WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Tuesday, 18 November 1997

Legislative Council

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

PETITION - D'ENTRECASTEAUX NATIONAL PARK

Hon J.A. Scott presented the following petition bearing the signatures of 149 persons -

> To the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned residents of Western Australia request that the Council -
>
> Reject any proposal to excise land from, or downgrade the status of any part of, D'Entrecasteaux National Park, especially areas adjacent to or near the beautiful Lake Jasper, which is of enormous significance to indigenous people;
>
> Reject any proposal to exchange land or do anything calculated to open the way for mineral sands mining within D'Entrecasteaux National Park, especially in areas adjacent to or near the beautiful Lake Jasper, which is of enormous significance to indigenous people;
>
> Guarantee the full and proper protection and management of the remarkable D'Entrecasteaux National Park for the sake of the native species and ecosystems of the Park and future generations of Western Australians.
>
> Your petitioners as in duty bound, will ever pray.

[See paper No 1044.]

PETITION - CIRCUS ANIMALS

Hon Norm Kelly presented the following petition bearing the signatures of 1 153 persons -

> To the Honourable President and Members of the Legislative Council of Western Australia in Parliament assembled.
>
> We, the undersigned residents of Western Australia are opposed to the use of animals in circuses.
>
> Your petitioners request that the Legislative Council urge the cabinet to accept the recommendations of the Animal Welfare Advisory Committee, which state:
>
> "It shall be an offence to import exotic animals into Western Australia as part of a circus troop, whether or not for the purpose of using animals in the circus".
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See paper No 1045.]

MOTION - URGENCY

Native Title

THE PRESIDENT (Hon George Cash): I have received the following letter -

> Dear Mr President
>
> In accordance with standing order 72, I move that the Council at its rising adjourn to the 25th of December 1997 for the purpose of discussing the following matter of urgency:
>
> > That the House calls on all Members of the Legislative Council to seek support for the Federal Government's amendments to the Native Title Act 1993.
>
> Yours sincerely
>
> Hon Greg Smith MLC

Point of Order

Hon TOM STEPHENS: I rise on a point of order to make three points on that letter. Firstly, Mr President, I saw for the first time the letter that you have just read only a few minutes ago. No courtesy was extended to the

Opposition, nor to members of minor parties, as has become the custom and practice in this House with such letters. Secondly, the letter does not conform to the standing orders because it is not written in the terms required by the standing orders. Thirdly, and more importantly, it calls on the House to do something other than that which it has specifically decided to do in reference to this matter; that is, to refer these issues to a select committee - which I chair and which is controlled by three government members - to make recommendations to this House on precisely the questions put before the House in the letter.

Mr President, I ask that either you rule the letter out of order or that four members not rise in support of this urgency motion, for the reasons I have explained.

The PRESIDENT: The Leader of the Opposition has raised a point of order with a number of elements. First, he said that he was not given notice of this urgency motion prior to the meeting of the House. Members will recall that the former President dealt with this matter on at least one occasion. His decision was that, in accordance with Standing Order 72, the motion had to be in the hands of the President not less than two hours before the sitting of the House, and that has occurred.

As to the courtesies the Leader of the Opposition has mentioned, in his ruling the former President recognised that it would be convenient to members if they were made aware of these urgency motions. However, he pointed out very clearly that the urgency motion was being handed to the President for the purpose of raising it with the House, and there was no authority given to the President to distribute the motion to any other member. We have always stuck by that decision. It is true that in some cases custom and practice have been, as a matter of courtesy, for members who are proposing to move urgency motions under Standing Order 72 to distribute them at least to the leaders of the respective parties in this House, but there is no fixed rule in that regard. I can only raise it with members to indicate to them that that option is available. For the benefit of the House and to ensure an ongoing flow of business, it would seem to me to be not unreasonable for at least the leaders of the respective parties to be advised of an intended urgency motion. However, until the standing orders are changed or the House overrules the decision of the former President, I must uphold the current rules. I am sure that matter can be taken care of by members of their own accord and at their own option.

Hon Greg Smith interjected.

The PRESIDENT: I will deal with this issue first; I have covered only the first point.

In respect of the second issue raised - that the proposed motion is not in accordance with the standing orders - I differ greatly with the Leader of the Opposition. I have read Standing Order 72 and the motion in its present form does conform to it.

As to the content of the matter, the Leader of the Opposition argues that a matter involving native title has been referred to a select committee of which he is the chairman. That may be the case. However, this motion deals with federal legislation and it is quite within the authority and province of the House to raise issues involving that legislation.

I have dealt with the three areas raised. I believe Hon Greg Smith wished to raise a point of order.

Hon GREG SMITH: Yes. I was not aware that I was required to circulate the motion. Please forgive me for the presumption, but I understood that once it was given to the President it would be circulated by the President or the administrative staff. I understand that the committee to which Hon Tom Stephens referred is dealing with state issues. The importance of this issue and the fact that the Senate is dealing with it next week suggest that it is appropriate that we discuss it now.

The PRESIDENT: That was more a point of clarification. The reason I am suggesting that there are courtesies that might be observed is to bring to the attention of those members who are not aware of those past decisions the opportunity to distribute motions at least to the leaders of the respective parties. I am not authorised to pass on any motion given to me, and until such authorisation is given I do not intend to do so - that is entirely up to the member proposing it. I understand the comments the member has made, but he obviously has not been involved in moving such a motion previously. The member is right: As I said, the native title committee that the Leader of the Opposition chairs is dealing with state matters in particular, and this motion is directed to federal legislation.

Debate Resumed

The PRESIDENT: Before this motion can be discussed, it will be necessary for four members to stand in their places to signify support.

[At least four members rose in their places.]

HON GREG SMITH (Mining and Pastoral) [3.46 pm]: I move -

> That the Council at its rising adjourn until 25 December 1997 for the purpose of discussing the matter of urgency:
>
> > That the House calls on all Members of the Legislative Council to seek out support for the Federal Government's amendments to the Native Title Act 1993.

Hon Tom Stephens: That is not what your letter states.

The PRESIDENT: Order! Please continue.

Point of Order

Hon TOM STEPHENS: While moving my very first urgency motion in this House I was pulled up by the then President for moving a motion not strictly quoting the letter addressed to him. The member has moved a motion that has differed by at least one word. That is only a technical point, but it was a point made to me while I was delivering my maiden speech in this place.

The PRESIDENT: It may have been raised with the leader. However, I am satisfied that Hon Greg Smith has moved his motion in accordance with Standing Order 72 and I ask him to continue.

Debate Resumed

Hon GREG SMITH: The operation of the commonwealth Native Title Act is a mess and that mess was created by the Labor Party. That fact was clear in this State even before the High Court decision in Wik. The High Court in its Mabo judgment found that native title rights existed in certain areas. The first ruling related to the island of Mer in the Murray Islands.

The coalition accepts that native title exists in some areas of Western Australia and other areas of Australia. A sensible Act of Parliament would seek to expedite determination of where native title exists, what it is and who holds it. The coalition cannot accept the fact that, as a result of simply lodging a claim, a claimant has the right to negotiate. Herein lies the crux of the problem with the legislation: That right to negotiate becomes a statutory right, not a common law right. It has been created for all Aboriginal people and in its present operation has little or nothing to do with native title.

We currently have over 300 claims lodged in Western Australia, many of which overlap. In some areas, in the goldfields in particular, in excess of 18 claims have been lodged over the same piece of land. Currently 82 per cent of Western Australia is under claim. If the total area of individual claims were added together, 187 per cent of Western Australia would be under claim.

The existing claims involve all types of land tenure and title, including private freehold, government freehold, perpetual lease, other freeholdings, exclusive leases, pastoral leases and crown reserves. Many claims are for exclusive possession, occupation, use and enjoyment of the lands and waters. I reiterate: The claims are for exclusive possession and occupation. If members doubt that, I have a native title claim lodged over the Shires of Cue, Dalwallinu, Menzies, Mt Magnet, Mt Marshall, Sandstone and Yalgoo and covering an area of 36 150 square kilometres.

The claim is couched in terms such that the native title rights and interests claimed by the applicant include the exclusive possession, occupation, use and enjoyment of the whole of the area covered by the application. Can members imagine the anxiety they would feel if they had a claim couched in those terms lodged over their homes and land?

Several members interjected.

The PRESIDENT: Order! Let us hear from Hon Greg Smith. We have limited time.

Hon GREG SMITH: Claims like this are driving a wedge between Aboriginal and non-Aboriginal Australians. There is another claim on the same piece of land.

Hon Tom Stephens interjected.

The PRESIDENT: Order! The Leader of the Opposition.

Hon GREG SMITH: What hope does someone have for negotiating when he does not know with whom to negotiate and the two Aboriginal claimants cannot decide who should be claiming native title? They are fighting amongst themselves.

Hon Ken Travers: Is it on your property?

Hon GREG SMITH: I have told the member where it is. The area extends to about five shires and is 36 150 square kilometres. As I said, of the more than 300 claims pending in Western Australia not one has been resolved. No wonder; how can non-indigenous parties to a claim be confident that the claimants have any bona fide claim to the land? They do not know with whom to negotiate. This is devaluing native title.

On 23 December 1996 the High Court handed down what has become known as the Wik decision. Wik made the whole issue even more complicated because it said that native title could coexist with pastoral leases. The original architects of the native title legislation assumed that native title would be extinguished where there was some other form of title over land. They also assumed that where native title was found to exist one or other title would exist.

Most members will have heard of the 10 point plan, but I doubt whether that many will know what it will try to achieve. We have heard lots of scaremongering from all sorts of guilt merchants. I will take a few minutes of the time of the House and let members know what the amendments to the Act intend to achieve. The first point will be to validate Acts and grants made between 1 January 1994 and 23 December 1996, which is the period between the passage of the Native Title Act and the Wik decision. This means that titles issued in good faith during that time will be validated and put beyond doubt.

The second point is the confirmation of extinguishment of native title on exclusive tenures, which will allow the States to confirm that exclusive titles such as freehold, residential and commercial, and public works that were valid pre-Mabo, have extinguished native title. Agricultural leases would also be included. It is fair to say that the holder of any area that has been fully enclosed and developed and is being farmed or has been farmed was intended to have exclusive possession due to the nature of the activities that are allowed to take place on the land. Western Australia currently has claims affecting a range of land and facilities including the Perth Airport located on commonwealth freehold land; tens of thousands of Homeswest blocks; churches; old people's homes; freeholds and leases, such as war settlement services leases and conditional purchase leases; and public reserves. This will provide security and certainty for all the holders of those sorts of tenures and help to remove their anxiety. Those people at the moment have ambit claims over their properties and they do not know where they stand.

The third point deals with the provision of government services. Currently under the Native Title Act many impediments can be placed in the way of providing services, such as sewerage, drainage, gas, water, electricity, transport and communications. The amendment will not remove native title but it will allow the Government to provide these services and require compensation to be paid if native title is found to exist. Of course, Aboriginal heritage issues would still apply.

The fourth point deals with native title and pastoral leases. The amendments confirm the High Court's decision in Wik - that where a pastoral lease has been granted native title has been extinguished to the extent that the pastoralist's rights override the native title rights, but some native title may still exist. It will give the State the power to allow leaseholders to do small but important things, like construct dams, fences, yards and buildings. It will also give the State the power to allow leaseholders to establish farm stay tourism and diversify into horticulture and agricultural activities without having to negotiate with native title claimants. In the event that something more substantial needs to be done, such as the upgrading or changing of the lease or title, then the amendments allow for the Government to compulsorily acquire the pastoral lease and in the process to give the native title claimants procedural rights. This means that the native title claimants will have the same rights as if they held some other form of title to the land and that they will be compensated. There will also be rights for native title claimants where there is a proposal to do some other activity on pastoral leases, such as mining, in which case the native title claimants will have the right to be notified and consulted about this activity.

Point of Order

Hon JOHN HALDEN: I am thrilled by this speech but I thought it might be appropriate to draw the member's attention to Standing Order No 83. I understand clearly that the member is breaching that standing order. I wonder if you would acquaint him with the fact, Mr President, so that he does not continue to do so.

Hon Tom Stephens: Or at least identify the author.

The PRESIDENT: I am aware of Standing Order No 83. Perhaps other members should acquaint themselves with Standing Order No 83. Hon John Halden says that it is clear to him that the member is reading his speech. I have adopted the view that unless I can quite clearly see someone folding page after page, I will not invoke that particular standing order. If we were to adhere strictly to that, a number of members in this House would be severely disadvantaged. One of the reasons for Standing Order No 83 is so that members do not come in here and recite research work or the words of others; that is, what is said in this House is meant to come from members. I do not believe that Standing Order No 83 should be applied in this case. Obviously the member is using copious notes. He

is entitled to do that. If standing orders are to be applied in a way that will disadvantage one member, I can assure members they will be applied equally to all members.

Debate Resumed

Hon GREG SMITH: With the extensive range of leases over property and the figures I have quoted, I would rather use copious notes and have the correct terminology than lead members astray.

Several members interjected.

The PRESIDENT: Order! Let us get on with the debate.

Hon GREG SMITH: The fifth point will legislate for statutory access rights for native title claimants who have had a regular physical access to non-exclusive pastoral leases for traditional pursuits such as hunting, fishing, gathering, performing ceremonies and visiting sites of significance.

The sixth point concerns future mining activities. The proposed amendments provide for a state or federal body to deal with the administration of the Native Title Act. There are also proposed amendments to the right to negotiate process. This is considered to be one of the most important parts of the legislation affecting the mining industry. We get currently approximately 5 000 applications for mining tenements in Western Australia of which 70 per cent are on pastoral leasehold land. The current right to negotiate is equivalent to a legislative right to extort. It attracts rights that far exceed those of any other form of tenancy on crown land. The amendment will not remove the right to any native title that may exist but it will be more in line with other relevant titles.

Hon Ken Travers: What about freehold?

Hon GREG SMITH: Native title does not exist on freehold now.

The seventh point makes changes in order to streamline future government and commercial development. The Bill enables usage of existing reserves for the purpose for which they have been created. It has no further effect.

Several members interjected.

The PRESIDENT: Order! Hon Ken Travers can make as many snide remarks as he likes. I could not hear what he was saying. He will be treated in the same way as any member in this House who interjects.

Hon GREG SMITH: The right to negotiate process is the most disturbing part of the whole legislation. Point 7 relates to how we handle government issues on land. It will allow for native title within towns and cities, subject to procedural rights. Native title holders will get title equivalent to that granted to other title holders. There will not be wholesale extinguishment of native title. The legislation seeks to allow the Government to deal with pieces of land; it recognises that native title exists. It will allow the Government, for example, to release residential land in Karratha and Kalgoorlie, to get on with stage 2 of the Ord River project. It will enable the Government to go ahead with matters of public importance and to deal with native title later.

The Native Title Act originally was an attempt to recognise and protect the principles outlined in the Mabo decision. It was supposed to set out the rules to recognise native title and to manage the issues that arose from that. Unfortunately, the Act does neither of these things. Instead there have been substantial delays, increased costs and uncertainty for all people on all forms of land tenure.

Hon E.J. Charlton: Especially for Aboriginal people.

Hon GREG SMITH: The problem for Western Australia is a serious one. If these amendments to the Native Title Act are not passed and the right to negotiate process is not changed, the chances of anything happening in Western Australia are remote. For example, we are trying to negotiate with people in Karratha but we cannot begin the negotiation process until all other statutory requirements have been completed. We must go through the planning process with the council, the appeals process with the planning authority and then the future act process with native title holders. Blanket claims for exclusive possession and occupation should be ruled out, because the High Court has said that native title will coexist with pastoral leases. Any claims for exclusive possession and occupation can only be frivolous and ambit. One does not have to be a Queen's Counsel to know that the High Court has already ruled that land that already has a form of title will coexist with native title, so any claim for exclusive possession will be thrown out. I ask members of the Opposition to please do what they can to seek support for the Federal Government's native title amendments, because if they do not do that the native title problems confronting this State in the future will be fairly and squarely placed on their shoulders.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.05 pm]: Invincible ignorance is always alarming when put on display.

Hon N.F. Moore: We know, we have seen it time and again.

Hon TOM STEPHENS: When one sees a motion in this format it makes one all the more concerned about that ignorance. That is particularly so when on the opening day of this Parliament the Labor Opposition gave notice in this House of a matter that it considered to be of such urgency that it made it the second motion it moved on that day, although it was not dealt with for many months and no support for it was forthcoming from any members opposite - certainly not from Hon Greg Smith. I refer to the motion that was eventually carried just a few weeks ago calling on this House to take the necessary steps to prepare for consideration of the issues associated with the Howard Government's 10 point Wik plan and to respond to that plan with some advice to this State Government, to this Parliament and hopefully in turn to the Federal Parliament about the impact of the 10 point plan upon the people of Western Australia.

Hon Greg Smith: Our amendments are doing that.

Hon TOM STEPHENS: Members opposite had the chance to appoint a select committee much earlier than they chose to in order to get some action and some consideration of the issues. They are serious issues and they deserve consideration. Instead of allowing us to deal with the motions on the Notice Paper that have so embarrassed the Government - I refer to the motion which relates to Hon Peter Foss and about which three editorials have condemned and attacked him for his ineptitude in handling legitimate attempts to change the standing orders in this place -

Hon N.F. Moore: When Mr Murray criticises you, you are on the right track.

Hon TOM STEPHENS: - we have an attempt by the Government to filibuster during this first hour to prevent consideration of an important series of motions that this House should be dealing with. Instead of dealing with this issue that I put before the House on the opening day of Parliament in any of the months after that, the Government finally has chosen to raise the issue. Members should keep in mind what it is that the select committee that has been formed by this House is doing: It is considering the 10 point plan to decide whether the issues are appropriate measures to accommodate the land needs of the Western Australian community.

Members opposite should have some doubts about the architect of the Government's strategies in this regard. I suspect from the dulcet tones of Hon Greg Smith that his speech contains the words found upon the lips of the Prime Minister and in the text written by the people who have pushed the taxpayers' funds in the direction of lawyers and the High Court to a 7-0 result. Members opposite are still drawing upon their rhetoric and lack of vision.

Hon N.F. Moore: Do you support the 10 point plan?

Hon TOM STEPHENS: I support certainty.

Hon N.F. Moore: The certainty that nothing will happen. That is exactly right. Tell us what you support.

Hon TOM STEPHENS: We saw a 7-0 result against the Government.

Hon N.F. Moore: That is the worst decision ever made in the High Court, and you know it.

The PRESIDENT: Order! I will wait until interjections cease. I ask the Leader of the House not to interject.

Hon TOM STEPHENS: The Labor Opposition wants to see enshrined in legislation certainty for the administration of the land and property laws of this State. That will not come about by pushing through the national Parliament legislation that produces the opposite; that is, constitutional lack of certitude. The only certitude that will come from pressing on with the legislative program that the Howard Government has before the Senate is a one way ticket back to the High Court. The legal commentary in support of the Howard Government's plan is totally deficient. Only two solicitors across the whole nation have come down in support of there being any prospect that the High Court will uphold his concept.

Hon Simon O'Brien: Two in the entire nation?

Hon TOM STEPHENS: Two solicitors have gone on record before the joint federal parliamentary committee on this issue.

Hon Simon O'Brien: That is two in front of the committee and not the entire nation.

Hon TOM STEPHENS: Only two solicitors gave submissions to the national inquiry on this issue.

The PRESIDENT: Order! The Leader of the Opposition will direct his comments through the Chair.

Hon TOM STEPHENS: On the other side of the argument is a body of legal argument that says that the process in which members opposite and their colleagues are engaged as members of a state and federal coalition party is

guaranteed to produce for the people of Western Australia and the nation total uncertainty in this regard. Members opposite are wasting millions of dollars worth of taxpayers' funds in their futile attempts to get around the Supreme Court. I know exactly what the Government is on about, as do the people of Western Australia. Our political opponents tried it in 1984 and most recently during their last term of government in the period following the 1993 election. The Government tried to play the race game with reference to these Aboriginal land matters. The Government does not care how many millions of taxpayers' dollars it spends on the process, and it does not provide the essential resources necessary in the administration system to process these issues. For example, the Department of Minerals and Energy has only five officers to deal with a multitude of claims, and the Government knows resources should be available to ensure these issues can be dealt with appropriately. Instead of allocating the resources required to bring about resolution of these problems, the Government is prepared to waste scarce funds that should be available for the police, teachers and hospitals in Western Australia. The Government allocates the funds in its efforts to cement itself in office because it smells smart politics in this matter. The difference now is that the last time the Government played its race card it did not have the disadvantage it now has; that is, the 7-0 decision. That is the disadvantage. The High Court will strike down this Government again. Even worse, it will result in ongoing costs for the taxpayers of Western Australia and will not produce the certitude that the people of Western Australia deserve.

Several members interjected.

The PRESIDENT: Order! If the Leader of the Opposition will put his comments through me, there will not be as many interjections.

Hon TOM STEPHENS: A number of features of the 10 point plan seem attractive, and the select committee will have the opportunity to make a report in that regard; for example, in relation to strengthening area agreements. The committee has received evidence from Justice French indicating the opportunities for and value of the support. That evidence is before the national Parliament through the joint federal select committee of Justice French, and it is on display on the Internet. Members can see the opportunities from regional agreements such as those struck in Broome. There is a need for legislative change - the Labor Party agrees with that - that would bring about the certitude, but it is not through the process of delivering lack of certainty in these issues. Every day since Parliament resumed, in the other place the member for Ningaloo has asked questions about this issue in an attempt to inflame it and attract the interest of the media. He is trying to stir up this issue in the community. So far, nobody has bitten. I see the member for Ningaloo is in this House to support his colleagues. Perhaps he did not succeed at his end and perhaps today through this urgency motion -

The PRESIDENT: Order! The Leader of the Opposition will come to order. He knows the rules, one of which is that he should not refer to people who are outside the bounds of this Chamber even if they might be visiting from another place. I ask the member to observe that rule.

Hon TOM STEPHENS: I see that as part of an ongoing strategy aimed at trying to heighten the tempo in relation to this issue, instead of leaving it to be resolved in the processes available to this House; that is, a select committee weighing the evidence available and making recommendations for this important and complex matter. It will not be solved through the smart politics of people such as Hon Greg Smith. These matters can be resolved by local agreements, as has happened at Broome, and by putting offers on the table. Members who look at the faces of people such as Ken Oobagooma, whose native title will be extinguished by the 10 point plan, will understand that it cannot be done and it will not be allowed.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [4.14 pm]: I was delighted to hear from the Leader of the Opposition that the Opposition wants certainty in this matter. The problem is that there is no certainty in Australia because of the poor legislation passed by the Federal Parliament at the instigation of former Prime Minister Mr Keating. He talked in his legislation about the extinguishment of native title on pastoral leases. The other day he denied doing so. He does not know what he did. There is massive uncertainty in Australia as a result of the 1993 Native Title Act. That is the problem we are trying to resolve. In the last month or so the debate has been heightened, not by this side of politics, but by those in the Aboriginal industry who want to call anybody who does not agree with their point of view racist scum or words to that effect. That is how the temperature has been raised.

I will read to the House today a letter to the editor of *The West Australian* signed by George Savell from the mining industry. He sat in this Chamber and supported the last Labor Party's land rights Bill. Fortunately, it was defeated. He is a very balanced person with regard to this issue, and he will tell members what are the problems with this legislation and how the Bill in the Federal Parliament seeks to clarify it. The letter is under the headline "The nonsense of native title" and states -

> The native title debate is taking a similar road to the debate which preceded parliamentary consideration of the Native Title Act 1993.

> On that occasion the Keating government was lobbied to ensure that social justice questions were dealt with to the virtual exclusion of measures which are vital to sensible land management.
>
> Therein lies the genesis of the problems which have made the Native Title Act 1993 all but totally unworkable in commercial terms.
>
> As occurred in 1993, the public debate is again heavily larded with terms such as "racist", "unconstitutional" and "discriminatory" when those interest groups opposing the amending Bill are quoted.
>
> Australian industries, including the mining industry, have suffered for four years under the totally unworkable regimes prescribed by the Native Title Act.
>
> The Act is fatally flawed in that it does not adequately define what native title is, what responsibility it confers and how it interfaces with a 200-year-old land title system maintained by the States. The Federal Act is purporting to manage something which it does not adequately describe.
>
> The courts have compounded the problem by ensuring that "claimants", as opposed to holders of native title, are able to "negotiate" on development matters. Many of these "claimants" will probably never be awarded native title to any area.
>
> "Claimants" with the "right to negotiate" can receive "compensation" for the alleged effect of a developer's activities on the as-yet undefined, non-awarded native title.
>
> This system has spawned the massive multiple-claim problem, which exists mainly because of the possibility of someone receiving so-called "compensation".
>
> The Act is a nonsense and must be properly and sensibly amended or Australia will continue to suffer. The amending Bill will correct many of the existing problems and is a significant improvement on the Native Title Act 1993.
>
> The fear campaign waged by some interest groups is reprehensible. It aims to protect some special privilege. Even the church is having a say.
>
> The only people who are not having a say are members of the Australian community, who are relatively silent. They are, however, the ones who will ultimately bear the brunt of the problem of a reduced economy.
>
> Australia stands to lose a great deal if the Native Title Act 1993 is not made more commercially sensitive. Future investment could easily go elsewhere and in that process jobs will be lost.

The letter is signed by G.A. Savell, chief executive of the Association of Mining and Exploration Companies, West Perth. He has very succinctly explained to Western Australians what the problem is, without going into the detail of the 10 point plan. He simply says this country has legislation for native title which does not work for the commercial sector or for the Aboriginal people. Since 1 January 1994, 291 native title claims have been lodged in Western Australia and not one has yet been determined. There is no benefit for Aboriginal people in what is happening at present. There is no benefit for anybody. It is a simple mess, as has been clearly pointed out by George Savell in his letter, and as was pointed out by my colleague Hon Greg Smith. It needs to be fixed.

Hon Greg Smith said today that members of this Chamber have an obligation to make known their views about the problems in the Native Title Act. It is causing serious problems. It would not matter if I, as Minister for Mines, had 4 000 people working in my department. It is clear Hon Tom Stephens does not understand the process. The only organisation that must act in good faith under the provisions of the Native Title Act is the Government; that is, the Department of Minerals and Energy. The department has inordinate difficulty in arranging any negotiations. People do not turn up and they have no obligation to do so. Alternatively, they might send someone else, or turn up a month later. The whole thing is an absolute disgrace.

In Western Australia the statutory six month period for negotiation and determination under the NTA has resulted in 153 mining leases being granted out of 1 500 leases submitted over two and a half years. The number of mining leases granted in 1996-97 was 159 compared with 611 in 1994-95. At the same time, the number of lease applications outstanding has increased from 1 785 in 1994-95 to 3 700 in October 1997. It is impossible under the current process for titles to be granted in a way which is expeditious and in the interests of mining in this State. Hon Tom Stephens does not understand the importance of the mining industry to Western Australia.

Hon Tom Stephens: Why not allocate more resources to the department?

Hon N.F. MOORE: It would make no difference. If 20 000 people tried to negotiate, it would make absolutely no difference under the current law. That is the fact. It is not the Department of Minerals and Energy that decided that,

for example, 22 overlapping claims could be made on the Murrin Murrin project. Hon Tom Stephens knows that the claims are being made for one reason: Compensation.

Hon Tom Stephens interjected.

The PRESIDENT: Order! The Leader of the Opposition has had his opportunity to comment. It is now the turn of the Leader of the House. I ask the Leader of the Opposition to respect the rules and other members in this place with regard to interjections. While the Leader of the Opposition does enjoy some preference over other members in this place, I ask him not to abuse it.

Hon N.F. MOORE: Western Australia's major industry, the mining industry, is being severely thwarted by the current federal law on native title. That is being said not by me but by people involved in the industry. It is being said by George Savell, who represents many mining companies in Western Australia. It is being said by the Chamber of Minerals and Energy of Western Australia, which in its submission to the Select Committee on Native Title Rights in Western Australia made it very clear where the problems lie with regard to the Native Title Act.

Hon Tom Stephens: How would you know? The submission is not on public record.

The PRESIDENT: Order!

Hon N.F. MOORE: If members of the Opposition do not understand yet how important this industry is to Western Australia, they should have a close look at the State's finances and economy. It is a fact of life that this Act must be amended. All we want to know is, where does the Labor Party stand? We know that the Democrats do not support any amendments to the Native Title Act. We know that the Greens think the Act does not go far enough and we should give the country back to Aboriginal people. The Labor Party has the balance of power in the Senate on this issue, but we do not know where it stands.

Hon Bob Thomas: Read the papers.

Hon N.F. MOORE: I do. I read about this all the time, and I do not know where the Labor Party stands. I interjected - I was quite out of order, Mr President - on the Leader of the Opposition to ask where he stood on this matter, and he said that the Labor Party supported some things but not other things. I do not know what that means, but I do know that if the Labor Party does not get behind the national coalition to sort out this problem, it will have on its head the serious consequences that this Act will have upon our economy.

Hon Ken Travers interjected.

Hon N.F. MOORE: If Hon Ken Travers, who has never been across the Darling Range, had a quick look at the figures that support this State's economy, he would know where the wealth of this State comes from and that that area is being severely hampered by the operation of the Native Title Act in Australia.

The view has been put that exploration is still taking place in Western Australia, and that is correct. However, it is taking place on land which was made available under various titles prior to the native title legislation. Virtually no exploration or mining is taking place on greenfield sites in Western Australia, and many companies are taking their money overseas and exploring in countries where they can get certainty of title. That is not happening here. If we do not provide certainty of title, our economy will suffer dramatically and the people who depend upon the resources industry for their occupations will lose their jobs.

HON J.A. SCOTT (South Metropolitan) [4.24 pm]: It is interesting that Hon Greg Smith has put this motion before the House. I suggest that he has a vested interest in this matter, because he is one of the pastoralists who will gain from the amendments to the native title legislation. The federal Liberal-National coalition is putting to this nation that the Wik decision has had a terrible effect on pastoral leases and people will not be able to operate on pastoral leases. That is a nonsense. The Wik decision stated that when there was a conflict between Aboriginal rights and the rights of pastoralists to carry out the terms of a lease, the rights of pastoralists would prevail.

Hon Greg Smith interjected.

The PRESIDENT: Order!

Hon J.A. SCOTT: I ask that at some stage Hon Greg Smith explain how things have changed on his pastoral lease, because that was written into nearly all pastoral leases in Western Australia before people were granted those leases. The Wik decision has resulted in no change for most pastoral leases. It is a total fabrication to say that pastoralists in this State will be badly done by as a result of the Wik decision.

The reality is that pastoralists want freehold title. Hon Greg Smith had said that we should compensate Aboriginal people for the loss of land rights. Who will compensate them? Will the pastoralists pay for this compensation when

the time comes, or will the taxpayers have to pick up the bill? The taxpayers are already picking up the bill, I think to the tune of $24m a year, for the environmental degradation of many of the pastoral stations in this State, many of which are owned not by people who live here but by absentee landowners. What is the sense of taxpayers paying for freehold land in areas like the Gascoyne, which many of the banks and stock firms are realising cannot be run at a profit and on which they will not lend any more money? Hon Greg Smith wants us to tell the Federal Government that it should change what has been a condition of his pastoral lease from the beginning so that he can make a better go of things without having to pay any money. This motion is about advantaging one sector of the community.

Hon Norman Moore knows very well that the position of the Greens is not that we should give the whole country back to Aboriginal people.

Hon N.F. Moore: Everything except the freehold that you own. Is that what you are saying?

Hon J.A. SCOTT: We know full well that freehold land has never been under threat.

Hon N.F. Moore: Why should it not be?

Hon J.A. SCOTT: The Government has at all times tried to confuse that matter. The Government has tried to play up how much land the Aboriginal people will get out of native title. The Government has constantly tried to break down the process of negotiation about native title claims and to hold up that process at every opportunity. I have spoken to many people involved in that process who have told me that the Government is trying to interfere with that process all the way through. The way in which the coalition Government has behaved in this matter has been a sorry saga. It has been picking on the weakest people in our community. It is beyond belief to talk about the Aboriginal industry when Hon Greg Smith and Hon Norman Moore suggest that the taxpayers will have to pick up the bill for the pastoral industry.

The Court Government enacted its own legislation. However, that was thrown out by the High Court on the basis that it was not valid because it was racially discriminatory. It is sad that such an issue should hang over any Government's head. I felt ashamed at that stage. We should not ask this House to support the Federal Government on this legislation. The Federal Government should dump the legislation immediately and start to look after all Australians instead of a small loud, vocal group, including Mr Savell and his company, which has almost the whole of Australia under claim. Hardly one inch of this country has not been claimed by the mining companies. Members should look at the map to find the areas that are not covered by mining leases! It includes our national parks and almost all the rest of it.

Motion lapsed, pursuant to standing orders.

MOTION - DISALLOWANCE

Prohibition on Commercial Fishing for Rock Lobster (Dampier) Order No 5 1997

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

> That the Prohibition on Commercial Fishing for Rock Lobster (Dampier) Order No 5 1997 published in the *Gazette* on 27 June 1997 and tabled in the Legislative Council on 19 August 1997, under the Fish Resources Management Act 1994, be and is hereby disallowed.

HON HELEN HODGSON (North Metropolitan) [4.31 pm]: Current events in the Dampier Archipelago have caused gross injustice to a person currently fishing in the area. He will suffer severe financial loss because of the manner in which the decision on this prohibition has been made by the Fisheries Department and the Minister for Fisheries. The fisherman in question is Mr Arnold Piccoli, one of four active commercial fishermen in the area. However, he is the only fisherman in the area who catches more than one tonne in one year, which is considered to be a commercial quantity. A number of people have held licences in the area, and up to 12 unused licences have been cancelled by the Minister under the provisions of the Fish Resources Management Act.

During Estimates Committee debates this year the Minister for Fisheries advised that 11 fishermen had licences to take rock lobster. He was asked to show cause why rock lobster licences should not be cancelled in the area. The number was dropped to four by that process, and officers were attempting to find a way to deal with the problem. Currently, the action taken by the department to close the area to fishing for rock lobster is having an impact on only one fisherman, Mr Piccoli - the only person taking commercial quantities of rock lobster from the area.

Mr Piccoli has a number of licences to fish for abalone which occupy his time for about 10 months of the year. For approximately two months of the year - August and September - under licence he takes rock lobster from the area in question. He has developed a new industry through which he can market live rock lobster to new markets in Asia. He goes to the area for two months of the year when seasonal conditions are appropriate. During those months he

takes two to three tonnes. Apparently there is a window period in the rock lobster season in Australia, and during the months of August and September no other fishery takes rock lobster live. That has provided an opportunity for the industry to be developed, and for Mr Piccoli to sell rock lobster live on the Asian market. In the process, he has invested $150 000 in building up his business, which provides a gross income of around $60 000 a year. I am sure we would all agree that $60 000 a year is not a small amount to be taken from anyone as a result of a decision by the Fisheries Department and the Minister, when other methods may be available to deal with the problems that have arisen.

Mr Piccoli does not fish within 10 nautical miles of Dampier, for a number of reasons, the first being the conflict between recreational and commercial fishing. Another is that rock lobster are easier to obtain in limestone areas rather than coral reefs. Therefore it is easier to catch fish beyond 10 nautical miles from shore. Fishermen normally work well away from the inshore, inhabited islands. Additionally, the methods adopted by Mr Piccoli to catch fish are such that the fish are kept alive and in good condition. Entrapment methods are used so that the fish are taken in reasonably good condition. A noose is used, to comply with the laws on the taking of under-size rock lobster and those carrying eggs, and to allow those lobsters to be released without being damaged. That is a rough description of Mr Piccoli's method of operation.

Of course there are always two sides to an argument, and I refer to a chronology of problems and conflict between commercial and recreational fishing. The problems became evident in 1991 when the Minister resolved that further commercial licences would not be issued in the area. The intention was to ensure that the conflicts were resolved. At the time it was stated that the decision not to issue any more commercial licences would mean that gradually the number of operators in the region would decline until eventually there would be no commercial fishing operations in the area. Obviously that was not a resolution of the problem. I believe the activities of the few commercial fishermen in the area have continued, and there is still some conflict between recreational and commercial fishermen. Other licensees with appropriate vessels choose to fish within the same fishery, but some distance from the archipelago, so that they avoid any potential conflict with recreational fishermen. Unfortunately that option is not available to Mr Piccoli, owing to the methods he uses, the size of his boat, and other factors, which mean he is restricted to fishing an area between 10 and 30 nautical miles from Dampier.

The matter has been ongoing for some time. In 1995 question on notice 3518 concerning green crays was asked in the Legislative Assembly. I understand that green crays, painted crays and tropical rock lobster are different names for the same species of rock lobster. A number of questions specific to Mr Piccoli and general to the issue of green crays in the area were asked. An interesting feature of the question was paragraph (7) which asked, "What research is either planned or being undertaken into green crays?" The response to the question was, "None".

The question was asked: What scientific research is being conducted into the impact of fishing on the green cray population? The answer was that "no research has been done on the impact of fishing the green cray population in Western Australia". The 20 parts of the question are consistent as no evidence was available and no research was undertaken in that regard. All we have is anecdotal evidence that the crays are harder to catch. Anecdotal evidence in itself is very important, but it seems that no hard research was available to substantiate the anecdotal evidence. No evidence was sought about the number of crays caught. As they are mostly recreational fishermen, no data is available on the number of fish taken in the area, so a huge gap exists in the technical knowledge on this fishery. Even though the answer to this question was given in 1995, that lack of research has continued until today.

I have some notes relating to a meeting held in February of this year at which it was indicated that the Fisheries Department still had not undertaken any research into the viability of the fishery and the number of fish that can be caught. The document reads -

> The point was made at the meeting that extensive research on Tropical Rock Lobsters was not likely to be carried out (because the fishery does not, at this time generate sufficient funds to warrant the expense of the research). It is possible that a survey will be conducted in the future.

No reliable scientific evidence is available, and none is likely because of funding priorities. I recognise the importance of funding priorities, and that we cannot research all fisheries at the same time. However, in this matter, we must rely on anecdotal evidence that it might be getting harder to catch the crays. Question on notice 3518, part (19), asked specifically -

> What financial impact would the introduction of a 30 nautical mile exclusion zone around the Dampier Archipelago have on the licence holder Mr Piccoli?

The answer was -

> Substantial impact. Dampier Archipelago is his main rock lobster fishing area.

The Minister for Fisheries acknowledged that any decision to close the area where the fisherman catches his rock lobster will have a substantial impact on his commercial viability. At the same time, a question was asked about the financial impact to both small business and the tourism industry if green crays are over-exploited. The answer to part (20) was -

Unknown, however currently the main recreational fishery in the Dampier Archipelago is finfish angling.

I do not suggest that rock lobster is not an important recreational catch in the area. When considering the impact on tourism and the dollars directed into the area, the crays do not seem to be the main reason for people to visit the area; they go for the fin fish angling. It is a beautiful area which I am sure provides many other recreational opportunities, although I have not had the opportunity to visit the area.

Although conflict exists between recreational and commercial fishermen, much of the conflict is based on anecdotal evidence. The evidence supporting pressure on the fishery is simply not available. A couple of steps were taken in response to this situation. One was the Driscoll review of the fishery, which made a number of findings. However, the review did not support the closure of the fishery. Although the conflict was acknowledged, essentially the report agreed that no evidence supports pressure on the fishery itself and that ways of managing the conflict between the commercial and recreational fishers should be found without necessarily depriving Mr Piccoli of access to the fishery.

In response to that report, the Western Australian Fishing Industry Council started to participate in a process to develop an interim management plan for the area, followed by a final management plan. I have evidence that discussions on this plan took place for much of the first part of this year. In fact, as recently as June, Mr Piccoli contacted the ministry asking for a meeting so the management plan issue could be discussed. Instead, a letter was sent to WAFIC on 24 June stating that the part of the fishery in question would be closed on 27 June - that was three days later, when the closure was gazetted.

Ongoing discussion was cut short by a decision to close part of the fishery and effectively deprive Mr Piccoli of the opportunity to take fish which are a significant part of his livelihood. The decision was to close a particular portion of the area, and this was the only part from which Mr Piccoli was able under his licence to take rock lobster because of the combined impact of the type of fish he took and the limitation on his vessel. Part of the fishery was closed, but his licence was not affected in any way. He was told that he could still have his licence, but he could not take fish from the area.

A mechanism is available by which the Parliament and the Fisheries Department can deal with resource sharing conflicts. The Fisheries Adjustment Schemes Act was amended significantly in 1994. The intention of this Act is to find a way in which people can be compensated when it is important for the sake of a fishery that people no longer have access to the resource. The second reading speech to the 1994 amending Bill made specific reference to the need to address issues associated with resources sharing between recreational and commercial fishermen. Therefore, the issue of recreational versus commercial interests was recognised at the time the amendment was introduced.

A fishery adjustment scheme can be handled in a couple of ways. First, it can be a voluntary scheme in which the industry states that a scheme is available for which everybody is entitled to apply. It is available when one needs a reduction in the size of a fishery or in the entitlements which apply in a fishery. Applications must be open to all licensees on set terms, and compensation must be payable.

Second, a compulsory adjustment scheme is also available under part 4 of the Act. Again, it is available when looking for a reduction in the size of the fishery or entitlements when it is inappropriate for a voluntary scheme to be applied. Interestingly, once a compulsory adjustment scheme is used, the Minister can set the rules for the recall of the licences and the cancelling or varying of entitlements. However, the requirement for natural justice is built into the Fisheries Adjustment Schemes Act. Under those requirements, one must advertise a call for objections; one must notify the fishermen involved; compensation must be available; and in the event of dispute over the amount of compensation to be paid, the value of the licence is reviewable by a tribunal.

Mechanisms exist in the Act for the Minister to say that it is inappropriate for the licence to be held; therefore, the licence can be taken and the licensee is to be compensated accordingly. These are the procedures we must follow. The snag is that in this case the department did not take away Mr Piccoli's licence. It said he could still have his licence, but it closed the only area in which that licence was of any value. It ensured he could not fish in the only area from which he was taking the fish he was allowed to take under his licence. Because that method was adopted, which was legitimate under the Fish Resources Management Act, the fisheries adjustment scheme is not available to Mr Piccoli because the size of the fishery or the entitlements under that fishery have not been reduced. That means there are no requirements for natural justice. No compensation is payable. There are no means of acknowledging the effort Mr Piccoli put into building up that fishery and of compensating him for the fact it has been taken from him. The closure was not based on the reduction in the size of the fishery: It was based on geographic limitations and not on

the entitlement under the licence. The fisheries adjustment scheme does not apply.

Conflicting evidence exists, because a letter from the Minister for Fisheries to the Western Australian Fishing Industry Council dated 7 May 1996 indicates the Minister believes a fisheries adjustment scheme will be available under the Fisheries Adjustment Schemes Act. This letter addresses some of the budgetary issues in the Fisheries Department's 1996-97 budget. It states -

> A provision has been made in the Department's 1996/97 budget from Consolidated Funds for $2 million to initiate a new Fisheries Adjustment Scheme. This $2 million provision is part of $8 million dollars to be provided over four years for Fisheries Adjustment.
>
> While the details for administering this new scheme have yet to be finalised, the broad criteria proposed for deciding the fisheries that will be selected for the buy back of commercial fishing licences under this scheme are:
>
> > It is to include fisheries where the need for rationalisation is driven by resource sharing issues including general community opposition to specific commercial fishing operations or potential or existing conflict over resource sharing with recreational fishermen and other wider community users.

Attached to this letter was a preliminary list of fisheries that have the potential to be considered under this scheme. I will give the Minister due credit because the letter said it was a preliminary list and was in no way binding. However, number two on this preliminary list was the Dampier Archipelago and the rock lobster industry there. In 1996 the Minister said the Government would find a way of developing a fisheries adjustment scheme to deal with this resource conflict that everyone knows exists in the Dampier Archipelago. An acknowledgment was made by the Minister that the fisheries adjustment scheme should be used in these cases. However, this year the area has simply been closed off in a way that does not give Mr Piccoli any access to a fisheries adjustment scheme. No scheme is set up for that fishery. By affecting the geographic area and not the licence itself, the Government argues that it does not come under the Fisheries Adjustment Schemes Act.

The Driscoll report in March 1996 recognised the conflict between commercial and recreational fishers and recommended negotiation with Mr Piccoli on the area that would be fished commercially. The response from Mr Piccoli was in good faith. He entered into negotiations on an interim management plan. He was suddenly handed a notice saying the department had gone this far down the track, but would take another track altogether, and in the process deny any possibility of compensation.

In the Estimates Committee in the other place on 20 May 1997 questions were directed to the Minister for Fisheries about this issue. In response to those questions the Minister indicated that compensation would be considered. If my chronology is right, 20 May 1997 was only a little over a month before the decision was made to lock Mr Piccoli out of his fishing grounds. Mr Piccoli acknowledges the problem in the area. It is extremely unlikely he would fish there again because of the problems that have occurred. The issue is not one of whether he should or should not be allowed to fish there, but of natural justice and compensation. Mr Piccoli has spent a lot of time and money building up an industry based on the fish taken from that area, and at the stroke of a pen that was taken away from him by the way the decision was made. It is my understanding that others were aware of this decision before Mr Piccoli even received the letter telling him what decision had been made. If that is true, it says something about the processes of the Fisheries Department.

Under legislation that this place passed previously, compensation is dealt with in a number of ways. As I have addressed already, the FAS Act provides for the resumption of licence. Compensation is payable under that Act and even an appeal mechanism is provided for compensation to be payable when one must resolve the value of the licence. A Bill which I do not think has been passed in this place yet deals with compensation that is payable when a fishery is closed because of the declaration of the area as a marine park. If my understanding is correct, that would not be available in this case either. Mr Piccoli has been locked out of the area not because it has been made a marine park, but because of the conflict between recreational and commercial fishing.

Other commercial fishers who had an endorsement on their licence have also had that entitlement taken away from them. However, the procedures are different; they are covered under a different section of the Fish Resources Management Act. Because of that, a form of justice is available to them. When people have not used an endorsement on their licence for a certain period, the Minister can ask them to show cause why that endorsement should not be revoked. However, there is automatically a 28 day period during which the fisher can give reasons that endorsement should not be cancelled. At least a 28 day notice period is available to people who undergo that process. It is my understanding that most of the other commercial fishers in the area have undergone that process; however, because they were not using their licences, there is no great issue and they have, if not been happy with the result, accepted

the result. Once again, no compensation is available to those people. However, if they are not using the licence, common law would say that compensation would be negligible anyway because without some form of loss, there is no entitlement to compensation. I do not have a major problem with the treatment of the other fishers in the area and the withdrawal of the endorsements and their licences.

Media reports have indicated that the Director of Fisheries has invited Mr Piccoli to make a claim for compensation. An article in *The West Australian* on 30 August 1997 states -

> Department director of programs Peter Millington said he told Mr Piccoli to submit a statement of claim which is currently being assessed.

That article is dated after the area was closed to Mr Piccoli. However, I understand that all the advice since then has been that no compensation will be paid because there is no requirement for the department to pay compensation under the FAS Act. The department has said that Mr Piccoli's case did not fall within the parameters; therefore, there was no requirement and it would not do anything about it. As a result of that invitation, Mr Piccoli understands that a report from the Valuer General has been sought; however, he has been unable to find out the value that has been put on his licence by the Valuer General. He has been unable to access that information. We do not even know what is going on within the department. On one hand, Mr Piccoli has been told that there is no claim; on the other hand, the valuation processes could be under way.

[Questions without notice taken.]

Hon HELEN HODGSON: Prior to question time I referred to the natural justice issues involved in the closure of the fishing area to Mr Piccoli. Over the past five or six years Mr Piccoli has had indications that he would be given the proper opportunity to make submissions in respect of compensation. With the action being taken in the way it has, and given its timing, Mr Piccoli has been denied natural justice. On that basis, that action has exposed the State to legal action and the outcome could well be in Mr Piccoli's favour. It would be far more appropriate to deal with this matter by offering him compensation at this early stage than to go through the legal process.

On the issue of compensation, there is nothing to say that Mr Piccoli does not have a case at common law in any case. I have gone through the details as to why access to the fisheries adjustment scheme has been denied him. That would obviously be the best remedy. However, there is a case to argue that Mr Piccoli could sue the State for compensation for having his property rights removed without any appropriate compensation having been offered.

I recognise the fact that this is not a constitutional law issue, because our state Constitution does not contain the same provisions as the federal Constitution, which requires property to be resumed on just terms. That is an oversight, but that is the way it is. However, it is my understanding that in matters of compensation common law is not automatically abrogated when action is taken under legislation. If legislation specifically denies common law compensation, of course, that overrides common law rights. However, when the compensation is not specifically abrogated it leaves the question open to be argued.

The fisheries adjustment scheme was obviously intended to deal with compensation, but only in situations where the rights attached to licences have been affected or revoked. In this case we are looking at the area covered by the licence and we are told that the scheme does not apply. That also means that the compensation provisions and the statutory compensation regime do not apply. Therefore, the common law compensation system should be tested to establish whether grounds exist for compensation at common law. We cannot have it both ways: If we deny access to a statutory regime and that is the only regime in place, we cannot then use that same regime to say that common law rights have been overridden.

A licence is acknowledged as a property right at common law, that is established law. I will not expand upon that because it is a given. In addition, the action taken by the Minister has had an impact on the conduct of Mr Piccoli's business and as a consequence he has been deprived of a substantial part of his livelihood. In anyone's terms, a $60 000 gross income per annum would be a significant part of a person's livelihood. This will result in significant financial loss to Mr Piccoli. Further, the Minister was aware that this action would result in a cost to Mr Piccoli because he acknowledged that in the questions to which I have referred. The Minister acknowledged that Mr Piccoli would be severely impacted upon by restrictions on fishing in that area.

The courts do not take kindly to people taking property rights from someone without providing compensation unless there is a specific regime to overrule that. In this case, Mr Piccoli might well have grounds to sue the Government at common law for compensation for the impact on his licence. That would once again involve the State in substantial legal costs and a legal fight which would create precedents that we do not really want to have. What is the situation here? A lot of political issues are involved in this area, by which I mean politics in the broad context and not only party politics. We have a conflict between recreational and commercial fishers in the area. The research does not substantiate whether this conflict will have an impact on the catch because the research has not been done.

All we have is anecdotal evidence. Mr Piccoli understands these issues. He acknowledges that his business at Dampier Archipelago has probably come to an end. However, he is not prepared to walk away from the investment he has made in this business. I am sure that none of us would be in a position to walk away from a $150 000 investment. Mr Piccoli has developed an industry for live rock lobsters, which must be serviced from different sources to which he may or may not have access. The decision that has been made has had a severe financial impact upon him.

The impact of disallowing this regulation will be to reinstate his right to fish in that area but, more importantly, it means that he will now be in a position to have a management plan developed for that area. That management plan may well involve a surrender of the licence, but the surrender of the licence would be under the fisheries adjustment scheme, under which there would be an entitlement to the processes of natural justice and the compensation mechanisms afforded in that scheme. This issue is about fair compensation for the loss of a significant part of a livelihood. What is the alternative if the regulation is not disallowed? We will be inviting legal challenges on both constitutional and common law compensation grounds. We do not really want to see that situation happen in this State. The reinstatement of Mr Piccoli's rights would be a mechanism to negotiate and ensure that an appropriate management scheme is developed, with an adjustment scheme as part of it, and that appropriate compensation is payable.

I commend to the House the disallowance of this regulation.

HON GIZ WATSON (North Metropolitan) [5.44 pm]: I second the motion. To find ourselves in a situation where we must debate a disallowance motion is an unfortunate way to resolve fisheries management issues. This fisheries area is situated in the Dampier Archipelago. It is important that members understand the bigger picture of the values of and the pressures on that area. Because of those values and the increasing pressures, we must have a way of resolving the management of the area other than that currently proposed by the Fisheries Department.

The report of the Marine Reserves Park Working Group of June 1993 describes the Dampier Archipelago as a major feature of the Pilbara coastline. The report reads that its environment and flora and fauna, both marine and terrestrial, have considerable regional significance and are subject to increasing human impact. The report notes that the archipelago has diverse coral fauna with 216 species of coral genera being recorded there. The area is outstanding for its diversity of habitat and is worthy of the highest level of protection and management. The report also notes that the Dampier Archipelago island management plan, which was approved in 1990, contained a recommendation that the waters of the archipelago be declared a marine park and its boundaries be determined. The report went on to support the 1990 management plan recommendations. Accordingly, the working group recommended that the water of the Dampier Archipelago, excluding the port of Dampier, be reserved for the purposes of public recreation and the protection of flora and fauna and that the seaward boundary be the limit of the state territorial sea. If that working group's recommendations had been taken up at that point, we would be dealing with the management of this area in a holistic way rather than on a piecemeal basis. On those grounds we wish to support the disallowance.

To deal with the operation of one commercial licence holder without looking at the whole management of the area is not a good management response. It is also not fair to that operator. The Dampier Archipelago has been under pressure since probably the early 1960s but pressure is increasing dramatically. I have been fortunate enough to visit the area and to fly over it and to speak with local people about the management of the archipelago. I am certainly aware of the concerns among the recreational fishing community about the activity of the licence holder. I have had brought to my attention issues to do with his operation when taking rock lobsters as perhaps not being the most environmentally friendly. However, we are always relying on anecdotal information; it is an area without a complete management plan and with no long term monitoring. Therefore, it is almost impossible to assess the impact of his activities and the impact of recreational fishers or industry fishers. Members would be aware that shipping regularly traverses this area. There are ongoing concerns about introduced species that can have a devastating impact on the archipelago.

In recent years there has been a history of controversy over pearling leases in the archipelago. It has caused a great deal of concern because the recreational fishing population in the Karratha-Dampier area is huge. I believe that boat ownership in this area is the highest in Australia. Therefore, the archipelago has enormous social value for the population of the Pilbara. The last time I was in Karratha I attended a public meeting to discuss the management of the Dampier Archipelago and local concerns about the lack of consultation by the Fisheries Department when allowing new pearling leases in the area. About 300 or 400 people attended that meeting. They unanimously supported the area being managed as a marine park under the management then of the Department of Conservation and Land Management. Members would be aware that we have legislation which means that if the Dampier Archipelago were to become a marine park, it would be managed by the Marine Parks and Reserves Authority. That meeting resolved that the management of the Dampier Archipelago area be put into the hands of the CALM marine branch.

I support that suggestion. I was pleased to see that it came from a variety of people in the Karratha community. The reason that the Greens (WA) support the vesting of that area in the Marine Parks and Reserves Authority is that it can resolve the multiple demands on the area. If the area were managed under the fisheries legislation the Fisheries Department would be limited in its management criteria. The processes that are required under the Conservation and Land Management Act to declare and establish a marine park involve extensive consultation with the stakeholders, in particular, with the non-extractive members of the community; that is, it does not just consult with recreational and commercial fishers to decide who gets what share of the resource, it consults with the whole community on how the community's resource should be used. That would result in a much more balanced management formula for an area. This might seem a lengthy way to be discussing this disallowance motion; however, it is important to look at why we are debating a disallowance motion when the area needs a comprehensive management plan. If that management plan were in train now we would not be considering a disallowance which has some serious questions of natural justice, such as those raised by Hon Helen Hodgson.

If we had a regional plan, by way of a notice of intent that this area will become a marine park, the mechanism is in place to debate issues such as who will be compensated and what areas will be zoned for what purpose. Members will be aware that an area that is declared a marine park does not exclude fishing; its areas are zoned for different uses. This process will be much more appropriate to resolving both the resource allocation issue and the issue of ensuring that the area is conserved for its flora and fauna values. Currently the impacts of fishing in this area are not being monitored. We do not know whether the rock lobsters will last forever, or whether the current level of extraction is acceptable; we do not know the incidental damage occurring as a result of the taking of rock lobster. We have no idea. How can we argue about the allocation of rock lobsters, about how many will go to recreational fishers and about the licence holders if we do not know how many rock lobsters we have and whether they will be there in perpetuity?

I would like also to discuss at some length the issue of compensation. During debate in this place related to the declaration of marine reserves I raised some concerns about the recognition of property rights in a public common. If we set a precedent that people should be compensated if they are required to stop fishing in an area, I am concerned that in a situation where a licence holder has been heavily exploiting a fish stock or rock lobster, the community is being asked to compensate him for having had a very good run of the resource. It is important that each request for compensation be taken on its merits. If it is found that a licence holder has been ripping an area off I do not believe that the community should compensate him for having a negative impact on that environment. The problem with this issue is that it is hard to assess how well or otherwise this licence holder has been operating in the area. A number of the people in Karratha told me that they were not happy with the way he has been operating, yet the Fisheries Department is happy with his operation. It is almost impossible to assess that without some sort of ongoing monitoring of those areas.

I also raise my concern about fairness to the licence holder who will lose his access to the area in which he catches rock lobster if this disallowance motion does not succeed. The Minister's commitment to buy back the licence is recorded in *Hansard* of 20 May this year. Therefore, it is not unreasonable, as Hon Helen Hodgson mentioned, that this licence holder might have a case to argue in law that he has been unfairly treated. Basically this debate about whether the licence holder will lose his entitlement is about the allocation of a scarce resource.

My underlying concern about the recreational fishers being asked to accept a reduction in their take in this area - as has happened - and the commercial fisher being asked to relinquish his licences is that is an indication of severe problems in the number of rock lobster in this area. Otherwise, why would there be a need to bring in these restrictions? I would be interested to know the full story here. Are we looking at a dangerously low number of rock lobster, or is this merely a political decision? Members know that the recreational fishing lobby is large and vocal - I know because I am lobbied by them also - and will offer a vigorous argument about why they should have X share and the licence holder should not.

Hon E.J. Charlton: It is the conservationists in this Government looking after a whole spectrum of operations in the region.

Hon GIZ WATSON: I am delighted to hear that.

Hon Ljiljanna Ravlich: The Minister should concentrate on buses.

Hon E.J. Charlton: We are waiting for the Greens to join the Government in a balanced approach to this issue. We have given up on the Democrats.

Hon GIZ WATSON: I would be most interested in pursuing that line.

Hon Simon O'Brien: Come to the coalition!

Hon GIZ WATSON: Members opposite are not talking to Cheryl Kernot!

We need to be assured that there will be ongoing research, not just on the stock levels but also on the associated impact of fishing. The issue concerns the system of management. It is not just about whether we can continue to take crays. Currently, although the Fisheries Department management is making some changes, it has not gone far enough down that track. A lot more can be done there.

In line with the recommendation of the working group on marine reserves and marine parks we support the notion that the area be managed as a marine park under the Marine Parks and Reserves Authority. The area has very high value for recreational activities and it is under CALM's legislation that those activities can be managed, and obviously the Fisheries Department will maintain a role in the management of the fish resource. I put it strongly that the model for the management of sensitive marine areas is that it is best handled under the jurisdiction of the Marine Parks and Reserves Authority. That is why the Marine Parks and Reserves Authority was established in this State. It is my understanding that it is this Government's policy that marine reserves be managed by one agency to ensure consistency.

Having looked at the report of the working party on marine reserves I know that the Dampier Archipelago is a priority area for management, because of the multiple demands on that area, including expanding heavy industry. It is very important that the Government follows through on its commitment in the "New Horizons" marine policy, which says that significant areas will be managed by the Marine Parks and Reserves Authority, and to put that as the top priority because at the moment this area is languishing.

Sitting suspended from 6.00 to 7.30 pm

Hon GIZ WATSON: The Dampier Archipelago is a particularly important area that needs to be managed on a holistic and ecosystem basis. There is strong community support for this area to be managed as a marine park. It has the endorsement of a large public meeting in Karratha, and this Government has already made a commitment under its "New Horizons" document, which was a statement about the best way to manage marine resources. It was stated in the document that the Government believed sensitive marine areas should be managed by a single authority, being the Marine Parks and Reserves Authority established by the legislation that passed through both Houses of Parliament. The Government also stated that in order to resolve the issue of resource allocation and best management of marine resources, significant areas should be vested in the Marine Parks and Reserves Authority.

The Dampier Archipelago is one of the significant areas noted in the report of the marine reserves and parks working group. As Hon Helen Hodgson has indicated by this disallowance motion, this single removal is an inappropriate way in which to deal with overall management of the area. A range of potential buybacks or whatever is required to manage the area in an ecologically sustainable way should be considered as a whole. That consideration should include a wide representation from commercial licence holders, recreational users and other interested parties. When decisions are made on fisheries management, people tend to fight over who will get what share of the catch. The argument should be about long term, ecologically sustainable management of the area rather than management of the rock lobster, reef fish or whatever is seen to be the extractive value of the area. These areas should be managed in a way that ensures their environmental values are maintained in perpetuity. This proposed resolution to the allocation issue in the Dampier Archipelago is a political solution whereby consideration has been given to where the most votes are rather than to the best way of managing this archipelago. Therefore, the process is flawed from the outset.

The Greens (WA) call on the Government to honour its commitment to marine management and move to have the Dampier Archipelago declared a marine park. This would set in place the appropriate consultation processes that would consider the total management of the area and deal with issues about long term monitoring and the community resource, rather than there being a debate on whether a commercial or recreational interest group will have access to the resource. It is a much fairer and more open process for resolving these disputes about an ever-dwindling resource in the marine environment.

The Greens will support this disallowance on the understanding that the reason behind it is to ask the Government, the Fisheries Department and CALM to seek better ways of resolving disputes that will occur more and more frequently about the allocation and management of marine resources. We urge the Government most strongly to act on the promise of establishing an adequate biologically representative marine reserve system around this coast, which I believe will go a long way towards putting fisheries and the marine environment itself on a sustainable basis. Without those marine reserves, of which the Dampier Archipelago should be a high priority, it will never be possible to resolve the issue of fair allocation. I put it to the Government that it should not hesitate any longer in implementing the recommendations of the marine reserves and parks working group report, which has now been languishing for several years. The Government has not delivered in terms of implementing those recommendations.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [7.39 pm]: In the consideration of any

motion before the House there is always a task of balancing the issues that are put before us as a Legislature to try to work out the appropriate response to competing claims. This Legislature has quite strong powers by virtue of the capacity of this place, as one House of the Parliament, to disallow government regulations. We are faced with the possibility of disallowing a regulation that governs the operation of the lobster industry. That regulation has produced quite strong responses from a community of interest whose viewpoint has been put to my colleagues through the member for Burrup, Fred Riebeling. I am pleased to see that this evening, discussions have been taking place -

Hon E.J. Charlton: What is Mr Riebeling's view about this?

Hon TOM STEPHENS: He has strong views. He has put those views in the forums of the state Parliamentary Labor Party, and he has had those views tempered by the views of others.

Hon Kim Chance: He was also informed by the Minister on 20 May that Mr Piccoli would be compensated; that was before the Minister did the dirty on him.

Hon TOM STEPHENS: I missed that detail. That is one detail of which I would have been aware had I been given the briefing that was made available to my colleague Hon Kim Chance. I hear now that the Minister for Fisheries gave an indication to my colleague the member for Burrup earlier in the year that there was some real prospect of compensation for the party who is affected by this regulation. It will be a difficult task for any Minister to weigh up all of the cogent arguments that have been put to the House by the previous speakers about the protection of the environment and of this species, which is increasingly under pressure as a result of the efforts of this industry to maximise its return and to continue to involve itself in harvesting a product at what it perceives to be sustainable rates. However, as that industry involves itself in those activities, it comes up against not only the views of environmental groups, whose case has been well put to the House this evening, but also the views of the wider community and of recreational fishers. It is absolutely comprehensible that at the end of this debate, deliberations will still be necessary about how we can fairly and reasonably expect the House to make a decision about this matter.

I have a full appreciation of the efforts to which my colleague Fred Riebeling, the member for Burrup, would go to ensure that his parliamentary colleagues deliver a positive response to the expectations of his constituency. At the same time, I know, because of his appreciation of the way that the law should operate in this State, that he would have a great sensitivity to the interests of a person whose licence could be affected adversely by a vote of this House to disallow this regulation. It is no wonder that in those circumstances, the House is left with trying to balance the legitimate claims of an affected party against the wider expectation of a community that is saying, "Hold on. We have got interests here as well. This is a process in which the Government, through its Minister and its department, has not appropriately and adequately taken into consideration all of the issues that it should have taken on board before issuing the licence that was allowed by this regulation." This is an onerous responsibility for the House, just as it is an onerous responsibility for the Minister. To some extent, no matter what decision is made by the House tonight -

Hon Greg Smith: Are you speaking for or against the motion?

Hon TOM STEPHENS: If the member listens attentively, he will know towards the end of the contribution by the Parliamentary Labor Party members what we are saying about this motion. A number of speakers are available on this motion.

Hon Ken Travers: We will all have our two bob's worth and reach a climactic position.

Hon Greg Smith: Will we then know whether you support it or reject it?

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Order! I think members are detracting from the sense of anticipation.

Hon TOM STEPHENS: Members will have the opportunity of seeing the state Parliamentary Labor Party display -

Hon E.J. Charlton: This is about leadership, surely?

Hon TOM STEPHENS: Indeed.

Hon E.J. Charlton: When you jumped to your feet, I thought. "Now we will really see what is happening", just as we did earlier in the day, when we knew from your first sentence. However, that leadership appears to have evaporated.

Hon TOM STEPHENS: When the Minister finally knocks off Hon Norman Moore as leader in this place, he will know that leadership requires, as it has of my predecessors, and as it will, no doubt, require of my successors, assessing the variety of opinions that exist among parliamentary colleagues.

Hon E.J. Charlton: The motion has been on the Notice Paper for a couple of months.

Hon TOM STEPHENS: That is right, and regrettably the Government at this point has still not delivered an appropriate response to some of the issues that have been weighing heavily upon the mind of the state Parliamentary Labor Party. There is a very good and real prospect of these issues being settled by the discussions that are taking place as we speak, not necessarily with the Minister for Transport, but at least with the Parliamentary Labor Party's representatives outside this Chamber. I hope that there are opportunities for settling these issues in double quick time. In those circumstances, there is a real need to take on board the variety of considerations that have been given to the House by previous speakers. Clearly, a number of speakers are prepared to contribute to this debate.

Hon Simon O'Brien: Why not just adjourn this debate?

Hon TOM STEPHENS: That is a possibility. I am open to that.

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

[Continued on page 7972.]

ROAD TRAFFIC AMENDMENT BILL

Second Reading

Resumed from 15 October.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [7.50 pm]: Road traffic safety and other road traffic issues legitimately raise great passion in the community. Most of us have already been affected deeply, as have our families and friends, by the tragedies and injuries associated with traffic accidents and catastrophes on the roads. No-one has any doubt about the need to respond to that reality. The second reading speech indicated that the Government has a number of responses it requires the Parliament to favourably consider in an effort to keep down the road toll and to diminish the horrific injuries associated with accidents on the roads. Therefore, in part, the Government's response has been to put in place a Bill aimed specifically at dramatically increasing the penalties that apply to offences relating to road traffic legislation. In many ways that is an appropriate response because it presents to the community that uses the roads the real need to appreciate the sanctions we put in place to try to discourage people from breaching the road traffic regulations, which can too easily lead to accidents that cause injury and death. Therefore, for a variety of reasons, the legislation has the support of the ALP Opposition, but in the process of expressing that support, we want to outline some qualifications.

The public deserves action from the Government in the area of education, road safety programs, the allocation of funds to road safety, and efforts to minimise road trauma, injury and death, other than just simply putting through legislation that can be too easily characterised as revenue raising. It is appropriate that debate tonight is in the context of the debate in the media, in response to questions asked in the other place and in this place last week and again today about the current Budget. There is evidence of a significant budget blowout, and a real fear in the minds of the Labor Opposition, and more widely in the community, that the Government is desperate for additional modes of raising revenue, in response to the realities with which it is faced. I hope that this Bill is not simply about that -

Hon E.J. Charlton: This Bill was not introduced in the last couple of weeks; it was agreed to by the new Office of Road Safety and the select committee over two years ago.

Hon TOM STEPHENS: I appreciate that interjection. However, I will continue to indicate that the real fear is that the substantial increase in penalties and the impost to be levied upon offenders will lead to a dramatic increase in revenue for the Government. I see no clear evidence that the Government proposes to utilise that increased revenue to seriously address the challenge that the community has to allocate funds for road safety education, other programs associated with driver education, and those associated with making sure that our road toll through death and injury continues on a downhill slide.

No doubt the penalties should reflect the serious threat that excess alcohol consumption poses to our community, and to some extent this Bill does that by reference to the use of vehicles by those affected by alcohol. Regrettably I do not see any indication from the Government that a campaign will be mounted to explain the new penalty regime that will come into effect after the passage of this legislation, to educate the community about the effect of this Bill when it is passed - and it will be, as a result of our support. It will go through this place and be dealt with by the other place. Presumably it will be passed and it will be put into force in double quick time. However, we commend to the Government the real need to allocate some effort in this regard. Some provisions in this Bill that the Minister is about to put into effect, we find unsatisfactory. I refer specifically to clause 8(3) which has the effect of being retrospective. I have been looking earnestly for an amendment to be placed on the Table -

Hon E.J. Charlton: There is one.

Hon TOM STEPHENS: I have not seen it. I asked my office today to inquire whether an amendment was about. I am pleased that the Minister has pulled an amendment out of his drawer. That gives me greater confidence. I do not mind that it is late in arriving. I have indicated that although the ALP has some reservations about the Bill in its current form, we commend the need to tackle this retrospective provision.

Hon E.J. Charlton: It could be interpreted that way. It was never the intention. That will be covered by the amendment. I apologise that it has not been circulated; I thought it had been.

Hon TOM STEPHENS: I appreciate the apology and, more importantly, the arrival of the amendment.

Clause 8(3) presents the opportunity for people who have already been penalised for driving a vehicle while under the influence of alcohol to face a retrospective penalty; that is, even when a penalty has been applied at the time of conviction, the Parliament could issue a new penalty unbeknown to people. People may not be aware of this penalty until they are picked up by a policeman at a random breath test or for a check of their licence and offence record. People with previous offences for the use of a motor vehicle while under the influence of alcohol would in future be obliged not to have an alcohol blood content in excess of 0.02 per cent.

The Opposition supports all prospective charges and convictions relating to the operation of a motor vehicle while under the influence of alcohol once this legislation is in force. However, it has serious reservations about the interpretation I have outlined which can easily be deduced from clause 8(3). This would leave an opportunity for a retrospective penalty to apply. We will take the opportunity before the Committee stage to study the Minister's amendment, which we hope will clarify the situation. The Minister stated that the clause was never intended to be read in the way outlined, so its definition should be put beyond question. The Government enthusiastically looked at the Opposition's critique of the clause, and introduced an amendment. I will ask the shadow Minister for Transport, Alannah MacTiernan, to look at the amendment, and I will express to the House a response to the drafting of the proposed amendment. The Minister for Transport must explain the new penalty regime, not only its effect on people who might be affected by the current drafting of the Bill, but also its impact on all prospective persons to be charged with offences.

I was very proud of the efforts made by the previous Labor Government in the campaign it launched against smoking in the community. That is a model for attacking the issues of the abuse and use of alcohol and vehicles. I commend it to the Government as a model for dramatically improving the horrific ongoing statistics associated with the use of alcohol and motor vehicles. It is necessary to discourage drunk and dangerous driving not only through the Statute book, but also by way of media blitz campaigns to shift public consciousness so that people develop an understanding that vehicles can easily become deadly weapons.

The Labor Party is conscious that police resources throughout the State are under increasing strain. Evidence of that has been before the House and in the media in the last few days. In my region, regrettably, police have received funding cuts as they try to enforce laws relating to the use of vehicles on the road.

No matter what we do and say as a Parliament, consequences arise in imposing new penalties for those who breach the laws we put in place. A real and effective deterrent will not be available to the entire community, especially in remote parts of the State, without a strong police presence on the road. Therefore, the risk is that significant sections of the community will not pay adequate regard to the will of Parliament and the community, which we endeavour to reflect in decisions in this place.

We hope that special efforts will be made, for instance, in parts of my electorate. I regularly speak in this place about the Aboriginal community, people from which too regularly appear in statistics of traffic law offences, whether it is regarding the use of alcohol and vehicles or other breaches of the letter of the law, let alone its spirit. We need to improve the community's appreciation of the risks involved with this behaviour, not only by imposing harsher penalties, but also by enhancing the Government's education efforts in remote communities. These should be aimed at correcting patterns of behaviour and vehicle use which are damaging for those communities and the wider community.

Over recent months, I have been pressing the State Government, through all its departments and agencies, to secure funding for a splendid program of Aboriginal driver education. This was aimed at delivering a real appreciation in that community of the need to respond to the traffic laws of Western Australia.

Hon E.J. Charlton: I will mention when I respond that we have already started on that. Derek Kickett was at Alice Springs to attend a meeting to develop a package especially for Aboriginal communities around Western Australia.

Hon TOM STEPHENS: Was that from the Police Department?

Hon E.J. Charlton: It was from the Office of Road Safety.

Hon TOM STEPHENS: I am pleased to hear that. I do not know whether the Minister was the direct recipient of my representations on the program to which I refer. It operated for five years in the metropolitan area, and had delivered some extension services beyond that boundary. It was run by David Collard and others who were doing a quality job using mostly Aboriginal and Torres Strait Islander Commission funding. Unfortunately, the funds have been cut and the service seems to have at least substantially diminished, if not folded.

Our community will suffer from that lack of funding. It may be augmented in part by some of the efforts being put in place through the department; however, I fear the Minister's efforts will not match adequately the quality effort resulting from the funds that were available previously to that organisation.

Hon E.J. Charlton: I beg to differ. We have in train now a process to deliver new driver education in a way totally different from how it has been provided in the past. I will run through that a little later. They are trying to find a framework that ensures that people riding on the backs of vehicles, which practice obviously will continue, are not subject to these horrendous accidents in which a number of people are killed at a time.

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Members, we are in the second reading stage, not Committee.

Hon E.J. Charlton: I am trying to save the Leader of the Opposition some time.

Hon TOM STEPHENS: I appreciate the interjections and commentary of the Minister for Transport. These are complex issues. They require a process not simply of statutory change, but of adjusting people's behaviour through education to lead people into better patterns of behaviour in the use of their vehicles. When enough people have shifted beyond what they are doing, the Government can put in legislative provisions that restrict people from exercising the mode of operation they have adopted in the past. That mode of operation has been convenient for many, not just in Aboriginal communities, but across rural Western Australia, who are used to riding in the backs of vehicles without the protection of seat belts and firmer protection around the tray-backs. The too frequent incidence of injury and fatality associated with accidents involving those vehicles leads us all to the view that we must try to move people away from that pattern of behaviour. It is hoped the statutory response will limit that practice and eventually outlaw it. That is a gradual process through which the community must move. It should not be taken in one big step.

Hon E.J. Charlton: We have started that process in the schools.

Hon TOM STEPHENS: I am pleased the Minister responds in that way. I hope any special efforts the Government makes in this regard will continue to be given extra emphasis. At the same time we must recognise that once penalties that apply in this area are dramatically increased, another issues arises. The Auditor General has commented about the failure of the system to enforce adequately the collection of penalties that have been applied by the courts for breaches of road traffic infringements. For a variety of reasons inadequate collection rates still apply. Decisions that have been made by this Government have led to people being incarcerated for their failure to respond to penalties for traffic infringements. They experience other realities, such as the loss of licence, that too frequently lead to incarceration. The taxpaying community is left with the task of providing resources for the ever increasing prison population that regrettably flows from the statutory changes this Parliament has facilitated.

A hypocrisy is worth commenting on as we consider this specific issue; namely, Parliament providing greater access to alcohol throughout the length and breadth of Western Australia, despite that in many sections of this State the wider access to that commodity is having an impact on the road toll that is nothing short of devastating.

The public's understanding of complex traffic legislation would be assisted greatly if the Road Traffic Act, either in its current form or as it will eventually be amended, included a form of index. As a Statute it would be one of the most utilised and reliably referred to Statutes. It is drawn on regularly by the police, the transport industry, courts, solicitors and all the legal fraternity. It is time the Government made available an incorporated, consolidated Act. When will the Minister for Transport ensure this legislation is incorporated into a consolidated Act with an index that lends itself to ready and accessible use by all those sections of the community that draw upon it?

Police have agreed to issue infringement notices under clause 7 to first offenders, except probationary drivers. In practice, this is a sensible use of resources. However, one must question the propriety of police making the blanket policy decisions that flow from the amendments with which we are dealing, particularly when it is left to the discretion of police rather than Parliament to respond to this. I appreciate the silent contribution of members opposite; however, I understand that my point is made. It is questionable whether this blanket application of policy is legally proper, as any decision maker must make each prosecution decision on its merits and cannot be bound to a policy. In the view of the Opposition, the proper approach is to provide specifically for infringement processes to be included in this Bill.

Clause 8 deals with recently disqualified drivers. Is the Minister able to assure the House that the effect of this clause is not to apply retrospectively? The Minister indicates he proposes to amend that provision. I have received some quick verbal advice from some of my colleagues who have started to peruse the proposed clause which the Minister has just arranged to be circulated. The substituted words in the proposed clause state -

> unless the person
>
> (c) is subject to an order disqualifying that person from holding or obtaining a driver's licence imposed for an offence against section 63 or 67, or for a second or subsequent offence against section 64, committed after the commencement of the *Road Traffic Amendment Act 1997;*
>
> (d) does not hold a driver's licence because it has been cancelled under section 75 (2a) or (2b) as a result of an order disqualifying the person from holding or obtaining a driver's licence imposed on the person upon being convicted of an offence after the commencement of the *Road Traffic Amendment Act 1997*;
>
> (e) holds an extraordinary licence; or
>
> (f) is a recently disqualified driver.

I will juxtapose this amendment with my view of the way in which it will impact on the legislation. From a preliminary glance which has happened only since I started my contribution, this amendment seems to alleviate the concerns the state Parliamentary Labor Party and I have had about what I thought might be a retrospective provision in this Bill. Nonetheless we support it.

I commend the Government for making this effort to utilise the Road Traffic Act as a way to dramatise within our community the need to maintain driving practices that diminish the risk of accidents, injuries and fatalities on our roads. At the same time I commend to the Government the belief that there is a need to adopt much more dramatic strategies aimed at educating the public of Western Australia about the best way of utilising our roads as drivers, pedestrians and passengers. The Western Australian community must forever lift its game in this regard to reduce the tragedies that too frequently are associated with our roads.

In encouraging the Government to lift its game in the road traffic education programs, we believe these dramatic increases in penalties in this Bill run a real risk of significantly impacting upon the disadvantaged sections of our community. These high cash penalties will weigh very heavily on those people. They will face those penalties not necessarily as a deterrent before they commit traffic offences, but rather, having committed the infringements, as a savage reality, almost without any opportunity for reversal, that eventually will lead to their incarceration once the courts apply tough penalties as required under this proposed amendment. People within significant sections of our community for whom cash reserves are not readily available, will find themselves as defaulters, and too easily will be placed at risk of incarceration. Inevitably they will be incarcerated, thereby increasing dramatically the numbers of people in our prisons. The Government must be cognisant of that fact. It is an additional impost which can be avoided. Those increases dramatically impact on a person's budget.

There is also the devastation to our community that flows as a result of the dislocation that is caused when significant factions of it are placed behind bars. Even when people are behind bars, regrettably the Government still does not appear to have an appetite to address the opportunity that presents itself. I have yet to see the Government make adequate effort since it has been in office, by comparison to that which was made by the previous Labor Government, to make driver education programs available to the prison population. I pay tribute to a couple of legal practitioners who operated in the Aboriginal Legal Service. I am thinking of two consecutive principal legal officers within that organisation; namely, Graham McDonald and Phillip Vincent.

In the early 1980s they quite appropriately and regularly pointed out to the then Labor Government the need to make available to the prison population in this State, particularly those members who found themselves in gaol for failure to have a driver's licence, the steps to provide basic driver education. Facilitating that process would ensure that by the time some of these people were leaving gaol they could apply for a driver's licence, if they did not have one already. At least in that regard when they got outside the prison walls, they could exercise a newly acquired skill and legitimately and safely drive on the roads of Western Australia.

The Labor Government can be rightly proud of that program. It was put in place as a result of the efforts of those two men, who convinced an entire Parliamentary Labor Party, at both its Caucus and Cabinet levels, of the need for such a program. Their approaches to the Ministers with whom they worked and whom they advised led to a positive and solid effort being put into the driver education program associated with this section of the community. That effort should be ongoing. I have not seen evidence that that is the case. In fact, I have seen evidence to the contrary. Too often the experience of incarceration for that section of the community is not being matched with programs

aimed at ensuring that there is not a real prospect of their reoffending as a result of their not having the necessary driving skills and drivers' licences to keep them out of harm's way following their release from prison.

The increased takes in revenue that keep coming to Government from not only these penalties but also the revenue from the sale of alcohol throughout our State provides an easy opportunity for the Government to grab some of that cash resource and allocate it to programs to reduce the use of alcohol by those who are driving vehicles and to improve the appreciation by licence holders of the penalty that can too easily be inflicted on the wider community by their stupidity and inappropriate use of vehicles when they are driving while intoxicated. I have not seen an appetite by this Government for an adequate allocation of those rapidly increasing cash takes from the sale of liquor, and the liquor licensing arrangements that the State Government has in place. Those cash resources that are available to the Government and therefore to the community could be better utilised than they are. I commend, by virtue of this debate, that response to these problems by the Government.

As I said at the very start of this debate, the Labor Opposition is prepared to support the legislation, with reservations. By virtue of the amendment now circulated, at least some of those reservations are allayed. I express appreciation to the Minister for taking on board those points previously raised on clause 8 to which I referred. I also express my appreciation for the Government's so quickly responding positively to those concerns.

HON B.K. DONALDSON (Agricultural) [8.32 pm]: I will make some points that were not mentioned in the second reading speech. Any one of us would say that one road death is one too many. Unfortunately the facts of life are that people will continue to be killed on the roads. It is something we must learn how to minimise. We must make people more responsible drivers. I was alarmed to find that in 1996 a large increase occurred in the number of people killed on our roads. However, the additional deaths from 1995 to 1996 reflected the increased number of motorcyclists, cyclists and pedestrians killed that year. Road safety requires a far wider net than increased penalties on just one category of road users. Effective public education should be aimed also at motorcyclists, pedestrians and cyclists.

Many of us get surprised by motorcyclists appearing at great speed, diving in and out of the traffic. Those riding with their headlights on are usually easier to see. I believe this issue has been raised previously. Motorcyclists who do not have the light on when they ride their motorcycle are very silly. It puts them at great risk of becoming another fatality on our roads. Motorbike riders must be convinced that their headlight turned on makes them more visible. It is not difficult to turn on the headlight.

In most countries the parking lights of vehicles automatically come on when the key is turned on. Some countries where that does not occur have indicated that by the year 2000 all vehicles that do not have parking lights automatically turning on must have that facility installed. That is another example of many countries being proactive on the issue of road safety. One of the road safety problems in Western Australia is the long distances that people travel. I recently examined some statistics on the cause of accidents, from which three very important issues arose - fatigue, carelessness and drug use. I was recently led to understand that drug use is probably involved in as many road accidents as is alcohol.

Fatigue is another factor. People in Western Australia probably travel greater distances than their Eastern States neighbours, such as those in Victoria and New South Wales. Travelling on the Brand Highway, the North West Coastal Highway and the Great Northern Highway to Broome involves some very long distances with very boring scenery for hundreds of kilometres. People get mesmerised and probably do not stop as often as they should to refresh themselves by taking a walk around their vehicle. That is not for the want of others trying to educate people. Many of the roadhouses are participating in that effort by offering free coffee to drivers. At least it gets them out of their vehicle and gives them an opportunity to revive their energy and concentration skills. That is very important.

I was one of the proponents who pushed for the 10 kmh speed increase from 90 kmh to 100 kmh on freeways, as the Minister will be well aware. What difference has that made to the accident statistics on the freeway? We are still awaiting the statistics. I hazard a guess that the rate of accidents has not increased and that Main Roads surveillance on the freeway will indicate that vehicles still travel at about the same speed.

Hon E.J. Charlton: A 3 kmh increase is all.

Hon B.K. DONALDSON: The Minister is dealing with the problems associated with our arterial roads. So many of our arterial roads with divided carriageways have a 70 kmh speed limit. Surveillance would probably indicate that drivers travel at about 80 kmh. It is probably a very safe speed for those roads because very few roads link into them and there are no pedestrian crossings. It is a bit silly to have 80 kmh on a single carriageway and 70 kmh on dual carriageways. There are a number of roads in the metropolitan area where that must be rectified.

Hon N.D. Griffiths: The 100 kmh speed limit on freeways seems a little dangerous judging by the way some drivers behave. Unlike country drivers, they are not used to it. They get off 40 kmh or 60 kmh roads, reach 100 kmh roads and cause many problems.

Hon B.K. DONALDSON: In his second reading speech the Minister referred to public education, wider community ownership of the roads, and participation in road safety programs. The Minister's idea of changing some of the criteria necessary for a driver's licence is sound because it will affect young people.

Hon B.M. Scott: It is a very good idea.

Hon B.K. DONALDSON: It exposes some of our younger drivers to certain conditions at an earlier age. Keeping a log book to indicate whether they have been on gravel roads will be very beneficial. Many young drivers who have never been off a bitumen road can be suddenly confronted with a narrow sealed road with gravel shoulders and get into all sorts of difficulties. If the gravel is very pebbly it can almost cause a car to skate across the road.

They are the drivers of the future and I welcome any initiative in schools to get hold of kids at an early age so their drinking and driving ages do not correspond. Initiatives to reduce the allowable blood alcohol level to 0.02 per cent is important, especially for drivers in their probationary period.

I now turn to traffic lights on major roads, and freeways in particular. I am sure members are well aware of the warning lights that indicate traffic lights ahead on the freeways are about to change from green to amber to red. This is especially the case on the Kwinana Freeway, where there are no overpasses. These systems seem to work effectively. In other parts of the world, before a flashing amber light appears, a flashing green light is used to indicate that the traffic lights ahead are about to turn amber. One of the arguments against introducing flashing amber lights in Western Australia was that when people saw the flashing light they would speed up to make it across the traffic lights while they were amber. When vehicles approach these traffic lights, especially in places where there is a red light camera, people must make a split-second decision about whether to speed up and rush through the intersection and risk being caught by the camera or to slow down by slamming on their brakes. I am surprised that more accidents do not occur at these sets of traffic lights.

Hon E.J. Charlton: There are a lot.

Hon B.K. DONALDSON: I do not know whether it is feasible or what cost would be involved, but I would like the Minister to take up this matter. He will probably find many Main Roads reports along the lines I am suggesting.

I now turn to public education and increased enforcement. The Police Service should be mindful that increased enforcement requires extra public relations exercises. Because the first exposure of many young people to the Police Service is while driving their motor vehicles, it is important that the police talk to young people from a cross-section of society. I was recently interviewed on this matter and I was reminded that it is important to take care of those frontline matters. It is difficult for young people to understand that the actions of the police are in their best interests, especially when their car is being ripped to pieces by the police looking for drugs. We must remember that that is the proper role of the police and that drug use goes on. However, it alienates some of our young people from the Police Service, and that worries me. I did not know how widespread drug searches were until very recently. I am not saying all police carry out these raids, but they could do their job mindful of their relations with the public. It is better to warn young people of leaks of oil on the tappet cover, and such things, than to ransack their car for drugs, because that will play an important role in the long term credibility and interaction between people and the Police Service. I am not trying to criticise; I am simply pointing out something young people are saying. Even a couple of senior police officers I have spoken to recently have agreed with me on the matter.

Handling drugs or people affected by drugs is a difficult problem. The stop-and-pee method, as someone has called it, is difficult to enforce, but something should be considered to help solve the problem of people driving while under the influence of drugs. No doubt someone will come up with a simple test.

Hon Tom Stephens referred to the new 0.05 blood alcohol content offence and clause 7, which sets out a table of penalties for people found driving with blood alcohol concentrations higher than 0.05. The penalty for drivers found with a BAC between 0.05 and 0.06 is two units; that is, a minimum fine of $100 to a maximum of $500 and disqualification from driving for three months. The first offence, which is between 0.05 and 0.08, presently attracts six demerit points and a fine of $100. I understand that the present arrangement will continue, in that there will be no disqualification for the first offence. However, will the Minister confirm whether the penalties will be left to interpretation by police?

Hon E.J. Charlton: It's the other way around.

Hon B.K. DONALDSON: Perhaps the Minister can explain that in his summing up. I am concerned about interpretation powers resting with the police, because we have already seen it in the gun debate and the headaches it caused many people throughout Western Australia, and I am loath to allow too much interpretation by any service.

Mr President, you may remember my public statements during the introduction of legislation to reduce the blood alcohol concentration of drivers from 0.08 to 0.05 per cent. A lot of research was done around Australia to prove

that people are not affected or impaired to any great extent until they reach a blood alcohol concentration of 0.05 and that there was a low increase between 0.05 and 0.08. People also said that it would not affect anybody going out for a meal and a bottle of wine. In fact, they encouraged the then Minister and his wife to have a meal at home and enjoy a bottle of wine over two and a half hours before being breathalysed. They breathalysed both the Minister and his wife. The result was a zero reading in both the then Minister and his wife. My guess is that the machine was broken, because any doctor will tell you that if a woman drinks two glasses of wine over two hours she will come up with some blood alcohol concentration reading.

Hon J.A. Scott: Their kids probably knocked off the wine and replaced it with water.

Hon B.K. DONALDSON: Hon Jim Scott might be right; perhaps they did not mark the bottle. They were the stories bandied around when 0.05 was first introduced. I very strongly lobbied the then Opposition, which is now in Government.

My other concern is that the 0.05 rule meant that motorists were given an infringement notice on the roadside. The question was what the drivers did then: Did they trust the first breathalyser reading? Naturally they could not. If they drove off, they would be charged again. In those early days not a lot of commonsense was applied. Eventually, we won and we now have the two regimes - 0.08 and above and 0.05 to 0.08.

I do not know how clause 7 slipped through; I must have missed a briefing. I would be irresponsible if I did not support every attempt to minimise road casualties in Western Australia. I hope the Minister will explain the situation. The average member of the public will not be aware that clause 7 has been introduced. Without looking at the committee notes, one would read it as a three months' disqualification if a person is convicted of having a blood alcohol level of 0.05 to 0.06. I look forward to hearing the Minister's explanation.

The repeal of the prohibition on advertising of car pooling arrangements sounds great. I do not know how it will operate and perhaps the Minister can explain. It is always very difficult to car pool in the metropolitan area. It is spread out over a long distance and people tend to want to live on the coast or close to the Darling escarpment. It is very difficult for people working the flexible hours now being introduced to organise car pooling. It is very interesting to travel on the freeway to Perth at varying times to see the changes in traffic flow. Many people start work very early, especially those in the financial world who must deal with the daylight saving time difference between here and the eastern States. While the idea might sound attractive, it would be very difficult to gain much benefit.

I look forward to hearing the Minister's comments on the repeal of the offence of car watching. Perhaps I missed the points raised by Hon Tom Stephens. While I support the Bill, I have those concerns. I hope the public education program is directed at all road users and that it does not concentrate solely on motor vehicle drivers. It is also important that we look at the safety of motorcyclists. They represent a large proportion of those killed on the roads. They must ensure that their headlights are on at all times when they are travelling. I can see the day coming when many more people will drive with their parking lights on. That is already happening on country roads, as the Minister will confirm. I can envisage all drivers being compelled to do that.

Hon Kim Chance: I think that is a terrible idea.

Hon B.K. DONALDSON: It has certainly reduced road deaths overseas.

Hon Kim Chance: You cannot pick up a hazardous situation at a long distance. People use headlights as an accident indicator.

Hon B.K. DONALDSON: A set of parking lights would hardly blind someone during the day. I referred to parking lights. Some car colours are also very difficult to distinguish. Hon Murray Nixon's car is very difficult to see.

Hon M.D. Nixon: It is the same colour as bitumen.

Hon B.K. DONALDSON: It would be very difficult to pick up his car on the road unless he had the parking lights on. While some colours do stand out, unfortunately at certain times of the day some almost disappear.

Enforcement is just the first step. I am pleased to see that the Office of Road Safety and the Road Safety Council are working towards improving the behaviour of drivers through education. Enforcement will be part of that deal but, at the end of the day, that is not the only answer. We should avoid those situations in the first place.

HON NORM KELLY (East Metropolitan) [8.54 pm]: The Australian Democrats support the Bill. We strongly support a number of the increased penalties contained in the Bill, including those relating to the more serious drink driving and speeding offences. I refer in particular to the introduction of the three months' licence suspension for a 0.05 drink driving offence, which is very good. The introduction of a 0.02 limit for previous drink driving offenders

in a sense imposes a new probationary period. The Bill contains a blanket doubling of penalties. The Democrats support penalties that relate to travelling at high speeds and failure to wear a seat belt.

The Minister stated in his second reading speech that any good road safety strategy is based on education, enforcement and participation. The Office of Road Safety has done a very good job in applying all three elements to its campaigns. Drink driving campaigns educating the public on the number of drinks they can consume before they reach the limit have been very successful. The introduction of standard drink labelling on liquor has been a good way to gauge accurately whether one is over or under the limit.

The road toll in Western Australia has remained high over a number of years and continues to remain above the national average. Even though 1996 was particularly bad in respect of fatalities, the level was high in the years prior to that. Fortunately we are experiencing a reduction in the number of fatalities this year. As members mentioned, any number of deaths is very difficult to contemplate.

The aim of this Bill is to reduce the level of road trauma on Western Australian roads. It targets those offences that most significantly contribute to those road traumas.

I am concerned that in his second reading speech the Minister stated on a couple of occasions that this is not a revenue raising measure. Ideally, if these new measures are effective, any increase in penalties would be offset by a reduction in the number of offences. We would have a revenue neutral situation and, ideally, a revenue loss.

The Government's agenda for the passage of Bills this session indicates that the passage of the Road Traffic Amendment Bill is essential. One of the reasons that the passage of the Bill is essential is the revenue implications. I would like to hear from the Minister in his response an estimate of the increased revenue the department hopes to achieve through the introduction of these new penalties. Correlated to that, what reduction in the number of offences is the target with the passing of this Bill? Penalty increases in this Bill in some cases amount to more than 1 000 per cent. Those penalties do not relate to the increase in road trauma victims but offences such as unauthorised parking or the unauthorised use of a vehicle. I have some difficulty in understanding the Minister's rationale for saying that all these increases are directly related to the seriousness of offences as they in turn relate to the probability of car accidents. For example, in one provision the penalty for the submission of a dishonoured cheque has been doubled. I fail to see how that decreases any risk of road trauma. That is one example of a few contained in the Bill. I feel it moves away from the whole idea of targeting more serious offences and a correlation between the penalty and the risk of accident caused by offending.

In his second reading speech the Minister referred to 0.05 offences up to 0.08 offences for which through administrative procedures a person can pay a fine of $100. This applies only to those people who have not had a prior offence recorded against them for drink driving. As I understand the Bill, it also creates a situation where a person could be on a level of 0.079 and get off with a $100 fine, which is inadequate for the seriousness of the offence. That is one area where there does not appear to be a proper correlation, especially when we relate it to unauthorised parking, which carries a $250 fine.

A couple of other aspects of inequality are inherent not only in this Bill but also in the Road Traffic Act in the way it imposes penalties. I refer to speeding fines based on a flat rate of kilometres per hour over the speed limit. That does not take into account the situation in which that person is speeding. We can have a person on an open highway travelling at 150 kmh in a 110 kmh zone. I would regard that as, and I would imagine that all the statistics would prove it to be, a far less serious offence than someone who in a built-up area is travelling at 100 kmh in a 60 kmh zone, yet both offences carry the same sort of penalty.

Hon E.J. Charlton: You are preaching to the converted.

Hon NORM KELLY: I realise that. There is a sense of inequity in having those sorts of limits. Perhaps a better way of introducing a new system of speeding fines would be to relate them pretty much to those applying to overloaded vehicles, where one looks at percentages. If someone is in a 100 kmh zone and is 50 per cent over the speed limit, he is travelling at 150 kmh, whereas in a 60 kmh zone he would be travelling at 90 kmh for the same seriousness of offence. That situation would be more equitable.

Hon Tom Stephens mentioned the inequity of people's ability to pay penalties. That is of some concern to me. The impact and deterrent effect for somebody paying a fine is lessened as his ability to pay increases. For somebody on a massive salary, to pay $200 is not very much. Although we have a penalty points system which is a deterrent, the monetary penalty is not equitable to somebody in a far worse economic situation. It occurs across the board of the Road Traffic Act penalties. It is an inherent weakness in the system for people in that situation.

I will bring up more points at the Committee stage. I have various details, particularly on clause 13 which lists the variations in penalties.

The Australian Democrats, however, support not only this Bill but also its intent. We appreciate the work the Department of Transport and particularly the Office of Road Safety have been doing to combat the problem of road trauma in this State. We are highly supportive of the Minister and his future endeavours in this area.

HON J.A. SCOTT (South Metropolitan) [9.06 pm]: The Greens (WA) will support this Bill. We certainly have some reservations about the effectiveness of the measures in the Bill. When some of the penalties described in the second reading speech were first imposed at the previous rates, evidence shows that after a period of time the community seemed to adapt to the increased rates and their effectiveness tended to wear off. Therefore, we have a situation where we wait for the effectiveness to wear off and then raise the penalties again. We are looking at treating the effect rather than the cause. We need to look at this whole problem in a much more lateral way.

When we look at the figures Hon Bruce Donaldson raised they certainly contain a clue. They show who is being killed and injured on the roads. As Hon Bruce Donaldson pointed out, the highest rise in injuries and deaths occurred with pedestrians, followed by motor cyclists and then passengers. From memory, the rates for injuries and deaths for drivers have decreased. We must ask why injuries to pedestrians are rising. It can be summed up by the huge dominance of the car in the city of Perth in particular and in Western Australia as a whole. Our streets are becoming increasingly designed for cars. We are allowing the continual widening of roads and road building. Main Roads always argues that widening the roads makes them safer, but the reality is that it makes cars travel faster and the roads harder to cross. The faster moving traffic makes it difficult for young and elderly people to cross the widened roads. That must be looked at far more seriously than it is today. Main Roads has it exactly wrong when it says that widening roads makes them safer; it makes them more dangerous. We have examples of people in East Fremantle arguing against that policy when the proposal to widen Canning Highway was mooted during the debate on the Fremantle strategy. With the debate in progress in the Melville area about the widening of Canning Highway. I sometimes wonder about the process that Main Roads Western Australia has gone through. Its plan to widen Canning Highway in Melville, and to thin it down in East Fremantle, is a bit of a joke. We must look more at this dominance of the car. The second reading speech states that one-third of the funding will go into the road trauma fund for education, in particular. I would like to know where the rest of the funding will go. Will it go into more roads so the Government can increase car use around the city?

Hon E.J. Charlton: It goes into hospitals and schools.

Hon J.A. SCOTT: I hope that is the case, because so far most of the funding that has come from measures taken by the Minister has gone into building roads only.

Hon E.J. Charlton: I will get that out of you another way and keep you home, so you do not drive so much.

Hon J.A. SCOTT: The funding from the fuel levy that was struck out recently by the High Court went into roads. If those funds went towards better public transport we would see the road toll start to come down. No matter how one looks at it the Government is continuing to increase the use of cars and to build more roads in the city, and even in the country, although I do not see the same problem with country roads because there has been a failure to spend money on country roads. Certainly dangerous roads can cause accidents, although I do not think that has quite the effect that people think. People tend to drive at the speed that suits the road, especially more mature people. As members pointed out, sometimes it is the young people who believe they are invincible who drive faster. I am concerned at the level of funding going into more and more roads in the city.

We should consider some of the other comments in the second reading speech, such as that Victoria's road toll has halved since 1989. Victoria has a good system of hybrid and light rail around the city. In Victoria public transport receives priority, not private cars that travel at high speeds. That has a lot to do with Victoria's reduced road toll. Certainly, raising penalties will have an effect for some time. However, that effect will eventually wear off. We must look at better solutions in the long term.

When we look at the level of road trauma in this State and both the social and economic costs of that we must compare that with the number of people who are being injured or killed on public transport. From my observation there are very few. It would be interesting if the Minister could give us some indication of how many people are killed on trains or buses, because I think he will find that, comparatively, in terms of miles driven, the number will be much lower.

The general tendency in Perth city is for people to drive more miles and for more money to be spent on roads. A recent study has shown that in Perth city, and Australian cities in general, more of the population's money is spent on roads than occurs in any other city in the world. We spend more money in Perth as a proportion of our income than any other city in the world, yet we are rushing forward to build more and more of this tarmac for people to tear around and kill themselves on. It does not seem logical to go down that highly tarmacked path. Until we start to look at reducing the amount of travel in the city and better planning of the city, people will continue to be killed. We must

design our cities more intelligently, not fine people after the event. It is too late then. We must prevent accidents from occurring in the first place. I agree with Hon Tom Stephens about the push to make alcohol more and more available at every hour of the day and at every outlet. That is probably a mistake. We should consider road trauma when we consider future Bills that deal with liquor retailing. I understand such Bills will come before the House at some stage.

I found the following comment in the second reading speech a little hard to accept -

> We do not use the word "accident" when we talk about road trauma because some 95 per cent of road crashes have a component of human error.

Surely, even if 95 per cent of crashes had some component of human error, those people certainly did not mean to get killed or to maim themselves. We are not perfect beings and we make slip ups. Quite often it is as simple as looking in one's rear vision mirror when the person in front suddenly brakes. That has happened to me and there is nothing one can do about it.

Hon E.J. Charlton: Where was the person who ran into the back of you looking?

Hon J.A. SCOTT: There was no-one behind me in that instance.

Hon E.J. Charlton: How did they run into you then?

Hon J.A. SCOTT: I ran into them, because somebody pulled out in front of the car in front of me and it stopped suddenly, just as I was looking in the rear vision mirror. I looked in my rear view mirror at the wrong time. One could say that was human error, but if one never looks in one's rear view mirror one is a very bad driver.

Hon N.D. Griffiths: Driving is a difficult thing to do for some people, as we all know.

Hon J.A. SCOTT: I know that the Minister probably does not look in his rear vision mirror because he is not worried about anybody coming up behind him. However, others do not have the same velocity.

Hon J.A. Cowdell: His rear vision mirror is the only way that he sees other people on the road.

Hon Norm Kelly: It is the flashing light that gives them away.

Hon J.A. SCOTT: I believe that these measures will have some effect, and that is better than no effect. At the end of the day we need to think more laterally about this proposal. I am pleased that the second reading speech refers to some further measures that will take place in the future.

The Minister is not taking into account the road trauma caused by the level of emissions from motor vehicles. Certainly the Minister has been a keen supporter of getting more B-double diesel trucks into the metropolitan area. I now point out some of the latest findings about diesel engines and the trauma caused by motor vehicles. I quote from the *New Scientist* of 25 October as follows -

> A compound discovered in the exhaust fumes of diesel engines may be the most strongly carcinogenic ever analysed, say Japanese researchers. They warn that a major source of the chemical is heavily loaded diesel engines, and that it could be partly responsible for the large number of lung cancer cases in cities.
>
> The compound, 3-nitrobenzanthrone, produced the highest score ever reported in an Ames test, a standard measure of the cancer-causing potential of toxic chemicals.

The article quotes Hitomi Suzuki of Kyoto University as follows -

> "I personally believe that the recent increase in the number of lung cancer patients in vehicle-congested areas is closely linked with respirable carcinogens such as 3-nitrobenzanthrone,"

The article continues -

> The researchers used the Ames test to measure the number of mutations the compound caused in the DNA of standard strains of bacteria. In a test with a strain of *Salmonella typhimurium*, 3-nitrobenzanthrone recorded more than 6 million mutations per nanomole. This compared to a score of 4.8 million for its nearest rival, 1,8-dinitropyrene, which is also found in diesel exhaust and had until now been the most powerful known mutagen.

When considering road trauma, it is important to remember there is more than one type of road trauma; it is not just the trauma people suffer from being run over by or running into someone else. There is a far less predictable killer of people in the exhaust fumes of these vehicles, particularly from diesel engines. I hope the Minister will consider these matters in combination and recognise that the best way to reduce road trauma in this State is to spend more on

public transport - not the type that is belching out diesel fumes, but electric powered vehicles such as light rail which the Minister dislikes so much - to get people off the road and into public transport where they are much safer. That will reduce road trauma significantly. I support the Bill.

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

[Continued below.]

MOTION - SITTING EXTENDED BEYOND 10.00 PM

HON E.J. CHARLTON (Agricultural - Minister for Transport) [9.23 pm]: I move -

That the House continue to sit beyond 10.00 pm.

I want to make members aware of the plan for this evening's business. I want to ensure debate on this Bill is completed, and I understand that we have only a couple of speakers to come. Later I will move for the Committee stage to be held at the next sitting.

Question put and passed.

ROAD TRAFFIC AMENDMENT BILL

Second Reading

Resumed from an earlier stage of the sitting.

HON N.D. GRIFFITHS (East Metropolitan) [9.24 pm]: I have three points to make. The first is that the matter with which the House has just dealt will not short circuit my remarks because I had intended to be brief. The second point relates to the observations of the Minister in his second reading speech with respect to revenue raising. The third point relates to the view of the law put forward by the Minister in his second reading speech with respect to extraordinary drivers' licences.

I have dealt with the first. In his second reading speech the Minister said that this is not about revenue raising but is about saving lives and preventing injuries. The Opposition supports the Bill because it wants to save lives and prevent injuries. I note the Minister mentioned that one-third of the money raised by infringements involving speed and red light cameras will go to the road trauma trust fund. What will happen to the other two-thirds? The use of speed and red light cameras, according to many members of the public, is for revenue raising. It is interesting that they are placed quite often in positions where drivers must put the brakes on to reach the speed limit and no real question of safety is involved. That view is held by many members of the public. There is a question mark over the use of these devices with regard to revenue raising. It reminds me of the words of the Bard in that methinks the Minister protesteth too much. In that context the Minister said: I repeat, this is not revenue raising. I put that caveat on that aspect of the Minister's comments.

The Minister said of extraordinary motor drivers' licences that they are intended to apply only where they are essential to enable persons in dire circumstances to continue in their employment, and where there is no practical alternative to driving. With respect to the Minister, that is not the law. The Minister then said that these licences are not provided to meet the convenience of a person who has lost his licence and, as such, there is no justifiable reason that drivers on extraordinary licences should not be restricted to a blood alcohol limit of 0.02 per cent during the currency of that licence.

The Opposition supports the Bill but it is proper to place on the record observations with regard to the operation of the law relating to extraordinary motor drivers' licences. That is contained in section 76 of the Road Traffic Act 1974 which states that where a person is disqualified from holding or obtaining a driver's licence, that person may apply for the issue of an extraordinary licence. That application is made to the court and the court makes an order directing that to take place. The relevant fee is paid. Subsection (3) sets out the criteria, and they are not as the Minister stated. It is a wide discretion, and properly so, because when courts are manacled injustice can occur. When there are poor prosecution policies, injustice does occur, as we know from recent events. The criteria are in these terms. Subsection (3) states that the court may make an order if it thinks proper having regard to -

(a) the safety of the public generally;

(b) the character of the applicant;

(c) the circumstances of the case;

(d) the nature of the offence or offences giving rise to the disqualification;

(e) the conduct of the applicant subsequent to the disqualification; and

(f) the degree of hardship and inconvenience which would otherwise result to the applicant and his family if the court refrains from making the order.

That is the general area of extraordinary drivers' licences. A category of extraordinary drivers' licences occurs relatively rarely and involves the issue of a special licence. To get a special licence, a person needs to fall within the category referred to by the Minister in his second reading speech. However, the second reading speech does not refer to a special licence. Subsection (3a) of section (3) states -

> Where a court of petty sessions hears a special application the court shall not make an order directing the issue of an extraordinary driver's licence unless it is satisfied that the application is attended by circumstances of extreme hardship, but nothing in this subsection authorizes or requires the court to make such an order if, having regard to any of the matters referred to in subsection (3)(a), (b), (c), (d), or (e), it considers that the application should be refused.

Paragraph (a) is the safety of the public, paragraph (b) is the character of the applicant, paragraph (c) is the circumstances of the case, paragraph (d) is the nature of the offence or offences, and paragraph (e) is the conduct of the applicant subsequent to the application.

The Act then refers to what is meant by "extreme hardship" and states that an application would be attended by circumstances of extreme hardship if the refusal of the application would -

(a) deprive the applicant of the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the applicant or a person who is a member of his family;

The members of Parliament who wrote this legislation knew what they were doing. They were in touch with what was going on, unlike the bureaucrats who wrote the Minister's speech. It continues -

(b) place an undue financial burden on the applicant or his family, by depriving him of his principal means of obtaining income; or

We can relate that to the Minister's second reading speech. It continues -

(c) deprive the applicant or a person who is a member of his family of the only practicable means of travelling to and from the place at which he or that person, as the case may be, is employed.

For some reason, extraordinary drivers' licences receive bad press. In fact, they receive very little press, but when they do receive press, they receive bad press, because people tend to talk about things only when they go wrong. Extraordinary drivers' licences are a good means of providing justice. They are, for the most part, administered wisely. People who oppose them do not like them because they have opposed them and lost the case. Extraordinary drivers' licences allow the justice of the Road Traffic Act with regard to licence suspension and disqualification to be tempered with mercy in a realistic way to enable people to get on with their lives. They minimise the occurrence of people joining a cycle of behaviour which involves them in the exercise of crime. The comments in the Minister's second reading speech add nothing to our level of understanding of extraordinary drivers' licences. The issue of extraordinary drivers' licences in this Bill and in the fines and infringement notices legislation needs to be addressed, otherwise we will unnecessarily cause people to join the ranks of offenders and repeat offenders - criminals. Extraordinary drivers' licences should be accessible. The people who wrote these laws from both sides of politics were wise people. They did their job well, after due consideration, and we should pay due deference to their wise consideration and not deal with this matter in the way that the Minister has stated in his, with the greatest of respect, very inaccurate summary of the law in his second reading speech.

HON M.D. NIXON (Agricultural) [9.34 pm]: I support the Bill. I have been prompted to speak by the remarks of Hon Jim Scott because, unlike him, I love motor cars and believe that motor transport and all that goes with it has done more to lift the standard of living and has saved more lives than any single invention that I can think of. Agricultural production is based on the transport industry. The transport industry is absolutely vital to a modern society. While there is no doubt that public transport has its place in densely populated areas, which create their own pollution, in the area which I represent, the Agricultural Region, and in most areas, it will be a long time before there is an hourly bus from Merredin to Perth. For as far as we can see into the future, the private motor car and private transport will play an important role in our community.

The only problem that I have with the Bill is that I am a great believer in a free and responsible society. I do not think we will ever produce better results on the road by imposing heavy penalties. Nevertheless, they have their place in the scheme of things as a last resort, and if the money they provide went towards promoting road safety, they could perhaps be accepted as an unfortunate way of producing a result.

I am fortunate to have raised a family of three who are all aged over 25, so there is probably a fair chance that they will survive for quite some time. However, I have some grandchildren, about whom I will soon have to start to worry. I am very much of the view that training is important. Country kids learn to drive on the farm and are usually very skilled by the time they get onto the roads. Although I had one daughter who wrapped her car around a tree, generally speaking their ability to drive is not a problem. People who have learnt to drive under slippery conditions at relatively low speeds are able to handle a car with a fair bit of confidence.

It is interesting that the fellow in Moora who used to take the farm kids for their road tests used to fail them the first time they took their test because he said they were great drivers but they did not know how to use their traffic indicators, and he believed that would make them a bit more careful when they came back and they would then do the right thing on the streets. That was an important lesson for those kids.

Hon Jim Scott is also very wrong about roads. It is true that last year there were about 248 road deaths in Western Australia, and that is far too many, but to put it into perspective, members may recall that some time ago I asked some questions in this House about the days when we did not have speed limits on our roads, when 250 people were killed on country roads. I suggest that we have probably almost doubled road traffic in those 30-odd years, and the fact that 248 people are now killed across the whole of Western Australia is a tremendous improvement, although the number of road deaths is still far too high and a lot more should be done to reduce it.

It may be the case that wider roads are a bit more difficult for pedestrians to cross, but most of those wider roads have an island in the middle, so effectively they are only half as wide for pedestrians to cross. We need to look at the interface between pedestrians and vehicles to ensure they interact safely.

Many new factors are impacting upon road safety. I spoke to a senior police officer today who said that the problem is that we can test for drink driving with a simple breath or blood test, but it is not so easy to test for drugs. Some of the people to whom I have spoken who drive ambulances and have the unfortunate task of sweeping people off the road after a vehicle crash tell me that they believe drugs are an ever increasing problem on the road safety scene. They claim that even so-called soft drugs like marijuana impair the driver's ability, particularly on flat roads where it is difficult to judge distance, such as the Brand Highway. Those people believe that drugs are a factor in many road accidents, although that does not always come out.

In this day and age we cannot discount suicide, because I am sure that many single vehicle accidents are not accidents in the true sense of the word but are cases where a person has aimed his car at a tree because that is a good way of getting life insurance for his family and of relieving himself of his problems.

It is interesting that in recent years the accident rate in Western Australia has not fallen as fast as it has in Victoria. I would like to suggest a few reasons. One of the factors is that before we had speed limits, 250 people were killed on country roads, and in the next two years, after we had speed limits, about 310 people were killed. The accident rate went up by 60 people, or about 20 per cent. Any sensible person would have looked to see what had gone wrong. I believe that the so-called fatigue factor, which is really one of concentration, started to come into it. Today with faster cars maintaining the speed limit, often it is not fatigue that kills people. They become bored because they lose their concentration by driving below the sensible speed for certain conditions. The rules are inflexible because a speed of 110 kilometres an hour is applied on some roads where it is probably safe to do only 90 kmh or 100 kmh, depending on the conditions. In other areas it is probably safe to do 140 kmh or 150 kmh but the speed is limited to 110 kmh, and people go to sleep. We must consider these factors.

In Victoria, rightly or wrongly, there are very few trees alongside roads. I intend to ask questions in this place regarding statistics. A large proportion of deaths on country roads are caused by vehicles hitting trees. Trees do not jump out and hit people. As I said earlier, for years racing car drivers were being killed. It was not until the trees were cleared from alongside the Grand Prix track and decent armour-guard railings were put in place that the situation changed. Almost one driver each race was killed. However, because the verges along the tracks have been tidied up, very seldom are people killed in Grand Prix racing. We must apply those changes to our normal road safety policy. We should have only light scrub on the edge of the roads so that if vehicles leave the road, they will be slowed down.

How many people hit kangaroos on country roads? How many people swerve to miss kangaroos and then crash their vehicle? Too many trees grow alongside roads. Roads are for cars and transport. Trees have their place but they should be strategically placed where they can do what they are intended to do; that is, control salinity or provide habitats for wildlife, and so on. Very seldom is the proper place for trees alongside roads. As a community we must consider those factors. I support the Bill.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [9.42 pm]: I thank members sincerely for their comments tonight. This is a good piece of legislation because it affects everyone in the community. It is above

politics; it is all about dealing with issues to which everyone can relate each day. Therefore, I thank members again for their contributions.

The Bill is the result of a long consultation period within the community and around Australia, and follows the report of an all party Select Committee on Road Safety in Western Australia. The committee travelled widely and considered many issues. It visited Sweden and considered the types of vehicles and safety measures used in various countries. It considered driver training and other issues that we have not discussed or dealt with recently. The Government has taken on board all those factors. A number of task forces were appointed to consider the many issues involved, including the new driver training program which will start early next year. It has taken us 18 months to prepare the program. Therefore, when the new plan is put in place early next year it will not represent something that was dreamt up recently. We have been addressing the issue for a long time. The plan will not be put forward in isolation. We have held back on the change in penalties because we did not want to introduce significant increases in isolation.

We bring forward these changes at a time when we have taken a new approach to this matter in the education system. Every child in every school from years 1 to 10 will receive road safety education. In later years, those children will go on to driver training. We will not teach them to drive at this stage; we will teach them about the need to learn how to drive. We will educate them about all areas of road safety - how to cross the road, how to board and alight from public transport, how to behave as a passenger in a car or when riding a bicycle. Those aspects must not be underestimated. I encourage members to participate, to go to schools, and to look at this plan. The schools, parents and task forces that have been involved in the plan are ecstatic about our approach. The community has involved itself in the production of this plan. The Government has made the plan possible simply by embracing the many different points of view in the community.

In his support of the Bill, the Leader of the Opposition spoke about a number of matters, one of which was education. I am happy to advise him that Derek Kickett, a well known identity, has worked in the Office of Road Safety for some time, and for good reasons - the first being his personal qualities. It is important to involve credible people who are well known in the community and can be identified easily. It is also important that Derek Kickett not only is readily accepted by the wider community but also is a model within the Aboriginal community.

Hon Kim Chance: It is an excellent initiative.

Hon E.J. CHARLTON: Derek has travelled with me to a few places and, as I said earlier, he and Gary Hodge, from the Office of Road Safety, recently visited Alice Springs to attend a forum addressing some of the issues raised tonight by the Leader of the Opposition; that is, dealing with Aboriginal people, and ensuring that they learn to drive properly and that they take note of the safety provisions so that we can cut the road toll in that community.

As Hon Bruce Donaldson said, the legislation relates to a range of issues. It relates not only to drivers of motor vehicles, but also to other people who use our roads and who may lose their lives or be injured. He is correct: The number of fatalities caused by motor vehicles has decreased. The number of bicycle related deaths has doubled, even though it was coming from a low base. The number of deaths caused by motorcycle accidents has increased, and the number of pedestrians killed has also increased.

We are not sure about the suicide factor. The number of suicides has increased, and the situation is becoming worse, particularly in country Western Australia and among young people. In many areas we are aware of how suicides are carried out. However, we do not know the number of people involved in motor vehicle accidents as suicide attempts.

Hon Bruce Donaldson mentioned drugs and fatigue. Fatigue has been the forgotten component of road safety. Emphasis has been placed on speeding, the wearing of seat belts and driving under the influence of liquor. However, until now we have not addressed the issue of fatigue. As Hon Murray Nixon said, fatigue is caused by a number of conditions. It may simply occur because people want to drive too far in one day. In many cases fatigue is caused by boredom, but everyone is affected differently. The subject was discussed at the Transport Ministers' conference the other day.

I think Governments have lost the plot on some issues, because they tend to be prescriptive in many areas. A road transport forum executive told me the other day that theoretically prescriptive conditions on driving hours sound great. That is, one can drive only X number of hours before a rest. In theory it is very good, but in practice, depending on when one leaves the starting point, a driver does not sleep in a bed but in the truck; he does not sleep at night but during the day. Therefore, a person is continually tired during the whole trip. One could be more flexible and say that within each 24 hours people may drive a certain number of hours. Therefore, people could plan their trips accordingly. These are important points which need to be picked up as part of the code of practice in the heavy haulage industry. Governments, regulators and road safety people must not miss these points when dealing with the practical side of these issues.

Hon Bruce Donaldson touched on increased speed limits. As I mentioned at the time, speeds travelled do not increase when speed limits are increased. People need to acknowledge that point. Good drivers will drive to the condition of the vehicle, the road and the weather at the time.

A program to teach people how to drive will be implemented, which has never been done before in this State. We will teach people how to drive, starting, I hope, at 16 years of age, rather than the current 16 years and nine months. The same period will apply as currently applies before people obtain a fully fledged driver's licence. It will be crucial that in the process we teach people the full range of skills -

Hon Ljiljanna Ravlich: How much will you charge?

Hon E.J. CHARLTON: That has not yet been ascertained. The important point is not what they are charged, but how well are they trained.

Hon Ljiljanna Ravlich: How much they are charged is important.

Hon E.J. CHARLTON: I differ with the member. If people can afford to pay $5 000 to $30 000 for a car, a few hundred dollars is not much to spend to learn how to drive. For people to take their place in society without being maimed, it is important that these steps be taken. Each year, $1.2b is spent as a consequence of road accidents in this State. To do anything at school costs money, and we must ensure that we properly train people. Obviously, we should not persecute people if they do not learn how to drive; however, we must ensure that people who learn to drive do so properly.

Many issues were raised in Hon Bruce Donaldson's significant contribution, for which I thank him, about driver training and consultation in the community. The draft of the new driving training program is out in the community, and this process will result in a report coming back to the Government in December. We will be moving into the new program early next year.

I agree with the member's comments about flashing green lights. Some Main Roads people spend too much time at road conferences rather than in implementing changes.

Another initiative we will soon implement is the idea of keep left at the red light when it is safe to do so. That will be a significant benefit as it will keep traffic flowing. Roads are made for traffic movement, not for vehicles to park or to sit still at lights or intersections for long periods. The same comment applies to other changes we will implement in the near future, including the increased speed limits on some of the dual carriageways. That will be implemented when it is agreed to by the Road Safety Council.

The 0.05 per cent blood alcohol content matter is difficult from a terminology perspective. Basically, it will mean that police will have the option to give a person an infringement notice for a second offence, or the person can be summoned to court. I did not want to see people forced to go to court. The flexibility is that an infringement notice, which contains a penalty, can be issued. I will go through that matter in more detail in Committee.

Car pooling and such matters are being addressed by the Government.

I agree with Hon Norm Kelly about the effects of exceeding the speed limit on a percentage basis. Obviously, doing 30 kilometres an hour above the 60 kmh limit is much more dangerous than doing 30 kmh above the 110 kmh limit. It is something we must deal with. I would be interested in the Office of Road Safety looking at that issue and making recommendations to Parliament, and I encourage the member to put points of view to the Road Safety Council on that issue.

Hon Jim Scott never fails to amaze me. He thinks I have an obsession with roads, but obviously he has one with public transport. Briefly, the Government spends in excess of $200m per year out of consolidated revenue to assist public transport in this city. That allocation is increasing, and the Government is happy to make that provision. Governments will continue to do so. In fact, we are buying a new fleet of buses to extend the service. However, we spend $150m on roads in the metropolitan area. Currently, we are spending about 25 per cent more on public transport than on roads. Also, we have something to see for road expenditure, but with public transport - I am not being critical here; it is an economic fact - we must spend the money again the next year.

Hon N.D. Griffiths: You do not buy new buses every year.

Hon E.J. CHARLTON: We are continuing to improve the public transport system. I congratulate Hon Murray Nixon for his comments, which raised some very practical points. Keeping road verges free of large trees is commonsense.

Finally, transport and its operation on our roads is about freedom. Mobility is freedom. Anybody who suggests that in this State, or in this nation, we should restrict people's movement would get little support in the community. As

I have said before on many occasions, when people are deprived of their liberty, they lose the ability to move around. We are trying to ensure that this movement is carried out in a safe manner. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

MOTION - DISALLOWANCE

Prohibition on Commercial Fishing for Rock Lobster (Dampier) Order No 5 1997

Resumed from an earlier stage of the sitting.

HON KIM CHANCE (Agricultural) [9.59 pm]: When one analyses it, this disallowance motion is about two different types of people; that is, it is about an individual and the whole fishing industry. The individual is a bloke by the name of Arnold Piccoli. I have met Arnold on a number of occasions. He is a nice bloke, a superb athlete - he is a past Australian diving champion - and a successful and innovative businessman. I would have thought the Government would want to encourage such a businessman as he sets a great example to young and enterprising export-orientated people of whom we on both sides of the Parliament are so proud. Arnold Piccoli developed a trade for an unusual animal in our fishery; namely, the tropical rock lobster. To the extent that it was fished at all before he became very professional about using the resources, it had a return in the order of $8 to $10 per kilogram for frozen tails. He put a great deal of money, time, effort and thought into developing an export market for the tropical rock lobster to the extent that rather than selling at the lower, US price-type end of the rock lobster market of $8 to $10 a kilogram, this year the ornates in Southern China are bringing $55 a kilogram. As a result of his development of that industry, the Queensland tropical rock lobster industry got under way. I understand that exports out of Queensland are in the order of 40 tonnes per annum.

Arnold Piccoli has been told he is not needed any more. It is a long story and I do not know whether I need to go into it in detail, given that a good explanation of the facts has been given already by Hon Helen Hodgson and Hon Giz Watson. He has been told that he is not wanted in the fishery and that it is time for him to move on to something else. In some ways that is inevitable. I will go into that in detail later. As far as his future in the Dampier Archipelago is concerned, that industry - small though it might be, but certainly innovative - is finished.

I said this issue was also about the fishing industry as a whole. The fishing industry in this State is worth billions of dollars. All of that capital is underpinned by one very shaky foundation. That foundation for the capital base of the commercial fishing industry of the State is not management, as many people think, but the concept of property rights inherent in an authorisation. It is an obscure concept. A former shadow Minister for Fisheries in this House wrote interesting and incisive words about the concept of property in fishing authorisations. It is a matter in which I have taken a great deal of interest and I have researched some of the law relating to property rights inherent in a fishing licence. However, it is vital to the whole concept of what the fishing industry is based on because that is what backs the capital in this industry.

The Piccoli case threatens all of that. The Piccoli case says that the property right Arnold Piccoli held in the Dampier Archipelago is valueless. The Fisheries Department can take it from him and give him nothing in return. There is no compensation in his case. I do not know why that is so because the Minister for Fisheries has not been able to tell us why that man can be singled out, lined up and shafted in the way he has been. If the Minister can argue that Arnold Piccoli had only a side interest or that his involvement in that fishery was not sufficiently long or large for him to warrant compensation, the Minister might get away with it. Who knows? He is the Minister and the Government has the numbers. However, let him try it on with a rock lobster fisherman in Geraldton. Let him pick one name at random - say, Kim Newbold, Bertie Boschetti or one of the Thompsons - and see how far he gets. He will not do that because he knows he would go down in a screaming heap, yet it is exactly the same action taken against Arnold Piccoli. Arnold Piccoli was one man fishing in a remote area, but carrying the right of licence in that area, which is as strong as anything the Boschettis, the Newbolds or the Thompsons hold. It is exactly the same right. The Minister took it away from him and said he would have no right of compensation.

I spoke to the Executive Director of Fisheries at the time this occurred. I asked what Piccoli could do and what he would do for Piccoli to sort out this mess. He said, "He can sue and we will settle on the steps of the court." What kind of public administration has that outcome? It is an incompetent public administration that says that, even though it has the facility in place to allow a fisherman to be taken out of an area. No-one objects to that if there is a good reason in the public interest to justify it. In Piccoli's case the Minister could have used two separate avenues to achieve the same effect. Why did he choose not to use either of those and to close that part of the fishing ground to commercial fishing when only one person, Arnold Piccoli, was using that ground? The Minister knew the outcome of that would be that no protocol was established to allow the payment of compensation other than recourse to a court of law.

Nobody has been able to explain to me why the Minister chose that course of action. It was an entirely illogical act. I cannot fathom why he did it. This disallowance motion is about overturning that decision. I have no argument with the Government's decision that commercial fishing in the Dampier Archipelago was no longer compatible with the demands of the recreational sector. I have some sympathy for the views that were expressed by Peter Rogers, the chief executive officer of the Fisheries Department, when he said the situation was turning nasty and the department had to act quickly. I agree it was turning nasty: Some unpleasant things were happening in the conflict between recreational fishermen and the single commercial fisherman. However, there was a solution to that. One cannot argue that because the Minister wanted to solve the problem expeditiously he had to act in a way for which there was no resolution. All he had to say to Arnold Piccoli was that he did not like the situation, he wanted his agreement that he would not fish at Dampier this winter, and the Government would shut down the fishery and a fisheries adjustment scheme would be put in place to allow him to receive compensation. That would have been acceptable because everybody could have understood what was going on.

Concern about the process has been expressed by the organisation that represents the commercial fishing sector; namely, the Western Australian Fishing Industry Council. That concern is not so much about what was done, although that is a matter of concern, but rather the way it was done. This relates to the matter of process I have covered already. When the Minister made the decision to close the ground to commercial fishing by the order which is the subject of this disallowance motion, he had at least two other options available to him. I say he had at least two others because a third was coming in a legislative sense; that is, the Acts Amendment (Marine Reserves) Bill and the Fishing and Related Industries Compensation (Marine Reserves) Bill. That legislation had not arrived at that time. The first option was that the Minister could have withdrawn or cancelled Mr Piccoli's authorisation. Had he done that, it would have provided a set of protocols that could have made compensation possible.

He could have resolved the conflict between the professional fisher and the amateurs by the use of the Fisheries Adjustment Schemes Act. Those matters have already been referred to by Hon Helen Hodgson. The fact is that the Minister chose to exercise neither of those options even though in each case they clearly provided an established protocol which would have allowed the calculation and the payment of compensation. Because the Minister chose neither of those available actions to achieve his ends, rather than being part of the resolution he became part of the problem. Until then, the problem was not beyond reasonable resolution, but beyond easy resolution. The Minister chose the one option that did not have that established protocol which could have allowed recourse to establish compensatory procedures. As I have said, the remedy which has been left to Mr Piccoli is to sue for damages in court, and that is the only remedy left to him.

I must put this question to members: Why did the Minister choose that option when he had other more regular means of resolution available to him, and what kind of public administration process is it when we have to tell a person that if he is not satisfied with a decision, he can sue us? That is not the kind of thing I expect to hear from a Government in 1997. The answer to that rhetorical question is that only an incompetent administration would produce incompetent outcomes of that kind, particularly when adequate remedies are available. The Piccoli case is something of a landmark issue for the fishing industry. As I said, one of the key elements that underpins our system is the question of property rights, the species of rights which is contained within the authorisation. I am seriously concerned about what this decision will do for the billions of dollars of capital investment tied up in property rights in the fishing industry. One thing is certain: Not only is the fishing industry watching the outcome of this case - the awareness of this case across the whole fishing industry is quite remarkable - so also is the banking industry. I was speaking to a senior executive of the fishing industry only this evening. He repeated a conversation he had had with a senior officer with the Commonwealth Bank in Western Australia. He knew the precise details of the Piccoli case. He needs to know because his bank is heavily exposed to the fishing industry. It is concerned about its security. All of us should be as well.

The way this issue was introduced and handled is a process which makes me angry. A single fisherman has been lined up and shafted by these regulations in a process which gave him no consideration at all as a person, and certainly not as a businessman. I do not believe the Minister made this bizarre decision because he dislikes Mr Piccoli. The Minister did not even know Mr Piccoli before this happened. I suspect the Minister made this decision to do nothing more than to score a political point. If that is the case, it is a questionable use of the Minister's executive power. He knew very well that he had at least two workable options. He chose the one option for which no regulation outside of the court existed, unless it was determined to come to an ex gratia payment. I suspect the Minister chose this option because he knew it was inevitable that the decision would generate a disallowance motion. He knew that motion would cause formidable political problems for those on this side of the House, especially the members of the Australian Labor Party. At some stage we must justify our vote for a disallowance to 600 or thereabouts very angry amateur fishermen and voters in a marginal Pilbara seat; that is, the seat of Burrup. The Minister knew we on this side would be torn between wanting to do the right thing for the fishing industry and the reality of the political damage it would do us, whatever decision we made. I have already told Mr Piccoli and the

Western Australia Fishing Industry Council executive members who have been here tonight that we have no intention of giving the Minister the means of undermining the member for Burrup. We have come to that decision, not only as a result of the consideration of the political reality of the member for Burrup, but also because the disallowance will probably not help Mr Piccoli either.

The Minister's attitude on this matter has been so lacking in consideration for Mr Piccoli and other fishermen, that I fear his response to disallowance will be spiteful and vindictive to Mr Piccoli and others. Should anyone doubt that the Minister will not react in that way, that person should ask why the Minister threatened the member for Burrup with political retribution after this motion was moved and why the Minister gave Mr Piccoli virtually no notice that his business in the archipelago was over. The Minister's attitude to people in this matter so far leaves me in no doubt that the carriage of this motion will be counter to Mr Piccoli's interests, and as a consequence we will vote against it. I do not enjoy saying that; in fact, it makes me feel quite sick. This is the first time in the five years I have been in this place that I must vote against my conscience. The Minister can be absolutely certain that if the situation is not satisfactorily resolved soon, the Opposition and I, in particular, will not let go of the issue. There should be no mistake that the fishing industry will not take this decision lying down. As I have said, the industry is remarkably well informed on the Piccoli case and is watching the outcome with great interest.

I am well aware, in recommending a vote against the disallowance motion tonight, that I will have a lot of critics in the industry. They will rightly say that although I have apparently been supportive of the concept of property rights within the fishing authorisations, at the first test I have walked away from defending them. Technically, that criticism is correct. I can only ask those in the industry to look at the whole issue before making a judgment on either me or the Australian Labor Party. In my view disallowance is not the only way of resolving the issue, and I hope people will understand that. If I come in for some criticism, I can gain some comfort from the fact that the Minister has been even more heavily damaged by his actions than I have. His actions threaten the concept of property rights and licences which underpins the capital base of the industry.

On a more optimistic note, there is a solution. I hope we all have the opportunity to grasp it before the situation gets any worse than it is now. I will offer any assistance I can to the Minister to put this solution in place. I urge him to grab hold of the solution. It is not a hard thing to do and I believe it will satisfy everyone. Why it has not been done before now, I am prepared to let go, provided we can look forward to doing this properly in the future. All the Minister has to do, without the disallowance motion, is choose to repeal the order. At any time the Minister can choose to withdraw that order. Once he has done that, he is free to immediately structure a scheme under the Fisheries Adjustment Schemes Act 1987, which would have exactly the same effect except that compensation for Mr Piccoli would become possible under those formal and established processes. That is not a difficult thing to ask a Minister to do. The solution is available. I can only challenge the Minister to grab it. However, to me it is simple and clear and makes sense.

Members should make no mistake that I refuse to let go of this issue. It was very difficult for me to tell Mr Piccoli tonight that we could not support the disallowance motion. However, I was able to promise him that however long it takes I will see this matter corrected properly.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [10.20 pm]: That is one of the most surprising contributions I have heard from Hon Kim Chance. This issue is not about destroying an industry, nor is it about affecting the financial viability of the fishing industry. Contrary to what Hon Kim Chance just said, members of the industry to a person would be well aware of that. This Government and previous Governments have always gone to extreme lengths to ensure the viability of the industry by ensuring it has sustainability. That is another issue we have debated in this place on many occasions. Amazingly, not everybody has agreed with those decisions to ensure sustainability and viability. However, I challenged too many people to say that in retrospect those decisions in the long term were not the right decisions in principle.

Although they can always be changed - we are talking about a changing industry - in this case it is not about sustainability; it is a balance in an operation in a closely confined area of fishing from a recreational point of view compared with a professional operation. It is not at this stage about sustainability, although it might well be next year, the year after or whenever, as pointed out by previous speakers who called for research so that information and data were available to ensure that could be achieved. This is not about politics. It is about a group of people in that area who have very few opportunities for recreation other than the ocean. It is not about victimising the professional fishermen at all. If there could be a sharing of that facility that would continue. The Minister and the department could have sat on their hands and done nothing and allowed the situation to continue.

Hon Kim Chance mentioned compensation. If we took away the opportunity for the fisherman to operate, of course we would pay compensation, or leave the opportunity there in the interim period, if that is what it turned out to be, to retain the licence and respond at a time in the future. If I heard correctly it has been identified - I am not an authority on this decision - that the operation is not about the total livelihood of the fisherman who is central to this

debate tonight. I understand that the licence was left with that fisherman to enable him to continue to operate. If an issue about compensation arises and further deliberation or decision is necessary the opportunity for that is available. However, on behalf of the Government and the Minister, I reject the notion that this is about politics. It is about an area requiring continued access to recreational fishing on the one side, and on the other side a professional operation taking place which was considered by the local community to be taking away their opportunity to freely carry out their fishing operations.

Hon Kim Chance: I have no argument with that whatsoever.

Hon E.J. CHARLTON: I ask members to cast their minds to what happens around the rest of the coastline of Western Australia. It happens everywhere. No-one would ever suggest that where a group of people are either professionally or recreationally fishing there must be a balance. The issue has been more than well canvassed. The department and the Minister, and therefore the Government, made a decision. This Government cannot be held to ransom about how it makes that decision other than by the people in this place who are elected to make decisions. Hon Kim Chance cannot have it both ways. He either supports the decision or he rejects it. The opportunity is his right now to support or reject it. Obviously, as has occurred before, given the Opposition's numbers, with most of the opposition members he could put an end to this regulation right now. That is a decision we must all make from time to time and in doing so we must wear the consequences. The Government does not support the motion.

HON HELEN HODGSON (North Metropolitan) [10.27 pm]: I listened with great interest to what other members had to say in this debate tonight, particularly to Hon Giz Watson's comments about the need for a management plan. I do not think anyone disagrees with that. A management plan must consider seriously the issue of commercial fishing compared with recreational fishing and marine parks versus conservation issues. That is the hallmark of a good management plan. As the Minister rightly said, it will balance all these interests and find a solution that is fair to everybody.

I listened with great interest to what Hon Kim Chance said. I appreciate that he acknowledges the injustice that is being done and that he recognises the effect this will have on the property rights of people in the fishing industry. Of course he recognises the need for compensation in these cases and the lack of natural justice that has been applied in this situation. However, all that does not count for very much when the political imperative means that the Australian Labor Party will vote against this disallowance motion on the basis that the politics in the electorate mean that that will be the outcome. I remind members on both sides of the House of their promises to the fishing industry before the election. I refer now to a special Western Australian Fishing Industry Council publication on the 1996 State election.

The PRESIDENT: Order! In her summing up the member is entitled to comment on matters raised by members, but she cannot digress and introduce matters that she might have brought into her original comments.

Hon HELEN HODGSON: The matters that have been raised by Hon Kim Chance were addressed in this response to the questions by the WA Fishing Industry Council prior to the 1996 election. The question related to current legislation making it possible for commercial fishers holding fishing rights to have those rights revoked without compensation and reallocated to other society interests on the change of government policy. They asked what the policies were on the issue of providing commercial fishers with secure access to marine resources. At the time Hon Kim Chance stated -

> Labor strongly supports the need for secure access to marine resources. It is inevitable that from time to time decisions have to be made to reallocate access rights according to the public interest. Where this occurs, it is our view that prior consultation and fair compensation are a fundamental right that a licence holder is entitled to.

Those comments are directly relevant to the matter that is being voted on here tonight.

Hon Kim Chance: And also entirely consistent with what I have said.

Hon HELEN HODGSON: Entirely consistent with what Hon Kim Chance has said, but not consistent with the position his party is taking.

The coalition's response to the same question stated -

> Commercial fishing rights are protected by licences regulated by new legislation -

That is a reference to the Fish Resources Management Act -

> - which has entrenched those rights in a manner which is transparent and specific.

Those rights are being abrogated by the method in which this action is being taken.

I could draw an analogy to a situation that has arisen in which a Government has cancelled licences without paying due compensation and a subsequent incoming Government has revoked that. At the time the arguments were about whether due compensation was payable. The instance I refer to occurred in Queensland with a Labor Government revoking the licence rights and a subsequent coalition Government paying fair compensation. That is the exact situation we are facing here. Everybody agrees that a right is being removed and that in those circumstances there are ways compensation can be made payable to the person who is losing his rights. Because of the methods that have been adopted in dealing with this issue, that compensation is not properly due and payable.

If this House allows this regulation to stand it will be abrogating its responsibility to the fishing industry and be saying that it is not here to protect the rights of members of that industry, that it is allowing administrative action to prejudice their businesses. I am not prepared to stand by and see that happen. Therefore, I hope that other members will agree with me and support the motion to disallow this regulation.

Question put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Norm Kelly *(Teller)*	Hon Christine Sharp	

Noes (24)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich
Hon E.J. Charlton	Hon John Halden	Hon B.M. Scott
Hon J.A. Cowdell	Hon Ray Halligan	Hon Greg Smith
Hon M.J. Criddle	Hon Tom Helm	Hon Tom Stephens
Hon Cheryl Davenport	Hon Barry House	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Bob Thomas
Hon Max Evans	Hon M.D. Nixon	Hon Ken Travers
Hon Peter Foss	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*

Question thus negatived.

House adjourned at 10.37 pm

QUESTIONS ON NOTICE

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

SCHOOLS - LOCAL AREA PLANNING

Interschool Transportation

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

I refer to the Minister for Education's statement in the Legislative Assembly on May 28, 1997 entitled "Changes to the Management and Planning of Government Schools". This statement referred to local area educational planning enhancing educational opportunities for students by focussing on groups of schools in an area rather than individual schools and providing opportunities for more efficient student access to curriculum, quality facilities and specialist teachers -

(1) Does the Minister intend that students will be required to transport between different schools in order to pursue various aspects of their education?

(2) If so, would the Education Department cover the costs of this interschool transportation?

Hon N.F. MOORE replied:

(1) It is anticipated that school communities will develop a number of varied options to improve educational opportunities for their students.

It is quite possible that some options, particularly hub schools, might involve travel of students between campuses for some specialist instruction. The extent of travel would need to be balanced against the educational opportunities gained.

(2) I would expect the Education Department to cover this cost in the overall cost of the proposal.

NATIVE TITLE - ADVICE TO GOVERNMENT

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

(1) Which Government agencies and chief personnel are responsible for providing the Minister and the Premier with advice on Native Title in Western Australia?

(2) Which consultants, private sector agencies or law firms provide, or have provided, advice on Native Title in Western Australia and who are the principals acting for them?

(3) Would the Minister for Aboriginal Affairs provide the details of any of these consultants, private sector agencies or law firms which have, has or had interests as company secretaries, directors, subscribers, shareholders, partners, owners or any other form of commercial relationship with any pastoral company?

(4) Would the Minister provide the details of any of these consultants, private sector agencies or law firms which have, has or had interests as company secretaries, directors, subscribers, shareholders, partners, owners or any other form of commercial relationship, with any Aboriginal individual or entity which has a commercial interest in pastoral leases?

(5) Would the Minister list all of the Government consultants, private sector agencies or law firms who act for those who own or have commercial interests in pastoral leases, and name the individuals or entities concerned?

Hon N.F. MOORE replied:

(1) Native Title Unit of the Ministry of the Premier and Cabinet and the Crown Solicitor's Office.

(2) The legal firms of Freehill Hollingdale & Page (including the now merged firm of Parker and Parker) and Hunt and Humphry as well as C Wheeler, A Robertson, D Jackson QC, C Howard QC and S Hulme QC have provided, from time to time, advice in respect of the native title legislation.

(3)-(5) The professional and commercial interests of legal practitioners and their clients is not something that the Government monitors or records.

ENVIRONMENT - DEPARTMENT

Definition of "Pollution"

834. Hon J.A. SCOTT to the Minister for Finance representing the Minister for the Environment:

I refer to questions on notice 588 of June 17, 1997, where the Minister for the Environment has stated "In this instance the notification under s74 of the Act and heavy rainfall at the time were relevant factors" -

(1) Can the Minister state what exactly was the section 74 notification and how this was relevant for Department of Environmental Protection to regard the spill as pollution?

(2) If not, why not?

(3) Can the Minister or the Department of Environmental Protection provide a copy of the section 74 notification?

(4) If not, why not?

(5) Can the Minister state why the "heavy rainfall" at the time was a relevant factor for the Department of Environmental Protection to consider the spill to be pollution or directly or indirectly altering the environment as defined in section 3(1)(a) and (c) of the *Environmental Protection Act 1986*?

(6) If not, why not?

Hon MAX EVANS replied:

(1)-(6) The company involved, notified the Department of Environmental Protection (DEP) as to the particulars of the spill as required by s72 (and referred to in s74) of the Environmental Protection Act. Early notification and other factors are taken into account by DEP in determining how it should deal with particular issues. Early notification of spills is relevant, in that it enables DEP to ensure that all appropriate action is taken so that any environmental impacts of a spill or event are minimised. I am given to understand that it was the heavy rainfall which caused the saline water to overflow from the sump within which it was held and thus spread over an area of less than half a hectare. With respect to the notification of the spill, I now seek leave to table this document. [See paper No 1046.]

ENVIRONMENT - STEPHENSON AND WARD INCINERATOR CO PTY LTD

Incinerator Site - Tests for Dioxin

914. Hon J.A. SCOTT to the Minister representing the Minister for the Environment: **[See page 7994.]**

FAMILY AND CHILDREN'S SERVICES - GERALDTON FINANCIAL COUNSELLING SERVICES

Grant

946. Hon BOB THOMAS to the Minister for Transport representing the Minister for Family and Children's Services:

(1) What was the amount of the grant paid to the Geraldton Financial Counselling Services (Geraldton Resource Centre Inc) for -

(a) 1994/95;
(b) 1995/96; and
(c) 1996/97?

(2) What were the reasons for the changes between -

(a) 1994/95 and 1995/96; and
(b) 1995/96 and 1996/97?

Hon E.J. CHARLTON replied:

(1) (a) $69,614
(b) $40,297
(c) $42,223

(2) (a) In 1994/95 some Financial Counselling services funded by Family and Children's Services were funded at levels exceeding a standard amount introduced for metropolitan and urban services. Those amounts in excess of $39,941 were adjusted during the 1995/96 financial year. The payment figure of $40,297 includes the standard amount plus further adjustments for increases in the Superannuation Guarantee Charge in 1995/96. It should be noted that the introduction of a standard funding level for Financial Counselling services enabled the establishment of an additional nine services across Western Australia.

(b) The increase is a result of a CPI four per cent factor and an adjustment to the Superannuation Guarantee Charge in 1996/97.

SCHOOLS - PRIMARY

Rottnest Island - Cost

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

(1) How many students currently attend the Rottnest Island Primary School?

(2) What teaching and other staff positions are currently allocated to this school ?

(3) What is the total cost (including wages and all other costs) per annum of maintaining this school on Rottnest Island?

(4) Does the State Government provide accommodation for teachers or staff associated with this school?

(5) If yes, how many houses are maintained for this purpose on the island?

(6) What contribution does the Rottnest Island Authority make towards the cost of maintaining this school on Rottnest Island?

(7) Has consideration been given to any other option for providing education to these school students on Rottnest?

(8) If yes, what are those options?

Hon N.F. MOORE replied:

(1) There are currently 20 students attending Rottnest Island Primary School (6 pre-primary and 14 primary), as at the start of second semester 1997.

(2) There are currently two full-time teaching positions at Rottnest Island Primary School. One of these positions is held by the Principal. The other position is currently shared in a tandem position - one teacher working 0.40 full-time equivalent (FTE) and the other working 0.60 FTE.

There are currently four non-teaching positions at Rottnest Island Primary School, consisting of:

Gardeners	0.2 FTE
Teacher Aide(Rural Integration Program)	0.9 FTE
Registrar	0.5 FTE
Library Officer	0.1 FTE

All positions are contracted to the end of the 1997 school year. The school has been allocated an additional 0.1 FTE for 1998 (i.e. a total of 2 full time positions + 0.1 FTE, that is, half a day).

(3) The total cost of maintaining the school on Rottnest Island for the 1996/97 financial year was $160 973.

(4)-(5) Yes. The Government Employees' Housing Authority provides one house to accommodate the principal.

(6) The Rottnest Island Authority supports the Rottnest Primary School in the provision of services by way of attending to jobs around the school and transporting students at no cost during winter, but does not assist financially.

(7) No other options for providing education to students at the Rottnest Primary School are being considered at this stage.

(8) Not applicable.

SCHOOLS - STUDENTS

Non-English Speaking Backgrounds - Resources

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

What resources, above that counted in usual allocations to schools, does the Ministry allocate to schools with students from a non-English speaking background?

Hon N.F. MOORE replied:

$120 000 is provided to support the specialist English as a Second Language Program for eligible students from non-English speaking backgrounds.

GOVERNMENT INSTRUMENTALITIES - CONTRACTS

In Excess of $30m - Details

1001. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Health:

What contracts has the Government entered into with the private sector which are valued in excess of $30m and for a length of more than five years?

Hon MAX EVANS replied:

Food services at Royal Perth Hospital	$35,000,000 estimated.
Joondalup Health Campus	$15,400,000 (1996/97); $29,500,000 (1997/98)

DRUGS - CANNABIS

Prevalence in Schools

1066. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Family and Children's Services:

The September 1995 Report of the Task Force on Drug Abuse stated that "Drug use for high school students begins in Year 8 (with 10 per cent using cannabis) and increases steadily through Year 9 (20 per cent using cannabis) and Year 10 (33 per cent using cannabis) to peak in Years 11 and 12 (37 per cent using cannabis)" -

(1) What are the current estimates on the prevalence of marijuana abuse in high schools?

(2) Given the increasing use of marijuana, what initiatives have been introduced by this Government to reduce its sale and use?

(3) What other preventative measures have been introduced in relation to drug abuse?

Hon E.J. CHARLTON replied:

(1) The best current comparable estimates on the prevalence of marijuana abuse among high school students, as opposed to "in high school", is that approximately 20 per cent of 12-15 year olds and 38 per cent of 16 and 17 year olds have used marijuana in the last month.

(2) Cultivation and sale of marijuana continues to be a target of police activity. The Alcohol and Drug Information Service and drug treatment agencies are increasingly available to persons who have problems or are dependent on marijuana. A number of education initiatives aim at preventing the use of marijuana. These include:

The *Drug Aware* public education campaign - this campaign has to date focussed on parents with newspaper advertising and the *Drug Aware* Parent Booklet. These have included a focus on cannabis. The most recent phase of *Drug Aware* has focussed on heroin and the next phase will focus on marijuana. This campaign is currently being developed. The *Drug Aware* campaign focussing on marijuana will provide objective information about its harms through youth media and promote the availability of QUIT kits and services to assist dependant people to stop.

The School Drug Education Program - this promotes a comprehensive approach to drug education including marijuana.

Parent drug education courses include a focus on marijuana.

Fact sheets containing objective information including the harms of marijuana have been produced for adults, school children and human service professionals.

(3) The WA Strategy Against Drug Abuse has a strong emphasis on the prevention of drug abuse. This occurs through education to prevent drug abuse including school drug education, education for families and public campaigns. It also occurs through support for the community to take action to prevent drug abuse. Some 28 Local Drug Action Groups have been established around the State. These groups promote public education, provide input to school drug education, develop activities for youth, work with retailers to prevent the supply of alcohol, tobacco and solvents to youth and undertake other activities appropriate to their local areas. Additionally, the WA Strategy Against Drug Abuse includes a strong law enforcement component. This is essential both to combat existing drug abuse and to provide a realistic deterrent to prevent drug abuse.

EDUCATION - PRIORITY SCHOOLS PROGRAM

Funding

1069. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Education:

(1) Will Priority Schools Program funding be withdrawn from schools?

(2) Will the money be allocated to literacy programs?

Hon N.F. MOORE replied:

(1) The Priority Schools Program was funded through the Commonwealth Government Disadvantaged Schools Program. This program ceased in 1996.

(2) The Commonwealth now funds a Literacy Program for which Western Australia receives funding. All schools funded under the Priority Schools Program will be represented in the cohort of schools that receive funding for literacy.

SPORT AND RECREATION - BOWLING CLUBS

Maintenance of Greens - Funding

1118. Hon TOM STEPHENS to the Minister for Sport and Recreation:

What avenues for State Government financial support are available to a bowling club wanting to repair and restore their bowling greens?

Hon N.F. MOORE replied:

The Community Sporting and Recreation Facilities Fund, administered by the Ministry for Sport and Recreation, provides Western Australian Government financial assistance to community groups and local government authorities to develop well planned facilities for sport and recreation. Bowling clubs are eligible to apply for a grant up to one third of the total cost of a project which may:

- Upgrade an existing facility to better suit current and future needs.
- Modify and add to existing facilities to provide greater opportunities for participation.
- Construct new facilities.

Application to the Fund are invited mid year.

HEALTH - KIMBERLEY

Psychiatric Services

1119. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) How many psychiatrists are employed by the Health Department to service the Kimberley region?

(2) How many psychiatric nurses and mental health workers are employed by the Health Department in the Kimberley region?

(3) In which centres are these nurses and mental health workers located?

(4) How many administrative support personnel are employed by the Health Department for mental health services within the Kimberley region?

(5) What financial support is available for engaging lay assistants and promoting home-visits by mental health workers in the Kimberley region?

(6) What plans are in place to provide for a mental health unit attached to any of the hospitals of the Kimberley region?

(7) What is the total budget for mental health services within the Kimberley region and what details, by way of allocation, are available in reference to this global budget figure that would indicate the way in which this budget is currently prioritised?

Hon MAX EVANS replied:

(1) Two psychiatrists and one final year registrar in psychiatry are employed to work in the Kimberley and Pilbara. They devote about half their time to work in the Kimberley.

(2) Five psychiatric nurses are employed in the Kimberley.

(3) Two nurses are based in Kununurra, one in Derby and two in Broome.

(4) 1.5 FTE of administrative support is provided in the Kimberley.

(5) Promoting home visits and other community based services are a major part of the approach adopted by all staff of the Northwest Mental Health Service. Staff work closely with Aboriginal Health Workers throughout the Kimberley in collaborative management of people with mental health problems even though these workers are not employed by the Mental Health Service. The Health Department has recently allocated funds to employ two Aboriginal Social and Emotional Wellbeing Workers in the Kimberley who will be appointed in the next few weeks.

(6) A Rooming In facility at Broome Hospital has been approved and will open early in 1998 when the building required for it is renovated. The Health Department has plans for a six bed acute admission unit at Broome Hospital to service the whole of the Kimberley.

(7) The budget for mental health services in the Kimberley and Pilbara at the beginning of this financial year was $1.95 million. About half this sum is spent in the Kimberley. Since the beginning of the financial year additional $160,582 p.a. has been allocated to fund the rooming in project in Broome. The funding required for the two social and emotional wellbeing workers has yet to be determined. The budget as at November 1997 allocates $361 000 to medical salaries for the Kimberley and Pilbara, $386,000 to nursing salaries in the Kimberley, $71 000 to administrative support salaries for the Kimberley. The remainder of the budget for the Northwest is spent on salaries in the Pilbara and on non-salary costs for the whole region.

SMALL SCHOOLS - CLOSURE

1122. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:

(1) Has the Minister for Education been accurately reported that the issue of class sizes is best solved by getting rid of small schools?

(2) Is the Minister aware of the strong body of professional opinion which says that small schools provide the best environment for children to develop both intellectually and socially?

(3) Will the Minister assure parents with children at small schools in the Peel and Bunbury regions that their schools will not be closed down?

Hon N.F. MOORE replied:

(1) No. Small schools is not the issue, and no school will be closed simply because it is small. Rather, the issue concerns small classes which cannot be amalgamated with other classes, a situation most prevalent in upper secondary schools, where student numbers are comparatively low. Where the number of students in a class is well below that which is viable, the class will either be conducted at the expense of some other class(es) (usually in a lower grade), or it will be discontinued. In some cases, the amalgamation of schools can ameliorate this problem. Money saved by the closure or amalgamation of schools will be redirected back into schools, thereby using resources in a more efficient manner. Closing or amalgamating schools is one way of freeing up resources so that system-wide initiatives, such as class size, can be addressed.

(2) Schools, whether large or small, organise themselves so that they can provide the best learning environment for the students. There are secondary schools in this State with a school population of 800 - 1000 students. These schools use a middle school approach in Years 8-10 for example, to create the best learning environment for their students.

(3) Parents of children in schools of the Peel and Bunbury district, like all other parents throughout the State, now have the opportunity to become involved in the process of planning for the government schools in their district through the Local Area Education Planning Framework which I launched on 23 September 1997. Any recommendations for closing a school will be part of a Local Area Education Plan prepared by a District Director following extensive consultations with the school community, as a result of the Local Area Education Planning process.

HEALTH - BUNBURY HEALTH CAMPUS

Public and Private Services

1123. Hon J.A. COWDELL to the Minister for Finance representing the Minister for Health:

Can the Minister for Health outline which health services will be -

(a) publicly owned and operated; and
(b) privately owned and operated,

at the new collocated Bunbury Health Campus?

Hon MAX EVANS replied:

(a) All those services currently provided by the Bunbury Health Service as well as the new services:

- Acute Psychiatric Unit
- Emergency Department
- Intensive Care Unit
- level 2 Nursery

(b) All those services currently provided by the St John of God Hospital, Bunbury as well as the new services:

- Palliative Care
- Oncology
- Renal Dialysis

HOSPITALS - MANDURAH, ALBANY AND BUNBURY

Budget Allocations

1124. Hon J.A. COWDELL to the Minister for Finance representing the Minister for Health:

(1) What are the 1997/98 Budget allocations for the Mandurah District and the Bunbury and Albany Regional Hospitals?

(2) In the case of each hospital, what percentage increase is this over the preceding budget?

Hon MAX EVANS replied:

(1) Mandurah

The 1997/98 budget for Mandurah Hospital was until the 31 August 1997 part of the overall Peel Health Service. Health Solutions Inc. took over the management of Mandurah Hospital on 1 September 1997.

The 1997/98 budget allocation for Peel Health Service included 2 months activity for Mandurah Hospital inpatient activity.

1997/98 total allocation to date, for Peel Health Service including the Health Solutions contract to manage Mandurah Hospital is $14.3m. Of this the contract for the management of Mandurah Hospital is $3.7m for the 10 months in 1997/98 under the private contractor.

It should be noted that all outpatients, allied health, community health and public health for Mandurah residents are funded under the allocation for the Peel Health Service and do not form part of the contract with Health Solutions Inc.

Bunbury: The total budget to date for 1997/98 for Bunbury Health Service which includes Bunbury Regional Hospital is $21.9m. This included the contribution for exceptional pool cases. There will be further adjustments during the year that will be allocated to the Health Service. The base budget for 1996/97 budget was $21.5m.

Albany: The total budget to date for 1997/98 for Lower Great Southern Health Service including Albany Regional Hospital is $22.6m. This includes the contribution for exceptional pool cases. There will be further adjustments during the year that will be allocated to the Health Service. The base budget for 1996/97 was $22.5m.

(2) Mandurah: The funding and activity levels are based on the 1996/97 allocation and level of activity.

Bunbury: This represents a 1.7 per cent increase on 1996/97 base allocation.

Albany: This represents approximately the same base allocation as the 1996/97 base allocation.

MINISTRY OF JUSTICE - ALBANY

Remand Facilities - Juvenile Indigenous Women

1148. Hon CHERYL DAVENPORT to the Minister for Justice:

(1) What remand facilities are available in Albany for juvenile indigenous women awaiting hearings or trials?

(2) If there are none, why not?

Hon PETER FOSS replied:

(1) None.

(2) Juvenile offenders on remand in country and regional centres are held at police lock-ups pending transfer to Rangeview Remand Centre. Numbers in Albany and surrounding areas do not demand the construction of a separate facility.

HEALTH - ALBANY

Dementia Cases - Increase

1149. Hon CHERYL DAVENPORT to the Minister for Finance representing the Minister for Health:

(1) Have the number of dementia cases increased in the Albany region in the past year?

(2) If so, have local services received financial assistance for provision of respite services for carers?

(3) If not, why not?

Hon MAX EVANS replied:

(1) The population in the Albany region has increased by approximately 3 per cent in the past year. The incidence of dementia in the population has remained relatively stable and therefore the number of people with dementia will have increased by approximately 3 per cent.

(2) The Albany Health Service has received Commonwealth funding to establish a Carer Respite Centre.

(3) Not applicable.

QUESTIONS WITHOUT NOTICE

STATE FINANCE - CONSOLIDATED FUND TRANSACTIONS 1996-97

1032. Hon TOM STEPHENS to the Minister for Finance:

(1) As the Government still has not made available transactions of the consolidated fund for August, September and October, can the Minister provide the House with information on the level of government recurrent and capital revenue and recurrent and capital expenditure for those months?

(2) If not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(2) The recurrent revenue for August was $376.3m, with capital revenue of $8.8m, a total of $385.1m. For September the recurrent revenue was $570m, with capital revenue of $19.6m, a total of $589.6m. In October the recurrent revenue was $519.5m, with capital revenue of $11.4m, a total of $530.9m. Recurrent expenditure for August was $524.6m, with capital expenditure of $33m, totalling $557.6m. For September the recurrent expenditure was $526.7m, with capital expenditure of $47m, totalling $573.7m. For October the recurrent expenditure was $732.2m, with capital expenditure of $61.9m, a total of $794.1m. The net result is that for August cash financing transactions of $172.5m less an amount in the sinking fund of $5.7m left an operating deficit of $166.8m. For September the figure for cash financing transactions was minus $15.9m less an amount of $4.6m for the sinking fund, leaving an operating surplus of minus $20.5m. For October the cash financing transactions figure was $263.2m, with the principal repayments amounting to $12.6m, leaving an operating deficit of $250.6m.

I repeat what I said the other day. This answer relates to the consolidated revenue expenditure. Money is now drawn down from the consolidated fund and is the total of the Government's bank account. A lump sum is drawn out according to the requirements which are budgeted over 12 months and paid into about 120 operating accounts, which are called trust accounts, for Health, Education, Police, etc. There is a lot of under expenditure there. The other day I provided the figure for the under-expended net figure. These figures are exactly what the Leader of the Opposition has requested; that is, the amount of money that has been expended out of the consolidated fund.

FORESTS AND FORESTRY - GIBLETT BLOCK

Logging - Area and Dates of Operations

1033. Hon NORM KELLY to the Minister representing the Minister for the Environment:

In respect of the 1998 logging plans of the Department of Conservation and Land Management for the southern forest region -

(1) Can the Minister confirm that approximately 600 acres of Giblett block are due to be clear felled next year?

(2) If so, on what dates are logging operations in Giblett forest due to commence?

(3) What is the total area of forest designated for logging in 1998 which is also interim listed on the Register of the National Estate due to its recognised high conservation value?

(4) Is it correct that, according to the plan, 60 per cent of the total volume of logs to be extracted from the southern forest region next year will be designated for woodchipping?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(4) Another bundle of questions on this matter was put in at the last moment. I believe the answer that I will give to this question will also apply to those others. The answer to these questions requires considerable research and considerable checking of data and I request that the member put the question on notice to allow preparation of a response.

HOMOSEXUALITY - AGE OF CONSENT

Constitutional Validity

1034. Hon N.D. GRIFFITHS to the Attorney General:

I refer to Order of the Day No 13, the Acts Amendment (Sexuality Discrimination) Bill.

(1) Is the Attorney General aware of legal opinion to the effect that section 322A of the Criminal Code, which deals with the age of consent for sexual behaviour between males, is open to challenge as to its constitutional validity?

(2) If so, what is Attorney General doing about it?

Hon PETER FOSS replied:

(1)-(2) Order of the Day No 13 is not mine.

LOCAL GOVERNMENT - CITY OF WANNEROO

Indemnity - Extent of Liability

1035. Hon TOM STEPHENS to the Minister representing the Minister for Local Government:

(1) Does the City of Wanneroo have an insurance policy to indemnify it for any liability which may arise from its conduct or the actions of its officers or councillors for the period covered by the royal commission?

(2) If so, with which company is that policy?

(3) What has the City of Wanneroo done to comply with its obligations to disclose to its insurer any potential liability arising out of that conduct or those actions?

(4) Has the City of Wanneroo estimated the extent of its potential liability to any persons affected by that conduct or those actions?

(5) If yes, what is the estimate?

(6) If no, will the commissioners of the council be making such an estimate?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. I ask the member to put the question on notice.

ENVIRONMENT - TYRE RECYCLING

1036. Hon J.A. SCOTT to the Minister representing the Minister for the Environment:

(1) Is a report available on the progress made in implementing the Government's waste tyre strategy?

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

(3) Has Imtech Australia begun its waste tyre recycling operation at Canning Vale?

(4) If so, on what date did it start; how many tyres a month are being recycled; what is the product used for; and if not, why not?

(5) Is the Chris Hill waste tyre dump still in operation?

(6) If so, why was it not closed earlier this year as promised; and if not, when was it closed and how has it been rehabilitated?

(7) What other waste tyre dumps are operating in or near the Perth metropolitan area; and how many tyres per annum is the company licensed to take?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No.

(2) Not applicable.

(3) No. I understand financial difficulties have prevented the construction of the plant.

(4) Not applicable.

(5) No.

(6) The Chris Hill quarry site was closed to tyres on 20 June 1997, and rehabilitation of the site has been proceeding in accordance with the site management plan, which involved covering the tyres with approximately 5 metres of blue metal fines and revegetating the site to the requirements of the Department of Conservation and Land Management.

(7) Two other landfill sites are licensed under the Environmental Protection Act for the disposal of tyres. They are the Eclipse Resources site in Flynn Drive, Wanneroo and the waste stream management small site in Thomas Road, Kwinana. Both sites are subject to stringent licence controls over the manner in which tyres are managed, but no specific restriction exists on the number of tyres they accept.

CHILD ABUSE - SEXUAL ASSAULT REFERRAL CENTRES

Funding

1037. Hon CHERYL DAVENPORT to the Minister representing the Minister for Health:

Growing evidence is now available that large numbers of perpetrators of violence and sexual assault were, themselves, assaulted as children.

(1) Will the Minister provide permanent funding to sexual assault referral centres so that long term counselling for abused children can be established to break the cycle of abuse and violence?

(2) If not, why not?

(3) If so, when?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Sexual assault referral centres are funded under the national women's health program, which is a long term agreement with the Commonwealth valid until June 1999.

(2) Not applicable.

(3) The establishment of longer term or permanent funding arrangements with sexual assault referral centres is dependent on the outcome of the post-June 1999 public health agreement negotiations with the Commonwealth which include the national women's health program.

LOCAL GOVERNMENT - CITY OF WANNEROO

Commissioners - Fringe Benefits Tax

1038. Hon TOM STEPHENS to the Minister representing the Minister for Local Government:

(1) Will the City of Wanneroo be liable to pay fringe benefits tax on the benefits it provides to its commissioners?

(2) If so, what is the amount of that liability?

Hon E.J. CHARLTON replied:

I ask the member to place this question on notice.

The PRESIDENT: Order! The last question was out of order because it sought a legal opinion in the first part of the question.

PRISONS - BANDYUP

Overcrowding

1039. Hon HELEN HODGSON to the Minister for Justice:

(1) How many prisoners is Bandyup Women's Prison designed to accommodate?

(2) How many are in custody at Bandyup?

(3) Is it true that at times prisoners are required to sleep on mattresses on the floor due to overcrowding?

(4) What steps will the Minister take to ensure that appropriate sleeping accommodation is provided?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Based on one prisoner a cell and excluding special purpose beds, it is designed to accommodate 85.

(2) 110.

(3) No. Fold-up beds are provided for all prisoners when standard beds are not available. However, a number of prisoners prefer double bunking and sleeping on the floor for cultural reasons.

(4) It is provided. However, renovations are under way to convert two activity areas into cell accommodation.

HEALTH - HEAD LICE

Distribution of Shampoo

1040. Hon KEN TRAVERS to the Minister representing the Minister for Health:

(1) What actions is the Minister taking to control head lice in our schools?

(2) Will the Minister implement a more equitable policy for distributing head lice shampoo through local government authorities?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The Health Department has a multipronged approach to control head lice in Western Australian schools. Firstly, students who are identified as infested are excluded until the day following treatment with perdiculocide. Secondly, information is distributed to parents of classroom contacts advising them to

inspect their children's hair for signs of head lice and informing them of the recommended management for head lice infestation. Thirdly, the Health Department has arranged for supplies of head lice lotion to be made available on a cost recovery basis through local government authorities, including some free lotions for parents unable to afford this. In addition, community nurses and their managers have been delegated responsibility for coordination of treatment and education for parents and teachers involved in head lice activities. The Health Department has recently produced a head lice video with accompanying information for parents, teachers and nurses which will be provided to all primary schools in Western Australia. Finally, the disease control service provides expert advice on other issues arising from head lice outbreaks.

(2) Due to the unrestricted release of head lice lotion by some local government authorities, the annual budget of $40 000 for head lice lotion was quickly exceeded this year. In response to the situation the Health Department restricted the availability of the head lice lotion to 20 bottles per local government per month. The Health Department is reviewing the policy on the supply of free and subsidised head lice lotion for distribution by local government authorities.

STATE FINANCE - COOPERS AND LYBRAND INQUIRY

Report

1041. Hon BOB THOMAS to the Minister for Finance:

(1) Has the State Government commissioned a Coopers and Lybrand inquiry and report into the State's finances?

(2) What are the terms of reference for this inquiry?

(3) When is the report due and will it be tabled?

(4) If not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No.

(2)-(4) Not applicable.

BUNBURY SILOS - SALE

Details

1042. Hon J.A. COWDELL to the Leader of the House representing the Minister for Regional Development:

With regard to the South West Development Commission's accepting a price of $900 000 for the white silos and 1.4 hectares of surrounding prime waterfront land in Bunbury -

(1) When was the Deputy Premier and Minister for Regional Development first informed of the deal?

(2) Did he approve of the process by which the sale was negotiated?

(3) Will he table the valuations obtained by the SWDC on the site?

Hon N.F. MOORE replied:

(1) 17 September 1997.

(2) Yes.

(3) The valuers have been requested to give approval to release their valuation.

PLANNING - KEMERTON INDUSTRIAL PARK

Expansion Study Report

1043. Hon KIM CHANCE to the Leader of the House representing the Minister for Regional Development:

I refer to the upcoming release of the draft Kemerton expansion study report and ask -

(1) When is this report due to go before Cabinet?

(2) Is the Kemerton expansion study report predicated on specific industries being located in any expansion of the core area of the Kemerton Industrial Park?

(3) If yes, what industries are slated for location in the proposed expansion of the core area, as detailed by the Kemerton expansion study report?

(4) Does the Kemerton expansion study report consider whether the development of a port adjacent to the proposed and existing core of the Kemerton Industrial Park, to allow industries direct seagoing access, is necessary to the long term viability of the expanded Kemerton Industrial Park?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The report of the Kemerton expansion study is due to be considered by Cabinet in the near future.

(2) No. The study is predicated on making long term land use allocations, including for resource processing and other strategic industries arising from the review of the resources in the south west region, as part of the regional planning process for the south west region.

(3) Not applicable.

(4) The expansion study and associated studies on transport between Kemerton and Bunbury port are based on industries in the Kemerton Industrial Park using the port of Bunbury for exported products and imported process materials for the foreseeable future. In this regard a detailed study has been carried out on a transport corridor between Kemerton and Bunbury, including arrangements for road access to Bunbury port.

SCHOOLS - REMOTE AREAS

Television Transmission - Federal Government Assistance

1044. Hon TOM HELM to the Leader of the House representing the Minister for Education:

Given that GWN and the ABC are about to change their method of transmission to remote areas, does the Minister expect any financial assistance from the Federal Government to schools in remote areas because they must change their method of receiving signals?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

The State Government has already made allowance through the Education Department's Technology 2000 project to change over the receivers to allow the digital signals to be received. The planning and implementation process is being undertaken by the Education Department. Any questions regarding funding from the Federal Government for transmission to remote areas should be referred to the Minister for Commerce and Trade.

LIBERAL PARTY - DONATIONS

Stanton Partners

1045. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

(1) Has Stanton Partners or Keith Lingard ever made financial donations to the Liberal Party?

(2) If so, when, and how much money has been received?

(3) How many government contracts have been awarded to Stanton Partners since 1993?

(4) What is the total value of these contracts?

(5) Is the Minister aware of any complaints lodged in relation to conflicts of interest or the quality of service provided by Stanton Partners?

The PRESIDENT: Order! Is that to the Leader of the House representing the Premier?

Hon Ljiljanna Ravlich: It was to the Minister for Employment and Training.

The PRESIDENT: Some of those matters do not involve the Minister's portfolio. However, I will leave the Minister to sort that out.

Hon N.F. MOORE replied:

(1)-(2) These matters are outside my portfolio responsibilities.

(3)-(5) The answer to these questions requires considerable research and I request that the question be placed on notice to allow preparation of a response.

MAIN ROADS WESTERN AUSTRALIA - ROAD CONSTRUCTION AND MAINTENANCE

Private Contractors

1046. Hon RAY HALLIGAN to the Minister for Transport:

(1) What proportion of the road construction and maintenance that comes under the responsibilities of Main Roads in this State was undertaken by private contractors?

(2) What savings have been made through the use of private contractors?

Hon E.J. CHARLTON replied:

(1) Main Roads expenditure in 1996-97 was $535.634m, of which $430.19m or 80 per cent was for goods, works and services provided under various contracts.

(2) Main Roads follows State Supply Commission policy, which emphasises open and effective competition, accountability, quality and equity, and value for money. Studies consistently show that the introduction of competitive tendering and contracting produces savings of 20 per cent or more on total costs.

FISHERIES - PYGMY SNAPPER

Useless Loop - Research

1047. Hon GIZ WATSON to the Minister representing the Minister for Fisheries:

In respect of the alleged existence of a distinct stock of pygmy snapper in the area of Useless Inlet, which includes the Shark Bay world heritage area and the Useless Loop salt pond currently being constructed -

(1) Is the Minister aware that this stock is likely to become extinct on completion of the pond?

(2) Is the Western Australian Government or any of its agencies carrying out any genetic testing to determine the taxonomic status of the stock by DNA fingerprinting?

(a) If yes, who is paying for this testing?

(b) If no, why not, given the Government's obligations under the Endangered Species Protection Act 1992?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) The existence of a distinct stock of pink snapper in Useless Inlet has recently been raised. Research is under way to determine the status of the pink snapper stock in Useless Inlet.

(2) There is no DNA study of the Useless Inlet snapper to the best of my knowledge. However, the Fisheries Department, as part of a research project to better define the extent of inner Shark Bay snapper stocks, is conducting research using the technique of allozyme electrophoresis to determine the taxonomic status of the pink snapper in Useless Inlet. Results should be available in approximately two months.

(a) The current research is being funded through the Fisheries Department.

(b) Not applicable.

TAXIS - LICENCE

Driver Convicted of Sexual Assault

1048. Hon SIMON O'BRIEN to the Minister for Transport:

What is the status of the taxi operator's licence and the ongoing taxi ownership by a taxidriver recently convicted of sexual assault in Perth?

Hon E.J. CHARLTON replied:

In the last day or so debate has arisen over the legal action against and conviction of a Perth taxidriver. The Department of Transport has taken away that taxidriver's driving licence, but has not at this stage taken away his right to own a taxi plate. The department's action has been criticised and, therefore, it is appropriate to remind both the public and the taxi industry of the enormous suspicion the taxi industry has been under in recent times. The department and the taxi industry have responded to that suspicion by trying to assure the public that they will not tolerate suspect cab drivers working in the industry. I support the department's withdrawal of a driving licence in this instance.

I also encourage taxidrivers not to pick up passengers who are obviously affected by alcohol, particularly those as drunk as the passenger mentioned during the recent legal case, or those others who simply believe it is their right to demand a cab at any time of the day or night when they are absolutely and totally incapable of getting themselves into a cab and cannot give directions to the cab driver.

Not only does the taxi industry have to be responsible - and that is what the department and the industry are trying to provide for - but also it is time that some members of the public made alternative arrangements to get home. If they cannot look after themselves, they had best stay where they are.

WORKSAFE WESTERN AUSTRALIA - PROSECUTION POLICY

Legal Advice

1049. Hon KIM CHANCE to the Attorney General representing the Minister for Labour Relations:

(1) In the case of the Esperance farmer who has been prosecuted after a farm accident caused a fatality, did WorkSafe seek legal advice on the public interest aspect of whether a prosecution should be launched?

(2) If so, did the legal advice indicate that WorkSafe had a choice to prosecute or not prosecute?

Hon PETER FOSS replied:

I ask that the question be placed on notice.

STATE FINANCE - TOBACCO EXCISE

High Court Decision - Windfall Gain

1050. Hon MURIEL PATTERSON to the Minister for Finance:

Some notice has been given of this question.

(1) How have the tobacco companies been able to make a windfall gain at the expense of the States as a result of the High Court's ruling against state franchise fees?

(2) What does the Government intend to do to recover the lost tax?

Hon MAX EVANS replied:

(1) Under the business franchise fee arrangements that operated prior to the High Court decision of 5 August 1997, the tobacco companies collected franchise fees on sales in the period 1 July 1997 to 31 July 1997 that would have been paid on 15 August. They would also have collected fees from sales in the period from 1 August to 6 August when the Commonwealth announced the excise surcharge to replace state franchise fees. The August collections would have been paid to the Government in September. These unremitted collections represent a windfall gain estimated to be in excess of $250m Australia-wide. Some confirmation of the size of the gains has been provided by Rothmans, which alone has identified receipts of unremitted tax amounting to $70.5m.

In addition, it is understood that tobacco companies accelerated the movement of stocks from bond in the period leading up to and immediately following the High Court decision. While these stock movements were subject to the Commonwealth excise, they predated the safety net excise surcharge and were not subject to any business franchise fee. The result has been to significantly reduce the States' expected excise surcharge collections. This reduction is also estimated to be $250m in 1997-98. Rothmans alone has reported an abnormal gain of $78.6m as a result of its stock movements.

(2) All States and Territories are collecting data to more accurately identify the size and nature of the windfall gains. Several state Treasurers will be meeting with the commonwealth Treasurer to discuss possible courses of action.

COURTS - DISTRICT AND SUPREME

Expenditure

1051. Hon N.D. GRIFFITHS to the Attorney General:

Some notice of the question has been given.

(1) What was the budgeted expenditure for the District and Supreme Courts for 1996-97?

(2) In each case, what is the estimated expenditure for -

(a) 1997-98;
(b) 1998-99?

(3) In each case, what amount was raised by fees in 1996-97 and what is estimated to be raised by fees in each of 1997-98 and 1998-99?

Hon PETER FOSS replied:

(1) Although I note that Hon Nick Griffiths has asked for budgeted expenditure, I will provide the actual expenditure rather than asking him to put the question on notice.

Actual expenditure for 1996-97 -

Supreme Court, $13 446 000; District Court, $9 541 000.

(2) (a) Estimated expenditure for 1997-98 -

Supreme Court, $13 936 000; District Court, $9 795 000.

(b) Unknown.

(3) (a) 1996-97 -

Supreme Court, $1 571 000; District Court, $2 219 000.

(b) 1997-98 -

Supreme Court, $2m; District Court, $3m.

(c) 1998-99 -

Supreme Court, $2m; District Court, $3m.

TOURISM - HEINEKEN CLASSIC AND HOPMAN CUP

Funding

1052. Hon KEN TRAVERS to the Minister for Tourism:

Will the Minister indicate the extent of taxpayer support for the Hopman Cup and the Heineken Classic? If not, why not?

Hon N.F. MOORE replied:

As a normal commercial practice, both contracts have confidentiality clauses. On a previous occasion, EventsCorp approached both parties for permission. This was granted by the organisers of the Heineken Classic, but refused by Paul McNamee Enterprises, which organises the Hyundai Hopman Cup. Funding support for the 1997 Heineken Classic was $300 000. A further approach will be made to PME seeking to have it waive the confidentiality clause in the Hopman Cup contract.

WORKSAFE WESTERN AUSTRALIA - INQUIRY

Number of Requests

1053. Hon LJILJANNA RAVLICH to the Minister representing the Minister for Public Sector Management:

(1) How many written requests have been received by the Ombudsman or the Commissioner for Public Sector Standards for a full inquiry into the activities of WorkSafe WA, Commissioner Bartholomaeus or both?

(2) Why has there not been a full inquiry into WorkSafe WA?

(3) Why is the Government prepared to inquire only into WorkSafe's prosecution policy rather than its full operations?

Hon MAX EVANS replied:

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

POLICE - BURGLARIES

Bassendean, Swan and Stirling - Increase

1054. Hon NORM KELLY to the Attorney General representing the Minister for Police:

Some notice of this question has been given.

(1) Further to question without notice 1030, what rate of increase or decrease in daytime dwelling burglaries has occurred from 1996 to 1997 in the local government areas of Bassendean, Swan and Stirling?

(2) What are the corresponding statistics for nighttime dwelling and commercial burglaries?

(3) Have police patrols been maintained in these areas during this period?

Hon PETER FOSS replied:

I ask that the question be put on notice.

FORESTS AND FORESTRY - SANDALWOOD

Goldfields

1055. Hon GIZ WATSON to the Minister representing the Minister for the Environment:

In respect of the taking of sandalwood from the goldfields area, the Department of Conservation and Land Management currently harvests 2 200 tonnes of sandalwood per annum. Assuming the average yield per plant is 20 kilograms, this take represents 110 000 harvestable trees that need to be replaced every year.

(1) What evidence can the Minister provide that the taking of this amount of sandalwood from Western Australia's arid regions is ecologically sustainable?

(2) What research is being undertaken by CALM to assess -

(a) the regeneration of sandalwood trees;

(b) how many germinations occur per tree; and

(c) what percentage of germinations survive grazing by sheep, goats and rabbits?

(3) What is the impact of sandalwood pulling on other plant species in the arid region?

Hon MAX EVANS replied:

I thank the member for some notice of this question and inform her that 2 200 tonnes was the permitted harvest level for 1996-97 across the State. The actual harvest was: 1 029 tonnes green - crown land; 742 tonnes dead - crown land; 11 tonnes green - wheatbelt - private land; 53 tonnes dead - wheatbelt - private land; 73 tonnes green - goldfields - private land; and 71 tonnes dead - goldfields - private land. While 20 kg is a very imprecise average weight per tree, 1 029 tonnes would equate to only 51 450 trees.

In respect of the member's specific questions, the answers are as follows -

(1) I refer the member to the sandalwood management plan, where data were published and objectives and strategies for management of sandalwood are outlined.

(2) (a) CALM has a full time research officer working on sandalwood ecology and regeneration. There are research plots in the rangelands at Burnabinmah, Thundelarra, Goongarrie, Jeedamya and Ninghan stations. Previous extensive research on sandalwood has been published in CALM research bulletin No 4 entitled "Historical review of sandalwood (Santalum spicatum) research in WA".

(b)-(c) Data for sandalwood exist from research plots and from inventory done across the range of sandalwood. Specific data are collected and updated at a resource level for strategic planning and at management level for operational planning. Data are used to plan specific operational

requirements and harvesting prescriptions. CALM has a full time sandalwood inventory crew collecting this data.

(3) Sandalwood is a managed land use similar to many others in the rangelands. While harvesting operations may have a temporary impact on other plants, natural regeneration processes occur from coppice and seeds. Temporary harvesting tracks are rehabilitated in accordance with contract conditions.

QUESTION ON NOTICE 914 (from page 7978) -

ENVIRONMENT - STEPHENSON AND WARD INCINERATOR CO PTY LTD

Incinerator Site - Tests for Dioxin

914. Hon J.A. SCOTT to the Minister for Finance representing the Minister for the Environment:

(1) What tests for dioxin are carried out at the Stephenson-Ward incinerator in Welshpool?

(2) What levels of fly ash are produced at the Stephenson-Ward incinerator?

(3) What toxic materials and harmful residues are produced at the Stephenson-Ward incinerator?

(4) Why is the Department of Environmental Protection recommending Option 1 cleanup?

Hon MAX EVANS replied:

(1) Air emissions from the incinerator are tested twice each year for a range of parameters including chlorine and chlorine compounds. In addition, air emission testing for dioxins is performed once per year. On each occasion the plant is tested to ensure dioxin emissions have complied with the criteria set in the licence of one tenth of billionth of a gram per cubic metre. This criteria has been adopted from the strict German criteria. I am also advised that the Stephenson and Ward incinerator is the only incinerator in Australia currently meeting this stringent emission criterion for dioxins.

(2) I am advised that the volume of ash produced by the incinerator varies depending on the characteristics of the waste incinerated. Typically, less than 10 per cent of the waste incinerated reports as ash. The incinerator currently burns approximately 750 tonnes of waste per year and would produce 70-75 tonnes of ash from this volume of waste.

(3) A range of contaminants are present in the ash including inert materials such as silica and iron, as well as low levels of heavy metals. I table a certificate of analysis for the most recent test result - 8 August 1997. [See paper No 1047.]

(4) I assume that the member is referring to one of the options for the remediation strategy for the PCB contamination of the site. I am advised that the department recommended a strategy of full clean up of the site and adjacent lands, except for some low level PCB soil contamination underneath the actual incinerator. This low level contaminated soil will be contained until a future change of land use is implemented, which in turn requires the incinerator to be removed, then the soil will be disposed of or treated in accord with the technologies of the day.

The independent risk assessment for the site concluded that the entire contamination on the site could be left in place until a future land use change. The Government decided to proceed with the site clean up.

Both Professor Arthur McComb, who was appointed to advise the EPA in regard to this site remediation, and the EPA itself have recently endorsed the DEP proposed strategy, and site works will commence in December 1997.
