Legislative Council

Thursday, 16 November 1995

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

PETITION - EDUCATION DEPARTMENT, CONTRACTING OUT CLEANING SERVICES

Hon John Halden (Leader of the Opposition) presented the following petition bearing the signatures of 128 persons -

> We the undersigned residents of Western Australia oppose the Court Government's plans to privatise the services currently provided by school cleaners employed by the Education Department of WA.
>
> As parents of students at Winterfold Primary School, we believe that an inevitable consequence of privatisation of these services will be a decline in the standards of cleanliness and presentation. The current cleaner at Winterfold Primary School has been a committed and enthusiastic member of the school community for twenty years. He contributes, in a voluntary capacity outside of his prescribed hours, in many school events. Such loyalty will be sacrificed by the contracting out of school cleaners as the employees' loyalty will be to the business, and not, as it should be, to the interests of the students, parents, staff and the Education Department.
>
> Your petitioners therefore humbly pray that the Legislative Council will reverse the Court Government's decision to contract out school cleaners.

[See paper No 854.]

PETITION - EDUCATION DEPARTMENT, CONTRACTING OUT CLEANING SERVICES

Hon John Halden (Leader of the Opposition) presented the following petition bearing the signatures of 1 862 persons -

> We, the undersigned residents of Western Australia oppose the State Government's decision to contract out school cleaning as we believe cleaners are committed and enthusiastic members of the school community who often contribute in a voluntary capacity in many school events, outside the prescribed hours. We consider that such loyalty will be sacrificed by the contracting out of school cleaning.
>
> We are also appalled at the Government's callous treatment of school cleaners in that:
>
> > It has not honoured its commitment to retain day labour even though cleaners have met targets for improved productivity;
> > It has not justified economically how, or why, the decision was made; and
> > It has not kept its promise to let school cleaners and the Miscellaneous Worker's Union know of any decision before it was made public.

Hon N.F. Moore: Signed Helen Creed!

Hon JOHN HALDEN: Interesting that.

The PRESIDENT: Order!

Hon JOHN HALDEN: The petition continues -

> Your petitioners therefore respectfully request that the Legislative Council call on the Government to reverse the decision to contract out school cleaning and release the Arthur Andersen Report which allegedly justifies this decision.

[See paper No 855.]

MOTION - URGENCY

Commission of Elders

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

> 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 December 25 for the purpose of discussing its concern at the confusion caused by the Premier's attempt to promote a representative group of Aborigines for a purpose as yet to be determined except perhaps to undermine other recognised groups which are elected properly to represent Aboriginal views and opinions.
>
> Yours sincerely
>
> Tom Helm MLC
> Mining and Pastoral

For the Council to entertain this motion it will be necessary for at least four members to indicate their support.

[At least four members rose in their places.]

HON TOM HELM (Mining and Pastoral) [2.43 pm]: I move -

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

The House should discuss this matter so that it can give its opinion on whether the Premier's decision announced in a media statement on 31 October was a proper way for taxpayers' funds to be used and is not a vehicle to spread confusion among Aboriginal groups, given the accusation aimed at Aboriginal organisations that they are delaying exploration or mining applications through the Mabo legislation. I have a great deal of respect for the 120 people who have been nominated from their communities to represent Aboriginal people on the Commission of Elders, but some of them may not be aware that they may be being used by the Government to help it avoid its responsibilities under the Mabo legislation.

The Premier's press release states that the group of elders will not be used to undermine the work of the Aboriginal and Torres Strait Islander Commission. ATSIC members are appointed in elections conducted by the Electoral Commission, by secret ballot and by Aboriginal people voting for the people they want to represent them in matters that concern Aboriginal people. According to the press release, the group will not undermine the work of land councils. Land councils have made stark and stringent statements about how they feel about the land, the rights of indigenous people and land values. The Premier said that other groups would also not be undermined. However, the press release does not tell us what the group of elders will do. All we know so far is that it cost $70 000 to bring them together at Observation City and Yanchep and that there is a budget allocation of $200 000 for the group to meet regularly. I have spoken to several of the people who have been nominated as elders. They are as confused as I am about their role. One of them told me that they attended the meeting at Observation City and they listened to young Court, as they described him, quietly and respectfully, as Aboriginal people do. When they talked among themselves after they left the room, they were confused about why they had been called together and about what was expected of them.

Hon Sam Piantadosi: I understand that at Yanchep's Club Capricorn, there was a container with $60 000, and $500 was given to each of the people who attended the meeting.

Hon TOM HELM: I do not know about that. I raise this as a matter of urgency because the issue came to the attention of the House only as a result of a question asked by Hon Tom Stephens. Apart from that, this Chamber has been unable to discuss the rights and wrongs of this media stunt or whatever it is.

The Premier is quite proud of the fact that, in more than 200 years of occupation of this nation by non-Aboriginal people, this is the first time that such a group has been called together. If the Premier is receiving messages from the organisations which already exist, some of whose members are elected, what is the reason for forming another group? Is it being formed in the hope that they will say the things that the Premier wants to hear rather than what has happened in the past when Aboriginal organisations and representatives have said things which the Premier did not want to hear? That is the cynical political slant we can place on the statement.

It is not just the politics of the matter which should be of concern to us. We must also be concerned about the confusion caused by the addition of this Commission of Elders, which is an organisation with another name. I know some of the people on the commission personally and I have a high regard for them. However, if the Government brings people like that together and does not give them a role, given that there is an area of conflict over land rights and the Mabo legislation, it is simply creating another smokescreen. Another confusing item will be on the agenda which will not help us to address the obligations which we are bound to address as a result of High Court decisions and the legislation brought down by the Federal Government. If we do not take the cynical view, we should understand what the group is intended to do. Given the confrontation which we are about to face and have faced in the past in respect of the Government's regard for secret ballots, if we cannot transpose our non-Aboriginal culture on Aboriginal people - which we may be doing in this case - we should at least carry forward our basic dream of democracy through the ballot box and secret ballots.

The union movement has given its view on secret ballots. Just in case anyone thinks that the union movement is opposed to secret ballots, let me state that it is not opposed to them per se. It is opposed to them only in the way in which the Minister for Labour Relations wants them to progress. However, that is another matter. The people I am talking about are nominated by their communities. The issue is difficult. I do not wish to give anyone the impression that I have a deep understanding of Aboriginal culture, background and history. I certainly do not have that. I love to sit down and listen to their stories and tales and I love to learn about that different culture, some of which I can relate to. By the same token, I do not know how we can describe a community. Is a community two families or one family? Does a community comprise 300 people? Is it a place like Jigalong, Punmu or Cotton Creek? Or is it a place like Port Hedland? All those places are called communities.

Anyone with half a brain who has spent any time with Aboriginal people would know that Aboriginal people are not all of the same skin group. We could say, using the non-Aboriginal cultural approach, that they all belong to the same community. So, someone, somewhere - and I do not have any evidence of any Aboriginal people saying it - could say that a particular person should be nominated as an elder for a community. That is totally inappropriate because an elder, particularly in the north west, is born - an elder is an elder when they are only a baby. That is established through tradition, ceremonies and lore, and everyone knows who an elder will be. No-one else in that group has responsibility for identifying that person or nominating anyone else for that position.

We should be honest: As good or as bad as ATSIC is, at least it has some legitimacy because it reflects non-Aboriginal culture - in other words, the western culture to which we belong. It is the way we impose our culture to see if we can get a satisfactory group of Aboriginal people to represent Aboriginal views and aspirations. We also know that some ATSIC organisations are quite strongly on the nose. They are really not held in high regard at all for many reasons, ranging from misappropriation of funds to quite clearly inadequate training or incompetence. There are many reasons why ATSIC organisations are not liked. One would have thought -

Hon Mark Nevill: When you say "ATSIC organisations", do you mean ATSIC funded organisations?

Hon TOM HELM: No, I am referring to ATSIC councils. My impression is that it is ATSIC councils, per se. I do not know of any that are held in high regard. I think the Pilbara council is particularly good.

Hon P.H. Lockyer: I hope *Hansard* is not widely distributed.

Hon Kim Chance: That is no secret.

Hon TOM HELM: I am saying that if we can give $200 000 to a group of elders and give them that title, one would have thought that $200 000 would have been better spent on training and providing more resources to ATSIC councils. They are the only groups that fit in with the philosophy that we are pursuing in this Parliament. If we talk about secret ballots and recognising someone who is entitled to represent someone, then ATSIC is the appropriate body. I am going strictly on what we would describe as non-Aboriginal culture. Having arrived at that, one would have thought that we should be aiming our endeavours towards making those groups more respected and relevant to the people they are elected to represent. Instead of that, we have put in another group. If one were a cynic one could say that instead of promoting the organisations that are already in place with whom there are problems, one promotes another organisation to put up a smokescreen. If, as the Premier said in his press release, this group is being brought together so that we can more ably understand what grassroots Aboriginal people are thinking, what is wrong with dealing with land councils, ATSIC organisations and cultural organisations? Why does the Government not go to them? It does not because those groups are not saying the things that the Government wants to hear.

Hon E.J. Charlton: Do we have only one organisation in white society?

Hon TOM HELM: That is an interesting question. For those people who do not regard State Governments of any political persuasion very highly and who are very cynical about State Governments, what do we do? Do we bring in another organisation to hear what they have to say?

Hon E.J. Charlton: How many organisations are in country Western Australia representing the communities?

Hon TOM HELM: Do you mean local councils, boy scout groups, the bowling clubs, RSL clubs and so on?

Hon E.J. Charlton: Yes, you can even do better than that. There is the Farmers Federation, the pastoralists and graziers groups and so on, and they are all representing the same people.

Hon TOM HELM: The difference is that very few of them have been set up by the Premier.

Hon E.J. Charlton: ATSIC was not set up by the Premier; land councils were not set up by the Premier.

Hon TOM HELM: No, but neither was local government, the RSL, the Farmers Federation or the trade union movement. None of those organisations is using taxpayers' money to establish themselves. ATSIC and the State Government are.

Hon E.J. Charlton: You were part of a Government that set up many organisations. The Womens Advisory Council was set up by your Government.

Hon TOM HELM: What is the difference?

Hon E.J. Charlton interjected.

Hon TOM HELM: Those organisations are set up in the same way as the Farmers Federation. We have Aboriginal organisations already.

Hon E.J. Charlton: Who set up Western Women?

Hon TOM HELM: There was only one of them and we should know.

Several members interjected.

The PRESIDENT: Order!

Hon TOM HELM: As much as the member says that there are examples of other organisations, I suggest that there is only one -

[The member's time expired.]

HON N.F. MOORE (Mining and Pastoral - Minister for Education) [2.57 pm]: What we have just heard is a typical speech by a member of the Labor Party who has a fundamental view that there should only ever be one organisation representing the views of any particular group.

Hon Kim Chance: That is not what he said.

Hon N.F. MOORE: When one looks at what the Australian Labor Party says about employees, one sees that it believes that the only organisation to represent the interests of employees should be unions - no-one else should be able to talk about employees. In relation to the training portfolio, the only organisation that should have a say about training needs is the industry training council network, and the unions should control that network. Who should represent the views of Aboriginal people? That is a good question, because Hon Tom Helm has just told us at length that Aboriginal and Torres Strait Islander Commission was not a very highly regarded organisation at all, yet that is one of the organisations that he is promoting as being worthy of notice and not the Commission of Elders. The member has a problem in that the only views he wants to hear are those of the organisations that he has personally endorsed. Anyone who has a contrary view should be put aside.

The Commission of Elders was set up as a result of a very extensive inquiry done by the State Government, chaired by Mike Daube and entitled "Task Force on Aboriginal Social Justice 1994." That report was put together after significant consultation with Aboriginal people and the broader community right across Western Australia. That report recommended as follows -

> A Commission of Elders should be established to meet annually with the Premier and Minister for Aboriginal Affairs. The members will be invited by the Premier and Minister for Aboriginal Affairs on advice from the Aboriginal Affairs Department and the Aboriginal community. The Commission of Elders will provide advice on general directions in policy and planning for Government. The CEO of the Aboriginal Affairs Department will be the secretary to the commission.

That is a recommendation of the Daube report into this whole question of Aboriginal social justice. I repeat: That report was put together after significant consultation with the whole community, including Aboriginal people across Western Australia. In fact, many of the people on the commission were Aboriginal. They made a very direct contribution to that recommendation. When that recommendation was presented the Premier decided to call together a meeting of elders and in response to a question asked by Hon Tom Stephens the Premier said in respect of the composition of the commission -

> Nominations came from Aboriginal people and were based on their views of who would be their appropriate representative. Aboriginal people also determined who they considered was an elder for the purpose of the commission.

It was not as though the Government decided who should attend; it asked Aboriginal communities to advise who they thought would be their appropriate representatives to attend a Commission of Elders.

Hon Sam Piantadosi: They were not necessarily all elders.

Hon N.F. MOORE: Hon Sam Piantadosi should tell them that, not me. If he reckons that Aboriginal people cannot decide who their elders are, he should tell them.

Hon Sam Piantadosi: You are referring to a Commission of Elders.

Hon N.F. MOORE: That is what it is called.

Hon Sam Piantadosi: Elders inherit the position.

Hon N.F. MOORE: I will ignore the member because he should listen to what I am saying. The Aboriginal communities decided who would attend the commission and it is not for me, Hon Sam Piantadosi, the Premier or anybody else to tell them who they

should have to represent their interests on the Commission of Elders. The first conference was held at Club Capricorn in Yanchep and I would be interested to hear Hon Sam Piantadosi's comments about a bag of money. It is the sort of comment that is occasionally made in the place without any substantiation. If he can substantiate his claim that people were given bags of money -

Hon Sam Piantadosi: You will be bloody embarrassed by my comments.

The PRESIDENT: Order! Hon Sam Piantadosi knows that he cannot use that language in this Chamber. I ask him to cease interjecting and, in particular, to cease using that sort of language.

Hon N.F. MOORE: Hon Tom Helm suggested that these people were brought to Perth because they might give a view that is in line with what the Premier would like to hear.

I will quickly go through the recommendations of the conference. I suspect that some of them may not be in line with the views that the Premier, I or other members may have about the future of Aboriginal people in Western Australia. The recommendations are -

> Support the preservation of language and Dreamtime stories.
> Amendments to the Australian constitution with full Aboriginal participation.
> Development of state legislation on Native Title which complements the Federal Native Title Act.
> Commission of Elders members to have the same status and roles/responsibilities of honorary wardens (Aboriginal Heritage Act 1972)
> Shires acknowledge that Aboriginal people were the first people.
> Shires recognise the positive contribution made by Aboriginal people, respect their rights to live according to their own values and customs subject to the law, and grieves for their loss of land and culture and commits itself to reclaim lost dignity.
> Shires work to promote community harmony, tolerance and understanding.
> Shires endorse and promote the Australian Council for Aboriginal reconciliation vision . . .
> Establishment of recreation areas/facilities for Aboriginal youth.
> Return of Aboriginal lands/reserves from shires and government agencies, or if not possible land of equal size to be provided.
> Shires to erect signs at shire borders explaining Aboriginal history of the area and extending an Aboriginal welcome to visitors.
> Establish Aboriginal councils in shires to work closely and equally with the local shire councils.
> In the interest of reconciliation and social justice, real loss in terms of damage to Aboriginal people needs to be calculated on a financial basis. This needs to be done up front and paid into a foundation to be administered by nominated Aboriginal people.
> Education - strongly recommend the Premier to implement recommendation 140 (Daube Task Force Report) to create a director position for an Aboriginal person.
> Recommend Government address and implement the recommendations from the women's meeting held at the Commission of Elders meeting at Club Capricorn - Perth, 31st Oct-1st Nov, 1995.

These recommendations are now being put together in a form by the Aboriginal Affairs Department to which the Government will respond. It represents the view of the people who came together as a Commission of Elders to talk about matters of interest to Aboriginal people. Members should applaud that. We should seek as many opportunities as possible for people to come together and talk about issues that are important to them. It does not matter who they are.

Hon Sam Piantadosi: That would be right!

Hon N.F. MOORE: Hon Tom Helm and Hon Sam Piantadosi would have members believe that the only people who can speak on these issues are the people who they decide are appropriate. The fact is that these people came together on the nomination of

their communities to put forward ideas that should be considered by the Government. It is not a statutory body and it is not funded by the Federal Government. The cost of the meeting was met by the State Government so that the people involved could come together collectively and put to the Government the views they think are important.

The recommendations are wide ranging. The general view, which is contrary to that put by Hon Tom Helm, was that the meeting was very successful and a worthwhile exercise. The future of the commission is being considered and a decision will be made on whether it will continue to meet and if it does when it should meet and how it should operate. The Government had no intention of directing the commission, but it simply wanted to facilitate the bringing together of a group of people to discuss matters of importance to them in the context of the Government's responsibility for a range of issues affecting those people. It is a pity that Hon Tom Helm should come into this place and argue that the Kimberley Land Council and organisations like it are the only people who can represent the interests of Aboriginal people. They are not and he and I know that. The Government is entitled to hear the views of anyone and that includes Hon Tom Helm and Hon Sam Piantadosi.

Hon Sam Piantadosi: You will hear my view in due course.

Hon N.F. MOORE: It is a good thing that this Government found the money to bring these people together for the first time to hear their view.

Hon Sam Piantadosi: To give them a bag of goodies.

Hon N.F. MOORE: I will check that out.

Hon Sam Piantadosi: You will be embarrassed by it.

Hon N.F. MOORE: I will not be embarrassed because this Government is accountable. The only thing I can think of in respect of a paper bag is that Mr Parker had been there earlier. If the member wants to talk about brown paper bags I can go through a range of circumstances -

Hon Sam Piantadosi interjected.

The PRESIDENT: Order! I ask members to stop arguing the point across the Chamber and certainly to stop interjecting.

Hon N.F. MOORE: We all know about brown paper bags and I will not go into that issue further. The Aboriginal people continually say that this Government has delivered for them and that it actually makes things happen.

Hon Tom Helm and I visited Jigalong the other day and we saw the services that are being delivered to that Aboriginal community. The Government does not talk about land rights or reconciliation, it does things. The Commission of Elders is all about bringing people together and asking them what will make their lives better. That is what this is all about; it is not about stopping the Aboriginal and Torres Strait Islander Commission, the Kimberley Land Council, Hon Tom Helm or Hon Tom Stephens from having a view. Their view will always be heard - there is no question about that. These people for the first time are making their view heard and this Government is listening.

HON MARK NEVILL (Mining and Pastoral) [3.08 pm]: The Commission of Elders came out of the Task Force on Aboriginal Social Justice, and it is an excellent report. I know a number of people involved with that report. The report does go over the top in the number and scope of government agencies which are set up under this particular structure. I suspect it is the result of the direct influence of the Chairman, Mike Daube, and I hope I am not maligning him too much by saying that.

The Aboriginal Affairs Department is in place and we have a recommendation of the Commission of Elders which the Government set up. I do not have any problem with that commission which meets annually. In addition, there is the state Aboriginal advisory panel which meets three times a year and regional advisory panels, of which there are six. We then have a suite of co-ordinating committees - the Aboriginal Social Justice Progress Committee which meets twice a year; the Aboriginal Affairs Planning

Commission; the Aboriginal Affairs Co-ordinating Committee; the regional coordinating committees; and the Aboriginal Affairs Liaison Committee. It is a bureaucratic nightmare, and it is set out on pages 224 to 227 of the report.

My main concern is the Government has not clearly stated which of these structures will be adopted. The announcement about the Commission of Elders is the first step - I am sure the Minister will correct me if I am wrong. It seems as though the whole system may grow like Topsy. Around my electorate many of the Aboriginal people seem to spend most of their life attending meetings. I was amazed at the number of places visited by Munja Mosquito, a traditional woman to whom I spoke last year and whose children I had taught many years ago. She had seen more of Australia than I had. Dicky Cox, for example, is Chairman of the West Kimberley Aboriginal and Torres Strait Islander Commission zone, Chairman of the Kimberley Aboriginal Association and Chairman of the Noonkanbah Community and now I think he is on the Commission of Elders. He was in Perth that weekend and I presume he went to the meeting. He is probably chairman of a number of other community organisations, and on numerous committees. He also has outstations to look after. Unless the Government makes clear what structure it will put in place when it starts - these are basically advisory structures - rather than its just announcing a Commission of Elders and allowing it to grow from there, it could end up with a real mess.

Hon N.F. Moore: I am sure it is not the intention that it grow like Topsy. It is an opportunity for people to come together on one occasion; whether it continues will be another decision.

Hon MARK NEVILL: I have no great argument with the Government's proposal to create a Commission of Elders. However, as a state government structure it needs to be planned. The Government may announce the formation of the commission now but change it in a year's time because it does not work.

Hon N.F. Moore: Maybe it will replace something else.

Hon MARK NEVILL: If the Government does not intend that the group meet annually it is not adopting a key recommendation of the report.

Hon N.F. Moore: That is the intention, but it may not continue in its current form and it may be changed. It may replace another advisory committee.

Hon MARK NEVILL: I have canvassed the idea of how this Commission of Elders fits in with other Aboriginal agencies, particularly within the State Government's proposed framework under this report from the Task Force on Aboriginal Social Justice. It must also work in with many other Aboriginal organisations. I refer to major ones such as ATSIC and other organisations which range from excellent to mediocre. The goldfields organisation is probably the best managed of all the ATSIC organisations of which I am aware in this State. It does an excellent job. To be diplomatic, I think some of the others have a long way to evolve. The elders of any Aboriginal group are extremely important. If one is an elder it means one has survived. The average age to which many of those people live is 55. The number of Aboriginal males who die of heart disease in their forties is to all our shame. Aboriginal people who live to an age at which they are regarded as elders, whether by lineage, age or whatever other criterion is used, will have lived through many problems and will have something useful to contribute. The Minister outlined some of the recommendations of that task force report. I was going to ask him what were the recommendations. I have not seen the report and I do not know whether it has had any publicity.

Hon N.F. Moore: It is being collated into a report.

Hon MARK NEVILL: I think the recommendations should be made public because considerable money has been spent on that task force. I am concerned about the number of different committee meetings that Aboriginal people are required to attend. That requirement makes their role less effective. If I had my way we would have fewer of these committees around the State. I suppose some people will agree with me.

Hon E.J. Charlton: You are dead right.

Hon MARK NEVILL: In his speech to the meeting of these elders, Cedric Wyatt made a few comments, one of which was -

> Many of the problems faced by Aboriginal people can be traced to the Aborigines Protection Act of 1905 which we now recognise to have been a most divisive and destructive piece of legislation.

Although features of that Act were destructive, it certainly contained many constructive measures. He goes on to say -

> As we all know it legalised the removal of Aboriginal children from their families, encouraged the establishment of reserves and missions and introduced many restrictive measures.

Surely the establishment of Aboriginal reserves and missions were fairly positive steps at that time. When droughts occurred Aborigines moved to the water holes from which pastoralists watered their stock. It was often a cause of conflict over who had the right to drink - the cattle or the Aboriginal people. We all know that at the turn of the century the Aboriginal people were regarded as part of the local fauna and quite expendable compared with cattle. The missions offered an alternative to those places. The two young part Aboriginal daughters of Bob Button from Ruby Plains station were sent to the mission at Beagle Bay to be educated because no education was available on Ruby Plains station south of Halls Creek and he wanted them to have a better chance in life. Not all those children were taken by the police.

HON P.R. LIGHTFOOT (North Metropolitan) [3.17 pm]: I did not have prior notice of the urgency motion but if I had, I probably would have come to the conclusion that the motion did not strictly come within the perimeters of urgency.

Hon Kim Chance: Four people stood.

Hon P.R. LIGHTFOOT: I do not see it as an urgency motion and this House should consider whether urgency motions should take precedence over other business apart from prayers, tabling of papers, motions, and so on.

Hon Mark Nevill: You have been very active on your feet lately.

The PRESIDENT: Order!

Hon P.R. LIGHTFOOT: That goes with my being a member of this House. It will be no surprise to the House that I congratulate the Government on its initiative in calling together a Commission of Elders to discuss problems within Western Australia which, to a substantial degree, are peculiar to Western Australia. For instance, it is well known that the Aboriginal and Torres Strait Islander Commission is not functioning. I am sure people on the other side will concede that.

Hon Tom Helm: The Premier did not say that.

Hon P.R. LIGHTFOOT: The Premier does not have to say what I am saying and I am not emulating the Premier. I am saying ATSIC is not functioning. If this State can show the leadership in this area that it does economically - with the raft of unemployment problems in Australia we have less unemployment, greater gross domestic product and national exports - there is no reason why this State should not show some initiative concerning Aboriginal people. ATSIC is not working. The first reason that it is not working is that too much of its money is being spent in the east. Most of the commissioners who run ATSIC under their various positions come from the Eastern States. The second reason that ATSIC is not working is that it comprises not just Aboriginal people but Torres Strait Islander people, who are predominantly Melanesian. Part of the problem is that the Melanesian people would like to have at least token independence with respect to their destiny because their aspirations are different from those of Aboriginal people.

Hon Kim Chance: They asked the Prime Minister for that recently and he said he would consider it.

Hon P.R. LIGHTFOOT: That endorses what I am saying, and I thank Hon Kim Chance

for that chance to put the argument that the Torres Strait Islander people, who are significantly but not exclusively Melanesian, want, because of their geographical and ethnic background, to go their own way and have some kind of self-determination.

Hon Kim Chance: I agree, and so does the Prime Minister.

Hon P.R. LIGHTFOOT: One of the reasons that the Premier has chosen to convene this Commission of Elders is that we can at least make a start. Hon Mark Nevill said that if we do not announce what sort of structure we will put in place, we may get into trouble. That is a reasonable statement, but I put it to Hon Mark Nevill that we cannot do that unless we call together, under a catch-22 situation, a group of people loosely titled a Commission of Elders, for want of a better name, to find out what structure we wish to put in place. We cannot do it with the disparate groups that come from this 2.5 million or 2.6 million square kilometres.

Hon Mark Nevill: Was a brief like that given to it?

Hon P.R. LIGHTFOOT: I do not know. I assume it was. I listened to the Minister for Education, and I assumed that part of its brief was to discuss that matter.

Hon Mark Nevill: I am sure you do not agree with the structures mentioned in the taskforce report.

Hon P.R. LIGHTFOOT: I do not agree with all of the structures that are mentioned in that report, although I obviously agree, as I am sure do some members opposite, with some of those structures, but I do commend the Government for showing some initiative. I have always been considered somewhat parochial and perhaps even insular in my views about Western Australia, and I would not be true to myself if I did not say that I believe Aboriginal people, discrete from the other people who are associated with ATSIC, should have some say about what happens in Western Australia. I find nothing wrong with that.

Many things need to be rectified. For example, the 300 000 Aboriginal people in Australia - not the Torres Strait Islander people, who do not necessarily come into the health statistics - of whom about 40 000 live in Western Australia, have about half the life expectancy of other Australians. Other Australians live to 75 years for males and 81 years for females; and a male who gets to be 75 can expect to live another 10 years. However, the situation is the reverse with Aboriginal people; they are dying like flies in their forties. That is a tragedy. A group of Aboriginal people in the northern part of the State, and I will not say where, but members will know, have the highest incidence of sexually transmitted diseases in the world - not Australia, not the southern hemisphere, not Oceania, but the world. That indicates that the processes which the Federal Government promotes through ATSIC are not working. In at least one area of this State, and possibly others, there has been an alarming increase in the number of Aboriginal people who are HIV positive. That again proves that ATSIC is not working. Aboriginal people have a terribly high incidence of unemployment. That again proves that ATSIC is not working. Aboriginal people have a terribly high incidence of child mortality. That again proves that ATSIC is not working. Aboriginal children have a terribly low incidence of either secondary, post-secondary or tertiary education. One can outline a range of things which white Australians take for granted but which Aboriginal people do not enjoy. Aboriginal people do not have the opportunity of enjoying the standard of living which other Australians enjoy because the processes that are administered by Canberra are not working.

Hon Sam Piantadosi interjected by saying something about a bag of money - I think he referred to $60 000 - and about $500 being dished out. That sort of comment is disgraceful. If anyone can extrapolate from an allowance made by the Salaries and Allowances Tribunal -

Hon Sam Piantadosi: I will give you the names of the recipients. You should be ashamed. You are a bunch of crooks.

Withdrawal of Remark

Hon P.R. LIGHTFOOT: Mr President, I ask that that comment be withdrawn.

The PRESIDENT: Order! Hon Sam Piantadosi continues to defy the Chair and I must call upon him to withdraw a statement that he should never have made. I do not get a lot of joy in asking him to withdraw, but he must withdraw.

Hon SAM PIANTADOSI: I will provide the evidence in future, but on this occasion I withdraw.

The PRESIDENT: Order! Hon Sam Piantadosi is being defiant again. When I ask him to withdraw, he does not have an opportunity to make a speech; he must just withdraw.

Hon SAM PIANTADOSI: I withdraw.

Debate Resumed

Hon P.R. LIGHTFOOT: Thank you, Mr President.

I would be astounded if it were the case that a sum of money was paid - I have no evidence that it was paid, but I assume this is where Hon Sam Piantadosi is getting mixed up, as he often mixes up his facts and figures - illegally to those who attended the meetings. If the member was armed with the facts, he would not be so ignorant when he interjects with the most appalling accusations against innocent people who are trying to defend themselves and their lifestyle and to increase those things which should be available to them. I have no truck with that sort of criticism. I do not sink so low in trying to score political points that I take advantage of a group of people who are so devastatingly disadvantaged. That sort of statement deserves the condemnation of this House. I find it disgraceful.

Hon Sam Piantadosi: You are a hypocrite.

Hon P.R. LIGHTFOOT: I find those sorts of interjections intolerable when they are directed at people who are underprivileged.

HON KIM CHANCE (Agricultural) [3.28 pm]: My comments will be truncated because I have only a little over two minutes, but I must say in respect of some of the comments that we have heard from members opposite in particular that it is regrettable to see the degree of grandstanding in which people are prepared to engage on this issue.

Earlier this week, I was in Kalgoorlie and had the opportunity of again visiting the Aboriginal Medical Service to see what is being done. Anyone who is interested in either Aboriginal health or general health issues should look at the AMS facility there to see how much the management of that facility is wringing out of the meagre dollars that it has. We are told that the Commission of Elders cost $70 000. I know that may not be a lot of money to the Government, but $70 000 would make a great difference to the Aboriginal Medical Service in Kalgoorlie.

Hon N.F. Moore: It would be petty cash for ATSIC.

Hon KIM CHANCE: Yes. Unfortunately, I do not have the time to answer the allegations that were made, but the Government has a duty to tell us and the community what function is perceived for the Commission of Elders which is not already being performed by ATSIC. The Minister for Education did give us a list of what seemed to be quite worthy objectives which were addressed by the Commission of Elders, but each of those initiatives could have already been addressed by ATSIC.

Hon E.J. Charlton: None has.

Hon KIM CHANCE: A fundamental error made by non-Aboriginal people generally is to assume there is a single united approach to every Aboriginal issue.

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

ORDERS OF THE DAY - ABORIGINAL HERITAGE AMENDMENT REGULATIONS, DISCHARGED FROM NOTICE PAPER

On motion without notice by Hon Tom Helm, resolved -

That Order of the Day No 2 be discharged and the motion withdrawn.

SENTENCING BILL
SENTENCING (CONSEQUENTIAL PROVISIONS) BILL
SENTENCE ADMINISTRATION BILL

Committee

Resumed from 15 November. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for the Environment) in charge of the Bill.

Sentencing Bill

Progress was reported after clause 6 had been agreed to.

Clause 7: Aggravating factors -

Hon N.D. GRIFFITHS: Subclauses (1) and (2) are a re-enactment of subsection 2 of section 17B of the Criminal Code. That legislation was passed last year. Subclause (3) is substantially in the same terms as the last paragraph of section 656 of the Criminal Code, but there is an important difference. I make these points so that those who will interpret those important areas of sentencing have some guidance. If I am inaccurate in my comments, I wish to hear from the Minister; however, if I am not, I do not expect to.

When the High Court of Australia in the decision of R v De Simoni handed down its judgment in 1981 it was thought to be appropriate to amend section 656 of the Criminal Code in these terms -

> When considering the sentence proper to be passed the court may have regard to a circumstance of aggravation whether or not that circumstance has been charged in the indictment but, notwithstanding any other provision of this Code, if the circumstance has not been charged in the indictment the court shall not impose on the offender a punishment that is greater than that to which he would have been liable if the offence had been committed without the existence of that circumstance.

The difference in import between those words and subclause (3) is that the operation of subclause (3) is not restricted to matters to be dealt with by way of indictment. It will also apply to simple offences as well as crimes and misdemeanours. From the tenor of my comments, members will gather that we support this clause.

Clause put and passed.

Clause 8: Mitigating factors -

Hon PETER FOSS: I move -

> Page 6, line 24 - To insert after the word "offender" the words "or decrease the extent to which the offender should be punished".
>
> Page 6, line 25 - To delete subclause (2) and substitute the following subclause -
>
> > (2) A plea of guilty by an offender is a mitigating factor and the earlier in proceedings that it is made, or indication is given that it will be made, the greater the mitigation.
>
> Page 7, after line 5 - To insert the following new subclause -
>
> > (4) If because of a mitigating factor a court reduces the sentence it would otherwise have imposed on an offender, the court must state that fact in open court.

These amendments bring the Bill into line with section 19B of the Criminal Code which allows the court to have regard to the timing of a plea of guilty. These amendments are intended to effect that consistency.

Hon N.D. GRIFFITHS: I draw the committee's attention to section 17C. This legislation comes from another place where it was the promise of the Attorney General. It is not complimentary to the Attorney General's handling of this Bill in the other place that the

Minister for the Environment must move these amendments in this place. I particularly welcome subclause (4).

Hon PETER FOSS: In the same way as I cannot take credit for its having been detected and included, I am sure that one should not blame the Attorney General for its not being detected. I recognise the ministerial responsibility in both places.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 9: Statutory penalty: effect of -

Hon N.D. GRIFFITHS: This clause seems to be commonsense. I query why the words are necessary.

Hon PETER FOSS: That is probably so. One thing this Bill recognises is that for many people it has been an arcane study. Even as commonsense it is useful for any person approaching the subject to have matters stated even when they are plain.

Clause put and passed.

Clause 10: Effect of change of statutory penalty -

Hon N.D. GRIFFITHS: I refer the committee to the second paragraph in section 11 of the Criminal Code. It seems that the wording of this clause merely recasts the wheel without changing the circumference or anything else of significance. I suppose it is modernising the language; however, it does not take the matter any further. I do not like words being changed unless there is a good reason for it because the words that are in existence have been the subject of interpretation; their meaning is understood. When we change words, even with a view to modernising them, we leave ourselves open to a reinterpretation. I say this as a matter of general principle; I do not think there is any room in this context. The words have changed but everything remains the same.

Hon PETER FOSS: I agree with Hon Nick Griffiths. I think it is the intent that the words change but everything remains the same. The reason for the wording is to have a consistency throughout the Bill.

Clause put and passed.

[Continued on p.10840.]

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

REAL ESTATE LEGISLATION AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by leave by Hon Peter Foss (Minister for Fair Trading), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Minister for Fair Trading) [4.33 pm]: I move -

That the Bill be now read a second time.

The Real Estate Legislation Amendment Bill amends the Real Estate and Business Agents Act, the Settlement Agents Act and the Residential Tenancies Act. These amendments represent the most significant changes to these Acts since their proclamation, which in some cases was 17 years ago.

The Bill removes unnecessary regulatory burdens on real estate agents, settlement agents and financial institutions in relation to deposit trust and tenancy bond accounts. It will also allow the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board to fund all activities associated with the regulation of the real estate and settlement industries from the interest earned on agents' trust accounts. This

will be achieved without any additional costs to agents and will provide ongoing savings to government of around $580 000 annually. The supervisory boards that support the real estate and settlement industries will take on a more strategic role and will work with these industries to develop a fairer and more competitive environment. The public will benefit from ongoing improvements in the level of professional service provided by agents. As well as funding board activities, interest accrued from agents' trust accounts will also be used to increase the number of grants from the home buyers assistance fund, and therefore will make more money available to people to buy their first home.

The present level of activity in real estate sales is regarded as the most protracted market recession of recent times. The Bill provides an opportunity to stimulate this important sector of the real estate sales market by increasing assistance to first time home buyers. In particular the Bill -

simplifies deposit trust account arrangements for real estate and settlement agents;

expands the range of activities that can be funded by the real estate and settlement agents boards;

varies the conditions and arrangements for the operation of the home buyers assistance scheme;

allows for the progressive deregulation of fees charged by real estate agents and settlement agents;

increases and makes consistent with each other penalties under the Real Estate and Settlement Agents Acts as well as increasing penalties under the Residential Tenancies Act;

amends the Residential Tenancies Act to address some of the concerns raised by owners, agents, tenants and financial institutions about the operation of this legislation; and

updates the wording of the financial provisions in accordance with Treasury standards.

At present, the deposit trust account provisions in the Act require real estate agents and settlement agents to maintain a percentage of their trust account balance with their respective boards. In the case of the Real Estate and Business Agents Supervisory Board, interest earned on the deposit trust is used to fund the fidelity guarantee fund, some education programs of the board, and the home buyers assistance fund. However, all funds received by the Settlement Agents Supervisory Board are currently credited to its fidelity guarantee fund. Maintaining the deposit trust with the boards can create difficulties for agents, particularly if several clients need to access their funds at once. In these circumstances, agents may even need to arrange a withdrawal from the board's trust account. The Bill seeks to address this problem, by abolishing the current deposit trust arrangements, returning all trust funds to agents and replacing the deposit trust fund with a direct interest payment system. These new arrangements will reduce the time that agents need to spend complying with the current requirements. These changes will also remove the annual reconciliation process for agents and the boards, which has been necessary in the past to maintain the deposit trust fund.

As I have already outlined, the interest obtained from financial institutions will be used to support the boards and their functions under the Act. The Bill allows the boards to pay for costs associated with, but not limited to -

education and advice for both the community and the industry;

compliance activities including proactive audit and inspection programs;

legislative, administrative or marketplace reviews;

activities of the boards or their staff and administration of the legislation; and

financial administration and policy support for the board.

This will provide the boards with opportunities to review existing regulatory

arrangements including legislation and licensing systems to ensure that they serve the public interest. Many complaints received about the real estate and settlement industries have resulted from a lack of understanding by agents about the relevant Act and code of conduct. Once proclaimed, the amendments to the Act will allow the boards to extend their proactive programs working with agents to give them a better understanding of the legislation and the surrounding real estate practice.

Clients will be less likely to encounter problems with those agents who are better informed about the legislation and more aware of their fiduciary responsibilities. This is particularly important for the Settlement Agents Supervisory Board, which at present does not have access to any funds for education purposes. Issues such as conflicts of interest within the settlement industry clearly demonstrate a lack of understanding by both clients and agents about the nature of conflicts of interest. The Bill enables the board to implement education and compliance strategies aimed at addressing these problems. Furthermore, the boards will be able to fund education and advisory services for members of the public. It is important that clients be well informed about their rights when dealing with agents. The Bill ensures that the boards can either pay an organisation or engage staff to perform services for the board. Additionally, the Bill provides the boards with the flexibility to engage persons as consultants on a contract for service.

As previously mentioned, the Bill will increase funding for the home buyers assistance fund. The fund currently provides grants of up to $2 000 to assist first time purchasers who buy properties through licensed agents with those incidental costs which occur at settlement time. Until last year the home buyers assistance fund was dormant as the legislation governing the criteria for grants discriminated against single people. In October 1994 Parliament passed amendments removing the discriminatory provisions This allowed the fund to be reactivated. Since its recommencement there have been 427 grants from the fund, averaging approximately $1 700 a grant and totalling over $730 000. First home buyers will benefit from changes to the rules governing grants from the fund. The period in which they can apply for a grant will be extended and the range of lending institutions will be broadened to include organisations such as credit unions, allowing their clients to be considered for grants.

This Bill allows for the progressive deregulation of real estate agents' fees. This is a significant move which links closely to the recommendations of the Hilmer report and the national competition policy package, requiring all regulatory restrictions on competition to be re-examined. The extension of competition policy to Western Australia in accordance with the national competition policy package is an important step in the reform and revitalisation of business. Initially, only commercial, rural, business broking and property management fees will be deregulated. I have heard some agents say that 20 per cent of tenancy properties provide 80 per cent of their work. At present, the current fee scale does not give agents the flexibility to deal with this. The fees that agents charge should not be artificially determined, but should reflect the level of service they are required to provide.

The deregulation of fees will allow agents to structure their services and charges to suit their clients and their organisation. Fee deregulation also provides clients with opportunities to compare agents' services and costs before negotiating the fee and the level of service required. The timetable for deregulation of these fees has been negotiated with industry to ensure that agents have sufficient time to prepare for these changes. At this stage there are no immediate plans to deregulate real estate agents' fees relating to residential sales. However, the competition policy reform agenda requires that the regulation of these fees must be reviewed before the year 2000. It is unlikely that the public benefit obtained from the retention of a fee scale for residential sales will outweigh the costs to the community from the resulting lack of competition. Similarly, the Settlement Agents Supervisory Board will need to review the fee scale for settlement agents. The Bill provides the board with the flexibility to deregulate all or part of the fee scale as required.

As outlined earlier, the Bill contains changes to the Residential Tenancies Act. These changes stem from the 1992 review of the Act and contain proposals aimed at addressing

some of the concerns raised by tenants, agents, owners and financial institutions. In particular, the Bill will provide tenants with improved information about where their bonds have been lodged and will reduce up-front costs to tenants. Currently, tenants pay up to one week's rent at the beginning of their rental agreement. This Bill will prohibit this charge on tenants. Agents involved in property management were concerned that this change would impact upon their income and rent roll values. To take account of agents' concerns, the abolition of letting fees forms part of a package that provides in excess of 12 months for agents to prepare for the change and links the removal of letting fees to deregulation of property management fees. Tenants should also receive their bond refunds more quickly as agents will be required to dispose of the bonds within a prescribed period. At present, tenants complain that it can take up to 28 days for the return of a bond once all the forms have been completed. Tenants will have improved access to advice and education initiatives funded by grants from the rental accommodation fund.

The Bill also contains the following amendments which take account of the practical concerns of agents, owners and financial institutions. Agents will no longer be required to open individual accounts for all residential tenancy bonds. Instead, agents will be allowed to deposit tenancy bonds into a single tenancy bond trust account. This will reduce the legislative impact on both agents and financial institutions and will link strongly to the Government's policy of removing unnecessary regulatory burdens on business. The Bill provides two alternative methods to deal with tenants who stop paying rent. Agents and owners often complain to me that under the present system it takes at least 22 days to serve the proper notices on tenants before an agent can lodge an application with the court to evict a tenant for unpaid rent. The proposed new methods provide for notice periods that are reduced by up to 14 days. Indeed, in the future, agents and owners will be able to list matters with the courts in as little as eight days if tenants do not pay their rent. The quicker of the two alternatives is a debt collection method aimed at ensuring that landlords get their money promptly. It allows the agent or owner to issue a termination notice as soon as the rent is in arrears. If the rent remains unpaid for seven days after this notice has been issued, the agent or owner can apply directly to the court to seek payment of the rent or termination if there has been no response from the tenant. Should the tenant pay the rent and the court filing fee - even up to one day before the court hearing - all court action stops and has no effect. The reinstatement of the ability of magistrates to award the court filing fee to the successful applicant will benefit both agents/owners and tenants. This is also consistent with all local court actions.

Financial institutions will benefit from the changes to the bond arrangements. The requirements on them for maintaining bond accounts will be less onerous. In addition, financial institutions will no longer be required to pay interest at a set rate. This rate has failed to keep pace with market rate changes and the financial institutions have argued strongly for a system which links the interest rate they pay on tenants' bonds account directly to a market rate indicator. The Bill provides for such an arrangement.

Many of the changes incorporated into the Bill have financial year impacts and therefore to ensure a smooth transition for industry and the community, the projected commencement date is 1 July 1996. Fee deregulation is planned to commence on 1 January 1997. The boards, industry and financial institutions are keen to see these changes implemented as soon as possible. Furthermore, the earlier these changes are implemented the greater the savings achieved for government.

Industry and community organisations representing the interests of agents, owners and tenants have provided valuable input into the development of this Bill. It is often difficult to satisfy all requests for amendment, particularly in the residential tenancies area where agents/owners and tenants usually have very different views. However, I believe that this Bill provides a balanced package of reform which addresses some of the issues raised by agents/owners, financial institutions and tenants. Furthermore, I am confident that the trust account changes will substantially reduce statutory and administrative burdens on agents and financial institutions. At the same time, these

measures will allow for increased funding and better management of the regulatory components that support the real estate and settlement industries as well as providing ongoing savings for government.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

SENTENCING BILL
SENTENCING (CONSEQUENTIAL PROVISIONS) BILL
SENTENCE ADMINISTRATION BILL

Committee

Resumed from an earlier stage. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for the Environment) in charge of the Bill.

Sentencing Bill

Progress was reported after clause 10 had been agreed to.

Clause 11: Person not to be sentenced twice on same evidence -

Hon N.D. GRIFFITHS: The clause notes provided by the Government state that this section replaces section 16 of the Criminal Code, that an offender should not be sentenced twice for the same act or omission, notwithstanding that the same act or omission may constitute the elements of more than one offence. These clause notes summarise much of what is said in section 16 of the Criminal Code. The crucial change when comparing section 16 of the Criminal Code and clause 11 is that the code in section 16 refers to "an act or omission" whereas in clause 11 the crucial phrase, as I read it, is the evidence necessary to establish the commission. Many may say that there is no difference between the two, and that is the case in most situations. However, I am concerned, and my concern echoes the comment I made on the previous clause, that in changing the words we are inviting reinterpretation. In relatively recent times there have been decisions on this section of the code. This is one of those clauses where it is appropriate that the Minister, for the benefit of future interpreters of the clause, set out clearly why that crucial change in wording is taking place.

Hon PETER FOSS: I have pleasure in doing that. It is certainly not intended to effect any change but is merely to keep consistency of terminology throughout the Bill. I add as abundant caution that I am sure any court in interpreting this would not interpret it so as to make it more restrictive on an individual; in other words, it would look more to the liberty of the individual than otherwise. I can assure any court that wishes to seek the assistance of *Hansard* that it is not intended in any way to impinge on an individual or change the current law.

Clause put and passed.

Clause 12: Common law bonds abolished -

Hon N.D. GRIFFITHS: The Australian Labor Party supports this clause. It is interesting to note that it refers to the jurisdiction at common law. What about the statutory jurisdiction? In that context, I refer the Committee to section 656 of the code, which will be mentioned on several occasions during our proceedings. I will not read it out; I refer to it for interpretative purposes. I also note the content of "Criminal Code - a general review", volume 2 on page 426, by Justice Murray, as he now is. In the code, under section 19(6) and (7), that which is proposed to be abolished at common law remains pursuant to that section.

Given the history of Western Australia, it is appropriate that for our criminal law we rely on the Criminal Code and other Statutes. We are a code State as distinct from a common law State. It is appropriate that common law bonds be abolished, but I query whether that is the only reason that the clause is in the Bill. Is it not the case that the practice of bonds overall should be abolished? If that is an appropriate policy measure, why is it not

taking place? It is an appropriate policy measure given that a regime of sentencing is set out in a later clause. That regime of sentencing does not envisage the process of bonds; it provides substitute measures. There is an inconsistency between setting up a regime of sentencing, which the Bill seeks to do, and permitting what I call in a shorthand way statutory bonds to continue.

Hon PETER FOSS: I apologise. There is probably a deficiency in the note. It does not refer one to clause 26 of the Sentencing (Consequential Provisions) Bill, in which chapter 4 is repealed. Nor does it refer one to a further part of that same section where clause 656 is substantially amended. Common law bonds were removed because of a recommendation by the Western Australian Law Reform Commission. Code bonds will be repealed, but there is something like them in the conditional release order. Generally speaking, the concept of the depositing of money has gone, although one will find in the conditional release order, in a very restrictive fashion, that recognisance stays in terms of other behaviour, but not requiring the deposit of money.

Hon N.D. Griffiths: The Minister has answered my point by referring to legislation that we will deal with subsequently. It will be better in such a Bill to deal with the issue in one cause rather than have people moving backwards and forwards.

Hon PETER FOSS: That is true. We wanted it to disappear without trace. If we dealt with it in this Bill, it would not disappear without trace. I remember that provision in the Property Law Act. The doctrine of interesse termini was abolished. Nobody knew what that doctrine was until it was abolished, and not many people bothered to find out what it was. It intrigued lawyers for ages. Putting that provision in the Sentencing (Consequential Provisions) Bill will allow it to disappear without trace.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Offender to be present for sentencing -

Hon PETER FOSS: As my amendment on the Notice Paper totally replaces this clause, I will move to defeat the clause. The Legislation Committee recommended that subclause (3) should remain as it is. It deals with sentencing in the absence of an offender. The replacement clause is suggested for the purpose of practical matters that have been raised by people who deal with these matters. It is mainly to make it work better, with capacity for several things to be done at the same time, in particular allowing orders under parts 15 to 17 to be given at the same time as sentence. Parliamentary counsel suggested that, rather than trying to fiddle with it piecemeal, it was better to replace the clause. That appears to meet some concerns that have been expressed about the wording and content.

The main issue is whether offenders should be sentenced in their absence. The only circumstances in which they should be sentenced to anything other than a part 6 or part 8 sentence - that is, the imposing of no sentence or the imposing of a fine; in other words something will have a more permanent effect - is when they have been removed in custody because of their conduct in court. The case that is quoted in support of that is Van Tongeren and the Queen, 1992 ACL Reports 130 WA 99.

Hon N.D. GRIFFITHS: I do not oppose the Minister's course of action. The rationale behind the Minister's stance on the issue that I raised with the Legislation Committee and the Legislation Committee's view are interesting.

I note the reliance on the case of Van Tongeren v The Queen. That case is the subject of a decision delivered on 16 April 1992. There were many issues in that case, but the pertinent issue for this debate is whether a person should be present at sentencing, not whether the absence of that individual from a substantial part of his trial means that a mistrial has occurred. The sentencing process is part of the trial and, to that extent, the case is relevant. A number of actions on the part of Van Tongeren disrupted the process of receiving matters into evidence. They actually disrupted the conduct of the trial itself prior to the sentencing process commencing. It seemed to me when I gave my view to the Legislation Committee that when a person is sentenced to a term of imprisonment he is forced to become, as some would say, a guest of Her Majesty; he is forced to go to a

particular place. There is no good reason why he cannot be forced to be in attendance when he is being sentenced to a term of imprisonment. I suggest to the Committee that, notwithstanding the reliance placed on the Van Tongeren case, it is not directly to the point. The trial process prior to sentencing is distinct from the sentencing process. This is one of those areas where I disagree with the Legislation Committee. I am not convinced by the arguments to the contrary put forward by the Minister and presented in the Legislation Committee's report. However, notwithstanding that and consistent with my remarks yesterday on the short title, I propose to accede to what the Minister proposes with respect to clause 14.

Hon PETER FOSS: Section 635 of the Criminal Code provides -

> The trial must take place in the presence of the accused person unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which case the court may order him to be removed and may direct the trial to proceed in his absence.

It is that section that would have led to the situation referred to in subclause (3). The only reason we included this is that, having separated the sentencing process from the rest of the trial, it was thought beneficial to allow for the fact that this could have already happened during the course of the trial and to provide what was to happen in that circumstance. It is not changing the law; it is actually re-enacting what is currently in the legislation and also acknowledging the way in which it has been interpreted by the courts in the meantime.

Members will notice in the Sentencing (Consequential Provisions) Bill that clause 26 amends section 635 to make the point that the trial does include the sentencing, which I think the honourable member will accept. However, one does not like to leave any doubt. This makes it quite clear that section 635 applies throughout the proceedings. Therefore, the power to remove from the court exists throughout the trial, including the sentencing. That power is conferred by section 635 and this clause recognises that that power may have been exercised and then provides that, notwithstanding the general principle, there is an exception if the power under section 635 is exercised. I understand the point raised by Hon Nick Griffiths, but we are not changing the law. The member has made an argument for a change in the law, but the Government prefers not to accede to that request. That is why we will be moving the amendment.

Clause put and negatived.

New clause 14: Offender to be present for sentencing -

Hon PETER FOSS: I move -

> Page 10 - To insert after clause 13 the following new clause to stand as clause 14 -
>
> **14.** (1) A court is not to sentence an offender unless the offender is personally present in court.
>
> (2) Despite subsection (1), a court may, in an offender's absence -
>
> (a) under Part 6 impose no sentence; or
>
> (b) under Part 8 impose a fine,
>
> and, in connection with such a sentence, may also make an order under Part 15, 16 or 17, or under another written law if that law does not require the offender to be present when such an order is made.
>
> (3) Despite subsection (1), a court may sentence an offender in his or her absence if the offender is in custody and the proceedings, because of the offender's conduct, have been directed to proceed in the offender's absence.
>
> (4) Despite subsection (2) or any other law under that does not require an offender to be present when a sentence is imposed, a court may require an offender to appear personally to be sentenced.

(5) For the purposes of subsections (1) and (4), a court may compel an offender to appear personally to be sentenced by -

(a) issuing a summons and, if it is not obeyed, a warrant for the offender's arrest; or

(b) issuing a warrant for the offender's arrest.

(6) A summons issued under subsection (5) is to be served by prepaid post unless the court directs it be served personally.

Hon N.D. GRIFFITHS: I note what the Minister said about the proposed substituted clause, but it seems to me that this is another example of something that should be done in another place. This Chamber is supposed to be a House of Review, yet in many instances we are starting the processes - we are tossing aside what has been done in the other place and substantially amending legislation. There are great similarities between the two pieces of legislation, but this change should have occurred before the Bill came to this place. I think that this reflects badly on the way that matters are conducted in another place.

Hon PETER FOSS: It will not come as any surprise that I beg to differ with Hon Nick Griffiths' remarks. The whole process of three readings of legislation in two Houses is to ensure that a Bill has adequate, formal, public exposure so that members of the public are aware of the various stages that take place and have the capacity, right through to the third reading in the second House, to draw matters that concern them to the attention of Parliament and hopefully to have the Parliament listen to them and to make the changes they suggest.

It would be a very strange House of Review if we never made amendments or if we were seen as being precluded from making amendments. I see this as part of the review process in operation. I have always known, and perhaps Hon Nick Griffiths would have had the same experience in private practice, that many people thank heaven for the upper House. There are many occasions - and I am not sure of the reason for them - when the public does not really become aware of legislation until it is introduced and is debated. We have always known times when a Government has sent out Bills and everyone ignores them. Learned papers are written and they are also ignored. When the Bill is introduced into the House and gets as far as the Committee proceedings, everyone suddenly hits the roof and asks what on earth it is all about. They then rush to their lawyer to see what can be done to stop it because they think the legislation should be changed; it will not work. At that stage lawyers are able to assure their client that they should not worry because there is still another opportunity. By the time the legislation gets to the upper House they will have been able to speak to the appropriate Minister to draw his or her attention to the concerns and hopefully have the appropriate changes made. Many times that is exactly what occurs. The second House does not exist for the benefit of members, merely to allow them the opportunity of making changes; it is an opportunity for the public to suggest changes and to query legislation. Although it is an admirable and proper process that legislation be publicised prior to coming to this Parliament, the formal consultation of the people and the formal opportunity for amendment of legislation is in the Parliament. We should not abdicate the benefits of that parliamentary process; at any stage of the passage of legislation the public, including special sectors such as courts, should have the opportunity to express their views and make suggestions.

Hon Derrick Tomlinson: But not judges.

Hon PETER FOSS: I will leave that one! It is part of the process and, although we have developed a consultative process prior to the start of the formal proceedings, often those formal proceedings are the best way to draw the attention of the public to legislation. Many people do nothing about these matters until they come to the House. I have been through this process as a private practitioner, a member of the Opposition and now a member of the Government. I have found that clients ignore the volumes of paper coming through their door and do nothing until the third reading stage in the first House.

They then rush to their lawyers with their problems. It is human nature and reality. I do not accept the criticism of the Attorney General. It is far better to respond to the public's concerns, rather than do nothing and say it will be fixed up next time.

Hon N.D. GRIFFITHS: I do not want to engage in a debate about whether there should be an upper House. It should not surprise members to know that my views and those of Hon Peter Foss differ on many matters.

The CHAIRMAN: Order! The member is straying from the subject matter of clause 14.

Hon N.D. GRIFFITHS: I do not want to be led astray by interesting propositions put forward by the Minister! However, this is one of the centrepieces of the Attorney General's legislative program, and it is incumbent on the holder of that office to ensure that by the time the measure passes through the other place it is in a better state than this legislation appears to be. The quantity and quality of the Government's proposed amendments bear testimony to the inadequacy of the treatment of this Bill in another place. No doubt a variety of explanations can be given, and I do not want to labour the point. However, the point is well and properly made. Notwithstanding that, the Minister enjoys my support on this occasion for his proposal with respect to this clause.

New clause put and passed.

Clause 15: Court may inform itself as it thinks fit -

Hon N.D. GRIFFITHS: I am very concerned about this clause which states that to decide on the proper sentence to be imposed, or on imposing an order in addition to sentence, a court sentencing an offender may inform itself in any way it thinks fit. The Legislation Committee in its report on this clause pointed out that I objected to the provision and considered that potentially it could be open to abuse. The Legislation Committee also pointed out that the Aboriginal Legal Service considered an offender should have access to any material to be relied upon by the sentencing court. The Legislation Committee stated in its report -

> The clause reflects a similar provision currently in s 656 of the *Criminal Code*. As was noted by the Acting Chief Justice, s 656 was amended to its present form in 1982 -

I interpose to point out, to either the Legislation Committee or the Acting Chief Justice, that the date was 1985 and not 1982.

Hon Peter Foss: I would not criticise the Legislation Committee.

Hon N.D. GRIFFITHS: I am not criticising the Legislation Committee; I make that point because I shall refer briefly to debate on this matter in 1985, and that is pertinent to our treatment of these measures. I hope I am not being disrespectful or unduly critical of my predecessors in this place when saying that from time to time matters of great moment have not received the attention they should have. I may be guilty of that as we get closer to Christmas. I regret that, but it may happen. The report continues -

> to overcome difficulties which emerged in the decision in *Morse v The Queen* [1977] WAR 151. If the provision were to be restricted it would increase the difficulty of and time taken in sentencing and may mean that complainants in sexual cases would be required to give evidence when otherwise they would not be so required.

The reference to Morse v The Queen is appropriate. It was a decision of the Full Court of the Supreme Court of Western Australia. Hon Peter Foss referred to me yesterday with regard to legal history. I suppose Morse v The Queen is part of legal history because it dates back to a time when serious drug offences were tried before stipendiary magistrates and, upon a verdict of guilty, they were forwarded to a higher court for sentencing. The appellant Morse was found guilty of being in possession of a quantity of drugs with intent to sell or supply. He was found guilty in the Court of Petty Sessions and was sentenced by the District Court Judge, now Justice Pidgeon of the Supreme Court.

In sentencing Morse, the full court points out at page 132 of its decision that -

> His Honour then had before him the reasons for judgment of the magistrate and a copy of the antecedent report to which was attached a record of the appellant's previous convictions. The previous convictions, which in passing do not include any previous conviction for an offence relating to drugs, was admitted.

The decision states also -

> The last information called for in the report, which is a printed form to be completed by the reporting officer, is:-

It then refers to general remarks made by a police officer, which were -

> "The accused has a well known association with several convicted drug 'abusers' and 'dealers'.
>
> "His two main associates among convicted dealers are . . .

It then names those two people. I am taking some time over this because I want members to understand why I raised my concerns with the Legislation Committee, and I trust that in due course the Chamber will revisit this issue and accede to my point of view, unless, of course, I am persuaded to the contrary. The judgment of then Chief Justice Sir Francis Burt states also -

> The appellant through his counsel addressed the court in mitigation. He told the judge that he intended to call a number of witnesses who "will tell you that in the last 10 years . . . the accused person has been an exemplary character and none of them can accept that . . . the accused person could have been guilty of the possession of heroin". This he proceeded to do and the evidence as led was to that effect.

We have here, on the one hand, a statement from a police officer, and, on the other hand, evidence that is substantially the opposite. Later in the judgment the Chief Justice refers to the judgment of Justice Pidgeon, who ruled as follows -

> He referred to the last paragraph of s 656 of the Criminal Code which is in these terms: "The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed." He then held that upon the proper construction of that section and particularly upon the proper construction of the words "such evidence as it thinks fit", the Court was able to receive hearsay evidence giving to it such weight as in the judgment of the Court it deserved. Generally, the purpose for which the evidence was to be received in the case before his Honour was, he held, to decide "whether the accused in any particular case might have been a complete amateur attempting to do it for the first time . . . or was doing it as part of a professional syndicate going to the other end of the scale".

The Chief Justice then refers to how the Crown, at the sentencing of offender Morse, presented its case. He refers to the Crown calling a detective to give evidence in support of what I refer to as the offending statements, and states in regard to that detective -

> He was cross-examined upon it by the appellant's counsel and from that cross-examination it clearly emerged that such evidence as he had given which would support the conclusion that the appellant was actively associated with either . . . -

He names the two convicted drug dealers -

> in the distribution of drugs was hearsay. Much of it was said to have been told to him by either . . . -

He again names those people, and I will not mention their names because, no doubt, they have served their time and their names should not be publicised -

> and that was as a fact denied by each of them on oath. The detective did give some first hand evidence of Morse being seen on a number of occasions in the company of . . . and others but his evidence in so far as it was based upon facts

> known to him from his own observations went no further than that. And there was other evidence from other police officers which was of the same quality and which took the matter no further. The appellant gave evidence and he denied that in the sense contended for by the Crown he was associated with either . . . or with any other person.

Hon P.R. Lightfoot interjected.

Hon N.D. GRIFFITHS: I know Hon Ross Lightfoot is not interested in matters which concern the liberty of a citizen.

Hon P.R. Lightfoot: I am, but not to the consuming degree to which you want me to be interested.

Hon N.D. GRIFFITHS: I regret that Hon Ross Lightfoot is not interested in the welfare of people who find themselves the subject of orders which cause them to be incarcerated, because that is a primary concern of members of this Chamber. I have pointed out to the Committee that I will take some time on this clause because I think it is important. If Hon Ross Lightfoot does not think it is important, I invite him to go away and engage in some parliamentary business elsewhere. I refer to what the Chief Justice said were the important words of the sentencing judge -

> "There has been evidence before me, which I accept, that you were financing and aiding professional cannabis dealers. That has come from their statements to the police by those dealers in the course of investigations by both Commonwealth and State investigating authorities. The effect of that is to nullify what a number of people said on your behalf in the belief that it was a surprise to them to see that you were breaking the law.
>
> "You were involved to the extent I have indicated in cannabis distribution but on this occasion you decided to go further and obtain heroin for distribution in a manner that I do not know and which you have not divulged.

Hon Peter Foss: Who was the magistrate?

Hon N.D. GRIFFITHS: He is now Justice Pidgeon. In those days the offenders were tried in the Court of Petty Sessions. The magistrate was Mr P.V. Smith, a very senior magistrate. He ended his career as the deputy chief stipendiary magistrate. I am not being critical of him. Justice Pidgeon emerges later in the Supreme Court in dealing with a leading case on this issue to which I will refer briefly. This is one of those areas that we do not have the opportunity to consider from time to time, and I do not apologise for taking up the time of the Committee. I hope that many other members are interested in it, too.

His Honour the Chief Justice said -

> It will be seen from those remarks that His Honour had for the purpose of sentencing made two distinct findings of fact, they being: (1) that Morse had been financing and aiding professional cannabis dealers, (2) that his possession of the heroin for which he had been convicted was an extension of his involvement in the business of drug trafficking.

The Chief Justice makes reference to the judge basing his ruling on the court being authorised by section 656 of the Criminal Code to receive hearsay evidence. Later in the judgment he makes reference to the leading case of the individual on this issue and quotes the words of the Lord Chief Justice in 1911 to this effect -

> If the prisoner challenges any statement it is the duty of the judge to enquire into it; if necessary, he should adjourn the matter, and if it is of sufficient importance he may require legal proof of it. Or he may ignore it, and if he does so he should state that he is not taking it into consideration. If the prisoner does not challenge the statements, the Court may take them into consideration, and no justice is likely to be done.

That was an accurate statement of the law at that time and should be an accurate

statement of the law in Western Australia. However, my criticism of this clause, which is a re-enactment of what took place in 1985, is that it is not an accurate statement of the law as it existed in Western Australia.

Hon Peter Foss: It does not mean it cannot happen though.

Hon N.D. GRIFFITHS: No, and it is the practice that it does happen. That being so, the proposition that I put to the Legislation Committee - namely, that there is a potential for an abuse - is valid. It is not good enough to say that matters can be rectified on appeal because very few matters come before the Court of Criminal Appeal in any event. I prefer to have good law on the Statute books which removes the potential for injustice, particularly when that potential is brought to the attention of the Parliament. I think I have made it clear that I am not opposing the clause; I am just making my views and the reasons for them known.

Hon Peter Foss: Your remarks are reinforcing the practice that you see being carried out.

Hon N.D. GRIFFITHS: That is the practice presently being carried out.

Hon Peter Foss: It is not beyond the wit of an appeal court to re-insert that practice while, nevertheless, acknowledging the statutory provision.

Hon N.D. GRIFFITHS: No, it is not beyond the wit of an appellate court, but it does not necessarily follow that that will take place. I would be delighted if an appellate court were to restate the law in the manner and in the words of Sir Francis Burt in 1977. If it does not and if I am still around and have the capacity, I propose to do so. I will make one last reference to the judgment of Sir Francis Burt on page 159 of the report to make it absolutely clear his view about the kernel of the case of R v Morse. He said -

> In my opinion the sentencing judge in the instant case was wrong in receiving hearsay evidence led by the prosecution and wrong in making the findings, based upon that evidence, that the appellant was "financing and aiding professional cannabis dealers" . . .

We all have justified faith in the processes of the courts and the Parliament. However, this is an instance of our not getting it right. After Morse, Mr Murray, now Justice Murray, was asked by the then Attorney General, Hon Ian Medcalf, to conduct a review of the Criminal Code. That review was presented to Mr Medcalf's successor, Hon Joe Berinson, in 1983. In volume 2 of his review of the code entitled "The Criminal Code: A General Review" at pages 426 and 427 he comments on R v Morse. He recommends change. That change led to the form of words that we propose to re-enact. That change occurred in 1985. At page 426 he states -

> But in the case of Morse v. R. . . . our Court of Criminal Appeal ruled that at least where there was a contest of fact the court was not empowered by this provision to receive hearsay information to enable it to pass sentence. To accommodate existing practice the court was required to place what is in my respectful view a rather strained interpretation upon the provision. It held that information which was not according to the strict rules of evidence was admissible unless contested when it became inadmissible and the court was thrown back upon the strict rules of evidence.

He says at page 427 after recommending the form of words to which I have referred by way of change: "It is not anticipated that this involves any alteration in the proper practice of the courts." I accept that, but there is the potential. Morse is an example of an injustice. To continue -

> No doubt where there is a conflict of evidence for sentencing purposes the court would still require to resolve that conflict according to the strict rules of evidence, particularly if the conflict was to be resolved against the offender.

That is his hope and reasonable expectation. I thought that was the position as everyone understood it before Morse was dealt with on sentence at the District Court. I suggest that that is not quite how the matter is currently being interpreted.

Before addressing that I refer to the treatment of this issue by the Chamber when it last considered the matter in 1985. I do not want to be unreasonable in my criticism. However, a large number of matters have been dealt with in the enactment which has a title that I have seen on a number of occasions over the past two and a half years - the Criminal Law Amendment Bill. I am sure this Chamber will have on its Notice Paper on many occasions in the future a Bill that is so described. Section 25 of the Criminal Law Amendment Act 1985 states -

> Section 656 of the Code is amended by deleting "The Court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed." and substitute the following -
>
> " Before passing sentence or otherwise disposing of the case according to law, the Court may inform itself in such manner as it thinks fit in order to decide upon the proper sentence to be passed, order to be made, or other disposition of the case. ".

The words have a familiarity. That legislation was introduced by Hon Joe Berinson. The second reading took place on 30 October 1985. His speech commences at page 3211 of *Hansard*. He makes reference to the Bill dealing with three important areas in the administration of criminal law.

Point of Order

Hon DERRICK TOMLINSON: I am concerned that the clocks in this place have been playing up, and either my wristwatch is wrong or the clocks are wrong again. Can we confirm that the time is now 5.59 pm?

The CHAIRMAN: The clocks are correct. There is no point of order. The member is winding up his remarks.

Debate Resumed

Hon N.D. GRIFFITHS: I will not be diverted by a good interjection. I wish I had gone to that lunch today: I look forward to it tomorrow!

In referring to the important areas in the administration of the criminal law, Hon Joe Berinson made no mention of this matter. In fact, in the course of his speech the only reference to section 25 of the legislation is on page 3214 of *Hansard*: "Clauses 25 to 29 - particularly clause 29 - effect the above changes." There was no allusion to the issue before the Chamber. Hon Ian Medcalf responded on 12 November 1985 at page 4019 of *Hansard*. His consideration of this matter was similar to that of Hon Joe Berinson. He said, among other things -

> A number of the sections of the Criminal Code are to be repealed and new sections are to be inserted in lieu. This has been a tidying-up exercise by the Government in a limited area and it is based generally on the recommendations of the Murray report.

Hon Peter Foss: That is correct.

Hon N.D. GRIFFITHS: Yes. There is no discussion or debate about the matter.

Hon Peter Foss: We were not there, were we?

Hon N.D. GRIFFITHS: That is right; however, we are here now and making up for lost ground. I can see that Hon John Cowdell may be about to take an expensive shot at me.

Hon Peter Foss: He specialises in cheap shots.

Hon N.D. GRIFFITHS: That is a cheap shot. We always know when it is Thursday evening.

The CHAIRMAN: Order! There are only five minutes left.

Hon N.D. GRIFFITHS: I do not want to take up five minutes of the time of this Chamber, but -

Hon B.M. Scott: How much do you charge by the hour?

Hon N.D. GRIFFITHS: A little more than members of Parliament can afford, I regret to say. Lawyers also charge by the word - ask Hon Peter Foss.

Hon Peter Foss: And by the portfolio.

Hon N.D. GRIFFITHS: That is correct. One would have made a reasonable quid so far. I trust that clause 15 will be passed this evening. That comment is consistent with the very brief comments that I made yesterday on the short title. I want to refer to another decision of the Court of Criminal Appeal of Western Australia. That decision was reported on page 371 of volume 59 of the Australian Law Reports -

Hon Peter Foss interjected.

Hon N.D. GRIFFITHS: Honourable members are being humorous, but I must have a degree of sensitivity on behalf of my co-religionists on that issue. It is advisable not to be sectarian.

The CHAIRMAN: Order! I do not want honourable members to interrupt the concluding remarks of Hon Nick Griffiths.

Hon N.D. GRIFFITHS: I am aware that you are mindful that you do not want my remarks to be interrupted, Mr Chairman, notwithstanding the pertinent interjections which I am always delighted to hear from members, be those shots cheap, expensive or indifferent.

Hon B.K. Donaldson: We have been so interested in Hon Nick Griffiths' speech that we are keen to hear his conclusion. We want to hear him bring it all together.

Hon N.D. GRIFFITHS: I am concerned that some honourable members have wanted to hear the conclusion for quite some time.

Hon Peter Foss: I would like to make a brief reply to your comments in a moment.

The CHAIRMAN: I hope that Hon Nick Griffiths will not stretch the relevance of that remark.

Hon N.D. GRIFFITHS: I will not stretch the relevance of that and you will appreciate that I never do that, particularly when I have the benefit of your strong guidance, Mr Chairman. I wanted to refer to those cases and I want Hon Peter Foss to respond. I am aware of the time. I wanted to point out the view of Justice Pidgeon in relation to that case. It may be sufficient for me to point out to the House and to those who may interpret that the case and the view exist. With the greatest of respect to His Honour, I read from his judgment a capacity to go back to the position as he interpreted it when he sentenced Morse in 1976. That is what concerns me. To demonstrate that point, I would have to go through the judgment in detail. However, it would be sufficient for the moment if the Minister were to note the judgment. I hope that the Minister has sufficient time to respond to my remarks.

Hon PETER FOSS: The clause and the section it replaces confer on the court a discretion which must be exercised judicially. It enables the court to put down guidelines on how that should happen. We go far beyond evidence to such things as sentence reports and how orders for community service should be given. Such things require this kind of discretion to exist. I hope it does not mean that it will be used incorrectly. We have to rely on the court and the appellate court to ensure that it is applied appropriately.

Clause put and passed.

Progress

Progress reported and leave given to sit again, pursuant to Standing Order No 61(c).

ADJOURNMENT OF THE HOUSE - ORDINARY

HON GEORGE CASH (North Metropolitan - Leader of the House) [5.55 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Nigeria, Hanging of Activists; Shell Oil Company, Boycott

HON J.A. SCOTT (South Metropolitan) [5.55 pm]: I draw the attention of members to the hanging of nine activists in Nigeria under the auspices of General Abacha. Those activists were guilty of trying to protect the environment of their native lands from the pollution and exploitation largely caused by the Shell oil company. People will be aware that President Mandela of South Africa has proposed that sanctions be imposed on Nigerian oil. A great deal of pressure is being applied on Nigeria to make it fall into line with the democratic principles which we would expect in this House and in this country.

However, recently we have seen a considerable amount of exploitation, particularly of third world countries, by very large corporations. I need look no further than the damage caused to the Ok Tedi River in Papua New Guinea by BHP. That Australian company has been found guilty of contempt in trying to influence the laws of another country to avoid having to follow the laws of that country.

It is about time that pressure was placed on these rogue companies. Very few people seem to speaking against Shell. I do not know whether that is because nations fear the great power of some of these very large oil companies. I am very angry about what has happened, especially because Shell announced, the day after those people were hanged, that it was going ahead with a multibillion dollar gas exploration project. That is an absolute disgrace. I for one will be boycotting Shell products and service stations and I invite other members of this House to join me in that boycott and to ask their colleagues to do so as well.

Question put and passed.

House adjourned at 6.00 pm

QUESTION ON NOTICE

WITTENOOM - TELEPHONE SERVICES FEBRUARY-MAY 1995

3967. Hon MARK NEVILL to the Minister for Transport representing the Minister for Commerce and Trade:

(1) What communications have officers of the interdepartmental committee on Wittenoom had with Telecom/Telstra about phone services to Wittenoom between 1 February 1995 and 30 May 1995?

(2) What was the purpose of each communication during the period outlined in (1) above?

(3) Was any other action taken to reduce or impede telephone services to Wittenoom during the period outlined in (1) above by officers of the Minister's department or the Pilbara Development Commission?

(4) If yes to (3) above, what action was taken?

Hon N.F. MOORE replied:

The Minister for Commerce and Trade has provided the following reply -

(1) None of the members of the interdepartmental committee on Wittenoom report communicating with Telstra about terminating telephone services to Wittenoom during this period.

(2) Not applicable.

(3) No. Outside the period in question, an officer from the Department of Commerce and Trade provided, at the request of Telstra, a progress report on the State Government's decision to accelerate the phasing down of activity in Wittenoom.

(4) Not applicable.

QUESTIONS WITHOUT NOTICE

PLANNING LEGISLATION AMENDMENT BILL - ENVIRONMENTAL ASSESSMENTS, CHANGES

935. Hon J.A. COWDELL to the Minister for the Environment:

Yesterday in another place the Minister for Planning said that under the Planning Legislation Amendment Bill environmental assessments would be done by the proponents and the private sector, and that all the Environmental Protection Authority would do was order assessments.

(1) Is the Minister aware of section 44 of the Environmental Protection Authority Act 1986, which empowers the EPA to carry out the assessments and does not refer to any private sector involvement at all?

(2) Was the Minister for Planning correct in saying that under the proposed legislation the assessment would be taken out of the hands of the EPA?

(3) Is the Government considering changes to environmental legislation to give effect to the changes foreshadowed?

Hon PETER FOSS replied:

(1)-(3) I am not aware of what the Minister for Planning has said. It is not likely that he said what the member attributes to him. I certainly do not believe that anything in the legislation suggests that environmental assessments will be taken out of the hands of the EPA, and I am not aware of any legislation that suggests that. I am sure the Minister must have been misinterpreted.

HEALTH DEPARTMENT - PEEL HEALTH SERVICE
Oncologist, Replacement

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

(1) Can the Minister confirm that the visiting oncologist to the Peel Health Service will be leaving at the end of this month?

(2) Given the long delays in getting this service up and running and the great need for this service in Mandurah, what steps are being taken to replace this service?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Yes, he has resigned to take up a position elsewhere.

(2) In conjunction with Fremantle Hospital, an advertisement has been placed for a replacement. Until a replacement oncologist is recruited, Fremantle Hospital will provide sufficient staffing to enable this service to continue.

CALM - BUNNINGS, TIMBER LEASE, NORTH BANNISTER AREA

937. Hon J.A. SCOTT to the Minister for the Environment:

(1) Does Bunnings have a timber lease covering state forests in the North Bannister area?

(2) What is the size of the lease area?

(3) Is it primarily a jarrah forest?

(4) Is the jarrah forest being cleared and replaced by exotic species such as *Eucalyptus globulus*?

(5) Is it government policy to replace native forest with exotic species?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No.

(2)-(4) Not applicable.

(5) No; however, both this Government and the previous Government, through the national forest policy statement, have reserved the ability to rehabilitate through replanting forest that has been devastated by disease.

I seek leave to table the relevant extracts from the statement and from the coalition's environmental policy.

Leave granted. [See paper No 856.]

OCCUPATIONAL SAFETY AND HEALTH, DEPARTMENT OF - STATEWIDE DEMOLITION, BAYSWATER SITE; WALL AND DEATH INQUIRY

938. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:

(1) Does the Department of Occupational Safety and Health have any record of site visits by a departmental inspector to a job by Statewide Demolition at brickworks in Garratt Road, Bayswater in June or July 1991?

(2) If yes, was there any record of a wall collapsing onto Garratt Road during or before that inspection?

(3) If yes, what action was taken by the department as a result of this incident?

(4) Has the department completed its investigation into the death of Philip Alan Turner at a Statewide Demolition site on 18 October 1995?

(5) If yes, is it proposing to lay any charges?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(2) Yes.

(3) An investigation was carried out which resulted in two prohibition notices being issued on Statewide Demolition requiring it to make the remaining wall safe to an engineer's specification and to secure the site with perimeter fencing.

(4) No.

(5) A decision on prosecution action will be made following completion of the investigation.

EDUCATION DEPARTMENT - PAY RISES, CLEANERS AND GARDENERS; TEACHERS

939. Hon JOHN HALDEN to the Minister for Education:

(1) Is the Minister aware that pay rises of $8 a week were awarded to school cleaners and gardeners in June this year and still have not been paid to those workers?

(2) Can the Minister confirm that teachers who signed the 7.5 per cent plus 7.5 per cent pay rise agreement with the Government in October this year have already received their pay rises?

(3) Will the Minister explain to the House how one group of employees can receive their pay rise almost immediately while another has been waiting nearly six months?

Hon N.F. MOORE replied:

(1) No, I am not aware that that is the case, but I will find out for the member.

Hon John Halden: It will probably only cost $5m or $6m.

Hon N.F. MOORE: There are 30 000 people working for the Education Department and I am not sure when everyone got his or her pay rise. I will find out for the member whether that is the case.

(2) In respect of the 7.5 per cent plus 7.5 per cent pay rise, I believe the question was whether those people had received that amount.

Hon John Halden: And if they are actually being paid.

Hon N.F. MOORE: I hope so. It has been my desire for that to happen.

(3) In terms of how one reconciles one against the other, because I do not know the situation with the first case and I have provided the answer to the second question to the best of my knowledge, I will have to say that I do not know that there is a discrepancy at all.

HEALTH DEPARTMENT - HARVEY-YARLOOP HEALTH SERVICE BOARD, POWERS DELEGATED TO ANOTHER PERSON

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

Yesterday I asked a question without notice about the powers, functions and responsibilities of the board of the Harvey-Yarloop Health Service being delegated to another person. In his answer, the Minister referred to the functions and responsibilities of the board but neglected to answer the query about the delegation of powers. Which powers of the board have been delegated?

Hon PETER FOSS replied:

I thank the member for some notice of this question. None of the Harvey-Yarloop Health Service board's powers has been delegated by the board to another person.

HOSPITALS - MANDURAH DEVELOPMENT
Australian Medical Association, Views on Two Models

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

(1) Is the Minister aware of the strong criticism by the Australian Medical Association of the proposals to allow private operators to own and manage the planned new hospital in Mandurah?

(2) Is it correct that a stand-alone private hospital will not be financially viable in Mandurah?

(3) Does the Minister agree that a private hospital would be viable only if the private tenderer also built a public hospital?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(3) I am aware that of the two models prepared at Peel, the AMA would prefer the collocation model to the privately owned and operated model. However, both models have a degree of integration which will improve the viability of both private and public facilities. I am very interested in the apparent adoption by Hon John Cowdell of a view expressed by the AMA. It is a refreshing and new approach.

POLICE - EUCLA CASE

942. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of Detective Inspector Ray Fairclough and the Eucla case -

(1) What is the reason for the delay in answering the nine questions on notice, dating back six months to 18 May 1995?

(2) To which questions has the Commissioner of Police provided draft answers to the Minister for Police and on what date?

(3) What action has the Minister for Police taken to ensure the Commissioner of Police provides answers, so that the Minister and his commissioner are accountable to Parliament?

Hon GEORGE CASH replied:

I thank the member for some notice of this question. I am advised in the following terms -

(1)-(3) There are nine questions outstanding concerning the Eucla case, namely, 2709, 1197, 3400, 3410, 3411, 3414, 3415, 3471 of 1995, and question 4044 which was received on 15 November 1995. The majority of these questions will be answered on Tuesday, 21 November 1995.

As the member will be aware, these questions relate to matters dating back several years which resulted in lengthy inquiries and legal proceedings. The honourable member has asked many questions on this matter, and the Minister for Police is insistent that all answers be consistent and accurate in respect of all information provided. The member is also aware that the former police officers involved in this matter are continuing to pursue their case through other avenues.

Arising from correspondence from Mr R. Fairclough, in May 1995 the Commissioner of Police transmitted the Eucla material to the Parliamentary Commissioner for Administrative Investigations for investigation of the issues raised. In addition, the Commissioner of Police has now referred the matter to the Australian Federal Police, who will conduct an independent assessment of all material and report directly to the commissioner. However, the member must be reminded that the Minister for Police has indicated many times in the past that he believes it is not appropriate for any Minister for Police to answer questions

which relate to ongoing investigations, and he certainly does not intend to do so now or in the future.

POLICE - FISHERIES DEPARTMENT ILLEGAL ACTIVITIES INQUIRY

943. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the investigation and police report of the illegal activities in the Fisheries Department, was the matter of Mr and Mrs T. Dixon and their complaint against fisheries officer Kendrick examined as part of this investigation?

Hon GEORGE CASH replied:

I thank the member for some notice of this question. I am advised that this information is not readily available and requires considerable time to conduct a manual search of departmental files. Therefore, I ask that the member place the question on notice to enable a thorough search to be conducted.

CALM - JANE BLOCK, PRESCRIBED BURNS; WILDFIRE

944. Hon J.A. SCOTT to the Minister for the Environment:

I refer the Minister to the prescribed burn proposed to be conducted in Jane Block this month and ask -

(1) During the past 20 years in what months and years was Jane Block burnt by -

(a) prescribed burning; or

(b) wildfire?

(2) Is this burn an advanced burn and/or a fuel reduction burn?

(3) On what date was it decided to conduct this burn?

(4) How many hectares are proposed to be burnt?

(5) What is the location of the area proposed to be burnt?

(6) Is it proposed to construct a road or roads into Jane Block prior to, or as part of, the burn and if so, in what location?

(7) Is it proposed to remove any dead or dangerous trees prior to, or as part of, the burn and if so, in what location?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) (a) Prescribed burns within the past 20 years were in November and December 1979, and November and December 1986.

(b) There was a small wildfire in December 1992.

(2) It is a fuel reduction burn to protect private property assets to the west of Jane Block, karri regeneration to the north, and the forest assets within Jane Block.

(3) The burn is in compliance with the approved southern forest regional management plan 1987 and the forest management plan 1994-2003, and in accordance with the master burn plan for the southern forest region. The decision to plan for and implement the burn was made in February 1995.

(4) An area of 1 100 hectares.

(5) Seven kilometres north east of the Northcliffe townsite.

(6) No.

(7) None is to be removed. Some dangerous burning trees may need to be felled during or after the burn if they pose a serious risk to burn security.

TAFE - CENTRAL METROPOLITAN COLLEGE
Staff Numbers; Increase Plans

945. Hon JOHN HALDEN to the Minister for Education:

Yesterday I asked the following question which the Minister was unable to answer. Does he now have this information?

(1) How many administrative staff, support staff and teaching staff are currently employed at the Central Metropolitan Campus of TAFE?

(2) Will there be an increase in any of the staffing areas listed above in 1996 and if so, in what areas and what is the likely increase?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) There are various categories of non-teaching staff, including senior management, academic management, clerical support and teaching support. It is more appropriate to consider the number of staff according to the following categories: Corporate management, 7; managers - except program managers, 15; administrative and clerical officers, 135; student support officers, 26; library officers, 30; child care officers, 10; program managers, 31; technicians, 27; storepersons, 9; and lecturing staff, 1 200.

(2) There are no plans at this stage to increase the staffing in 1996.

TAFE - OPEN LEARNING IN COLLEGES
Complaints

946. Hon JOHN HALDEN to the Minister for Education:

Following the Minister's answer to question without notice 921, in which he gave support to the open learning concept being instituted in technical and further education colleges -

(1) Will the Minister confirm that TAFE has refunded part of an overseas student's $7 000 fees because of a complaint about the lack of performance by a college of TAFE?

(2) Is this an isolated instance or have there been other complaints about open learning?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) I have been advised there are no such circumstances; however, if the honourable member is aware of a specific situation, I would welcome the information and I will follow it up.

(2) Not applicable.

PAPER - WASTE DUMPED INTO LANDFILL; RECYCLING

947. Hon SAM PIANTADOSI to the Minister for the Environment:

(1) How many tonnes of office paper are dumped into landfill?

(2) How many tonnes are recycled?

(3) If the paper is recycled, will the Minister inform the House of the percentage -

(a) turned into tissue paper;

(b) turned into packaging, printing and writing paper; and

(c) exported?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The official estimates, published in the state recycling blueprint, indicate that about 48 000 tonnes of high grade waste paper were disposed of to landfill in 1991, and about 9 000 tonnes were recycled.

(2) In 1994 approximately 12 890 tonnes of high grade office paper were collected in Western Australia for recycling.

(3) Of the paper mentioned in part (2) of this question - 1994 data -

(a) approximately 40 per cent is turned into tissue paper;

(b) approximately 60 per cent is turned into packaging, printing and writing paper; and

(c) an unknown, but small, quantity is exported.

RECYCLING - PAPER, FROM GOVERNMENT DEPARTMENTS

948. Hon SAM PIANTADOSI to the Minister for the Environment:

(1) How much of government departments' waste is prepared for recycling?

(2) Which recycling companies receive this paper?

(3) What program does the Government plan to put in place to maximise paper recycling throughout Western Australia?

Hon PETER FOSS replied:

(1) The Government, through the State Supply Commission has a contract with Austissue Pty Ltd to provide high grade office waste paper to that company. I am advised that the Department of Environmental Protection is currently progressing waste paper surveys of government agencies - over 40 have now been done this year - to improve recycling rates and enhance the operations of this contract. The most recent data indicates that Austissue Pty Ltd received about 792 tonnes of waste paper from government sources in 1994-95. In addition, I am advised the company was receiving about 500 tonnes per year of printer's waste from State Print. It is expected that the supply of office waste from the Government under this contract will increase as a result of the department's activities and improvements in the operation of the contract.

(2) The State Supply Commission contract is with Austissue Pty Ltd, who I am advised subcontract the paper collection activities.

(3) The Department of Environmental Protection has dedicated an officer to enhancing paper recycling within government agencies. The Government is currently reviewing its recycled products purchasing policy, and its state waste minimisation and recycling policy. When these reviews are concluded the policy framework will be in place to further enhance paper recycling. Additionally I am advised that significant private companies such as Australian Paper and Visy Recycling are expanding operations in this area.

POLLUTION - ROAD DRAINAGE; PROTECTION OF SWAN RIVER, WETLANDS, GROUND WATER

949. Hon SAM PIANTADOSI to the Minister for the Environment:

Does the Minister have a plan to prevent pollution from road catchment draining into -

(a) the Swan River;

(b) wetlands; and

(c) underground water?

Hon PETER FOSS replied:

I have separately provided an answer on the comprehensive program the Government has initiated to clean up the Swan River. This includes catchment management plans and actions to minimise the impact of road drainage entering the river and wetlands. Many local government authorities are already taking the lead in protecting wetlands in their areas. I have also announced the formation of a new Water Resources Commission which will operate from 1 January 1996 with the passage of legislation should this occur, and it will have the responsibility for protection of all water resources including ground water. Following the select committee into ground water additional resources have been allocated in the new commission for the protection of ground water from all sources of pollution.

PRODUCTIVITY AND LABOUR RELATIONS, DEPARTMENT OF - BREACHES OF AWARDS AND INDUSTRIAL LEGISLATION

950. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:

In May 1995 an internal evaluation found the Department of Productivity and Labour Relations investigative and resolution rate of alleged breaches of awards and industrial legislation was unsatisfactory. The reason given in the Budget papers was that, inter alia, insufficient resources were made available for that function. In light of the expressed commitment in the Budget papers to increase resources in the 1995-96 financial year to address the negative evaluation, what additional resources were provided for that function over and above the level of resources provided in 1994-95?

Hon PETER FOSS replied:

I thank the member for notice of this question. Approval has been given for staff numbers in the compliance program to be increased by approximately 50 per cent.

LAKE CHINOKUP - GYPSUM MINING APPLICATION
Environmental Protection, Department of, Consideration

951. Hon KIM CHANCE to the Minister for the Environment:

(1) When did final submissions close in relation to the Department of Environmental Protection's consideration of an application to mine gypsum at Lake Chinokup?

(2) What has caused the long delay in the consideration of this application?

(3) Can the Minister indicate when a recommendation might be available?

(4) Is the Minister aware of the extensive land care benefits that would accrue if the Lake Chinokup deposit can be made available to farmers in the region?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The public review period during which submissions were accepted on the consultative environmental review prepared for the assessment of this proposal closed on 10 January 1994. The appeal period on the Environmental Protection Authority's report and recommendations on the proposal finished on 29 April 1994.

(2) As the member is aware, the Environmental Protection Authority's recommendation was that this proposal was environmentally unacceptable. This recommendation was subsequently appealed by five appellants. In considering the appeals on the Environmental Protection Authority's report an attempt has been made to resolve the issues raised through other mechanisms, particularly through the development of an integrated plan for sustainable development of the Lake Chinokup

catchment. This has required extensive community consultation, and the participation of a number of different agencies.

(3) Discussions are currently being held with the local community at Lake Chinokup on the preparation of a catchment management plan. Once this plan has been finalised, and it is known what the measurable outcomes addressing the environmental issues of the catchment are, a recommendation can be made.

(4) I recognise that there is some potential for increased farm production and improved land management through the use of gypsum on some agricultural soils in the region. That is why I am seeking a solution that may permit this. The problem faced in this instance is that the land involved is an A class reserve, and the only way it can be released is by permission of Parliament. The recommendation of the Environmental Protection Authority, as forwarded and appealed, was that it was environmentally unacceptable and should be rejected. My view is that because of the problems in the subcatchment, in all probability - unless something urgent is done to prevent the rising watertable in the subcatchment - the environmentally unacceptable circumstances will become irrelevant. That is because in some 10 or more years the plants at hazard will be killed by the rising salt watertable. I have raised the possibility that we should be looking for a plus situation. In other words, I will see if we can get a deal by which we will end up with an environmental plus; that we save Lake Chinokup, give the farmers an improved situation with the gypsum, and save the agricultural land. The predictions are that a large amount of agricultural land in the subcatchment will also be destroyed.

Hon Kim Chance: Not to mention the Blackwood River which forms the catchment.

Hon PETER FOSS: Yes. The Lake Chinokup subcatchment is part of the Swan-Avon catchment, but it is alongside the major up-catchment of the Blackwood River. The main use of gypsum is for the Blackwood catchment. I do not have any problem about which catchment is used. I cannot impose as a condition on the person who wants to draw the gypsum an obligation to put in place an integrated catchment plan, because that person cannot plant trees on another person's land. I am prepared to ask the Minister for Lands to bring the matter to Parliament, provided I can say to Parliament that we have something that will be a big environmental plus. People in the catchment area have a willingness, for instance, to change their tilling practices, to bring in the gypsum, and to plant trees. In other words, they will have an integrated catchment plan. The way to go about it is to set out the environmental pluses. I see that as reducing the rising watertable in the subcatchment, and other things which would be measurable. If that process were put in place I would be prepared to give a one year approval to go ahead and mine, and review the situation each year to see if the catchment management plan is being carried out. I will extend it on that basis. I am not prepared to bring it into this Parliament unless I can say that I believe it is an environmental plus. We are moving towards that. I have outlined the objectives. I have tried not to be prescriptive. I think we will get somewhere with this.

WITTENOOM - FUNDS FOR ARCHITECTURAL PHOTOGRAPHIC RECORD BEFORE DEMOLITION

952. Hon MARK NEVILL to the Minister representing the Minister for Commerce and Trade:

In respect of the proposed demolition of buildings at Wittenoom, as the town is a unique former asbestos mining town, and the scene of the worst industrial disaster in Australia, will the Government immediately provide funds for a full architectural photographic record of the town, the mine and the colonial mill before any demolition commences?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. Yes.

CALM - POLICY TO REHABILITATE NATIVE FORESTS BY PLANTING EUCALYPTUS GLOBULUS; NORTH BANNISTER AREA

953. Hon J.A. SCOTT to the Minister for the Environment:

Previously the Minister said that this Government and the previous Government through the national forest policy statement have reserved the ability to rehabilitate forests devastated by disease.

(1) Is it the Government's policy to rehabilitate native forests by replacing them with *Eucalyptus globulus*?

(2) Is such rehabilitation taking place in the North Bannister area?

(3) Who is carrying out this rehabilitation?

Hon PETER FOSS replied:

(1)-(3) The member knows that is not the case. We do not do that. If the member wants to know what is happening in the North Bannister area I suggest he ask the people who have that responsibility. I am the Minister responsible for the Department of Conservation and Land Management. It is not my responsibility to answer questions about what people on private land do.

SWAN RIVER - NUTRIENT AND ALGAL PROBLEMS, PROGRAMS

954. Hon SAM PIANTADOSI to the Minister for the Environment:

What programs does the Government hope to put in place to eliminate the many nutrients that are carried into the Swan River?

Hon PETER FOSS replied:

I thank the member for some notice of this question. The Court Government has for the first time provided significant resources to tackle the problem of nutrient enrichment of the Swan River. $4.3m has been provided to the Swan River Trust over five years to develop programs to reduce nutrient loads from the catchments and the nutrient buildup in the sediments. The Government has also established a new Western Australian Estuarine Research Foundation and allocated $2m over its first three years to tackle the nutrient and algal problems in the Swan and Canning Rivers. These programs are now well under way, but it will take some time for action plans and implementation to occur, because of the complex nature of the problems. I recently released a comprehensive booklet on the clean-up program, which the member might care to read, which provides details on the many aspects of the work that will be undertaken in the catchments and the river.

O'CONNOR, RAY - CHARGES AND CONVICTION CASE

955. Hon MARK NEVILL to the Minister representing the Attorney General:

Further to questions on notice 3090 and 3631 on the case of Mr Ray O'Connor -

(1) Is the Attorney General aware that the answers to question on notice 3090 are not contained in the report of the Royal Commission into Commercial Activities of Government and Other Matters?

(2) Will the Attorney General provide the answers as requested?

(3) If not, why not?

Hon PETER FOSS replied:

(1)-(3) I ask that this question be put on notice as I do not understand what has been provided to me.