



WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Tuesday, 25 March 1997

Legislative Council

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

PETITION - CRIME

Hon Cheryl Davenport presented a petition, by delivery to the Clerk, from one resident of Western Australia calling on the Government to take immediate action to address continuing and unacceptable levels of crime in the community by increasing the police presence, ensuring that police respond quickly and flexibly, and linking operational police more closely with the community.

[See paper No 360.]

HANSARD - DELIVERY

THE PRESIDENT (Hon Clive Griffiths): I have received the following letter from the Chief Hansard Reporter -

I advise that delivery of the weekly *Hansard* will again be delayed. On this occasion the delay has been caused by unexpected difficulties with the software used to provide the index at the back of the book. I anticipate delivery tomorrow.

Yours sincerely

N J Burrell
Chief Hansard Reporter

That is a bit of a blow.

MOTION - URGENCY

Federal Government Funding

THE PRESIDENT (Hon Clive Griffiths): I advise members that I have received this letter, addressed to me as President, dated 25 March 1997 -

Dear Mr President

At today's sitting, it is my intention to move under SO 72 that the House, at its rising, adjourn until 9.00 am on 25 December 1997 for the purpose of discussing the incompetence of the State Government's economic management in handling reductions in funding to the State by the Federal Government, and the potential for increased taxes and charges as a result of this.

Yours sincerely

John Halden MLC

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

[At least four members rose in their places.]

HON JOHN HALDEN (South Metropolitan) [3.38 pm]: I move -

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

In the past month the spin doctors of the Ministry of the Premier and Cabinet have been at work yet again. They are trying to spin the con to the people of Western Australia that the evil Federal Government has descended on them and that a need exists to introduce a gold tax and to increase taxes and charges because the financial position of the State is tight. According to some Ministers, it is tighter than they have ever known. However, the reality is that the Government knew full well last year at the time of the federal Budget and at the time of its own Budget that the economic circumstances as a result of reductions in federal funding would be tight. It is stated in the Governor's speech, and the Premier has bleated in the other place, that since 1993-94 the State Government has lost in the order of \$208m as a result of reduced commonwealth funding. Cumulatively that amounts to \$530m over the same period. It was the same Premier who, last year, signed an agreement which resulted in a reduction in financial assistance

grants to Western Australia of \$59.8m in 1996-97 and will result in a reduction of \$62m this financial year and \$30m next financial year. The Premier also knew that the specific purpose grants this financial year would be reduced by \$30m. We now know that the reduction will include approximately another \$30m and that in 1998-99 there will be at least another \$10m cut in specific purpose grants to this State.

The Ministry of the Premier and Cabinet and the Treasury knew that the Commonwealth Grants Commission would have a significant impact on the amount of money Western Australia would receive. They knew in 1996-97 that the funding would be reduced by approximately \$30m and they also knew that this financial year it would be in the vicinity of \$34m. The same formula will be used in the 1998-99 financial year; therefore, specific purpose grants will be reduced by more than \$30m. It means that the Government was in possession of the knowledge last year that this State's Budget, over a three year period from 1996-97 to the 1998-99 financial year, would be at least \$315.8m worse off.

What was its response? The glossy magazine which accompanied the Budget and titled "Budget Overview - Western Australia, 1996-97" clearly demonstrates that this State will be in the order of \$110m worse off because of the impact of the Grants Commission's annual updates. What did the Premier of this State say about that? He said in *The Australian* on 18 June 1996 that he ruled out new taxes or special levies and that he would meet the \$90m shortfall by increasing public sector efficiencies. The Government endeavoured to do that by a 1.4 per cent across the board cut in all department budgets, which was not applied uniformly, and by delaying capital works.

The Government has found itself with a problem because it cannot keep delaying capital works, regardless of what it told the Opposition in the Estimates Committee last year. Can it make more funding cuts to the Public Service and government services? It knew last year that it could not keep up this facade. However, by using its spin doctors it knew it could con the people of Western Australia in the lead-up to the election and it also conned this Parliament's Estimates Committees. The Government said it could do it, and do it easily. Now, the same spin doctors are saying that this State is facing the most difficult budgetary situation it has faced in five years.

It is confronted with that problem because it did not address the fiscal problems which faced it last year. It deferred them for election purposes and now it is trying to blame the Federal Government for arrangements it knew about last year and agreed to last year. What humbug. What sort of game is the Government perpetrating on the people of this State? It knew there would be a \$320m black hole in three years and it said it could manage it. Now it is saying it cannot manage it. It cannot do it because of its incompetence in not addressing the issue last year. Now it is faced with a bank-up effect and it will have to find \$200m and stop the slippage in capital works, which it can do for one year, but it cannot do it for two or three years. The Government knew its action was a hoax from the beginning, but it perpetrated it for its electoral advantage.

I will refer to other hoaxes. This Government, in the lead-up to the election, said it would deliver a \$1.9b social dividend as a result of pain it inflicted in its previous Budgets. It put out forward estimates which it said were accurate documents. On 6 March this year the Premier was asked the following question by way of interjection in the other place by the member for Belmont -

Do you stand by the forward estimates you released during the election campaign?

The Premier replied, "Yes, we do."

It is interesting to look at the forward estimates to determine the social dividend with which the people of Western Australia will be provided. The key areas of government expenditure and social service are education, transport, training, police and health. I have used in my figures the implicit price deflator, which was provided during the election campaign, not the revised one. I have also used a percentage increase for the global wages under miscellaneous workers. I have endeavoured to factor as many increases as possible into the figures. The Premier, and no doubt the Minister for Finance, stand by these figures. At the end of the day what is the net effect in the reduction in funds to those departments? Bearing in mind that money from miscellaneous services is included in my calculations, and based on the Government's figures - and these are accumulative figures - over four years education will be \$141m worse off, transport will be \$74.1m worse off, training will be \$29.4m worse off, police will be \$124m worse off and health will be \$68m worse off. I reiterate that these amounts are based on the Government's figures.

That is the sort of social dividend this Government is providing and the responsibility it is taking for the people of Western Australia! It knew very well the difficulties in its budget circumstances. It knew that the growth of its revenue was below the growth factor. It knew the Commonwealth Government would take away from this State in the order of \$320m, yet it continued to say that it would provide the State with a \$1.9b social benefit for the pain sustained over the last four years. I suggest that the pain has not started.

Hon E.J. Charlton: Did you say \$1.9b?

Hon JOHN HALDEN: I was referring to an article in *The West Australian* dated 2 December 1996. The article is by Anne Burns and it states -

Premier Richard Court has promised West Australians a social dividend after a four-year crackdown on State finances.

A community payout from the \$1.9 billion reduction in State debt is the centrepiece -

I am sorry, I was wrong: There is no social dividend. In this case, the social dividend is negative. What we have is a reduction in core services which was planned and enunciated by this Government, but hidden in a particularly clever way. It was dressed up as something very different. In those five key areas the Government, on its figures, accumulatively proposes to spend \$437m less in its current term in office in real terms.

It is not appropriate for the Government to say, "We have found a little problem and things are very tight." Things were tight in the 1996-97 financial year and the Government knew that they would get tighter this and next financial year. It should not put on it the spin that it is the result of the nasty Federal Government. It may well be, but this Premier was a signatory to the deal in the knowledge that the State would have \$320m less in commonwealth funding over three years. It is hypocrisy to now put the spin doctors and press secretaries to work to try to find somebody else to blame! The Government knew how things were, but it deceived the public and attempted to distort the true financial position of this State because electorally that suited it. Now, as its term in office is in its early stages, the Government thinks it will run another story; that is, "We have a little problem. We are after the wallets of the taxpayers to fix the problem we created last year and build up a war chest for the next four years."

The Government has placed financial responsibility below electoral-political imperatives. However, the community is not stupid enough to think that the Government did not know these facts, because it did. It structured last year's Budget on them and, to use the Minister for Transport's words, it is the tightest Budget he has faced in five years. The results of that are made worse because last year the Government did nothing to address the \$100m shortfall that is now \$200m.

Hon Max Evans: What \$100m shortfall?

Hon JOHN HALDEN: In the finances provided by the Federal Government. As I was reading my figures earlier, I saw the Minister for Finance nod. I hope I do not have to go through them again. The \$100m last year was made up of \$60m financial assistance grants, \$30m specific purpose grants and the executive vehicle sales tax arrangement.

This Government cannot be hypocritical and say it now has a problem. The problem is of its own creation and its own efforts to manipulate the figures and the Press. At end of the day, the Government is responsible. The people of Western Australia cannot now be expected to plug the holes of this Government's political chicanery. The Government can do one of four things: It can increase existing taxes and charges; raise new taxes and charges, such as a gold royalty and others which could be on the agenda; reduce or abolish services; or sell more assets.

The Government has said in the Press - I presume it will continue to say it - that this is a result of this year's tight fiscal responsibility applied by the Federal Government. Perhaps the Government can explain how the document which I have, relating to the Treasury's timetabling of the Budget, and which was circulated to many departments, states that on 24 February Cabinet approved the Budget and Ministers and chief executive officers were told to advise of the final capital in the current Budget allocations. How, nearly one month before 21 March when the Premiers' Conference and Loan Council meeting was on, was the Government able to do that if it did not know within close terms the exact nature of the Budget and the reductions that would occur because of the federal allocations? I understand tomorrow, 26 March, the budget papers and Bills will be finalised. The Government knew on 24 February this year what the Budget would be. It knew what it would get. Now it comes out with absolute and outrageous humbug and says, "Oh, my goodness gracious; those nasty centralist conservatives in Canberra have done us a dirty deal." The Government knew prior to 24 February what would happen when the Premier went to Canberra. It was discussing the Budget between 10 and 14 February.

Hon E.J. Charlton: We knew last year.

Hon JOHN HALDEN: That is right, and it did nothing about it. That is what has made the hole bigger. I am glad the Minister for Transport admits the sin of incompetence. The Government admits it knew. It did nothing about it because it is incompetent.

HON MAX EVANS (North Metropolitan - Minister for Finance) [3.44 pm]: I have been waiting to hear how we are incompetent. I think we have been very competent in what we have done for four years.

Hon Bob Thomas: What did you know last year? Mr Charlton said he knew last year.

Hon MAX EVANS: We knew what it would be last year.

Hon Bob Thomas: You also said that the dams were full.

Hon MAX EVANS: Send him out of the House, please.

Let us get to the facts. The fact is that with competent management, we brought a Budget down on 30 June 1994 so that at least we knew where we were going in the next year. We did the same in 1995. In 1996, the Budget was passed before the end of June. The member referred to cutting down on capital expenditure. I did that so that we could start our new capital expenditure period on 1 July. In the old days, expenditure on new capital items could not begin until December. We then had underspending. The first time I ever heard the word was when Hon Joe Berinson said the former Government would pay off the Teachers Credit Society's debts, etc, through underspending. I said that was wonderful but asked where the Government would save. He said that the Government had not saved anything because it was not spending it this year, it was spending it next year. Cutting down on underspending has an impact on our Budget. It is far better financial management to get on with doing the new capital works. That was introduced last year when the Budget was passed by 1 July. We tried to do things properly in that regard. Hon Joe Berinson and previous Governments did not introduce Budgets before the end of June. I was told that I could not do it because it was impossible. However, we have done it for better financial management.

The former Government had a housekeeping account and a mortgage account - the consolidated revenue fund and the capital works fund. We have combined them. The former Government tried to balance the housekeeping account. It had a surplus of only \$13m over 10 years with \$9m of that being the funding of the parliamentary superannuation fund. That was paid in 1989. We brought them together and have had a balanced Budget. We had a surplus in each of the three years.

Hon John Halden asked what we knew last year. We knew last year what we would be up for this year, roughly. He referred to the figure of \$59.8m for last year. This year we knew it would be approximately \$60m. It had to be. We have already included that in the Budget.

Hon John Halden: You did not own up to that. You said you could manage that problem, and now you cannot manage it.

Hon MAX EVANS: I am telling the member the facts. Last year we brought our Budget into Parliament before we went to Canberra and were told what would happen. We then sweated a bit. This year we were able to put the shortfall in our Budget. The \$60m shortfall made it fairly tight. However, the other day we got hit on the specific purpose payments. We did not realise that the amount of payments had been dropped; there had been a 1.3 per cent discount. It works out at about \$15m. We did not do all the screaming. If the member had watched the television, he would have seen Hon Michael Egan from New South Wales doing all the political grandstanding. Pro rata, it meant about \$15m to us and about \$45m to him. That \$15m will have an effect, but we have a chance to change that in the Budget. In a \$6b Budget it is a quarter of 1 per cent. Last year we had to ask ourselves where we would make the changes to the system.

The member's comments about the Grants Commission were quite right. I have written a letter to all members of Parliament which states that the figure is \$543m and that this year it is \$208m. In other words, we get a large amount of money in the financial assistance grants. However, that has been discounted. It was \$34m in the first year and \$33m the next year. That is \$543m cumulative over four years. It is \$208m now and it will go up by that much more next year. That has been a helluva drain on the Government's finances. We have been subsidising Victoria. It is done on a formula going back over four years. It is brought forward a year at a time. We are still subsidising Victoria's gains and sale of assets, etc.

An amount of \$43m or \$44m in the Transperth budget came from the franchise on petrol. We have put that back into roads. We put \$11m in the first year, \$22m the second year, \$33m the third year and \$44m the fourth year. We have been subsidising roads to the tune of an extra \$110m, which are funds that have not come from the Federal Government. The amounts of \$543m and \$110m total \$653m.

The fringe benefits tax has gone up by \$8m or \$9m. It was interesting the other night when Hon Peter Costello indicated his surprise when he found out that we pay fringe benefits tax. I am now considering this because I refused to approve of the fringe benefits tax being paid on the legal costs of the royal commission. I do not believe we should pay fringe benefits tax. That eventually went to court and we got the money back.

We have worked very assiduously to operate within the Budget and keep the cover on it. I do not have any figures with me but the capital works budget has been well maintained over the years. In fact, by bringing the Budget forward, we spend more on capital works than has been spent in the past when Budgets were passed in October and November. I believe that is a big plus.

We will also help the system by bringing in net appropriations in the second year. Many departments can work to earn more money and keep it, whereas before the extra revenue went to the Treasury Department and departments lost the incentive to raise money. They borrowed it or used their capital funds to generate more revenue. It can be done. It has worked well in Agriculture Western Australia, the Department of Marine and Harbours, the Department of Conservation and Land Management, and the Valuer General's Office, and that has helped to provide a better service to the public.

Some people ask how we can bring down a Budget in April and hope to pass it before the end of June. It is the most natural thing to have a Budget brought down before then. It would be incompetent and irresponsible to bring down a Budget after 30 June because the financial year would have already started. A Budget is a guide to how the year will go. There are no certainties about business finances. One could talk about the quarterly figures, but it is not easy because revenue is not a consistent commodity. We collect land tax in a lump sum, but revenue is raised in many areas at many different times.

Another problem is royalties. We must consider that factor, just as we must consider the exchange rate. I think movement of about 1 per cent in the exchange rate can cost \$12m in royalties. Other factors are stamp duty and real estate. In other States the talk is that real estate is taking off to a greater degree than it is in Western Australia. Perhaps those other States are being hopeful. If the real estate market does take off, perhaps we could pick up another \$10m or \$20m in stamp duty.

Payroll tax has been a growth tax. We have provided more exemptions, and we have cleared up the anomalies in that area. However, with an additional 116 000 people employed in this State since we took government, many of those people are working for firms which must pay payroll tax.

I turn now to the comments by the Premier following the 1997 Premiers' Conference which read -

The Premiers' Conference last Friday was most disappointing. The Commonwealth foreshadowed further cuts to state funding which will have important implications for Western Australia's finances. The cuts will place further pressure on the State to look to its own revenue sources and to ensure government is best organised to deliver services in the most efficient manner.

Until the question of wider taxation reform is addressed in this country, the State will remain heavily reliant on commonwealth funding. About 37% of State Budget revenues come from the Commonwealth. But it is a revenue source which is constantly under threat. We are becoming used to cuts from Canberra both in terms of the reduced commonwealth funding pool available to all States and Western Australia's declining share of the pool as determined by the Grants Commission. Despite this, all States pledged last year to make a substantial contribution - \$1.6 billion over three years - to help fix the Commonwealth Budget black hole. These cuts in commonwealth funding have already been built into our forward estimates for the State Budget. However, the outcome from the Premiers' Conference on Friday has added significantly to our task of framing a responsible State Budget.

The States went to the Premiers' Conference prepared to honour their earlier commitment to help reduce the Commonwealth deficit. They were also ready to bear the cuts imposed by the Commonwealth last year. Unfortunately, the Commonwealth did not enter this spirit of co-operation and on Friday it foreshadowed a further 1.3% cut in special purpose payments (SPP'S) to the States in 1997-98. This is on top of the SPP cuts the Commonwealth imposed in its last Budget which are already included in Commonwealth forward estimates for 1997-98 and beyond.

The 1.3% cut in SPP'S proposed by the Commonwealth means an additional cut of \$139 million to all States with our share being around \$15 million in 1997-98. It brings the total decline, in real terms, in SPP'S to the States to \$400 million in 1997-98.

We are now faced with the daunting prospect of finding ways to manage this new Commonwealth funding shortfall. The Commonwealth will not provide us details of which areas will be affected by the extra \$15 million cut until after the Commonwealth Budget is handed down on May 13.

The forthcoming State Budget therefore will have to be prepared on the basis of the current Commonwealth forward estimates. If the Federal Government is not prepared to negotiate, and further cuts are in its Budget, we will have to reassess the continued delivery of federal programs.

It is inevitable the latest Commonwealth funding cuts will place greater pressure on the State to increase its own limited revenue-raising capacity. The cuts also mean we will need to look even more closely at the structure of State Government operations to ensure that services are being delivered as efficiently as

possible. This would include machinery of government changes, some of which will be announced in the State Budget.

HON MARK NEVILL (Mining and Pastoral) [4.03 pm]: Without doubt, a fiscal imbalance exists between the Federal Government and the States, and currently the federal system is grossly inefficient. We have a conservative Federal Government, and five of the six States are also controlled by conservative Governments; yet very little, if any, action has been taken to address the problem. During the last federal election campaign, the Prime Minister made a commitment to wind back the Commonwealth's presence in the service area, and said that efforts would be increased in the States. I refer here to health, education and police - areas in which the State delivers services better and in which there is massive duplication. For the past 10 years we have been told that there is a potential for savings. However, no attempt has been made to remove that duplication of services provided by the Federal Government and the States.

In the health arena we have returned to the quagmire with arguments about Medicare, and child immunisation has become the responsibility of the States. That is about all that has happened, and one wonders whether those actions have been very successful. I am not aware of any significant changes in our education system.

I have no doubt that the States are double dipping with health grants from the Commonwealth Government.

Hon Max Evans: That usually means that the States do not get any more than they deserve.

Hon MARK NEVILL: The pathology section of the Health Department receives funds from the Federal Government, which it should not receive. Half of that money is given to the pathologists to keep them quiet. Dr Michael Wooldridge has complained about that, and for good reason. In many cases, States are receiving money without good reason, or receiving it when they should not receive it. That is within a framework where the imbalance is such that the States are not getting enough money to provide those services, and pressure points are developing in the system.

In this State our revenue is coming from the "sin taxes" which are placed on the real battlers, the people who are supposed to be assisted by the Federal Government. They are the people who are paying extra taxes on gambling, tobacco and alcohol which are disproportionately paid by lower income groups. Those are the taxes which have been increasing in recent years.

Over the past two or three years, the Government has been chiselling away at the tax base and providing benefits to perhaps not undeserving people but definitely the higher income groups. I refer here to land tax and stamp duty concessions, and so on, and a number of Bills have been passed in this place in that regard. I do not say that is not justified. However, the net effect is to lower the tax take from those who can more easily afford it and invariably the burden is felt by the lower income groups.

The Federal Government has been a very poor performer. Since 1982 or 1983 federal government outlays have increased by 2 per cent in real terms, which is something like \$20b; whereas the States' outlays have decreased by a similar amount, and we have felt the continual squeeze. The last federal Budget contained an incompetent proposal regarding superannuation. I am a member of the Parliamentary Superannuation Board, and I recall discussing the federal government proposal shortly after the Budget was handed down. The unanimous view was that it would not work, and that nowhere near the amount expected would be collected. The cost of administering the proposal would consume a vast amount of the money to be collected, and it would be difficult to collect because, as it was not a new tax, the insurance companies would be made to collect it. Our predictions have come to pass; it was bad policy, and it was policy making on the run. It has left a \$1.5b gap in the Federal Government's budget estimates. It is about time the Commonwealth got its act together and the Prime Minister showed a bit of leadership. The Prime Minister is revealing that he is what I thought he was - a do nothing Prime Minister, a status quo Prime Minister. There have been no significant changes at a federal level. There have been no radical industrial relations changes; any changes have just been changes at the margin. The Federal Government is a do nothing Government, and if the States do not put a bit of pressure on it through their federal members, federal-state finances will deteriorate even further.

There is no prospect of this State Government's living up to the commitment that it made to the people of Western Australia five years ago to abolish payroll tax. Five years ago, payroll tax collections amounted to about \$500m a year. They are now well over \$600m a year. There is no way that the State could abolish payroll tax, because it would be penalised by the Grants Commission for having forgone that revenue. The State Government has had three years to sort out that matter. The truth is that it cannot sort it out, and it will not sort it out unless there is a complete reappraisal of the federal taxation system.

Our do nothing Prime Minister has said that there will be no major tax change in the first three years of his term. That is not leadership. At least the former Prime Minister, Paul Keating, was prepared to take on groups and do things. We might not have always agreed with him, but he certainly could not have been accused for most of his political career of being a do nothing Prime Minister.

Hon N.F. Moore: Would you go along with a GST?

Hon Bob Thomas: No we would not.

Hon N.F. Moore: I asked Hon Mark Nevill.

Hon MARK NEVILL: I have an open mind. There should be a complete overhaul of the taxation system. I have an open mind on everything except the gold royalty. Most of my opinions are based on good sense, as Hon Norman Moore would be well aware.

Hon N.F. Moore: And also on where you live.

Hon MARK NEVILL: The Minister for Finance said he had done the Grants Commission figures for the past four years. He should do the Grants Commission figures for the past 15 years, because the diminishing grants from the commission have been a problem not just over recent years but for a long time. The rationale for decreasing grants to this State can be found at page 33 of the Commonwealth Grants Commission Report on General Revenue Grant Relativities 1996 Update, which states -

Western Australia's exceptional economic growth has been reflected in its relative capacity to raise revenue. No other State has so consistent a pattern of above average economic growth between 1989-90 and 1994-95, whether in gross State product, wages and salaries, capital investment, retail turnover, mining production, commercial and residential property values or motor vehicle registrations. All this has led to reduced grants.

This gives the lie to the argument that something was dramatically wrong with the economy in 1989.

HON KIM CHANCE (Agricultural) [4.13 pm]: Hon John Halden did not say that commonwealth-state funding arrangements do not face a difficulty, because we are of one mind about the fact that a difficulty exists, and Hon John Halden was probably more sympathetic to the State Government's management than he needed to be. He said that when the State Government said there were no real problems in the State's financial situation as a consequence of those changes in the commonwealth-state funding arrangements, the State Government knew that there was a problem but did not admit it.

Hon John Halden: Hon Eric Charlton admitted that a moment ago.

Hon KIM CHANCE: Quite. I think we all remember the Premier's wonderfully optimistic statement that, "The dams are full, the crops are good, God is in his heaven and all is right with the world" - I might be paraphrasing a little. Even though that made all of us who did not know what the truth was feel good for a time -

Hon George Cash: Who said that?

Hon KIM CHANCE: I think it was the Premier, Hon Richard Court.

Hon George Cash: Was it Dowding, Burke, Lawrence or Court? They all said it.

Hon KIM CHANCE: I knew it was not original! I knew it was too good a statement to be an original statement from this Premier! Nonetheless, it was a wonderfully optimistic statement. The problem was that, despite the happiness that statement could bring to people, it was not true, and the Premier knew it was not true. Not only were the dark clouds gathering on the horizon, but also it was starting to rain in Treasury, yet he was telling us in public, and the Minister for Finance was telling us in this place, that we were not facing a problem with the next Budget as a result of the unfortunate changes in the commonwealth-state funding arrangement.

They did not want to tell us why - not because they wanted us to feel happy, having put us in this wonderful mood about God, the dams and the crops, but because they were facing an election. It was as base as that. They did not want to go into an election campaign admitting that they would have to increase those factors which increase state revenue. They did not want to let us know that they would increase taxes and charges. They certainly did not want to let us know that they were considering a gold levy. They certainly did not want us to know that during the Kalgoorlie by-election. I remember how silent the coalition was on that subject. It was worse than silent; it was positively negative about a gold levy. What happened after that?

Hon N.F. Moore: No decision has been made.

Hon KIM CHANCE: That is what was said at the time. We all know it was on the agenda then. The Premier and the Minister for Resources Development have said in the other place that it was not on the agenda. Of course it was on the agenda. Whether it was formally in the Cabinet minutes is another matter, but we all know that Cabinet minutes do not always reflect the facts.

Hon N.F. Moore: If you looked back in history you would find it has been looked at by Treasury for the past 100 years, every year.

Hon Bob Thomas: Is that why we cannot get a briefing from Treasury?

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! Perhaps Hon Kim Chance could be given the chance to continue his speech.

Hon KIM CHANCE: That is very generous of you, Mr Deputy President.

The facts are reflected clearly in the forward estimates. We will see \$437m less spending in real terms.

Hon John Halden: In just five areas.

Hon KIM CHANCE: I certainly will not be the one to castigate this State Government for the failure which has occurred in commonwealth-state funding arrangements, because it is not its fault, or certainly not entirely its fault. However, it is its fault that it did not tell us and that it denied that there would be tax increases as a result of what it knew already to be the fact. The Minister for Finance referred by interjection to the commonwealth Budget's black hole - the \$8b shortfall which was said to be lurking behind the Howard Government's capacity to honour its promises. In fact, the \$8b shortfall is a myth. We talk about it, but everyone knows it is a myth. Everybody knows that any new incoming Commonwealth Government can, with a Budget the size of the Commonwealth's Budget, produce a figure of around \$8b any time it likes simply by fiddling with the positive and negative ends of the growth figures. The Minister for Finance would be the first to agree that in any Budget, both Governments and Oppositions can rely on what are the best bet figures.

However, if the \$8b black hole was a myth, what about the real black hole; because there is a real black hole in the Commonwealth's Budget. That black hole represents the difference between what the present Federal Government knew it could deliver and what it promised it could deliver: The difficulty we are facing here is the difference between the funded and unfunded promises of the Howard Government. The Howard Government has effectively said to the States, "You will foot this bill, because there is nothing you can do about it." That is the problem faced by the Premier, the Treasurer and the Minister for Finance.

I was pleased that the Minister for Transport advised the House by interjection that the Government knew of the situation last year, and he supported it. Why was it that last year, whenever the Opposition put the question of how the Government would fund a shortfall of \$30m or \$60m - I remember Hon John Halden asking the questions - we were told not to worry about it? We asked the Government how it would fund the then sales tax issue. We did not know exactly what the bill would be because the variables were pretty wide - we thought \$10m, which was not a bad guess. We were told not to worry, that there was a bit of slippage in the capital works program and all would be well. All was not going to be well, because we knew growth estimates in Western Australia were going down, not up. We know, because of the dynamics of the state Budget, that we do not gain in a financial sense from growth anywhere near as directly as the Commonwealth does; although our expenditure grows in direct correlation to our growth.

We have a problem with commonwealth-state funding, and one of the reasons that the Opposition's view on this motion has been relatively mild is that both the Opposition and the Government share the problem that is called vertical fiscal imbalance, or some similar indigestible and unpronounceable term. It is a major problem for federation in Australia and we need to fix it. We have a structural problem with the federation that is getting worse and will continue to get worse.

It has already been mentioned by interjection that a goods and services tax has been proposed by both a former Labor Treasurer and a former coalition Opposition. In a quiet moment, when we look at the outcomes from the GST, we realise it is not a solution, although some kind of broad based tax might be. However, the GST is merely shifting the tax load from middle income taxpayers to the poorest. That is the only outcome. Malcolm Fraser got at least one thing right when he said there are no free lunches in this world. If somebody gets a free ride, or a tax break from the GST, somebody else must pay for it. Unfortunately, without some kind of threshold system the poorest will always pay more than their fair share. We recognise that we share a problem. What may help us to find a solution to the problem will be a bit more frankness from members opposite.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.23 pm]: I am left asking the question: What does this Government have in common with a clutch of drag queens? My answer is that they both represent a massive fraud. This Government tries to present itself as a bunch of men in suits who are fiscally responsible, who are good economic managers, and who are presenting sound economic arguments in the management of their budgets and annual servicing of people in Western Australia. In fact, the Government is closer to a group of Fagan's thieves. It is a group of people who present themselves as sound economic managers, and who, in the lead-up to the election,

presented themselves as though they would deliver the social dividend. Instead of that they are coming for our wallets like a bunch of pickpockets, like Fagan's thieves masquerading in suits.

Hon N.F. Moore: It would have been better for Mr Halden to stand up instead of your making this speech; at least he makes sense.

Hon TOM STEPHENS: Instead of sound economic management the Government is coming to us with the GST, the financial penalty of the gold royalty and a reduction in government services. What we have ringing in our ears are the pre-election commitments that members opposite made. They indicated that Western Australia would not receive anything but the delivery of a social dividend.

In another part of the Westminster world right now a consequence is being played out for a Government that made pre-election commitments and then engaged in activities that represented a fraud on its populace, the Cabinet, and its allies. The Prime Minister, the head of government of that country, is under enormous pressure to stand down because of what essentially is a lie. What is the difference between this Government's behaviour and that of the Government in which the Prime Minister is being forced to consider resignation? There is not much difference! Our Government dressed itself up as intending to do one thing, and as soon as it was elected it chose to do another. I call on this Government to do the right thing.

Hon Max Evans: You don't recognise good management when you see it.

Hon TOM STEPHENS: That is, to get some of its members to resign. That will create some by-elections, so the Government will once again face the electorate. That will create the opportunity for people to cast judgment on this Government stripped of its disguise.

HON JOHN HALDEN (South Metropolitan) [4.26 pm]: I am delighted that the Minister for Transport and the Minister for Finance have, some 10 months after the event, now conceded that they knew there would be a problem. That was not the picture that was painted for the Opposition 10 months ago. We were told that the Government could manage the problem, that it was the greatest financial manager in the world -

Hon Max Evans: In Western Australia.

Hon JOHN HALDEN: - and that it would provide a social dividend. We were told, "Don't worry, leave it to us. We know best." We now know, principally from the wonderfully enlightened interjection by the Minister for Transport, that the Government knew then and now that was not going to be the case.

Hon N.F. Moore: I do not think he quite said that.

Hon JOHN HALDEN: I thank the Minister for Transport for his belated honesty in this matter. I also thank the Minister for Finance for saying that he had factored into the forward estimates the expected reductions in federal revenue.

Hon Max Evans: Not in the last year; next year it is \$30m plus specific purpose payments.

Hon JOHN HALDEN: Is it any wonder that we see the anticipated real decrease in funding to education, transport, training, police and health? On the Government's own figures Western Australia will be worse off cumulatively over four years in education by \$142m; health, \$68m; transport, \$74m; training, \$29m; and police, \$123m. Of course, there are implicit price deflators that will decrease that marginally.

The Government said one thing to the public of Western Australia, but in its own financial systems and documents it said something very different. It played out the hoodwink and has now been caught.

(Motion lapsed, pursuant to Standing Order No 72.)

ADDRESS-IN-REPLY

Motion

Resumed from 20 March.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [4.29 pm]: It is customary at the end of the Address-in-Reply debate for the Leader of the House to sum up and indicate to members who have spoken in the debate that their concerns will be referred to the appropriate Ministers for consideration. That will happen on this occasion. A number of issues were raised by members and it is important during this debate for them to raise issues which are important to them and their constituents and for the Government to respond accordingly.

I will speak about some matters in relatively general terms because of the tone of the Address-in-Reply debate on this occasion. Listening to members of the Australian Labor Party one would get the impression that somehow or other they won the election. They certainly believe they won the campaign and the people of Western Australia are essentially stupid and made a massive mistake by re-electing the current Government. They also gave the impression that this is the worst Government ever elected in the history of Western Australia. Part of the reason I have that impression from members opposite is the way in which they from time to time go over the top. I regret the speech just made by the Leader of the Opposition because it indicates he has the capacity to go way over the top and make ridiculous statements. They are perhaps destined for "Inside Cover", but nowhere else where any real news is reported. It is a pity that on some occasions that over the top approach was adopted because it does not reflect the result of the election or the state of affairs in Western Australia. Before I talk about the last election result, I remind members opposite once and for all that they did not do well in that election. The suggestion that they somehow won the campaign has no validity whatsoever.

I have a concern about the standing orders, and I hope the Standing Orders Committee will look into the question of amendments moved to motions, including those in the Address-in-Reply debate. When an amendment is moved to the Address-in-Reply any member who speaks to that amendment loses the right to speak on the substantive motion. In the debate this year an amendment was moved to the Address-in-Reply and I had the choice on that occasion of responding to the amendment, thereby forgoing the right to speak on the substantive motion, or not speaking on the amendment and then speaking on the substantive motion as I am now. That put me at a disadvantage, particularly as a person who has spoken on the substantive motion may then speak on an amendment to that motion. The same thing happened the other day on the gold royalty motion. An amendment was moved and it was suggested by one of the members opposite that I should speak on that amendment. However, I wanted to speak on the motion and had I spoken on the amendment, I would not have been allowed to speak on the substantive motion.

Hon Bob Thomas: We would give you leave to speak on both.

Hon N.F. MOORE: Opposition members might have on that occasion, but perhaps not every time. Some consideration must be given to the standing orders, which currently disadvantage those members who have not spoken on the motion before an amendment is moved. I suggest that they should be considered and improved upon. On two occasions recently I have been disadvantaged by not being able to speak on the amendment because I wanted to retain the right to speak on the substantive motion.

Hon Kim Chance: We were all disadvantaged by your inability to contribute.

Hon N.F. MOORE: Hon Kim Chance is very perceptive. It is important for members opposite to appreciate the results of the election recently held in Western Australia. When this Government came to office in 1993 it received a large vote - 55.45 per cent of a two party preferred vote. It was a significant victory but did not result in a large majority of seats. People have commented on the reasons for that, but they are largely a result of the redistribution of seats at the time. It is fair to say that when a Government receives that sort of vote, in the following election it cannot expect to do much better in two party terms. That result is at the extreme of a landslide in Western Australian political history.

In 1986 when the Burke Government was riding high in the polls, Brian Burke was the best new leader in the world - as he described himself at the time - and the media could see no wrong in the Government, the ALP did not improve its position markedly at all. It won one seat at the election and lost one, with the end result being the same. Even at that time, when the Labor Government was riding high, it did not receive a much better result than it had at the previous election.

Before the latest election this Government anticipated the same could happen to it. Following the redistribution, since 1993 the Government has had six ultra-marginal Liberal seats in the Legislative Assembly and with a 2 per cent swing against the Government it could have lost office. There is no dispute about that.

Hon Tom Stephens: Is this the excuse for misleading the community?

Hon N.F. MOORE: I will remind the member as often as I can how well his party has done and why there are so few of his members in this House.

The Government went into the last election with the scenario of six ultra-marginal seats in the Legislative Assembly. It was on the cards that the ALP would make inroads into the Government's position because the Government had been forced to make tough decisions in the previous four years to straighten out the State's finances. It had made hard decisions in a number of areas, and that often leads to a Government losing some support. The Government's absolute majority after the 1996 election in the Legislative Assembly increased from seven to 13. The number of ALP members in the Legislative Assembly, which has 57 seats, fell from 24 to 19. It is the worst result for the ALP since 1917. The reason for that bad result in 1917 was the conscription issue. Members opposite did not have that

excuse in 1996 although they claim they won the campaign but lost the battle. The ALP has the smallest number of members in the Legislative Assembly that it has had since 1917 and yet in this House, not two months after the election, its members are throwing invective across the Chamber and carrying on as though this Government has done nothing right for the State. They suggest that somehow or other the Opposition is the font of all knowledge and has the answers to all the problems.

Hon Tom Stephens: You are reading my speech. This is what I said.

Hon N.F. MOORE: I know, but from listening to the Leader of the Opposition's speech it does not seem as though the meaning has sunk in. It was as though somebody had written the speech for the Leader of the Opposition. In the second half of his speech he said how terrible the Government was.

Hon Tom Stephens: You are a fraud. At least we are not frauds on this side.

Hon N.F. MOORE: Mr Deputy President, do I have to put up with that kind of description? I do not know whether it is parliamentary.

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! The Leader of the House has a point and I suggest that the Leader of the Opposition should temper his language and make it more parliamentary.

Hon N.F. MOORE: The Liberal Party held all its marginal seats, including Ballajura, which was very marginal, even though the Labor Party ran a pale blue shade of an ALP candidate dressed up like a Liberal. He gave the impression that he did not belong to the Labor Party at all and was a good local mayor.

Hon Graham Edwards: He was a good candidate.

Hon N.F. MOORE: A very good candidate, but he was not a very good Labor candidate. He lost the seat.

Hon Graham Edwards: There is no reason to rubbish him.

Hon N.F. MOORE: I am not rubbing him. I am rubbing the ALP strategy, which was to try to sell him as a Liberal.

Hon Kim Chance: That is rubbing him.

Hon N.F. MOORE: It did not work on that occasion because the electorate saw right through the ALP.

Several members interjected.

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! The Leader of the Government has the floor.

Hon N.F. MOORE: We held all the seats which would have been lost with a 2 per cent swing against the Government.

An amendment moved to the Address-in-Reply referred to the Government "failing to address the needs of regional Western Australia", so let us consider how well the Labor Party did at the election in regional and rural Western Australia.

For the first time in over 90 years, the Australian Labor Party has no members in the Legislative Assembly in seats south of Rockingham. Mr Marlborough in Peel is the most southerly ALP member.

Hon Graham Edwards: A very good member he is too!

Hon N.F. MOORE: Well, he won his seat, which makes him pretty rare!

Hon Graham Edwards: We have Mr Bob Thomas.

Hon N.F. MOORE: We have the situation of no ALP members from the south west at all.

Hon Bob Thomas: In the Legislative Assembly.

Hon N.F. MOORE: I am talking about the Legislative Assembly, and I will come to the Legislative Council in a minute - that is another story.

Hon Tom Stephens: You lost control of it because people did not trust you at all.

Hon N.F. MOORE: We still have 17 members, and if it were not for a quirk of the voting system in this House we would still have control of the place. The Leader of the Opposition should not carry on about how well the ALP did in the election.

Let us consider some of the ALP's safe seats in regional and rural Western Australia. Kalgoorlie has been one of its safest seats - it did not have a Liberal candidate a few years ago - and it is now a marginal seat, as the Liberal Party received 46 per cent of the two party preferred vote in Kalgoorlie. It was a very good result.

A former ALP member stood in Kimberley, and the Labor Party had somebody stand as a so-called independent Labor member because it did not want to upset Mr Bridge. It was known that Mr Bridge would do very well.

Hon Graham Edwards: You're living in the past.

Hon N.F. MOORE: He left members opposite in the lurch. What happened? In the two party preferred vote, the Liberal Party did better than the Labor Party's endorsed candidate. We received over 50 per cent of the two party preferred vote if one takes into account the "endorsed" ALP candidate and David Parker.

I turn now to the real crunch for the Labor Party. I hope Hon Tom Helm is listening to this very important point: I heard him and his colleagues speak about industrial relations the other day as he moved his amendment to the Address-in-Reply; he referred to "maintaining a strategy in industrial relations which continues to attack the interests of Western Australian workers". In that respect, let us consider Burrup, which was formerly a very secure Labor stronghold as a unionised part of Western Australia. We saw an overall swing of 10 per cent to the Liberal candidate, and some of the boxes in the area were very interesting: A 6.4 per cent swing resulted in Karratha; Dampier had a 10.6 per cent swing; Paraburdoo, a 16.8 per cent swing, and Tom Price - a great place - had a 24.5 per cent swing, all to the Liberal Party!

The Liberal Party won the Tom Price box for the first time since 1977, yet members opposite are telling us that a 10 per cent swing to the Government somehow reflects a mood against our industrial relations policy. Goodness me! Members opposite cannot feed that rubbish to the people of Western Australia and expect them to believe it.

Hon Tom Helm: Why did you not tell the truth about IR?

Hon N.F. MOORE: Let us move to the next seat of Ningaloo, as Hon Tom Helm has his electoral office in Newman to look after the interests of the unions and the ALP in the area. What happened? Newman experienced a swing of 12.8 per cent to the Liberal Party -

Hon Tom Helm: You did not tell the truth.

Hon N.F. MOORE: The member can make that claim, yet he spent all his time telling people about our industrial relations package. I knocked on doors where people said "I do not like your industrial relations; Mr Helm told us it was no good." However, Newman had a 12.8 per cent swing to the Liberal Party.

Several members interjected.

Hon N.F. MOORE: Is the member saying that the people are stupid?

Hon Tom Helm: No; that you tell lies.

Hon N.F. MOORE: Is the member saying that people are stupid and cannot tell the difference between the truth and a lie?

Several members interjected.

The DEPUTY PRESIDENT: Order!

Hon N.F. MOORE: The Opposition continues to denigrate the Western Australian voters because they will not vote for it.

Several members interjected.

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! If Hon Graham Edwards and Hon P.H. Lockyer continued their conversation outside the Chamber, the Leader of the Government could continue his address.

Hon N.F. MOORE: An amendment was moved to the Address-in-Reply criticising the Government for its industrial relations policy, which has had the most significant impact in areas like the Pilbara. However, massive swings to the Liberal Party occurred in boxes within the seats of Burrup and Ningaloo. The 25 per cent swing to the Liberal Party at Tom Price is a massive repudiation of the Opposition's industrial relations position and a massive demonstration of support for the Government's current system. It is as simple as that. Hon Tom Helm should rethink his attitude to people in that electorate. The massive swing to the Liberal Party in Newman of 12.8 per cent and of 25 per cent in Tom Price is not bad for a Government which supposedly introduced industrial relations legislation which will disadvantage the member's constituents. In fact, they like the legislation.

Let us consider other seats around the State where the Labor Party expected to receive support. Traditionally, the ALP has support from battlers and people on low incomes, whom members opposite claim to represent.

Hon Kim Chance: We did not hear about the Pilbara.

Hon N.F. MOORE: The Labor Party won Pilbara.

Hon Kim Chance: We won it very well.

Hon N.F. MOORE: Of course. I will explain that seat to the member one of these days.

Hon Kim Chance: Do Pilbara, Eyre and the like not count?

Hon N.F. MOORE: I am talking about the industrial relations policy of members opposite which applies particularly to the towns of Karratha, Dampier, Tom Price, Newman and Paraburdoo, and to a lesser extent to Port Hedland for other reasons. The seat of Pilbara now extends to Halls Creek, of all place, as a result of the dopey situation arising from the last electoral redistribution.

The Liberal Party received a swing to it of 3 per cent in the seat of Mitchell. Let us consider the boxes. In Carey Park, not at all a Liberal part of the world, we received a swing to the Government of 7.6 per cent; in Bunbury we had a 4.9 per cent swing; and in Withers, a Homeswest area, we received a 6.4 per cent swing.

Hon Bob Thomas: You were out-pollled two to one in Carey Park; does that make you popular?

Hon N.F. MOORE: We had a swing of 7.6 per cent towards us, and that is how one measures how one is doing in electoral terms.

Hon Graham Edwards interjected.

Hon N.F. MOORE: So what? We won the previously Labor seat, which is a pretty good demonstration of electoral success. We had a swing of 3 per cent across the seat and in Carey Park - where the Labor Party would expect to do well - we had a 7.6 per cent swing to the Liberal Party.

Hon Bob Thomas: We did well. We won 64 per cent before the two party preferred vote.

Hon N.F. MOORE: These guys opposite can convince themselves, despite having the worst result in history, that they won the campaign!

Hon Tom Stephens: And you lost control of this place.

Hon N.F. MOORE: Let us look at Dawesville.

Several members interjected.

The DEPUTY PRESIDENT: Order! Hon Bob Thomas will come to order.

Hon N.F. MOORE: In Dawesville, the Government secured a swing of 8.6 per cent to it in Coodanup, an area not considered to be a blue ribbon Liberal area. Ten years ago Labor was winning 60 per cent of the vote in the electorate of the Speaker, Mr Strickland, yet it now is a seat held by the Liberal Party. Iain MacLean is a former member of this House.

Hon Graham Edwards: The only time he was seen in the campaign was when he was let out on a leash with Cheryl Edwardes.

Hon N.F. MOORE: It is interesting that the member talks like that about one of our former colleagues in this House who won a seat which members opposite thought they would win. I heard members opposite say that the Liberal Party had no hope in the world of winning Wanneroo. The member showed that he can do the job on the ground as he won the seat. That is what happened. He beat members opposite. In fact, he achieved a 4 per cent swing towards him in the toughest suburb - Marangaroo. That was at a time when the Liberal Party had been in Government for four years and had made some hard decisions. We expected a backlash, but our support increased in the Labor Party's traditional seats. Members opposite should not forget that. They should not still believe that they represent the interests of the battlers in this country, because they do not: They represent the silvertail academics of the world; the chardonnay socialists we see sitting in this House. They do not represent the working class and the people who battle. These figures demonstrate very clearly that they do not represent whom they think they represent; the traditional Labor Party supporters are voting for us in droves, as they demonstrated in the last election.

Several members interjected.

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! I have already asked Hon Graham Edwards to come to order. I think he knows the consequences of not doing so.

Hon N.F. MOORE: In the Legislative Council -

Hon Tom Stephens: Where you lost.

Hon N.F. MOORE: As a coalition, we won 17 seats. The other parties - the ALP and the other two minority parties, the Democrats and the Greens - won 17 seats. The Labor Party won 12 seats out of 34 and its members criticise us. It has almost taken on minority party proportions. It won 19 of 57 seats in the Legislative Assembly and 12 of 34 seats in this House. It will be vying with the Democrats and the Greens to see who has the lowest number of seats. The Liberal and National Parties won 17 seats in this House and members of the Labor Party are claiming victory. I cannot work that out; it just does not make any sense.

Hon Kim Chance: It was not a win for you.

Hon N.F. MOORE: If it were not necessary for the Government to consider filling the President's chair, and if a member opposite decided he or she would like to be the President, then it would have the numbers to do the things it wants to do.

Hon E.J. Charlton: They have been waiting for the presidency for 100 years and the first chance they get they don't want it.

Several members interjected.

Hon N.F. MOORE: I sat on the opposition benches in this House when the Liberal Party had the numbers and the Labor Party was in Government. At that time Hon Joe Berinson said that the Legislative Council could not have any money because it was illegitimate. It was illegitimate because the Government did not have a majority.

Hon Tom Stephens: He said no such thing.

Hon N.F. MOORE: He said it was malapportioned. The Opposition had the numbers not the Government, so no money should be spent on the committee system.

Hon Tom Stephens: He said no such thing.

Hon N.F. MOORE: Members opposite worked on the basis that because they did not have the numbers in the upper House somehow the system was illegitimate. Now they think that, because they might have the numbers with the support of the other two parties - and I warn them that that will not always be the case - it is legitimate. We should now go ahead with this wonderful new House of Review because members opposite think they will have the numbers on the odd occasion. It is extraordinary. We hear incredible hypocrisy in this place from time to time from members on the other side.

The coalition parties in the Legislative Council won 46 per cent of the vote and the Labor Party won 33 per cent. It was the collapse of the Labor Party's vote that led to the minority parties getting the numbers in the House. Their incapacity to win support means that this House will finally have minor party members.

Hon Bob Thomas: I thought you lost the north metropolitan province.

Hon N.F. MOORE: We did. Interestingly, we lost in that area because the Labor Party's vote was so low that it enabled a minor party to win.

Several members interjected.

Hon N.F. MOORE: That is exactly what happened. Members opposite should have a good hard look at where the preferences went.

Hon J.A. Cowdell interjected.

Hon E.J. Charlton: Last time you messed up the ticket and this time they would not vote for you.

Hon N.F. MOORE: The Labor Party could not get a how-to-vote card right last time and this time it could not attract any votes. That is how it all worked out. As Hon Tom Stephens said: The Labor Party has a long way to go. I will give members opposite a little advice -

Several members interjected.

Hon N.F. MOORE: That is what they said last time. The Government won 55 per cent of the vote last time and 55 per cent this time. Our support did not decline at all. The Labor Party should start being a little more positive.

Members opposite are the biggest whingers and the most negative people I have ever met. They have spent the past four years whingeing and we have been back in this place for only one month and they have spent all of that time whingeing. They have told the House they did not lose the election; it was some sort of aberration -

Hon Tom Stephens: That is not true; we did badly.

Hon N.F. MOORE: But they won the campaign.

Hon Tom Stephens: We did not tell fibs.

Hon N.F. MOORE: The Leader of the Opposition would have us believe that if the Labor Party had not changed leaders it would not have won any seats. It won the smallest number of seats since 1917 only because it changed leaders, but it won the war!

Hon E.J. Charlton: But they do not all believe that: The Left does not believe that.

Hon N.F. MOORE: I do not know what they believe. Some of them are not here. Perhaps they are not supporting their new leader. We will find out in due course how the system works. My advice for members opposite - for what it is worth and I am sure that they will not take it - is that they must be more positive.

Hon Tom Stephens: That is rich, coming from you.

Hon N.F. MOORE: They should stop whingeing and complaining all the time and start saying what they would do. People are sick of hearing from them.

Hon Tom Stephens: The Government had to hide Hon Mr Moore.

The DEPUTY PRESIDENT: If the leader were allowed to continue we would get the answer we are looking for.

Hon N.F. MOORE: Hon Jim Scott criticised the Government for not introducing electoral reform in this session. We have been back in the House for only two weeks and somehow that represents a failure to honour a pre-election pledge. If the member would like, and with the numbers as they are now, perhaps we should try something.

Hon Tom Stephens: We are ready.

Hon N.F. MOORE: What is Hon Tom Stephens prepared to do? He is not prepared to do the wrong thing by the Greens.

Several members interjected.

Hon N.F. MOORE: I listened to Hon Kim Chance's speech the other day about one-vote-one-value. It sounded like heresy. He was saying that he would support the principle of one-vote-one-value as long as it did not disadvantage his constituents.

Hon Kim Chance: What would you expect me to say?

Hon N.F. MOORE: That is what I, Hon Eric Charlton and the country shires have been saying, but the honourable member's mates are not saying that. Hon Mr Cowdell is not saying that; he is saying that we should have one-vote-one-value regardless of anything else and that there should be no variations.

Hon Kim Chance: I was talking about resources for members; all my colleagues agree.

Hon N.F. MOORE: I listened to his speech very carefully. We should distribute it to his colleagues so that they can see what he is saying. Perhaps he will say it very loudly at some time and stand up for country voters by saying that perhaps there is a good argument for some weighting.

Hon Kim Chance interjected.

Hon N.F. MOORE: I am pleased about that. Reference has been made to the gold royalty. The Government has not made a decision on that issue but it has been accused of doing so. The member also mentioned regional areas. The Labor Party's history, both in the State and nationally, in relation to regional Western Australia is very interesting. We have seen the fringe benefits tax and the gold tax, which was introduced by the Labor Party. It was going to destroy the goldmining industry.

Members opposite referred to industrial relations, and I have already addressed that issue. The Labor Party was done like a dinner in the places where it really counts. Members also referred to unemployment. We have the lowest level of unemployment and the highest level of growth in this State. We have enormous opportunities if we can overcome the problems imposed upon us by others.

The Address-in-Reply debate is an important opportunity for members to raise issues. Their comments will be taken on board by the various Ministers and they will respond personally. I have spoken with the Minister for Health about the vitamin A issue raised by Hon Bob Thomas, and I am looking forward to a response. I thank members for their contributions to the Address-in-Reply debate and look forward to presenting it to His Excellency in due course.

Question put and passed; the Address-in-Reply thus adopted.

Presentation to Governor

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.00 pm]: I move -

That the Address-in-Reply be presented to His Excellency the Governor by the President and such members as may desire to accompany him.

Point of Order

Hon TOM STEPHENS: What about my amendment?

Hon N.F. Moore: Your amendment was defeated. Didn't you notice?

The PRESIDENT: The Leader of the Opposition asked me the question, not the Leader of the House, but the answer is the same.

Debate Resumed

Question put and passed.

[Questions without notice taken.]

TRUSTEES AMENDMENT BILL

Second Reading

Resumed from 12 March.

HON N.D. GRIFFITHS (East Metropolitan) [5.32 pm]: This Bill has the support of the Australian Labor Party in this House. However, opposition members have some reservations. We trust those reservations will be dealt with appropriately. Those reservations do not impinge on the support of the Labor Party for the proposition that the Bill be second read. The Trustees Amendment Bill is one of several Bills on the Notice Paper that have the potential to significantly affect the day to day lives of people in Western Australia. This measure suggests that a significant change will be made to the law on trustees in Western Australia.

The essence of the Bill is that the State move from a designated list authorised trustee investment regime to a prudent person approach. It involves a change to part 3 of the Trustees Act. Part 3 of the Act deals with the powers of a trustee to invest. The Bill's proposed change to the prudent person approach from a designated list authorised trustee investment regime involves consequential changes to other parts of part 3; in fact, this legislation is a rewriting of part 3 with a degree of modernisation. It also involves consequential amendments to other parts of the Trustees Act. Notwithstanding that overall change, a designated list approach will be retained by some state government bodies, including the Public Trustee.

The Bill involves amendments also to the Trustee Companies Act. Consistent with the changes to the Trustees Act, those changes include a move to a prudential requirement from a designated list requirement - a further attempt to clarify the position of hedging as a prudent investment. I note in that context what we did as a Parliament in 1994. It involves also a capacity to permit trustee companies to continue to use investment common trust funds in classes of investments for up to a year after the coming into operation of the legislation, notwithstanding the changes in the Bill. That aspect is a cause for concern and in due course the Opposition wants a full explanation of that.

In considering which stance to adopt on the Trustees Amendment Bill, regard was given to the comments of the Minister in his second reading speech; the wording of the 32 page Bill; the Trustees Act and the 1987 amendment to that Act; the Trustee Companies Act 1987 and the 1994 amendment to that Act; the West Australian Trustees Limited (Merger) Act 1989; the Report of the Law Reform Commission on the Trustees' Powers of Investment, dated January 1984; the report of the trust investments review committee to the Attorney General, dated November 1995; and a document which was not to hand when the Trustees Amendment Bill 1996 was introduced. I refer to the sixteenth report of the Standing Committee on Uniform Legislation and Intergovernmental Agreements in the last Parliament dealing with trustee laws. I note that report was laid on the Table in the other place on 31 October 1996.

The move away from a designated list approach is historic. It is part of a development that is taking place elsewhere. The designated list approach has been with us now for a considerable period - before the law on trustees was substantially rewritten in 1962. I will refer to the words of the Trustees Act prior to the 1987 amendment so the House can understand the context in which the State is moving from a designated list approach to a prudent person approach. I am taking some time over this matter so that people can understand why the Labor Party agrees to the proposal, although at first glance some may say that the Opposition should not agree to it because of a view that there is a more appropriate degree of safeguard in a designated list approach when one is dealing with the ordinary person operating as a trustee.

I refer to section 16(1) of the Trustees Act as it was prior to 1987. It reads -

A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in any investments authorised by the instrument (if any) creating the trust -

There is nothing new about that.

- for the investment of money subject to the trust, or in manner following -

The section lists a number of categories of investment. The Trustees Amendment Bill 1987 changed that. The changes were not revolutionary in effect, but they put in context what we are moving toward. Essentially, they added before the list a form of words dealing with the general application of the law. Again, this was not anything radical or new, but essentially, by way of explanation, it made matters clearer to the general public. That is the new section 15A under the heading, "General discretion and equitable duties". I will read it out so the remarks I make as I go through the development of this to the current position can be more appropriately understood. Section 15A states -

(1) Every power conferred on trustees by this Part shall be exercised according to the discretion of the trustee but subject to any consent or direction that may be required by the instrument creating the trust (if any) or by statute relating to the investment of trust funds.

(2) Any investments made under the powers conferred by this Part may be varied from time to time.

(3) Except as may be expressly provided in this Part, the general equitable duties of a trustee in relation to investments of trust funds and the retention of those investments are not limited or otherwise affected by this Part.

(4) In subsection (3), "general equitable duties of a trustee" includes -

(a) the duty of a trustee to exercise ordinary business prudence; and

(b) the duty of a trustee to act impartially.

It is useful for the community to have principles of that kind set out in legislation. This Bill seeks to set out in some relative detail principles that a trustee could take on board in considering an investment.

I refer to proposed new section 20 when I make that observation. In moving from the designated list of authorised trustee investment arrangements this State is not moving alone. This State is following in the footsteps of other Australian jurisdictions, particularly South Australia, Victoria and the Northern Territory.

In his second reading speech the Attorney General made a number of observations. If I were able to take the political rhetoric out of his second reading speech I would be able to say his observations were endorsed. I do not endorse his political rhetoric. Unlike some people, I do not think this measure is a great economic, isolated Western Australian reform.

I would prefer a uniform national approach and I regret that has not come to pass. I note there are differences in approach by the Australian jurisdictions and I will deal with that in more detail shortly. The trend in Australia is in line with the substance of this Bill. This State is not lagging behind; it is moving ahead to be one of the more forward looking jurisdictions in Australia.

This State came to this position not because of the election of any particular Government or the adoption of a political philosophy or ideology, but after a fairly significant history in the dealings of trustee arrangements, although the economic development of this country over the last decade and a half has provided a significant degree of impetus to the legislative changes which have occurred.

The position members are now contemplating is something that has been contemplated for a considerable time. Among other things it was considered by the Law Reform Commission in its January 1984 report to which I referred earlier. When I opened the report I noted with interest who the law reform commissioners were at that time. They were the then Mr H.H. Jackson, now His Honour; Mr C.W. Ogilvie; Mr L. L. Proksch, who lectured, and still does,

at the University of Western Australia; Dr J.A. Thomson, who is very active in these matters and whom from time to time we see in the Chamber during the Committee stage of Bills; and Mr D. R. Williams, QC. I note Dr Handford was there then, and still is, and that Mr Head was a research officer then and I understand still is. I found it to be of some interest; I do not know whether the Attorney General finds it of interest.

I will make reference to some aspects of the Law Reform Commission's report to demonstrate to the House that the proposal in this Bill is not something which has been plucked out of thin air or a new age, trendy, right wing, ideological advance, but something that has been under consideration for some time and is in the mainstream of developments which have taken place in Australia over the best part of a decade and a half.

I will refer first to the context of the Law Reform Commission's report because, although it dealt with the matter we are debating in the Bill, it dealt with many other matters. I refer to page 5 where it is observed that the commission is required to submit a report on submissions made to a former Attorney General on investments authorised under part III of the Trustees Act. In this Bill we are dealing with part 3 of the Trustees Act as it is proposed to be rewritten when we get to the Committee stage. There were quite proper concerns that part 3 at that time, and no doubt now, was inadequate to preserve the capital of the trust fund in the then prevailing inflationary circumstances or to enable trustees to take advantage of certain new forms of investment now available. In that context, although I am not embracing the proposition that we sell off national assets to the degree that others do - I do not find the proposition to sell off Telstra particularly invigorating - one of the justifications given for the move by the Attorney General in his second reading speech is that it will enable the trustees to have the capacity to invest in floats of that kind.

The Law Reform Commission says that it was concerned to ensure "that trustees had adequate investment opportunities under present conditions". I am talking about 1984, and I will come quickly to 1997. However, it is important to note that the commission was not attempting "to review in detail every investment then presently authorised, or to make recommendations as regards every form of investment which could possibly be included". I draw the attention of the House to observations of the commission which, to a degree, were reflected in what the Attorney General said in his second reading speech. However, again the context has to be made clear; that is, just because there was a designated list regime, that was not the end of the matter. As the commission points out on page 9 of its report -

A trustee is not safeguarded merely because the investment made is authorised by the instrument or by statute. Even with regard to authorised investments he must take such care as a reasonably cautious man would take, having regard to the interests not only of those who are entitled to the income of the trust, but also of those who will be entitled to its capital in the future.

The Law Reform Commission went on to review the treatment of the trustees giving rise to the designated list authorised trustee investment regime, and gave some consideration to the approach on which we are about to embark. I refer to page 15 of the report wherein the commission refers to "a number of possible approaches which could be adopted in relation to trustees' powers of investment". I find the language interesting in the context of what we are about to do. The report states -

At one extreme -

I think these are the words of Hon Daryl Williams -

is the American prudent man rule which permits trustees to invest in any investment objectively considered prudent, while at the other there is the strict and narrow list approach which applied in England and in Western Australia under the early statutes.

The Law Reform Commission then discussed the list approach and the American prudent man approach or, as the Attorney General said in his second reading speech, the prudent person approach. That was not an approach that the commission thought appropriate in 1984. On page 18 of the report, the commission in 1984 pointed out why it did not consider it to be appropriate. The year 1984 was not that long ago. I know the world moves on. That is why the major parties in this House agree to this proposal: The world has moved on. However, in 13 years the world may move on again. It may move in a different direction - in a circular manner - and people will be interested to know why we adopted this stance and why we did not go along with that which was suggested by the commission a mere 13 years ago. I suppose part of the answer may lie in numbers. It often does in politics, but I am not sure whether that is the reason a particular legal view of the law was reached.

The Law Reform Commission noted "only one commentator on the working paper supported the adoption of the prudent man rule in Western Australia". I am interested to know who that person was. However, the footnote says that the person was anonymous. He or she did not want to be identified. Therefore we will never know. Perhaps the people I mentioned earlier know who that person was; but they will not disclose it to anyone.

Hon Peter Foss: They probably cannot remember.

Hon N.D. GRIFFITHS: I am sure they are capable of remembering. They are all very learned people. I am sure they would not forget; it is only 13 years. The Attorney and I remember everything we did 13 years ago! Others may wish to forget. The report continues -

The remainder were of the view that the list approach should be retained on the ground that it is desirable to give inexperienced trustees guidance on investment

That is a very important point. There are dangers in it, and, on balance, that is why we support the Bill. It would be nice to be able to say to people, "Here is a list. Follow it; you do not have to worry about it." However, the world is not like that. I wish it were like that. The 1987 amendment makes it clear that is not the case and I do not think it was ever the case, although in a practical sense, because people probably thought it was the case, it became the case. If there were no complaints, nothing would ever have happened. Again, that is the way the world operates. People will go on happily until somebody complains.

The report continues -

However, they were generally of the opinion that the range of investments should be extended.

I can almost guess who was advocating that course of action. The proposition is then put by the Law Reform Commission that "it would not be desirable to abandon the concept of a statutory list in favour of a prudent man rule in Western Australia at this stage", not forever, "for the reason advanced by the commentators". That was a 1984 view. This is 1997. That view of the commission had very great weight in 1984. Its view has diminished, not because of the passage of time, but because of the passage of events, our experiences, and the sort of society we have become compared with the way we were in 1984. It is interesting to note that, again, in 1984 the world was different. No other jurisdiction in Australia or New Zealand had made the move. That is no longer the case. The commission points out that 80 per cent of the jurisdictions in the United States of America followed what we now call the prudent person approach, but only one Canadian province and two Canadian territories followed it at that stage.

I come back to the question of numbers. We learn from other jurisdictions. I suppose there is a degree of sense in being a little conservative and seeing how things develop elsewhere.

Sitting suspended from 6.00 to 7.30 pm

Hon N.D. GRIFFITHS: I was referring to aspects of the Law Reform Commission's report of 1984 to put in context the very fundamental change in the law of trustees in respect of the power of trustees to invest that we are embarking on by moving from the designated list of authorised trustee investment regimes to the prudent person approach. I mentioned that in 1984 the perceived wisdom at the time was that it was not prudent to do so; that other jurisdictions which have now embraced the idea, along with policy makers and major political parties in Western Australia, have moved on from the position in which they found themselves in 1984. It is interesting to note that when it concluded its deliberations on the question in 1984, the Law Reform Commission made a number of recommendations on that point. First, it recommended that a list of authorised investments continue to be included in preference to the adoption of the prudent man role. It foreshadowed in its report what was to become section 15(a) of the Trustees Act, to which I referred earlier.

Among other things, I note that the Law Reform Commission recommended at page 32 of its report that a trust investments review committee be established to review periodically the list of authorised investments in the Trustees Act. In Western Australia a trust investments review committee has operated from time to time, and I note much of what is set out in this Bill by way of policy is foreshadowed in a recent report of the trust investments review committee to the Attorney General dated November 1995. That report deals with authorised trustee investment status in Western Australia. The move towards the prudent person position, unless what I gather to be the perceived wisdom changes, would not, when looking at the report, necessarily occur. The terms of reference set out on the first page of the report do not make any specific reference to the move towards the prudent person approach. The terms of reference deal with matters relevant to the question of authorised trustee status and then go on to say "any other appropriate matters". It is under the other appropriate matters that we find the committee giving due consideration to the prudent person approach.

It is important to note that the world did not stand still; we had a Law Reform Commission report in 1984, and we have had a number of changes to relevant legislation. I referred to those matters of relevant legislation in my opening comments and, you will note, Mr President, many of them were pieces of legislation which were passed during the period of the last Labor Government. However, it was not just a matter of legislation; it was a matter of continuing review.

These sorts of measures do not occur in isolation. Governments of either political colour build on the work of their predecessors. The Law Reform Commission report to which I referred arose from a proposition put forward by Hon Ian Medcalf in 1982. He was a Liberal, and the Labor Government built on something that he put in place. Similarly what is occurring here is part of a process which has continued to be carried through. These are not politically contentious Bills. They are not vote changers. They do not attack the values expressed by the people on either this side or the other side of this House. They are Bills which, in some respects, are technical in nature and if approached properly should enhance the society in which we live. In 1989 work was carried out by the trust investments review committee, which made a number of findings and recommendations. Those matters were not acted on because there was a hope, an expectation and a reasonable possibility that national legislation may have evolved. That did not occur, and it is the view of the trust investments review committee in its report to the Attorney General in November 1995 that national legislation is unlikely to proceed in the foreseeable future. Therefore, it is appropriate that this State proceed in line with other States.

I will deal now with the approach taken by the committee, to put in context why we support this fundamental change to the law. The committee reviewed what was occurring in other relevant jurisdictions and noted a number of approaches with respect to the powers of trustees to invest. It noted the prudent person approach, notwithstanding the comments that the Law Reform Commission made over a decade ago. The committee pointed out the then situation with respect to other Australian jurisdictions. Mention has been made of those jurisdictions which have adopted the prudent person approach.

It is significant that New South Wales, which comprises a substantial part of the economic life of this nation, has not adopted the prudent person approach. However, the regime in New South Wales is a little more expansive than the current regime in Western Australia in that the designation can be dealt with by regulation. Queensland is backward, as we would expect. I will not make any further comments about that State; it is a lovely place to visit and some good people live there. I look forward to Queensland joining with us in moving ahead in this and other matters. Tasmania is somewhat similar; it is a lovely place to visit. The Australian Capital Territory is in a similar position. I note that New Zealand's regime is along the same lines as we are now pursuing. I have mentioned the other Australian jurisdictions which have adopted the approach that we are proposing to adopt.

The committee examined a number of possibilities with regard to the prudent person approach that the Attorney General is advancing to the House and with which we agree. Page 6 of the report examined the possibility of maintaining the status quo substantially by amending the Trustees Act to expand the granting of authorised trustee status to bodies such as credit unions and building societies. Credit unions and building societies were very keen on that. It also raised concerns which are reflected in the Attorney General's second reading speech and which are fairly soundly based. I mention them so that our endorsement of the substantive change can be accepted and so that if there is a move the other way down the track, people will know why we moved in this way.

Those concerns included a matter that Hon Peter Foss raised by way of interjection; namely, the false impression of security that it might give to a person who was investing. Many organisations have authorised trustee status, but that does not mean that they are safe. Of course, authorised trustee status gives them the Government's imprimatur. We are talking about investments made by ordinary people, such as commonplace administrations of deceased estates. It is a bad thing for a society to permit people to think that something is safe when it is not safe. The second concern was the lack of flexibility in the designated list approach. That aspect was dealt with adequately in the Minister's second reading speech. The third concern of the committee was that -

too much significance may be placed on an entity's authorised trustee investment status without full and proper assessment being made of current financial and other market information on the entity's performance both from a financial viability perspective and the suitability of the investment for particular trusts.

I mentioned in passing a particular clause of the Bill which sought to deal with that matter by the provision of a list of criteria rather than a designated list of authorised trustee investments. The committee examined the prudent person approach, in particular the point of view put in the second reading speech in South Australia. The words of that speech were, to a substantial extent, adopted by the Attorney General. One can say something differently only a limited number of times, so I will not say it again; it has been said in South Australia and it has been said in Western Australia.

One view of the committee gives rise to a degree of concern, and it is necessary that that concern be placated. In raising the committee's concern, I am not moving away from my support for the Bill, but merely pointing out that it is a proper reservation or concern. If the word "reservation" is stronger than the word "concern", so be it. Page 10 states, after the examination of the prudent person approach -

As a result, it is the Committee's view that if a prudent person approach were to be adopted, then non-professional trustees should be given a fall back position. Such a position will enable them to place

trust moneys on deposit with banks or in government guaranteed securities, without any risk of attracting liability for not taking a more positive approach. It is considered this is appropriate because many non-professional trustees will have responsibility for relatively small estates and the requirements to form a judgement about how a prudent person of business would act . . .

I note that proposed new section 18 deals with that point, although I am not convinced that clause 6 will necessarily do the job in dealing with matters on a practical day to day basis, notwithstanding what is said in succeeding parts of the Bill of which I have made mention in passing.

I agree with the view of the Trust Investments Review Committee, in making its report to the Attorney General, that the current approach to authorised trustee investment status is not doing the job. The committee gave strong endorsement of the prudent person approach. It stated -

The Committee strongly prefers the prudent person approach to trustee investments, with the non-professional trustee being able to place trust moneys on deposit with banks or in government guaranteed securities.

Again, that position of the ordinary person making a simple, everyday investment is not necessarily looked after by the adoption of the prudent person approach. I say that because, of the committee's three recommendations, two are adopted in the legislation and one is missed. Recommendation (a) of the committee states that Western Australia should -

replace the designated list approach with the "prudent person rule" for trustee investments.

That has taken place. Recommendation (c) is that -

all other legislation be reviewed where the authority to deposit or invest surplus funds is restricted to banks or investments which are authorised trustee investments, so that the prudent person approach is the applicable rule.

It is hard to say whether that recommendation has been implemented entirely. However, it is substantially correct that a lot of legislation has been reviewed. I note that the schedule states that a review has taken place with regard to many areas of legislation.

Hon Peter Foss: Some have not been completed.

Hon N.D. GRIFFITHS: That recommendation has been substantially adopted. In so far as it has not been adopted the Attorney General has told me by way of interjection that it is in the process of being adopted.

Hon Peter Foss: Some would take far too long and the ones that can be completed have been done.

Hon N.D. GRIFFITHS: That is fair. I note the nature of many of the institutions involved in making those investments, and it is not appropriate that there be a quick cut off with each and every one, although I have a particular misgiving that I will deal with in Committee. Recommendation (b) has not been adopted. That states that Western Australia should -

provide for non-professional trustees with authority to be able to place trust moneys on deposit with banks or in government guaranteed securities and to have protection against the risk of attracting liability for not taking a more positive investment approach;

That recommendation of the committee has a lot of force, and it is a matter of concern and reservation that the Bill does not address it. Notwithstanding that, the Opposition supports the Bill.

I noted in my opening remarks that in giving proper consideration to this Bill I had to consider the relevance of a number of documents. I will not deal with all of those documents, because they are not relevant to the point that I wish to address in this second reading debate. However, it is important that I point out again that the only difference between the Trustees Amendment Bill 1996 and this Bill is the numeral.

The sixteenth report of the Standing Committee on Uniform Legislation and Intergovernmental Agreements was tabled in the Thirty-fourth Parliament on 31 October 1996. Although it was tabled in the other place in a previous Parliament, it is not inappropriate to note the issues raised in that report. As the other place will be doing the work of a House of Review with this legislation I would hate it to think that we were not aware of what its committee has considered. The document deals with the question of authorised trustee investments. It examines trustee laws in Australia. It responds to concerns about the lack of uniformity in the area. The standing committee's report sets out a number of options, including those canvassed by the Law Reform Commission, and the matters raised by the Attorney General in his second reading speech. The report gave some consideration to the proposition that there

should be a prudent person principle, and a prescribed investment list. It is that idea of a prescribed investment list as distinct from the authorised trustee investment designated list that reflects that recommendation of the trust investments review committee that reported to the Attorney General. The report of the standing committee of the other place lends some support to the fact that it is proper that we have concern about the plight of the ordinary small investor. The standing committee's report deals with a number of current problems which I have already mentioned. Many trustees would opt for the lay trustee approach as the requirements of the prudent person principle are more onerous. I note the recommendations are put in the following way: That the prescribed list of investments and/or current authorised trustee investments and/or the prudent person principle be acquired by lay or professional trustees. It sounds as though they are sitting on the fence. It also states that the prescribed list of investments should include ordinary shares in companies with an AA credit rating. I do not know that that aspect need detain us.

The essence of this report, insofar as recommendation 7(b) of the report to the Attorney General of December 1995 is concerned, is that the position of the not so well informed ordinary person is probably - in an ideal world it would be - in a practical sense not well looked after. In removing this false shield, as it is perceived, of an authorised trustee investment, the Government is not putting in place appropriate guidelines for the ordinary investor, even though a list of criteria for investment is set out in the Bill.

With those few words I reiterate that the Australian Labor Party in this House supports the Bill.

HON PETER FOSS (East Metropolitan - Attorney General) [8.01 pm]: I thank members opposite for their support of the Bill. I first deal with the question raised by Hon Nick Griffiths of whether there should continue to be a designated list. There is an inherent contradiction. As pointed out by Hon Nick Griffiths, section 15A makes it quite clear that the rule already is that a trustee must be prudent in his investment. Although that amendment was put in the legislation after it was originally enacted, it did not add anything to the law other than to tell the public what was already the situation. A trustee must always act prudently. An authorised trustee list tells us only that if a trustee goes beyond that list, it is in itself a breach of trust. I gave the example in the second reading speech that it is rather like the change in the Corporations Law with regard to the ultra vires rule. A corporation can do anything an ordinary person does, provided it is in the articles of association. If it is not in the articles of association it is outside its power. In order to give a corporation further powers it is necessary only to amend the articles of association. People did that. Usually there was a table A set of articles which could be amended to give all the necessary powers outside those given by the legislation in its standard form. That has happened with trust deeds. Very few trust deeds restrict people to the authorised trustee investments for the good reason that if a trustee stuck to them, he would probably do the wrong thing by the beneficiaries because they would not get the return they should get. All this does is take away the imaginary line over which trustees cannot step. They always had to be prudent, and they must still be prudent.

The other point I make is that it is not sufficient to have cast iron investments. It is imprudent to have only cast iron investments because the return is too low. There should be a prudent arrangement of investments, some with greater risk and higher return and others with lower risk and lower return. In that way the right thing is done by the beneficiaries.

I had cause to research something years ago when I was executor of a will which involved a number of foreign investments. The will did not have a provision allowing the continuation of foreign investments. It is normal in a properly drawn trust deed to allow any hazardous investments received at the time to be kept until it is prudent to dispose of them. It was at a time when the value of the Australian dollar was incredibly high, and that gives some idea of how long ago it was. It became clear that in some circumstances the trustee is obliged to breach the terms of the trust in order not to breach the terms of the trust. Under those circumstances it became clear from some of the authorities that a trustee is obliged to postpone the calling in of the investment - even though there is no power to do so under the trust - because it would be imprudent not to do so and it would be running the risk of reducing the value of the estate. It is an interesting point. These subtleties of the investment law are probably beyond the comprehension of most trustees. However, that was the law which applied and with which people had to comply when making investments. The problem was that people thought if they had an authorised trustee investment, they were free of liability. I regret that Hon Nick Griffiths sees the reference to Rothwells as political. It is not.

Hon N.D. Griffiths: I never mentioned it.

Hon PETER FOSS: That was the source of his comment on the political polemic. Rothwells is an interesting case because whatever one might think of the previous Government's reaction to people investing in it, it is clear that many people invested in Rothwells because it was an authorised trustee investment. I am sure it was one of the matters the Government of the day had in mind when Rothwells was starting to go down. The Government felt some moral responsibility because people were investing in something to which it appeared the law had given a tick. It is a misreading of the Act which is fairly common. I have noticed that some members of this Parliament share that

misunderstanding. They seem to believe that it is currently a warranty of soundness by the Government and if it is not, there should be one.

Hon N.D. Griffiths: It is interesting that the committee which reported in 1995 also had the same view of that but I have not adopted it in my rules.

Hon PETER FOSS: What is the Government to do if it should give a warranty? What sort of guarantee or liability would it take on? What sort of inquiry would it make before giving that warranty? One of the reasons the third recommendation of the committee was rejected is that the committee had a fundamental flaw in its understanding of the role of the authorised trustee investment. It had a fundamental misunderstanding of the law of trusts. It cannot be suggested that for a lay trustee it is an appropriate investment policy to have low rate investments. It is inappropriate and a person with that attitude should not be a trustee. A person should not be encouraged to say he is a small trustee and can invest in that way. The Government saw that as being worse than the current situation because, in order to satisfy the requirement that people would not lose their money, it would be necessary to narrow the list of authorised trustee investments. That would have had the reverse effect to what was intended to be achieved by this change.

The point of view of most commentators - certainly it is my point of view - is that the third recommendation of the committee was a total disaster in that it misunderstood the fundamental duties of a trustee. It was a disaster because it did not distinguish how people should allow themselves to go within that rule. Would the Government say that one trustee could invest within those limits and narrow the range of investments down to something tiny, or stick with the basic idea of a prudent person? One either accepts the concept of a prudent person and takes away the artificial line, or rejects it. If the recommendation of the committee had been adopted, it would have been an unmitigated disaster because it would have resulted in the worst of both worlds. What trustee would dare step beyond that narrower line if he knew he was absolutely safe within that line and if he went beyond it he would be at risk? It was a very timorous response to the concept of a prudent person particularly bearing in mind the experience elsewhere with that rule. That is the reason for not making that change.

As Hon Nick Griffiths correctly pointed out, times change and we have had some experiences in which an authorised trustee list has been a disadvantage and has not worked. On the other hand, we have seen cases elsewhere in which the prudent person rule has been an advantage and has worked. In the light of those facts, it is appropriate to deal with the matter in this way. Hon Nick Griffiths mentioned the transitional period for common fund investments. I am not sure that I fully understood his concern, but the idea of proposed section 20(4aa) is not to give trustee companies an unlimited opportunity to bring their investments into a common fund within the new rule. If that were to be done, it should occur within the first 12 months of the Act coming into operation; otherwise, the process of so doing should be under the formation of an investment common trust fund in accordance with proposed subsection (4).

If I have not dealt with that point sufficiently, the member should raise it in Committee. I thank Hon Nick Griffiths for his comments and his support for the Bill, which I commend to the House.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Murray Montgomery) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Commencement -

Hon N.D. GRIFFITHS: Clause 2 states that "This Act comes into operation on such day as is fixed by proclamation." Why is the mechanism of proclamation used rather than assent? When is it envisaged that the matter will be ordered to be proclaimed, and does anything inhibit that process?

Hon PETER FOSS: The method is used clearly for the purposes of alert. People need to know the precise date some Bills will come into operation, and this is such a Bill. It will be a matter of alerting those concerned by advertising the fact that changes will take place and identifying the date on which they will apply.

Hon N.D. GRIFFITHS: Would it not be better for people to be made aware that the legislation will come into operation on a date fixed in the Bill? I do not mean that the date be within the next month or two, but one in the reasonable future. In that way people will be aware that the regime of trust investment will change on a set date, rather than adopting the approach the Minister has just outlined. The mechanism of Acts coming into effect by virtue

of proclamation rather than by royal assent appears to be overused. I do not want to be critical, but frankly it can give rise to laziness in administration, although I would not be so unkind as to suggest that of any Minister.

Hon PETER FOSS: In view of the fact that we originally introduced the Bill in 1996, and that we still do not know when it is likely to pass through the Parliament, it is a little unreliable to fix the date in the Bill.

Hon N.D. GRIFFITHS: It is appropriate to note that this Bill is being debated reasonably efficiently and has not been hanging around for a long time in 1997. In so far as members opposite have trouble with legislation introduced in 1996 still hanging around in 1997, I suggest that they speak to the Premier.

Clause put and passed.

Clauses 3 to 15 put and passed.

Clause 16: Section 19 amended -

Hon N.D. GRIFFITHS: We last visited this area as a Parliament in 1994. Can the Minister explain how the 1994 amendments have fallen down, and why it is necessary to engage in this further clarification?

Hon PETER FOSS: As a result of a change in the concept of underlying investment, the words are being moved around to read more appropriately. Proposed section 19(4) of the Act refers to the funds being held by an estate common trust fund being invested only in a manner authorised by law for the investment of trust funds. The 1994 amendments inserted subsections (4a), (4b) and (4c) to enable the funds to do certain things. This Bill will remove all those subsections because of the changes in the way the investment will take place under this provision.

Clause put and passed.

Clause 17: Section 20 amended -

Hon N.D. GRIFFITHS: I mentioned clause 17 in passing in the second reading debate. I am concerned about trustee companies making determinations to invest in some investment common trust funds in a class or classes of investment as authorised, and making the variation within 12 months of the Act coming into operation. I accept that there must be time for companies to make reasonable arrangements. We have a period of 12 months, a determination to invest - that is an interesting use of language - and a Bill that will come into operation on a date yet to be ascertained. Is this designed to provide a maximum reasonable time for a trustee company to get its affairs in order, or should we be concerned about something else? Is there any other difficulty? I am not suggesting that there are any difficulties, but it is a little too open ended. I need some positive assurance from the Attorney General that all is well.

Hon PETER FOSS: Subclause (4) applies prospectively to any funds created in the future and provides for a process to take place before the fund is established. Obviously, current funds cannot comply because they already exist. It is reasonable under those circumstances to allow changes to those funds to take into account the new investment rules. On the other hand, the Government does not believe that the changes should be open ended. In other words, a trustee company should not have the obligation under funds to set them up so that people know in advance -

Hon N.D. Griffiths: I am concerned that it is open ended.

Hon PETER FOSS: The member thinks that it is too long, but it is not. A period of 12 months is reasonable.

Hon N.D. Griffiths: Is it more than 12 months; they must give notice now.

Hon PETER FOSS: They must make the variation within 12 months of the coming into operation of the Trustees Amendment Act. Obviously it is not just a matter of doing it; it is a matter of letting people know it is happening. A 12 month period is not unreasonable. It is a matter of balance. It should not be open ended, but it should not be so tight that the decision must be made in haste and notified in haste. Therefore, 12 months is reasonable.

Clause put and passed.

Clause 18 put and passed.

Schedule 1 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

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

SEA-CARRIAGE DOCUMENTS BILL*Second Reading*

Debate resumed from 13 March.

HON N.D. GRIFFITHS (East Metropolitan) [8.27 pm]: This Bill is arguably one of the more interesting Bills to be considered by this House in a long time. I am sure many members are considering availing themselves of the opportunity to speak on it. I do not wish to make many points about it because I agree with what has been advanced and I do not want to take up the time of the House in saying that. However, it is appropriate for me to state that the Labor Party agrees with the Bill. It is in a form adopted by the Standing Committee of Attorneys General and it will be taken up by other Australian jurisdictions. It deals with bills of lading, seaway bills and ships' delivery orders, and it will enhance their operation within Western Australia and, when adopted by other jurisdictions, within Australia. It is an attempt to modernise the law by moving to replace imperial law with Australian law. There are a few areas where imperial law still governs our operations, but it is not appropriate that I delve into them at this stage. It is always a good thing for us to make our own laws as Australians rather than to rely on the vestiges of a long vanished empire.

As I mentioned earlier, this is an interesting and significant Bill and the Labor Party supports it. I note that my colleague Hon Mark Nevill has a very strong, driving interest in the matters dealt with in the Bill and I understand that he intends to comment on it.

HON MARK NEVILL (Mining and Pastoral) [8.29 pm]: I do have a strong interest in this Bill. Unfortunately, I read it about a week ago and have not looked at it since. I would like the Minister to explain why the States need to be involved in this legislation. Is it because of freight shifted between ports within a State or because of interstate and intrastate trade? This appears to be an area of legislation that would perhaps be better administered by the Commonwealth without the States' involvement. I was interested in this matter and so I looked at the original federal Act, which was the Carriage of Goods by Sea Act.

Hon Peter Foss: It is not. The member is getting confused with two concepts. This was set out in the second reading speech. One of the concepts is to do with the contract of carriage; the other is to do with the contract for the sale of the goods. I know a bill of lading appears to be something to do with carriage, and it is. This Bill is dealing with property. The Carriage of Goods by Sea Act will continue to exist under the law governing carriage.

Hon MARK NEVILL: I appreciate that the nature of the contracts has changed. I looked at the Carriage of Goods by Sea Act, which currently comes under the Hague rules. In the Federal Government's Bill, there was a proposal to adopt the Hamburg rules which shift insurance liability from the shipper to the ship owner. They were not proclaimed at the time. Have they been proclaimed since? Is there some proposal to have the ship owner incur the cost of insurance or is it still basically with the shipper? I appreciate that in Western Australia it may be in the interests of shippers to carry the insurance. That may not be the case with general cargo. Under the Hague rules it seems that the shipper carries the risk rather than the ship owner. I understand that Australia signed a protocol with several other nations, of which not one seems to have sea boundaries. They included countries like Czechoslovakia and Zambia.

Hon Peter Foss: It included Switzerland.

Hon MARK NEVILL: For the ship owners to carry some of the risk seems an eminently sensible idea, but that certainly did not seem to be taken up by many of the countries. Australia is obviously a shipper and not a ship owner. I wonder whether there has been a shift from the Hague to the Hamburg rules. Why is it necessary to have this piece of state legislation? Would it not be better to be done by the Commonwealth?

HON PETER FOSS (East Metropolitan - Attorney General) [8.34 pm]: I will restrain myself from giving a dissertation on shipping law.

Hon Mark Nevill: We thought we would get a free opinion.

Hon PETER FOSS: Members might do. I draw members' attention to the second reading speech. Most of the position is explained there. It reads -

There are three major characteristics in all jurisdictions around the world -

- (1) A document of title to the goods which enables transfer of property in the goods by delivery of the documents;
- (2) a policy of insurance covering the goods so that a transferee has the assurance of receiving either the goods or their worth; and

- (3) a uniform regime of liability for loss governed by international treaties so that contracts for sale and insurance tie into that regime wherever the goods may travel.

Those are the three elements of documentation. When people wish to buy goods they look to those three things. The first is a document of title, which is what we are talking about here. This is not the sea carriage of goods but the sea carriage document. The Carriage of Goods by Sea Act deals with the regime of liability, which is what the member was talking about when referring to the Hague rules and the Hamburg rules, and a policy of insurance. The reason these three things link is that an awful lot of buying and selling of goods takes place while they are in transit, merely on the documents. Therefore, people do not want to have to get out a document in a particular case and send it to their lawyer; look at the contract of carriage and send it to their lawyer; and then get hold of a policy of insurance and send that to their lawyer, in order to work it all through to see if there are any gaps. People want to know that every single time there is a document which will give them title and a consistent regime of liability. It does not matter what is in the contract of carriage. People know that ultimately that is the bottom line. They know that if they get a standard form of insurance, tied into that is the fact they are covered because they are able to receive the goods or the insurance.

They cannot have all the shuffling around with problems of private international law and what law governs the situation because it all varies. This is all about title to goods, not the contract of carriage, although a bill of lading is issued as part of the contract of carriage and is normally endorsed with the terms of the contract of carriage. We are dealing with a document of title, which is rather like a certificate of title from the Land Titles Office, or a bit more like a cheque. A bill of lading is negotiable; that is, people can pass the good title by passing over the documents. Often with the passing of title for personal property people have physically to transfer the goods or under some circumstances to arrange for the transfer of title to take place pursuant to the terms of the contract. The real advantage of bills of lading is that they are negotiable. In the same way, when people hand over \$20 it is negotiable and others become the owners of that \$20 because it has been handed to them. If people write a negotiable bearer cheque, the mere delivery of the document carries with it the matter of title.

This Bill deals with the passing of title. Under private international law, the law that deals with the passing of title is called the *lex situs*, the law of the place where the goods are. Therefore, because the goods are delivered to a ship in Western Australia, the law of Western Australia deals with the passing of title. Thus we have an Act of Parliament which says, "This is the law for this particular situation where the goods are and it will determine the title of those goods." The Federal Government could have done it. It chose not to because it did not want to get involved in this area. The Federal Government could enter into an international treaty to give it power under the foreign affairs head. It might even say that there is enough under foreign affairs power to justify it already. Strictly speaking, it is a law which relates to the transfer of title of goods. In the same way as if one went to Myer and bought some goods, Western Australian law says how the transfer of title is to take place. That is why this is Western Australian law. I am sure that if the Commonwealth wanted to take over this area, it could use foreign affairs power to do so. While the Federal Government has failed to exercise that power, we continue to have it because it is very definitely a matter of interstate law.

The point the member is raising, however, about the Hague-Visby and Hamburg rules is that they deal with a contract of carriage. There are two regimes about the contract of carriage of goods out of Western Australia. If they are carried out of Western Australia interstate or overseas then the commonwealth Act applies. If they are carried out of Western Australia into another port in Western Australia, then the state Act applies. The state rules are in fact the old United States COGSA rules - the Harter Act. It is a while since I have practised in this area. In Western Australia we have an old United States form of regime of liability. The commonwealth form is the international one which was originally agreed through the conferences that took place in the Hague. As I have not practised in this area for some eight years, I cannot tell members where they are with the Hamburg rules. It was certainly being actively canvassed that change should take place. I expect that it would take place. However, there are quite severe arguments as to whether there is any real advantage in putting more liability on the owner because in the end we are dealing with the question of insurance. The person receiving goods does not want to get involved in litigation. The person wants either the goods or the money.

At a CMI conference at Aix-la-Chapelle about 1979-80 on the whole effect of apportionment of liability, a good argument was made that for the benefit of shippers one often wishes to have less of a liability on the ship than otherwise. Evidence also shows that in tough times the freight interest, rather than just the ship owners, tends to pay more. One must remember with ships that there are three interests: The ship itself, the freight interest and the cargo interest. The freight is often in the hands of somebody else because people who own a ship do not necessarily run it. They charter it out and other people then take on the cargo. The cargo recovers against the freight interest. It has been found that in tough times the shipping companies tend to honour claims more than in easy times. It seems to be a way of providing a service to shippers. The shipping companies are quicker at paying up. It came out quite clearly that, because of the regime where the freight interest has to deal with the claim, in a non-litigated case the cost

of everybody dealing with a claim - that is, the people who are acting for the ship, those acting for the cargo, and every other assessor involved - equalled the amount of the claims. That goes onto the cost of the freight. There is certainly an argument for it, because the cost is even greater if it goes to litigation. I am talking about non-litigated claims. There is certainly an argument to say that the parties are better off not having a lot of claims dealing, but merely dealing with the matter through insurance, in which case they will not get involved in a massive claims assessment that will be equal to the amount of the claim. The parties will say, "Look, we have \$100m-worth of claims; we pay out \$100m and we also pay costs of \$100m in dealing with those claims."

This is one of those subtleties of human behaviour and economics. It is not as simple as it seems. The member is quite right in saying that the move towards that change in liability has come from countries that see themselves as shippers rather than ship owners. From those who have studied the matter, it is arguable that the system will be better off with a simpler and smaller regime, enough to keep people careful but not so much as to make litigation worthwhile. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Commencement -

Hon N.D. GRIFFITHS: This clause talks about the day on which the Act comes into operation. Given the speedy passage of legislation that is occurring in this place, and I trust in the other when this Bill arrives there, why can this clause not be amended to say that it will come into operation on the date it receives royal assent, or at the very least a particular date. If there is a good reason, I should like to know it.

Hon PETER FOSS: As we were saying previously, it is important that we notify the public of the change in the law. I agree that it is a specialised group, but nonetheless it is important to have a fixed date because it does change the relations.

Clause put and passed.

Clauses 3 to 9 put and passed.

Clause 10: Transfer of liabilities -

Hon PETER FOSS: I move -

Page 10, line 18 - To delete the word "paragraph" and substitute the word "subsection".

This is an unfortunate misuse of terms from the way in which we refer to things these days. We now no longer use the word "paragraph".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 11 and 12 put and passed.

Title -

Hon PETER FOSS: I move -

Page 1 - To delete "1955" and substitute "1855".

This involves a slight centenary bug. The wrong century has been included.

Amendment put and passed.

Title, as amended, put and passed.

Report

Bill reported, with an amendment and an amendment to the title.

Leave granted to proceed through remaining stages.

Bill passed through remaining stages without debate and transmitted to the Assembly.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [8.47 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Dean Capobianco

HON DOUG WENN (South West) [8.47 pm]: I will not delay the House too long; however, I must report on one of the biggest travesties of justice that has ever occurred to a very prominent Western Australian, a person who is liked very much by those in the athletics scene in this State. I refer to the finding of the International Amateur Athletic Federation against Dean Capobianco relating to drug taking. I have known Dean since he was 16 years old and first ran in an event in Bunbury. I admired him then, and I will continue to do so. I find it extraordinary that the kangaroo court that was put together by the IAAF came down with its judgment, given that Dean was found innocent of taking drugs by the Australian athletics body.

Many books are going around not just Australia, but the world, about the make-up of international athletics organisations, suggesting they are in dire straits. The situation is such that the chairman of the organisation is under investigation for rigging some of the international events to make sure that competing athletes did not reach the peak for which they had aimed throughout their lives. I strongly believe Dean Capobianco would not take drugs to enhance his performance in athletics or any other sport. He has shown massive support for athletics not just in rural areas in Western Australia where I have seen him encouraging young people to go into the sport, but also in the Eastern States, where he has been admired not just by present top athletes, but by past athletes as well.

I sincerely hope that Dean Capobianco appeals to the World Civic Court. I know that he will be found not guilty of the charges of which he has been accused. It is ironic that the body that found against Dean is encouraging him to take his case to the Civic Court. That causes me to wonder what is happening in the world of international athletics. I hope that, on proving his innocence, Dean will open the eyes of many people around the world to what is taking place.

A week ago yesterday, at a function at the Commercial Club in Bunbury, George Grljusich was guest speaker. I asked his opinion about Dean Capobianco's case. He said that it was extraordinary because Dean had been found drug free only days earlier, three days later he was found to have traces of a drug in his system and a week later he was again found to be drug free. The drug he has been accused of using is supposed to stay in the system for some time.

As most members know, I am heavily involved in athletics in this State, particularly the professional side and I am aware that traces of those drugs in the system do not disappear overnight. At all times the drug testing system can be challenged. The system was challenged at the court hearing in Monaco at which Dean was accused of being guilty - he was not actually found to be guilty. That kangaroo court, which is the only name for it, refused to allow the blood and urine tests to be transferred to one of the best drug testing systems in the world. This anomalous situation is a disgrace. I hope that everyone in Western Australia will strongly support Dean in his challenge to overrule the findings of the International Olympic Committee.

George Grljusich referred to something of which I, and I am sure many people here, was not aware. When Ben Jonson was found to have drugs in his system in 1988 after running at the Seoul Olympics, the British runner who came third and who is now recognised as the world's best, had the same drug in his system. However, prior to the event, his coach submitted a medical report stating that it was necessary for his athlete to take that drug for medical reasons. While Jonson was banned for four years the British runner received the silver medal.

I feel strongly that the OIC drug testing system must be examined. It is most unfortunate that Dean Capobianco, once acknowledged as the fastest white man in the world - I may be using politically incorrect language - has been accused of taking drugs -

Hon Derrick Tomlinson: Non-black.

Hon DOUG WENN: That is another way of saying it. He has been accused of taking drugs, found not guilty by one tribunal, and accused of being guilty by the OIC for reasons best known to that body.

At the outset I said that I have known Dean Capobianco for almost 11 years - since he was 16 years old. One could not meet a more honest person. I will be counted among those who vouch for the fact that Dean did not take drugs

at any time. I also strongly support him because he can encourage many people in the world to perform as good athletes rather than take drugs.

My support for Dean could not go unspoken. All athletes in Western Australia, no matter in which sport they participate, should stand behind Dean. He is very upset about the circumstances in which he finds himself. Although he is an emotionally strong person, his distress was obvious on television tonight. I firmly believe that he has been wrongly accused of taking performance enhancing drugs. I believe that Dean will clear his name at the Civic Court very soon. I hope so; then he will be ready for the Sydney 2000 Olympic Games. He is a fine representative for both Western Australia and Australia and deserves the right to represent his country at the next Olympic Games.

Question put and passed.

House adjourned at 8.58 pm

QUESTIONS ON NOTICE**HEALTH - INSTITUTE FOR CHILD HEALTH***Commonwealth-State Contributions*

80. Hon JOHN HALDEN to the Minister for Finance:

- (1) Has the Commonwealth contribution to the Institute for Child Health now been received?
- (2) If yes, what is the amount received?
- (3) What is the level of the State's contribution?

Hon MAX EVANS replied:

- (1) No.
- (2) Not applicable.
- (3) The State had committed \$15m to this facility subject to there being a matching commonwealth contribution.

HOMESWEST - COMMONWEALTH GRANTS*Level*

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

- (1) What level of Commonwealth grants and contributions does Homeswest expect to receive in 1996/97?
- (2) Is it expected that the same level of funding will be retained in 1997/98?
- (3) If not, why not?
- (4) What is the likely level of funding?

Hon MAX EVANS replied:

The Minister for Housing has provided the following reply -

- (1)-(4) At this stage the Commonwealth has only guaranteed six months funding under the Commonwealth-State Housing Agreement for 1997-98. The final outcome for 1997-98 will not be known until the commonwealth Budget is announced.

LOCAL GOVERNMENT - CITY OF SOUTH PERTH*Karawara Redevelopment Project*

107. Hon CHERYL DAVENPORT to the Minister for Finance representing the Minister for Housing:

- (1) Is the Minister for Housing aware that the City of South Perth, as part of its commitment to the Karawara Redevelopment Project, undertook to make up a shortfall of some \$200 000, which is the gap between Homeswest's commitment and the actual relocation costs of the Karawara Community Project?
- (2) Is the Minister also aware that the City of South Perth in its 1997/98 Forward Planning Budget has failed to make allowance for the project?
- (3) Has Homeswest received a signed guarantee from the City of South Perth that the Karawara Community Centre and the Fun Factory will be relocated?
- (4) Will the Minister provide details of the current actual valuation of the Fun Factory Playground and the estimated cost of its relocation?
- (5) Will the Minister provide information on the specific purpose for which the \$250 000 set aside as compensation for the City of South Perth after the rezoning of the Banksia Bushland at Lot 690, Gillon Street, Karawara is to be used?

Hon MAX EVANS replied:

The Minister for Housing has provided the following reply -

(1)-(2) No.

(3) Clause 15 of the memorandum of understanding provides -

Homeswest agrees that the current Karawara Community Centre and Fun Factory will remain in operation until such time as the new facility is available for operation provided the Council uses its best endeavours to complete the new facility within 2 years of the date of the Government Gazette which publishes the Minister's final approval of amendment No 89 to the No 5 Town Planning Scheme.

(4) Homeswest does not have a valuation of the Fun Factory playground.

(5) The \$250 000 set aside is for the Karawara estate improvement project and is not a compensation payment. A committee chaired by the member for South Perth, Hon Phil Pandal MLA, will decide on the allocation of these funds.

ENVIRONMENT - SPILLAGE

Licence No 6420 - Kalgoorlie Consolidated Gold Mines Pty Ltd

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

I refer to question on notice 724 of 5 September 1996 in relation to a tailings spill for Licence No 6420 -

(1) Will the Minister for the Environment or the Department of Environmental Protection prosecute Kalgoorlie Consolidated Gold Mines Pty Ltd, or the owners, for breaching condition B1 on Licence No 6420?

(2) If no, why not?

(3) Will the Minister or the DEP prosecute Kalgoorlie Consolidated Gold Mines Pty Ltd, or the owners, for causing pollution as defined under the Environmental Protection Act 1986?

(4) If no, why not?

(5) Will the Minister or the DEP ensure that proceedings, if any, for a prosecution are commenced before 12 months pass from the date on which offences occurred?

(6) If no, why not?

Hon MAX EVANS replied:

The Minister for the Environment has provided the following reply -

(1),(3),(5)

I am waiting for a report and recommendation from the Department of Environmental Protection and the advice of the Crown Solicitor's Office.

(2),(4),(6)

Not applicable.

GOVERNMENT CONTRACTS - COMPETITION

Cartels

238. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Works:

(1) Could the Minister for Works explain what initiatives have been introduced to prohibit the practice of private companies acting as cartels rather than competitors and thereby combining resources to tender for Government contracts?

(2) Could the Minister explain what initiatives have been introduced to guarantee the Western Australian public against financial default?

Hon MAX EVANS replied:

The Minister for Works has provided the following reply -

- (1) Cartels are illegal at law. If the member has any evidence of private companies acting as cartels or in a collusive tendering situation, the member should take what evidence he may have to the Australian Competition and Consumer Commission. The Government, through the "buying wisely" strategy on procurement is encouraging open and effective competition, sustaining competition, developing a competitive market and encouraging small and medium businesses to compete for government work. I draw the member's attention to the "buying wisely" strategy tabled in September 1996.
- (2) The existing policy framework for competitive tendering and contracting has in place processes to assist agencies in sound selection and evaluation techniques. These processes take into account the requirement to undertake comprehensive assessments in the tender evaluation process, such as managerial, financial and commercial capability. These processes are designed to manage and/or minimise any risk in contracting. The procurement planning process for which there is a policy requirement established by the State Supply Commission for high value and/or sensitive contracts is also designed to consider the overall contracting strategy in order to enhance contract outcomes. Also, as part of the procurement planning process, there is a requirement to examine the financial implications of a contract. The State Supply Commission is enhancing this requirement by preparing detailed due diligence guidelines to enable agencies to better understand and manage financial risks involved in government contracting.

QUESTIONS WITHOUT NOTICE

CRIMINAL INJURIES COMPENSATION - APPLICATIONS

Number

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

- (1) Since July 1996, how many criminal injuries compensation applications have been -
 - (a) made;
 - (b) approved;
 - (c) refused?
- (2) How many applications are still to be processed?
- (3) What is the current delay in processing criminal injuries applications?

Hon PETER FOSS replied:

- (1)-(3) Unfortunately, I do not seem to have that question and so I am unable to answer in the detail requested.

CRIMINAL INJURIES COMPENSATION - APPLICATIONS

Processors

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

- (1) Is it true that there is still only one assessor assessing criminal injuries applications?
- (2) Is it true that the Attorney General has made an appointment to be effective from July this year?
- (3) Why have additional assessors not been appointed to clear the backlog and reduce delays, as the Attorney General promised in his second reading speech to the relevant Bill delivered on 4 September last year?

Hon PETER FOSS replied:

- (1)-(2) Yes.
- (3) I am awaiting the appropriate funding, which I am sure will be available shortly.

HAZARDOUS SUBSTANCES - CSBP

*Kwinana***115. Hon J.A. SCOTT to the Minister for Mines:**

I refer the Minister to March 1994 when Mr Keith Collins of the Department of Minerals and Energy was informed by Mrs Dot Hesse that the chemical storage bunds at CSBP Kwinana were unsafe -

- (1) Did an investigation by Mr Collins confirm that -
 - (a) the bund area was not large enough;
 - (b) the bund area contained incompatible goods, such as phosphoric acid and sodium hydroxide; and
 - (c) these bunds were unlined?
- (2) Did 30 000 litres of phosphoric acid spill into the unlined bund and contaminate the surrounding area in December 1994?
- (3) Did CSBP agree to upgrade and line the bund area and to attend to the problem of incompatible goods in December 1995?
- (4) Did CSBP carry out this work by December 1995, and, if not, what action did the Department of Minerals and Energy take to ensure this work was done and when was this action taken?
- (5) Has the bund area been lined at this time?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1)-(2) Yes.
- (3) No.
- (4) No. At no time was there any serious threat to public safety from the storages at CSBP's site. The investigation in March 1994 revealed that CSBP's tanks, which have been lawfully installed and operated for many years, did not comply with the requirements of the newly proclaimed Dangerous Goods Regulations 1992. The bund capacity was less than prescribed, incompatibles were stored together and the bunded area was unlined. The department worked with CSBP to develop a multimillion dollar five year plan to upgrade the entire CSBP site to world's best practice in environment and safety. This plan is being progressively implemented.
- (5) No. The tanks to which Mrs Hesse refers are being bunded and lined to the standard prescribed in the relevant Australian standard and the work should be complete by August 1997. The incompatible goods have already been separated.

GLOBAL DANCE FOUNDATION - AUSTRALIAN DANCE COUNCIL'S CONCERN

116. Hon TOM STEPHENS to the Minister for the Arts:

I refer the Minister to the letter to the Premier from the Australian Dance Council, Australia's main dance umbrella organisation, dated 27 November 1995 expressing its concern over the involvement of Global Dance Foundation in the now aborted 1997 World Dance Congress. The council sent to the Minister a copy of the letter, to which the executive director prepared a draft reply -

- (1) Did the Minister write the following comments to the executive director about the Australian Dance Council's concerns: Don't you think we should tell them they are a mean minded bunch, resentful of people who have had the initiative to get off their backsides and do something?
- (2) Does the Minister agree that the Australian Dance Council's concerns about the competence of Global Dance have now been vindicated?
- (3) Why did it take the Minister over three months until 7 March 1996 to reply to the concerns expressed by the council?
- (4) Will the Minister now apologise to the Australian Dance Council for his ill considered and intemperate remarks?

Several members interjected.

The PRESIDENT: Order!

Hon PETER FOSS replied:

- (1)-(4) The Leader of the Opposition has misrepresented what the letter said. Ausdance was not concerned about the Global Dance company. The Graduate College of Dance was involved at that stage. I am sure the Leader of the Opposition will acknowledge that it is an extremely valuable contributor to Western Australia. The Graduate College of Dance has probably done more for young people in dance than anybody else. At that stage it looked as though the Graduate College of Dance would be taking this on. Ausdance's concern was not that the money had been wrongly given but that it should have had the money. The point I made is that I am sure if Ausdance had come forward with the idea, I would have been just as supportive of it as I would of anybody who has a good idea. I am sure the Leader of the Opposition would agree that we would all endorse the idea of a world dance festival in Western Australia. I would still like to see it happen. I certainly believe that the Graduate College of Dance is an excellent body. I hope the Leader of the Opposition is not in any way complaining about it.

Hon Tom Stephens: I am complaining about your comments.

Hon PETER FOSS: I am about to go on to my comments. If Ausdance had come forward and said, "We would like to assist to make this work" or if it had had the idea in the first place, it would have been a different matter. All Ausdance people wanted to say was, "You should have given the money to us instead of them." Frankly, people who come up with ideas should get the money. Their complaint was that they had not been selected.

Hon E.J. Charlton: What did you say to them?

Hon PETER FOSS: Hon Tom Stephens has some comments. I did actually say that. It took three months because by the time the department received the letter it was in far milder terms than I had suggested. We must instil into the community a concern that people who are prepared to put forward ideas should be supported. People who are prepared only to come along afterwards and knock an idea cannot say, "We should have been given the money." Incidentally, I had nothing to do with the allocation of money because that was not done through my department. All those people were prepared to do was to knock the idea and the effort the person was putting into it. I do not support that. Far too often the Australian and Western Australian approach is that if anybody gets a good idea, we go along and say, "Why didn't I get the money?" That complaint was put forward. The answer was quite simply, "You did not have the idea." Had they had the idea, they would have had the same support from me as the Graduate College of Dance received.

I make it quite clear that the Graduate College of Dance is where the idea came from. It is one of the best contributors to Western Australian dance, particularly through schools and young people. It has had great successes. It put on one show for which it brought back ex-Western Australian graduates, who are lead dancers throughout the world. The Graduate College of Dance had a very good track record. I am not talking about the Global Dance company. I supported the Graduate College of Dance. I believe it is and was a great contributor. People who are not prepared to have the ideas and get up and go should not be allowed to knock those who do. Subsequent events have had to do with the Global Dance company. I will give my backing -

Hon Tom Stephens: You can't say you had no dealings; you wrote to him.

Hon PETER FOSS: It has not done anything for me, and I have had no dealings with it, other than my writing to it. I gave a reference to the Graduate College of Dance, and I will still support it. It is one of the best contributors in this State. I think when it comes up with ideas, we are duty bound to support it.

POLICE - ARMADALE

Domestic Violence Pilot Training Program

117. Hon CHERYL DAVENPORT to the Attorney General representing the Minister for Police:

- (1) What financial and human resources were allocated to the Armadale police domestic violence pilot training program during its first year of operation?
- (2) What financial and human resources were allocated in each subsequent budget year?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1)-(2) In May 1993 the then officer in charge of the Armadale Police Station, with the cooperation and contribution of representatives of 16 local organisations and agencies, implemented the Armadale domestic

violence pilot program. The program, which was officially launched in July 1994, has been resourced on a voluntary basis by the organisations and agencies involved.

GLOBAL DANCE FOUNDATION - "INC" IN TITLE

118. Hon TOM STEPHENS to the Minister representing the Minister for Fair Trading:

I refer the Minister to the agreement between the Western Australian Tourism Commission and Global Dance Foundation dated 26 May 1995, tabled by the Premier in the Legislative Assembly on 19 March 1997.

- (1) Does section 44 of the Associations Incorporation Act provide that a person who carries on business or enters into a contract under any name or title of which "incorporated" is the final word, unless incorporated under that Act, is guilty of an offence?
- (2) In the agreement is the final word after the name Global Dance Foundation "incorporated"?
- (3) Was Global Dance Foundation an incorporated association on 26 May 1995 or at any time before 1 June 1995?
- (4) If not, will the Minister refer this prima facie breach of the Associations Incorporations Act to the Commissioner for Corporate Affairs for his investigation?

It might seem this question should have been directed otherwise, but that is not the case.

The PRESIDENT: Order! I do not know why the member anticipates that comment.

Hon TOM STEPHENS: Mr President, I think it is always wise to anticipate. I am happy to pass a copy to you.

The PRESIDENT: Order! If I want it, I will ask. Had I thought it was out of order, I would have told the member.

Hon MAX EVANS replied:

It is only half out of order. I thank the member for some notice of this question.

- (1) Section 44 of the Associations Incorporation Act 1987 provides that a person who carries on business or enters into a contract under any name or title of which "incorporated" or any abbreviation of that word is the final word or the abbreviation, unless incorporated under that Act or any other law, is guilty of an offence.
- (2) Yes.
- (3) Global Dance Foundation applied to be incorporated under the Act on 18 May 1995. We answered that last week. Because amendments were required to its proposed constitution, Global Dance Foundation was not incorporated under the Act until 1 June 1995.
- (4) The Minister will refer this matter to the Commissioner for Corporate Affairs for his investigation.

EDUCATION - LITERACY TESTING

Age Differences

119. Hon B.M. SCOTT to the Leader of the House representing the Minister for Education:

Given the national agreement for literacy testing in years 3, 7 and 9, I ask -

- (1) Will the Western Australian Minister for Education take into account the fact that Western Australian children are, in most cases, up to one year younger than their Eastern States counterparts - other than those in Queensland - in any given grade?
- (2) If so, would he consider pressing for testing on age, rather than school level or grade?
- (3) Will he ensure that Western Australian parents fully understand that if testing is done on grade levels only, it will not provide for any meaningful comparison of competency between States?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) The issue of children being at slightly different ages in any given grade across the States will be considered when the processes for literacy testing are developed. The benchmarks for years 3 and 5 must be finalised

by the curriculum corporation before the complex task of developing tests to measure them can be completed. This will be less of an issue in the future as the changes to the school starting age come into effect.

- (2) Not applicable.
- (3) Appropriate ways of informing parents will be considered when the processes for literacy testing are developed.

HESSE, MRS D.

CSBP and Farmers Ltd

120. Hon J.A. SCOTT to the Minister for Mines:

- (1) On 13 February 1997 did Mrs Dot Hesse fax a letter to Mr Ken Price, chief inspector for the explosives and dangerous goods division of the Department of Minerals and Energy, regarding her continuing concern at the unlined chemical storage bunds at the CSBP and Farmers Ltd facility at Kwinana?
- (2) Did the fax from Mrs Hesse state that both Dave Boulden, representing Coogee Chemicals Pty Ltd, and Steven Fitzpatrick, representing CSBP, were in agreement that their companies would not upgrade the unlined bunds unless they were absolutely forced to?
- (3) Did Mr Price send or fax a copy of Mrs Hesse's fax to CSBP or Mr Fitzpatrick, or verbally inform CSBP or Mr Fitzpatrick of Mrs Hesse's fax message?
- (4) Is it regular and proper practice for the Department of Minerals and Energy to pass on the names of informants to offending companies?
- (5) Is the Minister aware that Mr Fitzpatrick has threatened to sue Mrs Hesse because of her complaint?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) Yes, but Mr Fitzpatrick and Mr Boulden deny the statements attributed to them in this question.
- (3) Yes. There was nothing in the letter to the Department of Minerals and Energy that Mrs Hesse had not said in public before, or was not discoverable through the freedom of information process or due legal process.
- (4) No.
- (5) The Department of Minerals and Energy is aware that Mrs Hesse has alleged that Mr Fitzpatrick has threatened to sue her.

TAXIS - SECURITY DEVICES

Installation

121. Hon E.R.J. DERMER to the Minister for Transport:

I refer the Minister to the declaration by WorkSafe Western Australia of the taxi in which Mr John Hall was assaulted on 6 March 1997 as an unsafe workplace.

- (1) Does the Minister now propose to take action to meet the urgent need to improve the security of taxi drivers?
- (2) When will this action take place?
- (3) Does the Minister now support the installation of protective screens in taxi cabs, as called for by Mr Tad Krysiak, the taxi driver whose throat was slashed in an assault in December 1995?
- (4) If not, why not?
- (5) Will the Minister confirm the Government's contribution of \$1m for the provision and installation of camera surveillance units in all taxis, reported in the *Sunday Times* of 11 August 1996 as a commitment by the Minister?

- (6) If not, why not?
- (7) By what date will the installation of camera surveillance units in all taxis be completed?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. This is a very important series of issues.

- (1)-(2) I have been working with the industry over the past 12 months to address the safety problems faced by those in the taxi industry. In April last year a taxi drivers safety summit was held where we dealt with a whole range of issues that resulted in many recommendations to improve taxi drivers' safety. These recommendations have now been introduced, or are well advanced.
- (3)-(4) I have always supported the installation of screens in taxis, so long as they do not compromise the comfort and safety of the driver and passenger. At the safety summit last year we arranged for representatives, who were elected at the meeting, to meet with the Department of Transport and other interested people. At the end of the day we made some decisions, the most important of all being to put in the security cameras. We proceeded to call tenders for those cameras. That tender process was repeated because there was concern that the equipment might not meet the standards required in the taxi industry due to the vibration and continuing movement of the cabs, and has taken much longer than any of us wanted. However, that is a decision made not only by the Department of Transport but also in consultation with those in the taxi industry.
- (5)-(6) At last year's safety summit I gave a commitment to provide each cab driver with \$1 000 towards the cost of the supply and installation of camera surveillance units in each of Perth's taxis, and this commitment remains. That equipment is being tested today.
- (7) The tender for the supply and installation of camera surveillance equipment has closed. An industry evaluation panel has chosen a preferred tenderer. A trial of the tendered system is expected to be completed by the end of next week. Once the formal approval process is finalised, the successful tenderer will be able to produce and fit the units. The installation of screens can be done by individual cab owners. The requirement to have cameras will be compulsory. However, more than half the drivers at that meeting did not want screens. Therefore, we do not intend to force them to install them.

As a result of this safety issue, at the end of January a meeting was arranged for 11 February with the Western Australian Taxi Association. A couple of statements have been made lately, particularly one in the *Sunday Times* last week, by a representative of that association that I would not meet with its members. I did not refuse to meet with them. The date was set, but the association cancelled. It sought a meeting again last Thursday. I will meet the association as soon as a suitable date can be arranged. This misrepresentation about me not wanting to meet with a group of the taxi industry is counterproductive. The association discredits itself by making those outrageous statements.

WESTERN AUSTRALIAN TOURISM COMMISSION - AUDITOR GENERAL

Investigation

122. Hon TOM STEPHENS to the Minister for Tourism:

I refer to the Auditor General's investigation of the Western Australian Tourism Commission under section 80 of the Financial Administration and Audit Act conducted in May 1996.

- (1) Did that investigation identify areas in the operations of the WATC where controls, financial management and event management were deficient?
- (2) If so, what findings did the Auditor General make and what action has the WATC taken in response to those findings?
- (3) Were those findings contained in any correspondence from the Auditor General to the Chairman of the WATC?
- (4) Will the Minister table that correspondence?

Hon N.F. MOORE replied:

I do not have an answer to this question. However, I have sought legal advice on answers to questions about Global Dance Foundation because we have a contract with that organisation. I am anxious to ensure that answers given in the House in a hurry do not jeopardise that contract. I ask the member to place the question on notice. The only

difference between my giving an answer now and providing one on notice is that it will be a little later than the member expected and will have been checked by Crown Law to ensure it does not jeopardise the contract.

HEALTH - NURSING HOMES

Aged Care Reform Package

123. Hon KIM CHANCE to the Minister representing the Minister for Health:

As a result of the new commonwealth aged care reform package, nursing home proprietors will be able to use a single pool of funding at their discretion. The use of that discretion will have the effect of reducing the resources available for the provision of nursing care and is a fundamental change from the earlier care aggregate model funding - the CAM model - which guaranteed that an adequate amount of nursing skills mix was available to meet needs.

- (1) Can the Minister advise what discussions have taken place between the WA Minister for Health and his federal counterpart concerning the possible outcome of this policy in Western Australia?
- (2) Does the aged care reform package have the support of the Western Australian Government?
- (3) Has the WA Minister for Health been able to determine the likely impact of the policy on nursing home staffing levels, the qualification of those staff and the rates of pay in the public and private nursing home sectors?
- (4) Is the Minister aware of the warning issued by the Australian Nursing Federation that nurses may avoid working in the nursing home sector as a result of wages and conditions being less in that sector than in other areas of health care?
- (5) Is it correct that aged care nurses in WA have been unable to secure a recent 10 per cent wage increase which their colleagues in every other State except Victoria have been able to obtain in both the private and public sectors?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(3) The Commonwealth has provided only an exposure draft of its proposed Aged Care Bill at this stage. The detail of the implementation of the provisions in the Bill will not be known until the Commonwealth releases the subordinate legislation to the Bill and the principles of the Bill. The Commonwealth has advised that it plans to release the principles of the Bill in April. When the State Government has had the opportunity to examine the Commonwealth's proposed subordinate legislation to its Aged Care Bill it will be in a position to enter into substantial discussions with the Commonwealth on the implication of the Commonwealth's aged care reform package for Western Australia.
- (4) The Commonwealth has not been willing to adjust the WA care aggregate model rate since 1996. Western Australia's CAM rate is out of step with rate adjustments which were granted by the Commonwealth to most other States in 1996. The Minister for Health has written to his federal counterpart seeking a review of the Commonwealth's position on this matter.
- (5) Because the Commonwealth has been unwilling to increase the CAM rate, nursing operators have not been able to resolve the wage increase sought by nurses similar to those achieved by nurses working in other areas of health.

DAWESVILLE CUT - SAND BYPASSING WORK

Contract

124. Hon J.A. COWDELL to the Minister for Transport:

I refer to the sand bypassing work being carried out at the Dawesville Cut.

- (1) Is there a contract in place which dictates the amount of sand to be pumped per annum, and the times for the machine to be in use?
- (2) If yes to (1), have the conditions been met?
- (3) What steps are being taken to continue to move the sand while the sand bypassing units are being refurbished?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1)-(2) Yes.

(3) Insufficient sand accumulates in the trap to warrant mobilisation of the equipment more frequently than the scheduled annual operation required by the contract. However, the Department of Transport is constantly monitoring the sand trap and will take any appropriate action required. If the member has any other suggestions, ideas or concerns he should discuss them with me. I was at the Dawesville Cut last week and I have had discussions with the department since then.

MINING - MINERAL EXPLORATION

Increase

125. Hon TOM STEPHENS to the Minister for Mines:

Is the Minister aware of the figures released last week indicating that money spent on mineral exploration last year in Western Australia increased by 30.2 per cent between the September quarter 1995 and the September quarter 1996? In that period, the figure for the whole of Australia was 20.9 per cent and 9.7 per cent for all States, excluding Western Australia. Does the Minister have an explanation for how this exceptionally strong growth in mineral exploration squares with the Government's claim that the High Court's recognition of native title will ruin the State's prospects of attracting funds or increased expenditure on mineral exploration in this State?

Hon N.F. MOORE replied:

I can only assume that the figures the member has quoted are accurate. Where did they come from?

Hon Tom Stephens: They were released last week by the Australian Mining and Exploration Council.

Hon N.F. MOORE: What is AMEC's source?

Hon Tom Stephens: I presume they were taken from industry.

Hon N.F. MOORE: It is helpful to know where they came from because people have different views and statistics can differ. Based on the assumption that the information is correct, it must be remembered that different sorts of exploration take place in Western Australia. The biggest change since the native title problems have surfaced has been the move away from exploration in greenfield areas into what are called brownfield areas. Brownfields are where existing mining activity is taking place and where mining tenements are in place. Many companies with those tenements are exploring their existing properties in a way they had not done before. The amount of exploration on brownfield sites has increased significantly. The situation on greenfield sites is the opposite.

The advice I have - I cannot give figures - is that the amount of greenfield exploration has significantly decreased. If Hon Tom Stephens were to talk to mining companies, as he should, he would learn that the reason for that is their concerns about native title. It is not a fact that native title is having no impact at all; it is having a serious impact. If Hon Tom Stephens wants to know the facts, I suggest he talk to AMEC, the Chamber of Minerals and Energy of Western Australia, mining companies, and companies that are now exploring overseas, not just in Western Australia, and ask them the reason. They will say in no uncertain terms that the reason is the uncertainty surrounding native title. They have different views on how the situation should be resolved. Some may have views that are the same as Hon Tom Stephens'. It must be understood that a significant change has occurred in the way exploration takes place in Western Australia which is detrimental to the long term viability of the mining industry. Members opposite complain about a potential gold royalty. Unless some greenfield sites are explored in Western Australia and additional gold deposits are found, gold production in Western Australia will taper off rapidly over the next 20 or 30 years. It is vital for the continuation of the mining industry that new deposits are found. No doubt exists that the native title problems are having a detrimental effect on the level of exploration in Western Australia.

HOSPITALS - COUNTRY

Budget Deficits

126. Hon KIM CHANCE to the Minister representing the Minister for Health:

Some notice of this question has been given.

- (1) In view of the fact that the annual reports of a number of country hospitals reveal significant deficits in their financial operations, will the Minister advise what approach will be taken by the Government to enable these hospitals to continue operating?
- (2) Will deficits be recovered from the hospitals concerned?
- (3) What arrangements will be made to enable hospitals that have exhausted all available funds to meet the demands of outstanding creditors?

Hon MAX EVANS replied:

This is a long, complex question. The State has about 128 hospitals. Therefore, I ask the member to put the question on notice.
