m. How will that be divided up between each of the tiny towns of Cambridge, Shepperton and Vincent de Paul?

Hon J.A. Scott: Shamebridge!

Hon A.J.G. MacTIERNAN: Yes; Shamebridge, Sheppard's Pie and Vincent de Paul, I think they are called. Each of these towns will have a tiny office and a depot.

Hon E.J. Charlton: Do you think big is beautiful?

Hon A.J.G. MacTIERNAN: In this case, the residents and ratepayers would much rather have their money spent on facilities which will improve their quality of life rather than on facilities which are not needed and will be provided to satisfy the political obligations of this Government. It is as simple as that. I do not reject the view that there may be certain groups within the Cambridge area which desire a separate municipality. So be it. Whether it is the most logical way to go is one question. Whether the Government would have had the guts when doing the carve up to include some of the other Liberal voting municipalities is another question. I guess the latter would have been too much to ask. I put it to the Government that the overwhelming majority of people within the proposed municipalities of Vincent and Shepperton do not want separate municipal offices and depots. Virtually every resident and ratepayer of the entire municipality was outraged by the divvying up proposal in the first proposal. The liquid assets total \$66.5m and there will be these tiny offices, and I do not know how much they will cost, and depots which are not needed. Each tiny town will receive the grand sum of \$1m in reserve. Even on the flawed arithmetic of Dr Carr and Mr Ralph Fardon these figures do not add up.

I regret that the Minister has left the Chamber again for parliamentary business.

Hon J.A. Scott: Where will the rest of the money go?

Hon A.J.G. MacTIERNAN: In the initial draft the money went to the central city. I do not know how much each of the new offices will cost, but I assume it will be in the vicinity of \$4m. That would total \$12m, plus the \$3m which will be given to the councils, making a total of \$15m. Therefore, three-quarters of the existing municipality will receive less than one-quarter of the total assets. It is quite a reasonable formula by normal Liberal Party and National Party calculations. The endowment land area, over which there is much concern, is in the area represented by Dr Elizabeth Constable. I guess that one day the Liberal Party, if it is ever able to sort out its factional problems

and the relationship between the Crichton-Browne faction and the rest, hopes that it will regain the seat of Floreat.

Several members interjected.

Hon A.J.G. MacTIERNAN: The Government obviously has high hopes that one day it will win back what was a blue ribbon Liberal seat. In addition, a number of senior Liberal people - and I am not criticising them - are resident in that area and I refer to people like Peter Gallagher. He, and others, have been able to make representations to the Government and to obtain certain concessions for this area in relation to the reserve funds. In particular, they have negotiated for the endowment lands to be vested, not in the City of Perth, but in the new municipality of Cambridge.

Hon P.R. Lightfoot: That is where the money came from in the first place.

Hon A.J.G. MacTIERNAN: Hon Ross Lightfoot is a person of considerable historical knowledge and he would be aware that the endowment lands were actually given to the City of Perth in the 1920s as an endowment.

Hon P.R. Lightfoot: But it came from the sale of land in the proposed city of Cambridge.

Hon A.J.G. MacTIERNAN: Without doubt, the endowment lands are located in City Beach, but the whole area of endowment land was given to the City of Perth for the endowment of the city and that is why it is called endowment lands.

Hon Mark Nevill: What year was that?

Hon A.J.G. MacTIERNAN: In the 1920s.

Hon P.R. Lightfoot: But the money derived from the sale of the land was substantially returned to the area which is the proposed new city of Cambridge.

Hon A.J.G. MacTIERNAN: Sales of Crown land normally do not go to the benefit of the community immediately surrounding the Crown land. It was recognised by the Government of the day that the City of Perth, as the capital city, had certain civic obligations that went beyond the obligations of a normal municipality, and in order to better enhance the capacity to perform those functions it was endowed with land. It is also the case that there were some provisions that the City of Perth had an obligation to ensure that the area of City Beach, which was considered to be an unattractive place to live at the time, be developed. One of the main intentions of the City of Perth Endowment Lands Act originally was for the construction of a railway.

Hon P.R. Lightfoot: It was to benefit the people of the area, not the central business district.

Hon A.J.G. MacTIERNAN: In part it was to do that. I know it is a view put around by the ratepayer groups of Perth, but there are other analyses available that say it was, in the first instance, an endowment for the City of Perth in recognition of its role as a capital city. I hope at a later stage to develop that argument.

Hon P.R. Lightfoot: That is not what the Act said.

Hon A.J.G. MacTIERNAN: It may not be what the Act said but there is a broader history than simply the City of Perth Endowment Lands Act that needs to be explored in tracking the investiture of the land with the City of Perth.

Hon R.G. Pike: Historically it never happened. It was always for the benefit of Floreat, City Beach and a small part of Wembley.

Hon A.J.G. MacTIERNAN: That is not the analysis accepted by the City of Perth. It is not an irrefutable fact. If it were, can the member explain why it is the case - and upheld by various Supreme Court judgments - that when the City of Perth puts the proceeds of land sales into the endowment land fund, and applies the interest accrued on the endowment land funds to projects outside the endowment land areas, that is considered to be perfectly proper?

Hon P.R. Lightfoot: The reason they do not touch the capital is simply because the capital should have been spent on the area outlined. That was not Floreat-City Beach.

Hon A.J.G. MacTIERNAN: I am not denying that is the case, but it also had another function as a broader endowment -

Hon R.G. Pike: That was implied.

Hon A.J.G. MacTIERNAN: It was acknowledged by the court in finding that it is quite proper for the City of Perth to apply the proceeds from those funds to the benefit of the entire city.

Hon R.G. Pike: The capital belongs to Floreat-City Beach.

Hon A.J.G. MacTIERNAN: No, it belongs to the City of Perth for a certain application. Part of the point is that many of the regional facilities are located - and this is the problem with the carve up - in the City of Perth; the areas have traditionally been within the City of Perth, and that has been a well resourced area; many of the regional facilities for the entire metropolitan area are found within the boundaries of the City of Perth.

Hon Mark Nevill: Were there any Aborigines living there in the 1920s?

Hon P.R. Lightfoot: No, but there are many miners in your area and you will need their vote to get back into Parliament!

Several members interjected.

The PRESIDENT: Order!

Hon A.J.G. MacTIERNAN: I raised the transfer of endowment land because the lands have been transferred to the town of Cambridge which would certainly assist it in maintaining its regional facilities which have been placed there because they were in the City of Perth in the first instance. However, it does not do anything for other municipalities.

Even putting that aside, a more recent development has occurred since the Bill was first introduced when the flaws in the Carr-Fardon report became obvious and when it became obvious that the tiny towns would not survive. New provisions in the Bill provide that the endowment lands fund and the parking fund can be spent only by the City of Perth; they have been gifted to the City of Perth but can be applied only by the City of Perth with the Minister's approval, and the Minister may for a certain period direct the City of Perth to allocate those moneys from the parking fund and the endowment lands fund for purposes within those municipalities.

That provides very small comfort particularly to those Labor voting areas because we believe it is evident that things are being divided up on the basis of rewards for whom one voted for and what sorts of people and political complexion people have representing them in local government. If the Government were genuinely concerned to ensure that each of the municipalities starts off on a fair basis it would have divided up far more evenly those reserves, rather than handing them over to the central area with a pathetic little aside to say, "If you get into trouble we may give you some of the money back but you do not have the right to it. As a matter of grace and favour from time to time when you hit a dark spot we may, depending on the way you vote, give you a hand out." The amendments to the Bill since the time it was introduced in the Legislative Assembly are very small comfort, particularly to the residents of Shepperton and Vincent.

Hon R.G. Pike: What is your view or the Labor Party's view in regard to endowment land and the funds? Where do you think they should go?

Hon A.J.G. MacTIERNAN: Hon Tom Butler suggests that I use the member's general response and ask that the question be placed on notice.

Hon R.G. Pike: It is better to make your own smart alec comments; his are very poor.

Hon A.J.G. MacTIERNAN: I thought it was very good, that is why I chose to repeat it. I could have been greedy and grabbed it for myself, but I like giving credit where credit is due.

Hon P.R. Lightfoot: Anyone from the painters and dockers union does not talk all that credibly.

Hon A.J.G. MacTIERNAN: It transcends those comments we get from the peanut gallery.

If we must have this carve up I am not necessarily critical of the transferral of the endowment land to the town of Cambridge. Perhaps it should have been directed to the town of Cambridge to spend on the development or maintenance of its regional facilities, such as Perry Lakes, which would justify that municipality getting a reserve of that type. There are few other municipalities which would have such benefits accruing, and we think certainly Cambridge needs it because it must maintain Bold Park, under current structures, which is a massive area.

Hon R.G. Pike: So you acknowledge that Perry Lakes is for the whole metropolitan area, not just the local area?

Hon A.J.G. MacTIERNAN: That has been our argument, and obviously we have not been able to get it across. Not only in Cambridge but also in Vincent and also possibly, to a lesser extent, but to some extent, in Shepperton because they have been part of the well-resourced City of Perth and they have located within their boundaries an enormous number of regional facilities. Within the town of Vincent we have two league football ovals and two first division soccer ovals, and it is a small area. We have what has been recognised by the Ministry of Sport and Recreation as a major regional aquatic centre in Beatty Park. We have all these things, and it is not accidental. It is because, first, of proximity to the city and, second, because they have been part of the well-resourced City of Perth. One cannot just suddenly chop up the City of Perth, put in money and keep all the high level -

Hon E.J. Charlton: Subiaco and Fremantle have a few ovals.

Hon A.J.G. MacTIERNAN: Members will note that I did not include Forrest Reserve; I was not talking about areas like that. I was talking about the number of facilities in a very small area. It has something which has evolved because of its geographic proximity, its history and its placement within the central area of the City of Perth. As a result of the City of Perth having access to a higher level of moneys and investments built up over its long history and access to a very high rate base, it has been able to preserve those facilities. They cannot be carved up and put into little residential municipalities which are then expected to be able to sustain those facilities. It will not work.

The Premier and the Minister for Local Government have made certain claims to market this proposal. They constantly say there will be no need for the tiny towns to increase rates to maintain their existing facilities. To give the Government the benefit of the doubt, it has put its faith in the highly flawed Carr-Fardon report. As has been said, one would not pass muster in a first year of a technical and further education accountancy course if one presented a proposal of this type. As the Government proceeded in a clandestine fashion without any consultation, it did not have access to information other than publicly released figures such as the financial statements in the annual report of the City of Perth. It certainly did not have access to the detailed figures which are necessary to make realistic projections about expenditure. I know Carr and Fardon have been involved with local government for some years; however, all they did was use the model of the City of Nedlands, which has about 24 000 people, on the basis that that will be about the size of the proposed three new shires. They assumed the income and expenditure for Nedlands would be about the same as the figures for these new municipalities. That is a highly flawed methodology. If we were to use that methodology in relation to the new shire of Perth with its 5 000 or so residents, it could well adopt a budget based on the Shire of Merredin or Manjimup. It will not work. One cannot use another municipality as a model for cost comparisons on the basis that it is approximately the same size. It takes absolutely no account of the vastly different circumstances in which these areas find themselves.

As I said, for a range of historical and geographic reasons, the three excised municipalities, unlike the City of Nedlands, contain enormous amounts of public open space and regional facilities which need to be maintained. We are also talking about areas, particularly Vincent and Shepperton, which are, by and large, much older areas

which present enormous infrastructure problems. They have older style developments which were built before the introduction of the motor vehicle and which must be adapted for their use and the ever-increasing traffic demands. Those older areas also have back lanes which require money to be spent on them. Last year the Perth City Council spent \$1m in North Perth, Highgate and Leederville on paving and draining back lanes. That was just a drop in the ocean. These are not problems faced by the City of Nedlands.

I will read the analysis of the Perth City Treasurer, Mr Ron Back, of the figures which have found their way into the Carr-Fardon report. Mr Back has had enormous experience. By the Premier's own admission, financially, the City of Perth has been extremely well run. Mr Back's credentials certainly stand up better than Carr's and Fardon's. The city treasurer comments on the indicative statements which appear in the Carr-Fardon report and which have been drawn up to show how expected expenditures balance with expected revenue and that, therefore, justifies their claim that no rate rise is necessary. Mr Back says -

The indicative statements appear to have been prepared in the main without reference to the maintenance of the existing facilities and amenities in each of the new towns. For example, large discrepancies are apparent in the estimates for the maintenance of parks and reserves when compared to current expenditure patterns. In the town of Cambridge estimates for the maintenance of recreation facilities is \$.9m as compared to current operating outlays of \$2.2m. The difference is too large to be ignored.

He continues -

Capital expenditure for the new towns has been pegged at \$.750m/\$.500m for non road reserve outlays. Again significant differences exist with current patterns to raise the issue and account for the proposed change.

As with the general capital expenditure above, the outlays for road reserve (including rights of way, footpaths and area redevelopment) -

They are all issues that probably do not face the City of Nedlands to anywhere near the same extent -

- have been pegged at \$.750m. Further difference of a material nature arose in this area of expenditure.

The consultants, in calculating rate revenue estimates for each of the new towns used a different rate in the dollar with their estimates for rating values. (Cambridge 7.00c, Vincent 7.14c, Shepperton 7.39c) The difference in calculated estimates when compared to the current rate in the dollar of the City of Perth of 6.85c results in overstatements of revenue ranging from \$.120m to \$.505m.

It turns out that Carr and Fardon were wrong even in the areas we were prepared to concede they were relatively right, which is the revenue the City of Perth and each of the municipalities could expect to receive. Far more importantly, they were very wrong in their estimation of the expenditures that would be required to maintain existing facilities. Mr Back goes onto say -

The proposal to fund two new town office and depot facilities from the sale of the nursery site in Wembley implies the proceeds of the sale to be \$9.0m. A valuation prepared for an internal audit report in August 1993 values the site at R20 -

That is a higher level than it is actual zoned.

- with group unit site or as a retirement village at between \$4.3m to \$4.5m.

They have doubled the value of this asset they were going to sell which would provide some financial input into the infrastructure costs that would be required to build these new tiny town offices. Mr Back points out a range of errors within the Carr-Fardon report.

I will now highlight a few of the actual costs in hard figures. These are based on the area of Vincent, a town I know well. The cost of street lighting, a comparatively small item of



expenditure is based again on Nedlands figures at \$160 000 a year. In fact the real cost to Vincent will be \$457 000. There is a different need for all-night lighting in the City of Perth than in an area which is close to the central city, such as Vincent. The municipality of Vincent will not be able to turn its lights off at 2.00 am or 3.00 am as occurs in Nedlands. Again, the projections were wrong. They were made without reference to the sociogeographic factors of the new towns. As to the maintenance of parks and reserves, the consultant said that Vincent could provide that service for \$684 000, which is what it costs in Nedlands; but, in reality, Vincent spent \$1.4m last year on that item.

Capital expenditure on road reserves, which includes roads and shopping precinct upgrades, is very important in an old area. Like the City of Perth, Vincent has strip shopping centres which date from the early decades of this century. Last year expenditure on that item in the municipality of Vincent was almost \$3m. The indicative budgets based on Nedlands figures provide a mere \$750 000 - a 400 per cent reduction on what is required to maintain existing programs. Vincent does not believe its programs are lavish or undisciplined; they are average for what is required in an area of that age with the socioeconomic group that it services and the high to medium density development that occurs within its boundaries.

Earlier, I referred to the maintenance of pathways and lanes. Based on the figures for the City of Nedlands, \$500 000 was allocated; in fact, that item costs \$1.5m. I could go on and on with these figures. They are projections made in a considered way by the city treasurer after careful analysis of the figures. It will not be possible for the new municipalities of "Vincent de Paul", "Shepherd's pie" or "Shamebridge" to be able to maintain their facilities and services at anywhere near the same level without an increase of at least 50 per cent in rates.

We have received a promise that the as yet unnamed, as yet undiscovered commissioners may from time to time throw some money our way if we need it and that, after the commissioners have bowed out, the Minister will have access to the parking fund and the endowment lands fund in order to direct money to top things up if they are going badly. That is not a very reliable basis on which a municipality can plan its future. It is obviously susceptible to political influence.

Our fifth objection is that the proposal requires the wasteful depletion of resources in replicating administration and work centres and functions. We say that they are resources that could be better spent elsewhere. As I understand it from the Institute of Municipal Management, the optimum size for an urban municipality is approximately 50 000. There are certain economies of scale up to a point and, when one goes beyond that point, the sense of locality tends to be lost. As the Minister pointed out, Peppermint Grove is a wonderful area which has 457 residences. He said that it is doing very well and asked why we would complain about our new tiny town. We have tried to explain to the Minister that Peppermint Grove is hardly a typical area. It would have to be one of the most homogenous areas within the City of Perth. The level of private wealth is such that the requirement for a municipality to provide for its residents is vastly diminished. It is silly of the Minister to even raise that as an example.

These towns will be divided into units of around 20 000 to 25 000 people and the CBD will have only 5 400 people. I would have thought that in making some of the modifications that were made between the second reading speech in the Assembly and the second reading speech in this place the Government would have corrected the apparent error that has been pointed out on several occasions to the Minister relating to population figures for the central area of Perth. In his second reading speech in this place, the Minister said that the population of the central area will be approximately 9 000. That is the type of figure one would expect from the Carr-Fardon report, but I would have thought that the Government, having had wiser counsel in the interim, would have corrected that figure and conceded that the actual population of the central area is 5 400. When one takes out all the people who are having triple bypasses in Royal Perth Hospital, the Japanese sailors staying at the Sheraton and so on, one realises that the population is only in the order of 5 400. It will be a real Shire of Perth.

It is important to look at some of the trends. Generally, the trend has been towards amalgamating authorities to obtain better utilisation of resources. We are doing the opposite to that. Shortly, a Ministry of Justice Bill will be coming before this place which talks about the benefits of amalgamating units to gain more streamlined, cost-effective structures. We have a structure that in terms of its financial management is very streamlined and providing good levels of service. As well, it provides reward to the Building Owners and Managers Association and to the Chamber of Commerce and Industry. Yet the City of Perth is being divided against all current trends.

Jeff Kennett and Charles Court appear to be the guiding hands in this Government -

Hon T.G. Butler: Richard Court.

Hon A.J.G. MacTIERNAN: No, I am referring to Charles Court, who is one of the intellectual gurus who guides the Government. As to Jeff Kennett, we get the Victorian papers to find out what this Government will do in the near future. In the restructuring proposals for the City of Melbourne, they recognised the need to retain a residential hinterland. They preserved within the boundaries of the City of Melbourne two very substantial residential areas of Carlton and Parkville. The new City of Melbourne now has within it 35 000 people - not 5 400. They took out the poor areas and put them into other working class municipalities so that there would not be any drain from cross-subsidisation. I must say that they showed more sense than this Government in two respects. Firstly, they retained a residential hinterland and, with that, a substantial population within the City of Melbourne. They were not too gutless to amalgamate areas when engaging in a carve up, and they were prepared to take out certain areas. They were prepared to put a large size area in with an existing authority. It may have been that the other authority voted Labor anyway and it did not matter. Many of those decisions appear to have been born out of what the Government can get away with in Labor electorates.

It is not sensible to build three new administration centres and depots. We hope that when the phantom commissioners are appointed, they will reconsider this. We have been advised for the last month and a half about the commissioners, but it will be difficult to find people who will work for 18 months for 30 hours a week for no pay. The Government believes it will find these commissioners. We can only hope that they will be people of superior judgment to Carr and Fardon and perhaps they will be able to persuade the Government to listen to the ratepayers and not spend the money in that way. After all, the money does not belong to the State Government, and it should not build depots and administration buildings which we do not need or want. The problem with the municipalities will be that for the interim period of 18 months we will have no accountable local government. A group of commissioners will run these areas. The commissioners will have a certain amount of autonomy, although that will be selected by the Minister. The commissioners will not be subject to any accountability to the residents and ratepayers of these areas.

Fiercely fought battles often arise in the City of Perth regarding developments. Certain groups want increased density zoning, and others are opposed to it. Often these battles relate to development styles. Currently these interests are being represented by elected councillors, and a balance is found between those various interests. Residents and ratepayers are greatly concerned about this aspect, especially in the suburbs surrounding the City of Perth in which a great deal of development activity can be found. The areas of West Leederville and Wembley have greatest concern in that respect. Ratepayer groups in those areas have fought hard to ensure that councillors represent their interests, but they will have no such assurance from the commissioners.

When the Bill reaches the Committee stage, I will move an amendment which will inhibit the power of the commissioners to make decisions contrary to the recommendations of the council officers. That is not a totally satisfactory response, but at this stage that is all we can seek to do to provide a fetter on the power of the commissioners, and provide some protection for the interests of the residents and ratepayers until democracy is restored in the City of Perth. This issue cannot be taken lightly as the municipalities will

be without elected representatives for a long time. This may not be an issue in certain areas without a great deal of development activity; however, that is not the case within the City of Perth.

Another major concern is the complete absence of consultation with affected groups. We have received letters from Mr Packer of the Building Owners and Managers Association and from the Chamber of Commerce and Industry saying that they had nothing to do with this proposal. We have already indicated that a BOMA consultant, upon leaving that payroll, immediately joined the Government payroll and, wacky-do, produced exactly the same report for the Government as was produced for BOMA! The consultation has been limited to BOMA and the Chamber of Commerce and Industry. In fact, the City of Perth has become a subcommittee of BOMA and the Chamber of Commerce and Industry. We have the Foster's Melbourne Cup and the Pepsi Western Australia Football League, and this sponsorship could be extended to the BOMA City of Perth.

Hon T.G. Butler: Maybe the Chamber of Commerce and Industry.

Hon A.J.G. MacTIERNAN: Does the member think so? I believe BOMA is very influential. This sponsorship of the City of Perth could involve writing BOMA across the top of its emblem.

Hon T.G. Butler: It could be HIA Northbridge.

Hon A.J.G. MacTIERNAN: Maybe we could all be sponsored, and have Mt Hawthorn sponsored by Slick Chix. We could do a great deal of business.

The PRESIDENT: Order! Can the rest of us join in?

Hon A.J.G. MacTIERNAN: We are off to a flying start by handing over the resources and ownership of the City of Perth to those business interests, which were the only groups consulted. We have repeatedly asked for a referendum. It may have been possible for the Government to put the proposal out for public comment. If this Government had any political savvy, it would have adopted that approach. Instead, it is going in boots and all with this proposal. The Government is saying, "We are making the decisions and you will wear it." The Government has painted itself into a corner. As we indicated last night on numerous occasions, it is driven by ideological lunacy, as Nick Greiner referred to the Liberals in this State. The Government did not take the opportunity to consult. Consultation is not just about making people feel good - it is democratic and we subscribe to democratic values - but it actually also helps in making decent decisions. If a plan is presented to the people who are asked for their views, they are likely to point out errors in the proposal. This should be done before a commitment is given to a proposal. This decision was made before the Government found out the fundamental and great problems with the Carr-Fardon report.

I have left the issue of the absence of consultation and the diminution of democratic rights for my colleagues. It is important to understand that this proposal does not affect only the municipalities of Perth. This Government's conduct is cavalier and goes against an integral part of our democratic structure. As pointed out in other debates, we hear ad nauseam about State's rights, but that cry is a refuge for the scoundrel conservatives in this State. If all else fails start beating the States' rights bandwagon. Any time the Federal Government may encroach on any of the State Government's perceived powers this Government feels that is a complete travesty and a threat to democracy as we know it. Yet this Government can without a scintilla of consultation, let alone with anything as sophisticated as a referendum, just seek to demolish, dismiss, destroy a democratically elected local government authority. There have been cases where local government has failed to function and it has been necessary for a short term for the Government to step in. On the Government's own admission this is not one of those cases. This is not a city in crisis. This is a financially well run and stable municipality that could, like any other municipality, perhaps do better in certain areas, but on the overall scale of things it is certainly doing a good job. Yet this Government for its own purposes has decided to destroy that tier of government in Perth for 18 months.

During that period it will seek to spend at its will and not at the will of the residents and ratepayers, the funds of those residents in the way it sees fit to service its own political ends. It is extraordinarily stupid politically to attempt to do such a thing, because that, of all things, has encountered the wrath of the residents and ratepayers of the City of Perth. The Minister for Local Government has been at a couple of resident and ratepayers' meetings. He has not been at others. The Minister's adviser over there has been at most of those meetings, and he can tell members that one of the strongest themes that has come through at all of these meetings is that it is outrageous that there has been no consultation. There is an absolute disgust that this has been done without any reference. Even in areas where there is some support for secession there is such outrage and anger at this wanton disregard for what the people in the municipality of Perth might think and want. The result now that local government generally is at threat is these pious and unctuous statements from the Premier today to the delegation of mayors, "Oh no, we are going to do it only to the City of Perth. We would not do it anywhere else."

Hon Cheryl Davenport: It would not matter. They would not have to pay their vested interests.

Hon T.G. Butler: Can you take their word? They were not going to close the Midland Workshops either.

Hon A.J.G. MacTIERNAN: We will not see it in Wanneroo because there are far too many interests of the Government there. That is notwithstanding that Wanneroo has a population of 200 000 people.

Hon E.J. Charlton: It is not a capital city yet. That is the only minor difference.

Hon A.J.G. MacTIERNAN: Certainly on any analysis Wanneroo is a city in crisis. The Government has said in its little brochure that it wants to put the "local" back into local government. Regardless of the City of Perth, if the Government wanted to put the "local" back into local government by creating tiny towns, why not create them in the City of Wanneroo? Once again like so many of these things we have brought forward this shows it is a purely political exercise. If the Government were concerned, putting aside the capital city issue, which is what the Premier and the Ministers have said from time to time, it would do it in Wanneroo - or it would if it did not have its mates there - and the City of Stirling. The Government will not do that because this is a purely political exercise of paying back political mates. It can afford to do it because not one coalition member represents those areas. As people said at well attended and vocal meetings in the North Perth Town Hall, the people of Vincent are being punished for voting Labor.

The Government is repeating the error of history. In 1896 a separate municipality of Leederville was created from the City of Perth. In 1901 the City of North Perth was created from the City of Perth. By 1914 they had both gone bankrupt and they were amalgamated back into the City of Perth. We now have town halls in the City of Perth, North Perth, and Leederville. Now we will have a Vincent Town Hall. We will have in this area a proliferation of municipal facilities that bear testament to very bad decisions of Government. Let us not waste these resources or repeat the lessons of history, but learn from them.

To recap the vital points: This proposal will not solve any of the planning problems that could be addressed for the City of Perth. It narrows rather than expands the base of decision making within the City of Perth; that is a bad thing. It is not democratic and will lead to a poorer quality of decision. This proposal fails to recognise the interdependence of the CBD and its surrounding residential hinterland. There can be no long term prospects for a central area without a thriving medium density residential area around that. If we produce these mendicant municipalities surrounding the city we will not have such a thriving area. The areas will fall into urban decline and the natural market for the businesses, the retail sector and the entertainment sector within that central area will fall away and the cities will become irrelevant as people refocus interest on regional centres.

The proposal fails to provide any guarantee. It is not fair economically. It does not provide for any fair distribution of assets. The plum that has been thrown in that the

Minister may from time to time prop up these mendicant municipalities for a certain period if they are falling short - that is, until after next election - is of no comfort. If we are to proceed down this very wrong track there must be an equitable distribution of the resources. The proposal is based on false premises as to the economic indicators. The indicative budgets do not stand up to any scrutiny and there has been absolutely no consultation whatever with the City of Perth. The City of Perth has taken upon itself to conduct a referendum as it is entitled to do under its powers under the Local Government Act. This is a formal statutory referendum and I implore the Government Ministers, if they will not listen to us, at least to use this as some last opportunity to listen to the voice of the people of Perth.

Debate adjourned until a later stage of the sitting, on motion by Hon George Cash (Leader of the House).

[Continued on p 8757.]

### **MEMBERS OF PARLIAMENT - LEAVE OF ABSENCE**

*Edwards, Hon Graham*

On motion by Hon Tom Helm resolved -

That leave of absence for 12 sitting days be granted to Hon Graham Edwards on the ground of private and parliamentary business.

### **PAY-ROLL TAX ASSESSMENT AMENDMENT BILL**

*Second Reading*

Debate resumed from 25 November.

**HON MARK NEVILL** (Mining and Pastoral) [9.01 pm]: The two payroll tax Bills before the House tonight represent a breach of faith by this Government. Prior to the last election the then Opposition gave a commitment to the public of Western Australia that it would abolish payroll tax, a tax which raises about \$500m a year. When it was pointed out to the then Opposition that the Federal coalition may not win the Federal election, it realised that it needed some fall back strategy. If the coalition did not win the Federal election in March, the payroll tax would not have been abolished by the Federal Government with no substitution of a goods and services tax.

The State coalition then amended its policy to say it would phase out payroll tax over two terms. If payroll tax, which raises revenue of \$500m a year, is to be phased out over two terms in any orderly fashion, the revenue from payroll tax would have to be reduced by about \$70m or \$80m a year. On top of that, the State coalition went into the election with a vague commitment to abolish State debt by the year 2010. I detect a slight frown from the Minister for Finance, but I read that information in the coalition's policy statement and I do not know what more authoritative document I can consult.

There was a policy to abolish State debt by the year 2010; that is, the abolition over 17 years of \$11b or \$12b worth of State debt, not including superannuation. From memory my calculations were that State debt had to be reduced by \$700m every year to abolish it completely by the year 2010. It was fairly obvious to a person of the stature of the Minister for Finance that those two bizarre commitments would not be achieved without some form of assistance by the Commonwealth. Yet, the State coalition made a commitment to trim \$700m or \$800m - about one-seventh - from the State Budget. It was a fanciful proposition. In this Bill we have an increase in payroll tax of \$16m. It is only marginal, but to keep its promise the Government should be making some dent in the payroll tax that is collected in Western Australia.

It reminds me of the 1975 election when Gough Whitlam announced one of the major planks in the Labor Party policy as being the abolition of payroll tax. Malcolm Fraser came out shortly thereafter with a fistful of dollars for the family allowance or child endowment - I am not sure what it was called then. People were not interested in the payroll tax. The average person does not pay it but could see a fistful of dollars with the

child endowment or family allowance increase. It seems that a Federal Labor Government previously had a major plank in its electoral platform to abolish payroll tax and the Federal Liberal Party passed over that great opportunity.

The other fundamental flaw with the coalition's policy before the election was that if it were successful in reducing payroll tax by \$70m, it would have been penalised by the grants commission for not raising revenue to the extent that it could have done. The grants commission looks at all the different forms of revenue raising. If a State does not realise full revenue from a particular area, that is taken into account when the general grants are given. We get penalised by the Federal grants commission for not having a gold tax in this State. I am not sure of the amount. The same thing would happen with payroll tax; we would have been penalised because our level of collection would have been substantially below that of other States. I looked at the grants commission report for last year, in the volume 3 appendices which show figures for standard and standardised unsourced revenue per capita of population. The standard figure for all States is \$341 per capita. That varies from a low of \$268.70 per capita in the Australian Capital Territory to a maximum of \$385.73 per capita in New South Wales. Western Australia sits at \$322.11, about \$19 below the average value.

Hon Max Evans: Queensland is well below that and I think South Australia is below the Queensland figure.

Hon MARK NEVILL: Those two States are lower. Western Australia on average has a lower per capita take of payroll tax and that would be taken into account by the grants commission in working out this State's grants. The coalition was going into the election with a policy which would have had an economic penalty attached to it in terms of grants from the Federal grants commission. The other amusing part of the run-up to the last election was that the then State Leader of the Opposition agreed with the Federal Leader of the Opposition, Dr Hewson, to give up \$500m worth of State payroll tax and that somehow would be offset by payments from the goods and services tax.

Hon Max Evans: It was not \$500m by the State; it was about \$73m. The figure of \$500m was for the whole of Australia.

Hon MARK NEVILL: How much? What are payroll tax receipts in Western Australia?

Hon Max Evans: You were saying that the State would not get \$500m. The payroll tax raises \$550m, but an amount will come back from the other way. There would be a figure of \$73m imposed on the State.

Hon MARK NEVILL: The Minister has lost me. The general principle is that we have a State's rights Premier ready to give over \$500m of tax to the Federal Government and then turn around and go cap in hand to John Hewson, if he were the Prime Minister after the election, begging for that \$500m. I am not sure what the \$73m adjustment was, but it seems a crazy proposition. At the same time, the Federal Leader of the Opposition was saying that there would be a five per cent cut in grants to the States, plus a \$160m-odd cut in hospital funding. When those three factors are added together - the promise to abolish payroll tax, the effect it would have on the Grants Commission grants, and the proposition that the Government was going to give a State tax back to the Federal Government and have to go cap in hand for it - they do not make any sense to an objective observer of the promises made in the lead up to the election. I am confident the Minister for Finance knew that the Government could not knock off \$80m from the payroll tax bill this year. If he did not know it, I expect to see \$160m knocked off when we see this Bill next year. I put it to the House that the Government had absolutely no intention of honouring that policy if the Federal Labor Government had not been elected, but perhaps that is something it did not contemplate.

We had a bit of refreshing honesty from the Deputy Premier, Hendy Cowan, a few months back when he said he doubted whether the State Government would be able to abolish payroll tax over the eight years without introducing a new tax. To my knowledge the Premier has not yet walked away from that commitment.

It might be interesting to put in a few details about the history of payroll tax, which is a

fairly dry subject. Perhaps people like Hon John Cowdell would enjoy the nuances of its history. Payroll tax was introduced by the Commonwealth Government partly to fund child endowment in the 1950s, and I think it was in 1971 that the Federal Government transferred payroll tax to the States. This was seen by the States to be a tax that had some growth potential. The Federal Government had the rate at 2.5 per cent and since then the States have increased it to 3.5 per cent.

Hon Max Evans: It is up to five, six or seven per cent, depending on the State.

Hon MARK NEVILL: It depends on the State, but initially it was increased. The receipts in Western Australia in 1980 were \$168m; in 1992-93 that had grown to \$529m and in 1993-94 to \$545m. Therefore, in 13 years we have had a tripling of receipts from payroll tax. It certainly was a growth tax. I do not think anyone in this House would disagree with the proposition that payroll tax is an unfair tax, and does not fall evenly across business. It is not equitably distributed, because only larger companies pay payroll tax, and it particularly impacts on industries that are labour intensive rather than capital intensive, because they are paying it based on the number of people in the work force.

I think the sentiment is shared by all that if we can get rid of payroll tax we should, but I put it to the House that the coalition's promises before the elections were quite cynical and will not be delivered by this Government. The compliance costs for business are also very high, and compared with other taxes the administrative costs are very high. The Opposition is not opposed to these Bills as they give a measure of relief to small and medium sized businesses. If this Bill had not come in, payroll tax would have gone up by more than \$16m. The changes brought about by this legislation will have no impact on employment and it is certainly not going to make any difference to the Western Australian economy. I agree that if the Government could have kept its promise and reduced payroll tax by \$70m or \$80m this year, it would have had an impact on employment in this State. However, I would be very wary of any Government in this State handing over payroll tax to the Federal Government without having a more efficient alternative taxing mechanism in place that was controlled by the State. Inevitably when a Government does not it will lose.

The Opposition supports the Bill but certainly wants to bring home to the Government and the public of Western Australia the point that these two Bills represented the opportunity for the Government to honour its election promise to start phasing out payroll tax. The Government should be honest with the people of Western Australia and say that it has no prospects of phasing out payroll tax or lowering it below the level we have now. While the commitment is there it will hang around the Government's head for the next seven years. It should tell the public of Western Australia that it was not honest with them before the elections and that it has changed its ways.

**HON BOB THOMAS** (South West) [9.20 pm]: As Hon Mark Nevill has indicated, the Opposition supports this Bill, although some of the Government's rhetoric we have listened to, both when it was in Opposition and now when in Government, leads us to believe that it is not as serious about abolishing payroll tax as it has made out it was. The Notice Paper may confuse some members because there are two payroll Bills on it, one an assessment amendment Bill and the other an amendment Bill. The assessment amendment Bill provides exemptions and changes to the payroll tax regime and the amendment Bill changes the threshold and therefore the rates of tax which are raised.

The Pay-roll Tax Assessment Amendment Bill has four functions. Briefly, it provides an exemption to all apprentices; it increases the thresholds at which the payroll tax rates apply; it removes the anomaly for group businesses as far as discretionary trusts are concerned and therefore removes an anomaly whereby some businesses are required to pay tax even though the business does not have a payroll which requires the payment of a tax; and it amends the way in which agencies are treated. Rather than a Bill being introduced each time a Government agency changes its name or a new agency is created to exempt it from payroll tax, it is done by regulation.

The first function is to exempt all apprentices from payroll tax. Members may remember that in 1991 the then Opposition moved an amendment to exempt all apprentices from

payroll tax. At that time - and until this Bill is passed - only first year apprentices applied for an exemption under the Act. The Opposition at that time felt that it was important to extend that exemption to all classes of apprentices. At the time, I think only group apprentices qualified.

Hon Max Evans: Only first year group apprentices.

Hon BOB THOMAS: Yes, that is right. As Mr Evans knows, at that time the recession had begun to bite in Western Australia and our revenues had started to contract. From memory, that initiative would have cost the State about \$1.5m. The Budget was so tight at that time and given that the Labor Government had increased in real terms spending in the education and health areas in that Budget, it was not possible for it to extend the exemption to all apprentices in Western Australia. As a result of a deadlock between the two Houses, the amendment was withdrawn and the exemption was not proceeded with. In my view, the Western Australian economy has now picked up substantially. The State's finances are in far better shape than they were two years ago and we can afford to extend these exemptions to all apprentices. I support that. However, the Government should not view it as a panacea for all of the problems associated with falling apprenticeship numbers because a lot of other factors are involved. For instance, recently I spoke to a businessman in Albany who told me that the wages paid to apprentices were not a factor. He said that often he would have a first year apprentice in his workshop who could not do more than just sweep the floor. However, it was costing him more money to pay a qualified tradesman \$500 a week or \$13 or \$14 an hour to supervise an apprentice who earns \$4 or \$5 an hour. It was unproductive. He did not believe that he should employ someone as an apprentice, give him a broom and tell him to sweep the floor. Therefore, there is a big commitment by employers to time and resources to take on an apprentice; so reducing the amount of payroll tax an employer must pay is only one very small factor in the number of apprentices employed in Western Australia. However, this is a step in the right direction.

The mirth at this part of the Chamber has been caused by Hon Tom Stephens -

The DEPUTY PRESIDENT (Hon Barry House): Order! This is irrelevant to the debate.

Hon BOB THOMAS: Okay, Mr Deputy President. I will not tell the House that Mr Stephens answered the phone by saying "House of oppression".

The DEPUTY PRESIDENT: Order!

Hon BOB THOMAS: The Bill will also increase the thresholds at which payroll tax comes in from \$375 000 a year in salaries to \$450 000 a year. There is a consequential shuffling upwards at which the higher rate of tax comes in. That measure alone will increase by 500 the number of employers who are exempted from payroll tax. I think that is a good thing although less than 10 per cent of Western Australian employers are required to pay payroll tax and the majority of them are metropolitan-based businesses. Very few employers in the country pay payroll tax.

A couple of years ago I was lobbied by some business people in Albany who told me that the coalition had the right policies for Albany. I was told that the coalition would get Albany going because it was going to abolish payroll tax. I asked them how many of them paid payroll tax and was told that not one of them paid it. I went further and rang the State Taxation Office and asked how many employers in postcode 6330 paid payroll tax. I was told that 24 companies were eligible to pay payroll tax in that postcode but some of them were exempted. The point I am making is that very few employers in Albany pay payroll tax. In fact, it is to their advantage to see the payroll tax rates stay as they are because this legislation will now pick up many of their competitors in the metropolitan area. The payment of tax discriminates in favour of country based employers and small business in the metropolitan area against big business. For example, many of the retailers in Albany are not large enough to pay payroll tax. People who go out of town and shop in the metropolitan area would more likely shop in large retail stores which are required to pay payroll tax. That makes the country shops a little more competitive because they do not have to pay it. In many ways payroll tax



arrangements advantage businesses in the country and small businesses in the metropolitan area who do not pay it.

I had to give a lot of thought to the way this Bill treats discretionary trusts. On the one hand I felt that when a person engaged in this sophisticated investment practice, which allows him to control the level of income tax he pays, he must weigh up the advantages and disadvantages. One of the advantages may be to reduce income tax but, because of the way the existing Act is worded, all beneficiaries from discretionary trusts are considered to have more than a 50 per cent interest in the trust. Therefore, any business a beneficiary may carry out is grouped with all the other businesses involved in that trust. A person may have a business which for all intents and purposes is operated independently of the other businesses in the trust, but because of the discretionary trust arrangement, that person would be required to pay payroll tax, whether or not his business was liable on its own. An example is a farmer's son. As a sibling the son would be classed as a beneficiary of the trust. If he came to the metropolitan area and established a business which became profitable, that could have an adverse effect on the farmer who, because of the discretionary trust, would be required to pay payroll tax even though he may employ only one person. I had to weigh up whether that was a fair situation and determine whether a person engaging in those sorts of practices should take the good with the bad. However, I have decided that in many cases people do not realise they are beneficiaries of trusts, and they may unwittingly be caught up in this requirement to pay payroll tax. I am perhaps not being very articulate.

Hon Max Evans: Not at all. You have it right.

Hon BOB THOMAS: I do not intend to vote against that part of the Bill.

I agree with the other change in this Bill which is to ease the administrative way in which changes to Government agencies and names and amalgamations of departments are treated for exemptions for payroll tax. This will make it much more efficient for the department to continue to grant those exemptions without bringing the matter to this Parliament each time.

I do not need to reiterate the comments of Hon Mark Nevill who quite clearly showed that the policies of the coalition parties in the lead-up to the State election were fanciful in the way they treated payroll tax. The State coalition said that if it won the election it would abolish payroll tax, provided the Federal coalition won the election and implemented Fightback, which had a compensation package for the States. I understand that the compensation package would have replaced the amount the State lost when it abolished payroll tax, but it would have been fixed and not indexed. Western Australia's amount was to be \$500m, and that figure would have stayed the same. There would have been a concomitant reduction in other grants of five per cent. Therefore, over time this State would have lost money. The payroll tax compensation would not have been indexed and the State would have lost five per cent of 60 per cent of its revenue, which comes from the Commonwealth Government. I was a little confused when the Minister indicated that the State would have lost only \$73m. I hope the Minister will indicate in his response to the second reading debate how the compensation mechanism would have worked and explain how the \$73m figure was arrived at. The Minister could also inform the House whether that compensation package was not indexed because the State would have been able to retain the goods and services tax levied on State trading enterprises.

Hon Max Evans: I will not tie you up with the detail.

Hon BOB THOMAS: I think the Minister should because it is an important issue. Hon Mark Nevill has indicated that the State Government has backed away from that commitment. The Minister said in his second reading speech -

Unfortunately, the re-election of the Federal Keating Government and the severe financial problems inherited from the previous State Government have frustrated our endeavours to provide even more substantial reductions in payroll tax this year.

Hon Mark Nevill: The books are exactly as we said they were.

Hon BOB THOMAS: The majority of people in a majority of seats voted for the Keating Government because they did not want the Fightback package and the GST, the goods and services tax. I have a great deal of respect for the Minister for Finance and it ill behoves him to demean the will of the electorate, which clearly preferred the policies of the Keating Government to the radical changes proposed by the coalition parties. The electorate made a decision which the Minister for Finance should respect and which his statement demeans. I am surprised that he, of all people, allowed that to be included in a second reading speech.

Hon A.J.G. MacTiernan: Their election promises were based on assumptions they could not predict - that Hewson would win. What an improper assumption to make!

Hon BOB THOMAS: Given the political climate that prevailed in Western Australia last year, it may have been -

Hon B.K. Donaldson: The political climate was not too good last year, but it is good this year.

Hon BOB THOMAS: This Government has been taking away people's rights, left, right and centre yet the member says that the political climate is good. That is terrible.

[Quorum formed.]

Hon BOB THOMAS: I have forgotten what Hon Bruce Donaldson said.

The DEPUTY CHAIRMAN: Order! I think you should, because your contribution has been very relevant so far; so forget the interjections and stay on track.

Hon BOB THOMAS: Thank you very much, Mr Deputy President; I will quote that time and time again. The Treasurer's second reading speech indicates that this Government had inherited severe financial problems from the previous State Government. In fact, the State Government inherited a balanced Budget from the previous Government.

Hon P.R. Lightfoot: I have only just come into the Chamber, but I thought I was listening to Hans Christian Andersen!

Hon BOB THOMAS: The member obviously disagrees that the Government inherited a balanced Budget.

Hon Mark Nevill: Did it not have a \$23m surplus?

Hon P.R. Lightfoot: It was the most corrupt Government the State has ever seen. How dare you say we inherited a balanced Budget!

The DEPUTY PRESIDENT (Hon Barry House): Order! Members, the interjections are out of order, no matter where they come from in the Chamber. The only person who has the right to speak is Hon Bob Thomas, and he has the right to speak through the Chair.

Hon BOB THOMAS: I advise those members who have only recently returned to the Chamber and who have started to interject that had they read the editorials in *The West Australian* over the past six or nine months, they would know that they have slammed this Government time and time again and said that it has no commitment to implementing the recommendations of the royal commission. I admit that our Government made mistakes in the past, but at least we were prepared to accept and implement the recommendations of the royal commission. This Government has no commitment whatsoever to implement them. The State Government inherited a balanced Budget from the previous Government.

A Government member interjected.

Hon BOB THOMAS: I would have finished five minutes ago had members opposite not interjected. When next the Leader of the House starts to complain about the Opposition delaying and holding up the business of the House, and how he can even say that with a straight face beats me, because we do not have the numbers in this place -

*Point of Order*

Hon PETER FOSS: Mr Deputy President, I have not heard Hon Bob Thomas say one thing about payroll tax.

The DEPUTY PRESIDENT: The member on his feet has made a very relevant contribution, apart from the last couple of minutes, and I ask him to get back to the Bill before the House, which is concerned with payroll tax.

*Debate Resumed*

Hon BOB THOMAS: As I said, I would have concluded my remarks five minutes ago had I not had the inane interjections from the two members opposite. The Treasurer stood in the Legislative Assembly at the end of June and indicated to the Parliament - I think it was during his second reading speech on the Supply Bill - that there was a Budget deficit of \$23m. However, at the same time that he was advising the Legislative Assembly of that Budget deficit, that second reading speech was being distributed to members of the House and to the Press, and it did not take long for the Opposition to realise that the second reading speech which had been distributed to members indicated that the State Budget was balanced.

Hon P.R. Lightfoot: It has taken you a long time to realise that. You have only just mentioned it.

Hon BOB THOMAS: The reason we know that the State Government had a balanced Budget is that the Treasurer apologised to the House for misleading it and indicated that there had been a late surge of stamp duty receipts and the Budget had balanced. Therefore, it was wrong for the Government to say in the second reading speech on this Bill that the Government had inherited severe financial problems.

Hon Peter Foss: What about the \$400m that had to be borrowed to get to that stage?

Hon Mark Nevill: Are you talking about the net financing requirement?

Hon BOB THOMAS: The net financing requirement is about average for all of the States, and all of the financial commentators - Moody's and Standard and Poor's - indicated that Western Australia's financial position was very sound. Therefore, that statement in the second reading speech is wrong. The Government also received more Commonwealth grants this year than it has ever received. Therefore, Commonwealth receipts are up, State Government receipts are up, and it is wrong for the Government to say that it inherited -

Hon P.R. Lightfoot: What do you think about State debt?

Hon BOB THOMAS: That is actually up this year.

Hon Mark Nevill: There were no skeletons in the cupboard, as you had hoped to find.

Hon P.R. Lightfoot: There are plenty from your Government - the most disgraceful Government this State and nation have ever seen.

Hon BOB THOMAS: I probably would have concluded 10 minutes ago had it not been for those interjections. The Opposition will support this Bill.

HON A.J.G. MacTIERNAN (East Metropolitan) [9.47 pm]: We have certainly had, as has the Minister, representations made to us by the Law Society of Western Australia that it is not sufficient simply to remove what the Minister describes as an anomaly with discretionary trusts, but that we should revert to the very wide discretion that was given to the Commissioner for State Taxation in 1975 when the grouping provisions were first introduced. For the benefit of members who may not be familiar with payroll tax, payroll tax is progressive in nature, so that the higher the level of the payroll, the higher the percentage of payroll tax that is paid. Therefore, there was a natural minimisation tendency on the part of businesses to divide up their operation into a number of smaller businesses in order to reduce their overall payroll tax burden, because each of those smaller businesses would slot into the scale at a lower rate. Therefore, quite properly, grouping provisions were introduced in 1975 to ensure that businesses which were owned by the same persons or substantially the same persons, and which were not substantially operated independently, were grouped together and their payroll combined for the purpose of determining what level of payroll tax they would incur.

What the Minister is seeking to address in this legislation is discretionary trusts.

Hon Bob Thomas informed the House that a number of people who are beneficiaries in a discretionary trust do not have any involvement in it. However, they find that their very independent business operations combine together to set a new high level of payroll tax. Another problem is that the commissioner now - it was not the case when the grouping provisions were introduced in 1975 - has discretion not to group businesses that have a joint ownership of 50 per cent or more only where there is precisely a 50 per cent shared controlling interest. I am not sure whether it is as rare as the Law Society of Western Australia's submission makes out, but it is only where there is an exact 50-50 split in the ownership of the assets of the two businesses that this applies. For example, where company X is owned by person A and person A also has a 50 per cent interest in company Y, person A can make an application to the commissioner to exercise discretion to treat those businesses as being substantially independent and, therefore, not grouped for payroll tax purposes. If, for example, a person had a wholly owned interest in company X and a 51 per cent interest in company Y he would not have the capacity to go to the commissioner to seek his exercise of discretion that those businesses may be substantially independent.

There are issues in this Bill which need to be examined. It is a question of going back to the first principles. We should consider that the grouping provisions were introduced to stop the artificial dividing up of businesses so that they would attract a lesser rate of taxation. There is no purpose or justification for confining the incidence where the commissioner may exercise discretion to those where there is only a bare 50 per cent controlling interest. There are probably many other instances where businesses are independent and their independence is not predicated on any attempt to minimise tax, but from the very nature of the operation - the partnership structures - and the fact that a person may enter into very disparate business ventures with a wide variety of people it is inappropriate in many of those circumstances to group them.

In making its decision, the Opposition has to go back to the principles and look to the mischief that has been sought to be relieved by the introduction of the grouping provisions. I ask the Minister to comment on whether he would consider looking at broadening the range of circumstances in which the commissioner is given an opportunity to exercise his discretion. The Opposition is keen for the establishment of a well defined set of guidelines that would direct the operation of that discretion so that it is directed to the businesses that are truly independent and do not in any way perform a single or associated business operation. The points I have made are valid and we do need to look to them. Hon Tom Stephens may have some suggestions on how we should handle that.

**HON TOM STEPHENS (Mining and Pastoral) [9.55 pm]:** I was not aware that this Bill was being debated tonight. I gather that my colleague, Hon Mark Nevill, learnt of the Government's intention to proceed with this Bill only at 7.45 this evening. He found out then that it was intended to interrupt debate on the Perth City Council Bill to debate this legislation. The Opposition was not given very much notice, but interestingly I notice that the Minister knew about it because he organised for his departmental advisers to be present. If this is the level of cooperation that the Leader of the House speaks about, I put it to him that he should have another think about what cooperation means. If it is good enough to let the Minister know so that he can organise his departmental officers, it is good enough to let the Opposition know that the Bill is coming on for debate.

My attention was first drawn to this Bill on 15 November. The reason I remember that date is that it was my birthday. I happened to see the letter which arrived at the office of the Leader of the Opposition from the Law Society of Western Australia. I was intrigued when I read that letter and I was keen to make sure that it was sent to members of the Opposition to ensure that they had a chance to assess the questions. Members will be aware that one of my front bench colleagues has been involved in family matters and I have not had the opportunity to discuss this matter with him. When I read the letter from the Law Society alarm bells started to ring for me. I understand that some members have received a briefing on this legislation, but I was not one of those lucky enough to receive

it. The briefing suggests that this Bill is identical in its intent to the Bill introduced into this House in 1991. I have asked one of the attendants to try to get me a copy of the 1991 Bill, which lapsed. I hope that I have it before the end of the second reading debate because I want to check to ascertain whether that is the case.

I have developed an interest in the provision in this Bill which repeals the current list of exempt Government agencies in schedule 2 of the Act. Those agencies which are currently exempt from paying payroll tax will no longer be dealt with by way of schedule, but they will be dealt with by way of regulation. I find it an appropriate response on the Government's part to the anomalies that have developed over the years with agencies that are in and out of the payroll -

Several members interjected.

Hon TOM STEPHENS: I agree with the position which will ensure that the payroll exemptions for Government agencies will be dealt with in this way in the future. Members will be aware that I have placed on the Notice Paper a series of questions relating to those agencies which do and do not pay payroll tax. I was intrigued by the answers given by the Ministers during the Estimates Committees, some of which were clearly inconsistent with the answers given to questions on notice in this place. Those questions related to which agencies or departments were paying payroll tax and which were exempt. The whole area is a minefield. I regret that the matter was not dealt with in the 10 years we were in office. I commend the Minister for Finance for ensuring that this Pay-roll Tax Assessment Amendment Bill addresses that question.

I have had the opportunity to read the second reading speech thoroughly. It provokes me to deal with the Bill at some length. Some provocative and partisan comments were made by the Minister. They provoke me to respond in depth to what the Minister may have regarded as a procedural Bill which could be whipped in, no matter the provocation in the second reading speech, and we would put up with the provocation without responding. I reject out of hand the defence by the Minister in his second reading speech in justification of the Government resiling from its pre-election commitment regarding payroll tax. It defends its position by referring to the unfortunate re-election of the Keating Government and the severe financial problems inherited from the previous State Government. As Hon Mark Nevill, our shadow Minister for Finance has asked: How can anyone, even when in Opposition and deprived of access to Treasury officials, possibly make the two-pronged commitment relating to abolishing payroll tax - \$500m of State revenue - and the removal of the State debt over a short time, prior to the formation of a Government? Because of the depth of knowledge of the current Minister for Finance, in Opposition he would have known that the pre-election commitments should not have been made because they could not be met. During this debate we have heard interjections by the Minister for Health about the royal commission and its lectures to Governments of all political persuasions. What is more corrupt than a party standing for office on election commitments that it knew from the start it did not have the capacity or the intention to fulfil? What level of corruption is it when a Liberal Party Opposition Leader -

Hon Peter Foss: Look at what your people did!

Hon TOM STEPHENS: As the Minister said earlier, we are debating the Pay-roll Tax Assessment Amendment Bill. I am talking about the corruption of a political process where the Minister's party, while in Opposition, and blessed with the skills of the current Minister for Finance, lied to the electorate of Western Australia about commitments to abolish payroll tax representing \$500m of State revenue. The Liberal Party misled the people. What is more corrupt than to go before the people and lie? The Minister for Health has brought into debate the royal commission and what it said about Governments and Government processes, but what has the Government done? It demanded the royal commission, and now it is proceeding to rip up the recommendations. The Government is ignoring those recommendations relating to the obligations of the Government to the people of Western Australia.

Hon A.J.G. MacTiernan: They did not ignore it; they did the reverse.

Hon TOM STEPHENS: Absolutely. The Government has systematically ripped up the recommendations. Members opposite have turned on their heads. It is only today, 2 December, that we finally see the Government prepared to proceed with the Commission on Government legislation in the other place, despite the fact that that legislation was a commitment made by a Labor Government.

Hon Peter Foss: Brown paper bags and leather satchels!

Hon TOM STEPHENS: Here we have it - brown paper bags! I am very interested that we now have two pieces of legislation dealing with discretionary trusts. I am starting to become interested in discretionary trusts.

Hon Peter Foss: Are you suggesting anything?

Hon TOM STEPHENS: I want to know more about discretionary trusts.

The DEPUTY PRESIDENT (Hon W.N. Stretch): Order! I suggest that the member remain interested in the Pay-roll Tax Assessment Amendment Bill.

Hon TOM STEPHENS: This Bill deals with discretionary trusts. This is the second time the Minister for Finance has come to this House this year -

Hon Max Evans: This is Labor Party legislation that I am bringing back in.

[Quorum formed.]

Hon TOM STEPHENS: This is the first time I have had a good look at the provision of the two Bills. I am very interested in the provisions related to discretionary trusts. I have here the 1991 Bill -

Hon P.R. Lightfoot: Was that \$5 000 your Premier took illegally, in discretionary trusts?

Hon TOM STEPHENS: I note differences between the 1991 and the 1993 Bills: There are differences between paragraphs (c) and (d); and paragraph (e) is different. Clauses 9 and 10 seem to be similar. There appears to be similarities between the two Bills. The Bill before the House moves into the area of discretionary trusts, and I am starting to become interested. I want to know more about discretionary trusts, and who will be the beneficiaries of the process of the two Bills before this Parliament which will make it easier for the discretionary trust holders to become exempt from State tax.

Hon Max Evans: The Labor Party brought up this legislation, not me.

Hon TOM STEPHENS: Previous legislation addressed land tax exemptions. I have a precise memory about that debate. I remember the contributions by the Minister for Finance at the time. He was on the Opposition bench and he engaged in that debate. He expressed support for the amendments moved by Hon Joe Berinson.

Hon Max Evans: I do not begrudge that but when he handed out the fax it made the difference.

Hon TOM STEPHENS: We have seen, firstly, the Minister for Finance introduce amendments that relate to payroll tax which relates to land tax.

Hon Max Evans interjected.

Hon TOM STEPHENS: However, in common to both pieces of Government legislation is the attention to the interests of discretionary trust holders. I do not know much about discretionary trust holders.

Hon Max Evans: Hon Alannah MacTiernan will give you a lesson.

Hon TOM STEPHENS: I missed out on the benefit of her advice. However, it is certainly known to members that discretionary trusts are ways people have of organising their financial affairs to gain some respite from various obligations which might otherwise be theirs. I understand discretionary trusts are often used to protect partners in a marriage against the full force of any Family Law Court requirement regarding support for a spouse following separation.

Hon Max Evans: They are not very effective against that.

Hon TOM STEPHENS: I understand that is one of the motivations people have for opening a discretionary trust. It also seems to be utilised by people who are trying to protect themselves from court orders in relation to bankruptcy and the like. I gather people who have had court orders against them for things like damages have their assets protected by a discretionary trust because of argument which can be put to the court that they do not have real beneficial ownership of the assets of the trusts and therefore the court order theoretically cannot affect them. It involves a set of arrangements for people trying to separate themselves from their obligations. These are two pieces of legislation which try to attend to the needs of that group of people. It strikes me as intriguing that this Government is giving that power to that class of people.

Hon Max Evans: I am supporting Labor Party 1991 legislation and you are querying it. I do not understand that.

Hon TOM STEPHENS: It is the combination of the two Bills in which I am becoming interested. This is the first time I have spotted reference to a discretionary trust in a Pay-roll Tax Assessment Amendment Bill. I did not notice it when it came through the House in 1991.

Hon Max Evans: It did not come to our House, only the Assembly. Caucus might have approved of it.

Hon TOM STEPHENS: That may be the case; I missed it. I understand the Western Australian Law Society has written in great detail to the Minister for Finance about this Bill. Those concerns have been outlined by Hon Alannah MacTiernan. One of the quotes I find very interesting is the response by the Premier to why the Government was not prepared to attend to the concerns of the Law Society. He said that the present amendments to the Pay-roll Tax Assessment Act must be limited to securing the anomaly with respect to discretionary trusts as that was the extent of the Cabinet approval for amendments to the grouping provisions. The argument that that was as far as the Cabinet decision went, can hardly carry water in this place. If we were to accept the argument of the Law Society it may be time for a wider group of amendments to be included in the provisions of this Act as argued for by the Law Society in its four page letter which I seek leave to have incorporated in *Hansard*.

[Leave denied.]

Hon TOM STEPHENS: The letter reads -

Dear Minister,

#### **PAY-ROLL TAX ASSESSMENT BILL 1993**

Richard Norton of the Taxation Institute of Australia provided comments in relation to pre-Bill drafts of the proposed Sections 16D(8)-(9), 16G and 16H.

The Taxation Institute, in providing its comments through Richard, was aware of the proposed article in "Brief", passed to you pre-publication by way of additional commentary upon the proposed amendments. That prompted his comment:

"The TIA submits that part IVA of the Pay-Roll Tax Assessment Act would operate more equitably if discretions similar to that now proposed for discretionary trusts were restored to the Commissioner in the case of all businesses which are carried on substantially independently of each other, even where there may be greater than 50% common ownership."

Although the Law Society of Western Australia is pleased that your Government is addressing the present lack of discretion to exclude grouping in relation to businesses conducted through discretionary trusts, we are seriously concerned that the methodology will create an imbalance in favour of businesses operated through discretionary trusts as only the trustees of discretionary trusts operating a business will be entitled to seek the exercise of a general discretion to exclude grouping by reference to "carrying on of business substantially independently". That discretion will not be available to partnerships of individuals, partnerships of companies or trustees of unit trusts unless their partnership interest or the "controlling interest" of a beneficiary of a unit trust is precisely 50%.

The "Brief" article sought to demonstrate that the original discretion, contained in the 1975 introduction of the "grouping" provisions, should be reintroduced. In your letter of 22 October 1993, in response to that submission, you indicate that present amendments to the Pay-roll Tax Assessment Act must be limited to curing the anomaly in respect of discretionary trusts as that was the extent of the Cabinet approval for amendments to the grouping provisions. With respect, we suggest that such a narrow approval has arisen because the problem was put to you as an anomaly when in fact, as we believe is demonstrated by the "Brief" article, the problem was much wider. The problem was, and will remain after the amendments proposed in the Bill (save in relation to discretionary trusts) that there is no discretion for the Commissioner to exclude grouping unless a "controlling interest" is precisely 50% (a rare commercial scenario).

Further, we take it in counter argument to the propositions raised in the "Brief" article, you say that:

1. the purpose behind the 1986 amendment to limit the Commissioner's exercise of discretion to situations where there was a bare 50% of controlling interest, appears to have been to make it clear that the Commissioner should exercise his discretion where there was only a bare 50% and that purpose was achieved by limiting the discretion to a situation where there was the bare 50%;
2. the 1986 amendment, by achieving that purpose, "appears to have created a much more acceptable arrangement than previously applied"; and
3. the Act has always precluded the exclusion from a group of companies which are related under the companies legislation - ie where one corporation holds more than half of the issued share capital of another.

It can be said that the 1986 amendment made it clear that if there was a precise 50% controlling interest, the Commissioner was to exercise his discretion if a business was substantially independently operated. If that was the purpose of the amendment, however, then it was not necessary to go on and provide that the discretion could only be exercised if there was that bare 50% controlling interest. The purpose of the amendment would have been achieved by a direction (in the now 16D(7)) that the discretion was exercisable where the controlling interest was "50% or more" (to adopt the phraseology from other provisions in Part IVA). It certainly was not necessary to remove the then wider discretion, exercisable (no matter the % of controlling interest) to exclude businesses that were carried on substantially independently, in order for the Parliament to direct the Commissioner to its view that that Discretion was to be exercisable where the deemed controlling interest was only precisely 50%. It is difficult to see how limitation of the wide discretion, to make it clear that it was exercisable in the precisely 50% situation (which we suggest is a commercial rarity), "created a much more acceptable arrangement than previously applied."

Taxpayers were given certainty of availability of the discretion in relation to a business structure that is a commercial rarity (where a party has a precisely 50% interest) in return for removal of a discretion that was then available to a wide variety of business structures that are more common (where one party has a majority interest).

It is pertinent that you point out that the Act has always precluded the exclusion from a group, of companies which are related under the Companies Legislation. That it has done so more clearly demonstrates the limitation on the discretion which was effected by the 1986 amendments. The "grouping provisions" from the outset grouped related companies but also from the outside contained the "unusual discretion" referred to by Sir Charles Court in introducing those provisions to the Act, which allowed the Commissioner to exclude grouping of entities operating businesses carried on substantially independently of one another. That those provisions, at the same time, only excluded the discretion in



relation to businesses other than those operated through related companies. Clearly, the Parliament in introducing the grouping provisions in 1985, took the view that where businesses were operated by related companies the possibility of their being carried on (in substance rather than form) substantially independently of one another was so small that they should not be given the benefit of the exercise of such a discretion. Equally clearly, the discretion was to be open in respect of all other entities.

We respectfully request that you ask the Cabinet to revisit this matter with a view to authorising amendments which will return the grouping provisions to their anti-avoidance role rather than continue the denial of discretion to exclude grouping and thus deny the lower rates of Payroll Tax to business that are carried on substantially independently. However, if the limited changes proposed by the present Bill are to proceed, we suggest further amendment is necessary if the suggested "anomaly in respect of discretionary trusts" is to be cured.

It is our understanding that the Commissioner interprets Section 16F of the Act to authorise grouping under sub-section 16D(2) if a controlling interest can be found under any one of the paragraphs of sub-section 16D(3). Thus, for instance, if a corporate trustee of a discretionary trust, carries on the business, then it could be grouped by reference to the controlling interests of directors or shareholders of the corporate trustee (under paragraph 16D(3)(a)/(b)). If the Commissioner sought to group a corporate trustee in relation to its business under those alternative "controlling interests" paragraphs then there would not be a grouping "by reason of carrying on a business in which a person has, or persons have together, a controlling interest under sub-section (3)(d) or (6) as a beneficiary or beneficiaries under a discretionary trust" - the reintroduced discretion of the Commissioner, in the proposed sub-section 16D(9) discretion could only apply to discretionary trusts where there was a non-corporate trustee. Even then the Commissioner could group a natural person discretionary trustee by reference to sub-section 16D(3)(e) and such a grouping would not be capable of exclusions by reference to the proposed new discretion.

If it is not the intention that businesses can be grouped by alternative applications of the various "controlling interests" paragraphs of Section 16D(3), so that discretionary trusts could only be grouped by reference to controlling interests of a beneficiary or beneficiaries under (3)(d) or (6) - and thus the proposed Section 16D(9) discretion will work - then amendment to sub-section 16D(3) is needed. Alternatively, any uncertainty should be removed by the Commissioner, through the ruling process, stating that Section 16D(3) is to be interpreted and applied on the basis that the various alternative "controlling interests" paragraphs of sub-section 16D(3) will be applied by the reference to the most relevant structure through which the business is carried on (by a corporation, by a corporation with share capital, by a partnership, under a trust or by a sole owner) and not alternatively.

The letter is signed by Peter Fitzpatrick, Executive Director of the Law Society. It starts to ring alarm bells with me when the Law Society has concerns about the legislation.

Hon George Cash: What does it mean to you?

Hon TOM STEPHENS: The Leader of the Opposition has asked me to wind up my remarks.

Hon George Cash: Why? We can simply add it on.

Hon TOM STEPHENS: He wants me to ignore that I have been provoked and to continue with the debate. It occurs to me that it may be appropriate that these Bills be sent to the Estimates Committee to consider some of the questions that have been raised by the Law Society and to make recommendations about those concerns. I am not sure what is the view of the Minister for Finance to that proposition, but I would like him to consider it between now and the Committee stage.

Hon George Cash: Then we will spend a couple of hours talking about it.

Hon TOM STEPHENS: If necessary, but I am sure that it can be dealt with quickly - certainly if there are no more provocative interjections from members such as Hon Peter Foss as to the orderly carrying on of the debate. As pointed out by the Minister for Finance, it is extraordinarily ironic that we had a party in Opposition carrying on about wanting to transfer back to the Federal Government half a billion dollars worth of State revenue and then having to go as a mendicant to Canberra to get those funds back. It demonstrates a party that showed no real commitment to the State's rights ideology about which Government members have been beating their chests in the last couple of weeks in this Parliament on land title legislation.

Hon P.R. Lightfoot: The Mabo Bill is a clear indication of our commitment to State's rights. It is a retention of our sovereignty.

Hon TOM STEPHENS: The reverse is the case. The State Government has just transferred the responsibility for land title in this State to the Federal Government as a result of the carriage of that legislation, because it is about to be struck down in the High Court.

I am intrigued to see that the payroll tax alterations that come about as a result of these two Bills nonetheless still increase this year's State Budget by in the vicinity of \$16m. Is that correct?

Hon Max Evans: More or less, yes.

Hon Bob Thomas: That's if they haven't understated it.

Hon TOM STEPHENS: That is correct.

Hon Max Evans: Because of the employment we have created, it goes up and up. It is our success that has created that.

Hon TOM STEPHENS: The Government has inherited an economy that is in good shape. It is the beneficiary of years of hard work put in by our team while in Government. It is very fortunate. In addition to that, it is clear that this system of coming in every now and again with changes to the threshold is a silly process.

Hon Max Evans: We learnt it from Joe Berinson.

Hon TOM STEPHENS: I believe that it is a silly process and that we should step back from it.

Hon Max Evans: What do you think we should do? I want some help on that one.

Hon TOM STEPHENS: Perhaps we could send it off to the Estimates Committee to see if it can make recommendations on a better way to proceed in these matters. When we reach the new threshold that is now being advocated by the Minister for Finance, I suppose that threshold will be roughly comparable to that which exists in the other States. It may be a little lower.

Hon Max Evans: They go up and down. There is no consistency.

Hon TOM STEPHENS: The average of the other States is approximately \$450 000. Is the Minister contemplating that the threshold will be \$425 000?

Hon Max Evans: It changes because of the different rates throughout. It is about \$10m, and the rate of tax does not change.

Hon TOM STEPHENS: Nonetheless, it does not seem to be a satisfactory way to go about business to regularly change thresholds. All the change of threshold does is make a small number of businesses a little more profitable. In the end, it probably does not have a significant impact on employment.

Hon Max Evans: With payroll tax, they say that half goes to the Federal Government in income tax.

Hon TOM STEPHENS: If we are serious about trying to do something for Western Australia that will increase job opportunities, we should look at the question more

thoroughly than is being done by merely considering these issues in a second reading debate in this House. I am interested in the questions that have been canvassed by the Law Society. I am disappointed that I was not prepared for the debate because it was brought on at short notice by the Government. However, if that is the way Hon George Cash wants to go about business - if he wants to catch the Opposition by surprise -

Hon George Cash: What are you talking about? Hon Mark Nevill knew what was happening.

Hon Mark Nevill: I was expecting it a lot later in the night. I thought we were doing the City of Perth legislation until 11.00 o'clock.

Hon George Cash: Keep going. We have another hour.

Hon TOM STEPHENS: There is a better way for this House to conduct its business, and it is not the way that Hon George Cash is doing it.

HON MAX EVANS (North Metropolitan - Minister for Finance) [10.30 pm]: I will go straight into the Bill; two hours ago I might have elaborated a little further. I will take the last point first. The payroll tax provisions will come into force in January because some work needs to be done before then. This amendment was my initiative as I wanted to remove some anomalies in the system. We picked these up in 1991. I was being briefed by an officer from Department of Planning and Urban Development who told me that the department was paying \$25 000 in payroll tax. I said to David Hatt, "Why are you paying that?" He did not know. He went away and found out. I rang State Taxation because I thought the system had changed years ago regarding payroll tax and Government departments, and I was told that new departments had to pay payroll tax. Many members have come into this House since 1986, but in my maiden speech that year I drew attention to the fact that departments were paying payroll tax. That year the Education Department paid \$26m, and about \$50m was paid from Government agencies in total. That situation had continued since 1971 when the Federal and State Government arrangement was made.

Hon Mark Nevill: What harm did it do? It is not taken into account by the Commonwealth Grants Commission.

Hon MAX EVANS: It did not do too much harm, but it did not do any good either as it involved a great deal of paper work. It was money going backwards and forwards as the \$26m collected from the Education Department had to be returned. I pointed out the anomaly to Hon Joe Berinson who said that it could not be true. I went out to dinner with some of my colleagues who could not believe this. I indicated that it was in the Budget papers, and it was a single line item within the Education Department; no other department showed the payroll tax paid. A change was made and in the following year the payroll tax take increased from \$300m to \$305m. This was instead of \$355m collected if the Government departments had not been exempt. Brian Burke then said, "What a good boy am I", and claimed that the increase had been only 1.7 per cent. I wanted to make life simple and remove the unnecessary paperwork. In 1989 a Bill was introduced in June to exempt a certain number of departments. In 1991 a Bill was introduced to exempt a certain number of new agencies that were paying payroll tax. The legislation before the House is different, and Hon Tom Stephens asked about those differences. If this Bill is passed the exemption can be applied to departments by regulation and it will not be necessary to do so by Act of Parliament.

Hon Mark Nevill: Can the Government exempt agencies from payroll tax?

Hon MAX EVANS: Under this Bill it would be done by regulation.

Hon Mark Nevill: Government agencies are taken into account by the Commonwealth Grants Commission.

Hon MAX EVANS: Organisations like the Department of Planning and Urban Development are paying agencies - I see agencies as departments, although different categories apply. This Bill will make it easier in the future when departmental name changes are made in that the new agencies will not be subject to payroll tax. Immediate

changes will be possible by regulation. This problem does not involve a great deal of money, but it is an unnecessary movement of funds. The amendment will reduce the unnecessary paperwork. When we discussed this matter in Cabinet for the first time, I could not understand why the 1991 Bill had not proceeded through the House. This related to all apprentices being included in the payroll tax exemption, and the then Government did not proceed with the legislation. Hon Bob Thomas made the interesting comment that revenues in June 1991 were badly down, and the then Government did not want to do away with that revenue. I checked, and the revenue from royalties was down by about \$70m at that time, although the return increased in the next year. However, according to Mr Kierath, Bob Pearce did not bring on the legislation and said, "It is a very good idea, but we will not bring it on because we did not think of it."

Hon Mark Nevill: It was the cost to revenue I think.

Hon MAX EVANS: It would appear so, but Bob Pearce gave that explanation.

I am also attempting to rectify a problem with discretionary trusts. A year or so back I heard about a brother and a sister who were running separate businesses. The brother was being investigated by the payroll tax people. It was discovered that he had run his business as a discretionary trust for family or other reasons. It was found in his discretionary trust that his sister was a beneficiary. She was nominated but she did not know about that. People often do this in case their family is wiped out in a car accident or the like and do not want to leave everything to consolidated revenue; this ensures it goes to family members. The brother and sister were told by the Commissioner of State Taxation that they had to group the businesses together. If someone is a beneficiary of a discretionary trust, he or she is considered to have more than a 50 per cent interest in the company. Drawing the businesses together cost them \$140 000 because the payroll tax was applied back over four or five years. Also, the Minister has no discretion in this regard unless the interest in the company is 50 per cent or lower. Unfortunately, this family was caught up in the anomaly. Eventually the brother cut his sister out of the discretionary trust, which can easily be done by way of an order. Anyway, the sister was receiving no benefit.

I apologise that it has taken months for the legislation to come before the House. I cannot find out why.

Hon Mark Nevill: Yet we will deal with it in one day.

Hon MAX EVANS: It has taken months of drafting and preparation. During that time a fellow chartered accountant told me about a problem with a grouping of discretionary trusts. A father and son had separate companies, and the son had matrimonial problems and his wife walked out. The father agreed to be a director of his son's company. That company became subject to a regular payroll tax review. The father had a business with a discretionary trust, and many years ago, although not for long, the son was a beneficiary in his trust. These companies were grouped together which resulted in a bill of \$86 000. This occurred while the legislation was being drafted. If the legislation had been passed in 1991, the \$86 000 bill could have been avoided.

Another anomaly is outlined in the letter read out by a member opposite. We referred this matter to that organisation, which recommended that the ministerial discretion be broader. When I considered this problem the Minister had the discretion to decide whether to group a company if the holding was less than 50 per cent, but this discretion should apply to holdings of over 50 per cent. Sometimes these trusts are involved with tax avoidance schemes. Much more has to be done regarding payroll tax as anomalies still exist. For example, local doctors - I do not refer to those in the north west - may choose to work together to share secretarial services and a common accounting function. This may involve four or five doctors. If they are sharing facilities, they are grouped together under the payroll tax provisions. As Hon Bob Thomas said, the doctor is not paying payroll tax for one or two nurses, but is paying for the shared services grouped together. This takes the threshold to the top rate, so the doctors are paying a great deal in payroll tax.

Some years ago I met the manager of a company which was selling special engineering

material in the goldfields. A chap sold his business and the new owner retained the internal accounting service. The previous owner kept a few shares to have a say in the matter or to be seen to be part of the company. They were separate legal entities, but they were grouped together in relation to payroll tax. This situation can lead to \$20 000 to \$50 000 payouts. Therefore, it is a matter of the greater of two evils. Bringing the previously exempt companies together moves them to a high rate threshold, and the tax must be paid quickly.

I will be looking more at the groupings as contained in the letter read out. Some years ago two restaurateurs decided to buy a restaurant in Fremantle - a 50:50 partnership. The payroll tax boys decided they wanted \$7 000 more payroll tax from one and \$4 000 from the other because they lost the threshold. They won their case, which comes back to the discretion of 50 per cent interest. The commissioner could use his discretion to exempt them from being grouped. Under the old regulations, if one had more than 50 per cent interest the commissioner had no discretion. Tax agencies and the Law Society of WA did not like that much, but we wanted to keep it in place because some avoidance schemes still exist. It is up to the commissioner to use his discretion in the right way. Hon Tom Stephens is quite right; a lot more must be done. When we start looking at groupings and the 1986 legislation brought in by the Labor Government, there were avoidance schemes then. People set up new schemes, trusts, etc to get the benefit of that threshold over a number of companies. We had to try to block those loopholes so we had to take it carefully. I did not want to wait six or nine months. The exemption of partners, apprentices and discretionary trusts is quite obvious. I want to get these three things from the 1991 legislation rectified and up and running again plus some new ones.

Some work needs to be done on rates of payroll tax. The member mentioned we did not reduce the \$16m. We were expecting growth in the work force. State Treasury is doing financial models to see what is the best way to reduce it by \$50m or \$60m - whether we have a progressive 3.75 or 4.75 per cent and then six per cent. Do we bring it in at six per cent and reduce it to five per cent or bring the smaller ones in, and what are the costs? We have financial models for next year. There was not much time this year. The net financial requirement this year was \$165m - approximately three per cent of total gross expenditure, which is not a big factor. One of the biggest problems of recent years is increased interest costs, and interest rates are down. There has been a \$3b increase in debt in recent years. My main interest is to reduce the net financial requirement down to nil. When we have done that we can do something else with it. It is down this year to \$165m.

Hon Mark Nevill: You have reduced it by that?

Hon MAX EVANS: That is our budget. We are bringing in just about the same amount of land tax as last year because of all the fluctuations in valuations. The Treasury said "Why not increase land tax by \$30m or \$40m?" Maybe we could have, but it is a hell of an impediment on the small shopkeepers and businesses. We decided we could have brought the net financial requirement down by pushing up that amount of revenue, but we must have a close look at land tax and see how it works out this year for valuations in the future.

I thank the Opposition for its support of this legislation. I will try to bring back the 1991 legislation and get that in order, and I will be looking forward to the support I get from others in respect of these grouping problems. There are a lot of anomalies and a lot of people are hurting. At the moment we are looking at this grouping under discretionary trusts. Since 1991 a couple of million dollars extra has been paid as a result of this not going through. That is good revenue, but it has severely hurt a lot of people.

Question put and passed.

Bill read a second time.

#### *Committee*

The Chairman of Committees (Hon Barry House) in the Chair, Hon Max Evans (Minister for Finance) in charge of the Bill.

**Clause 1: Short Title -**

Hon TOM STEPHENS: I thank the Minister for his response to my query about the discretionary trusts. I appreciate that detailed explanation. I will take the time to study those comments because it is a new area.

Hon Max Evans: I will have a talk to you.

Hon TOM STEPHENS: I look forward to that. I am surprised the Minister has indicated no provision will be made by way of this legislation that would proscribe the use of discretionary trusts that are being used for some sort of avoidance purposes. Are these discretionary trusts prolific? Are large numbers operating in Western Australia? What is the likely cost to revenue of the changes that are brought about in this Bill in so far as they relate to discretionary trusts?

Hon MAX EVANS: They probably run into tens of thousands. A lot of farmers put their farms in discretionary trusts prior to 1977 because of death duties. They used to have family companies, but discretionary trusts offered a cheap way of doing that. They were widely used; it is not just in the business world with people paying land tax.

Hon Tom Stephens: Not just for avoidance?

Hon A.J.G. MacTiernan: It is minimisation.

Hon MAX EVANS: It has been a way of looking after one's affairs. One does not have to organise one's affairs to maximise one's taxes. One is allowed to organise one's own affairs.

Hon Tom Stephens: Is it something you did?

Hon MAX EVANS: Yes. I have had family trusts over the years, business propositions with partners or friends. The business is in the name of a company, the company is trustee for the family trust; therefore one can offset losses against profits rather than paying taxes in one and getting losses in another one. It is normal business, and sometimes quite prudent. Hon Joe Berinson was keen last year to have limited partnerships, which is a very similar thing, so that companies could come together in partnership and not be taxed at the company rate. Western Australia and Queensland had these working well for years. The Federal Government thought it would lose taxes. One cannot afford to have unlimited initial costs without some tax benefit. One might not live long enough to make income to get any tax benefit. Discretionary trusts have the advantage of offsetting income against other losses. A natural person can have a discretionary trust, it does not have to be a company. We will not know how much revenue would be lost in the future; it is only if we picked them up. We will never know because they have not been caught. I talked about two businesses where the son was going broke but the old man who had nothing to do with the son's business was responsible for paying tax under the grouping system. Unfortunately, in another case a brother and sister had to pay their own share of the payroll tax which would have been a helluva lot more. In the case of a father and son, the son's business will probably be wound up. The old man will not be making any money and will have a \$86 000 tax deduction but will have nothing to offset it against.

Hon BOB THOMAS: At the outset I indicated to the Committee that we will not speak on the next Bill because most of the relevant comments have been made in the debate on this Bill.

Hon George Cash: Surely Tom could give us an hour. He promised it. We don't want to cut off the debate.

Hon BOB THOMAS: Hon Tom Stephens quite often cannot deliver on his promises.

Hon George Cash: I have noticed that. At least you are honest enough to admit it.

Hon E.J. Charlton: He is into trusts now.

Hon BOB THOMAS: That might keep him busy for a while. Hon Mark Nevill has made quite an appropriate comment; that is, that we probably should have considered

these two Bills cognately. Perhaps we should consider doing that next year. One of the main thrusts of this Bill is to increase the threshold at which payroll tax comes in. The higher the threshold, the fewer the people who get caught in that payroll tax net and people at the lower levels have to pay less. I was surprised to hear the Minister in his second reading speech say -

... the severe financial problems inherited from the previous State Government have frustrated our endeavours to provide even more substantial reductions in payroll tax this year.

I will refer to authorities who are more eminent than I on this issue about the financial position that this Government says it inherited. Members should remember that the Premier has already told us that the Government inherited a balanced budget.

Hon B.K. Donaldson: Your Premier also told us some lies in the Assembly.

The CHAIRMAN: Order!

Hon BOB THOMAS: The new Victorian Government set up a Victorian Commission of Audit in May this year. From that commission the Victorian Government stated -

Victoria was the only State ... with the exception of Tasmania, to incur a current or operating deficit, on average, over the past three years.

That means that, contrary to some of the interjections that I heard earlier, Western Australia has not had a deficit.

Hon Max Evans: Be careful; you are bringing on a big debate. Just keep going carefully.

Hon BOB THOMAS: The Victorian Commission of Audit has indicated that Western Australia has always operated on a surplus. The Moody's Investor Service sovereign credit report for February 1992 in relation to Western Australia's debt says -

The rapid rise in ... debt has been the result of rapid rates of population and economic growth in the last decade. The State has been faced with considerable capital investment needs, in the form of public infrastructure, which have translated into rising debt burdens.

Hon E.J. Charlton: Tell me about SGIC and the Superannuation Board?

Hon Max Evans: Don't get me wound up.

Hon BOB THOMAS: That statement comes from Moody's, an international credit agency.

Hon Max Evans: They were fascinated that I was not only the Minister for Finance but also the Minister for Racing and Gaming.

Hon BOB THOMAS: That is something that is incongruent. In a report put out in December of last year Access Economics indicated that Western Australia's net debt as a percentage of GSP rose from about 20.2 per cent in 1989-90 to a peak of 22 per cent in 1991-92. It projected future levels of that debt and indicated that, with no change to the policy of the previous Government, we would see by 1995-96 net debt, as a percentage of GSP, falling to below 19 per cent. One of the reasons for that was that we made a decision as a Government in 1991-92 and 1992-93 that we needed to spend countercyclically. The best way to do that was through capital works, through borrowings for public works programs. They act as a lever and generate a lot more activity than if we were just spending that money on Government related activity. We would be borrowing a lot more money than we would be spending if we did not undertake those capital works but rather spent the money on ordinary Government services.

Hon Max Evans: Once you finish, those things consume more and more revenue.

Hon BOB THOMAS: We had a policy of spending countercyclically during the recession. It was important that we maintained a critical mass, a minimum level of Government activity, because a lot of businesses depend on Government activity. In the 1991-92 and 1992-93 Budgets, we had a deliberate policy of increasing borrowings.

Members will notice that we reduced general Government spending for that reason. As the economy improved we would have seen that level of borrowings pulled back and we would have paid off that debt as our revenues increased. The same thing happened during the 1981-82 recession. I do not have the figures in front of me but towards the middle of the 1980s we saw our net debt much lower than it was when we went into recession in 1991-92.

Hon Max Evans: You still wasted all the money.

Hon BOB THOMAS: I will come back to that.

Hon E.J. Charlton: I would not if I were you.

Hon BOB THOMAS: If we were looking at this in three or four years' time, we would see debt reduced. Access Economics put out another report in June 1993 which says -

The fastest growth States have fewer budgetary problems. Queensland, Western Australia and the ACT have been least adversely affected by the recession and have lower debt levels than the southern States.

It indicated that New South Wales had dipped back into recession and its debt level was slightly lower than that of Western Australia. If we compare the amount of debt in Western Australia to that in Queensland -

Hon Max Evans: Are we better or worse than Queensland?

Hon BOB THOMAS: Slightly worse.

Hon Max Evans: They have no funds.

Hon Kim Chance: Try driving on a road in Queensland and you will find out why.

Hon E.J. Charlton: This year Queensland got \$250m for roads and we got \$90m.

The CHAIRMAN: Order!

Hon BOB THOMAS: Some functions provided here by the State Government are provided by local government in Queensland. It is difficult to compare Western Australia and Queensland. However, the member is right; the situation here is worse than that in Queensland. If we look at the level of facilities and services provided by the Queensland Government, we find that they are far inferior to those in Western Australia. Members should drive on the Queensland roads and look at some of the facilities in Queensland. Western Australia has a reasonably modest debt position. Section 5.7 of the Access Economics report of 1993 states -

Western Australia had the lowest growth in real per capita public consumption expenditure of any State in the eighties at only 0.9% per annum.

It is very tight, and this can be attributed to the former Premier, Carmen Lawrence, and the amount of fiscal restraint she was able to -

Hon P.R. Lightfoot: What a lot of utter garbage.

Hon BOB THOMAS: Is the member disputing the Access Economics report?

Several members interjected.

The CHAIRMAN: Order!

Hon BOB THOMAS: The Access Economics report says unequivocally that Western Australia had the lowest growth in expenditure of any State. That is a tribute to the management of the former Premier. Our debt level is lower than in other States and our net per capita consumption has been lower than in other States. When this Government came into power Western Australia had the highest employment growth of any State, but over the last couple of months we have fallen back to third behind Queensland and New South Wales. In 1983 the State Government took 15.5 per cent of every dollar created in Western Australia by some form of tax, and when we lost the election at the beginning of this year it was down to 13.3 per cent of every dollar. So the impost of the former Government on the State of Western Australia and the Government it replaced in 1983, according to the Access Economics report -



Hon George Cash: In real terms?

Hon BOB THOMAS: I do not think the member knows what he is talking about.

Hon George Cash: I have the degree in accounting - not you.

Hon BOB THOMAS: I do not think the Leader of the House really knows what he is saying. It is wrong for the State Government to come into this Chamber with this Bill and say that it inherited severe financial problems which precluded it from providing a great reduction in payroll tax. I hope the Minister refrains from doing that in the future.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 16D amended -

Hon A.J.G. MacTIERNAN: The Minister will be aware of the concerns that I have expressed in relation to the limitations of the set of discretions that are being granted. As I set out in the second reading debate, on the advice of the Law Society the Opposition is querying whether it is right that the discretion being made available to the commissioner in respect of businesses, where there is an association by way of the interests of a beneficiary of a discretionary trust, should be limited simply to that class and whether it would not be more proper to expand the discretion so that it applied to other classes of business interest, and not simply where there is a discretionary trust involved or where a party in question has precisely a 50 per cent interest in the business grouped with the other business. The Opposition believes it is unduly limiting. It wants to see the discretion broadened. It is advised that there is a case for broadening that discretion, bearing in mind that we want strong guidelines so that we can be sure that the assessment of business is substantially independent and realistic. As we go back to first principles we look at the very reasons for the grouping provision and the mischief it was seeking to avoid by way of artificial division of business enterprises. Unfortunately, I was waylaid by the Minister for Planning on parliamentary business and I did not hear the Minister's response to Hon Tom Stephens.

A Government member interrupted.

Hon A.J.G. MacTIERNAN: We were planning the future of the City of Perth. Hon Tom Stephens tells me this matter had not been canvassed. The Opposition did not have a great deal of notice that this was coming on tonight. I note the concern expressed by the Law Society that in respect of discretionary trusts this provision may not be drawn wide enough. The society's view is that the reintroduced discretion of the commissioner in the proposed section 16D(9) could only apply to discretionary trusts where there is a non-corporate trustee. Even then the commissioner could group a natural person discretionary trustee by reference to new section 16D(3), and, as such, the grouping would not be capable of exclusion by reference to the proposed new discretion. In view of the whole range of things - that there is a very real question that more than discretionary trust should be included in this; that even in relation to discretionary trusts this will not cover a situation where there is a corporate trustee; and that even in relation to natural person discretionary trusts there are situations where they could be counted back into a situation, notwithstanding the business enterprises in question being grouped would be substantially independent - it would seem to me that this is a provision that needs some substantial revision and should perhaps go to the Legislation Committee for review.

Hon MAX EVANS: I was trying to rectify the shortfalls of the 1991 legislation. There are a lot of grouping problems here, and I would be only too pleased to have help from the Law Society, which advised the Opposition. A lot of doctors have grouping problems that we are trying to rectify here. The discretion comes back to 50 per cent because there could be some discretionary trusts which are avoidance schemes to avoid paying payroll tax, and the commissioner would not use his discretion to exempt them; but they would be grouped.

Hon A.J.G. MacTiernan: We are saying that should not be the threshold.

Hon MAX EVANS: At what it was before, with a beneficiary of a discretionary trust considered to have more than 50 per cent interest, the commissioner had no discretion. Therefore, it was automatically grouped. That was the problem, and we are trying to rectify it in this Bill. There are a lot of other places where the commissioner could be used to clarify the position, and I want to look into that, but I did not try to rectify all of those in this Bill, which has been around for some months. We envisage cases where 50 per cent discretionary trust could be used to avoid the grouping provision. I am trying to clear up this problem. I am only too pleased to give any help and assistance that I can. I do not know what has happened with the suggestions provided by the Law Society since 1986 because some of them should have gone through in recent years. That is what I will be looking at. I do not know what it has been doing up until now. There are a lot of anomalies there.

Hon A.J.G. MacTIERNAN: I accept what the Minister said and that he sees that this might be limited. I want to signal to him that it might not be limited; it may not apply to the discretionary trust areas. However, it may be on Law Society advice - I admit that I have not fully assimilated that Law Society advice in this regard - that what the Minister is doing here does not even cover all of the sorts of discretionary trusts that he might want. We will not oppose the clause. We are pleased that the Minister is interested in reviewing this further. I would also ask him to arrange for a briefing for those of us who are involved in this area with his officers and with the relevant persons from the Law Society and the Taxation Institute so that we can develop a collective understanding on these areas.

Clause put and passed.

Clauses 7 to 11 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 Max Evans (Minister for Finance), and passed.

### **PAY-ROLL TAX AMENDMENT BILL**

#### *Second Reading*

Debate resumed from 25 November.

HON MARK NEVILL (Mining and Pastoral) [11.13 pm]: The two payroll tax Bills have been debated together although they have not been handled cognately. I have no further comment to make at this stage but I will comment during the Committee stage.

HON MAX EVANS (North Metropolitan - Minister for Finance) [11.14 pm]: I thank the Opposition for its support of the legislation.

Question put and passed.

Bill read a second time.

#### *Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

Clause 1: Short title -

Hon MARK NEVILL: I refer to this Bill and the Pay-roll Tax Assessment Amendment Bill. In the former Bill, the formulas under clauses 4, 5 and 6 are quite easy to follow. However, I do not know how anyone can make any sense of the numerical factors contained in this Bill. I do not know what they mean.

Hon MAX EVANS: That is a nasty question. I tried to do some calculations on that

formula recently in an attempt to do some financial modelling. I admit that I have been told how difficult it is to work on these formulas. That is why I would like to cut out the way we do our ratings. The problem is that at the beginning of the year, we do not know what the total payroll will be at the end of the year under these formulas. I found them difficult and that is why I had calculations done on financial modelling.

Clause put and passed.

Clauses 2 to 7 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 Max Evans (Minister for Finance), and passed.

## **PUBLIC AUTHORITIES (CONTRIBUTIONS) AMENDMENT BILL**

### *Second Reading*

Debate resumed from 25 November.

HON MARK NEVILL (Mining and Pastoral) [11.18 pm]: The Opposition supports the Bill although it is always reluctant to support increases in levies or rates.

[Quorum formed.]

Hon MARK NEVILL: However, there is good reason financially to support the increase in this levy. If the Government wants to give the revenue back to the public in some way, that is fine. However, the Bill increases the statutory corporations levy.

Hon P.H. Lockyer: Don't take any instructions from a dill like him.

Hon MARK NEVILL: He was asking me for advice.

### *Withdrawal of Remark*

Hon BOB THOMAS: I would like the reference to "dill" withdrawn by Hon Phil Lockyer.

Hon P.H. LOCKYER: I withdraw.

### *Debate Resumed*

Hon MARK NEVILL: Third time lucky! The Bill increases the statutory corporation levy on the State Energy Commission, the Water Authority of Western Australia, and the Bunbury and Busselton Water Boards from four per cent to five per cent. The last levy increase, from three per cent to four per cent, was in 1991. The increases under this Bill will provide the Government with an additional \$21m in revenue. The actual revenue raised last year from this levy was \$84m, and it is estimated that in this financial year it will be \$108m.

The statutory corporation levy in Western Australia is a percentage of the actual revenue of the public authority. Other States use different mechanisms. In New South Wales and Victoria a certain percentage of the surplus is set which varies from year to year, depending on the financial pressure facing the Government. For example, the New South Wales Government dragged \$100m out of the Water Board last year to solve its budgetary problems, although the authority may have been better off putting the surplus into capital works or eliminating debt. It is hard to say which system is the best, but certainly the systems in other States may encourage those Governments to keep taxes and charges high to allow for a surplus, which can be siphoned off into general revenue. I have been advised when trying to compare the different systems used in those States with our levy on revenue, that the New South Wales and Victorian public authorities are paying on average about 8.5 per cent, and in some States it is up to 10 or 11 per cent. In Western Australia the levy is sitting on four per cent, and obviously penalties are

attached to that. This State is not raising the sort of revenue in that area that the Grants Commission thinks it should.

It is important that these levies not be placed on public authorities that are in a shaky financial situation. There is no point siphoning money from a public authority if it has financial problems, because that only exacerbates its problems. That has happened to some public authorities in Victoria. The Opposition is pleased that the Government has recognised the problems of the Fremantle Port Authority and has not increased the levy in its case. The figures for the Fremantle Port Authority in the Supplementary Budget Information indicate that it had a surplus in 1989-90 of \$261 000, a deficit in 1990-91 of \$37m, a deficit in 1992-93 of \$9.7m, and was back in the black this year with a surplus of \$546 000. It is pleasing to see that the Government has taken the pressure off the Fremantle Port Authority for the time being and kept its rate at four per cent.

The Water Authority of Western Australia contributed \$18.6m this financial year through the four per cent statutory levy. The provisions of this Bill will increase that by another \$4.5m. I am proud of the improvements made in the Water Authority and SECWA over the past 10 years. We have a penchant in this place for belittling our opponents and praising what we do ourselves. However, over the past 10 years there has been a dramatic improvement in the effectiveness and efficiency of these two public authorities. I have looked at the performance statistics from the Water Authority and they indicate that the number of employees has dropped considerably over the last four years by approximately 450, from 4 548 in 1988-89 to 4 105 in 1992-93. The Water Authority showed a deficit this year of \$12.8m. That was because Treasury no longer pays the interest on loans to country water supplies. That represents a transfer of \$36m. If that were factored in, the Water Authority obviously did well last year. I hope it is the same in other people's electorates, but certainly in my electorate the conditions and facilities under which Water Authority employees work are much improved. The statutory levy from the Water Authority has increased from \$10.4m in 1989-90 to an estimated \$23.7m this year.

Hon Max Evans: That came from the increases from three per cent, to four per cent and five per cent.

Hon MARK NEVILL: Is that estimated on five per cent for 1993-94?

Hon Max Evans: Yes.

Hon MARK NEVILL: The figure last year was \$18.5m. I have two surplus figures for the Water Authority. The surplus for the Water Authority in 1989-90 was \$46.3m and that grew to \$64.8m last year. The estimate for this year is \$78.8m. It is on a strong financial footing. All of its borrowings are funded internally and there are no new borrowings. The previous Government can take some credit for that.

I comment now on SECWA, which in the early 1980s was certainly under stress financially with the North West Shelf and the Muja B power station commitments. That statutory authority has certainly improved its efficiency over the years. Of course, there is always room for improvement. The Supplementary Budget Information gives us a clue about how it has improved. The statutory levy has increased from \$36.2m in 1989-90 to \$64.1m last financial year. The SECWA surplus was \$28.5m in 1989-90 and that increased to roughly \$101m last financial year. Therefore, SECWA is certainly delivering the goods with regard to surplus and profit. Some other statistics in the SECWA report should be brought to the notice of the House. There have been no new borrowings in the last three or four years. Capital expenditure last year was \$167m, which was all internally funded. The return on revenue has increased from a negative 2.2 per cent in 1989 to a positive 5.8 per cent in 1993. Another factor which should be noted is that the employees' safety lost time frequency rate has been reduced from 48 in 1989 to 19 in 1993. SECWA has made a distinct improvement over the years. We have had real decreases in electricity and gas prices in recent years, and at the same time that SECWA has reduced its debt it has had to accommodate a \$79m loss on its gas business through the North West Shelf last year and \$83m this year, together with some \$80m worth of community service obligations.

The Opposition would probably prefer that the other States reduce the level of payments from their statutory authorities to Government to our level rather than see our level increase to that of the other States. It is clear that our level of payments is lower. It is my understanding from the Grants Commission reports that the fact that we are not recovering a high level of revenue from our public utilities is factored against us in the Federal Government's general grants. The Opposition supports the Bill.

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [11.33 pm]: I thank the Opposition for its support. I am glad the Opposition noted that last year, the Fremantle Port Authority had to increase its overdraft by \$1.25m to pay the levy, and that was a ridiculous situation. That is actually what happened in Victoria last year. A lot of public utilities paid a big distribution to the Government by borrowing money, and they had a lot of debt. When they consolidated that debt, they found that they had a bigger debt than was known at the time.

The Chairman of the New South Wales Water Board explained to us that the NSW Water Board appeared to be making a very generous contribution to the Government of \$100m, but the Government then paid back to the Water Board nearly \$80m of community service obligations. The Government tried to do a contra. It worked out what the community service obligations were and added that back into the figures, and worked out that the rate of company tax was 39¢ in the dollar, and arrived at the \$100m, but the actual net distribution to the Government was only \$20m. That is the reason that I say to Hon Mark Nevill that we cannot really compare all of the States at present. A national competition policy group has been to see me and is trying to set benchmarks in Australia for power, water and transport authorities, etc. I believe that is a waste of time. It all depends on the will of the Government.

Hon Mark Nevill: I agree. For example, they compare Westrail with other State transport authorities, but they do the comparison from 1989, which was after most of our restructuring in employment went through, so they are comparing different thresholds.

Hon MAX EVANS: That is right. They do that all the time. I received a report when I became the Minister for Finance, which suggested that all of the public authorities under my portfolio should present a five per cent return on assets. Therefore, if the assets are worth \$11b, they should pay five per cent of that, which is \$550m. That is all very well, but how can we get a five per cent return on the assets of SECWA when its liabilities nearly exceed its assets? It does not work out that way. The total assets of the Western Australian Water Authority are \$2.4b, and five per cent of that is \$120m on that formula.

With regard to profitability, the Water Authority has two depreciation schedules, one on historical value, of \$75m, and one on current cost accounting. Therefore, if the bottom line profit is \$3m or \$4m, that is after that high rate of depreciation has been taken out. There were a lot of questions about this in the Estimates Committee, and the Estimates Committee is looking at this, because WAWA has overvalued a lot of its assets in order to do that current cost accounting. It is trying to say that it has not made much money and will need to put up charges. However, we are well aware of what is going on there.

With regard to CSOs, is cross-subsidisation between the metropolitan area and the country a CSO? I do not think it is. Pensioner benefits are CSOs.

Hon Mark Nevill: I agree with cross-subsidisation.

Hon MAX EVANS: So do I. However, I do not see it as a CSO. I believe it is all part of the running of the business of the State. That is why we must be very careful when people start talking about wanting to privatise monopolies.

Hon E.J. Charlton: Or corporatise them.

Hon MAX EVANS: Corporatisation is done in-house; privatisation is done by bringing in someone else.

A couple of years ago, the former Government wanted rates of three per cent and five per cent, and in the end it came back to four per cent. It is now five per cent. That is really not a true reflection, because the turnover of the Water Authority is only \$450m and the

turnover of SECWA is over \$1b. Therefore, the profits of the Water Authority are better than those of SECWA. However, SECWA is doing very well. It has financed most of its capital works out of cash flow, and so has the Water Authority. The only way that this Bill can work at the moment is by working on a tax base. The NSW Water Board was paying tax at 39¢ in the dollar. Now that the Federal Government has reduced that to 33¢ in the dollar, it will get less money, so that has backfired on it. I thank members for their support.

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 Max Evans (Minister for Finance), and passed.

### **CITY OF PERTH RESTRUCTURING BILL**

#### *Second Reading*

Order of the Day read for the resumption of debate from an earlier stage of the sitting.

Debate adjourned, on motion by Hon B.K. Donaldson.

### **ADJOURNMENT OF THE HOUSE - ORDINARY**

**HON GEORGE CASH** (North Metropolitan - Leader of the House) [11.43 pm]: I move -

That the House do now adjourn.

#### *Adjournment Debate - Child Care Accreditation*

**HON B.M. SCOTT** (South Metropolitan) [11.44 pm]: I rise to address the House on a matter of concern that has been given quite a lot of publicity over the last week in Western Australia, and it is to go before the Senate next week; that is, the child care accreditation process and the council's proposed quality improvement of the accreditation system.

I will give the House some background on child care accreditation. In 1990 the Federal Labor Party promised that if it was re-elected it would ensure that parents using private child care centres would be eligible for fee relief or child assistance. That promise by the Government to put in place a system of national accreditation for long day care child care centres was made to appease the ACTU. My concern is about the principles that have been laid down in the handbook. While some of the principles have been acknowledged as acceptable and appropriate for child rearing, many of the prescriptors of the principles are far too rigid and actually prescribe a very rigid child rearing regime on many children. Many Australian parents would find the prescriptors of the principles quite unacceptable and inappropriate to their own mores and cultural heritage.

When the Interim Accreditation Council was established by the Government its charter was to look at quality in child care. It was never intended that the accreditation system would be attached to fee relief. The prescriptors of the principles were not written by the Interim Accreditation Council. A consultant was brought in to write them and they were presented to the Minister, without reference to the council. I would be one of the first members in this House who would guarantee that any child placed in a child care centre should be able to have access to the highest quality care and that every parent should be able to guarantee, when placing a child in a child care centre, that that centre should be able to provide a very high quality of care. However, in Western Australia, and in most States of Australia, there is a very strict system of licensing for child care centres. The regulations reflect the suitability of the child care centre, the child-staff ratios, staff

qualifications and training. All these factors guarantee quality of provision of care in the same way as any school. To place rigid prescriptors on suggested principles would be like having somebody looking over the shoulder of a doctor, nurse or teacher and telling him exactly what to do in any given situation. The end result could work out to not be of the quality we are looking for, but a very rigid system with not a lot of flexibility.

I repeat that the Interim Accreditation Council was set up to look at improving the quality of programs in child care. It was not intended that the accreditation would be attached to fee relief. It is very wrong to attach child care payments to a set of conditions on how children should be raised. To implement the accreditation system will take time and will mean added costs to centres. In addition, a costly bureaucracy will be put in place to ensure that centres abide by the rules. Child care fees will inevitably rise and this will discriminate against some parents and will add costs to the Government's child care budget which is already very large. When considering the principles and the accreditation process the Interim Accreditation Council recommended that the accreditation of all centres be voluntary. However, the Government is now considering making it compulsory, attaching it to fee relief and charging centres a fee for bringing in the moderators. This will make it very much more difficult for some parents to access the centre of their choice. If a private child care centre is within travelling distance from a person's home and he or she is able to access it through fee relief, it is very much more convenient for that person to take his or her child to that particular centre.

Hon Mark Nevill: What is the travelling distance?

Hon B.M. SCOTT: Some parents may have to traverse three or four suburbs to reach a Government subsidised centre, while the private centre might be at the end of the street in which they live. With the accreditation process being compulsory, private child care centres will have to attain accreditation, for which they will have to pay and it will mean that parents on low incomes may not be able to access the centre of their choice and will have to travel long distances. Accreditation should be voluntary.

There is a guarantee through licensing and regulations for quality child care, which I would support. This is a determined effort to negate the flexibility of choice for parents in accessing private child care. I urge all members to plead with their Federal colleagues to reassess the accreditation link with fee relief and ask their colleagues to keep it a voluntary process so that it is one which centres can work towards and achieve a higher level of quality care for children but not a compulsory, over-regulated system which will be costly. Already we have 60 per cent of child care centres in Australia being run by private child care operators. They must abide by licensing regulations, so there is a guarantee for parents who access quality child care. This will impose rigid systems of child raising which I find objectionable, and many parents would. So, I urge my colleagues in this House to take the opportunity to inform their Federal colleagues that this is more than just perhaps the emotional side of children not being able to sing Christmas carols at Christmas; it is more an imposition on the whole system of accreditation which is not totally necessary.

Question put and passed.

*House adjourned at 11.52 pm*

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**QUESTIONS ON NOTICE**

**ROTTNEST ISLAND AUTHORITY - LIGHTHOUSE KEEPER'S HOUSE,  
PURCHASE**

1068. Hon GRAHAM EDWARDS to the Minister for Education representing the Minister for Tourism:

I refer to the Budget paper Capital Works Program, page 60, the line item "Purchase Lighthouse Keeper's House" -

- (1) By what date will the purchase of the lighthouse keeper's house be completed?
- (2) From whom is the house being purchased?
- (3) How was the figure of \$63 000 arrived at?
- (4) How does the Rottnest Island Authority intend to use the lighthouse keeper's house following its purchase?

Hon N.F. MOORE replied:

The Minister for Tourism has provided the following reply -

- (1) The date for the purchase of the lighthouse keeper's house is to be finalised following negotiations with the Australian Maritime Safety Authority.
- (2) The house is being purchased from the Australian Maritime Safety Authority.
- (3) The \$63 000 is a part payment of the agreed purchase price following negotiations between the Rottnest Island Authority and the Department of Transport and Communications. The total purchase price of \$97 000 includes the area of the Wadjemup Lighthouse and the lighthouse keeper's house and the Bathurst Lighthouse.
- (4) The lighthouse keeper's house is currently rented from AMSA and is used to provide housing for Rottnest Island Authority personnel.

**PRISONS - COUNTRY, PRIVATISING MANAGEMENT**  
*McCarrey Report Recommendation, Review*

1142. Hon DOUG WENN to the Minister for Health representing the Attorney General:

In response to a question without notice asked by me on Wednesday, 29 October the Attorney General indicated that a Cabinet subcommittee had been established to review and consider the McCarrey report's recommendation dealing with the management of a country prison -

- (a) when will this review be finalised; and
- (b) will the review be made public?

Hon PETER FOSS replied:

- (a) The review is ongoing.
- (b) No.

**MEDIA OR PUBLIC RELATIONS TRAINING - GOVERNMENT  
DEPARTMENTS OR AGENCIES**

1278. Hon TOM STEPHENS to the Leader of the House representing the Minister for Police:

- (1) How many officers from departments or agencies within the Minister for



Police's portfolio areas have undertaken media or public relations training between 1 March 1993 and 31 October 1993?

- (2) What was the date of each training session?
- (3) Who provided the training?
- (4) What is the actual cost to date and estimated total cost of the training?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

The information sought would require considerable research and I am not prepared to allocate resources for this purpose. If the member has a specific question about media or public relations training I will be pleased to respond.

#### GOVERNMENT PUBLICATIONS - ISSUES; PRODUCTION DETAILS

1326. Hon TOM STEPHENS to the Leader of the House representing the Minister for Police:

- (1) What publications are issued by each department and agency within the Minister for Police's portfolio on a regular or periodical basis?
- (2) For each publication -
  - (a) is it produced in-house or by an outside firm;
  - (b) what is the cost including artwork, printing and distribution;
  - (c) who is the target audience; and
  - (d) is a copy of each edition provided to the Library and Information Service of Western Australia?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

The information sought would require considerable research and I am not prepared to allocate resources for this purpose. If the member has a specific question about a publication I will be pleased to respond.

#### GOVERNMENT ADVERTISING - *THE WEST AUSTRALIAN*, 6 NOVEMBER, COST

1380. Hon N.D. GRIFFITHS to the Leader of the House representing the Premier:

- (1) What was the production cost of the advertisement published in *The West Australian*, Saturday, 6 November 1993, page 23?
- (2) What did *The West Australian* charge for the publication of the advertisement?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

- (1) \$2 234.81.
- (2) \$10 936.70.

#### SCHOOLS - ASBESTOS, LIST

1384. Hon JOHN HALDEN to the Minister for Education:

- (1) Can the Minister list the schools that still contain asbestos?
- (2) Can the Minister inform the House what steps are being taken to ensure the safety and health of children attending those schools?

Hon N.F. MOORE replied:

- (1) It is probable that most schools built before 1985 would contain some

form of asbestos products. The Ministry of Education has only documented those schools with asbestos-cement roofs, a list of which I will table. [See paper No 912.]

- (2) The Ministry of Education, in conjunction with the Building Management Authority, strictly follows the procedures documented in late 1991 and adopted by my predecessor on handling asbestos-cement products in schools. All work undertaken conforms with the Department of Occupational Health, Safety and Welfare guidelines. Some additional measures undertaken by the Ministry of Education are to -
- (a) consult on-site with the school community and representatives from the head office of three unions before work, other than minor, is undertaken at schools;
  - (b) ensure that children are not on-site when work involving asbestos-cement products is in progress;
  - (c) ensure that the BMA supervises work on asbestos-cement products; and
  - (d) ensure that only contractors acceptable to the BMA are permitted to work with asbestos-cement products on school sites.

### QUESTIONS WITHOUT NOTICE

#### SPORT AND RECREATION - COMMUNITY AND SPORTING FACILITIES GRANTS, O'CONNOR LIBERAL SEAT APPLICATIONS

880. Hon KIM CHANCE to the Minister for Sport and Recreation:

- (1) Is the Minister aware that in respect of the allocation of sporting facility funds by the Commonwealth Government in the safe Liberal held seat of O'Connor, the only two applications which were successful were those supported by the Labor member for Kalgoorlie, Graeme Campbell, MHR?
- (2) Is the Minister also aware that applications which are not supported by the local member are generally unsuccessful?

Hon N.F. MOORE replied:

(1)-(2) No.

#### SEXUALLY TRANSMITTED DISEASES - HIV PROGRAMS, FUNDING

881. Hon KIM CHANCE to the Minister for Health:

- (1) How much has the Federal Government allocated to Western Australia in 1993-94 for expenditure on sexually transmitted diseases and HIV programs?
- (2) What is the nature of the programs proposed by the Federal Government?
- (3) Is funding dollar for dollar with the State Government?
- (4) Will any of the funds be expended in rural and remote areas of the State?
- (5) If so, where?

Hon PETER FOSS replied:

I ask that the question be placed on notice.

#### SEXUALLY TRANSMITTED DISEASES - CLINICS ESTABLISHMENT *Royal Perth Hospital, Fremantle Hospital*

882. Hon KIM CHANCE to the Minister for Health:

- (1) Will sexually transmitted diseases clinics be established at -

- (a) Royal Perth Hospital; and
- (b) Fremantle Hospital?
- (2) How will the clinics be staffed?
- (3) What will be the cost of the establishment of each clinic?

Hon PETER FOSS replied:

(1) Yes.

(2)-(3)

These questions should be placed on notice.

#### MURRAY STREET CLINIC - CLOSURE, STAFF NOTIFICATION

883. Hon KIM CHANCE to the Minister for Health:

- (1) Is it true that the staff at the Murray Street Clinic read of their fate in *The West Australian* on Thursday, 25 November 1993?
- (2) If yes, does the Minister consider that this is an appropriate and responsible way of informing staff of such massive changes?

Hon PETER FOSS replied:

(1)-(2)

I am glad that the member has asked this question because the matter somehow managed to get into the hands of the Opposition spokesman for Health before it came to me for a decision. The first I learned of the matter was through the media. I do not know how this happened, but it illustrates one of the problems with leaks. It is important that staff be properly informed. It is important that decisions be properly made. It is important that there be proper times for the release of information. Most importantly - and this is a matter I have always emphasised - staff should be the first to know. This is one of the irresponsible results of leaks. Of course, one must remember that that is contrary to the Public Service Act and the Criminal Code - in both cases, they are criminal offences. It is very important that people realise that making these leaks has very serious repercussions on members of staff. I endorse the fact that it is a most improper way for people to find out. It is something I would never countenance.

Hon Mark Nevill: The same as with retrospective legislation.

Hon PETER FOSS: I am very disappointed that the deputy Leader of the Opposition chose to release what was a proposal to me. I very quickly had to deal with the proposal because, the matter having become public, it was important that the staff were not left in doubt about the situation. I was able to take urgent advice from my office. A paper was coming to me. I was able to deal with the paper and approve it. This situation does outline the point that those people who think they are being clever by leaking proposals are all too often causing alarm and concern to members of staff who end up finding out things through the newspaper, and end up getting a garbled version of what it is all about. They end up having considerable concern and worry as a result of irresponsible, illegal, criminal leaks. I sincerely hope that people realise that, and cease those leaks. I hope also that members of the Opposition who have such information will handle it in a responsible manner and ensure that in future we do not release it -

#### Point of Order

Hon BOB THOMAS: I move an extension of time for the Minister to complete his lecture!

The PRESIDENT: That is out of order. Has the Minister finished his answer?

Hon PETER FOSS: Yes.

*Questions without Notice Resumed*

**SEXUALLY TRANSMITTED DISEASES STATE COORDINATION  
COUNCIL - AXING**

884. Hon KIM CHANCE to the Minister for Health:

- (1) When did the Minister axe the Sexually Transmitted Diseases State Coordination Council?
- (2) Why did the Minister axe the council?

Hon PETER FOSS replied:

(1)-(2)

I am not aware that I have axed it. The question should be placed on notice.

**TAXI INDUSTRY - NEW BOARD**  
*Private Operators, No Cover*

885. Hon JOHN HALDEN to the Minister for Transport:

Will the Minister confirm that private taxi operators will not be covered by the new taxi industry board?

Hon E.J. CHARLTON replied:

Yes.

**TAXI INDUSTRY - NEW BOARD**  
*Country Operators, No Cover*

886. Hon JOHN HALDEN to the Minister for Transport:

Will the Minister confirm that country taxi operators will not be covered by the new taxi industry board?

Hon E.J. CHARLTON replied:

Yes.

**TAXI INDUSTRY - TAXI DRIVERS' LICENCE FEES AND PREMIUMS**

887. Hon JOHN HALDEN to the Minister for Transport:

Where will the money currently held by the Taxi Control Board from taxi drivers' licence fees and premiums be directed, when the Government's announced changes to the board come into effect?

Hon E.J. CHARLTON replied:

An announcement has been made to the industry, including the broad details on the basis of the new legislation. The new legislation is being drafted -

Hon John Halden: Answer the question - where will the money go?

Hon E.J. CHARLTON: Legislation is being drafted and the final determination about a range of issues will be part of the discussions in respect of that legislation.

Hon John Halden: It is going to the Department of Transport!

Hon E.J. CHARLTON: No. If the member had asked that question in the first place he would have been told that the money is going down some other road.

**MINES REGULATION ACT - NOISE LEVELS, 90 dB INCREASE**

888. Hon MARK NEVILL to the Minister for Mines:

Has the Minister received any representations from the mining industry or

from hearing experts to increase the allowable noise level from 85 dB to 90 dB under the Mines Regulation Act?

Hon GEORGE CASH replied:

Not that I am aware.

#### MINES REGULATION ACT - NOISE LEVELS, 90 dB INCREASE

889. Hon MARK NEVILL to the Minister for Mines:

Is the Minister aware of any approaches to the State Government by insurance companies to increase the allowable occupational noise level from 85 dB to 90 dB?

Hon GEORGE CASH replied:

Not that I am aware.

#### HASSELL, BILL - SETTLEMENT AGENTS' REPRESENTATIVE, CORRESPONDENCE TABLING

890. Hon A.J.G. MacTIERNAN to the Minister for Fair Trading:

With reference to the Minister's undertaking to investigate whether the President of the Liberal Party, Bill Hassell, made representations to the Minister on behalf of settlement agents, will the Minister table any correspondence from Mr Hassell in relation to this matter?

Hon PETER FOSS replied:

No.

#### FORRESTDALE PRIMARY SCHOOL

891. Hon T.G. BUTLER to the Minister for Education:

- (1) Is it a fact that the Government will cancel the Forrestdale Primary School bus which services students in the McNeil Road area of Forrestdale, in favour of sending the students to the Willandra Primary School in Armadale in 1994?
- (2) How many students presently travel on the Forrestdale Primary School bus which services the McNeil Road area?
- (3) What is the number of students enrolled at the Willandra Primary School for 1994?
- (4) What is the number of students enrolled at the Forrestdale Primary School for 1994?
- (5) Is it a fact that the ministry is placing transportable classrooms at the Willandra Primary School to meet the increased numbers of students anticipated for 1994?
- (6) If the answer to (5) is yes, have the costs of retaining the Forrestdale Primary School bus service been balanced against the cost of a bus service to Willandra Primary School, and also the provision of portable classrooms?

Hon N.F. MOORE replied:

(1)-(6)

The draft answer was provided to me earlier today in the absence of the chief executive officer, who is in Hobart. I have decided that I will have the issue examined further because the information provided to me raises some further matters that I need to look at more closely. I will discuss the matter raised in the question with the chief executive officer when he returns and I will provide the member with a detailed answer in due course.

**HASSELL, BILL - SETTLEMENT AGENTS' REPRESENTATIVE,  
CORRESPONDENCE TABLING**

892. Hon A.J.G. MacTIERNAN to the Minister for Fair Trading:

Further to my earlier question concerning Mr Bill Hassell, why will the Minister not table the correspondence from Mr Hassell?

Hon PETER FOSS replied:

Because the correspondence was specifically said to be confidential and was critical of a number of people. I do not think it would be appropriate to table it.

**SCHOOLS - SINGLETON PRIMARY, CONSTRUCTION PROMISE**

893. Hon CHERYL DAVENPORT to the Minister for Education:

Before asking this question, Mr President, I seek leave to table a newspaper article from the *Telegraph Weekender* of 26 November.

Leave granted. [See paper No 910.]

Hon CHERYL DAVENPORT: In an article in the community newspaper *Telegraph Weekender* of 26 November, the failed Liberal candidate for Peel, Anne McMurdo, was quoted as saying that the Liberal hierarchy had asked her to promise the community of Singleton a primary school in 1994.

- (1) Will the Minister confirm that that promise was made to Singleton residents?
- (2) Was this advice given to Anne McMurdo by the Minister and, if not, does he know who advised her?
- (3) Was the Singleton primary school on the projected capital works budget for 1993-94?
- (4) When will construction commence on the Singleton primary school?

Hon N.F. MOORE replied:

(1)-(4)

I do not know how many times I need to describe the situation in respect of the Singleton primary school before people understand it. The last commitment to build a school at Singleton was made on 3 February 1993, three days before the last election. In a letter from the then Premier to the member for Peel, Mr Marlborough, a commitment was made to build a school to open in 1994. However, funds for schools to open in 1994 were included in the 1992-93 capital works budget and, surprise, surprise, Singleton was not in it. That commitment made by the former Premier was not backed up by any funds. Therefore, I have inherited a situation where the schools for 1994 have already been included in the former Labor Government's Budget.

I would like to build a school at Singleton. However, in terms of priority it is not in the first four in respect of the numbers and demands for a new school. In February each year, each school is required to do a census of the number of students that attend the school. When those figures for the school at Singleton are available to me in February, I will decide whether a commitment can be made for that school to be built to open in 1995. That is the situation at the moment. That is what will happen if the numbers justify a new school. Schools should be built on the basis of numbers and need, not on the basis of promises made by Premiers trying to buy votes three days before elections.

**WESTRAIL - BUNBURY, BLAIR STREET RAIL RESERVE LAND**

894. Hon DOUG WENN to the Minister for Transport:

I thank the Minister for giving me the rail station report and for the response to my question 790 on the rail reserve land in Bunbury which was advertised as available for tender. The Minister has confirmed that no tenders have been supplied for the sale of the land.

- (1) Will the Minister put the land out for tender?
- (2) How does the Minister intend selling the land?
- (3) Does the Minister intend accepting the Prosser group offer?

Hon E.J. CHARLTON replied:

- (1)-(3) I understand that no decision has been made yet by Westrail. It is Westrail land and Westrail is the autonomous body to determine the process for disposal of any land that is not required by it as it does with other reserves around the State from time to time. My latest discussions with Westrail indicate that it has no intention of accepting any offer from anybody at this stage. As I have indicated before, I intend to ensure that the Bunbury City Council has an opportunity to discuss this matter before any action is taken. I have intimated that to other members representing the region who have approached me.

**BRADSHAW, DR WAYNE - ARREST WARRANT**

895. Hon A.J.G. MacTIERNAN to the Leader of the House representing the Minister for Police:

I gave notice of this question on 25 November. With reference to question on notice 1402, on what occasions was the warrant attempted to be served and where?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

The Commissioner of Police informs me that this is an operational matter and as such it is inappropriate to provide the information requested.

**TRANSPERTH BUSES - BREASTFEEDING COMPLAINT**

896. Hon P.R. LIGHTFOOT to the Minister for Transport:

Has there been any further development involving a young woman on a Transperth bus who was ostensibly breastfeeding a child and was asked to leave the bus?

Hon E.J. CHARLTON replied:

I have received an up to date report on the situation from Transperth. I will table the report later if anybody wishes to see the detail of it. In addition to what I told the House yesterday, Transperth will speak again today to the woman passenger to see if she can give further evidence. In another development, Transperth performed a records check on the number of passenger boardings on the 447 bus which departed the Warwick interchange at 1533 hours on Tuesday, 30 November. A total of 32 passengers boarded at 1533 hours. At 1540 hours another five passengers boarded and at 1546 hours a further two people boarded the bus. That is a total of 39 passengers, which conflicts dramatically with the lady's recollection of only five or six other people, all of them school children, on the bus. Transperth does not have records of the number of people set down on the trip, but it would be reasonable to assume that 34 people did not get off the bus in the first 10 minutes of the trip from Warwick.

It is important to note that the lady said her child was hungry and screaming for a feed. It is considered by Transperth that, with that many people on the bus, it would have been impossible for anyone not to have noticed what happened. Through a process of elimination, Transperth is satisfied that it was the 447 bus leaving Warwick interchange at that time, given the route described by the lady and the time she alleged she was ordered to leave the bus. Between 5.00 and 5.30 pm on Tuesday, an hour or more after the time that has been described by the woman that she arrived home, an anonymous female caller telephoned Transperth's information office complaining that a friend had been asked to leave a Transperth bus because she was breastfeeding her baby. Because of the lateness of the day, the caller was asked to call the Joondalup office the following morning to further register the complaint. The caller then intimated to the Transperth officer that her friend might wish to take the matter further. It seems that further inconsistencies have developed and, as a consequence, Transperth is continuing to investigate the matter.

[See paper No 911.]

#### HOSPITALS - BUNBURY REGIONAL, PLANS

897. Hon DOUG WENN to the Minister for Health:

- (1) Will the Minister advise at what stage the plans are for the new Bunbury Regional Hospital?
- (2) Will those plans be made available for the existing staff to have some input?

Hon PETER FOSS replied:

- (1) The process for the construction of the Bunbury Regional Hospital will be two staged. The first is that being followed by the ministerial technical advice committee, which will look at the total health needs of Bunbury and its region to determine the appropriate way to specify how it should be handled. Following that the usual type of task force will be set up to do the design. At this stage the committee is receiving all the information on the survey of health needs and looking at the ways in which those health needs can be met in Bunbury, before specifying the type of hospital required. The drawing of the plans of the hospital will not be started until such time as the advisory committee reports.

Hon Doug Wenn: Have you allowed staff to have some input?

Hon PETER FOSS: That is a very important point. The Government was concerned that on the previous plans there had not been adequate discussion with the staff. A task force will be set up and will include staff members and local people. It will be given adequate time to deal with this matter. I will make certain that the task force has as much time as it feels is reasonable to provide a full opportunity for comment.

#### SCHOOL BUSES - MARANDOO

898. Hon TOM HELM to the Minister for Education:

I refer to question without notice 873 asked yesterday by Hon Kim Chance with regard to school buses for children living at Marandoo, and ask -

- (1) Is the Minister aware that negotiations were taking place to provide a conveyancing allowance to parents of children who live at Marandoo?
- (2) If so, is the Minister also aware that some of those parents are not in a position to accept any conveyancing allowance?



- (3) If not, does he know what his department is doing at all?

Hon N.F. MOORE replied:

- (3) Most of the time.

- (1)-(2)

I do not know the circumstances of every parent who lives or works at Marandoo. I said yesterday that the ministry is trying to find a way to transport the students to Tom Price that does not cost taxpayers an arm and a leg, but provides a suitable means of conveying students to that school. There is a degree of goodwill about this, and I hope that goodwill will translate into proper arrangements being made for the transport of those students. The insinuation attached to the member's question does not help with the goodwill necessary to resolve the matter.

#### SCHOOLS - EAST MARANGAROO PRIMARY, CAPITAL WORKS PROGRAM LIST

899. Hon BOB THOMAS to the Minister for Education:

Can the Minister confirm that the East Marangaroo primary school was included on the document "Ministry of Education - Capital Works Program Projections 1992-93 to 2001-02"?

Hon N.F. MOORE replied

I cannot confirm that, to the extent that I do not know to which document the member refers. If it is the one published in the *Western Teacher* a couple of months ago, which I suspect was leaked by a former staff member of the previous Minister for Education, it was completely out of date by the time it was printed. The school may have been on that list.

I make the point very clearly that circumstances and needs change on a fairly ongoing basis in respect of numbers of students at potential primary schools. As we have a growing system and the need for more new primary schools than we have the money to provide, circumstances arise where numbers change and the schools on that priority list change. From time to time schools are in the first two or three, and a new subdivision may be finished quicker than another, so the order changes. As a result of the overall lack of funds available to build all the schools needed, some schools drop off the capital works list, sometimes at a very late stage of the deliberations.

I have already said today in answer to a question that I am looking at the situation in Singleton in the hope that a school can be built there in 1995, but it will again depend on the number of students available. Members opposite would be the first to criticise me if the Government built schools and had empty classrooms in brand new schools. East Marangaroo will be considered, in the same way as other areas needing new schools are, and a new school will be provided on the basis of need. That is the only priority.

#### SCHOOLS - EAST MARANGAROO PRIMARY, CAPITAL WORKS PROGRAM LIST

900. Hon BOB THOMAS to the Minister for Education:

Has the Minister's office ever advised any Federal members of Parliament that the East Marangaroo primary school has never been included on the capital works projection list to which I referred?

Hon N.F. MOORE replied:

I am aware of having written a letter to the Federal member for Cowan

about that school. As is normal when writing letters about possible school development, the information is always qualified on the basis that the school has the required number of students and that funds are available. I am not aware of any particular comment that might relate to the question, but if the member has a copy of the letter in which I wrote that, then obviously I did so.

# **SCHOOLS - EAST MARANGAROO PRIMARY, CAPITAL WORKS PROGRAM LIST**

901. Hon BOB THOMAS to the Minister for Education:

Is the Minister aware that the Federal member for Cowan, Mr Richard Evans, wrote to constituents on 24 November, advising that he has approached the Minister on this matter, and has been told that the Ministry of Education has not previously included this proposed school on a specific capital works program, due to its inability to rate as a high priority, based on normal planning criteria?

Hon N.F. MOORE replied:

I am not aware that Mr Evans has written to any of his constituents, but I am aware that he and I have corresponded. I do not recall the content of the letter I wrote, bearing in mind that thousands of letters go through my office and I cannot remember the details of them all. I have discussed East Marangaroo with planning officers in the ministry, and I am aware that it is not necessarily in the highest priority of areas in which new schools will be built.

As I said previously, it must be borne in mind that there are areas of significant suburban development throughout the metropolitan, Mandurah and Rockingham areas. It is a fairly fluid situation with respect to demand and the supply the Government can afford. The East Marangaroo area will be assessed, in the same way any other area is assessed, and a school will be built when its turn arrives.

# **SCHOOLS - CLEANERS, FUTURE CONTRACTS REQUIREMENTS**

902. Hon KIM CHANCE to the Minister for Education:

With respect to any future school cleaning contracts which may be let, will the Minister advise whether he intends to retain existing requirements which must be met by successful tenderers, specifically the requirements for -

- (a) minimum hours to be 65 per cent of day labour;
- (b) contract cleaners to retain accrued entitlements; and
- (c) contractors to detail their statutory obligations to workers' compensation, superannuation, public liability and occupational health and safety?

Hon N.F. MOORE replied:

Obviously, because of the new arrangements being made with the day labour work force, it would not be possible to require contractors to operate at 65 per cent of the rate of the new arrangements. Members know that the day labour work force is retaining jobs on the basis of increasing productivity to that of the private sector. I cannot say then to the private sector that it must now be 30 per cent more productive than those people. I will check the other details and advise the member accordingly. Obviously, we need to look at the arrangements that will apply to future potential contractors, bearing in mind the new situation that exists with the day labour work force.

**SCHOOLS - EAST MARANGAROO PRIMARY, CAPITAL WORKS  
PROGRAM LIST**

903. Hon BOB THOMAS to the Minister for Education:

- (1) Can the Minister confirm that the document I have, titled "Ministry of Education - Capital Works Program Projections 1992-93 to 2001-02", is bona fide?
- (2) Can the Minister advise whether the Federal member for Cowan, Mr Richard Evans, is correct when he says that the proposed East Marangaroo primary school has not previously been included on the capital works program of the ministry?

The PRESIDENT: Order! I must tell you, and I keep having to tell members, that members cannot ask the same question twice. I think this is the third time that same question has been asked today by you.

Hon BOB THOMAS: Mr President, the question I just asked was can the Minister confirm whether the member for Cowan is correct when he said that he had been advised.

The PRESIDENT: I know what you said.

Hon BOB THOMAS: Previously, I asked the Minister whether he was aware that the member for Cowan had said that. I am now asking the Minister to confirm whether that statement is correct.

The PRESIDENT: Okay. The Minister for Education.

Hon N.F. MOORE replied:

- (1) How would I know, not having seen the document? The member has a document there and he wants me to confirm that it is bona fide. If it is the document to which I referred earlier - that is, the one that was in the *Western Teacher*, leaked by either a staff member or the former Minister, and printed in total in the *Western Teacher* - then I suggest that that was probably an up to date document in 1992 when the previous Minister was in the portfolio.
- (2) I have already given an answer about East Marangaroo. I do not recall the details of any correspondence with Mr Evans. East Marangaroo, like every other suburb in Western Australia, will get a school when it is entitled to one, based on the number of students that are there and the availability of finance.

Hon Bob Thomas: I asked whether the member for Cowan was correct when he says that this school has not previously been on any capital works program of the ministry.

Hon N.F. MOORE: I will find out. As I said a moment ago, the list of priorities varies, and schools go on and off that list quite regularly. If the member had a talk to the previous Minister for Education, she would explain it to him in language that he might understand.

Several members interjected.

Hon N.F. MOORE: When the member asks the same question three times, I must answer it three times.

*Point of Order*

Hon BOB THOMAS: Mr President, the Minister is reflecting on the Chair when he says that I have asked the same question three times. You and I have already discussed that, and you have agreed that I have not.

The PRESIDENT: Order! That is not a point of order, and do not get me involved in the argument because I will tell you that you will not win if you pick on me.

Hon Tom Helm: We thought you were on our side!

The PRESIDENT: I am not on anybody's side.

*Questions without Notice Resumed*

Hon N.F. MOORE: I will make this point very clearly again. Documents are produced from time to time which list the priorities based on known knowledge. That list changes from time to time. It can change on a weekly basis and from year to year. It changes regularly. To give a simple example - Hon Mark Nevill will vouch for this - there is talk about a subdivision at the site of the old Kalgoorlie Airport. They are talking about a new school there. That is on the list, on the basis that that subdivision will go ahead according to plan. If it does not go ahead according to plan, the school will be deferred for another couple of years or another year, depending upon the circumstances. Therefore, it is a very volatile situation. It may be that East Marangaroo was never on any list. It may be that it has been on a list and come off. I do not know. I suggest there are probably dozens of lists that have been produced over years gone by. There is nothing sinister about this. East Marangaroo will get a school, like every other part of Western Australia, when the numbers are there and the finance is available.

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