WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE ASSEMBLY

Wednesday, 25 November 1998

Legislative Assembly

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THE SPEAKER (Mr Strickland) took the Chair at 11.00 am, and read prayers.

CAMPING LAWS, AMENDMENTS

Petition

Mr McGowan presented the following petition bearing the signatures of eight persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, call upon the State Government to amend certain laws which are seen as unfair, restrictive and discriminatory towards us, the Australian public.
>
> We therefore ask that the following legislation be amended.
>
> 1. The Caravan Park 50 km protection zone be returned to its former 16 kms.
> 2. The 3 night Camping Law be amended to 28 nights on rate payers own property allowing for holiday visits by family or friends without having to seek special written permission from authorities.
> 3. That country road Park/Rest Areas limit of 4 hours be increased to 12 hours allowing long distance tourists, travellers and truck drivers to vacate roads during the hours of darkness if they so choose.
> 4. That en-route country Rest Stops of up to 12 hours be not defined as camping.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

A similar petition was presented by Mr Bloffwitch (four signatures).

[See petitions Nos 83 and 84.]

ROCKINGHAM BUS ROUTE

Petition

Mr McGowan presented the following petition bearing the signatures of 24 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, are extremely concerned about the current condition of the buses serving the Rockingham bus route. On a number of occasions in recent weeks these buses have been late which has caused considerable inconvenience to commuters. Additionally the condition of these buses is now very poor with a number of them being leaky and a number of repairs being required to be undertaken. We respectfully request that you take some action to rectify this situation and ensure that our public transport system is one of high class and high quality.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 85.]

STATUTORY REVIEW OF THE OCCUPATIONAL SAFETY AND HEALTH ACT

Statement by Minister for Labour Relations

MRS EDWARDES (Kingsley - Minister for Labour Relations) [11.06 am]: I make a ministerial statement on the statutory review of the Occupational Safety and Health Act 1984, as required under section 61 of the Act. I table the report on the review of the Act prepared by barrister Jeremy Allanson who assisted me with the review. The current review of the Act was commenced by my predecessor in 1997, and 20 submissions had been received at the conclusion of the period for public submissions in February 1998. The submissions presented a range of views. The majority of those which commented on the objects of the Act concluded that it has generally been meeting its objectives. While no major changes to the overall approach of the legislation are recommended, a number of specific matters require further consideration.

The key areas discussed in Mr Allanson's report are codes of practice, environmental tobacco smoke and employee health,

and whether the coverage of the Act should be amended to include members of the Police Force. The matters arising from Mr Allanson's report are complex and the solutions may not be simple. Consultation and advice is required to determine appropriate action. In addition to consulting with my ministerial colleagues responsible for relevant portfolio areas, I have today referred Mr Allanson's report to the WorkSafe Western Australia Commission. The commission's collective expertise in occupational safety and health, and its tripartite nature with representatives from government, the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia, ensures the commission is well placed to consider the report and provide advice on any recommended changes. The commission has a function in the development and review of occupational safety and health legislation, and consideration of Mr Allanson's report as part of this process will ensure it is dealt with in the context of ongoing legislative improvement.

[See paper No 468.]

BILLS - INTRODUCTION AND FIRST READING

1. Perth Parking Management Bill.

2. Perth Parking Management (Consequential Provisions) Bill.

3. Perth Parking Management (Taxing) Bill.

Bills introduced, on motions by Mr Omodei (Minister for Local Government), and read a first time.

4. Adoption Amendment Bill.

Bill introduced, on motion by Mrs Parker (Minister for Family and Children's Services), and read a first time.

BOTANIC GARDENS AND PARKS AUTHORITY BILL

Council's Amendments

Amendments made by the Council now considered.

Committee

The Chairman of Committees (Mr Bloffwitch) in the Chair; Mrs Edwardes (Minister for the Environment) in charge of the Bill.

The amendments made by the Council were as follows -

No 1

Clause 9, page 7, line 9 - To delete the words "the flora and fauna" and substitute "any native biological diversity".

No 2

Clause 9, page 7, line 14 - To insert after the word "to" the word "conserve,".

No 3

Clause 9, page 7, line 17 - To delete the words "flora and fauna" and substitute "biological diversity".

No 4

Clause 9, page 7, line 18 - To delete the words "flora and fauna" and substitute "biological diversity".

No 5

Clause 53, page 39, lines 17 and 18 - To delete the words ", flora and fauna" and substitute "and biological diversity".

No 6

Clause 53, page 39, line 20 - To delete the words ", flora and fauna" and substitute "and biological diversity".

Mrs EDWARDES: I move -

That the amendments made by the Council be agreed to.

The Government fully supports the amendments made in the other place. The inclusion of "any native biological diversity" clearly recognises the conservation role of Kings Park and Botanic Gardens especially in relation to the conservation of Western Australia's unique flora and the need for the preservation and enhancement of our urban bushland areas such as Bold Park and Kings Park.

Dr EDWARDS: The Opposition agrees with these amendments, as was indicated in the upper House. As the minister has just stated, "any native biological diversity" better covers the previous words "flora and fauna". The practical reason for this, as pointed out in the upper House, is that "any native biological diversity" covers fungi, whereas "flora and fauna" technically does not cover fungi. The addition of the word "conserve" also clearly spells out the conservation role that will be undertaken in both Kings Park and Bold Park and in future botanic gardens. Given the importance of these amendments, we support them.

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

Report

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

TRUST REMOVAL (MOUNT CLAREMONT LAND) BILL

Second Reading

Resumed from 12 November.

MR McGOWAN (Rockingham) [11.17 am]: I will put the Opposition's point of view on this Bill. As the spokesperson for land matters in the lower House, I am, in effect, representing the shadow Minister for Lands, Hon Mark Nevill, who is in the upper House. Be that as it may, I will do my best to give my analysis of this Bill. This Bill effects the removal of a parcel of land in the Mt Claremont area which is bounded by Rochdale Road and Whitney Crescent. The purpose of the removal of that piece of land is to allow the land to be sold by the State and part of the proceeds of the sale to be used for the ongoing management of the reinvigorated Bold Park reserve. Those proceeds will be used by the Kings Park Board, which also has the overall management of Bold Park. Under the terms of the minister's second reading speech - although a specific provision for it was not incorporated in the Bill - some of the proceeds of the sale of this piece of land will go to the State. I assume that the proceeds will go to the Kings Park Board for the management of Bold Park. Provided that that parcel of land is sold for more than $11.5m, some of the funds will go to the Town of Cambridge and the Kings Park Board.

According to the minister's second reading speech, the Town of Cambridge supports the removal of this piece of land from the trust and, accordingly, its sale. In general terms, the Opposition is supportive of this move. We note that it appears to have local support in the Mt Claremont area and it is supported by the local authority in the Town of Cambridge. One can only say that it raises some questions about the future of Perry Lakes. I know that the Town of Cambridge would like to sell that facility. This Bill appears to be related to the financial situation of the Town of Cambridge in some way. However, that is probably a matter for debate at another time. Overall, the Opposition supports this sale and hopes that it assists with the management of Bold Park and Kings Park.

MR KOBELKE (Nollamara) [11.20 am]: Although the Opposition will support this Bill, I must comment on the second reading speech and the real intentions of the Government. It seems that more is said by omission than by statements in the presentation of this Bill. Very little sense can be made of the one-page Bill because it must be technical to specify the land involved. It indicates that the land is to be discharged from a trust currently with the City of Perth. That municipality has split up since that trust was put in place, and the Town of Cambridge is now the key player. In the second reading speech the minister alluded to Bold Park as a major reserve of considerable significance in the western suburbs, and the Government's undertakings with respect to the development of Bold Park should be commended. However, the speech does not refer in any way to the process by which Bold Park was established, and how this relates to it. Therefore, the reason for this Bill being introduced in relation to this land and not other land is open to conjecture. Do other pieces of land require similar legislation or does this Bill represent the final settlement of the arrangements for Bold Park and the Town of Cambridge?

Mr Shave: I have no advice that other legislative changes are proposed with regard to Bold Park. I am not saying it is the case, but it has not been discussed with me.

Mr KOBELKE: I thank the minister for that response. The question of who would have control of the endowment lands was a matter of some contention in the split-up of the City of Perth. No statement is made in the second reading speech about the final arrangements. The Towns of Cambridge, Vincent and Victoria Park expressed some concern that they were not receiving a fair share of the endowment land and I am not sure whether the excess funds to go to the Town of Cambridge are calculated in relation to the endowment land squabble, or whether the matter was settled separately from this move. Those matters were not addressed in the minister's speech. The minister also did not mention the quantum of money. I acknowledge that until the land is subdivided and is on the market, it is difficult to predict the value because market values can shift over six months or a year. The minister stated that sale proceeds in excess of $11.5m would be disbursed equally to the Town of Cambridge and the board. Is it anticipated that the value of the land is between $12m and $15m, or is it around $25m? How much is the excess likely to be? How was the figure of $11.5m arrived at? The minister stated -

> Sale proceeds in excess of $11.5m will be disbursed equally to the Town of Cambridge and the board.

Was that figure simply plucked out of thin air? No explanation is given in the speech of where it derives from. Perhaps it relates to settlement of a range of other issues and the excess is to be disbursed by this procedure. This Parliament needs to know how the figure was arrived at.

My final comments relate to the history of the announcement of this project. It was a very shabby deal, about which I have spoken previously in this place. The Government, seeking to do something about Bold Park and the lands previously owned by Bond Corporation - the Knightsbridge land - had to deal with a range of complex problems. It rightly recognised the fantastic potential of that area and the need to preserve and allow development such that people could use the area while maintaining its environmental integrity. Clearly a manager was needed, together with management plans and funds to look after the area. The Government sought to address that issue, and I fully commend it for embarking on that process in which it was able to incorporate the Knightsbridge land and deal with the difficult situation that arose with liabilities and the collapse of the companies that held the land.

On a bright Sunday afternoon, the Premier made an announcement on site that this move would take place and that, as part of the deal, some of the land would be sold. That land appears to be the subject of this Bill. The minister can correct me if this is not the land that the Premier announced three or four years ago would be sold. Things may have changed over the years and in the reshuffling that took place. The Premier said the land would be sold and the funds would be used through the Kings Park Board for the management of the area. That was a shonky step because the Premier put a value on the land at that time. When I asked questions about that value, the Premier was coy and did not want to answer the questions. Apparently, no valuations had been carried out; and someone just dreamt up the figure. That is why I am suspicious of the amount of $11.5m quoted in this Bill, because no explanation or validation is provided by the minister. Some years ago the Premier announced the project and the sale of land, and put a value on that land that had no substance at all. This House does not have time to go into the problems that arose as a result of that.

Clearly, the Town of Cambridge was unhappy with that. It had received this land as a result of the split-up of the City of Perth and the Government had unilaterally taken the land from it. It involved not just the lands related to the reserve, of which it had management, but also land such as this which clearly had commercial value. This resulted in a protracted and sometimes bitter argument between the Town of Cambridge and the Government. I know the member for Cottesloe has been involved in trying to settle that matter and I assume this Bill is part of the final settlement, although no mention is made of that in the minister's speech. One might infer that, from the statement of the minister that the Town of Cambridge supports the removal of the trust, but it is not said that it is final settlement of the dispute between the Town of Cambridge and the Court Government. I hope it is and that some funds will be available in excess of $11.5m. The whole matter raises questions rather than provides answers. I hope the minister, and perhaps the member for Cottesloe if he speaks in the debate, will give some explanation of what has transpired in the final settlement of all these lands and what part this land plays in that final settlement. I repeat that we need some explanation of how the $11.5m was arrived at and what excess of that amount is likely to be disbursed equally between the Town of Cambridge and the Kings Park Board.

MS WARNOCK (Perth) [11.30 am]: This is a small Bill which occupies only two sides of a piece of paper. I am supportive of this legislation because I know how important is the final settlement of the Bold Park matter to the good citizens of the Town of Cambridge. The arguments that occurred between the Town of Cambridge and the Government will be familiar to all members of this House. I note from reading the minister's second reading speech that the Town of Cambridge is supportive of the removal of the trust. That stands to reason because, like my colleague the member for Nollamara, it seems to me that is part of the settlement of the long argument following the break-up of the old City of Perth. There was initially a great deal of disagreement about who would get what when the City of Perth was split at the beginning of this present Government's term.

I attended a civilised function earlier this year at the handover of Bold Park to the management of Kings Park. I admire the management team at Kings Park and Botanic Gardens greatly so I know it will be in good hands. Bold Park is immensely important to the people of the Town of Cambridge and to the citizens of the entire metropolitan area. It is a magnificent public open space of the kind with which we are greatly gifted here in Western Australia, including of course Kings Park, which includes much of the original bushland, playing fields and, in the case of Bold Park, even an amphitheatre. This magnificent public open space is a tremendous gift to the citizens of Western Australia now living and those of the future. I want to put on record the great value of this splendid park and how glad I am that the matter has been settled to the satisfaction of the Town of Cambridge.

MR BARNETT (Cottesloe - Leader of the House) [11.34 am]: With the agreement of the Minister for Lands handling this Bill, I rise as the member for Cottesloe, not as the minister. My involvement with Bold Park has been as the member for Cottesloe. However, as a reasonably senior minister, I have had an influence in the way things have evolved. I remind members, although not this minister because he is conscious of it, that Bold Park is within the electorate of Cottesloe.

Mr McGowan: You should have told me; had I known that I would have made more of it.

Mr BARNETT: The member for Rockingham should have known. It is generally believed, by members on both sides of the House, that Bold Park is within the electorate of Churchlands. However, it has always been in the electorate of Cottesloe,

albeit most of the surrounding residents live in Churchlands. The issue of Bold Park is important, and while not wishing to spark a political debate, I will not miss the opportunity of reminding the member for Nollamara that the Burke Labor Government sold the Knightsbridge land and planned to subdivide it. At considerable expense, this Government bought back that land and returned it to the park. Despite what the member for Nollamara said about commitment to urban bushland, his Government saw the opportunity of flogging off that land for housing. To the great credit of the Premier, this Government repurchased that land. That needs to be said and will be said again and again.

Apart from repurchasing the Knightsbridge land and therefore restoring the integrity of Bold Park, which would have been destroyed had that land been subdivided, this Government also removed the Stephenson Highway reserve from Bold Park which had been in place since the 1960s. That too removed a long-term threat to the integrity of Bold Park. In addition, for which I will claim some credit, we also incorporated into Bold Park an expansive and expensive piece of land between Rochdale Road and the Cottesloe golf course and a piece of land running to the coast which effectively doubled the size of Bold Park. That has also added greatly to it.

The next move, reflected partly in this Bill, was to give Kings Park overall management responsibility for Bold Park in which there are obvious advantages, acknowledged by the member for Perth, in having both Kings Park and Bold Park under one management. It is obvious on an aerial map that they are almost contiguous to one another; therefore, that is logical. As part of those negotiations, the playing fields were left within the control of the Town of Cambridge, as was Perry Lakes reserve. That also was appropriate. It was initially proposed that also would go to Kings Park. The Town of Cambridge is correct in its position.

To clarify comments made by the member for Rockingham with respect to the small pieces of land that will be sold - areas I think on the map of the day referred to as areas F and G - four were examined initially. Perhaps three will be sold, one being an area on Fortview Road, which will no doubt achieve high market prices. It is a single strip of perhaps 12 or 15 lots overlooking in one direction the Christ Church Grammar School playing fields and in another direction the hill of the Cottesloe golf course fairway. They are in stunning locations. The two triangular sections, which are essentially part of Mt Claremont, will also be sold. Neither of those pieces of land could be regarded as being part of Bold Park. They are already separated by other residential developments. That sale is appropriate. Another area earmarked to be sold between the Christchurch playing fields and Rochdale Road was left within Bold Park because the Government decided that it was part of the frontage and contained recognised vegetation.

Out of that the Government has done a fantastic job and as a local member I am delighted. We have preserved the local integrity of Bold Park by putting it under the professional management of the Kings Park Board, more than doubled the size of the park, purchased back land sold by the previous Government, and removed the road reserve.

Mr Kobelke interjected.

Mr BARNETT: I will get to the financial implications. Out of that, as everyone agreed after some discussions, it was appropriate to sell some areas. Some valuations were done which were probably conservative. The Kings Park Board estimated the amount of money it required for rehabilitation and improvement of some of the facilities within the Bold Park area. The amount of $5m was talked about. Negotiations occurred between Ministers Foss and Omodei and me as the local member, in which we negotiated the sale of the land and the payment of $6.5m to the Town of Cambridge, which the Premier subsequently gave to the town earlier this year. We agreed that any of the proceeds above $11.5m would be split equally. The town feels that arrangement is fair and it has accepted it. The $6.5m has already been paid to the Town of Cambridge. If there is any risk, it is borne by the State. Although this Bill will implement that, I did not want to steal the thunder of the minister responsible. However, I wanted to comment on some of those issues because the history precedes the minister's role in the Lands portfolio.

Mr Kobelke: Do you see the issue with respect to the Town of Cambridge fully settled with this proposal?

Mr BARNETT: Yes, with respect to Bold Park and the land immediately surrounding it. That is not to say other land issues may not arise over some of the land owned by the Water Corporation or City Beach Senior High School. Other land endowment issues could arise.

MR SHAVE (Alfred Cove - Minister for Lands) [11.38 am]: The member for Cottesloe is far more conversant with all the negotiations than I am because he was involved and that was appropriate. In response to the member for Nollamara, who asked about the valuation, it was undertaken in 1995 by Sullivans. That is how the figure of $11.5m was arrived at.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL

Council's Amendments

Amendments made by the Council now considered.

Committee

The Deputy Chairman of Committees (Mr Barron-Sullivan) in the Chair; Mr Shave (Minister for Fair Trading) in charge of the Bill.

The amendments made by the Council were as follows -

No 1

Clause 7, page 10, line 20 - To insert after the word "review" the following -

provided that such rent shall not be payable at a rate faster than the rate at which it has accrued

No 2

Clause 8, page 15, line 22 to page 16, line 5 - To delete the lines and substitute the following -

(1g) A landlord must not include in a retail shop lease a provision that requires a tenant to -

(a) pay land tax; or

(b) reimburse the landlord for land tax.

(1h) A provision in a retail shop lease requiring a tenant to -

(a) pay land tax; or

(b) reimburse the landlord for land tax,

is unenforceable.

No 3

Clause 13, page 26, lines 6 to 10 - To delete the lines and to substitute the following -

13. Section 31 of the principal Act is repealed and the following section substituted -

" **Review of Act**

31. (1) The Minister administering this Act is to carry out a review of the operation and effectiveness of this Act within 6 months after the expiration of every 5 years from the commencement of the *Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998*.

(2) The Minister is to prepare a report based on each review made under subsection (1) and cause the report to be laid before each House of Parliament within 1 year after the commencement of each review. ".

No 4

Clause 14, page 27, after line 16 - To insert the following -

(c) section 10(3), (4) and (5) of the principal Act as inserted by section 6 of this Act;

(d) section 11(2) and (2a) of the principal Act as inserted by section 7(2) of this Act;

No 5

New clause, page 7, after line 31 - To insert the following -

Section 7 amended

6. Section 7 of the principal Act is amended -

(a) by deleting "either in whole or in part" wherever occurring; and

(b) by inserting after subsection (5) the following -

" (6) Where a retail shop lease contains a provision to the effect that rent is to be determined by reference to the turnover of the business then such rent must be determined exclusively by reference to such turnover. ".

No 6

New clause, page 7, after line 31 - To insert the following -

Section 8 amended

7. Section 8 of the principal Act is amended -

(a) by deleting "either in whole or in part" wherever occurring; and

(b) by inserting after subsection (2) the following -

" (3) Where a retail shop lease contains a provision to the effect that turnover figures or statements must be supplied by the tenant to the landlord such provision is void unless the lease contains a provision to the effect that rent is to be determined exclusively with reference to the turnover of the business.
".

No 7

New clause, page 24, after line 30 - To insert the following -

Section 13 amended

10. (1) Section 13 (1) of the principal Act is amended by deleting "5" wherever occurring and substituting the following -

" 7 ".

(2) Section 13 (2) (a) of the principal Act is amended by deleting "5" and substituting the following -

" 7 ".

No 8

New clause, page 24, after line 30 - To insert the following -

Section 13C inserted

10. After section 13B of the principal Act the following section is inserted -

" **Unconscionable conduct connected with lease renewal**

13C. (1) A landlord must not, in renewing a retail shop lease, or in connection with the renewal, or possible renewal, of a retail shop lease to a tenant engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a landlord has contravened subsection (1) in connection with the renewal of a retail shop lease to a tenant, the Tribunal may have regard to -

(a) the relative strengths of the bargaining positions of the landlord and the tenant;

(b) whether, as a result of conduct engaged in by the landlord, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the landlord;

(c) whether the tenant was able to understand any documents relating to the supply of goods and services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were exerted against, the tenant or a person acting on behalf of the tenant by the landlord or a person acting on behalf of the landlord in relation to the renewal of the lease or possible renewal of the lease;

(e) the amount for which, and the circumstances under which, the tenant could have acquired an identical or equivalent leave from a person other than the landlord;

(f) the extent to which the landlord's conduct towards the tenant was consistent with the landlord's conduct in similar transactions between the landlord and other like tenants;

(g) the requirements of this Act;

(h) the requirements of any other legislation or industry code, if the tenant acted on reasonable belief that the landlord would comply with that code;

(i) the extent to which the landlord unreasonably failed to disclose to the tenant -

(i) any intended conduct of the landlord that might affect the interests of the tenant; or

(ii) any risks to the tenant arising from the landlord's conduct (being risks that the landlord should have foreseen would not be apparent to the tenant);

(j) the extent to which the landlord was willing to negotiate the terms and conditions of any lease for the occupation of the retail shop by the tenant;

(k) the extent to which the landlord and the tenant acted in good faith;

(l) whether there have been substantial and persistent breaches of the lease conditions;

(m) a desire to change the tenancy mix or redevelop the centre for which vacant possession is required;

(n) the economic performance of the tenant compared to other comparable businesses in the retail shopping centre or locality during the life of the lease;

(o) the level of investment obligated under the lease and the ability of the tenant to meet that investment at a reasonable rate over the term of the lease;

(p) any compulsion upon the tenant to undertake during the term of the lease a refurbishment or a refit and the ability of the tenant to meet that cost at a reasonable rate over the balance of the term of the lease;

(q) the value of the current store fitout to the tenant's business as a going concern;

(r) the availability of suitable comparable premises in the immediate vicinity; and

(s) the disparity between the rental level of any final offer and that as determined as a fair market rent for the premises by a specialist retail valuer.

(3) A landlord or any person acting on behalf of a landlord is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, to a tenant by reason only that such landlord or person institutes legal proceedings in relation to that lease or possible lease or refers a dispute or claim in relation to that lease or possible lease to the Tribunal.

(4) For the purposes of determining whether in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, a landlord or any person acting on behalf of a landlord is in breach of this section the Tribunal -

(a) must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged breach; and

(b) may have regard to the circumstances existing before the commencement of this section but not to the conduct engaged in before that commencement.

(5) On hearing a dispute at lease end in respect of whether a landlord, or any person acting on behalf of a landlord, has acted unconscionably under this section the Tribunal may -

(a) dismiss the claim;

(b) uphold the landlord's decision not to renew the lease but make provision for payment to the tenant in recognition of the contribution that the tenant has made to the economic value of the retail shop or the retail shopping centre during the life of the lease; or

(c) issue a new lease with the terms and conditions as determined.

(6) Where the Tribunal makes an order or orders in accordance with subsection 5(b) in assessing any economic loss the Tribunal must consider matters such as -

(a) any forced disposal of the tenant's stock at a discount rate; and

(b) any inability to recover the tenant's cost of any fixtures or fittings. ".

No 9

New clause, page 24, after line 30 - To insert the following -

New section 13D

10. After section 13B of the principal Act the following section is inserted -

" **Relocation entails obligations**

13D. (1) Where a retail shop lease contains a provision that enables the landlord to require the tenant to relocate the tenant's business from one shop to an alternative shop in the shopping centre, the lease shall be taken to provide that -

(a) the tenant's business cannot be relocated unless and until the landlord has given 3 months written notice of the relocation (**''the relocation notice''**) with details of -

(i) the alternative shop to be made available to the tenant; and

(ii) the proposed refurbishment, redevelopment or extension to the first mentioned shop sufficient to indicate a genuine proposal that is to be carried out within a reasonably practicable time after the relocation of the tenant's business and that cannot be carried out without vacant possession of the tenant's shop;

(b) the tenant is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease excepting the term of the new lease which may be for the remainder of the term of the existing lease; and

(c) the rent for the alternative shop is to be the same as the rent for the shop to which the existing lease relates provided that such rent may be adjusted to take into account the difference between the market value of the shop to which the existing lease relates and the alternative shop at the time of relocation.

(2) Where the tenant receives a relocation notice in accordance with subsection (1) the tenant may terminate the lease within 28 days after receipt of such notice by giving written notice of termination to the landlord.

(3) Where a tenant terminates a lease in accordance with subsection (2), the lease is terminated 60 days after receipt of the relocation notice unless the landlord and tenant agree that the lease is to terminate at some other time.

(4) Where a tenant receives a relocation notice in accordance with subsection (1) and the tenant does not give the landlord a notice of termination in accordance with subsection (3), the tenant is taken to have agreed to relocate to the alternative shop identified in the relocation notice.

(5) Where a tenant agrees to relocate the tenant is entitled to payment by the landlord of the tenant's reasonable relocation costs including costs incurred by -

(a) dismantling and reinstating any fixtures and fittings;

(b) packing and removal;

(c) any new fitting requirements;

(d) any legal requirements associated with the relocation; and

(e) any disruption to trading relating to the tenant’s business.

(6) Subsection (5) does not apply to the Crown as a landlord. ".

No 10

New clause, page 25, after line 15 - To insert the following -

New section 27 A and 27 B inserted

12. After section 27 of the principal Act the following sections are inserted -

" **General penalty**

27A. (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and is liable to a penalty not exceeding an amount of $50 000.

(2) The provisions of this section apply to any retail shop lease entered into on or after the commencement of this Act but shall only be applicable to offences which occur on or after the commencement of the *Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998*.

Proceedings for offences

27B. (1) A prosecution for an offence against this Act shall be by way of summary proceedings under the *Justices Act 1902* upon the complaint of the Registrar or any person authorised in writing in that behalf by the Minister.

(2) The authority of a person to make a complaint in respect of an offence against this Act shall be presumed until the contrary is proved. ".

Mr SHAVE: I move -

That amendment No 1 made by the Council be disagreed to.

Mr BROWN: Amendment No 1 seeks to amend proposed section 11(3a) of the Act, which reads -

> If the parties to a retail shop lease referred to in subsection (3) do not agree on the rent payable as a result of the review concerned, the rent payable immediately before that review shall not be increased or reduced before the question is resolved or determined under this section, but nothing in this subsection prevents any increase or reduction in rent which takes place after that resolution or determination from being due and payable with effect from the date of that review.

The Council's amendment seeks to put a condition on that clause - particularly if rent is increased - that rent should not be payable at a faster rate than the rate at which it accrued. That is to overcome a situation in which a tenant could be faced with a substantial amount being due for past rent as a result of a review concluding that it was appropriate for that rent to be increased. The amendment from the other place tried to provide a measure of protection for small business proprietors by ensuring they were not confronted with paying a lump sum at the conclusion of any review which determined that rent should be increased. That is a laudable objective. As we all know, many small businesses do not have a high level of discretionary funds from which they can meet unexpected expenses. They could be caught unawares by a review which may determine a rent increase. The minister has moved to disagree with the amendments, but has not as yet advised the Committee of the Government's reasons for doing that. The onus is on the Government in dealing with amendments from the other place to place on record its rationale for disagreeing with them.

Mr SHAVE: The Government rejects amendment No 1 because of its drafting implications. The change may introduce the potential for manipulation by lengthening the dispute to gain an advantage in time to repay the new rental level. It would be more appropriate for the registrar to make the decisions and to have flexibility, so that if either party tried to use the clause to unfairly manipulate the situation, he could make that determination having all the facts. The foreshadowed insertion of proposed section 11(8) retains the intent of amendment No 1 while providing flexibility to the registrar. The Bill expands the registrar's powers, and he will be in a position to determine that issue. We consulted with Hon Norm Kelly, who moved the amendment in the other place, and he understands that decision and agrees with it.

Mr BROWN: Given the minister's foreshadowed motion to substitute proposed section 11(8) I will address the amendment from the other place. Did the minister consider adopting a different style of amendment from that moved in the other place? His foreshadowed amendment could have been styled so that the relief provided by the upper House amendment is qualified by the fact that a party must not seek to unduly frustrate or delay a review. I understand the minister's point regarding someone not wanting to pay a rent increase which will be clearly awarded under a review as a result of market movement. For commercial purposes, that operator may drag out the review process for a year or three, which would be a manipulation of the clause. The minister suggested that someone could frustrate the process until the lease expires and then move on, thereby avoiding the obligation to pay market rent. The protective mechanism should be even-handed. However, such problem could be dealt with by applying a further condition to the protection granted through the upper House amendment;

namely, to make the provision conditional on the fact that such relief not apply where a party unduly seeks to prevent the review or frustrate its process.

That activity sometimes occurs in court; that is, a matter is called on and a party claims insufficient notice and seeks to adjourn the matter until another day for the sole purpose of dragging out the proceedings. We have all spoken to counsel at different times on this subject. I recall one senior counsel outlining some time ago that he was instructed by a wealthy client that he was never to let the application under consideration be determined by the court. He was to prevent the court from hearing and determining the matter by raising every technical and preliminary objection possible to frustrate and break his opponent. That is a misuse of the law and its procedures. I understand the Government's attempts to provide an appropriate balance in the legislation by protecting against that activity. However, that could be achieved by adding a further condition to the relief provided in the upper House amendment. Also, the intent of the upper House amendment could be met by allowing that measure of relief to prevail. Was consideration given to the style of amendment I suggest?

Mr SHAVE: I can only reiterate that the department looked at this proposal to tack the amendment on as it stood. The amendment had many implications for retrospectivity and other issues. The strong view was that any decision related to these issues should be determined by the registrar. That is why we framed the foreshadowed amendment in the manner outlined.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That the following amendment be substituted -

Clause 7, page 11, after line 5 - To insert the following -

(8) In determining a question under subsection (5) the Registrar, after considering all the circumstances of the case, may determine that any increase or reduction in rent payable as a result of the determination of the Registrar under that subsection is payable over such period as the Registrar thinks fit.

Mr BROWN: This amendment seeks to clothe the registrar with additional powers so he or she will have the power to determine that any increase or reduction in rent payable on the determination of the registrar be payable over a period which the registrar thinks fit. In other words, once the registrar has dealt with the question of whether rent should be increased or decreased, a party who faces the cost may claim that he or she should be given time to pay any residue amount due from the date of the review until the date of the determination taking effect. I understand that that provision will provide the registrar with that discretion.

The issue not factored into the provision is the way the registrar should exercise that discretion; that is, whether anything further should be included in the amendment to guide the registrar in the exercise of that discretion. For example, should the registrar in exercising that discretion under the amendment take into account the financial circumstances of the party, particularly the party to meet the costs, to ensure that any order the registrar makes does not unduly put the financial circumstances of parties, or one of the parties, at risk? My concern is that although a discretion has been granted to the registrar to determine this matter, it may be argued, for example, in the case of a rent increase, that the landlord should be paid in one lump sum the amount retrospectively due from the date of the review and the determination. The onus would then fall on a small business operator to demonstrate that he does not have sufficient finances to make the payment in one sum. It could require the small business person to go into detail about the finances of that business. That operator may not wish to lay open those matters before the landlord.

Although I agree with the discretion permitted by the amendment moved by the minister, I am concerned about the tests the registrar may use in the exercise of that discretion, and whether those tests will mean that some small businesses will not seek to avail themselves of the opportunity to seek time to pay any amount owing because it will require the disclosure of confidential material before the landlord and his representatives. Could the minister outline for me, and particularly for the record, how he envisages the registrar exercising discretion in this matter and the type of evidence or material that the registrar would need before him or her in order to exercise the discretion to allow time to pay?

Mr SHAVE: Subclauses (6) and (7) at the top of page 23 of the blue paper outline the way the registrar may address these issues. This subclause merely reinforces that.

Mr BROWN: The blue paper is a combination document of the existing Act and the Bill, showing the changes. At the top of page 23 clause 11(6) reads -

> In determining a question under subsection (5), the Registrar shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and shall not be bound by the rules of evidence, but may inform himself or herself on any matter in such manner as the Registrar thinks fit.

I understand the legal test relating to equity, good conscience and the substantial merits of the case. Some courts have held that equity laws apply and some courts have held that they do not necessarily apply. Subclause (7) reads -

> For the purposes of determining a question under subsection (5) the Registrar may require the parties to furnish to the Registrar such valuations, documents or other information as the Registrar thinks fit and the parties shall comply with any such requirement.

I understand the required evidentiary tests and the way the registrar may go about his or her work; that the registrar is not bound by the strict rules of evidence but might inform himself or herself of such evidence as the registrar thinks fit; and that the registrar may require parties to furnish such documents as the registrar determines are required. However, neither of those two subclauses deals with the point that I was making; that is, that some guidance be given to the registrar about the way in which the registrar should exercise the discretion of requiring, particularly a small business person, to meet a lump sum payment which could well fall due under this amendment. That concern was raised by Hon Norm Kelly in the other place who said that it was fair enough to have a review and to hold the rent during that review period at the same rent. Nobody disagrees with that; it is a fine clause and is in the current Bill. However, the concern was that if it took some time for the review to be completed, a payment would be due for the period between the date of the review - I presume that means the date of the application for a review - and the date of the final determination, and that a considerable sum of money could accrue between those two dates. Hon Norm Kelly raised the concern in the other place that a small business person might simply not have the financial capacity to be able to meet that payment in one lump sum and, therefore, what he was seeking was that if the rent were increased, the person could pay it off over a period. I understand the amendment moved by the minister contains a discretion for the registrar to allow for that to occur, but there is no guidance to the registrar as to the way in which he or she may exercise that discretion. One could have a situation where a tenant is required to pay X number of dollars and the tenant says that he is sorry but he cannot afford it and that he will pay the accrued amount over the following number of weeks, but where the landlord argues that the amount is due and it should be paid unless the tenant can prove to the satisfaction of the registrar that he is unable to pay it. That may put the tenant to considerable expense and also in a position where he must disclose his business interests to the landlord to justify the claim; that he is not prepared to go through that procedure.

Mr SHAVE: I do not think I can elaborate further on this other than to say that my advice is that with all of the issues taken into account, including the concerns raised by the member for Bassendean, the way the clause has been worded and the empowering of the registrar have been determined as the most practical and fairest way of doing it.

Mr BROWN: It is not my intention to go over all that has been said, other than to raise the point that there is wisdom in giving the registrar some discretion in this area. I do not quibble with the registrar's having some discretion and the way in which it is done. I question the way in which the registrar may elect to exercise that discretion. I have made the point for the record and I do not think it is worthwhile persisting with it. I note that the Government intends to agree with an amendment relating to a review of the Act in five years. That is a good amendment from the other place. However, I suggest that the operation of this Act should be reviewed much earlier, perhaps 12 to 18 months after this Bill has become law, to see whether it is operating equitably and takes into account the particular circumstances of small business retailers.

Amendment put and passed.

Mr SHAVE: I move -

> That amendment No 2 made by the Council be not agreed to.

The issue of transferring the onus and responsibility for land tax was not in the Government's original Green Bill, because the Government had determined that it was not appropriate to change that matter in this legislation. Therefore, the Government does not support the amendment.

Mr BROWN: There was some debate in this place about the payment of land tax. Retailers believe that they should not have to pay land tax, and that that cost should be borne by the landlord. In the residential market, the landlord charges the tenant rent, and is responsible for the payment of land tax and other taxes, and the tenant is responsible for the payment of outgoings such as water and electricity. Land tax is payable if a person owns more than one commercial or residential investment property. The South Australian legislation provides that tenants are not liable for the payment of land tax, and this amendment is based on that model.

One of the positive provisions of the original Bill was that tenants should not be liable for the payment of management fees. That provision was welcomed by small retailers. However, I have received information from a number of sources that the leases that are now being issued have changed in nature and there is a major move towards gross rentals. The minister would know that a gross rental covers all outgoings and does not reveal the individual components. The Government might argue that if this provision were included in the legislation, it would increase the move to gross rentals. However, regardless of whether that would be the case, it would send the message that land tax should be borne by landlords and not be an added cost for tenants. Therefore, small retailers have expressed some disappointment that the Government will not support this provision.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That amendment No 3 made by the Council be not agreed to.

The Government is not opposed in principle to this amendment, but I foreshadow that I will move to amend it in order to correct the drafting and facilitate what the member in the upper House was endeavouring to achieve.

Mr BROWN: There does not appear to be a substantive difference between what the minister intends to move and the upper House amendment. Therefore, we have no objection to the deletion of this amendment and the substitution of the minister's amendment.

Mr SHAVE: I have received advice from legal counsel that it is basically a drafting issue. The substance of the amendment which I shall move is in line with the requirements of the member in the other place.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That the following amendment be substituted -

Clause 13, page 26, lines 6 to 10 - To delete the lines and substitute the following lines -

13. Section 31 of the Act is repealed and the following section is substituted -

" **Review of Act**

31. (1) The Minister is to carry out a review of the operation and effectiveness of this Act within 6 months after every 5 years from the commencement of section 1 of the Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998.

(2) The Minister is to prepare a report based on each review made under subsection (1) and cause the report to be laid before each House of Parliament within 12 months after the commencement of that review. ".

Amendment put and passed.

Mr SHAVE: I move -

That amendment No 4 made by the Council be not agreed to.

The Government never intended to support changes to the legislation which are retrospective and interfere with existing contracts. For that reason, we will not be agreeing with this amendment.

Mr BROWN: Amendment No 4 seeks to amend clause 14 of the Bill, which deals with the saving and transitional provisions of the Bill. Clause 14 defines the terms "existing lease," "new lease" and "retail shop lease". The amendment moved by the other place sought to include two new sentences on page 27 after line 16. Line 16 comes under clause 14(3) of the Bill. That subclause sets out which clauses in the Bill would apply to existing leases. Generally speaking, the Bill applies only to new leases - that is, leases which come into operation after the proclamation of the Bill - but there are certain exceptions whereby the provisions of the Bill will apply to existing leases. The amendment seeks to include additional provisions in the subclause. It seeks to bring into play immediately on proclamation of the Bill the clauses of the Bill which would apply to existing leases. The first part of the Council's amendment relates to amendments to clause 10(3), (4) and (5) as amended. Those subclauses deal with the provisions applying to a transfer or assignment of a lease. The current provisions enable a landlord to withhold consent of an assignment unless a tenant or a grantor of the tenant agrees to pay certain moneys which may be payable under the lease by a person to whom it is proposed to assign the lease if that lease is subsequently declared void. It is a guarantee provision which requires a small business lessee to agree to underwrite the costs of a new lease if anything goes wrong. The transfer requires the landlord's consent. The amendment is a good provision because it means one can no longer require that guarantee. It is something that small business retailers have sought to achieve for a long time and they have welcomed this provision. The difficulty is that this section will not apply to existing leases when the Bill comes into operation. The small business retailers are keen to see this provision apply to all leases immediately the Bill comes into operation; hence the amendment moved in the other place.

Mr CUNNINGHAM: I would like to hear more from the member for Bassendean because I am not sure I have grasped the issue yet.

Mr House: We can arrange a briefing for you, if you like.

Mr BROWN: We can arrange a briefing for the member for Girrawheen and the Minister for Primary Industry if he is interested.

Mr Barnett: Neither of us has time for all of that.

Mr BROWN: The small business sector is very important. What the Opposition is seeking to do is critically important to small business retailers. The other provisions of the Bill that the small business community would like to see apply immediately the Bill is proclaimed are contained in sections 11(2) and (2a) of the principal Act. These provisions deal with the question of the review of retail shop leases and the rent payable. They implement a number of changes which make the way such reviews are carried out under a retail shop lease far more equitable.

They also provide an opportunity for retailers to instigate a view, which is an opportunity that they did not necessarily have previously. The two provisions to which I have referred - the rent review process and the assignment process - contained in the Bill introduced by the Government are seen as positive changes. However, the small retailers to whom I have spoken are keen for both changes to come into effect immediately and not sit on the sidelines until such time as new leases are entered into. I understand it is the Government's intention, once this Bill passes through Parliament, to not proclaim it immediately, but to wait some months before it is proclaimed. If this Bill comes into operation in the middle of next year, any leases that are entered into prior to the proclamation of this Bill will not have to conform to the types of provisions set out in the two clauses. That means that the reform which will be ushered in by this Bill could mean for some retail tenants that the reform will not apply to them, if it is not proclaimed until halfway through next year, until, in the worst-case scenario, 30 June 2003. That seems like a long way off for many small retailers to say that this is a great reform. It may come into operation at a time when their leases expire and they will not renew for various reasons. Small business retailers would like to see those provisions come into operation immediately or, if that is impossible and there must be a period of notice, a shorter period than is currently proposed.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That amendment No 5 made by the Council be not agreed to.

This amendment effectively excludes arrangements between the parties to negotiate rentals that allow a commercial risk share between the lessee and the lessor over the life of a lease. I discussed that issue when this Bill was first debated in this Chamber. To accept the Opposition's amendments would mean that tenants and landlords will no longer be able to negotiate this arrangement, even in the circumstances in which they may see it as a mutual benefit. The Government recognises the commercial sensitivity of small business turnover figures. Access to the figures is at the discretion of the tenant agreeing to rental reviews or other arrangements that may be mutually agreed to by the parties. Remedies are available to the tenant if turnover figures are obtained, used or released for other than the agreed purposes. From the Government's point of view, it is not desirable to accept this amendment. Therefore, we will not be supporting it.

Mr BROWN: Amendments Nos 5 and 6 were the subject of debate in this Chamber, were moved and defeated in this Chamber, and were moved in the other place and supported. Hence, they reappear on the Notice Paper as a message. I will not go over all of the arguments that have been referred to previously. However, it is important to place on the record, firstly, why the amendments were moved and, secondly, a way through the concerns that have been raised by the minister. Small business retailers are concerned that under the current terms of leases, small business retailers may be required to disclose to a landlord the retail turnover figures because it is a requirement of the lease. However, many leases are structured in such a way that the small retailer is required to pay a set amount based on the area of the shop. In addition to that, clauses are inserted in leases which state that in the event of a small business retailer turning over a certain amount - normally an amount beyond the current turnover of the business - a new formula will be struck for rent. Many of the small business people to whom I have spoken have said that they would be happy to achieve that rental turnover figure. However, it is set so high and at such a rate that they will never achieve it. Why is it included in the lease? In their view, it is included for the sole purpose of giving the landlord access to the turnover figures. Under the Act, a landlord does not have access to retail turnover figures unless there is a provision in the lease which relates rent to turnover. By including in the lease a notional rent related to turnover, even though it does not apply, a landlord is allowed to obtain the retail turnover figures. The turnover figures are then disclosed. In one case a couple of years ago, a landlord demanded an increase in rent of about 35 per cent when the inflation rate was about 2 per cent. The argument went backwards and forwards, but essentially the landlord was able to argue that the tenant was doing very well in the business and was making a considerable income on the basis of the business. That tenant agreed to a substantial increase of over 20 per cent in the rent in one year. There were other issues involved in that case, but I will not go into them.

It is the view, rightly or wrongly, of many small tenants that the landlord has a matrix, particularly in larger shopping centres, of all the rents that are paid by the tenants and of all the turnover figures. When it is time for the rent reviews, it is very easy to pick on the business that is doing extraordinarily well. A landlord negotiates with that business, and extracts whatever he can and that becomes the new benchmark which other small retailers are required to meet. I understand there are differences in shop types and other matters, but that is a very strong perception held by small retailers; that is, they are at a considerable disadvantage because of the current requirements for them to disclose turnover figures when the rent they pay does not relate to the turnover figure at all.

Mr CUNNINGHAM: I would like to hear more from the member for Bassendean because I am not sure that I have grasped all aspects of the legislation.

Mr BROWN: It is the very strong view of small retailers that the current arrangements operate to their disadvantage. Hence, the amendment sought to be included by the upper House provides that a rent can still be determined by reference to the turnover of the business. It is prescribed for the purposes of the legislation by this amendment, but it means that a rent related to turnover should be the exclusive way in which the rent is determined, and no other basis should be used for setting the rent. The small retailers to whom I have spoken are quite happy with that arrangement because if they do very well, they are quite happy for the landlord to also do very well. It may well be that they will pay a lot more than the market rent, but they will pay it because their businesses are doing well. It also means that if, for one reason or another, their businesses do not do well, the landlord participates in that decline. Therefore, it is a direct business risk in which both the tenant and the landlord participate. As an analogy, I refer to the wages paid to deckhands who work on fishing boats. They are generally paid a percentage of the catch. If the skipper makes $0.5m in one season, the deckhands will probably receive between $50 000 and $60 000. As the skipper's income decreases, so does the deckies' income. If very few fish are caught and the skipper makes a loss, the deckies get nothing. It works on a direct percentage basis. The small retailers to whom I have spoken are happy with that arrangement, but they are not happy with a dual arrangement whereby a minimum is set and a further step is involved - in many instances it is an artificial step - that purportedly relates the rent to turnover. It does not apply in any event but it enables the landlord to get hold of the retail figures and use them against tenants when negotiating rent reviews. That is what the retailers most object to.

I now deal with the minister's final point. He said the Government does not wish to include this provision because it will somehow limit the negotiations that can be held between tenants and landlords. I do not know how it achieves that. Perhaps the minister will explain how it limits the nature of the negotiations, because the tenant and the landlord can agree to a rent based on a percentage of the turnover. The Opposition is not saying that is wrong, and certainly the small retailers agree with that. If the Government is concerned about this provision being too restrictive, it is possible to place a condition on the clause in a way that provides the level of protection the Opposition seeks and also the level of flexibility the Government seeks. It is not an option for the Government to simply reject it because that rejection totally ignores the concerns of the small retail business sector. By conditioning this amendment, it is possible to provide the level of flexibility the Government wants and also meet the concerns of small retailers.

Mr SHAVE: When a new tenant enters into a lease arrangement, if there is no capacity to make these agreements, it will reduce flexibility for both landlords and tenants. If a rent is set which the landlord considers is fair and there is no capacity to vary it, the landlord could overload a person with a rent even though it might be preferable in the initial stages to offer a substantially reduced rent and then review the situation. The Government is very comfortable that maintaining that flexibility is to the benefit of all parties.

Mr BROWN: This provision will not limit that flexibility. I refer to circumstances in which a landlord accepts that a new business is starting and he must wait to see whether that new retail business will blossom. That could be done in a number of ways without offending this type of provision. One way would be to agree on the market rent and for the landlord to agree to accept a rent lower than the market rent for one year or some other period. They could agree to a different review clause or a whole range of things. That would not contravene the provision that the Opposition seeks to include. The Opposition is of the view that if the rent paid is to be related to turnover, it should be the exclusive way of determining the rent. Nothing else is sought by the Opposition which could be described as overly prescriptive.

I am aware that tenants in some shopping centres, where there is good rapport between landlords and tenants, are still in business only because their landlords have some understanding and compassion and have given a discount or rebate on their rents during certain periods. That would not contravene the Opposition's provision if it were included in the Bill. It will not remove the flexibility. That flexibility remains but it prevents landlords from getting the best of both worlds by imposing market rents and also having access to the retail figures. It cannot be argued that the current system is fair when leases are set on market rents but the tenants are required to disclose to the landlord the retail turnover of their businesses, even though it is not related to the market rent and the requirement in the lease relating to retail turnover figures will never be reached because the level is set far too high. That provision in a lease is not fair. Many other small business retailers do not consider that type of arrangement to be fair and equitable. The Opposition is open to any amendment, if it is considered that the wording is not exactly as it should be. However, people are adamant, and talk to me about it all the time, that they do not want to be caught in this wedge situation. When they pay a market rent but must also disclose their retail turnover figures, they are at a disadvantage in any negotiations over rent reviews and they vociferously object to that. I put that on the record once again. Obviously, the Government has made up its mind in relation to this issue. I am disappointed and I am sure many small business retailers are equally disappointed with the Government's attitude because they consider that the current provisions in the Act operate to their great disadvantage.

Question put and passed; the Council's amendment not agreed to.

Sitting suspended from 1.01 to 1.30 pm

Mr SHAVE: I move -

That amendment No 6 made by the Council be not agreed to.

The Government disagrees with this amendment on the same basis that it disagreed to amendment No 5. Although the member for Bassendean covered that point in his comments, I understand that it is necessary to deal with the two amendments separately.

Mr BROWN: I agree that amendments No 6 and No 5 go hand in glove. All my comments concerning amendment No 5 apply to this amendment.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That amendment No 7 made by the Council be not agreed to.

Mr BROWN: This amendment seeks to amend sections 13(1) and 13(2)(a) concerning the right to at least five years tenancy. The amendment seeks to provide a minimum term of seven years. It is important for the record and would be helpful if the minister indicated why he will not support the amendment.

Mr SHAVE: The issue of changing to a seven-year term is something that Hon Norm Kelly, representing the East Metropolitan Region, raised in discussions originally, and he referred to leases of even 10 years duration. Much consultation with the industry indicated that a fixed term of seven years was not the preferred position of property owners. A number of tenants also had some concerns about being locked into a seven-year fixed lease. A tenant may have mortgaged his house and put up securities to establish his business, and if it became unviable he could find himself in considerable difficulty if his landlord enforced the terms of the lease.

In fairness, Hon Norm Kelly spoke with me about sticking with the five-year term with an option to extend the lease. The Government has not agreed to that at this stage. However, my understanding from my staff, who had discussions with all the key stakeholders, is that the preferred position is to have the existing five-year fixed term rather than a seven-year term. I am advised that this amendment is disagreed with by both the retailers and the people providing leases. The Government has decided it will maintain the status quo.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That amendment No 8 made by the Council be not agreed to.

We received advice that the issue of unconscionable conduct is very concerning to many small retailers. The way in which this issue could be addressed has drawn some concern. In the previous debate I pointed out that my advice was that provisions for unconscionable conduct similar to those contained in section 51A(c) of the Trade Practices Act would be better placed within the Fair Trading Act. My department is very firm that we should not include this clause in this legislation.

A number of issues about unconscionable conduct must be addressed; that is, the setting up of a tribunal and how it may be structured. That will require discussions between the Attorney General and me, and will also require a determination on how it may be best provided if the decision is made to set up such a tribunal. Clear guidelines and ramifications for decisions on the powers must be set. Inserting this clause now is making legislation on the run, in the Government's view. That is not to say that the intent that has been raised by the Opposition and by some of the Independent members in the Parliament in the other House and in this House does not have some merit.

I have received advice from the Property Council of Australia that represents some of the larger property owners, albeit it does not represent many of the small property owners. I have also received representations from a solicitor representing many of the small property owners. They are concerned that we might legislate without having the right guidelines or clarification of what constitutes unconscionable conduct, how it will be handled, what are the penalties already and all the issues that must be addressed. That problem will not be resolved simply by putting that clause in this Bill at this time. From the point of view of the small retailers, I am pleased to point out that the property council has had discussions and negotiations with the retail groups. It has indicated that it is prepared to look at that issue and the Government welcomes that approach.

I gave the member for East Metropolitan Region an undertaking that we would look at the provisions. There was talk about legislation that applied in New South Wales, but as I told that member this morning, that legislation has not yet passed through the upper House in New South Wales. The decision on that legislation will be arrived at after consultation and debate between all of the groups involved. Therefore, it would be inappropriate to take a shotgun approach now and put this provision in without having all of the parameters correct. I have told the member for East Metropolitan Region that

when we reached this issue in this House, I would give an undertaking that my staff would commence negotiations with all of the groups involved, and subject to reaching a reasonable proposal, I think it will receive some support at a government level. That is something that I cannot predetermine. I am hopeful that as those negotiations go forward, we might be able to resolve this issue. It is in the Government's interest if it can introduce some legislation that is appropriate and fair to all of the parties. It is an issue that is close to the hearts of small retailers and hopefully something will be resolved along that line. I confirm what I said previously that my staff will be going through the process of looking in detail at the proposals in New South Wales that have been put forward, having discussions with all of the parties and getting on with trying to resolve that issue.

Mr BROWN: This amendment deals with unconscionable conduct connected with lease renewal. It was moved by the Opposition in this House, but not supported by the Government. It was then moved in the other place and was supported by the non-government parties and sent back as a message to this House. It was moved here and moved in the other place because of a frequently reported concern. It was reported in much detail in the House of Representatives Standing Committee on Industry, Science and Technology in the report headed "Finding the Balance Towards a Fair Trading in Australia" and related to a key issue affecting small business proprietors. The Howard Government has picked up an amendment to the Trade Practices Act that in part deals with this issue, but the question of unconscionable conduct as it relates more particularly to lease renewal is considered in this clause. Retailers and especially small retailers that have sunk considerable funds into their businesses and are concerned that at the end of the lease period, they will be required to pay a premium over and above the market rate. If they fail to pay that, they will be required to do two things: One is to either remove or forgo the infrastructure that they put into the business premises and, secondly, they will forego the goodwill that they built up in that business, and consequently they are considerable losers. The small business community is not seeking any special concession of market rates or whatever. It is not saying that simply because there is a sitting tenant, the landlord must provide that tenant with a rent that is lower than the market rate. It is saying that sitting tenants should not have their rates hiked up because they happen to be vulnerable at the time of the lease renewal. If due to demand the rent be a certain amount which is over and above the market rate, many of them can be forced into having to agree to that unreasonable demand because of the goodwill and money they have sunk into their businesses. This is not a new issue. This issue has been around for a long time. It has been the subject of considerable inquiries. Both the commonwealth inquiry and the House of Representatives Standing Committee on Industry, Science and Technology, which commenced its inquiry in 1996, delivered a substantial report a year later. It has been the subject of an inquiry by a parliamentary committee of the South Australian Parliament and it has elected to put in a clause - not this type of clause - providing security of tenure and giving sitting tenants the first option on a lease.

Since the Opposition moved the amendment in this place, and then moved the amendment in the other place, some negotiations and discussions have taken place between the Property Council of Australia, the Retail Traders Association of WA and the WA Council of Retail Associations. Arising from that, a measure of agreement has been reached about the type of provisions that should be included. These by and large are modelled on the New South Wales provisions. Given the Government's reliance on the fact that it has followed agreement between the industry partners in shaping the form of this legislation, I would have thought that it is possible for a clause such as this to be shaped and included in this Bill as it currently is without any reason to wait.

Mr CUNNINGHAM: I would be delighted to hear more from the member for Bassendean on the Bill.

Mr BROWN: One of the issues raised with me by some organisations is the degree to which the Government is prepared to commit itself to legislation of this nature. I am sure that the minister's commitment to examine the matter is welcomed by those who are keen to see such a provision included in the Act. As we all know it is one thing to examine and another to do. Is the minister prepared to record in the *Hansard* the Government 's commitment, if any, to introduce legislation to deal with unconscionable conduct, whether in this Act to deal with leases, or in another Act, in the March-June session of Parliament next year? I have listened acutely to the minister so far, and I understand that the Government is prepared to examine the matter. However, many people within the sector, particularly those representing small business, are interested in whether the Government has a rock-solid commitment to that - although those words do not seem to mean as much as they suggest.

Mr SHAVE: Discussions have taken place, and today I wrote to Mr Reynolds of the Retail Traders Association, Mr Catania of the Western Australian Council of Retail Associations, and the Property Council of Western Australia. The Property Council has written to me and indicated its willingness to talk about those issues. Of course, we can talk forever and we may not necessarily achieve anything. However, I gave a commitment to consider this issue forthwith. In the letter I wrote to Mr Reynolds I stated that my second reading speech indicated a commitment to examine any further developments that are agreed to at a national level that contribute to harmonious retail tenancy laws. I stand by that commitment. Provided the Council's amendments are passed by this Chamber the ministry will commence consultation and evaluation of the concept and will report back to me with recommendations by 30 May 1999. We will not be doing anything by March, but we will address the issue. However, it is not within my power to commit the Government to do one thing or the other. All I can do is to state that the issue will be considered. In the second reading speech almost a year ago I gave an undertaking to pursue

legislation that harmonised with legislation in other States. A rider to that is that there should be substantial agreement between the stakeholders. I do not think the Property Council is naive enough, if something is done at a national level in the more populous States, to put its head in the sand and say it will not have it in Western Australia. It is appropriate to thrash out this matter at a national level. If we are comfortable with the decisions made at that level I do not see any reason not to support proposals that are practical and realistic. The indication from the Property Council is that it is prepared to address the issue. The council wants to ensure the result is rational and that it works, and that is the Government 's position. The Government will consider the issue. It will not just look at it and then forget about it, but will try to come up with a genuine solution.

Mr BROWN: I welcome the minister's commitment to address this issue. However, the interests representing small business were seeking something more than that, although we have progressed from the last occasion we debated this very important issue. However, the Government has not said that it will introduce legislation. I understand that the minister cannot commit the Government by himself, although in other areas ministers - including his predecessor the Minister for Fair Trading - were prepared to commit the Government to legislative timetables. Unfortunately, the commitment made by the former Minister for Fair Trading was not met. I would like the minister's motion to be determined, and then I will move a further amendment in some form which suggests a lesser form of clause. I seek your guidance, Madam Deputy Chairman (Ms McHale). Procedurally, I am not clear how this should be done. The question before the Chair at the moment is to not agree with the Council's amendment, so presumably I should move to insert a clause in its place.

The DEPUTY CHAIRMAN (Ms McHale): We can deal with that when we resume debate in Committee after question time.

[Questions without notice taken.]

Mr BROWN: I have been advised that if the motion now before the Chair is carried - that is, that the Council's amendment be disagreed with - I will have an opportunity of moving immediately after that to substitute that amendment with a further amendment. I give notice now of my intention to do that. As I said when debating the Council amendment before the Committee, this is a matter of considerable importance to small business retailers. The absence of protection in this clause causes them great concern, particularly at the end of their lease period when their lease may not be renewed other than on harsh and unreasonable conditions. This clause seeks to provide a level playing field in lease renewals and to put under the microscope any questions of unconscionable conduct. I believe it provides a measure of protection for small businesses, many of which certainly perceive themselves to be in a weak bargaining position compared with shopping centre proprietors, particularly proprietors of large centres. The small retailers perceive that the proprietors have considerable resources at their disposal and can force on the retailers terms and conditions in leases that are not beneficial to small business. I disagree with the procedural motion before the Parliament to reject the Council's amendment. However, if I do not succeed in retaining that proposed amendment, I intend to move a further amendment to replace it.

Question put and passed, the Council's amendment not agreed to.

Mr BROWN: I move -

That the following amendment be substituted -

New clause, page 24, after line 30 - To insert the following -

Section 13C inserted

10. After section 13B of the principal Act the following section is inserted -

Unconscionable conduct in retail shop lease transactions

13C. (1) A lessee must not in connection with a retail shop lease engage in conduct that is in all the circumstances unconscionable.

(2) A lessor must not in connection with a retail shop lease engage in conduct that is in all the circumstances unconscionable.

This is a fall-back amendment that simply seeks to write into the legislation a broad power relating to unconscionable conduct. It does not define it, but is a broad prescription in relation to it. This obviously is not perfect wording, and it is put forward in an attempt to include in the legislation something that indicates to people in the industry that that type of conduct is not permitted and that they should refrain from engaging in conduct that falls under that heading. It very much reduces the proposed provision, and also is less than the provisions contained in a Bill before the New South Wales Parliament. However, it at least seeks to insert in the force of the legislation that that type of conduct should not be engaged in. Although it is not a perfect amendment, and it does not profess to be, it indicates a direction.

Mr SHAVE: The Government will not accept the amendment. A number of issues are involved. Firstly, it is the view of parliamentary counsel that the wording itself does not fit the scheme of the Act. That is not derogatory of the member's effort to achieve something, but the proposed amendment contains the words "lessee" and "lessor". The Act refers to landlord and tenant. That in itself would create some problems, but it is a drafting issue.

In addition, if a clause such as this were inserted in a lease, everyone would have a different interpretation of that clause. A clause that is ambiguous can be more dangerous than one that is specific. How does one determine what is in all the circumstances unconscionable? What I regard as unconscionable may be totally different from what another person regards as unconscionable. Two lawyers could have a field day on this matter because they would take different positions and it would result in a cesspool of litigation.

I refer to the comments I made this morning, which I have made previously, that the Government is not averse to setting up a tribunal. However, when a situation is created in which there will be differences of opinion and adversaries will be competing over an issue, the clearer the guidelines, the better the opportunity to resolve those issues. Many of those issues can be resolved before they reach a tribunal or become the subject of litigation. Although I understand the member's intent, including a phrase as wide-ranging as "in all the circumstances unconscionable" could be a deterrent to a reasonable resolution and satisfactory legislation. The Government will not accept the amendment but, as I indicated this morning, the Government's position stands and it will endeavour to address this issue.

Mr BROWN: I take on board the minister's comments about the elegance of the drafting. However, the intent was to provide a direction in this matter. Such a clause may well throw open the types of arguments to which the minister has referred. However, it is my understanding that it is the Government's intention, once this Bill is passed, not to proclaim it for some time. I do not know whether that is still the minister's intention.

Mr Shave: The only reason the Government would not proclaim it as early as possible is to ensure that the transition takes place at a time that is satisfactory from an accounting point of view. The Government has received representations on that basis, and the only reason for holding up the legislation is so that the drafting and the appropriate times can be adhered to because of the mechanisms, and not because the Government wants to delay the legislation.

Mr BROWN: I accept that and obviously that is not without substance of that rationale. I suppose that provides a time frame, as indicated by the minister to bring forward a further change to the legislation if one is trying to slot in with the end of the financial year so that it would come into operation on, say, 1 July 1999 so that businesses would not have to do two different audits or two different arrangements or whatever. In terms of seeing the light of day in a piece of proclaimed legislation, this amendment may never see the light of day if the Government on receiving the report that it says it will produce by the end of May next year brings forward proposed legislation and incorporates in this Act or in another Act unconscionable conduct provisions. In bringing forward such a Bill, it would seek to delete these provisions and insert others which were deemed more appropriate. I would suggest that if all the parties are at one with the clause that is brought forward - that is, the Retail Traders Association, the WA Council of Retail Associations, the Property Council and the Government - such an amendment will pass quickly through this Chamber and the other Chamber. There would be some incentives to get it through by 1 July by agreeing to this amendment. While it is not a very elegant amendment and while it may leave open various questions to which the minister has referred, it would certainly, if nothing else, provide a powerful incentive for legislation to be brought back in the next session, and for that legislation to be quickly considered by the Parliament and put through on the understanding that there would be a measure of agreement between those peak organisations as I have mentioned.

Those words probably fall on stony ground as no doubt some of the other amendments that I have moved fell on stony ground. However, it does not mean that when one is not successful the first time, one should not keep pushing these issues. Since the beginning of this debate in Parliament, some movement has been made although, unfortunately not enough. Some would say the movement is almost imperceptible, but others would argue there has been more. However, no movement will take place unless one is continually taking the opportunity to promote this type of change at every opportunity. For those reasons and for reasons of expediency rather than efficiency, I ask that this amendment is supported.

Amendment put and negatived.

Mr SHAVE: I move -

That amendment No 9 made by the Council be not agreed to.

The advice I have from our council is that the existing powers exercised by the registrar are adequate protection. I think I mentioned in the previous debate that, to the best of my knowledge, this issue has not been raised by the stakeholders as an area of concern for intervention. Obviously the Opposition has raised it in the upper House, so it must have spoken to someone who had a concern. I have been advised that we have not received that advice; I may stand corrected, but that is what I have in the notes before me. The registrar of the commercial tribunal has been mediating and resolving matters of relocation and development since 1985. I am advised that in most cases he has successfully fulfilled those duties. When people make decisions, not everyone agrees with them. However, I am told that the current situation is operating effectively. On that basis the Government will not be supporting this amendment.

Mr BROWN: Legislative Council amendment No 9 reflects an amendment moved by the Opposition in this place and the other place in terms of relocation arrangements. In formulating its position on this legislation, the Opposition had consultations with a wide range of people. It was obviously influenced by both the Retail Traders Association of WA and

the WA Council of Retail Associations, which are the two peak organisations representing small retailers. However, the Opposition also had negotiations or consultation with a wide range of small business retailers. I, as the opposition spokesperson on small business, and a number of other members of the Opposition, wrote to retailers outlining what was in this Bill and seeking comments. A number of meetings were held and contact was made with metropolitan and non-metropolitan small business people. The amendments that are reflected here arose from those discussions. The minister may be correct about the fact that this matter was not pursued by either of the two peak small business retail organisations, but without the matrix here detailing where the matter was raised, I do not have that before me. I cannot tell him the context in which it was raised, but I can tell him that all of these amendments were not dreamt up because they seemed like a nice thing to do at the time or taken from some esoteric report. They were formulated on the basis of consultations that the Opposition had either with the peak organisations or alternatively with the small business retailers themselves.

The question of relocation is a key issue. It is true that the tribunal has dealt with that. I have received feedback from sources saying that they are reasonably content with the way in which the tribunal deals with these matters, whereas other people have suggested that the type of change that we propose in the amendment would be appropriate for the legislation. We previously debated this issue in this Chamber. The Government indicated that it was not prepared to accept the amendment then. It was debated in the other place and it has now been sent back here. I guess everybody is being 100 per cent consistent; the Government is still not saying it is prepared to accept it, and the Opposition is still indicating that it wishes to pursue the matter.

Question put and passed; the Council's amendment not agreed to.

Mr SHAVE: I move -

That amendment No 10 made by the Council be not agreed to.

This is the last amendment on the Notice Paper. I am advised that the introduction of the general penalty as drafted in this amendment would be ineffectual as the offences under the provisions are not specified. I am also advised that this provision would encourage disputation rather than negotiation and mediation through the registrar. It is a most contentious issue which would require extensive consultation. As members may be aware, the issue was not proposed in the Green Bill which the Government provided prior to the last election. None of these amendments were in that Bill for the reasons I have outlined and the Government does not support this amendment.

Mr BROWN: This amendment was not moved by the Opposition in this Chamber. It is an amendment that emanates from debate in the other place. I understand that it was moved by the Australian Democrats. It is a view of one section of small business retailers who believe such a provision is essential to ensure compliance with the Act but that view is not generally shared. While the Labor Party has looked at this issue, relocation and the other matters we have referred to, this amendment is not a key issue in the raft of amendments. The key issue is contained in the two amendments we have debated about unconscionable conduct. If the unconscionable conduct provisions or a modification of them were accepted so a remedy existed for such conduct, one would not need to talk of penalties in this legislation because remedies would be available for such behaviour.

Question put and passed; the Council's amendment not agreed to.

Report

Resolutions reported and the report adopted.

A committee consisting of Mr Osborne, Mr Brown and Mr Shave (Minister for Fair Trading) drew up the following reasons for not agreeing to theamendments made by the Council -

Amendment 1 - Repayment period

The Government accepts the principle of this amendment; however, the Government is concerned the change, as drafted, may introduce the potential for manipulation by lengthening the dispute to gain an advantage. Accordingly, a variation has been moved which addresses these concerns and provides the registrar with further powers.

Amendment 2 - Prohibiting Land Tax from being paid by tenants

Prohibiting this property cost element was not included in submissions to the Green Bill consultations process. The recovery of this tax is a legitimate operating cost. The tenant can potentially negotiate any cost element out of the agreed contributions in the commercial lease with the landlord. As a result of the extensive consultation, the amendment Bill reflects commercial reality and has been drafted to protect those agreed contributions being based on the single-ownership rate of ownership.

Amendment 3 - Review of Act to stipulate a definite time frame for reporting to Parliament

The Government accepts the principle of this amendment; however, to accommodate drafting requirements, a variation has been moved.

Amendment 4 - Apply assignment and subleasing provisions, market rent determinations and disclosure to all parties to all leases

This is retrospective legislation that interferes with existing contracts.

Amendments 5 and 6 - Prohibit rent from being determined by combinations of turnover and other rent calculation methods

The Opposition's proposal would effectively exclude agreements between parties to negotiate rentals that allow a commercial risk share between the lessee and lessor over the life of a lease. To accept the amendments would mean that tenants and landlords will no longer be able to negotiate this arrangement, even in circumstances where it would be to their mutual benefit. The existing Act prevents lease terms that require the disclosure of turnover unless the rental agreement specifically includes the provision of those figures.

Amendment 7 - Right to seven years' tenancy

The previous amendments to this legislation addressed the needs of retailers to ensure a minimum five years' tenancy for them to acquire, earn and profit from their new leasehold estate. This entitlement is common to most retail tenancy laws in Australia. The need for statutory intervention into a commercial contract by increasing the guaranteed tenure is highly questionable. It would certainly affect the balance in those stakeholders' interests. There is no evidence of agreement from either sector, or any analysis supporting the proposal. The double-edged sword effect of the increased tenure needs to be thoroughly canvassed with the retail sector. It would be entirely inappropriate for the Parliament to impose this major change at this time before stakeholders have come to some sort of consensus or agreement.

Amendment 8 - Unconscionability provisions of the Trade Practices Act to apply to lease renewal

Unconscionability is embodied in the Federal Liberal Government's new Trade Practices Act provisions to assist all small business. The Government announced before the last election that it would introduce legislation in Western Australia to complement the commonwealth legislation. The Government's initiative will make these provisions available to all small business following an appropriate consultation process. Unconscionable conduct is a wider issue involving balance of power considerations in all commercial dealings between business parties. It should not be focused in the limited sense, which the Opposition is proposing under this Bill, on retail tenants whose leases are nearing expiry. In contrast, these proposals by the Opposition relate to only a small section of the business community. As there has not been local industry-wide consultation, there is the real probability of unintended outcomes. This is a significant change inconsistent with this Government's commitment and the proposals in the Green Bill. Industry stakeholders must be given the opportunity to have input to the debate.

Amendment 9 - Relocation and compensation

The existing powers exercised by the registrar are adequate protection. The matter has not been raised by the stakeholders as an area of concern for intervention; that is, with the Government. I understand the point made by the member for Bassendean. The registrar of the Commercial Tribunal has been mediating and resolving matters of relocation and redevelopment clauses successfully since 1985. The industry is well aware of the registrar's powers. The issues were not proposed in the Green Bill which the Government provided before the last election.

Amendment 10 - General penalty and proceedings

The issues were not proposed in the Green Bill which the Government provided before the last election. The Act contains no penalties provisions and is at odds with the scheme and history of the Act. The general penalty as drafted would be ineffectual as offences under the provision are not specified. This provision would encourage disputation rather than negotiation and mediation through the registrar. This is a most contentious issue which would require extensive consultation.

MR SHAVE (Alfred Cove - Minister for Fair Trading) [3.16 pm]: I move -

That the reasons be adopted.

MR BROWN (Bassendean) [3.17 pm]: As a member of the committee who participated in the drafting of these reasons, I wish to place on the record that I do not agree with all the reasons set out in the document. It is not my intention to go through each and every one that is provided. The position of the Opposition is clearly outlined in the debate of the proceedings in Committee as recorded in the *Hansard*. To go through all those issues again would further draw out the debate. I merely wish to place on the record that for all the reasons given in the debate which are contained in the *Hansard,* the Opposition does not agree with all of the comments contained in the report of the committee.

Question put and passed; reasons adopted and a message accordingly returned to the Council.

NATIVE TITLE (STATE PROVISIONS) BILL

Committee

Resumed from 24 November. The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Court (Premier) in charge of the Bill.

Progress was reported after clause 3.34 had been agreed to.

Clause 3.35: Criteria for making recommendations -

Mr RIPPER: I move -

Page 25, lines 9 to 26 - To delete the lines with a view to substituting the following -

3.35. Criteria for making recommendations

(1) In making its determination in respect of a Part 3 act, the Commission must take into account the effect of the act on -

(a) the enjoyment by the objectors of their registered native title rights and interests; and

(b) the economic or other significance of the act to -

(i) Australia;
(ii) this State;
(iii) the area in which the relevant land is located; and
(iv) Aboriginal peoples who live in that area.

(2) In taking into account the matters mentioned in subsection (1), the Commission may also consider the effect of the act on -

(a) the way of life, culture, traditions and economic interests of any of the objectors;

(b) the freedom of access by any of the objectors to the relevant land;

(c) the carrying out, by any of the objectors, of rites, ceremonies or other activities of cultural significance, on the relevant land in accordance with their traditions;

(d) any area or site on the relevant land of particular significance to the objectors in accordance with their traditions; and

(e) any other matter that the Commission considers relevant.

(3) While taking into account the effect of a Part 3 act as mentioned in subsection (1)(a), the Commission must also take into account the nature and extent of -

(a) existing rights and interests that are not native title rights and interests, in relation to the relevant land;

(b) existing use of the relevant land by persons other than the objectors; and

(c) unless it recommends that the act not be done, consider ways in which the impact of the act on registered native title rights and interests of the objectors in relation to the relevant land can be minimized.

(4) Taking into account the effect of a Part 3 act on areas or sites mentioned in subsection (2)(d) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

This proposed section deals with the criteria which the commission must take into account when it makes a recommendation following the failure of parties to a consultation to reach an agreement. In the Native Title Act a set of criteria is outlined in section 39 which the National Native Title Tribunal must take into account when making a determination following the failure of negotiating parties under the right to negotiate to reach an agreement. In part 3 we deal with alternative procedures to the right to negotiate for alternative provision areas. Later on, when we come to part 4 of the Bill, we will deal with the State's version of the right-to-negotiate procedures. The NTA requires the State's version of the NTA right-to-negotiate procedures to have a set of criteria similar to those in section 39 of the NTA which will govern the operations of the State Native Title Commission when it makes a determination following the failure of any right-to-negotiate procedures. In the alternative consultation procedures provided for in part 3 the State has left out the equivalent of the NTA section 39 procedures. The Opposition would like to write back into the consultation procedures in part 3 a version of the section 39

NTA criteria. I say a version advisedly. We are not proposing to insert the full text of section 39 into the criteria which must be taken into account by the commission when it makes a recommendation following the failure of consultation procedures. The Opposition is proposing to work with the Queensland version of the section 39 criteria. That was the version that was used in the Premier Peter Beattie's legislation. I need to say more on that; however, I will await my next instalment.

Dr GALLOP: In order to allow the member for Belmont to continue, I rise only to sit down immediately afterwards.

Mr RIPPER: This matter is important, not only for the work of the commission in making its recommendations following the failure of consultation procedures; these criteria will also have an impact on the way in which consultations are conducted. If the parties to consultations know that in due course the commission will be taking into account certain criteria if the consultations fail, they will have an incentive to consult on those matters. Therefore, by seeking to insert into the provisions these matters governing the criteria for the making of commission recommendations, we are also seeking to add content to the consultations that will occur between the consulting parties. We sought yesterday to add some content to the consultations that will occur between the consulting parties by seeking to require those consultations to be conducted in good faith. Regrettably, the Government rejected that amendment. I fear that the Government will also reject this amendment, leaving the commission with what we regard as too limited a range of matters which it must take into account when it considers making recommendations following the failure of consultation. I will run over some of those matters. We divided our amendment into three parts: The first part relates to things that the commission must take into account; that is, enjoyment by the objectors of their registered native title rights and interests, and the economic or other significance of the act. The second part includes a list of matters which the commission may also consider which includes way of life, economic interests, freedom of access by the objectors and a range of other matters. Thirdly, there are matters which the commission must take into account. That relates to the existing words in the clause about the existing rights and interests of non-native title holders to have an interest in the land. We have adjusted our amendment to take account of one of the new government amendments. We support the new government amendment which suggests that the commission must also consider ways in which the impact of the act on registered native title and the interest of the objectors in relation to the relevant land can be minimised. Therefore, we have adjusted our amendment to take account of that welcome new government amendment.

A number of objections have been made to the Opposition's proposed amendment to these consultation procedures. Objection number one was to the Opposition's proposal to essentially convert the consultation procedures into de facto right-to-negotiate procedures. I want to make two comments about that: Firstly, the consultation procedures derive from a section of the Native Title Act which allows States to design alternative provisions to the right-to-negotiate provisions for defined alternative provision areas, principally leasehold land. The consultation procedures flow from that section of the commonwealth Native Title Act which provides for right-to-negotiate procedures. Should this state legislation fail, those commonwealth right-to-negotiate procedures, including the full section 39 criteria for the making of determinations, would apply across this land. Secondly, we are not proposing to insert into this section of the legislation the full version of the section 39 criteria. What we are proposing to do is to insert the Queensland version of those criteria, which reduces the word "must" to the word "may" with regard to any requirement for the commission to consider certain matters when deciding on its recommendations. Finally, this is not the position which indigenous interests would prefer us to move. They would prefer us to move the original version of the section 39 criteria for insertion in this clause.

Mr COURT: The Deputy Leader of the Opposition said that it was left out. It was not left out; it was never required to be put into this section. When the commission is deciding if an act can take place over pastoral leasehold land, the Opposition wants the commission to take into consideration most of the criteria that are set out in that section 39.

Mr Ripper: The Premier does know the difference between those that we say are obligatory and those that we say are optional?

Mr COURT: Yes, prescribed in respect of the right to negotiate over the vacant crown land. This is just another attempt to reinstate those right-to-negotiate processes in this section of the state law. It is inconsistent with the Native Title Act because it is not required. It does not prescribe any of the criteria that the Opposition wants to put in. That section 39 outlines the criteria that are applied to determinations under the right-to-negotiate procedures. Basically, the Opposition wants those criteria to also apply to the consultation process. Those section 39 criteria are applied when the native title could be equated with the full beneficial ownership, and they are inappropriate when native title is a coexisting right along with other interests in the land. That is why we oppose the amendment.

Dr GALLOP: In covering some of the ground that the Deputy Leader of the Opposition covered, I will begin by going to the Native Title Act which talks about the registered native title interests, because what we are talking about here are the criteria for making recommendations that will exist for the Native Title Commission. Of course, the Native Title Commission must take into account the impact of the Act on registered native title rights and interests. That part of the equation is in our amendment and the Government's Bill.

It is interesting that when one goes to section 62 of the Native Title Act, there is a discussion of what will be in the registered native title right and interest. To give members some clear view about what is contained in there, I will go through some of the points that will be described. Section 62(2)(e) says -

a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist . . .

(i) the native title claim group have, and the predecessors of those persons had, an association with the area; and

(ii) there exist traditional laws and customs that give rise to the claimed native title;

Then there is a clear statement that there should be continuity in respect of those issues. Paragraph (f) then says that the description will be given if the native title claim group carries on any activities in relation to the land or waters involved, and details of those activities. Therefore, what we will get is a pretty good definition of what that native title right and interest is, and it will cover a range of areas. We are quite happy with the fact that the Government's Bill says that one must take into account those rights and interests. I believe that covers a fair breadth of the native title right and interest.

The Government's version then says that the commission must also take into account questions of access to the land, the way in which the thing authorised may be done. Of course, the Government has since added its own amendment to this clause; that is, that consideration should be given to ways in which the impact can be minimised. It also says that the commission must take into account other rights and interests in relation to that land, and the existing use of the relevant land by persons other than the objectors. Therefore, this is a classic example of one having one set of rights and another another set of rights. However, the first point I make to the Premier, before he jumps too quickly into criticising our amendment, is that under the Government's version and our version, what the commission has to take into account is broadly defined by the Native Title Act, and it will include a definition of what that native title right and interest claimed is in reality. It will deal with the economics of that right and interest; it will deal with the culture and customs of it; it will deal with the relationship to the land. I think it will be quite a substantial basis upon which the Native Title Commission must look at the issue. On top of that, it is also desirable to give the Native Title Commission some non-obligatory requirements. That is why we used the word "may" rather than the word "must". We list those, as the Deputy Leader of the Opposition said, as taken from section 39 of the Native Title Act. Therefore, they are "mays" rather than "musts".

There is no question that we are dealing here with a compromise. On one side, representations have been made to us by the indigenous working party saying that it would like all of section 39 included; on the other side, there are those who say we should have very narrow reference just to the native title rights and interests. We are saying that we should reach a compromise here. The compromise is taken from the Queensland model, and I believe it clearly establishes that the rights and interests of the native title holders or claimants must be properly taken into account. It then gives some general advice to the commission on some of the issues that it might look at on this matter. However, I emphasise the use of the word "may" rather than "must".

Mr COURT: Dealing with the definition that the Leader of the Opposition read out, we are talking about registered native title rights in clause 3.35, not the claimed rights. We are talking about registered native title rights that have gone through a registration test; therefore, there is a prima facie case that they -

Dr Gallop: That is what has to be put in.

Mr Ripper: From now on there will have to be a prima facie case for registration.

Dr Gallop: That is the whole point about registration. That is why it is different now.

Mr COURT: I am advised that one can still claim any rights, but only certain rights will be registered. I am making the point that we are talking about the registered native title rights, not the claimed rights.

Dr Gallop: I was making that very point.

Mr RIPPER: The Premier is persisting with his argument that if we seek to do a little better than the minimum requirements under the Native Title Act, our legislation will be inconsistent with the Native Title Act. He does not say explicitly that our legislation will then be found to be invalid by the commonwealth minister, or that it will be overruled by the Senate, but that is what he implies. The Premier has got the position slightly wrong. It is not the case that if our State legislation goes further than meeting the minimum requirements, the commonwealth minister may refuse to make a determination that the Act complies with the NTA; or he may make a determination that it does comply, but that may be overturned on judicial review, or by Senate disallowance. If our legislation meets the minimum requirements, and also contains a system that is more elaborate, fair and workable, our legislation will survive. The Premier believes that if the state legislation goes further than meeting the minimum requirements of the commonwealth legislation, it will fail. My interpretation of the NTA is that our state legislation can go further than the minimum requirements, without putting the legislation at risk. The risk is not from our amendments. The risk is from the Government's determination to do only the minimum that is required of it by the NTA. However, because it seeks to do only the minimum, it runs the risk of falling below that minimum from time to time, and of failing to convince either the commonwealth minister, a judge reviewing the commonwealth minister's decision, or the majority of the Senate making a political decision, that it meets requirements of the NTA.

The Premier talks to us often about workability. The amendments that have been moved by the Opposition may do this State Government a favour by making the legislation more acceptable to that Senate majority, thereby enabling the state scheme to survive. The amendments may save the Premier from himself, and from having his legislation overturned by the Senate majority, so that this State will then have to rely on a commonwealth scheme rather than a Western Australian solution. I wish the Premier would approach our amendments from that point of view.

Mr COURT: I do not agree with the assertion that we are going for a minimum position. The Queensland Parliament has gone down the path of giving back the right to negotiate on pastoral leases. We do not want to go down that path. We know what the Opposition wants to achieve. We are trying to resolve the problems that exist with pastoral leases, not keep things as they are.

Dr GALLOP: I urge the Premier to reconsider the amendment that has been put by the Opposition. The Opposition's amendment is a genuine attempt to bring together the different interests involved in this situation. We have made it absolutely clear that when the commission makes its recommendations, it must take into account the nature and extent of existing rights and interests that are not native title rights and interests, and the existing use of the land by persons other than objectors.

We also want to do something that the Premier does not do in his legislation; and I am surprised that the Premier has not considered this matter. The Queensland Government has said that in making its determination, the commission must take into account the enjoyment by the objectors of their registered native title rights and interests - and I have mentioned what the registration test involves in a general sense, and what is put together when it survives the registration test. We have said also that the commission has an obligation to look at the economic issues that are involved. We have tried to put together a statement of the situation, which is that we have the interests of the native title claimant or holder, others involved in the land, and the economic significance to the broader community of the proposed acts. We want to bring them together into a framework for the commission. I believe we have described the real situation and have given all of the parties the comfort of knowing that they will not be ignored: The interests of native title parties will not be ignored, the interests of other parties will not be ignored, and the general economic significance for the State and nation will not be ignored. We want to give the commission a lot more status and significance in the equation. We believe that a properly constituted state commission can do a lot to bring about a resolution in these areas. Therefore, we want to put before it the full range of interests that it must take into account.

I urge the Premier to reconsider his position on this matter. I believe we have put forward a very practical solution. That solution was developed by the Queensland Government when it sat around the table with the different interests and tried to meet those different interests, and came up with this compromise. It is not a right to negotiate, as the Premier implies. It is an alternative mechanism that is different from the right to negotiate but at the same time recognises and respects the native title rights and interests that are involved. The Opposition has put a lot of thought into this amendment and has decided to adopt a compromise position. It is in all of our interests to give it serious consideration.

Mr COURT: The Leader of the Opposition keeps saying that in Queensland, they all sat around the table and worked it, and everything was hunky-dory.

Dr Gallop: I did not say that. I said it was a compromise.

Mr COURT: There was no agreement by the groups with regard to this matter. That is the part the Leader of the Opposition left out of the explanation. Queensland did put it through, in its one-House Parliament, but it did not have the support of all the parties.

Mr Ripper: Would you like a one-House Parliament at this stage of the process?

Mr COURT: No, but the Leader of the Opposition just said that they all sat around the table, as if they all sat around the table and agreed.

Dr GALLOP: The point I am making is that there were differences, as revealed in that discussion around the table, and the Queensland Government attempted to reconcile those differences by making a decision. We believe it has done a pretty good job; therefore, we have taken it on board. The signs from Queensland are that there is now a lot of community acceptance of the Government's attempt to reach a position that is in everyone's interests, rather than in the interests of just one group. The Premier is right. I was not trying to indicate that there was total agreement on this matter. I was trying to say that this was the Queensland Government's attempt to bring about a reconciliation, given the different interests that had been expressed. We believe it did a pretty good job, and that it would be good for this Parliament to take it seriously; and, by so doing, it would improve this Bill significantly.

Mr RIPPER: One theme that underlines the Premier's objection to our amendments to the consultation procedures is his belief that native title rights have somehow been substantially impaired by the grant of pastoral leases. The Premier seems to have the view that the native title that may survive on pastoral leases must be greatly inferior to the native title that may survive on vacant crown land. Therefore, he concludes that we should have a much inferior set of rights for the approval

of future acts on pastoral leases than for the approval of future acts on vacant crown land. The Premier must distinguish between his wishes for what should be the legal situation and what is actually the legal situation. I understand that pastoral leases do not have at common law the extinguishing effect the Premier seems to think applies to possible surviving native title. This is one of the reasons for the Premier's outrage at the outcome of the Miriuwung-Gajerrong case. He is astounded that where pastoral leases have expired and the lands returned to the ownership of the Crown, the courts found that full native title rights have survived. That may not be what the Premier wanted, but it is wrong of him to imply that what he wants is the position at common law. There is a fundamental misunderstanding at the heart of the Premier's assertion that we need an inferior set of rights for the approval of future acts on leasehold land because somehow or other the native title that might survive on pastoral leasehold land cannot be as good as native title that might survive on vacant crown land. I think he is confusing his wishes with reality.

Dr GALLOP: The pastoral lease situation is more complicated in two senses: The High Court has made it clear that if a pastoral lease comes into conflict with native title rights and interests, the pastoralist's interests prevail. There is no question about that. It is also complicated if other rights and interests come to bear on that land. That is why we must develop a practical procedure to deal with the native title right and interest that remains intact on a pastoral lease. The Premier seems to think that the right itself is somehow diminished because the context within which the right exists is more complicated. This is where the Government continues to make a mistake on this issue. As the courts have been continually telling us, and as I indicated during the second reading debate, and others on this side of the House said, where property right exists it must be given a meaningful expression in any of our laws. That is what we are trying to do. What is different about the pastoral leases is the complicated nature of the situation. We have the Aboriginal right and interest which exists and which has not been impacted on by the pastoral lease. The High Court has told us that if it is impacted on, the pastoral interest prevails. We are dealing with the interest there.

How do we deal with conflicts of interest such as a proposed mining or agricultural purpose that wants to use it? We do not deal with them by assuming that the property right that exists is somehow diminished by the fact that it is surrounded by other rights. We must find a mechanism to deal with the complex rights. That is what we are trying to do with all the amendments to this clause. We consistently see a problem from the Government on this issue. The Premier seems to think that when a pastoral lease is given, somehow the native title right that is left there is a lesser right than if it is on vacant crown land. It is lesser only to the extent that it conflicts with the pastoral lease; in which case that prevails. That is what the High Court said and that is the basis on which we argue this point. If the Premier continues to fail to see this he will produce legislation that will provide a shaky basis for future deliberations either by the Commonwealth on the one side or the courts of Australia on another.

Mr COURT: The Leader of the Opposition has just confirmed what we have been saying all along. His argument is that we should treat the pastoral leases with the same right-to-negotiate provisions.

Dr Gallop: That is not what I said; it is a more complex situation.

Mr COURT: He just outlined why he has moved these amendments. As I said, it is fascinating.

Dr Gallop: It is complex.

Mr COURT: It is fascinating that in four years a simple situation has now turned into a complex situation.

Dr Gallop: It is because there are different rights.

Mr COURT: It is interesting how things have changed. I can recall only too well the Labor Party's position four years ago on pastoral leases. Now it is putting all these arguments which are reinforced by a decision yesterday about what are the rights. Basically a pastoral lease is like a temporary thing that comes along.

Dr Gallop: The relationship between the pastoralist and the native title holder is one thing and the relationship between the native title holder and any person who wants to develop that land is another thing. We are dealing with the second set of relationships, not the first.

Mr COURT: Members opposite have given us a good explanation of why they want to make these changes. We do not agree. We had the ability to put an alternative regime in place for pastoral leases. We said all along that this would be the area of most practical difficulty and that is why we want to try something that will work rather than go back to the current system that has not worked.

Dr GALLOP: I remind the Premier again of what our amendment does. It has native title right and interest. It has the interests of the nation, the State and the area in which the relevant land is located. We bring together the interests of other people in that land. In other words we are doing what I think the public wants us to do in this legislation; that is, respect all the rights and interests. We are telling the commission to consider all these factors when making its recommendations. The Premier is misrepresenting the position in our amendment. We have tried to bring together all those interests. We are being pressed on the one side to include section 39 in an unamended form by the indigenous working group, and on the other side

we are being pressed by the mining interest or whatever to have a bare minimum set of interests to be taken into account by the commission. We are saying that we should draw a path down the middle that reconciles those interests and takes them all into account. We are trying to produce a solution that is in the interests of all the people involved. That is what it must be about in the end.

The Premier referred to Queensland, which tried to bring together the interests. On this point it could not agree. However, at least it sat around a table and tried to reach an agreement, which is to the credit of the Queensland Premier. Then he had to decide whether to go for one side or the other or find a path that brought both sides together and reconciled their interests. That is the path he chose. That is the way we should go as a Parliament. We have therefore taken on board his suggestion and added to ours a very good amendment to be included in the Premier's amendments; that is, it must be taken into account that where it is recommended that an act not be done, consideration should be given to ways in which the impact of that act can be minimised. I refer members to the Deputy Leader of the Opposition's version of 3.35(4) which reads -

> Taking into account the effect of a Part 3 act on areas or sites mentioned in subsection (2)(d) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

The Opposition is making it very clear that the whole question of preservation of sites of significance covered by other laws will not be affected by this process. That is very important because obviously the Opposition wants to make sure those sites are protected properly. The Opposition has done its homework on this issue, taken advice from Aboriginal and mining interests, and looked at the Queensland situation. It has come up with a genuine resolution that deals with the complexities of the pastoral lease situation, without sacrificing the rights of anyone. I fear that the Premier seems to think that because it is a pastoral lease situation, somehow or another the existing native title rights in relation to those who may wish to use that land are diminished. That is a very big mistake, and that is why he is continually getting into trouble with this legislation. The Premier must come to grips with the High Court decisions and the Federal Court decision yesterday. We are dealing with a real property right. Until that is absorbed by the legislators, we shall continue to get into trouble.

Mr Court: Until the legislators put some guidelines into place, we shall get into trouble.

Mr RIPPER: That is an interesting comment by the Premier. He must understand that the common law is the law of this land, just as much as law made by statute by Parliament is. The Premier seems to neglect that aspect of the law. Judges from time to time make law by developing the common law. The Premier seems to think that people have gone back on their word because they made a statement about their view of the common law and later on the common law turned out to be different when a judgment of the court further developed it. We have heard this constant argument that the Labor Party has gone back on an undertaking given by former Prime Minister Keating. He stated his view of the common law with regard to the survival of native title on pastoral leasehold land, but he is not in a position, and never was, to alter the common law or to refine it. The only people who can alter or refine the common law are judges. Prime Minister Keating made a statement about what he thought on this matter, but that turned out to be wrong because the High Court in its fourth decision made a ruling that was different from Mr Keating's view. It does not mean that the Prime Minister at the time was duplicitous, but that his judgment eventually was seen to be wrong. The Opposition has put arguments that the Premier is underestimating the value of native title that might survive on pastoral leasehold land. That does not mean the Opposition is arguing that pastoral leasehold land is the same as vacant crown land. There is another private interest on pastoral leasehold land - the interest of the pastoralist. I understand that at common law the interest of the pastoralist prevails over the interests of any native title holders if there is any inconsistency. That is a difference between pastoral leasehold land and vacant crown land.

The Opposition has accepted that there should be consultation procedures for leasehold land and right-to-negotiate procedures for vacant crown land. If the Opposition had wanted the right-to-negotiate procedures to apply to pastoral leasehold land, it would have moved for the deletion of part 3 of the Bill and for all the land in part 3 to be included in part 4. The Opposition has not done that. In the Opposition's view, the Government has underestimated the extent of native title likely to survive on pastoral leasehold land, and has reduced the consultation procedures to the bare minimum allowed by the commonwealth Native Title Act and perhaps to below the Senate's judgment of the bare minimum required by the NTA. It is not necessary to believe that pastoral leasehold land is exactly the same as vacant crown land in order to move for improvements to the consultation procedures outlined. I reject the argument that the Opposition is reinstituting the right to negotiate on pastoral leasehold land. The Opposition accepts the division of the Bill into part 3 and part 4, and that different procedures apply. It believes that courts will interpret those procedures differently, and will interpret that the intention of Parliament was to provide two different sets of procedures. The words are different but the Opposition does not think the Government has gone far enough with the consultation procedures. That runs the risk of the consultation procedures being unworkable because they may be overruled by the Senate.

Mr BRIDGE: I have sat here for an hour observing the debate and there is no doubt that both the Opposition and the Government are arguing from a position in which they have a very powerful commitment to their approach to this part of the Bill. A very dangerous trend is emerging in debate on this early part of the Bill. In the 18 years I have been a member of this Parliament, I have observed that once members develop an intransigent attitude on issues that are debated, invariably

the final legislation is not much good. One of the key features of achieving good legislation or reaching a good agreement, is the ability of the parties to recognise and appreciate each other's points of view. It defeats the purpose of achieving good legislation when, no matter how good the case being argued, neither side will change its position. As one who genuinely wants to see good law at the end of this process, I say to both the Opposition and the Government that there must be a better way of dealing with this part of the Bill. This committee has spent two hours yesterday and today arguing about two points of view that are fundamentally different. I am not disputing the validity or importance of those points, but I am concerned about the intransigent attitudes employed in this argument. Members must recognise the dangers of that because, as I said earlier, the laws passed during my 18 years in this Parliament that have been flawed are those that have been proclaimed following this kind of debate. When this Parliament has been able to develop a dialogue, with both sides giving ground and recognising the validity of the other's position, it has often resulted in good legislation. I warn members today that if we continue in this way, we shall not achieve good legislation. That would be a dangerous situation for this State. This is an issue of such magnitude that the law must be right. It will not be right if neither side is prepared to give a little. I make that plea and I hope the manner of debate will change as the committee proceeds to the later clauses of the Bill.

Amendment put and negatived.

Mr COURT: I move -

Page 25, lines 11 to 13 - To delete the lines and substitute the following -

Commission must -

(a) take into account the impact of the act on registered native title rights and interests of the objectors in relation to the relevant land; and

(b) unless it recommends that the act not be done, consider ways in which that impact can be minimized.

The Government is lifting the words from the Native Title Act in order to be consistent.

Mr RIPPER: The Opposition will support the amendment. However, we will vote against the clause, as amended, in order to provide scope for the Opposition to move the amendment that was foreshadowed in the previous 30 minutes or so of debate. The amendment to the original government proposition is a good amendment as it provides a better form of words for what the commission must consider. The Opposition is positive about paragraph (b) which requires the commission to consider ways in which the effect of the impact of the act can be minimised. This is perhaps a rare occasion in the debate in which there is agreement between the Government and the Opposition - at least for a minute or two. What are the origins of the amendment? Has it come about as a result of discussions within the Government or is this another amendment required by the Commonwealth so the Bill will meet the requirements of the Native Title Act?

Mr Court: It was as a result of discussions with commonwealth officials, who suggested that the words be included, so there was no doubt that area was covered.

Mr RIPPER: We should keep a running count of the number of amendments required by the Commonwealth.

Mr Court: I said that most of the changes are minor and technical in nature, and to avoid a dispute with commonwealth officials.

Mr RIPPER: The Premier's argument is that the amendments are pragmatic and not something the Government is required to do. The amendments are evidence that the State has had some trouble in negotiating the acceptance of the Bill with the Commonwealth. At the last minute, essentially, a number of amendments have been made by the Government to its own legislation and we now find that those amendments have been initiated as a result of commonwealth objections. The Government is rushing this legislation through, and it is clearly under-prepared. There has been and perhaps remains a risk that the legislation will be unworkable - not because of Labor amendments, but because the Government has failed to satisfy the requirements of the Native Title Act and will lose either with the commonwealth minister or in the Senate. The Opposition is trying to do the best for the State from the point of view of justice and workability. Accepting a few opposition amendments might add to the possibility of this Bill satisfying those administrative, judicial and political requirements in Canberra when the time comes.

Amendment put and passed.

Mr CARPENTER: I have been overwhelmed by the viewpoint put by the member for Kimberley in his rather sad and ironic speech. I decided to take the opportunity to leap to the Premier's defence - I will not get that opportunity too often - on the view the Premier has consistently put that the original concept in legislation was that native title would be extinguished by pastoral lease. The Premier is often on the record saying that he was told exactly that in face-to-face meetings with then Prime Minister Paul Keating, although he has never been able to produce quotes. However, I recall fairly vividly at the time the original Native Title Act was being drafted that there was a view from Canberra that pastoral and other leases would

extinguish native title. The preamble to the Native Title Act indicates that the grant of leasehold - I do not know if they use the words "pastoral lease" - does extinguish native title. That was done with an eye to the circumstances that prevailed on pastoral leases in Queensland, which were believed largely to be exclusive possessions.

Aboriginal groups in Western Australia contended this would never be the case here, because in the majority of cases pastoral leases in Western Australia were not exclusive possessions and access was always provided to native people; therefore, native title rights would not be extinguished on pastoral leases. There was a genuine legal debate on that matter. I accept the Premier's word that he and others were led to believe that pastoral lease probably would extinguish native title. The fact is that it has not, and that determination has been brought down by the High Court. There is not much point in the Premier feeling consistently frustrated and angry that was the view put around in 1993. We now know -

Mr Court: We now know you were pulling our leg.

Mr CARPENTER: I am trying to fit in with the exhortations of the member for Kimberley that we should take a more balanced view of the matter, and I believe that the then Prime Minister and others were acting in good faith at the time, because they genuinely believed it. The point is that pastoral lease has been found not to extinguish native title and in the Wik case it was found that where pastoral lease and native title rights coexist that pastoral lease prevails.

The Premier also said he had never heard, until the federal court decision yesterday, of the notion that native title rights would survive the issuing of pastoral lease and that they could be revived. It is my clear recollection again that was a point the Opposition made to the Premier in this Chamber last week when we said that historical leases would not extinguish native title rights, and native title rights would not be revived but would be found to be still in existence. We must accept that and deal with that as part of the process we are involved in here when we talk about native title rights and pastoral lease - either historical or current pastoral lease. They are not extinguished; they survive. There may be circumstances on those pastoral leases in which some native title rights are extinguished - some sort of permanent structure has been put in place which would permanently extinguish native title rights. In general terms native title rights survive on pastoral lease, either current or historic, and that was found to be the case in two court cases. We recognise that native title rights are not extinguished or partly extinguished; they are still in existence and must be treated accordingly. The Opposition is asking that certain factors be taken into account when we make recommendations about future acts on pastoral lease, because native title rights survive.

Mr COURT: I will tell members opposite how absurd these comments have been over four years. In the second reading speech on this legislation, that Labor Prime Minister stated that the Government's view is that under the common law, past valid freehold and leasehold grants extinguish native title and that, therefore, there is no obstacle or hindrance to the renewal of pastoral leases in the future. In an interview he then stated -

> After the dinner break and into the mid-evening I negotiated an agreement between the Aboriginal community and the National Farmers' Federation on the question of pastoral leases. And I think with a very good outcome. What it means is that native title will be extinguished on pastoral leases, that is not to the extent of any inconsistency, but extinguished.

This was said by the then Labor Prime Minister of this country. We have just had the native title legislation to extinguish native title rights on invalid pastoral leases. That is how absurd this thing is. We have legislated to extinguish native title rights on invalid pastoral leases. Four years later we have valid pastoral leases and we are told that there is a heap of native title rights on them. Like many others in the community, I think I have the right to find it rather strange that we have gone through all of this.

Dr Gallop: You are just playing politics; you are not making sense.

Mr COURT: I am not playing politics. I also want to explain that Western Australia was the first State to recognise coexistence can occur.

Mr Carpenter: Of what?

Mr COURT: There can be coexistence of the rights on the pastoral leases. In March 1995, we started putting all of the applications on leasehold land through the native title processes. The other States did not do that until December 1996.

Mr Ripper: Not all.

Mr COURT: Those opposite should not tell us that we have not accepted coexistence. I return to the current situation. The people of Australia are having trouble with this: It is all very well to say that we do not understand, that the High Court of Australia can do this and the Federal Court can do that; however, the Prime Minister can also tell the truth.

Dr Gallop: Don't be ridiculous. You are a fraud.

Mr COURT: Who is the fraud? As I quoted earlier, "What it means is that native title will be extinguished on pastoral leases, that is not to the extent of any inconsistency, but extinguished."

Dr Gallop: I have some quotes, too; and I am going out to get some more.

Mr COURT: As I have said, I am a simple person. The Prime Minister discussed the matter with me. We have a different situation today. We are being asked to comment on a Federal Court ruling that says there is a whole heap of native title rights on some land, and that includes the sharing of the resources that are coming off the land. What do members opposite think that means?

Mr Ripper: What do you think?

Mr COURT: I am asking members opposite what they think it means.

Ms Anwyl: Presumably it does.

Mr COURT: Does the member for Kalgoorlie think it means the sharing of royalties? She is the lawyer; I am not. Are we to have a situation where on pastoral lease land - even the holders of freehold land do not have access to these resources - there is a right to take royalties?

Mr Ripper: Table the legal advice from Crown Law and then we can all have the benefit of it.

Mr COURT: I reckon we will probably be in court for another few years in relation to these matters. I rest my case.

Mr CARPENTER: I generously extended the hand of -

Mr Court: And I accepted it.

Mr CARPENTER: I conceded that in 1993 there was a genuine view - the Premier said he was misled by the Prime Minister - in Australia that pastoral and other leases extinguished native title.

Mr Court: Except that we made it clear that if that was not in the legislation, we would get to the point we are at today. We put that argument in 1993 and we were accused of being racist.

Mr CARPENTER: The point is that the situation was determined otherwise; that native title rights are not extinguished.

Mr Court: I reckon the legislators in this country also have some say about what the law shall be.

Mr CARPENTER: If the Premier wants to be a High Court judge, he can study law and try to move up the legal ladder. The fact is something called the separation of powers exists in Australia, and we must all recognise that. There is also something called the common law. It underlies the law; it exists. There is no point in the Premier standing up in the Parliament, throwing his arms up in the air, tossing his pen onto the Table, and being angry, infuriated and frustrated about what may have been said to him in 1993. The Premier said that Western Australia was the first State to recognise coexistence. My recollection is that the Western Australian native title legislation sought to extinguish native title - to wipe it out.

Mr Court: Keep going.

Mr CARPENTER: That is it.

Mr Court: That is not it. We sought immediately to replace it with traditional land usage rights which were the equivalent of native title rights.

Mr CARPENTER: It was an inferior set of rights.

Mr Court: Tell the whole story. If that legislation had been in operation today, we would not have all these problems. We would have some positive benefits flowing through to Aboriginal people; instead we are bogged down with this legal hurdy-gurdy.

Mr CARPENTER: That legislation was struck down by the High Court and found to be in conflict with the Racial Discrimination Act. That is where that piece of legislation rests. It is dead and buried.

Mr Court: The more I think about it, the more incompetent I realise a Federal Labor Government was in this matter.

Mr CARPENTER: The legislation of the Federal Labor Government was found to be valid. The Western Australian legislation was found to be invalid. It is a matter of competence.

The CHAIRMAN: We are in committee. We are dealing with clause 3.35, not Mr Keating's speech, and not the common law rulings on what happened back in 1992. I ask members to address only the matters contained within clause 3.35 and the amendment moved by the Premier.

Point of Order

Mr RIPPER: I seek your advice. I appreciate the guidance you are giving members, Mr Chairman. In view of the fact that

the Premier has made certain controversial assertions, would you contemplate at least a small rebuttal of those before we go to a vote on this clause?

The CHAIRMAN: I made my statements because this debate has got way out of hand in the committee stage. I do not want any rebuttals or any further movement in that direction. I want the Committee to deal with this clause. In future, I ask members to address their remarks to the clause. No party is to blame. Both sides have contributed to this situation; however, I ask that these arguments cease.

Mr CARPENTER: Unfortunately in this Parliament so few people are involved in debate continually, that some people do not understand when members are addressing the point and when they are not. With due respect, Mr Chairman, we are addressing these issues, whether you realise it or not.

The CHAIRMAN: I will not tolerate those sorts of comments. I have made a ruling. I have said that members must address the clauses, and that is the end of that discussion.

Debate Resumed

Mr CARPENTER: I will address the clause by pointing out that we are discussing factors which we believe must be taken into consideration when the Native Title Commission, as it will be called, makes recommendations and/or determinations about future acts on pastoral leases. Members must understand and discuss the history of that matter, the recognition of the rights that do, or do not, exist on pastoral leases, and the importance and the impact of those rights. That is what the Premier, other members and I have been involved in during this short discussion. It is valuable to have that discussion. Unless we know where the Government is coming from, we might find it hard to understand its position on the legislation. All I am trying to say is this: In this matter over a number of years I have observed the Premier being angry and feeling frustrated. I understand the position he takes.

Mr Court: I am not angry, but I have been frustrated - and I still am.

Mr CARPENTER: I understand the position the Premier has taken over native title and the way the debate has developed. However, let us face reality. We are dealing with reality. We must deal with the facts as they apply in the debate about native title, not the Premier's belief about the way things should be. In the short period of this debate we have consistently seen the Premier's beliefs clashing with the facts. There is no point in the Premier continuing to bang his head against the brickwall he considers was erected in 1993. We have gone past that and we are dealing with the repercussions of various court decisions. We on this side of the Chamber are genuinely trying to improve the legislation and make it work.

Mr RIPPER: As indicated previously, the Opposition will oppose this clause with a view to moving new wording for the criteria that the Native Title Commission must take into account when making a recommendation following the failure of consultation. The Premier is banging his head against the brickwall of common law. I do not mind him doing that if he gets some enjoyment from it. However, it is at our expense. Every time the Premier bangs his head against the brickwall of the common law it costs Western Australian taxpayers money. We must legislate in this State in accordance with the provisions of the Native Title Act and the Native Title Act must operate in accordance with the Racial Discrimination Act. If we operate outside the commonwealth Racial Discrimination Act, we will be subject to courts overturning the legislation. The legislation must also take account of the common law position. The Premier might find all of this very irritating. He might wish that he had a free hand to legislate exactly as he wants. However, that is not an available option in the practical world in which we must deal. We must legislate in accordance with High Court decisions on common law, in accordance with the effects of those decisions, in accordance with the effects of the Racial Discrimination Act and in accordance with the Commonwealth Constitution. All those things interact in a way which places constraints on what the federal and, in turn, the state Parliaments can do. It is frustrating for someone like the Premier, but in the end, if one wants workable legislation, he must take account of those constraints.

A problem with the Premier's public presentation on those issues has been his failure to communicate to the Western Australian public that politicians cannot do exactly or just anything they want on this matter.

Mr Court: Can I interject?

Mr RIPPER: No, let me finish. The Premier has failed to communicate that to the Western Australian public. We must all legislate in accordance with the constraints imposed by the Constitution, the Racial Discrimination Act and the High Court decisions and in this State we must legislate in accordance with the restrictions imposed by the Native Title Act. We cannot do just anything in this clause. This legislation must conform to at least the minimum requirements of the Native Title Act. That is both an administrative decision and a political issue. Members should not think that the Senate will not take a quasi-political approach to this legislation when it considers whether to disallow the minister's determination that the Western Australian legislation is in line with the requirements of the Native Title Act. All the Premier's frustration, theatrics and anger about the common law and way it has been refined over the years does not advance us. It does not give us workable legislation. It does not matter how good legislation is; if it is overturned by a court or the Senate, it is not workable. The only workable legislation is that which remains valid and legal. The Opposition is assisting the State

Government by moving some of these amendments. It is advancing the possibility that the State's legislation will be workable because it is advancing the possibility that the State's legislation will be found to be valid and legal. The Premier's fulminating about the restraints imposed upon him by the common law does not get us anywhere. It is the frustration of someone who does not want to recognise reality.

Clause, as amended, put and a division taken with the following result -

Ayes (32)

Mr Ainsworth	Mr Court	Mr MacLean	Mr Prince
Mr Baker	Mr Cowan	Mr Marshall	Mr Shave
Mr Barnett	Mrs Edwardes	Mr Masters	Mr Trenorden
Mr Barron-Sullivan	Dr Hames	Mr McNee	Mr Tubby
Mr Bloffwitch	Mrs Hodson-Thomas	Mr Minson	Dr Turnbull
Mr Board	Mr House	Mr Nicholls	Mrs van de Klashorst
Mr Bradshaw	Mr Johnson	Mrs Parker	Mr Wiese
Dr Constable	Mr Kierath	Mr Pendal	Mr Osborne *(Teller)*

Noes (18)

Ms Anwyl	Dr Gallop	Mr Marlborough	Mr Ripper
Mr Bridge	Mr Graham	Mr McGinty	Mrs Roberts
Mr Brown	Mr Grill	Mr McGowan	Ms Warnock
Mr Carpenter	Mr Kobelke	Ms McHale	Mr Cunningham *(Teller)*
Dr Edwards	Ms MacTiernan		

Pairs

Mr Sweetman	Mr Thomas
Mr Day	Mr Riebling

Clause, as amended, thus passed.

Clauses 3.36 and 3.37 put and passed.

Clause 3.38: Effect of recommendation -

The DEPUTY CHAIRMAN (Mrs Holmes): Can we have some order in the Chamber, please. If members want to talk, they can go outside.

Mr RIPPER: I ask the Government why it has chosen to use the word "recommendation" throughout the part relating to consultation procedures. Has that word been chosen to imply a different effect from that which would flow from the word "determination" had that word been chosen instead? There has been no requirement on the Government to use the word "recommendation" rather than the word "determination". Clearly, it has made a decision to use the word "recommendation". I would like to know why it made that decision and whether, in its view, it has any practical legal effect on the operations of this part of the Bill.

Mr COURT: The Native Title Act allows the use of either word. It was a conscious decision to use that terminology to ensure that part 3 was seen to be different from part 4.

Dr GALLOP: That raises an issue in respect of the role, function and status of the commission. The Premier says he wants it to be different from part 4. On this side of the Chamber we do not hold the view that the functioning of the commission should be different. The fact is it has a very important role to play. It must look at whether processes have been followed properly and make recommendations. Under the Native Title Act, as amended by the Commonwealth Parliament in 1998, it can also make determinations. The Opposition does not like the message that is being sent which is that, in respect of alternative provision areas, the status of the Native Title Commission is not as strong as it is in part 4 of the Act.

The DEPUTY CHAIRMAN: Order! I ask members on both sides of the Chamber, who are continually having conversations, to do so outside because we cannot get on with this debate.

Dr GALLOP: I draw the Chamber's attention to the distinction made in industrial law between the words "recommendation" and "determination". In industrial law the word "recommendation" is used when there is a mediation process. In other words, a commission will recommend particular courses of action, the various parties in dispute will consider those and there is an effort to bring both sides together. However, a determination is binding, and that is made in respect of arbitration. As I read the responsibilities of the Native Title Commission, in a sense it has both mediating and arbitrating functions. However, this legislation does not allow it to make determinations. It precludes determinations on the basis that a recommendation is no different from a determination. It is not a good message to send in respect of the part 3 provisions

of this Bill. I would prefer the part 3 provisions to give the Native Title Commission equal status to that which it will have under part 4; that is, it can make determinations. Of course, those determinations can be overruled but a process will be set up by which that can be done. I wonder why the Government has done this if it does not want to send out a message that somehow the Native Title Commission's role under part 3 is less important than it is under part 4. I cannot see why the Government has not used the word "determination" if indeed its own logic holds that there is no difference between the two words. If there is no difference between the two words, the Government should allay all of our fears and include the word "determination".

Mr RIPPER: The Government has some explaining to do in the choice of this word. Either the choice of the word "recommendation", rather than "determination", does or does not make a legal difference to the operation of this part. Can the Government answer explicitly whether the choice of this word does make a difference to the way in which this part operates? There is an alternative view: The Government is eating its cake and having it too. My understanding is this State Government wanted a position where, if consultation procedures failed, a recommendation could be made to the Minister for Mines who would make the final decision. That was contrary to the John Howard-Brian Harradine version of the NTA which was endorsed by the Federal Parliament. The Federal Parliament wanted a position where, if consultation procedures failed, parties had a right to put their cases to an independent arbitral body that would make a determination.

To harmonise these two positions we have had a bit of juggling with the words. On the one hand, the Federal Parliament is saying it wants determination by an independent arbitral body. On the other hand, the Court Government and the previous Borbidge Government in Queensland are saying they want a body which will make recommendations to the Minister for Mines who will make a decision. The situation has been harmonised by allowing the State Governments to use the word "recommendation" in their alternative procedures but to then insert in the NTA a proviso that determination includes recommendation. Therefore, the State Government can say to its industry constituencies, "We have held the line on the use of the word recommendation"; and the Federal Government can say to Brian Harradine, "We have insisted on the use of the word determination"; and it is all covered by this rather strange dictionary provision in the NTA which says determination includes recommendation.

Can the Premier explain whether the scenario I have just outlined is the one that applies and that the Government is eating its cake and having it too; or whether the alternative is true, that there is a legal difference between the way in which this clause works because of the use of the word "recommendation"?

Mr COURT: The Opposition is playing at semantics.

Dr Gallop: No, you are.

Mr Ripper: We accused you of playing at semantics. Is it semantics or is it real?

Mr COURT: The terminology best describes what is happening in this clause. It is a binding recommendation with which the Government must comply. I said it was a conscious decision to choose that word to ensure that part 3 was seen to be different from part 4. It is no big deal.

Mr RIPPER: The Premier avoids my question. Does a legal difference flow from the use of the word "recommendation" or has the Premier been engaging in a game of semantics to satisfy the two constituencies; that is, Brian Harradine in the federal Senate and the people in this State to whom he has said the Government supports a scheme that includes recommendations and the Minister for Mines makes a decision? Why does the Premier not own up? Which scenario is the correct one?

Mr Court: I have nothing to own up to, so I won't.

Dr GALLOP: The Premier is obviously not willing to engage in any more debate on this point. We will make it clear that this is one of the issues that we will want to be addressed in the other House of the Parliament.

Mr Court: Is the Leader of the Opposition serious? Does he think this is a significant part of this legislation?

Mr Ripper: We are asking the Premier to explain if there is a legal difference. He has had several opportunities.

Mr Court: I said that the Act allows one to use either terminology. What is the deal?

Mr Ripper: The Premier's view is that there is no legal difference flowing from the word "recommendation"?

Mr Court: We said we have chosen it quite consciously so that there seems to be a difference between part 3 and part 4.

Dr GALLOP: That is our problem. The Premier wants a difference to be seen. In other areas of law there is a difference between "recommendation" and "determination". When people look at these things in future - it might be courts of law which are asked to examine whether the law was properly followed in this case - they will look at those words, and they will have their legal definitions of them. It could well be that what we are talking about here is a significant difference that undermines the status and authority of part 3 relative not only to part 4, but also to the requirements that are laid down in

section 207, which make it clear that the commission in Western Australia, or any other State, should be an equivalent body to the tribunal. The Premier says we are playing with words. If we were playing with words, I would not have thought there would be any great problem in his acknowledging that he could change them around to satisfy our concerns. Therefore, this is an issue that we will be looking at in future debate on the Bill.

Clause put and passed.

Clause 3.39 put and passed.

Clause 3.40: Responsible Minister may overrule a recommendation -

Mr RIPPER: I am interested to know what will be the process by which the minister makes a decision to overrule a recommendation. Does the concept of due process apply to this decision that the minister will make? What would happen if someone were to allege that due process had not been applied by the minister in making a decision to overrule a recommendation? Will there be a process by which there is consultation with interested parties before the minister makes that decision? I note that there is a process of consultation with the Minister for Aboriginal Affairs in the State, but later on in the Bill there does not seem to be any process for consultation with any of the parties to the decision. I can think of at least three parties: The pastoralists, or some parties with non-native title interest in the land; the native title parties; and the third party developer.

Mr COURT: The principles of natural justice apply. The process will have to provide the parties with the opportunity to make submissions to the minister before the minister exercises this power.

Mr RIPPER: I think, therefore, that the Premier is agreeing that if the minister fails to follow principles of natural justice or due process, the minister may well be caught up in the process of judicial review, which we will discuss at a later stage.

Mr Court: That is right.

Mr RIPPER: We are talking, are we not, about principally the Minister for Mines when it comes to this clause?

Mr Court: The Minister for Mines or the Minister for Lands, depending on what is the title.

Mr RIPPER: Do we have any idea of the number of decisions which these ministers might be required to make on these matters?

Mr Court: We expect it to be used on rare occasions.

Mr RIPPER: From the point of view of the independence and status of the Native Title Commission, one would hope so; one would also hope so from the point of view of the workload of the individual ministers concerned. I do not know how many titles we process a year in this State.

Mr Court: Not as many as we used to.

Mr RIPPER: How many do we anticipate processing when we have this legislation in place?

Mr Court: We are doing about 3 000 mining titles a year.

Mr RIPPER: Therefore, one would hope that the responsible minister was not required to make decisions on overruling recommendations in more than a tiny fraction of these cases.

Mr Court: That is right.

Mr CARPENTER: I realise we are about to move on. However, I want to make the point that has been to some extent covered in the earlier debate about definitions and also in the debate about clause 3.38. There is no good reason to differentiate between part 3 and part 4 activities of the commission in relation to recommendations and determinations, other than the fact that the Government wants "recommendation" to have lesser strength in the law than "determination", which is exactly the way any normal, right-thinking human being would regard the meaning of the words. In the part 3 provisions, the minister makes the determination; the commission makes only recommendations. In part 4, the commission makes determinations. There is no justifiable reason for that. It is typical of the finicky, mean-spirited, gutless way that the Government has addressed this whole issue that it chooses to adopt this pathetic approach to the powers of the commission. If the Government were serious about addressing this issue in a responsible way, and in a way that demonstrated some good faith and a genuine attempt to incorporate native title into the law in a way in which it would work, it would not differentiate between the recommendation and determination aspects of the commission in part 3 and part 4. Any average person would understand that the commission making recommendations, the final determination of which is then left in the hands of the minister, is a different scenario from the commission making determinations.

When dealing with the general sense and understanding of the word "recommendation", the often used legal quote is that the man in the Clapham omnibus would understand that a recommendation is not binding. It is merely a recommendation;

it is merely a guide to what might happen. A determination, on the other hand, has a sense of finality and gravity that a recommendation does not have. It is a sad reflection of the entire attitude of the Government that it has chosen to go down this track. The Premier stands and rails against native title and the previous quotes of various Prime Ministers and the fact that he has been delivered unworkable legislation, yet he descends into this pathetic differentiation which demonstrates bad faith on the part of the Government.

Clause put and passed.

Clauses 3.41 and 3.42 put and passed.

Progress reported.

[Continued on page 4228.]

LAW AND ORDER

Motion

MRS ROBERTS (Midland) [5.00 pm]: I move -

(1) That this House acknowledges that the Court Government has failed the people of this State on law and order. The failure is demonstrated by massive increases in crime rates since the Government first came to office and an increasing number of excessively violent crimes against vulnerable people in our community.

(2) Further this House condemns the Government for failing to provide an effective and comprehensive crime prevention strategy.

Over the past six years since this Government first came to office, this State has experienced a massive increase in crime rates. We have seen a very unwelcome increase in violent crimes against some of the most vulnerable people in our community. In addition, we have seen the complete failure of the Government to provide an effective and comprehensive crime prevention strategy. It is easy to know that this State has gone from bad to worse, and that this Government has well and truly failed the community, on law and order. All we need to do is listen to the news on television and radio, read the newspapers and the letters to the editor, answer telephones calls to our electorate offices, read the letters that we receive from our constituents, and talk to our family and friends, to know that an increasing number of people in this State are becoming victims of crime in this State, whether that be an assault, a home burglary, a car theft, or any one of a number of crimes that are well and truly out of control in this State.

I will take a little time to provide some hard evidence. The anecdotal evidence is clear and overwhelming. Everyone in the community fears that the rate of crime in this State has increased markedly in recent years. That fear is well founded. On 15 July this year, the Australian Bureau of Statistics released its recorded crime data. I have jotted down some of the highlights in that report; or perhaps they are better referred to as lowlights for our State Government. That report demonstrates the sorry state of law and order in Western Australia. The report states at page 9 that Western Australia recorded the highest victimisation rate for unlawful entry with intent, which was well above the national average. The assault rate in Western Australia increased by 11 per cent, which was again above the national average. The sexual assault rate in Western Australia was the third highest in Australia, with a rate of 89 victims per 100 000 persons. The only States that have a higher sexual assault rate are the Northern Territory and Queensland. The national rate is 76 victims per 100 000 people. The report continues at page 9 that Western Australia and New South Wales are the only States to record a victimisation rate for armed robbery that is above the national average. The rate in Western Australia was 59 victims per 100 000 persons. Western Australia recorded a 20 per cent increase for unarmed robbery, which again is above the national average.

Page 10 refers to unlawful entry with intent, otherwise known as UEWI, which includes burglary and break and enter offences. Tasmania had the highest rate of 2 336 per 100 000 persons, and Western Australia had the second highest rate of 2 241 victims per 100 000 persons; again, above the national average. With regard to unlawful entry with intent "other", which is UEWI offences that do not involve the taking of property, Western Australia continued to record the highest victimisation rate of 904 victims per 100 000 persons, which was not just above, but nearly double, the national rate of 480 victims per 100 000 persons. On page 10 it states also that motor vehicle theft increased in only two States, one of which was Western Australia, where it increased by 1 173 vehicles, or 8.4 per cent. Western Australia was one of only two States to record a victimisation rate above the national rate of 704 victims per 100 000 persons, with the rate in Western Australia being 845 victims per 100 000 persons. In the previous year, that rate was 803.9 victims per 100 000 persons. That demonstrates the increase that we have experienced in motor vehicle theft. Page 11 states that Western Australia had the highest "other theft" victimisation rate of any State - 4 204 victims per 100 000 persons, well above the national rate of 2 856 victims per 100 000 persons. That is some indication of where Western Australia sits nationally: In just about every serious crime, we are well above the national rate. That is a most alarming set of crime statistics.

One of the furphies that is sometimes used to justify these enormously high crime rates is that Western Australia has always

had a comparatively poor record. However, the people who suggest that are really not telling the truth, because we have not traditionally led the nation in all those areas. The Court Government needs to take responsibility for the huge increase in crime rates in this State since it has come to government.

Page 79 of the Western Australia Police Service annual report 1998 highlights some of the crime information and gives crime statistics under a number of headings for the financial years 1993-94 to 1997-98. In 1993-94, the number of robbery offences against the person was 1 099. That rate is currently 2 515, a 129 per cent increase over the term of this Government. In 1993-94, the rate of assault was 9 771. It is now 14 170, a 45 per cent increase. In 1993-94, the total number of offences against the person, which includes things such as homicide and deprivation of liberty, was 13 983. That is now 19 645, an increase of over 40 per cent. What is most alarming is the huge increase in the number of offences against the person since the Court Government has come to office.

With regard to offences against property, burglary has increased by 10 per cent; stealing by about 15 per cent; motor vehicle theft by about 7.5 per cent; and damage, which includes graffiti, by about 48 per cent. The total increase in offences against property was about 16.5 per cent. The reported number of "other" offences, such as drug offences, in 1993-94 was 6 276. The reported number now is 14 466, about 130 per cent more. The note at the bottom of that page states that the reported number of "other" offences, which includes other indictable offences such as breach of restraining order and stalking, has increased by a massive 83 per cent. In 1993-94 they were 4 732, and in the 1997-98 financial year they stand at 8 650.

This is not simply the Opposition claiming that law and order is out of control in this State. In the two documents from which I have quoted are located the hard facts to demonstrate that this is certainly the case. Yet this Government is failing to take responsibility for the increased rate of crime in this State. I do not think it deserves to be in government if it will simply sit on its hands and not take responsibility for crime. I know that simplistic solutions are not the answer, but this Government, which was originally elected on a law and order platform, has had six years to do something about it.

Mr Acting Speaker (Mr Barron-Sullivan), you often hear the Government saying it will be tough on crime and criminals. I believe it should be tough on the causes of crime. It should be aiming to prevent criminality and to prevent the offences happening in the first place. That is the second part of the motion that I have moved today: To absolutely condemn the Government for failing to provide an effective and coordinated comprehensive crime prevention strategy. Such a strategy would include addressing a number of levels of crime prevention. Traditionally those levels are broken into primary, secondary and tertiary categories. Primary crime prevention studies the social, physical and environmental factors - one might look at the environmental factors which incline to criminality, or at target-hardening and those preliminary factors. At the secondary level, one would look at those people who are more at risk of committing a crime. Those people who could be potential offenders are sought out and dealt with effectively in an attempt to prevent them from offending. Perhaps the most emphasis seems to be at the tertiary level; the offender is focused on and often that involves locking him in prison.

Many kinds of factors can affect a person's likelihood of committing a crime. A number of those factors have been identified worldwide over and over again by criminologists and other people who are interested in looking at crime prevention. Factors such as age and gender are relevant. For example, members of this House may not be aware that about 80 per cent of people who break the law are male. If one is looking at a secondary style of crime prevention initiative, one should be looking at the male population for some of those crime prevention strategies. Other factors which will influence a person's likelihood to commit crime are their level of education, their family, whether they have a strong mentor in their lives, whether they have been subjected to child abuse, race, alcohol and drugs, socioeconomic circumstances, behavioural problems exhibited in childhood, and employment, or the lack of it. They are not an exclusive list of factors by any means, but they are the kinds of areas one must look at when one is looking at preventing criminality, from preventing the causes of crime and dealing with reducing the number of offences. Any Government that is looking at a holistic approach to crime prevention should be looking at all those factors. The Government should be doing much more in schools and in the community and addressing those people who are in need. It must be looking at kids who are truanting from school; not just dragging them back to school and putting them in the classroom, but looking at the reasons that they are truanting and how those kids can be attracted to wanting to stay at school. This is where the Government is failing.

It is also failing when it increases unemployment in this State. It has systematically eliminated many jobs in our Public Service. Many Government apprenticeships have been lost in this State since it came to office. There are no apprenticeships in the Midland workshops anymore. The Water Authority, the Building Management Authority and a range of government instrumentalities that once provided apprenticeships no longer do so. One cannot simply look at the end product; one must have a holistic approach to crime prevention and that is where the Government has let the community down.

Members should consider the disproportionate number of Aboriginal kids in gaol. Again, the Government has not only let those people down, but also the people who are their victims. We have obvious problems in my electorate and many other electorates with young Aboriginal kids. Kids are on the street glue sniffing and substance abusing. This Government has often talked about providing facilities for kids who are involved in substance abuse, yet very little is being done. The police are ringing their hands saying, "We can see them using the substances, we know they are doing self-harm, but there is nothing much we can do about it because we do not have any powers to act." Desperate parents come to my office saying

they know their kids are abusing substances. A couple of years ago one mother told me her daughter was spraying hair spray on the mirror layer after layer and inhaling it. She was concerned about the effect that was having on her daughter's brain. Yet she could not get any assistance with that. The frustrating part of it was that unless her daughter either became the victim of crime because she was so stoned out of her brain that she did not know what she was doing or what was happening to her, or she went ahead and committed a crime, she could not receive assistance. It could be made compulsory for her to receive counselling or training. This is a case of a girl of only 14 or 15 years of age.

It is a sad fact that many people in our community are calling for capital punishment and corporal punishment. I understand their frustration because they are absolutely fed up. It is no wonder that people are totally and utterly frustrated when the crime statistics are such as we have in this State. It is a normal reaction for people. They become victims, they are hurt and they want to see other people punished for the crime. When people think about it a little more and when they scratch a little below the surface, people acknowledge that unemployment, the lack of facilities for kids, and the inability of the State to be able to do anything about kids who are ruining their minds and lives through substance abuse are enormous problems. Most reasonable and sensible people in the community would love the Government to spend money on doing something for those kids so that they do not permanently damage their brains and be a burden on the community for rest of their lives, and to reduce the impact that they will have on the community by committing crimes.

I will also deal with what police can do to play a role in solving this problem and what the Government can do with its Police Service. Police officers must be properly resourced to be able to catch offenders. The clearance rates for a number of crimes are abysmal. In some areas the clearance rate has been marginally improved, and in other areas it has been marginally reduced. Whether one is talking about a 9 per cent clearance rate for home burglaries or a 13 per cent clearance rate, it represents about one in 10 cases being resolved. The answer is not necessarily locking up people for longer periods, caning them, beating them or hanging them; they must be caught. We should take home burglaries more seriously and provide the police with the resources required to catch offenders.

The Select Committee on Crime Prevention, of which I am a member, has taken evidence from people who have interviewed children who have been incarcerated. They asked what factor the children had in mind when they committed the home burglary. In 90 per cent of the cases they did not think about the penalty. They did not think about whether they would go before a parole board and get six or 12 months' detention. The No 1 question is: Will I get caught? If the answer is that they think they can get away with it, they will go ahead and commit the crime. That is where the police have a major role to play.

On a number of occasions over the past few years I have highlighted inadequate police resourcing in various parts of the State. Some material has come to my attention in the past week detailing problems occurring in the Gascoyne region. A meeting was recently held at the Carnarvon Police Station at which a range of problems was outlined. I cannot see how we can improve clearance rates and have police do their job if they do not have the basic resources and equipment to do so. Some facts about the Carnarvon Police Station may interest members and help them to realise the seriousness of the situation at that station. The station is running with 31 staff, but they have access to only two personal computers. That drops to one personal computer when the CIB is working on reports and statements. Both computers are so old that they have operating problems. The district office has been promising six new personal computers for the past two and a half years, but the officers are still waiting. In addition, neither of the PCs is connected to the mainframe system. Officers are still typing their briefs on typewriters that are not being serviced because of the cost involved, which means there are fewer on which officers can work. Many officers are doing paperwork on their personal computers at home because of this lack of equipment at the station. Munquip mobile radar units are not being repaired or replaced, and that is reducing the ability of the officers to conduct highway patrols. The Western Australia Police Service has been advised on numerous occasions about problems with communications when conducting searches away from Carnarvon, but it still has not provided a satellite phone for the station.

No training is offered at the Carnarvon Police Station. Some officers are not trained or are inexperienced in areas such as traffic operations, and that puts pressure on other staff. Officers are also being asked to do what they call "one-man patrols". One-man highway patrols are done because of staff shortages and the cost factor - it is cheaper to pay one meal claim than two. If a police officer is patrolling alone on a bike or in a car, he will pick and choose who he will pull over for committing a traffic offence. If it is Mr and Mrs Average with their children in the back seat, they will be pulled over. If it is a couple of hefty looking blokes -

Mr Prince: Will you table that document?

Mrs ROBERTS: No, I will not. I have made notes on the document.

Mr Barnett: Really?

Mr Prince: What are the notes?

Mrs ROBERTS: That is not the minister's business.

Mr Prince: It is definitely my business.

Mrs ROBERTS: When I am a minister, I will happily table documents in accordance with the rules of the House.

Officers are saying that they pick and choose who they stop. If it is mum alone or a happy family travelling along the road, they are likely to be pulled over if they commit a traffic offence. If the police officer believes there could be an altercation, he does not pull over the offender. It is a farcical situation.

When a Government fails to resource police officers in this State as this Government has done, it is no wonder we have these problems with law and order. We have police officers throughout the State who are over-stretched and under-resourced. We have a disgraceful situation in Western Australia with law and order. My constituents repeatedly raise only two major issues: Law and order and health. People are sick and tired of seeing ill people on waiting lists and this Government's failure to address critical policing matters in this State.

MR BROWN (Bassendean) [5.28 pm]: I second the motion and will put a local perspective on this issue of law and order and people being entitled to the quiet enjoyment of their home. In the past six to eight months I have had numerous meetings with residents, the local police and a variety of government agencies, trying to come to grips with and to put in place active programs to reduce the high incidence of crime in Bassendean and surrounding areas.

Mr Barnett: So we can rely on your support for the rapid passage of the sentencing legislation and other law and order measures.

Mr BROWN: I will deal with some of the issues raised by my constituents before the leader interjects.

Mr Barnett: So we cannot rely on your support.

Mr BROWN: My responsibility is to draw attention to these issues.

The officers at the Lockridge Police Station are well respected by the local community. However, as the local community has pointed out to me, the police are sick and tired of being called out repeatedly to deal with the same problems. They attend to a problem and go away, but the problem keeps reoccurring.

Many residents in my electorate are waiting for their houses to be broken into. That is the environment in which we now live. It is not a question of whether it will occur but when. People to whom I have spoken - there are many - have had enough. They want something done effectively at local level and they want intervention programs to occur forthwith. Let me deal with a letter that I received from a resident, just to try to put the matter into context. The letter was written last month after residents in Lord Street, Bassendean, as they put it -

> . . . had been subjected to a particularly rough, noisy and at times violent weekend . . .

They circulated a petition which was signed by a considerable number of people who live in the area. In their letter they refer to a pamphlet that was distributed by the Lockridge police in September 1997. That pamphlet states -

> To the householder
>
> A message from your Local Police
>
> To all residents of Lord Street, Bassendean between Railway Parade and Success Road.
>
> A message from your police at Lockridge Station
>
> fighting
> drunkenness
> disorderly behaviour
> noisy parties
> excessive noise
> anti social behaviour

Across the page it states -

> Don't tolerate it.
>
> Report all instances to the Lockridge Police Station . . .

The telephone number is listed. The pamphlet goes on to state -

> Lately there has been an increase of reports of such behaviour, nobody should have to put up with such nonsense.
>
> Don't hesitate contact Senior Sergeant Geoff Kiernan or First Class Sergeant Cyril Laurent.

In a letter to me, those residents stated -

> Lockridge Police distributed the enclosed pamphlet in the Lord Street area prior to September 1997. Obviously the problems were bad then, today the problem is out of control.
>
> Petty crime is rife, house break-ins a regular occurrence car theft is common, harassment on Bassendean and Success Hill railway stations is normal.
>
> If a doorknock of the area were to be conducted, it would be found that at least one, sometimes two or three houses in most streets have been broken into, some many times during the year. In recent weeks we have seen a rise in the incidence of home invasions in Bassendean. Police response times are sometimes less than adequate due, no doubt, to the enormous work load they appear to have these days.
>
> Despite having deadlocks, window locks, bolts on manholes, a brick through a window or a foot through the ceiling will give these criminals access to a persons home. There is only so much homeowners can do to protect themselves, their families and their property.

That letter is a cry for help. It cannot be ignored. People have had enough and they will not tolerate it any more. I have raised various questions in Parliament.

I will deal with the interesting issue of crime prevention. I refer to a report dated October 1998, under the heading "Delta Update" on the Safer WA program. It states -

> Community safety and security is an issue of priority for all members of the Western Australian community. All spheres of government have an important role to play in addressing crime. In August, the Premier announced the Safer WA program, a formal approach to consolidate and enhance coordination of the many initiatives currently undertaken by a range of public sector agencies having an impact on law and order issues.

Finally, in 1998, we had an acknowledgment that we need a coherent and comprehensive response to crime. I now refer to a report on a major conference on crime prevention which was held in 1995 and sponsored by the State Government. It would have cost a considerable amount to run and there were about 300 attendees. At that stage I was the Opposition Justice spokesperson. In my speech to the conference I said -

> Let me now turn to deal with what I believe are some of the essential features of a crime prevention strategy. These include:
>
> independent and impartial research, policy development and project evaluation
>
> a whole of government approach
>
> co-ordination between government agencies, the three levels of government and private agencies
>
> genuine community involvement
>
> targeting resources to areas of need
>
> providing realistic levels of resources to meet identified needs

I was not a genius in saying that three years ago. It came out of research that has been available for the past 20 years; it is not something that I thought up. Finally, we see that it is acknowledged in the "Delta Update". It has taken three years for that to happen.

What do we see in terms of resources on the ground? Two weeks ago, I asked the Minister for Family and Children's Services, who is in charge of the drug strategy, what was happening about resources being provided on the ground to deal with people who take illicit substances; that is, people who come under the influence of glue and other substances and who harass people. I asked her what she was doing about it. The minister fumbled and bumbled through an answer because she did not really know. She thought that she would do the wise thing and distribute a media release to try to cover her tracks. She also wrote to me and said, "We are doing all these things - blah, blah, blah - and these are the groups that are available." She said -

> The North East Regional Youth Council operates out of Midland and provides activity and personal development programs for solvent abusers, particularly young Aboriginal women. Contact - Mollie Naser, Manager . . .

I know Mollie Naser and she is doing a very good job. The same group ran the Index program, but the coalition Government took its funding away. That group dealt with school refusers and people who were vulnerable to substance abuse. A total of $37 500 a year, which was used for the group's street work, was withdrawn. The coordination of its services was totally disrupted by the withdrawal of those funds. I know what an excellent job that group does. The problem is that it cannot do that work without adequate funding. It cannot deliver programs if it does not have any money. I was also told to contact

the north east metropolitan community drug service team and the contact person's name was mentioned. I tried to contact that person and I was told, "Make an appointment to ring." Make an appointment to ring! That is not "get services", it is "make an appoint to ring"! Where are the resources?

The minister's letter also mentioned local drug action groups and the contact in Midland, so I rang that person and said, "I have a letter from the Minister for Family and Children's Services. I want to put it out to my 25 000 constituents indicating that when they have a problem they should ring you." She said, "Oh no, don't do that! We don't have any resources." I said, "Well, what do you actually do?" She said, "We get $1 000 a year to talk to parents." I said, "Where is your intervention program? Do you have people who go into the community to talk to families and children who have problems and get them back into school? Where are those active intervention programs?" She said, "I don't know, but they ain't here." The information provided by the minister is fluff. It is not worth the paper it is printed on. There is no comprehensive intervention program on the ground - there is nothing.

I take my hat off to the police. In my area they do a good job. I do not agree with much of what Commissioner Falconer says, however, I do agree with him that these social problems are not a policing responsibility. A whole range of agencies should be involved. When one rings them up and tries to get them involved, one finds they have gone in the opposite direction.

Mr Trenorden: They are all in Northam.

Mr BROWN: The member for Avon is doing well if they are all in Northam. When one tries to get people from those agencies to attend a meeting, they do not even arrive. When one writes to the Minister for Family and Children's Services asking, "Will you send your senior officers to this meeting to deal with crime prevention issues?" one receives the response, "Yes, they will be there." However, the meeting takes place and they do not attend. It is not that they do not make a contribution; they do not even come. The police and officers from Homeswest and the Education Department attend the meeting, but where are the officers from Family and Children's Services? They are not there. They have disappeared. They have no role to play. This is a disgrace!

There is no comprehensive intervention program at a local level. Who is dealing with young people? Who is seeking to talk to young people to get them into programs and away from substance abuse? Who is bringing them in and looking after them? Where is the intervention on the street? Where is the intervention at the family level? It is not there. There is no-one that anybody can ring apart from the poor old copper. Ring the copper and get him down! It is not his role. He has a role in dealing with crime, which includes crime prevention and detecting crime; however, it does not include all of these other issues. They are the responsibility of other agencies and those agencies are shirking that responsibility. Why are they shirking that responsibility? They are doing so because there is no money; there are no resources to deal with these issues. We need resources on the ground so that people can ring up and say that there is a problem in their area and someone will come out and ask, "What is the nature of this problem? What do we need to do? Do we need to get the Education Department involved? Do we need to get Family and Children's Services involved? Do we need to get the Aboriginal Affairs Department involved? Which is the appropriate department? Is it a local government issue? How do we deal with this? How do we intervene? How do we get a successful outcome?"

The Leader of the House talked about the sentencing legislation. If that is the Government's answer, it had better do more than build the Wooroloo prison because it will be full in no time and we will be building another and another. Currently the biggest issue in the United States of America is how to fund the prison service. The Government is cutting back in other areas. It has to fund prisons with the "three strikes and you are in" policy. Talk about a low unemployment rate! It is pretty low in the USA - half of the people are inside! They are not in the unemployment queues; they are actually locked up. The USA has an incarceration rate about five times per 100 000 higher than Australia's rate and people are saying that is the best way to go.

This is a crucial issue and there are absolutely no resources on the ground. In the areas of crime prevention and detection we will pay. How will we pay? We can pay at the end. After the crime is committed, we can lock up people for a year or two, three or five at a cost of $40 000, $50 000 or $60 000 a year. We can pay at the end or we can invest money at the beginning. We can reduce the incarceration rates by investing at the beginning and preventing people from going inside by making that investment up front. However, unless the investment is made up front, the incarceration rates will grow and grow. No matter who is on the government side of the House, that will continue. I say to the Minister for Police, the Deputy Premier and the Minister for Youth, whom I am pleased to see here today, that these resources must be put up-front. There must be an active crime prevention program with real resources and real power at the local level. I put the Government on notice that, in my electorate, crime is out of control. Next year, with the help of a local authority, a crime prevention council will be set up in my electorate. We will require the relevant departments and agencies to report to us on their initiatives.

Mrs van de Klashorst interjected.

Mr BROWN: I am in three.

Mr Cowan: Do you have community policing?

Mr BROWN: We have community policing.

Mr Cowan: What do you mean by "council"?

Mr BROWN: We will be setting up our own council with people from the community. I put the Government on notice that those people will be calling the agencies to account - and I do not mean only the police - and asking them to front up to report on their coordination and the programs they are putting in on the ground.

Mr Cowan: Just explain the difference between that council and community policing in the crime prevention committees that exist now.

Mr BROWN: As the Deputy Premier is aware, crime prevention committees are operating currently with the local crime prevention officer or the community policing officer and it has a police focus. The Deputy Premier knows the argument in the crime prevention area about police focus versus community focus. It is a big argument. There are people who believe it should have a police focus. I believe that it should have a community focus because all of the departments must front up on this issue. It should not be left to the local senior sergeant to attend to explain the situation; rather all of the agencies should attend. We will be asking the local director of Family and Children's Services about the position of dysfunctional families and the intervention programs the department operates. Next year we will be calling people to account and pushing the issue in this area because currently there are no resources and nothing is happening on the ground. Until such time as real resources are put in and real programs are established on the ground, the prison population will continue to grow; as will all of the other problems which stem from that, including the recidivism and economic problems of the State. I put the Government on notice that that is what we will be doing, and I hope many other members will do the same.

MR PRINCE (Albany - Minister for Police) [5.48 pm]: I rise as the first speaker on this side of the House to speak in this debate. Many others members also want to speak. Unfortunately, we have less than three quarters of an hour.

Mrs Roberts: We will have to increase private members' time to three hours.

Mr PRINCE: The member for Midland should not get me on that subject as we will wind up wasting time.

I express sympathy with the member for Bassendean on the need for a community council; however, he should listen. In the mid-1980s I was part of a community group in Albany that was concerned with child abuse. We had a community group, that included lawyers, doctors and others, which acted as a review panel on the way in which the then Department of Community Services handled some cases of child sexual abuse. It was a review panel and it failed because it was not mandatory for people to attend and discuss cases with the panel. I applaud what the member for Bassendean is trying to do to get the agencies involved in a coordinated way, which we are trying to do in government. I will explain the other way to do it in a moment. However, well-intentioned as the member for Bassendean's proposed community council is, it will not work unless it is mandatory for the officers from the respective government agencies, and non-government agencies where appropriate, to attend, report and coordinate.

Mr Brown: I put you on notice that the local newspapers will be advised when people refrain from attending once they are invited.

Mr PRINCE: My experience of 10 or more years ago was that although it worked for a while, it failed eventually because the personalities of the officers concerned were such that they simply would not attend. For the first time with Safer WA, we have formed a standing committee of the key ministers of Cabinet. The Deputy Premier and/or the Premier chairs the committee. I am involved along with the Minister for Police, the Attorney General - obviously from the justice point of view - and the Ministers for Education, Family and Children's Services and Local Government. Others come and go as required. However, that is not all that it is about. That is the standing committee of Cabinet. Beneath that, there is a council chaired by the Commissioner of Police, which includes the chief executive officers of the critical departments, and others as required. Therefore, if a particular issue is being dealt with, a particular department will be brought in which may not be represented there all the time. At the next level down, one has the community police and crime prevention councils, which are now called the Safer WA councils. They have a power to command that there shall be coordination on the street at the level the member is talking about, because experience tells us that that is obviously what we all appreciate should be the result. However, it does not happen unless people are, in a sense, told that they must. My experience has largely been in the country, and in a small, relatively discrete community, the personalities are such that people cooperate. There is perhaps an informal network operating. It is an absolute fact that the child who appears in casualty at the local hospital, diagnosed as "failure to thrive", almost invariably is the child who subsequently will have problems at kindergarten or preschool, and in primary school, and who will be the sort of child who is labelled, rightly or wrongly, as having attention deficit disorder. This child usually winds up not doing well at primary school and becomes a problem in high school. The kindergarten teachers can identify these children, and the primary school teachers are able to say that these are the children who will ultimately be offenders. The high school teachers can say what their records are. Largely, the cause is bad parenting, and I say that in the broadest possible sense.

In order to deal with this problem, we must talk about a better environment for the growing child, particularly from the age of one, and that is where to a large extent the long-term remedies are found. That is not exclusively, because from time to time, obviously in every generation psychopaths will emerge for whatever reason, and in some respects it is not possible to predict who those persons will be. However, with respect to the "dysfunctional" person who becomes the offender, who mixes in that group where the peer pressure is such that criminality becomes the norm, where perhaps there are elder siblings or cousins within that group who have the badge that used to be Riverbank, and these days is Banksia Hill Detention Centre, and so on, it becomes the culture. These are the ones who are causing a disproportionate amount of mayhem, particularly in their juvenile years. For every 100 people who appear in the courts for the first time, 80 never come back. Of the 20 who come back a second time, about 15 to 16 never come back. The 4 to 5 per cent who come back over and over again are the recidivists, and those are the people we are talking about.

Mr Graham: What are their names? Can the minister list them?

Mr PRINCE: No. I can tell the member what some of the names are in Albany. Indeed, I could have told the member some of the families, by name, in Albany. One family comes to mind. I represented all 11 of them successively over a period of years. I want to make the point that that family was not an Aboriginal family. Although Aboriginal people figure disproportionately in this debate, it is not exclusively Aboriginal people, and it should never be seen to be. They are some general comments with regard to the issue.

In regard to the second area that we have to deal with - this is coming back to crime prevention - there are the causes of crime. We must become better at intervening in the early years. That is long-term stuff. There is then the environment - the hardening, as the member has called it, of the so-called soft targets. Much of the work that we are doing, have done in the past and will continue to do in the future, concerns that. Things like immobilisers are an obvious case where one seeks to harden the environment. I give full marks here to the City of Gosnells. Some very good studies have been done for the City of Gosnells. It has prepared a city plan which it is now putting into effect in order to change its built environment at a relatively low cost. In those cases where the environment contributes to the opportunity to commit crime, it is changed so that it is far less of a friendly place for opportunistic crime to occur. Whether this be installing street lights or closing alleyways and so on, it is up to the city to choose what it wants to do. A great deal of study has been done by the University of London on this issue. The City of Gosnells hired the people from the University of London to come and look at the city, do the audit and come up with the plan. There has been a lot of input from police and others. I attended the launch about three months ago. It is a first-class effort, a first-class endeavour; however, it was a coordinated effort involving many people. We must deal with the environment in that sense.

Mr Graham: All of that was done a decade ago. It had a temporary effect. Crime has now gone back through the roof.

Mr PRINCE: Yes. It is something that one can never do and say that that is it. One must continue to do it.

Mr Graham: Will the Government fund local government to do it? Surely that is reasonable.

Mr PRINCE: We must work it out. The point is that it is being realised across all western societies that we must plan better for the future.

Mr Graham: I will give the minister a practical example.

Mr PRINCE: I do not have much time.

Mr Graham interjected.

Mr PRINCE: I appreciate what the member is saying on that point. It is not an insignificant issue. The point I make is that there has not been the realisation, in a general sense, that there is much that we can do in our environment, whether it be in the built environment or with immobilisers for motor vehicles, and so on. These are things that we can do, we are doing, and we realise we should do. However, there is not a universal acceptance among the public that that is the case. Many people in the public would say, "I should not have to do this. I should be able to leave the keys in my car. I should not have to lock my doors." I can understand why they say that: It is someone else's job to ensure there are no criminals, to which I say that I wish it were true. If crime could have been eradicated from society, it would have been legislated away or in some other way eradicated centuries ago. It has not been, and arguably never will be in our lifetimes. However, what we must do always is to seek to minimise crime, deal with the causes, deal with the environment, and then punish the wrongdoers.

I will deal with the crime rates and figures which the member for Midland quoted. I am pleased that she quoted from the 1998 annual report of the Western Australia Police Service. I will also quote from it. For the benefit of members, I am quoting from page 79. There has been an increase in offences. They are grouped here into three categories; that is, offences against the person, offences against property, and other offences. Then the total is given. There has been an increase in numbers. However, the clearance rate is of particular interest to me, as Minister for Police, because that is the way in which I am able to see whether the Police Service, with the cooperation and partnership of the people, is apprehending more and

more people who commit offences. I refer to offences against the person. I will not go through the subcategories of homicide, driving causing death, robbery, assault, sexual assault and so on. I will deal just with the totals, because there is not much time. We had a clearance rate in 1993-94 of 80.8 per cent for 13 983 reported offences. In 1997-98, we had a clearance rate of 81.1 per cent.

Mrs Roberts: It is 0.3 of a per cent. It is negligible.

Mr PRINCE: Wait a minute; listen. We have a slight increase against a reported increase of offences from 13 983 to 19 645. Therefore, what we have is not just a maintenance of the same clearance rate; we have an increase in the clearance rate of a higher number. That means we are actually solving more crimes of offences against the person - not just more, but more of an increase in the number as well. Although it is, as the member says, only 0.3 of 1 per cent, it is 0.3 of 1 per cent of an increase in number. Therefore, the number being solved has increased, as well as the percentage of that number. That says to me that the police are doing things right. Particularly with offences against the person, that clearance rate is absolutely astonishing. The clearance rates in the United Kingdom, for example, are significantly lower than that; and that is a reasonably comparable place at which to look. The clearance rates in some other States are not as good, and in some other States they are better. It varies from place to place.

Mrs Roberts: Some are much better.

Mr PRINCE: Yes.

Mr Pendal: Which rates did you say were astonishing?

Mr PRINCE: The clearance rates for offences against the person. That is taken from page 79 of the annual report of the Western Australia Police Service, where the statistics that the member for South Perth was lamenting did not exist can be found. The number of offences against property in 1993-94 was 181 844, and in 1997-98 it was 211 782. The clearance rate has increased from 19 per cent to 21.1 per cent. Again, we have an increased clearance rate of a vastly increased number of offences.

Mrs Roberts: It is still only one in five. That is pathetic.

Mr PRINCE: We have an increased clearance rate of an increased number of offences, which means that the police are getting better. With regard to drug and other offences, again we have an increase from 11 000 reported cases in 1993-94 to 23 116 reported cases in 1998-99, and an increased clearance rate from 62.7 per cent to 77.1 per cent. There has been a significant increase in the number of offences from 11 000 to 23 000 - over double - and the clearance rate has increased by 15 per cent. Therefore, the police are solving more of an increasing number of crimes.

Between 1993-94 and 1997-98, the total number of offences increased from 206 835, with a clearance rate of 25.5 per cent, to 254 543, with a clearance rate of 30.8 per cent. Those figures indicate that the police clearance rates are improving. They are certainly not good enough, and the number of offences is a grave concern, but the clearance rates in those three areas, as stated in the annual report, have increased, on an increased base; therefore, the police are doing better than they were previously. I would like to see them do significantly better, and when we break it down district by district, we find variations. In the Joondalup district, the clearance rate for burglary has increased from 13 or 14 per cent to 26 per cent.

Mrs Roberts: That is because you have put the resources in there.

Mr PRINCE: No. It is because this is problem policing, and the district level has control and command. It has the people, it has formed a burglary team, and it has intelligence and information. Midland has begun to do the same thing, and its clearance rate for burglary has increased. This is happening in a number of other areas. We will not get a magic effect overnight, but we are seeing a benefit, albeit slowly.

To some extent, the statistics about crime rates are unreliable, because at any given time there is a number of variables; for example, the incidence of reporting. I opened a conference yesterday, which was convened at the initiative of the Aboriginal police advisory council. It involves 200 to 300 Aboriginal people and many police officers and has been quite successful. Some dreadful statistics were reported about domestic violence. Only 20 per cent, or one in five, cases of domestic violence are reported to the police, and they are generally cases that involve some form of assault. Less than 15 per cent of sexual assaults that occur in a domestic situation are reported. The incidence of reporting has a significant effect on crime statistics and rates. We need to go through the rate of reporting from jurisdiction to jurisdiction before we can make any meaningful comparison.

The second factor is the effect of changes in law and policy. The changes to the Pawnbrokers and Second-hand Dealers Act, and to some extent the Sentencing Act, have led to an increase in the number of robberies that take place near automatic teller machines, and things of that nature. I have no doubt that one reason for the increased number of bag snatches on the streets of Perth is a "60 Minutes" program five or six months ago, in which a young hood from the eastern States carefully explained how to rob an elderly lady of her handbag. Criminals are not entirely stupid. They also watch "60 Minutes".

Mr Graham: I object when they watch that program on my television!

Mr PRINCE: I agree. The point I am making is that that was a case of cause and effect that was beyond the control of any Government. Changes in reporting practice and in the categorisation of crimes also lead to anomalies in the statistics, and we need to go through that series of four criteria before we draw any conclusions from any sets of statistics.

Mrs Roberts: Armed robbery is reported, and the rate of armed robbery is skyrocketing.

Mr PRINCE: The increase in the rate of robbery and armed robbery is due, at least in part, to the Pawnbrokers and Second-hand Dealers Act, which we passed in 1994 and which provides much stricter rules for the purchase and resale of goods by dealers. It is hardly surprising that the consequence is an increase in the number of robberies by people who are looking for money to buy drugs. One of the ways in which we will achieve a better clearance rate for burglary, for example, is by DNA testing and the establishment of a DNA database. The United Kingdom, which passed a law fairly recently that all sentenced prisoners must undergo compulsory DNA testing, has cleared up 30 or 40 per cent of outstanding burglaries. I am a strong advocate of a national DNA database and of legislation that will enable the police to take DNA samples from suspects, before they are arrested, because that will give the police a tool in investigation and in apprehending criminals.

An increased crime rate is a worldwide phenomenon. It is not peculiar to Western Australia and Australia. It is happening everywhere. In the United States over a 15- year period to 1994, the total number of crimes increased in nine of those years, and the rate of crime per 100 000 population increased in more than eight of those years. For the benefit of members, I table the United States of America national crime rate breakdown, which shows the number of offences between 1979 and 1994.

[See paper No 469.]

Mr PRINCE: It is interesting to compare that breakdown with our crime rate. Our crime rate increased in only five of the 14 categories in 1997 compared with 1996. That is good, but it is not good enough. Between 1993 and 1996, the crime rate increased in 10 of the 15 categories, and that was exceeded only by New South Wales, which had 12, and Tasmania, which had 13. I put more store on clearance rates than anything else.

This Government has provided 800 more police, and 500 officers over and above the natural attrition rate. It has also taken 300 sworn officers out of administrative positions, put them onto active policing and replaced them with civilian personnel. The member will be aware of the comments that have been made by the Commissioner of Police a number of times in recent weeks about the state of the Police Service. I refer to the Delta Update of July, which states that the police are now better paid and equipped, and have better opportunities, training and staff. The police are now better thought of and respected. I referred yesterday in question time to the Morgan Gallup poll on the public image of police professionalism in this State, which has increased from 52 per cent in 1993 to 70 per cent in 1998. The only State that exceeds us is South Australia. I table that paper.

[See paper No 470.]

Mr PRINCE: That paper is sent to every electorate office. I appreciate that members cannot read everything that comes in, but I urge them to read that paper. It is not very long, and it contains a lot of useful information.

Mr Brown: I read it.

Mr PRINCE: I know; the member for Bassendean is one of the few members who reads it.

Members heard me say before that we have increased the budget to $4.9m. That is $157m more than the Labor budget of six years ago and is more than a 60 per cent increase. In fact we have spent $1.8b on police in the past five years. We have opened 17 new police stations in the past two and a bit years, and more are to be opened. As the member for Rockingham knows, one will be in his electorate.

Mr Brown: When the Labor Government came to power in 1983, Western Australia had the lowest police population ratio of any Australian State. When it went out of power in 1993 it had the highest population.

Mr Cowan: No; the first part is right, but the second part is wrong.

Mr Brown: Which States were higher?

Mr Cowan: At least three.

Mr PRINCE: The member for Bassendean can argue that with the Deputy Premier when I have finished.

Members opposite know that a new police academy is being established. The 17 police stations opened in the past two years and planned, include Busselton, Clarkson, Wiluna, Lockridge, Bunbury, Bayswater, Nullagine, Rockingham, Katanning, Mirrabooka and Geraldton and Albany will be on the list. An amount of $37m is allocated for the new communications and information technology project so that outlaw motorcycle gangs and others will not be able to listen to police communications. A better command control system for responses, particularly to emergencies, will be installed.

The amount of $4.5m has been allocated for crime fighting programs such as the vehicle immobiliser scheme, the state crime prevention strategy, Crime Stoppers and so on. In the past four years, approximately $12m was spent specifically on operational and office equipment such as computers, hand-held radios, pistols, video cameras, riot shields, and so on; things which the police did not have when we came to power. The Delta program was implemented at the end of 1994 and it has transformed, and will continue to transform, the Police Service so that it is far more functional and its management is at a district level. The officers in charge of regional and district stations with officers and squads have the responsibility for their areas. They are taking up that responsibility and doing it well.

Members will be aware of the many changes to the Criminal Code and the punishments available for serious offences such as wounding, burglary, aggravated home burglary, murder, wilful murder, assault of public officers, grievous bodily harm, etc. The Young Offenders Act 1994 abolished remission. Fifty per cent of the sentence must be served. A series of other amendments have been made to Acts such as the Bail Act.

A number of matters are before the Parliament now such as the Sentencing Amendment Bill, with the matrix, which we will debate tomorrow. We recently made legislative changes relating to forensic sampling, and stalking and the forfeiture Bill will be introduced next year. The Intoxicated Persons Bill, which is part of my portfolio, in part deals with some of the aspects to which the member for Bassendean referred concerning people who are intoxicated. In 1975 under the Police Act a person intoxicated could be arrested and locked up. The Supreme Court said that that was inappropriate and we should not do it, so it stopped. That following winter approximately 80 people, who perhaps would be classed as derelict individuals, died in this city and across the State. However, as a result no law has been introduced under which the police can pick up people for what are commonly called "victimless crimes". There is no law that enables a police officer to take into custody a 14 year old who is out of his mind from sniffing paint or glue. We will introduce a Bill to fix that and for which I hope we will get cross-party support. For the first time it will empower the police to take those people off the street to a place in which they can be helped.

I am amazed by what the member for Midland said about Carnarvon because its equipment includes a personal computer for the receptionist, one for the detectives and for the general office and a laptop presently being repaired. There are four dummy terminals and access to information only through them. The information the member for Midland has is not correct. The document she had looked official, and so I again call on her to table it.

Mrs Roberts: It is not an official document; I have no requirement to table it.

The ACTING SPEAKER (Mr Barron-Sullivan): Although a minister can be requested to table a document, another member cannot, but a member can offer to lay documents on the Table for the duration of the day.

Mr PRINCE: Thank you, Mr Acting Speaker. I will make a point for not only the member for Midland but also the member for Bassendean who unfortunately has left the Chamber. For some time the member for Swan Hills has been convening a local Midland District Community Police and Crime Prevention Council which involves members of the community, the Department of Family and Children's Services, the Health Department, the Education Department, local authorities, the Police Service, the Ministry of Justice and the member. They meet monthly and work out many crime prevention strategies in Midland. Much work has been done on the ground. Clearly the member for Midland is not aware of that.

I refer to the other things for which the member for Swan Hills has been responsible and about which the member for Midland clearly does not know. These include the relocation of police communications to the Midland Workshops, the permanent mobile police van in Midland, and the sobering up shelter being built at the back of the Swan District Health Service. They are all initiatives that the member for Swan Hills has championed. What has the member for Midland done in Midland? Nothing. She should not come in here and complain.

Mrs Roberts: That is a lie.

Mr PRINCE: The member for Midland is accusing the Government of doing nothing. It has done an enormous amount in the sentencing, intervention and general areas. Our clearance rates are improving all the time. For the first time ever in the history of this State a standing committee of Cabinet has been established to create a complete line of command from the ground up, involving all agencies. That will work. Many other initiatives have been made about which many members on this side would love to be able to educate the member for Midland. Unfortunately, she is not listening, but we will keep trying to educate her. Her motion is fundamentally miscast, poorly researched and nothing more or less than an attempt at political grandstanding. The motion should be defeated.

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [6.17 pm]: Mr Acting Speaker -

Point of Order

Mr GRAHAM: Although it is not open to me to question your judgment Mr Acting Speaker, I was clearly on my feet first and I clearly caught your attention because you looked at me and then you looked at the member for Swan Hills. I make this as my point of order -

The ACTING SPEAKER (Mr Barron-Sullivan): Make it rapidly please.

Mr GRAHAM: I will make it any way I like. I am making a point of order and you have not heard it, Mr Acting Speaker. The point of order is that the Opposition is allocated one and a half hours each week to deal with matters of importance.

Mr Cowan: Not to the Opposition, but to private members, but it is the Chair's prerogative to choose who will speak next.

The ACTING SPEAKER: Order! I am waiting to hear whether there is a point of order.

Mr GRAHAM: I am waiting for the opportunity to make it. If you tell the Deputy Premier to keep quiet, Mr Acting Speaker, I will make it. One and a half hours per week are allocated to private members to raise matters of importance to them. The motion with which we are dealing is an opposition motion raised as a matter of concern. I clearly was on my feet first. You saw I was on my feet first, Mr Acting Speaker, so you should have given me the nod.

The ACTING SPEAKER: There is no point of order in relation to whether this section of business should have any preferential arrangement for members of the Opposition. As the member for Pilbara is aware, it is up to the person in the Chair to determine who sought and should receive the call first. I give the call to the member for Swan Hills.

Debate Resumed

Mrs van de KLASHORST: I want to speak in this debate because I have been very involved in some practical measures the Government has taken to combat crime. The Government has received a lot of criticism about what it is not doing, but members should consider some of the things being done on the ground in which I am involved most of the time. One of the main issues in which I have been involved is the domestic violence scene, which is a major crime area in this State. There is a great deal of domestic violence in WA. A Family and Domestic Violence Task Force was put together under this Government, and its action plan was launched by the Premier in November 1995 and has been operating for three years. This is a first for this State, because the previous Government did nothing about domestic violence. The action plan is achieving results. It considered the whole State when working on an action plan to deal with family and domestic violence. Many of the initiatives the Government has put together in that action plan are being carried out and are helping reduce the incidence of domestic violence in this State. They are being worked on by not only the Government but also government agencies and the community. Crime will not be solved in this State unless everybody works together, and that includes the opposition members. I sometimes wish that opposition members would work with the Government to try to stop crime in this State. We cannot stop crime in this State if the leaders of the community do not work together. The Government is asking the community to work with the police and government agencies, yet members of this House, as a community, cannot work together. Crime is a whole-of-community concern.

The following measures have been introduced in the field of domestic violence. Sixteen regional domestic violence committees with government and non-government representation have been established. They are currently working in that area. New legislation has been enacted, which I put through the Parliament, for the victims of domestic violence to be protected by restraining orders. Five new victim services, three new services for Aboriginal children affected by domestic violence, and seven new services for Aboriginal perpetrators have been established, and funding has been provided for five Aboriginal family support units. That has been done following the formation of the action plan. Further, six police domestic violence liaison officers have been appointed to work with people on the domestic violence front.

Mr Marlborough: Is this all in Midland?

Mrs van de KLASHORST: No, it is throughout the State, as required by the umbrella groups. The Government has implemented a comprehensive awareness program, and training has been provided for police. It is the first time in Western Australia that any Government has allocated funds to train police to handle domestic violence situations.

Mr Graham: That is not true.

Mrs van de KLASHORST: It is true because it was said to me today by police and Aboriginal people at a conference I attended.

Mr Graham: I chaired one in Port Hedland in 1990.

Mrs van de KLASHORST: The Government is also working strongly in the electorate of the member for Kalgoorlie to deal with domestic violence.

Ms Anwyl: I chaired a committee in Kalgoorlie for many years.

Mrs van de KLASHORST: The Government has also constructed safe houses throughout Western Australia, including the metropolitan area, and women's refuges. A new one is being constructed in Carnarvon. Homes are being provided for people suffering from domestic violence, and a comprehensive long-term education plan is being formulated to turn the community away from domestic violence. A men's hotline has been established. I could go on and on, but there is not sufficient time. Members opposite have said that nothing is being done, but these measures are working, although some not

as well as they might. The Government is refining those measures all the time and it is trying to stop domestic violence. When members opposite say the Government is doing nothing, they do not know what they are talking about.

MR GRAHAM (Pilbara) [6.24 pm]: The two speakers opposite, including the minister, indicated that the Opposition had said the Government has done nothing. The Opposition has not said that at all. The motion states that the Government has failed the people of this State on law and order, and the failure is demonstrated by massive increases in crime rates since the Government first came to office. The minister outlined the vastly increased rate in the number of crimes, and at the time I said he would be voting with members on this side because he agrees with the Opposition. Who else agrees with the Opposition? The Governor of Western Australia also agrees with the Opposition. On 11 August 1998, on the instructions of the Government, he said -

> There is genuine outrage at the crimes of violence against people and property - and the Government will not stand for it.

He talked about the increasing crime in Western Australia. The Governor is the Government's set piece, the top man in the system, and he outlined the increase in crime when he opened the Parliament this year. Can members believe him? Of course, we can believe him because the Government wrote his speech.

I refer to the next source in case members are not sure what the Government said: The official submission from the Government of Western Australia to the Federal Government. In that submission an entire chapter points out the increase in crime in Western Australia. I suggest that the minister should read this report. It indicates the ranking of the States for various crimes in 1993 and 1995. In 1993, when the Labor Party was in government, Western Australia had the third highest number of sexual assault crimes in Australia, and by 1995, when the coalition Government was in office, it had the highest number in Australia. For armed robbery, Western Australia went from fifth in 1993 to second in 1995; for murder it went from fourth to second; for unarmed robbery it went from fifth to third; for blackmail/extortion it went from sixth to fifth; and for attempted murder it went from eighth to sixth. That is the official government submission to the Commonwealth Grants Commission seeking extra funds from the Federal Government because of the vast and rapid increase in crime in Western Australia. In case members have missed something, I quote from page 65 of the 1998 Annual Report of the Western Australia Police Force. That report contains the rates for each type of offence, effectiveness performance indicators and so on. A note in the report states -

> The Western Australian victimisation rate for each type of offence increased in 1995 compared to 1993.

Those are the latest figures available. The report continues -

> Each type of offence recorded an increase of at least 18 per cent with the highest increases being Robbery (46.2 per cent), Attempted Break and Enter (44.9 per cent) and Motor Vehicle Theft (36.4 per cent).

As the minister said in his speech, the numbers have increased and the police report indicates that the rate has also increased. That is stated in the Opposition's motion. The motion also states that the failure is demonstrated by massive increases in crime rates since the Government first came to office. That is exactly what is said in the annual report of the Western Australia Police Service. The dates could not have been better to illustrate the point, because the figures start in 1993 when the Labor Party lost government. They have increased since that time.

My final point on the people who have said that this State has a law and order problem is that the Commissioner of Police has acknowledged that - not only Larry Graham or members on this side of the House. The Commissioner of Police is holding public forums and giving interviews in Western Australia saying -

> A violent army of young criminals could swamp Perth unless swift, hard-hitting action is taken, Police Commissioner Bob Falconer has warned.

It is Commissioner Falconer's job to take the hard-hitting action. If there is such a thing as justice in this Chamber, this motion will be passed with the support of the Government, for the simple reason that the facts underlying it are not disputed. I make the point that the facts were not disputed by the two speakers on the Government's side of the House. Not one of them claimed that the Government had crime under control or that its actions were leading to a significant reduction in crime in this State. Even the minister with statutory responsibility for this area did not dare say that the crime level in this State has fallen. He did not do so because it has not fallen; it has increased dramatically.

Question put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Dr Gallop	Mr McGinty	Mr Ripper
Mr Carpenter	Mr Graham	Mr McGowan	Mrs Roberts
Dr Constable	Mr Kobelke	Ms McHale	Mr Cunningham *(Teller)*
Dr Edwards	Mr Marlborough	Mr Pendal	

Noes (25)

Mr Ainsworth	Mrs Holmes	Mr McNee	Mr Trenorden
Mr Baker	Mr House	Mr Minson	Mr Tubby
Mr Barnett	Mr Johnson	Mr Omodei	Dr Turnbull
Mr Bloffwitch	Mr Kierath	Mrs Parker	Mrs van de Klashorst
Mr Cowan	Mr MacLean	Mr Prince	Mr Wiese
Dr Hames	Mr Masters	Mr Shave	Mr Osborne *(Teller)*
Mrs Hodson-Thomas			

Pairs

Mr Thomas	Mr Board
Mr Riebeling	Mr Bradshaw
Ms Warnock	Mr Marshall
Mr Brown	Mr Sweetman

Question thus negatived.

Sitting suspended from 6.34 to 7.00 pm

NATIVE TITLE (STATE PROVISIONS) BILL

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Mr Osborne) in the Chair; Mr Court (Premier) in charge of the Bill.

Progress was reported after clause 3.42 had been agreed to.

Clause 3.43: Ground on which determination may be made -

Mr RIPPER: Clause 3.43 describes the grounds on which the minister may make a determination to overrule a recommendation of the Native Title Commission. He can do so "in the interests of the State". It has a double-barrelled definition which includes "and in the interests of the relevant region or locality in the State". I seek guidance on the meaning of the definition. It does not appear to be an exclusive definition. It states "in the interests of the State includes" and then lists paragraphs (a) and (b). Does it have to be both in the interests of the locality and in the overall interests of the State for the minister to make that determination, or can it be only in the interests of the relevant region, but not particularly significant for the broader interests of the State for the minister to make that determination? I think that is more than simply an esoteric point. If it must be only in the interests of the relevant region or locality, there will be many more occasions on which it will be proper for the minister under this legislation to make a recommendation that a decision of the Native Title Commission should be overturned. It would be interesting to have examples of the circumstances that the draftsman envisaged when he included the words "in the interests of the relevant region or locality in the State".

Mr COURT: As I understand it, this matter has basically come out of the native title legislation. It is in section 43 on page 122.

Mr Ripper: Yes, I have seen it in the Native Title Act.

Mr COURT: We have simply drawn it straight from there.

Mr RIPPER: Does that mean that the Premier is not able to say what sort of circumstances will apply for the operation of this clause?

Mr COURT: It is our understanding that the interests of the State can extend to the interests of the relevant region or locality.

Mr Ripper: What sorts of matters will be taken into account? Is it a question of 20 jobs being created in an area of high unemployment? Is that the sort of thing that will be taken into account?

Mr COURT: It probably will be if it involves an industry that is significant for the development of investment or other industries in the State. I cannot be specific. By the time it gets to this stage, good reason must exist for its use to enable it to be sold to the public. I can give a number of hypothetical cases.

Mr RIPPER: I am trying to determine the scope of the grounds on which a minister might decide to overturn a recommendation of the Native Title Commission. These grounds are vague. He can overturn a decision in the interests of the State. It seems to be almost a political decision. If the matter goes to a judicial review, will the judicial reviewer be able to say that it is clearly something that is not in the interests of the State, or is the judicial reviewer not able to make that

judgment? Does the minister have a degree of freedom to make a political judgment about what he or she thinks is in the economic or social interests or in the interests of a relevant region or locality?

Mr COURT: As I said publicly, a good reason must exist. The member gave the example of 20 new jobs being created - 20 new jobs state wide is not a big deal, but 20 new jobs in a small regional town may be a very significant deal. For example, we have seen that happening in some of the towns in the south west where difficulty has been experienced in obtaining approvals for industrial land where companies want to expand their operations.

Mr BROWN: I am not sure whether the Premier answered the member for Belmont's question about the opening words of subclause (2), which states -

> In subsection (1) -
>
> **"in the interests of the State"** includes -

Then paragraphs (a) and (b) are listed. Does that mean that while it includes those things, it may include other things, and that other factors may be taken into account other than the factors mentioned in (a) and (b)?

Mr Court: Such as?

Mr BROWN: I do not know. The reason that I inquire is that it states, "in the interests of the State includes". It does not state, "In subsection (1) the interests of the State means". If it stated "the interests of the State means", one could ask what that terminology means. It means those two things set out in paragraphs (a) and (b), but the use of the word "includes" tends to suggest that it will include paragraphs (a) and (b), but it may include other things. If that is the interpretation, the responsible minister is entitled to make a determination on the ground that it is in the broader interests of the State, without our knowing what "the broader interests of the State" means.

Mr COURT: The definition is broad. The Government has included "in the interests of the relevant region or locality in the State" so that small communities are not ignored. In practice that is where we have had a lot of problems, and the Government is keen to take into account the overall state interest.

Mr BROWN: I understand that point. However, the Opposition is seeking to establish which other matters, other than those contained in paragraphs (a) and (b), might be taken into account in determining the interests of the State. My difficulty is that, when the minister makes a determination in the interests of the State, we do not know what that means. What factors might fall under the definition of "in the interests of the State" that are not specified in paragraphs (a) and (b)? Subclause (2) does not confine the definition to what is set out in paragraphs (a) and (b) and it may be some other matter.

Mr Court: I have said that it is a broad definition. Is the member saying that it is not broad enough?

Mr BROWN: I am trying to get on the record the intent of the legislation and whether factors other than those mentioned in paragraphs (a) and (b) must be taken into account by the minister as matters that might be in the broader interests of the State. Parliamentary counsel usually chooses its words extraordinarily carefully.

Mr Court: Part 4 does not have a definition of that phrase; it says "in the State or national interest" and does not include the relevant region or locality. The clause has deliberately been extended to cover regions and localities for the reasons I gave the member. This is commonwealth drafting.

Mr BROWN: Yes, but ultimately this will be state legislation.

Mr Court: The member for Bassendean knows that this legislation must conform to the federal legislation. I cannot give him a full explanation of why the Commonwealth used that drafting style, but we cannot use any other.

Mr BROWN: It is interesting that the words in brackets in subclause 2, which are "including Aboriginal peoples" appear in paragraph (a) rather than in (b). I am not entirely clear when one is reading paragraph (b) whether "in the interests of the relevant region or locality" takes into account the interests of Aboriginal people in the same way as in paragraph (a). Paragraph (a) refers to "the social and economic benefit of the State (including of Aboriginal peoples)" which are broad parameters. Paragraph (b) refers to the interests of a particular region and locality, which is more specific to the area and does not refer in brackets to Aboriginal peoples. I am not sure if this is taken from the commonwealth drafting.

Mr Court: I cannot give the member the answer, and I cannot explain it.

Mr RIPPER: The Opposition's questioning of the Premier has established that the grounds on which the minister can make a determination that the recommendations of the Native Title Commission be overturned are broad, which are the words the Premier used to describe this provision. The grounds are so broad that it does not seem that a judicial review of the minister's decision could realistically question the grounds on which the minister has made the decision. There might be some extreme examples in which a determination could be questioned, but by and large the minister's judgment of what is in the interest of the State or locality will not be capable of being questioned by a judge. The judge might be able to go to

the process by which the minister made the decision, but I doubt whether a judicial review will be able to say demonstrably that a decision was not in the interests of the State. "In the interests of the State" is essentially a political-type judgment. The Opposition does not oppose this clause because, as the Premier said, the drafting has come straight out of the commonwealth Native Title Act. However, the Opposition is concerned that the State Government's use of the word "recommendation" rather than "determination" for the decisions of the Native Title Commission under these part 3 procedures, and the broad grounds under clause 3.43 for minister's decision to overturn a recommendation of the commission, might create a position in which the independence and status of the Native Title Commission is undermined. The Opposition supports a Native Title Commission of high status and independence. We do not support a position in which its rulings are treated only as recommendations and the minister has broad grounds and frequent opportunity to overturn those recommendations.

Clause put and passed.

Clauses 3.44 and 3.45 put and passed.

New clauses 3.46 and 3.47 -

Mr RIPPER: I move -

Page 30, after line 7 - To insert the following new clauses -

3.46. Copy of determination to be laid before Parliament

(1) The responsible Minister must cause a copy of a determination under section 3.41, together with reasons for the determination, to be laid before each House of Parliament.

(2) Subsection (1) is to be complied with as soon as is practicable after the determination is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the determination is made.

3.47. Either House may disallow Minister's determination

(1) Either House may, by resolution, of which resolution notice has been given at any time within 12 sitting days of such House after a copy of a determination made under section 3.41 has, in accordance with section 3.46, been laid before it, pass a resolution disallowing such determination.

(2) If either House of Parliament passes a resolution disallowing a determination made under section 3.41 the Minister shall, within 21 days of the passing of the resolution, cause notice of the disallowance to be -

(a) published in -

(i) the *Government Gazette*; and

(ii) a daily newspaper circulating generally throughout the State; and

(b) communicated in writing to the Commission.

Mr Court: Where did you get this idea? I would love to see you introduce this in government.

Mr RIPPER: We aim to give members opposite that opportunity in two short years.

Mr Court: You would not bring it within a mile of this Parliament.

Mr RIPPER: The Premier should vote for it and when we are in government he will see how it operates.

This amendment proposes to give either House of State Parliament the opportunity to overturn a minister's determination that in itself has overturned a recommendation of the Native Title Commission. I agree with the Premier that it is an unusual amendment, so I will explain the Opposition's thinking on this issue.

Members on this side have been concerned that the Native Title Commission proposed in the Premier's Bill does not have sufficient status and independence. When we first read the Bill, it appeared that the Native Title Commission was to be a politico-administrative unit in the Ministry of the Premier and Cabinet and there were insufficient requirements for the qualifications of the executive director. That led opposition members to think that what the Premier was proposing was not a judicial body but a body that would be overly influenced by political operatives in the Premier's department and the politicians.

Mr Court: They are not political operatives; they are professionals.

Mr RIPPER: So Ian Fletcher and Richard Elliott are not political operatives.

Mr Court: Ian Fletcher has a track record as a very professional public servant in a number of different jurisdictions. I do not think you would get much better.

Mr RIPPER: So he does not look after the Government's political interests.

Mr Court: I will not interject in future.

Mr RIPPER: That would be wise.

The Opposition is concerned that the status and independence of the Native Title Commission is not sufficiently protected in this Bill. It is concerned that it will not be a judicial body but more an administrative unit susceptible to political influence. It is also concerned about the way in which ministers can overturn the commission's decisions. The Committee has already determined that the grounds on which the minister can overturn a commission recommendation are extraordinarily broad. In making a decision to overturn a recommendation the minister is not making a quasi- judicial decision; he is making a political decision. If the minister can make such a political decision, it must be subjected to a political counterbalance; that is, the possibility of disallowance by either House of Parliament.

Mr COURT: It was the Opposition's mate Paul Keating who introduced the ability to overrule. There is no way he would have put forward this amendment. The Opposition is going through the motions with this amendment and it knows that it would make the legislation unworkable. Members opposite want all decisions made by the minister that overrule the commission's determinations to be disallowable by either House of State Parliament, and that disallowance would have to be gazetted and published in the newspaper. As I said, there is no such requirement in the Native Title Act, which was introduced by the former federal Labor Government. The proposal is unprecedented in this regard and certainly is unacceptable to the Government. It would result in incredible uncertainty and add months to the process. It would make a mockery of the whole reason the Opposition is including this as part of the process. As I said, members opposite are going through the motions. If they were in government they would not bring it within 10 miles of this Parliament.

Mr RIPPER: The Premier could always put us to the test and see what happens in a couple of years when he is in opposition and we are in government.

Mr Court: I spent 10 miserable years in opposition.

Mr RIPPER: The Premier will be well experienced when it comes around next time.

I will restate the argument. If we had a Native Title Commission that had status and independence and it made a determination rather than a recommendation, if the minister were not making a defacto political decision to overturn a commission decision and if a minister very rarely made a decision to dispense with the commission's recommendations, we might then say we do not really need this additional check and balance. However, the Government has deliberately chosen to use "recommendation" instead of "determination" in respect of decisions of the Native Title Commission under the part 3 consultation procedures. The Opposition cannot determine from the Government's answers whether that is a semantic game designed to satisfy conflicting federal and state constituencies or whether it has some legal impact on the way these part 3 procedures work. In addition, the grounds on which the minister can make a decision to overturn the commission's recommendation are very broad - to use the Premier's own description. Those grounds are so broad that a judicial review of the minister's decision will not be capable of determining that the minister has not acted in the State's interests. A judicial review might be able to focus on deficiencies in the process by which the minister has made the decision, but I am unsure whether a judge will be able to say that the minister did not make a decision that was in the interests of the State. That is more a political than a judicial decision.

Given all those issues - the recommendation, the broad powers given to a minister to overturn the recommendations and the political nature of the minister's decision - the Opposition believes there should be a political counterbalance or check on the minister's powers. Otherwise, we might have a situation in which the Minister for Mines or the Minister for Lands is making decisions on what acts could be undertaken on leasehold land involving native title interests. The Opposition does not believe that it should be a political decision made by a Minister for Mines or a Minister for Lands.

Mr Court: Do you think they should just take their pay and go home every day?

Mr RIPPER: No. The Minister for Mines and the Minister for Lands have important decisions to make; however, we do not want them to be the arbitrators of the approval of future acts on land which might be subject to native title.

Mr Court: You don't mind a Labor Government doing it, but you don't like a coalition Government doing it.

Mr RIPPER: Naturally, we would trust a Labor Government more than we would trust a coalition Government! The principle applies to both sides of politics. If a Bill is structured in the way this one is, effectively political decisions are being made by the minister. We believe those decisions should be subject to a political check. If the Premier can demonstrate to us that the commission will have the status, independence and judicial nature that it should, and that on a regular and

political basis the minister will not be enthusiastically overturning the recommendations of the Native Title Commission, the Premier might have an argument to dispense with this amendment we have moved. So far, he has not been able to demonstrate those things to our satisfaction. We want to continue with this amendment because of the other deficiencies in the legislation.

Mr CARPENTER: I am inclined to go some way towards agreeing with the Premier that this is a rather unusual clause; however, unusual times call for unusual measures. The whole concept embodied in clauses 3.46 and 3.47 is a product of the history and attitude of both the Government and the Premier towards native title issues. I will put it as mildly as to say that, in relation to native title, there is a lack of confidence in the goodwill and good faith that might flow from the Government.

Mr Court: Who has been telling you that story?

Mr CARPENTER: I am a great student of human nature and I have been watching the reaction of the Government to native title. Those who are most intimately involved in the debate and who have the most to lose - the indigenous groups - have a fairly strong lack of confidence in the amount of good faith that has come from the Government in relation to native title. There is a lack of confidence and belief that the Government will act in good faith and do the right thing. We have discussed previously trying to push the Government to a position of reasonableness, rather than one which is rooted in its beliefs and anger about the whole native title issue. There has been a reaction to the scepticism about the structure of this legislation. Basically it allows the minister to override the commission's recommendations on a very broad basis of reason; that is, if it is in the interests of the State. I know that is taken out of the Native Title Act, but given the background from which it emerges, it is perfectly understandable that native title claimants and native title holders would like to see these two clauses embodied in the legislation, if only as a form of insurance and protection that the Government will be held accountable and will act in good faith.

Listening to the Premier's words tonight, I also wonder what is the problem if we are to take him at his word. During the debate on a couple of earlier clauses, the Premier said that the minister would override decisions only very rarely, in very unusual or extraordinary circumstances. We are not talking about - to take the Premier at his word - a daily or weekly situation whereby ministerial decisions are rolled up to the Parliament, and the Parliament looks at overriding them. We are talking about very unusual circumstances. He is talking about a House of the Parliament acting against the best interests of the State. The Premier is saying that the members of Parliament in the upper House - assuming the Government has a working majority in the lower House - would wilfully act against the best interests of this State. Political consequences would arise from that sort of action. I think the Premier's old mate, the late Paddy O'Brien, were he still alive today, would probably give broad support to this notion that the Parliament should reign supreme and that the decisions of government should be brought before the Parliament. From his point of view there would be no problem about these two clauses which allow the Parliament to exercise its democratic function - to hold the Government in check and be accountable. I put the ball back in the Premier's court. Had the history of this debate and the Government's attitude been different, this clause never would have seen the light of day. This is a manifestation of the Premier's attitude towards native title. Some groups in the community want these clauses in the Bill as a form of insurance. That is why they are there.

Dr GALLOP: In arguing for this clause, it is important that we put it in the context of the current legislation. The member for Belmont said that in a different context and with different clauses in the Bill, we may reconsider this issue. Let us just look at the Bill as it is constituted and as the Government has presented it, and note what the minister is doing. Under this legislation, the role of the Native Title Commission is to make recommendations. Those recommendations can be overruled by a minister. Let us look at the criteria the minister can use to overrule a recommendation of the Native Title Commission. Clause 3.43 states -

> The responsible Minister may only make a determination . . . on the ground that it is in the interests of the State to do so.

It goes on -

> **"in the interests of the State"** includes -
>
> (a) for the social or economic benefit of the State . . . and
>
> (b) in the interests of the relevant region or locality in the State.

The Native Title Commission will be looking at all of the issues related to native title; at whether the native title interests have been properly protected and due process has been followed. All of those questions which we debated earlier tonight relate to the native title rights issue. Under this Government's legislation a completely new set of criteria is brought in from a different area "in the interests of the State". We are now seeing the minister making a judgment that "in the interests of the State", he or she will make a determination to overrule the recommendations that come from the Native Title Commission. This issue can be looked at in terms of parliamentary disallowance.

Whether something is in the interests of the State is a political question - a question for judgment by those who are involved

in politics. Whether an act infringes upon a native title right or interest and what we might need to do to minimise that impact are the sorts of considerations the commission will undertake. Under this clause, the minister is looking solely at the interests of the State. If the minister is to be given the power to interpret the interests of the State, we must have a close look at enabling the Parliament to disallow that. Ultimately, the Executive is being armed with the power to overrule a properly constituted commission that is making recommendations about property rights. The minister will be able to overrule that recommendation by a determination on the basis of what the Government regards as the State's interest. That is the classic situation in which parliamentary disallowance will apply. Let us look at parliamentary disallowance. It applies in many areas. Regulations are being disallowed all the time. They are being considered by the Joint Standing Committee on Delegated Legislation and members of Parliament can move motions for disallowance. There is the whole question of state agreements. These are crucial documents for the future of the State whereby the Government and a private developer enters into a contractual arrangement; the contract stands; however, it is incorporated in a state agreement and goes through both Houses of the Parliament. At any time either House can reject that state agreement. This clause deals with the classic case study of an executive state-based decision by a minister that does require the scrutiny of the Parliament. As the member for Belmont and I said, if we were dealing with a different set of circumstances relating to the commission and the way it operates, we might have a different view of this. However, the Premier must understand that the grounds upon which the determination can be made - that is, in the interests of the State - are the classic grounds that should provide for a disallowance.

Mr COURT: What academic gobbledegook! The Opposition is putting forward a most extraordinary argument. It is saying that if it were a Labor Government this provision would not be included. However, we have a coalition Government and it has a different attitude on some of these things. We are legislating for Governments regardless of their political persuasion. Fancy getting up in this place and saying, "If it were a Labor Government -

Dr Gallop: When did I say that?

Mr COURT: That is the whole thrust of the argument of the Leader and Deputy Leader of the Opposition.

Dr Gallop: I can assure you that that is not the thrust of our argument.

Mr COURT: That is exactly what members opposite are saying. The Federal Government brought in these provisions. There is no way that it would allow a disallowance. There is no point in having the overrule provision if there is a provision for disallowance.

Dr Gallop: Why?

Mr COURT: It would be totally ineffective. It would add months and more uncertainty to the process. As I said at the beginning of this debate, the Opposition is not serious about this amendment. It would not bring this amendment within 10 miles of Parliament if it were in government. However, it is nonsense for the Opposition to say that if it were a Labor Party in government it would be all right, or that because it does not like the overall operations of the legislation, it must have this safeguard in place.

Mr RIPPER: The Premier and I had a flippant exchange in which I said I would have more confidence in a Labor Government. However, I am moving the amendment not because we have a coalition Government, but because of the weaknesses in the Premier's Bill. As I said, if we had a native title commission with more status and independence; if we had more confidence that it would make determinations and not recommendations; if the grounds for overturning these determinations were not as broad as they are; if we did not know that the present State Government in negotiations with the Federal Government expressed the view that the way these matters should be dealt with is by way of recommendation and decision by mines ministers - if all of those things did not apply - we might not be as enthusiastic about this amendment. However, those things do apply and there is a risk that under this legislation Mines ministers will be making political decisions on native title matters. If Mines ministers are to make political decisions on native title matters, the Opposition believes that the Parliament should provide a check on those decisions. That is the reason for moving this amendment. The Premier can assert what he likes about making legislation for both sides of politics. We agree with him: We must make legislation for both sides of politics. If he were to support this amendment, in government we would have to live with it just as he would have to live with it. However, he will not support this amendment.

Mr Court: And you will breathe a sigh of relief.

Mr RIPPER: If the Premier thinks we will breathe a sigh of relief, he should support the amendment and subject us to the same discipline, because in two years' time we will be running this piece of legislation and trying to make it work. Therefore, the Premier can apply the same discipline to us simply by voting for my amendment.

Mr Court: When you get back into government, and in years to come you will -

Mr RIPPER: Two years to come.

Mr Court: The first thing I will want to see is your first time management motion. You have as much heart in this amendment as you have in opposing a time management motion.

Mr RIPPER: I have given more speeches opposed to time management in this House than anyone else, and I maintain my view on that issue.

I return to the amendment before the House. We could be in a different situation in which there was more confidence in the independence and status of a native title commission and more confidence in the quasi-judicial nature of its operations and decisions. Regrettably, we are not in that position. We are in a position in which people fear that Mines and Lands ministers will make many decisions on these matters on a political basis. Given the way that this Government has approached the issue, there must be an additional check in the system. That is what I propose. I am not suggesting - neither would I be supporting - wholesale dislocation of the system. The mere existence of this type of check will give mines and lands ministers great pause for thought and would act to restrict the number of decisions that they would make to overrule determinations of the Native Title Commission and therefore bolster the status and independence of the Native Title Commission. I do not expect that many of these determinations will be disallowed. However, the prospect that it might would keep everyone else in the system honest. Unfortunately, the way the Premier's legislation is designed does not give us confidence that people will operate it in good faith.

Mr CARPENTER: I said that unusual times call for unusual measures. The piece of legislation that we are debating, for a start, is subject to disallowance from the Senate, the upper House of the Federal Parliament. The federal minister can override it. This is an unusual piece of legislation to deal with unusual circumstances with which the State must grapple. Therefore, we are in waters that are not normally traversed. For that reason there are clauses, additions and inclusions in this legislation that one might not find in the ordinary run of the mill piece of legislation to deal with, for instance, a dog Act or a cat Act. The other thing that is worth bearing in mind, to underline the position I mentioned earlier, is attitude. We are considering the circumstance whereby a minister can overrule recommendations and determinations of the Native Title Commission if that minister, and presumably the Government that he represents, believes it is in the interests of the State. I point out that it was this Government's belief that it was in the interests of the State to totally extinguish native title rights.

Mr Court: Keep going.

Mr CARPENTER: It is a fact; the Premier cannot walk away from it. That is what the Government sought to do. Therefore, of course, indigenous groups are concerned about the prospect of ministerial override on the broad requirement that the override be in the interests of the State. If the Government has an attitude that the very existence of native title is against the interests of the State, of course the people who have an interest in native title will be concerned. Therefore, there is a very strong lobby from those groups to have these clauses included. That is perfectly understandable. If one looks at the construction of the Government's legislation, their fears are probably confirmed. The Government has not taken the opportunity of setting up a transparently independent authority, a Native Title Commission, which is one step removed from government; the Government is setting up a commission which, at least in part of its operations, seems to be very much under the umbrella of direct government oversight. That is exactly why people who have a vested interest in native title as claimants or potential native title holders do not have confidence that they will be treated fairly. I understand why they want clauses such as this, and that is why those clauses are there.

New clauses put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Dr Edwards	Mr Kobelke	Mr Ripper
Mr Bridge	Dr Gallop	Mr McGinty	Ms Warnock
Mr Brown	Mr Graham	Mr McGowan	Mr Cunningham *(Teller)*
Mr Carpenter	Mr Grill	Ms McHale	

Noes (25)

Mr Ainsworth	Dr Hames	Mr MacLean	Mr Pendal
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr Masters	Mr Shave
Mr Board	Mrs Holmes	Mr McNee	Mr Trenorden
Dr Constable	Mr House	Mr Minson	Mr Tubby
Mr Court	Mr Johnson	Mr Omodei	Mr Wiese
Mr Cowan	Mr Kierath	Mrs Parker	Mr Osborne *(Teller)*
Mr Day			

Pairs

Ms MacTiernan	Mrs Edwardes
Mr Thomas	Mr Sweetman
Mr Riebeling	Mrs van de Klashorst
Mrs Roberts	Mr Marshall
Mr Marlborough	Mr Nicholls

New clauses thus negatived.

Clause 3.46 put and passed.

Clause 3.47: Form and contents of application -

Mr RIPPER: I seek an assurance from the Premier that efforts will be made to minimise the red tape from the point of view of both proponents and native title parties. My understanding is that there is considerable potential for paperwork connected with all of these processes. It would be unfortunate if regulations prescribing the form and content of applications were unnecessarily bureaucratic and onerous.

Mr COURT: I would love to be able to say that. Of course, we do everything we can to make it simple, but, unfortunately, because so many complexities are in the legislation, I would be hypocritical if I said that no red tape was involved. It is probably the worst example of red tape that I have seen.

Mr RIPPER: Will there be any process of consultation over the drafting of the regulations which are referred to in various clauses of this Bill so that perhaps native title parties and proponents can have their say on what paperwork they might be required to submit under this legislation?

Mr Court: Yes, there will be.

Clause put and passed.

Clause 3.48 put and passed.

New clause 3.49 -

Mr RIPPER: I move -

Page 30, after line 19 - To insert the following new clause -

3.49. Application fee may be waived

The Executive Director may waive payment of whole or part of a fee payable under section 3.48 where -

(a) having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay the fee, in the Executive Director's opinion, payment of the fee would cause financial hardship to the person; or

(b) for any other reason the Executive Director considers appropriate to do so.

Where there are circumstances amounting to financial hardship or where there are other appropriate reasons to do so, this new clause would allow the executive director to waive any fee that might be payable under clause 3.48, which we have just passed. This is a useful addition to the legislation and a useful discretion for the executive director of the Native Title Commission. I believe that the Government may be willing to support this amendment, and rather than delay the Chamber with further argument, I will test that assumption before I proceed.

Mr COURT: On the condition it goes to the vote quickly, we will support it.

New clause put and passed.

Clause 3.49: Judicial Review -

Mr COURT: I move -

Page 30, line 20 -

The CHAIRMAN: It will be necessary to put the question, and for the Chamber to vote against the clause, before the Premier can move his amendment.

Mr RIPPER: There has been some consideration of the need for a test vote, in view of the fact that both the Government and the Opposition have amendments with regard to judicial review. Our advisers have considered the Government's judicial review amendments, and we are happy to support them, which will remove the requirement to conduct a test vote and to mess around with those difficult procedures.

Clause put and negatived.

New clauses 3.49 - 3.54 -

Mr COURT: I move -

Page 30, line 20 to page 31, line 13 - To insert the following new clauses -

Division 8 - Judicial Review

3.49. Application for review

(1) A consultation party in relation to a Part 3 act may apply to the Supreme Court for a review of a decision to which this section applies.

(2) The decisions referred to are -

(a) a dismissal under section 3.31 of an objection to the doing of the act;

(b) a recommendation of the Commission under section 3.34 (1) (a) or (b) in respect of the act; and

(c) a determination of the responsible Minister under section 3.40 (1) that the act -

(i) may be done; or

(ii) may be done subject to conditions.

3.50. Time limit for application

An application for review must be made not later than 28 days after the day on which -

(a) notice of the dismissal of the objection is given to the applicant;

(b) a copy of the recommendation is given to the applicant under section 3.37; or

(c) a copy of the determination is given to the applicant under section 3.40 (3),

as the case may be.

3.51 Procedure

The manner of making the application and other matters relating to the proceedings are to be as prescribed by rules of court.

3.52 Grounds on which application may be made

(1) An application for review may only be made on a ground or grounds that would support an application for a remedy of -

(a) injunction;

(b) declaratory judgment; or

(c) an order in the nature of a prerogative writ.

(2) The application is not required to specify the kind of remedy that is sought but is taken to be an application for the grant of such of the remedies referred to in subsection (1) as the Court considers appropriate in the circumstances.

3.53 Powers of Court

On the making of an application for review the Court may grant such relief as it considers appropriate in the circumstances, including relief by way of any of the remedies referred to in section 3.52 (1).

3.54 Effect on other remedies

This Division displaces, in respect of a decision to which it applies, the right of a consultation party to apply in other proceedings for relief of a kind that is available under this Division.

I said when summing up the second reading debate that we do not believe it is necessary for the judicial review to be spelt out in the legislation in this way, because that matter is quite adequately covered. The Commonwealth had wanted it to be included in this way, and the Opposition has stated that it is prepared to support this amendment, but will move a new clause 3.55 at the end of this new division with regard to an extension of time by which an appeal may be instituted. We believe that the amendment will not alter the way in which judicial review will be available and work, and we have no difficulty with putting it in this format.

Mr RIPPER: One of the requirements of section 34A of the Native Title Act, which governs what state and territory alternative provisions are satisfactory, is that the alternative state and territory provisions must provide for judicial review of the decision to do the act. In our view, the original Bill had a most inadequate judicial review clause, which was just a declaration that for the purposes of section 43 of the NTA, nothing in this Act is to be read as preventing the judicial review of a recommendation of the commission or a determination of the responsible minister. We did not believe that was adequate to meet the requirements of the federal legislation, so we drafted our own judicial review procedures, on advice from people who are experienced in these matters. Clearly, the Commonwealth Government reached the same conclusion as the State Opposition about the inadequacies of the State Government's Bill, and the State Government has been in receipt of submissions from the Commonwealth Government to place an expanded judicial review section in the Bill. Consequently, the bundle of late amendments which the Premier gave us included extended judicial review provisions. We have examined the extended judicial review provisions proposed by the Government and compared them with those drafted for the Opposition. We have found few differences in essence between the two proposals. Therefore, we are prepared to support the government amendment for judicial review. However, there is one difference, and we intend to move an amendment to the government amendment in the hope of having that matter remedied. The last part of the judicial review procedures under our amendments provided for an extension of time by which an appeal may be instituted. I move -

That the amendment be amended by adding the following new clause -

3.55 Extension of time by which appeal may be instituted

Where, upon the application of a party before the date by which an appeal may be instituted under this Division, the Court is satisfied that exceptional circumstances so require, the Court may fix a later date by which such appeal may be instituted and give such related directions as the Court thinks fit.

This is a complicated piece of legislation, and it contains a number of time limits. People who live in remote communities, who travel on cultural business and who may be isolated by floods and bad roads, may be subject to the provisions of this legislation, and their interests may be vitally affected by an act proposed to be conducted on land which concerns them. It is possible that the combination of the time lines in the legislation and the circumstances of people who may be affected by the legislation will produce exceptional circumstances which in all fairness and justice will require the court to have some ability to extend a time line. We do not imagine that the time line will be extended very often. We hope the court will take seriously the words in our amendment "exceptional circumstances", but we believe the court should have that flexibility.

Mr COURT: I appreciate what the Opposition is trying to achieve. The Government certainly supports an extension of time under the circumstances described. However, the Government is advised that it is not necessary, as this is covered by clause 3.51 which gives the court total control over the handling of applications. It is understood that the court can grant an extension of time for an applicant to institute proceedings. Therefore, it is not necessary to include the additional clause.

Mr RIPPER: Is the Premier quoting from the existing Supreme Court rules? I am not a lawyer, so I do not have direct knowledge of those rules. I am looking around for any lawyers present who might be able to help.

Mr COURT: I give an assurance that it has been explained to the Government that clause 3.51 covers the situation, and the court has total control over the applications and can grant an extension of time. The circumstances described would occur from time to time.

Amendment on the amendment put and negatived.

Mr COURT: As has been indicated by the Deputy Leader of the Opposition, in effect the Opposition and the Government have the same drafting which achieves the same end result. As I mentioned earlier, in the original legislation the Government was relying on the common law that all the listed things could be done under existing Supreme Court rules, but the Commonwealth wanted a written law. That is contained in the amendments.

New clauses put and passed.

Clause 4.1: Request for determination under section 43(1)(b) of the NTA -

Dr GALLOP: The committee now moves to part 4 of the Bill. Part 3 dealt with the alternative procedures that would apply in those areas of the State with co-existence of native title rights and other property rights. We now move to the area over which there are native title rights - for example, on vacant crown land - and we shall consider the processes to be set up to deal with future acts. I commence by pointing out that under clause 4.1, the state minister may, on behalf of the State, request the commonwealth minister to make a determination under section 43(1)(b) of the Native Title Act that the provisions of this part comply with section 43(2) of the Act. The State's legislation must comply with the federal legislation.

The amendments that will be moved by the Opposition as we proceed through this part of the Bill are designed to ensure that the right to negotiate to be established by this Parliament accords with the right to negotiate laid down in the federal

legislation. In section 43(2) of the Native Title Act it is clear what those provisions are to be. It is important when we discuss this part to recognise that this Parliament is not in a position to set standards lower than the national legislation dictates. It can improve on those standards, but not reduce them. As we go through this part of the Bill, it will be important to ensure that all the requirements laid down in section 43(2) of the Native Title Act are met. Those provisions must -

(a) contain appropriate procedures for notifying the registered native title bodies corporate, representative bodies, registered native title claimants and potential native title claimants of the act; and

(b) require negotiation in good faith among the persons concerned; and

(c) provide for mediation by a person or body to assist in settling any dispute among the persons concerned regarding the act; and

(d) give registered native title bodies corporate and registered native title claimants the right to object against the act; and

(e) make provision on similar terms to section 30 and contain time limits similar to those applicable under this Subdivision; and

(f) provide that the body determining the objection consists of, or includes, persons enrolled for at least 5 years as legal practitioners of:

(i) the High Court; or

(ii) another federal court; or

(iii) the Supreme Court of a State or Territory; and

(g) make provision to the same effect as section 39 in relation to matters that are required to be taken into account by the body determining the objection; and

(h) if the alternative provisions involve the hearing and determination of the objection by a person or body other than the NNTT or a recognised State/Territory body for the State or Territory - provide for a member of the recognised State/Territory body (if any), or of the NNTT to participate in the determination; and

(i) provide that any decision of the body determining the objection may only be overruled on grounds of State or Territory interest or of national interest; and

(j) make appropriate provision for compensation for the act, including provision for trusts on similar terms to those in subsections 36C(5), 41(3) and 42(5); and

(k) if the alternative provisions allow a Minister to make a determination in relation to the act in circumstances other than those covered in paragraph (i) - provide for those circumstances to be similar to those set out in section 36A and for requirements similar to those in sections 36B and 36C to apply.

When this reaches the minister, all those requirements must be met. When debating this part of the Bill, I urge all members to make sure we meet those requirements because otherwise this legislation will not survive the commonwealth test.

Clause put and passed.

Clauses 4.2 and 4.3 put and passed.

Clause 4.4: Acts to which this Part applies -

Mr RIPPER: There is an amendment to this clause on the Notice Paper in my name, which seeks to include the intertidal zone in the land which can be dealt with by the right-to-negotiate procedures in part 4.

I indicated earlier in the debate that this was a matter on which the Opposition had received some differing legal opinions. At this stage the Opposition will not proceed with the amendment listed on the Notice Paper. We want to clarify whether it is possible under the Native Title Act to incorporate that amendment into the legislation. The Opposition is interested in the nature of the Government's legal advice on the inclusion of the intertidal zone under the right-to-negotiate procedures. It is a matter of considerable interest to indigenous people, particularly in the north west. The intertidal zone is mostly vacant crown land that, if it were not in the intertidal zone, would be subject to right-to-negotiate procedures under part 4. Because of the definition of waters and the consequent definition of land in the NTA, the intertidal zone is not effectively land, which makes us think it is not possible to include it under the State's right-to-negotiate procedures. Nevertheless, the intertidal zone in the north west can stretch four kilometres because of the topography and the high tidal range. It is an area of land - even if it is not land for the purpose of the NTA - which is of considerable interest to indigenous people, because of their traditions of hunting and fishing over that territory. When the Opposition raised the issue with representatives of indigenous people from the north west, they were concerned to maintain their rights over the intertidal zone.

It is matter of some regret to the Opposition that it may not be possible for the intertidal zone to be subject to either the consultation procedures in part 3 or the right-to-negotiate procedures in part 4. We may have to accept the legal straitjacket which prevents our moving an amendment like this, but that does not mean we must accept that the overall situation is just or fair. Considerable vacant crown land is involved in the intertidal zone and there is significant indigenous interest in that land, and it would be unfair for events that might occur on that land not to be subject to either part 3 or part 4 procedures. I know that the Government might repeat its argument that part 5 type acts could invoke consultation procedures if they were to be foreshadowed on the intertidal zone. However, there are many other acts that might not be part 5 acts. I found the Government's performance on the legalities of this issue the other night to be confusing. We heard some conflicting and contradictory explanations on the legality of this situation. I hope that the Government might have had some time to collect its thoughts and be able to give us the benefit of its legal advice on this matter. It might be a matter we can take up when the legislation reaches the other place.

Mr COURT: I appreciate what the Deputy Leader of the Opposition has said, and he is right, it is complex. We provided advice yesterday on how this will work. If the Deputy Leader of the Opposition believes it would be helpful, he and his people can sit down with representatives from the Crown Solicitor's Office. We would be prepared to work through the issues on the intertidal zone with the Opposition. We talked about this matter today when we met with some Aboriginal representatives. It is a complex matter. It has been taken out of the right-to-negotiate regime in the federal legislation.

Mr RIPPER: I very much appreciate the Premier's remarks and his offer. The Opposition and our advisers would be delighted to discuss matters related to the intertidal zone with the Crown Solicitor's Office. It is a complex matter, and as I have indicated, the Opposition is not in a position to proceed with the amendment on the Notice Paper because we are not quite sure of its legal validity, and the debate which occurred the other night did not advance our knowledge.

Clause put and passed.

Clause 4.5: Circumstances in which act is not valid -

Mr COURT: I move -

Page 34, lines 5 to 8 - To delete the lines and substitute the following -

done, there is no native title party in relation to any part of the relevant land;

The amendment is consistent with the Native Title Act by referring to native title parties rather than registered native title claimants and native title holders. It is a small technical amendment that we also moved in a previous clause.

Mr RIPPER: The Opposition supports the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4.6 and 4.7 put and passed.

Clause 4.8: Identification of proponents in other cases -

Mr COURT: I move -

Page 36, after line 15 - To add the following -

(5) If there is any other negotiation party in relation to the act at the time when a notice is given under subsection (4) the Government party must give the copy of the notice to each other negotiation party.

This is a similar amendment to one which was moved in part 3 to ensure that where a proponent is determined by the government party, or the determination of the proponent is amended, any person who is at that time a negotiation party will be notified of the determination.

Mr RIPPER: That seems to be a fair amendment so that native title parties will be advised when the Government makes a determination that the proponent in a case has changed. Once again, I ask about the origins of this amendment. Was it suggested to the State as a result of negotiations with the Commonwealth? Have commonwealth officials said this amendment, like all the other amendments they have suggested, is necessary, otherwise the state legislation runs the risk of not being accepted as valid and consistent with the requirements of the NTA?

Mr COURT: Yes.

Mr CARPENTER: Although I accept what the Premier has said about some of these amendments being minor, amendments like the one about judicial review underscore the point that the Labor Party has been making about this legislation from the beginning; that is, the original legislation needed a considerable amount of study and improvement. This highlights the folly

of the Government and some sectors of the community - for example, the organised mining lobby rather than any particular mining company - which urged the Labor Party to accept the Government's original legislation unamended. I invite members, the Premier and anybody else who happens to stumble across a copy of *Hansard* to imagine what would have happened if the Opposition had accepted the Government's legislation and not tried to improve the legislation. The legislation would not have met the basic requirements of the federal Native Title Act and we would have been back in this Parliament next year going through the whole process again. The 30 pages of amendments delivered into the Parliament when this legislation was introduced last week underline the fact that this side of the Parliament more than the other has taken the responsible attitude to the whole question of native title. The Labor Party is the party which said that the unamended legislation would fail. It would not have met the requirements of the commonwealth Act and would have caused a continuation of the angst, division and anger some in the community feel about this issue, because it was not up to scratch. We are working through a process overseen by the Premier which affirms the position the Opposition has taken all along. We should not let this opportunity pass without remarking on that. The Opposition received an enormous amount of criticism in the community, particularly from the organised mining lobby, because of its position on native title. Every amendment to the legislation proves that our position was the responsible one and that the Government's position was not responsible. It is heartening to see that the federal government officials hold the same view as the state Opposition; that is, the legislation originally put to the Parliament required improvement. That is the effort we are genuinely involved in on this side of the Chamber.

Mr RIPPER: Due to some consultations I was required to undertake, I am not sure whether the Premier confirmed that this amendment resulted from commonwealth negotiations.

Mr Court: I got up and said yes, as I did when we dealt with the same change in part 3.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4.9: Closing date for objections -

Mr COURT: I move -

> Page 36, line 24 to page 37, line 3 - To delete the lines and substitute the following -
>
> (3) If on or before the closing date for a Part 4 act a person has -
>
> (a) filed a native title determination application under section 61 of the NTA in relation to any part of the relevant land; and
>
> (b) within 7 days of doing so, notified the Government party and any proponent in writing of that fact,
>
> the closing date for the act is, by the giving of such notice, automatically extended by one month from the date fixed under subsection (1).

This is basically a wording change. If a native title claim is lodged within the objection period but has not completed the registration test, the closing date is extended by one month.

Dr GALLOP: This amendment appears to improve the legislation but the Opposition has a problem with paragraph (b) of the amendment. My colleague, the Deputy Leader of the Opposition, will indicate what that problem is.

Mr RIPPER: The Premier's amendment provides for an automatic extension of the closing date if a new native title determination application is submitted under section 61 of the Native Title Act. As the Leader of the Opposition has pointed out, that is a valuable addition to this clause. However, the Opposition has a problem with paragraph (b). This automatic extension of the closing date is available only if the applicant has, within seven days of filing his application, notified the government party and any proponent in writing of the fact. It is unnecessary to impose this bureaucratic requirement on a native title party. This sort of requirement could easily be overlooked by someone submitting an application for a native title determination. Even if the party did not overlook the requirement, it could fail to honour it. It is a tight time line; within seven days of submitting the application for a native title determination, the party must notify the government party and any proponent of the act to which they are seeking to object. What will happen as a result of people overlooking the requirement or simply failing to meet the deadline for logistical reasons? They will not get the advantage of the one-month extension to the closing date they would receive otherwise.

I see no reason for the native title party being the party responsible for notifying the government party and the proponent in writing of the filing of its native title determination application. A party files a native title determination application with a government body. The government bodies, both state and federal, should be communicating with each other and the proponents. Why, under this amendment, is it left to the native title party to run around and do the communication work which should be done by the government authorities? This seems to be an unnecessary imposition on native title parties.

It is something which is likely to deny them the advantage that the Government purports to be providing as a result of this amendment to the original Bill.

We should not proceed with the Government's version of this amendment. I propose to move my own version of the Government's amendment. I propose to move -

Page 36, line 24 to page 37, line 3 - To delete the lines and substitute the following -

(3) If on or before the closing date for a Part 4 act a person has filed a native title determination application under section 61 of the NTA in relation to any part of the relevant land the closing date for the act is, by the giving of such notice, automatically extended by one month from the date fixed under subsection (1).

(4) Where, upon the application of a person before the closing date fixed under subsection (3), the Commission is satisfied that exceptional circumstances so require, the Commission may extend that closing date by a further period and give such related directions the Commission thinks appropriate.

I have not yet explained the second part of the amendment. We believe that there should be some flexibility for the commission when exceptional circumstances apply. I have already argued with regard to previous clauses that the combination of tight deadlines under the Bill and the circumstances of life of native title parties from time to time will produce exceptional circumstances. With regard to many of the closing dates in the legislation there should be provision when those exceptional circumstances apply for the commission or whichever other authority is dealing with the matter to extend the closing date by a further period. I say that conscious that proponents will be concerned about indefinite and unclear extensions of time. I hope that every authority will take seriously the words "exceptional circumstances" in the amendment that we propose to move.

Mr COURT: The member for Belmont has not yet moved that amendment.

Mr Ripper: I understand that I cannot move it. You have the jump on me; you are ahead of me in the Notice Paper.

Mr COURT: If the amendment that we are currently considering is passed, what will the member for Belmont do?

Mr Ripper: I will seek guidance from the Chair.

The DEPUTY CHAIRMAN (Ms McHALE): Perhaps I can clarify that point. We are dealing with the Premier's amendment. If it is accepted, it will become the substantive issue and the Opposition's amendment will lapse. There is a possible option: The member could move an amendment to the amended version, but it would need to be re-worded. The order of things is very clear.

Point of Order

Mr RIPPER: If I am to move an amendment to the Premier's amendment, must I move it before the Premier's amendment is voted on? I understand that when the Premier's amendments is accepted, if it is, I will lose my opportunity to move an amendment to his amendment because the House has already endorsed it.

The CHAIRMAN: We will deal with it in two parts. The first question is that we delete the words and then, assuming that that question is passed, the member can then seek to amend the Premier's amendment at the time that the question is that the words to be added be added.

Debate Resumed

Mr RIPPER: We will listen to the Premier's arguments, consider their merits and see whether my eloquence has managed to persuade him at all. After we have reached a conclusion on that matter, we will decide the procedural matter.

The CHAIRMAN: For clarity, we are dealing with the Premier's amendment as it appears on page 23 of the Notice Paper.

Mr COURT: There is nothing onerous about paragraph (b). The safeguard is needed because the claim is lodged in the Federal Court and there is no guarantee that the Federal Court will have notified the State of the claim within the objection period. It is quite appropriate that that provision be included.

Mr RIPPER: I am aware of the difficulty that we are dealing with state legislation and that claims are filed with the Federal Court. I understand that the Native Title Commission will take over what has been described as registry functions. I am not exactly sure how the paper will flow, but would not the Native Title Commission be made aware of applications for native title determinations that have been filed with the Federal Court?

Mr Court: We have no guarantee that that would happen. If it were handled by the commission we would know immediately; it would not be a problem.

Mr RIPPER: The Premier says that he has no guarantee. Will he not seek to have the state Native Title Commission take over?

Mr Court: Yes, but there is no guarantee that that will happen.

Mr RIPPER: If the Premier seeks to have the state Native Title Commission take over registry functions and if the transfer of registry functions is agreed to by the Commonwealth, he will have capacity to notify government parties and proponents without putting the obligation on native title parties.

Mr Court: Yes.

Mr RIPPER: Once we endorse the legislation, even if those things happen, the obligation will remain with native title parties. In future, they might miss out on the extension of the deadline and consequently they might actually miss out on getting in their objections because they must notify everyone else and do work that should really be done by the State and Federal Governments.

Mr Court: It is hardly onerous. If that provision were not included and the commission did not have the function, we would need that sort of safeguard in place. There is no guarantee that the Federal Court will notify the State of the claim.

Mr RIPPER: I agree that it is a good idea for government parties and proponents to know that someone else has a registered native title claim over the relevant land. I am concerned that the administrative requirement, by this piece of drafting, has been put onto the native title party. The Premier said that it is not onerous, but the timetable is tight - within seven days of filing the native title determination application, one must notify the government parties and any proponents. One's lawyer had better read the Act carefully. The letters will have to be drafted at the same time as the native title determination application. One would not want to let a couple of days go by and say, "Oh gee, we have not complied with clause 4.9(3)(b)", because by that time it might be too late to get the letters in the mail.

Mr Court: This is after a three-month objection period.

Mr RIPPER: I understand that it extends the three-month objection period, but one cannot object unless there is a registered native title claim. One does not have the right to object unless one has a registered native title claim. One's lawyers must get working on the preparation of the registered native title claim. It takes a while to prepare a native title claim.

Mr Court: You bet it does. All we are talking about is a letter.

Mr RIPPER: It takes quite a while to prepare a native title claim. One must go to section 61 of the Native Title Act, specify the boundaries of the land covered by the claim, specify the parcels of land that are within those boundaries but are excluded from the claim, conduct title searches, give statements about title searches that have been conducted, and specify the native title interests that are claimed. There is much work in order to satisfy the registration test - one of the changes that will prevent the multiple claims about which the Premier has been complaining. Two and a half months of that three-month period might easily go by while that was being done and one will need the month extension. That is easily overlooked and a potential burden.

The CHAIRMAN: The question is that the words to be deleted be deleted.

Amendment (words to be deleted) put and passed.

The CHAIRMAN: The question now is that the words proposed to be substituted, be substituted.

Mr RIPPER: The best way for me to proceed, having failed to convince the Premier of the merits of my argument, is to seek to amend the words the Premier proposed to place in the Bill. Therefore, I move the following amendment to the amendment moved by the Premier -

> That the amendment be amended by deleting all words after "If" and substituting the following -
>
> > on or before the closing date for a Part 4 act a person has filed a native title determination application under section 61 of the NTA in relation to any part of the relevant land the closing date for the act is, by the giving of such notice, automatically extended by one month from the date fixed under subsection (1).
> >
> > (4) Where, upon the application of a person before the closing date fixed under subsection (3), the Commission is satisfied that exceptional circumstances so require, the Commission may extend that closing date by a further period and give such related directions the Commission thinks appropriate.

I have dealt with the first part of that amendment in the remarks made earlier. I now summarise the argument. If a problem is caused by different federal and state jurisdictions, and bodies within a jurisdiction are not communicating with each other, I do not see why the citizen, in this case the native title party, or in other cases the proponent, should bear the burden of the lack of administrative coherence or communication in the government sphere. If there is a problem of communication, it should be solved by government parties, and the burden should not be borne by a proponent or native title party.

The second part of my amendment to the amendment provides for the commission, when it is satisfied that exceptional circumstances so require, to extend the closing date by a further period. I am aware that mining interests in particular fear amendments which provide for the possibility of indefinite extensions of time. I am aware that mining interests fear that time lines provided for in native title legislation can often be subject to a blowout. I am aware that mining interests require some certainty regarding when matters will be resolved. On the other side of the argument, exceptional circumstances arise from time to time.

In moving this amendment to the amendment, the Opposition relies on bodies like the commission making a strict interpretation of "exceptional circumstances". We hope that if Parliament puts words like "exceptional circumstances" into legislation, bodies like the commission will treat those words seriously and not grant extensions of time willy-nilly. The Labor Party can think of no other way to provide for the limited flexibility for circumstances confronting native title parties, while not providing unlimited flexibility and the possibility of indefinite and uncertain extension of a deadline which mining interests fear. The Opposition thinks it has struck the right balance. We rely on the integrity of the commission to read "exceptional circumstances" as members of Parliament read it; namely, those circumstances which do not occur very often. I know the Premier and his Government often preach the necessity to reduce bureaucratic requirements and cut red tape. I hope they will agree to cut red tape when it applies to a native title party as readily as when it applies to small business people.

Mr COURT: A provision in clause 4.18 covers the second part of this amendment on the amendment. We have already had this debate. I appreciate what the member is trying to do. However, the Government does not accept that what is proposed in my amendment is onerous - it is a necessary safeguard. As much as we would like to get rid of red tape, we believe it must be there.

Amendment on the amendment put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Dr Gallop	Ms MacTiernan	Mr Ripper
Mr Brown	Mr Graham	Mr Marlborough	Ms Warnock
Mr Carpenter	Mr Grill	Mr McGinty	Mr Cunningham *(Teller)*
Dr Edwards	Mr Kobelke	Mr McGowan	

Noes (27)

Mr Ainsworth	Mr Cowan	Mr Kierath	Mr Pendal
Mr Barnett	Mr Day	Mr MacLean	Mr Shave
Mr Barron-Sullivan	Dr Hames	Mr Masters	Mr Tubby
Mr Bloffwitch	Mrs Hodson-Thomas	Mr McNee	Dr Turnbull
Mr Board	Mrs Holmes	Mr Minson	Mr Wiese
Dr Constable	Mr House	Mr Omodei	Mr Osborne *(Teller)*
Mr Court	Mr Johnson	Mrs Parker	

Pairs

Mr Thomas	Mrs Edwardes
Mr Riebeling	Mr Prince
Mrs Roberts	Mrs van de Klashorst

Amendment on the amendment thus negatived.

Mr RIPPER: Following the Government's ruthless use of its numbers, we are now left with a choice of putting in the Premier's amendment or not putting it in. It has some good parts and some bad parts. On this occasion we will allow the curate's egg to go through without too much more protest. I ask the Premier whether in the spirit of reducing over-regulation and red tape the Government will keep this matter under review. Certainly if the state Native Title Commission establishes a registry function, there would be no longer any justification whatsoever for this to remain in the state's native title legislation.

Mr Court: You are right.

Amendment (words to be substituted) put and passed.

Clause, as amended, put and passed.

Clause 4.10: Notification of acts -

Mr RIPPER: It is interesting to compare the right-to-negotiate procedures with the alternative consultation procedures provided for in part 3. From time to time we see clauses in the government Bill which we sought to include in a similar

fashion in part 3, which the Government vehemently argued against when it came to part 3 but which are here in part 4. One of those is in this clause. Some members may recall an argument last night about whether native title parties should be notified by public advertisement as well as by certified mail when it came to part 3 acts. The Premier rejected an opposition amendment to that effect and further argued that additional cost and obligation was being placed on proponents by the opposition amendment. On a division, the Opposition's proposal for the public advertisement of proposed part 3 acts was rejected. Now we come to clause 4.10 which reads -

> Before a Part 4 act is done, public notice of the act must be given by advertisement -
>
> (a) in a newspaper circulating generally throughout the State; or
>
> (b) in a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph.

I know that the consultation procedures are different from the right to negotiate procedures. I know that the Premier regards surviving native title on pastoral leasehold land to be inferior to that on vacant crown land. However, there is no necessity for these petty differences in the procedures that apply under part 3 and part 4. If it is good enough for part 4, surely it is good enough for part 3. If it were included in part 3, it would not make the consultation procedures the same as the right-to-negotiate procedures. If the Government considers it fair for the purposes of notice under part 4, why is it not fair enough for the purposes of notice under part 3? Will the Premier indicate why the Government is apparently supporting these mutually contradictory positions?

Mr COURT: The federal Act did not have the requirement in it that all the relevant parties had to be notified under part 3 procedures. In this case the Federal Government has put it in because it obviously wanted a distinction between the part 3 and part 4 clauses.

Mr RIPPER: I know the Premier objects to the term "mean spirited" but this sort of approach to these sorts of clauses gives rise to the Opposition's description. The Premier is saying that it might be fair enough but the Government was not required to do it by the Native Title Act for part 3 alternative-consultation procedures, so the Government did not do it. However, it is required to do it for part 4, so it will include it. Does the Government not have any idea of justice? Could the Government not meet the minimum requirements of the NTA and go a little further to improve the service to native title parties or the recognition of their rights? It would hardly be of any great concern to the major mining companies in this State if they had to pay for advertising in *The West Australian*. I would suggest that it would not overly trouble BHP. I am surprised that the Government, even on such a small matter, has stuck rigidly to the idea that all that it must do is meet the minimum requirements of the NTA.

Dr GALLOP: This issue illustrates the general point that we have been making; that is, in respect of the part 3 alternative-provision areas the Government seems to be wanting to find ways and means by which the native title interests can be avoided or diminished in some sense. The Government does not seem to be all that concerned when it comes to the right-to-negotiate sections of the Act, although we will soon raise an issue of a blatant difference between what the federal Act says and what is in this legislation. It really raises a concern with us that whenever the consultation processes are being defined and outlined in the Government's legislation, there seems to be a real diminution of what "the right" means in that context. As we said earlier, the only difference between the alternative-consultation procedures and the right-to-negotiate procedures is that the context in which the alternative consultation occurs is much more complicated because there are different interests and, therefore, there must be a different procedure for dealing with them, whereas with vacant crown land with a continuing native title right from the past into the future, it is much more uncomplicated because in a sense there is only the State on one side and the native title interests on the other. That having been said, there seems to be no reason whatsoever that the notification process in one should be different from that in the other. The fact that the Government has put such a notification process in this clause indicates that it is important. Our view therefore is that it should have been the legislation relating to the consultation process. Will the Premier remind me of the section of the Native Title Act that lays down this requirement? Is it section 43(2)?

Section 43(2)(a), under the heading "*Requirement to be satisfied"* reads -

> contain appropriate procedures for notifying registered native title bodies corporate, representative bodies, registered native title claimants and potential native title claimants of the act;

I do not see any reference there to newspaper advertisements. It appears that on this occasion the Government has added the newspaper advertisements to the requirement in which case I wonder why it could not be done in the consultation section.

Mr COURT: Potential native title claimants require some form of public medium to contact other potential native title claimants whereas section 43A(3) reads -

> (a) notify all representative Aboriginal/Torres Strait Islander bodies . . .
>
> (b) invite submissions from them about the proposed determination;

The interpretation of "potential native title claimants" means newspaper advertisements must be used.

Mr RIPPER: This is a classic example of a State Government following the requirements of the NTA. These sections of the NTA govern notification for people under the alternative provisions. The provisions in this State's Bill are covered under part 3. As that section of the NTA does not refer to potential native title claimants, the Government has not seen fit to put a public advertisement requirement into the legislation. The Government feels it is required to put in a public advertisement requirement by the provisions of the NTA relating to the State right-to-negotiate procedures, but it does not feel it is required to put in a public advertisement requirement for notification under the part 3 consultation procedures.

Of course potential native title claimants will have an interest in part 3 land just as potential native title claimants will have an interest in part 4 land. From the point of view of justice and equity the circumstances are exactly the same. I do not know why the wording "potential native title claimants" was left out of the federal NTA and why that has apparently let the Government off the hook; nonetheless, the Government should not be operating on such a mean-spirited interpretation. The circumstances on the ground are exactly the same. The difference is that the Government can get away with not including a public advertisement requirement in part 3, but it cannot get away with not including a public advertisement requirement in part 4. The Government has chosen to get away with what it can, rather than examining equity and equal treatment of people in similar circumstances.

Dr GALLOP: This raises another point: In assessing the legislation provided by the Government the Opposition uses a three-way test which, I am sure the Chairman, who just left the Chair, would appreciate, being a member of the Rotary Club. It must meet the requirements of our Constitution as interpreted by the High Court, the Racial Discrimination Act and what the courts determine is native title. Secondly, it must meet the requirements of the commonwealth legislation, which is obvious because that is the framework under which we are operating. The third test is a political one; that is, it must provide enough incentive for people to use it, particularly potential native title holders.

We are hitting on an interesting point here. Throughout this debate the Opposition has been trying to ensure the legislation that goes through this Parliament is litigation proof. In other words we are trying to avoid the potential for it to be argued in the courts that the legislation falls short. Interestingly, as the Premier said, the federal legislation has different comments about the native title interest as it applies in an alternative consultation area from a right to negotiate area. The spirit and intention of that difference seems to me to want to diminish the right in one case.

That indicates a problem. If we have a requirement to notify people, surely that requirement will exist irrespective of whether it relates to vacant crown land or a pastoral lease. Why would the Government want to make that distinction? The only reason is that it would not want the interest in the case of the pastoral lease to be activated compared to the interest in vacant crown land. That seems to lead to the conclusion that somehow there is an intention on the part of those who framed this distinction to not allow those who have native title in the context of a pastoral lease to be fully informed of their rights and to be fully able to exercise them.

This is one of those little issues that may come into account should someone in the future say this legislation does not shape up; be it the commonwealth or state legislation that reproduces the commonwealth legislation. When we add this to other issues, it all adds up to a form of native title in respect of pastoral leases that is insufficiently substantial to meet the requirements of the law. This is just a small case study of what has occurred here all the time. As I said, the Opposition's position is that the legislation should be politically acceptable for those who must use it, acceptable in terms of the future deliberations of the Commonwealth minister and the Commonwealth Parliament and litigation proof. It is no good having legislation that will be knocked off in the courts; that does not do anyone any good. The Opposition is trying to build into the process a very clear view that notification should be as broad as possible. We lost that amendment in the part 3 debate and we find it puzzling that the amendment we moved has popped up in part 4. I can assure the Premier these are exactly the things that will put his legislation at risk should it ever be subject to a challenge.

Clause put and passed.

Clause 4.11: Further provision as to notices -

Mr COURT: I move -

Page 38, line 2 - To insert after "date" the following -

fixed under section 4.9(1) or (2)

The amendment will ensure that a notice relating to an act must specify the closing date as fixed under clause 4.9(1) or 4.9(2). It will not be possible for the notice to specify a closing date that comes about because of clause 4.9(3) as it will not be known at the time that the notice is given.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4.12: Notice may relate to 2 or more acts -

Mr RIPPER: This clause does not deal with the question of objections. Can the Premier advise the Chamber whether one objection will be satisfactory in response to a notice which relates to two or more acts, or is it a requirement of this legislation that while a notice can relate to two are more acts, potential objectors must object to each of the acts on a case-by-case basis?

Mr COURT: I am advised that one objection would be satisfactory to cover the additional acts.

Mr RIPPER: Is it the rule that if only one notice is required, only one objection is required?

Mr Court: Yes.

Clause put and passed.

Clause 4.13 put and passed.

Clause 4.14: Who gives notice -

Mr COURT: I move -

> Page 39, line 16 - To insert after "proponent" the words "or other person".

This amendment seeks to include a reference to any person required to give notice under part 4. The subclause at present refers only to proponents, but other persons may also be required to give notice.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4.15: Prescribed provisions about notice -

Mr RIPPER: I seek some information about the likely regulations that will be made under this provision. Subclause (1) of clause 4.15 states -

> The regulations may make provision about the giving of notice under this Division including how the requirement to give notice -
>
> . . .
>
> (b) may be satisfied in conjunction with the giving of notice under another written law that relates to a Part 4 act.

I seek some information as to how the Government intends to administer clause 4.15.

Mr Court: In what way?

Mr RIPPER: Which other requirements or acts will the Government be combining?

Mr COURT: It is most likely that we will use the administrative provisions under the Mining Act.

Clause put and passed.

Clause 4.16: Right to object to doing of act -

Mr COURT: I move -

> Page 40, lines 7 to 10 - To delete the lines.

This removes the provision which allows native title parties to object to an act only on the grounds that it would affect their registered native title rights and interests.

Mr RIPPER: It is incumbent upon the Premier to give us an explanation for any amendments he moves. This appears to be an amendment that the Opposition would not oppose. It appears to leave open the basis on which an objection can be lodged to the doing of an act on part 4 land. It may be an important issue, but it is a little hard to determine unless we receive some explanation from the Premier for the basis on which he has moved this amendment. Is this another amendment which has been foisted on the State by the Commonwealth? Is that why the Premier is not keen to give us any detailed explanation of its origins?

Mr COURT: The provision that was in the Bill was too restrictive and this will allow objections to be lodged to the doing of the act. It was a change that was suggested by the commonwealth officials.

Mr RIPPER: Can the Premier indicate what type of objections will now be allowed which would not have been allowed prior to the Government's agreeing to move this amendment?

Mr COURT: A native title party can lodge any objection to the doing of the act. It does not have to be on the grounds that it would affect his native title rights and interests. The previous provision was seen to be too restrictive and there will now be nothing to stop someone lodging any objection.

Mr RIPPER: I look at this amendment to clause 4.16 which seeks to delete the requirement that an objection may be lodged only on the ground that the doing of the act in relation to the relevant land would affect the person's registered native title rights and interests in relation to that land. I compare that with paragraph (b) of clause 4.17 which refers to requirements for objections -

> An objection must -
>
> (b) state the manner in which it is said that the doing of the act would affect the objector's registered native title rights and interests in relation to the relevant land;

Are we facing a potential contradiction whereby the Government has deleted the requirement that an objection can be lodged only on a particular ground, and then in the next clause requires the ground to be stated in the objection? I seek some explanation from the Premier as to the interaction of these two clauses.

Mr COURT: The first amendment the member referred to is to ensure that it is consistent with the exact words in the Native Title Act. The second amendment is basically stating that it does not have to be on the grounds that it affects a party's native title rights.

Mr CARPENTER: We are casting our eyes forward to clause 4.17 to point out an inconsistency. The rationale for the amendment to delete clause 4.16(2) is that the requirement is too narrow, and native title parties should be able to object for any reason, and it does not have to be one which is set out in subclause (2). Clause 4.17(b) states that an objection must state the manner in which the doing of the act would affect the objector's registered native title rights and interests in relation to the relevant land. To be consistent with its amendment to clause 4.16(2), which is a good amendment because it broadens the scope of possible reasons for objection, the Government should also delete clause 4.17(b), because that again narrows the reason for objection to a statement on how it affects native title rights. An inconsistency is emerging in clause 4.17 because of the amendment moved in clause 4.16.

Mr COURT: Under clause 4.16 a person has the right to lodge a general objection. Under clause 4.17 the objection must state how the act will affect native title rights, because the rest of the process is specific to the effect on native title rights.

Mr RIPPER: I am trying to clarify this apparent contradiction. Is the Premier saying that a person can lodge an objection on a variety of grounds, including the ground that the doing of the act would affect the person's native title rights and interests in relation to that land, and the person must state later on the manner in which that aspect of the objection is said to occur? However, the person can also deal with other objections not related to registered native title rights and interests without stating the manner in which those particular ill affects are said to occur?

Mr COURT: The commonwealth officials have said that subclause (2) is not consistent with the wording of the NTA. Although we do not see that it is necessary to change it, the Deputy Leader of the Opposition is quite right, and that wording is required in clause 4.17 for the processes to be consistent with those that follow. It is ludicrous that we must make the change, but that is what they want.

Mr CARPENTER: Is it conceivable that there could be reasons for objection which are separate from the capacity to enjoy native title rights which would still be considered to be legitimate objections and therefore permissible under clause 4.16? Perhaps there might be an adverse environmental or social impact as a result of a particular mining development, without that necessarily impinging on native title rights. However, the retention of clause 4.17(b) means that such an objection would be ruled invalid. I am trying to visualise circumstances in a native title area in which a mining development is proposed which, strictly speaking, does not impede native title rights, but there might be other factors which the native title claimants or title holders find objectionable, such as an environmental or social impact - for example, the construction of a single men's quarters or something of that nature against which they would be able to object under clause 4.16 as amended, but under clause 4.17 that objection would not be allowed.

Mr COURT: The process is about the impact of the act on the native title rights and interests. The Opposition has referred to a general objection to the doing of the act on, say, environmental, social or some other grounds. If it were an environmental or mining issue the objection would go through an EPA process or into the Warden's Court. This process covers the impact of the act on native title rights and interests.

Mr Carpenter: What about the impact on native title holders?

Mr COURT: If it is an impact on their rights and interests this process would cover it.

Mr CARPENTER: I do not want necessarily to focus on a theoretically adverse mining development. I am talking about those acts which would fall foul of clause 4.17, but would be allowed under clause 4.16. For example, a mining development is proposed on an area with a native title interest; the development will not inhibit the exercise of native title rights but it might have the potential to have severe adverse social effects on the Aboriginal community in the area. It is arguable whether that will impinge on native title rights but it does impinge on the rights of native title holders and claimants. This circumstance will be problematic under clause 4.17 if the requirements for objection are restricted to the manner in which the act will affect the registered native title rights and the interests in relation to the relevant land. I understand the point the Premier made that it could be dealt with through another department or regulation. However, I do not know necessarily whether that would be the case, because this is the legislation under which native title complaints and title holders have recognised tenure.

Mr COURT: Is the member for Willagee referring to an act on native title land or on land surrounding it? This clause affects only the native title area; it does not cover acts that might occur off the land.

Mr CARPENTER: I had not made that differentiation. Let us say a development is proposed for land over which there is a recognised native title right, or there are registered native title rights, and by its nature the development does not affect access to the land and does not have an adverse effect on the exercise of native title rights. It is on the land, but creates a circumstance in which there might be an adverse effect on the native title claimants. As I said before, in the development of senior men's quarters, for example, native title claimants may wish to object, but will find they are unable to do so under the Government's amendment to clause 4.16.

Mr Court: If it is an effect on the native title on the land, it is an effect on their native title rights and interests, so it would be covered if it is on the land.

Mr CARPENTER: I am heartened by that advice; however, it would be argued and contested by the proponent that such an objection would be heard.

Mr BROWN: I wonder whether the amendment by the Premier to delete part of clause 4.16 in some ways is a bit of a pea-and-thimble trick. That clause deals with the right to object to the doing of an act. As the Premier has said, subclause (2) makes it fairly restrictive in terms of the basis upon which people may object to the doing of the act and, therefore, on the advice of Commonwealth officers, the unnecessary restriction has been removed. That theoretically opens up greater scope to object. Stipulating the requirement for the objection in clause 4.17 - that is, the manner of the doing of the act - would affect the objector's native title rights and interests on the relevant land. On one hand there is seen to be a broadening of the right to object; on the other hand, under this amendment, when exercising that right to object, the requirement to do so is narrowed by clause 4.17(b). The Premier has said already that it is not clear to him or the State why that is being done. I hope it is not for fairly devious reasons on the part of the Commonwealth to create a charade that says ostensibly that the right to object is unduly restricted and, therefore, there is compliance; but that it has been made so difficult to exercise the right to object by virtue of subclause (b) that the State is still allowed to restrict by another method an opportunity for objections to be lodged.

I raise the question of the Government's bona fides in the way the amendment has been framed and on the basis of consistency. I cannot see the consistency between the deletion of clause 4.16(2) and the absence of any proposal to delete clause 4.17(b). The Premier may, or may not, wish to comment on those remarks; however, it seems to me that this is a bit of a -

Mr Court: It is not a pea-and-thimble trick.

Mr BROWN: - mirror-and-smoke trick, or whatever other terminology people may like to use to describe this creation of an image that something is being done, when in fact, by the use of clever and articulate words, the Government is ensuring that the same restriction applies.

Mr Court: That is not the case.

Mr BROWN: Perhaps the Premier could explain why that is the case.

Mr COURT: If the member had been listening, he would have heard me explain that we do not see it as necessary to make the change in clause 4.16; however, we are told by the commonwealth officials that for it to be in strict compliance with the Act, we must do that. As the member says, it does not make sense when clause 4.17 is about the impact of an act on the native title rights and the interests.

Mr Ripper: The key to it is probably the word "only".

Mr COURT: We must remember that this legislation is about native title. We are starting to wander a little, talking about what other effects might be. That is the explanation that I gave earlier.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4.17: Requirements for objections -

Mr BROWN: Given that clause 4.16(2) has been deleted, I wonder why the Premier does not propose to move an amendment to remove clause 4.17(b). Such an amendment would broaden the scope for people to have a right not just to object, but once they have exercised that right also to object in the requirements for lodging objections. Clause 4.16(1) states -

> A person that is, in relation to any part of the relevant land -
>
> (a) a registered native title body corporate; or
>
> (b) subject to subsection (3), a registered native title claimant,
>
> may lodge an objection to the doing of a Part 4 act.

That is much broader than what is in clause 4.17(b) which requires that any objector may state the manner in which it is said that the doing of the act would affect the objector's registered native title rights and interests. In clause 4.16(1) there is no obligation for a right to object to be conditioned by the fact that one must demonstrate that the issue in question will affect the registered native title rights and interests as defined under the Bill. Those rights and interests are defined under the Bill in clause 1.4 which states -

> **"registered native title rights and interests"**, in relation to a person, has the meaning given by section 30(3) of the NTA in relation to a native title party;

Section 30(3) stipulates what is meant. I could go on and quote that Act; however, it seems to me that, on reading those things, we now have a ludicrous situation: A right to object is conveyed to parties, particularly to registered native title claimants, which is conditional. When people seek to object, that objection can be entertained only by the objectors stating in the objection how it will affects the objectors' right -

Mr Court: That is what the clause is about. That is what the following processes that are set out in the Bill cover. That is what it is looking at: How it affects the native title rights and interests. Therefore, it does not need to cover anything else. That is what we are talking about, native title.

Mr BROWN: That is right, native title.

Mr Court: If the Bill is about native title, surely we have that covered?

Mr BROWN: No, because, as the Premier would know, there is a difference between the definition of a registered native title claimant in clause 4.16(1)(b) and registered native title rights and interests. The definitions are different in the Bill, are they not?

Mr Court: I do not understand your point.

Mr BROWN: I do not see consistency between the two definitions. Maybe the Premier can explain it. There is no consistency between those two definitions, unless it is related to the thimble-and-pea trick that has been decided by the commonwealth officers to try to massage this piece of legislation through the commonwealth processes.

Mr COURT: All that proposed section 4.17 requires is that someone state the manner in which the native title rights and interests are being affected. That is all it is about. There are no tricks to it. I do not get the point that the member is trying to push.

Mr RIPPER: I make a point that I have made on several other occasions on other clauses. Proposed section 4.17(c) stipulates that an objection must comply with any other requirements of the regulations as to the form or content of objections. Once again, I hope the Government, in drafting the regulations, will not impose unnecessary burdens on objectors by including overly-complicated requirements for the form and content of objections. I seek the Premier's assurance that some effort will be made to keep the paperwork as simple as possible. I also seek an assurance that the Government will be prepared to consult with Aboriginal representative bodies and others, including proponents, on these regulations.

Mr Court: I give that assurance.

Clause put and passed.

Clause 4.18: Time limit -

Mr RIPPER: I move -

Page 41, lines 1 to 9 - To delete the lines and substitute the following -

(2) Where, upon the application of a person before the closing date, the Commission is satisfied that exceptional circumstances so require the Commission may -

(a) fix a later closing date for the lodgement of objections against the act; and

(b) give such directions the Commission thinks appropriate as to the giving of notice of the date so fixed.

This amendment will transfer the power from the minister to the commission for fixing later closing dates in exceptional circumstances. We debated this matter in the part 3 procedures. I am pleased that the Government in essence has supported the Opposition's amendment. I have moved the amendment in a form which the Government has recommended. There are a couple of minor word changes. I appreciate that some people in the mining industry are concerned about indefinite extensions to closing dates in consideration of exceptional circumstances that may apply. I repeat that we, as members of Parliament, are relying on the commission and others to make the proper interpretation of the words "exceptional circumstances". In my view exceptional circumstances do not occur often. If they do occur often, the circumstances are not exceptional. I hope that the commission will debate that interpretation, which, if it does, should put to rest the fears of the mining industry.

Amendment put and passed.

Mr COURT: I move -

Page 41, after line 9, to add the following -

(3) Despite the fact that the closing date for a Part 4 act has become a later date by operation of subsection (3) of section 4.9 -

(a) only a person referred to in that subsection may lodge an objection to the doing of the act between the previous closing date and the later closing date; and

(b) for other persons the closing date for the purposes of subsection (1) continues to be the previous closing date.

This proposed subsection will ensure that when the closing date is extended because of the lodgment of a new native title claim, within the amendments to subsection 4.9 new claimants have the right to object within the extended period.

Mr RIPPER: The Opposition regards this amendment as fair. The closing date has been extended to accommodate the needs of the new native title claimant. The Premier's amendment will restrict the advantage of the later closing date to the parties to whom that extension was granted.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4.19 to 4.23 put and passed.

Clause 4.24: Negotiations -

Mr RIPPER: I point out that in part 4 we see once again the same words of which the Government was horrified when the Opposition suggested they should be included in part 3. In clause 4.24 we see the words which the Government dreads, "in good faith". The Government was not keen to see those words when we were dealing with the consultation procedures in part 3. The Government must include them in part 4, not because it likes the words "in good faith" but because it is required to do so by the provisions of the NTA. We are not going to object to the provision of the words "in good faith". If people negotiate, they should negotiate in good faith; when people consult, they should consult in good faith. We are sorry that the Government did not agree with us when we were discussing consultation in good faith. We are rather happy that it has been compelled by its coalition colleagues in Canberra to accept the words "in good faith" when it comes to the negotiation procedures under part 4.

There is one aspect of the Native Title Act, however, which the Government has not sought to include in its version of the right-to-negotiate procedures. I want to rectify that omission. I move -

Page 43, after line 17 - To add the following -

(2) Without limiting the scope of any negotiations under this section -

(a) they may, if relevant, include the possibility of including a condition that has the effect that an objector is to be entitled to payments worked out by reference to -

(i) the amount of profits made;

(ii) any income derived; or

(iii) any things produced,

by a proponent as a result of doing anything in relation to the relevant land after the act is done; and

(b) the nature and extent of the following may be taken into account -

(i) existing rights and interests that are not native title rights and interests, in relation to the relevant land;

(ii) existing use of the relevant land by persons other than the objectors; and

(iii) the practical effect of the exercise of those existing rights and interests, and that existing use, on the exercise of any registered native title rights and interests in relation to the relevant land.

I expect some opposition from the Government to this amendment. Yesterday the Premier was quite crude in his references to what he called "the money business". He seemed to regard the idea that people might seek some compensation for an act done on their land as abhorrent. We do not adopt that approach when we are dealing with other people's land. In fact, plenty of landholders in the south west have a veto on mining activity on their land, and they are able to extract considerable compensation payments from the mining industry on the condition that they do not exercise that veto.

Aboriginal people in Western Australia are the poorest people in our community. On the basis of every social indicator that one can imagine, Aboriginal people in Western Australia are the most disadvantaged people in this State. If one looks at education levels, life expectancy, death rates at particular ages, infant mortality, deaths from accidents, income levels, or whatever social indicator one chooses to look at, one sees that Aboriginal people are far and away the most disadvantaged people in our community. We should be seeking to empower Aboriginal people economically to give them a stake in the future development of this State. We can make some advance towards that through the operation of native title legislation. That is what this amendment is about.

Mr COURT: The State does not support having such a requirement.

Dr Gallop: It is "may".

Mr COURT: Yes, but we do not support having such a requirement. Under state laws, for example, royalties are the prerogative of the Crown. The Native Title Act does not require these provisions to be included in the state law and confirms the concept of crown ownership of minerals. Basically, it is an example of the Opposition wanting to elevate native title to something that is even greater than freehold. In this State the freeholders are not entitled to any share of royalties or production when mining takes place on freehold land. What the Opposition wants -

Dr Gallop: The Premier is misinterpreting the amendment.

Mr COURT: No, I am not misinterpreting it at all. How could one have an agreement in relation to royalties, for example, if that is something that is determined by the Government?

Dr Gallop: This is in John Howard's Act; this is in John Howard's legislation. Has the Premier spoken to John Howard about that?

Mr COURT: If the Opposition puts this in the Bill, there is an expectation that native title claimants could receive such benefits, and that is not, and has never been, the case.

Dr Gallop: It is in John Howard's legislation.

Mr COURT: I am saying that it is the State which owns the -

Dr Gallop: This is just a total furphy.

Mr COURT: What does the Leader of the Opposition mean that it is a total furphy? The minerals belong to the Crown, and the Crown determines what royalties will be paid.

Mr Ripper: Is the situation different in any other State in regard to crown ownership of minerals?

Mr COURT: I do not know what is the situation in all the other States. I make the point that the question of royalties is the prerogative of the Crown. Why would the Opposition want to put -

Mr Ripper: Is the Crown going to be prevented from charging royalties?

Mr COURT: No, the Crown is not prevented from doing that.

Mr Ripper: What is the problem?

Mr COURT: The Opposition is saying -

Dr Gallop: It is between the proponent and the native title holder. The State does not come into it. Where does the State come into it?

Mr COURT: What the Opposition is suggesting is that the negotiations would involve the native title claimant getting a share of royalties.

Dr Gallop: Where does it say that?

Mr COURT: The Opposition is saying "profits from the minerals".

Dr Gallop: Profits earned by the company. They will discuss those matters anyway. It is in John Howard's legislation. We have done nothing different from what he has done.

Mr COURT: I am not saying that the legislation prevents it.

Dr Gallop: Nor are we. We are saying it may happen.

Mr COURT: Why would the Opposition want to be encouraging a situation where the title would give benefits greater than that of a freehold title?

Dr GALLOP: There are certain concepts, certain phrases and certain ideas that the Premier will always respond to, a bit like Pavlov's dog. One of them is that the Crown owns all the minerals; another one is negotiation. What the Premier says means a lot to him, but it bears no relationship to what we are debating. We are debating a clause which is taken straight out of section 33 of the Native Title Act 1993. This section deals with negotiations, and it says -

> **Negotiations to include certain things**
>
> . . .
>
> (1) Without limiting the scope of any negotiations, they may, if relevant, include the possibility of including a condition that has the effect that native title parties are to be entitled to payments worked out by reference to:
>
> (a) the amount of profits made; or
>
> (b) any income derived; or
>
> (c) any things produced;
>
> by any grantee party as a result of doing anything in relation to the land or waters concerned after the act is done.

On the one side, we have the person who wants to do the act; on the other side, we have the native title interest. This section is saying that they may search for an agreement, and one of the things about which they may search for an agreement is those particular economic issues. That is all it says. The Premier knows that this is what will happen. We are talking about one person who has a property right, and another person who wants to use that property for a particular purpose. They will talk about these matters. Whether they will reach agreement about these matters we do not know, because it takes two to tango. The federal Native Title Act says they may negotiate about these matters. If it is good enough for John Howard in his federal legislation -

Mr Court: Keating put it in the legislation.

Dr GALLOP: This is John Howard's legislation.

Mr Court: Those words are in the original legislation. Get your facts straight!

Dr GALLOP: The Premier cannot tell us that this legislation is not endorsed by the Liberal Prime Minister of Australia, John Howard, because it is. It is his legislation. It has gone through the Federal Parliament.

Mr Court: It is Keating's legislation. The words that you have mentioned are the original words that were put in by Paul Keating.

Dr GALLOP: And they were never taken out. They took other things out, but they did not take out this phrase, so it is very much commonwealth legislation; and the Commonwealth Government is, if I am not mistaken, a Liberal-National coalition Government.

The Premier has an enormous hang-up about Aboriginal people negotiating about these things. He said yesterday that this was "money business". Why cannot Aboriginal people engage in money business? Are they different from us? Are they not allowed to engage in "money business"? All we are saying is that they may include these things in their negotiations, if relevant. We are not saying that they must include these things.

I will go to a practical point. From time to time this will be, in the right to negotiate situation, the basis upon which agreements will be reached. Agreements have already been reached - much paraded, excellent agreements - between mining companies and local Aboriginal people.

Mr Court: Name one!

Dr GALLOP: The Hamersley agreement, which involves education and training, and all sorts of economic factors to help the Aboriginal people in that area. Some of the income generated in that area is being converted into socially useful functions for Aboriginal people. The Premier, as always in these matters, goes for the lowest common denominator when it comes to Aboriginal people. It catches him out every time. We see it again with this Bill. What we are proposing is in the commonwealth Native Title Act 1993, as amended in 1998 by the Commonwealth Parliament, whose Government is a Liberal-National Party Government. I cannot see any reason why that clause should not be in this Bill. It does not require people to do anything. It just says they may do it with a view to reaching an agreement.

Mr COURT: It is all very well for the Leader of the Opposition to say, "This is Howard's legislation." The words to which the Leader of the Opposition referred were part of the Labor Party's original Act.

Dr Gallop: Howard did not take them out.

Mr COURT: The Leader of the Opposition should enter the real world. John Howard could hardly get anything done to change the legislation.

Dr Gallop: You do not endorse the commonwealth Bill?

Mr COURT: The Leader of the Opposition seems to want to encourage the situation where a mining company pays royalties to the Crown, and it then pays a second set of royalties to Aboriginal people. The Native Title Act says that Aboriginal people should receive fair and just compensation. The Leader of the Opposition referred to the Hamersley agreement and said it has already been done. The Hamersley agreement does not cover the amount of profit made, income derived, or things produced. That agreement covers training and employment.

Dr Gallop interjected.

The CHAIRMAN: The Leader of the Opposition will come to order!

Mr RIPPER: I am operating from a document prepared by the legal research section of the National Native Title Tribunal. That document is a consolidation of the Native Title Act 1993, and the amendments which produced the Native Title Amendment Act 1998. It can be seen from that document that the legal research section has ruled a line through omissions made by the Native Title Amendment Act 1998 and has underlined additions made by the Native Title Amendment Act 1998. Page 134 of this document refers to section 33 of the Native Title Act, which is underlined. That indicates that according to the legal research section of the National Native Title Tribunal, that section was an addition made by the Native Title Amendment Act 1998. In other words, it was an addition made by the John Howard-Brian Harradine Bill. If the Premier is so horrified at what we are proposing to do, he should be equally horrified at what John Howard and Brian Harradine did. It is clear that John Howard and Brian Harradine were prepared to accept this form of words in their Native Title Act.

The Opposition is proposing to take a section that is in the commonwealth right-to-negotiate procedures and put it into the State's version of the right-to-negotiate procedures. We are replicating in the state right-to-negotiate procedures what is already in the John Howard procedures. This is not some revolutionary move by the Labor Party. Let us look at the situation on the ground. Yes, the Crown does own the minerals under the ground, but the native title holders may well own the surface of the land which will be disturbed by the recovery of those minerals. It may be the case that the compensation for that disturbance should be worked out with regard to the value of the things produced, or the profits that will be made from the exercise. We must remember that we are talking about the poorest, most disadvantaged group in our society. We are saying that perhaps the poorest, most disadvantaged group in our society should be given some limited share in the economic development which will take place on the land which they own. There are not a lot of economic opportunities for Aboriginal people in this community, particularly for Aboriginal people in remote areas. If we want to deal with the problem of the living circumstances of Aboriginal people, we need to give them a share in the economy of this State. That would be of benefit to Aboriginal people, and it will also be of benefit to the remainder of the community. A share in the economic growth of this State will, after all, promote self-sufficiency among Aboriginal people, which is surely an aim shared by both Aboriginal and non-Aboriginal people in this community. The key point is that this is vacant crown land on which native title has most likely survived. We are talking about giving the owners of this land, who are very poor people, the opportunity of sharing in the economic development which will occur on the land which they own.

Dr GALLOP: Clause 4.24 reads -

> The negotiation parties must negotiate in good faith with a view to -
>
> (a) the objections to the doing of the act being withdrawn; or
>
> (b) obtaining the agreement of the objectors to -
>
> (i) the doing of the act; or
>
> (ii) the doing of the act subject to conditions to be complied with by any of the negotiation parties.

When the native title holder and the proponent are negotiating, does anything in clause 4.24 prevent them from talking about the issues that the member for Belmont raised? Hypothetically, the parties are at the negotiating table. The mining company may want to develop a mine on certain land and the Aboriginal people may refer to an issue they want addressed, such as a need to secure the future of their children, so they may seek to negotiate a share of the profits by having a trust set up for their education. Does anything in this legislation prevent that? If there is nothing in this Bill that prevents that from occurring, what is the Premier on about? Why does he object to our saying that the negotiations may be about these things and to having it in the state Act, just as it is in the federal Act? I take extreme exception to the Premier's misleading this Parliament in respect of my intervention on this issue by saying this clause was a hangover of the Keating legislation, when it is clear that they were additions made by the Native Title Amendment Act 1998. That demonstrates that a conscious act was made by the Parliament dominated by the coalition Government to include it. If the Federal Government did not want to put it in, it could have taken it out. If nothing in this Government's clause precludes negotiations on these issues, all I can say is that the Premier has produced no justification whatsoever tonight for opposing our amendment.

Mr RIPPER: Clause 4.46(3) reads -

> The Commission must not determine a condition under subsection (1)(b) that has the effect that an objector is to be entitled to payments worked out by reference to -
>
> (a) the amount of profits made;
>
> (b) any income derived; or
>
> (c) any things produced,
>
> by any other negotiation party as a result of doing anything in relation to the relevant land after the act is done.

If my amendment is carried, the parties may be able to negotiate for payments related to profits, income or things produced. However, should they negotiate those things - and they are not required to negotiate them - and should those negotiations fail, under this legislation no determination of the commission can enforce such a payment scheme. The Labor Party has had the opportunity available to it to move for the deletion of clause 4.46(3), which places that limit on the determinations the commission can make. We have chosen not to exercise that opportunity.

Dr Gallop: Perhaps you should point out why. That would be the imposition of a tax by government.

Mr RIPPER: Exactly. We have chosen to allow and encourage people to reach an agreement on these matters. However, we will not agree to any compulsion being placed on proponents to effectively pay a tax to native title holders which is not a tax payable to the rest of the community. The limited nature of what we are proposing should be appreciated. The similarity between what we are proposing and what John Howard has accepted in his legislation should be appreciated. If people do not get some limited share in the economic development that is occurring on their land, we must ask what native title legislation is about. If it is not about at least that, what is it about? Is it just a sophisticated and complicated form of protection of sacred sites? Is it just about allowing some hunting rights and some rights to traverse the countryside and receive compensation if those rights are lost, or is it about a little bit more than that?

I submit that the common law position is that it is about something a little bit more than that. If it is to mean anything for the lives of Aboriginal native title holders, there must be at least some encouragement for them to have a share in the economic developments that are occurring on their land. By accepting this amendment and the retention of the clause limiting commission determinations, they can have that share only by way of agreement. People will not be compelled to negotiate those matters; they will be simply allowed to negotiate those matters.

The position of native title holders should be compared with the position of the farmers in the south west who have a veto on mining. Those farmers are able to use that veto to secure generous compensation payments from mining companies which wish to pursue mineral sands projects on their land. It would be hypocritical of the Government to deny this very limited approach that the Opposition proposes, and that John Howard proposes, to allow Aboriginal native title holders a share in the economic development of their land while continuing to accept the veto that farmers have on mining activities in the south west.

Mr COURT: I already answered the question asked by the Leader of the Opposition. I said nothing prevented it.

Dr Gallop: What is the problem?

Mr COURT: I am saying that it builds up an expectation. It is not necessary to put it in legislation. The arguments put forward are interesting. Things have changed over the years. I can remember when discussions about native title were to ensure that Aboriginal people could continue to carry out their traditional land usage rights. Now the Deputy Leader of the Opposition is saying if they cannot get an economic advantage out of it they are being duded. Surely the first requirement would be to continue to have traditional land usage rights on those lands. All the Opposition now talks about is the dollar. The Government does not support the amendment.

Dr GALLOP: The Premier still has not learnt. He did not learn in 1993 when the High Court knocked him out 7:0. It is five years since that decision and he still has not learnt what native title is. It is a property right. I hope that he is reading what Justice Lee said in the Federal Court yesterday about these issues.

Mr Court: I hope you are too.

Dr GALLOP: I am. I hope he is reading what Justice Lee said this property right means. It clearly means much more than has ever entered the mind of the Premier. That is why he continues to introduce legislation that does not do the job required of it. Let us be absolutely clear about the Opposition's proposal. The Premier has acknowledged that it is not prevented in the Government's legislation and it can happen. The federal Act provides that if they wish, the negotiating parties may search for agreement and look at those issues in that search. The Opposition does not propose to add anything extra to the situation, but seeks only to provide a framework to indicate what may happen. That is perfectly reasonable and it is consistent with the federal Act. It is also consistent with the matter under discussion; that is, the right to negotiate. If the right to negotiate means the right to negotiate, it must mean the parties can negotiate about something. The Premier gives no guidelines about what that might be. The Opposition has proposed some guidelines, and I believe the amendment would strengthen the legislation.

Native title is about a number of things, including protection of rights and interests that have been exercised for many years, economic empowerment, and limiting the social impact of activities that occur on land. The Premier continually wants to restrict this. He knows, from his daily life as a member of Parliament, of the way in which property rights are now interpreted in the community. People come to members' electorate offices every day, and they may complain that a property proposed to be built next to their house will be two storeys high and it will enable the neighbours to look into their kitchen window. They say that that affects their property rights. People may complain about a change in the bus route that will mean buses pass their front door. Others may complain that a restriction has been placed in the road next to their road, which has resulted in increased traffic passing their house, and it is affecting their rights. People have a very broad and expansive concept of property rights. However, the Premier wants to restrict the native title rights and put them into a little bottle that suits his prejudices and purposes. That will not succeed as a long-term solution to this issue.

In this debate the Opposition will make sure that the committee debates the concept of native title as interpreted by the courts, as defined by the Commonwealth Parliament and as it is now understood in the community. The fact that the Government is behind the times and is dealing with a preconception that has no basis in reality is the Government's problem. I do not mind if the Government has that problem, but I do mind when its problem becomes the Parliament's problem through faulty legislation. It therefore becomes the people's problem because of the uncertain legislation. This is a very clear case study. The Opposition is proposing a reasonable amendment based on the federal Native Title Act. It does not require people to do anything, but provides that they may do these things. It is perfectly reasonable, given any understanding of native title as presented by both the courts and the Commonwealth Parliament.

Mr RIPPER: The Premier is clearly upset at the idea that economic considerations might enter into negotiations between native title parties and proponents. Clause 4.47 of this Bill, under the heading "Criteria for making determinations", states that in making a determination with respect to a part 4 act, the commission must take into account the following. It then lists all the things the commission must take into account, one of which, in paragraph (a)(iii), is the development of the social, cultural and economic structures of any of the objectors. The economic issue is contained in the Premier's own legislation. It is in the list of things that the commission must take into account when making a determination, following the failure of negotiations. The one thing the commission cannot do is make a determination for payments based on profits, incomes or things produced. If the Opposition amendment is carried, the incentive will be to negotiate and agree on those things, because if agreement cannot be reached, there is no possibility of achieving that sort of determination from the commission.

Some people may fear that outrageous demands will be made of proponents. However, if that happens, people are not negotiating in good faith. In any case, the proponent need only respond properly to those outrageous demands and, when the negotiating time has expired and no agreement has been reached, the commission will not be able to make a determination which forces the proponent to accept any arrangement at all based on profits, income or things produced. If people negotiate in bad faith by making outrageous demands, in my view the proponents have a degree of protection under the structure of the legislation.

The Opposition is not proposing an outrageous amendment. It is the John Howard legislation; it is in accordance with clause 4.47 which requires the commission to consider economic issues when making a determination. It gives some content to native title which is beyond the mere protection of hunting rights and sacred sites. That is in accordance with the common law. It would be extremely hypocritical for the Government not to support this amendment, given its tolerance towards and longstanding acceptance, over mining industry objections, of the right of veto enjoyed by farmers in the south west. Members can be assured that those farmers have used their right to negotiate, which is backed up by a veto, to great effect in securing compensation payments from mining companies in return for allowing mineral sands operations to proceed on their land.

Amendment put and a division taken with the following result -

Ayes (17)

Ms Anwyl	Dr Gallop	Mr Marlborough	Mr Ripper
Mr Bridge	Mr Graham	Mr McGinty	
Mr Brown	Mr Grill	Mr McGowan	Ms Warnock
Mr Carpenter	Mr Kobelke	Ms McHale	Mr Cunningham *(Teller)*
Dr Edwards	Ms MacTiernan		

Noes (27)

Mr Ainsworth	Mr Cowan	Mr Kierath	Mr Pendal
Mr Baker	Mr Day	Mr MacLean	Mr Shave
Mr Barnett		Mr Masters	Mr Trenorden
Mr Barron-Sullivan	Dr Hames	Mr McNee	Mr Tubby
Mr Board	Mrs Hodson-Thomas	Mr Minson	Dr Turnbull
Dr Constable	Mrs Holmes	Mr Omodei	Mr Wiese
Mr Court	Mr House	Mrs Parker	Mr Osborne *(Teller)*

Pairs

Mr Thomas	Mrs Edwardes
Mr Riebeling	Mr Prince
Mrs Roberts	Mrs van de Klashorst

Amendment thus negatived.

Clause put and passed.

Clauses 4.25 to 4.29 put and passed.

Clause 4.30: Responsible Minister may give Commission notice as to urgency -

Mr RIPPER: What processes will be followed when the responsible minister considers giving this urgency notice to the commission? Will any due process of consultation or receiving submissions take place from interested parties, or does the minister simply arrive at the decision off his own bat and plop an urgency notice on the commission?

Mr COURT: It is all spelt out in clause 4.34.

Mr RIPPER: Clause 4.34 relates to determinations under clause 4.31, not the giving of notice as to urgency under clause 4.30.

Mr COURT: Sorry, it is clause 4.32.

Mr Ripper: That relates to clause 4.31.

Mr COURT: I apologise. The member was correct. As the member has explained, an intervention can be made if there is an unreasonable delay. Does the member want to know the process that one goes through?

Mr Ripper: Yes

Mr COURT: It states -

> the responsible Minister may give a written notice to the Commission requesting it to make such a determination within the period specified in the notice.

Mr Ripper: Does the minister consult with anyone before he issues a notice of urgency, or does he simply go ahead and do it?

Mr COURT: The time periods are set out. Evidence must be able to be shown that things are not being met, so clear notice is given before such a determination would be made.

Clause put and passed.

Clauses 4.31 to 4.40 put and passed.

New clause 4.41 -

Mr RIPPER: I move -

Page 51, after line 24 - To insert the following new clause -

4.41. Either House may disallow Minister's determination

(1) Either House may, by resolution, of which resolution notice has been given at any time within 12 sitting days of such House after a copy of a determination made under section 4.31 has, in accordance with section 4.40, been laid before it, pass a resolution disallowing such determination.

(2) If either House of Parliament passes a resolution disallowing a determination made under section 4.31 the Minister shall, within 21 days of the passing of the resolution, cause notice of the disallowance to be -

(a) published in -

(i) the *Government Gazette*; and

(ii) a daily newspaper circulating generally throughout the State; and

(b) communicated in writing to the Commission.

The amendment is similar to the Opposition's amendment in part 3 regarding parliamentary disallowance of a minister's overruling of a commission recommendation. Roughly the same arguments apply to parliamentary disallowance of the minister's determination to overrule a commission determination. However, I will concede that the arguments were stronger for the part 3 consultation procedures. The part 3 consultation procedures do not have all of the procedural safeguards that are in part 4. The Government uses the word "recommendation" in its part 3 procedures, rather than "determination". The arguments for parliamentary disallowance of a ministerial override of a recommendation under part 3 were stronger than the arguments for disallowance of a ministerial override of a determination under part 4. Nevertheless, strong arguments still exist for this parliamentary disallowance.

The Opposition is not satisfied with the provisions for the status and independence of the commission. The state Native Title Commission, by its record, will have to demonstrate a degree of independence of government required before people will have full confidence in the system. If the Native Title Commission turns out to be the creature of the Government, in particular of the Ministry of the Premier and Cabinet, which people fear it might become, there will be a real need for further checks and balances in the system. The Opposition does not know how often ministers will see fit to override determinations of the commission. We do know that the grounds on which they can override those determinations are broad and that, essentially, ministers will make political judgments about what they see as being in the interests of the State. If ministers were making judicial or administrative decisions, there would not be the same grounds for urging the possibility of parliamentary disallowance. However, when ministers are making essentially political decisions on broad grounds, which mean that while the processes might be subject to judicial review, the merits might not be, the Oppositions believes there is a need for an additional check in the system. That will be provided through the amendment to provide for parliamentary disallowance of a minister's override of a commission determination.

Mr COURT: The proposal is unprecedented and is completely unacceptable to the Government, as I mentioned in debate on part 3. It would add to the uncertainty and add months to the process.

Mr CARPENTER: The amendment is in existence for the same reasons as the earlier proposal to amend part 3. Significant stakeholders in the native title debate - the indigenous groups - fear that the Government is not being evenhanded in its administration of the concept of native title and they want an insurance policy - that is, that ministerial overrides can be disallowed by either House of Parliament. Such a disallowance does not offend the concept of democracy.

I will point out the scenarios with which we are dealing here. If we compare part 3 acts which involve native title over pastoral lease with native title over vacant land, we see that very different approaches are being adopted by the Government. Under the part 3 provisions, there is no right to negotiate, simply a right to be consulted; and where vacant crown land is involved, the notification requirements are different from part 4. The State has agreed with the commonwealth position that notification should include notification in the newspaper, so that potential native title claimants may be informed of a

proposed act. However, that is denied potential native title claimants whose claim may be over a pastoral lease, because the Government refused to include a provision that would allow notification through a newspaper circulated in the area. That was based on what seemed to be a completely specious basis of cost, and a suggestion of some sort of economic support for *The West Australian*. There is also a great difference in the operation of the commission when native title rights are over land which is on a pastoral lease compared with land which is on vacant crown land. For a pastoral lease, the commission merely makes a recommendation which goes to the minister for determination, and on vacant crown land the commission is able to make determinations which are subject to override by the minister. If we consider the flow of the Government's treatment of the concept of native title and how that varies between part 3 and part 4 provisions, we arrive at this point. This amendment has been moved because indigenous groups with an interest in native title are seeking some sort of assurance that they will be treated fairly and will not be subject to pure politicisation through direction of a minister. I understand the Premier's objections to this amendment. However, if the Premier had a more open-minded view of the native title issue he would understand the need for this amendment. In fact, if the Premier had a more open-minded view of the native title issue this amendment would not be necessary.

Mr RIPPER: I am disappointed that the Government refuses to accept this amendment. We will take this matter with our package of amendments through to the other place. It may be possible that if the Government can demonstrate the integrity, status and independence of the commission and can show that we will not have wholesale overriding of the determinations of the commission, we may be given pause for thought. However, I am not saying that to indicate that the Opposition would definitely withdraw this amendment or anything like that. It may give members on this side pause for thought if the Government can demonstrate the integrity and strength of other sections of its scheme. In the absence of that demonstration so far, the Opposition believes this additional check is required in the system.

Members on this side are concerned about the possibility of political decisions being made about native title by the Minister for Lands and the Minister for Mines. We do not agree that those decisions should be made by such ministers. We are also concerned that, given this Government's attitude to native title issues, a plethora of such decisions might be made on political grounds to the detriment of native title holders. I confirm the Opposition's support for parliamentary disallowance of ministerial overriding of commission determinations. Opposition members will take the matter to the upper House and will be interested to see how the Government responds to the criticisms we have presented about the independence and status that the commission has under its scheme. If the Government cannot respond satisfactorily, the Opposition will maintain its support for parliamentary disallowance.

New clause put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Dr Gallop	Ms MacTiernan	Mr Ripper
Mr Brown	Mr Graham	Mr Marlborough	Ms Warnock
Mr Carpenter	Mr Grill	Mr McGinty	Mr Cunningham *(Teller)*
Dr Edwards	Mr Kobelke	Mr McGowan	

Noes (28)

Mr Ainsworth	Mr Court	Mr Kierath	Mr Pendal
Mr Baker	Mr Cowan	Mr MacLean	Mr Shave
Mr Barnett	Mr Day	Mr Masters	Mr Trenorden
Mr Barron-Sullivan	Dr Hames	Mr McNee	Mr Tubby
Mr Bloffwitch	Mrs Hodson-Thomas	Mr Minson	Dr Turnbull
Mr Board	Mrs Holmes	Mr Omodei	Mr Wiese
Dr Constable	Mr House	Mrs Parker	Mr Osborne *(Teller)*

Pairs

Mr Thomas	Mrs Edwardes
Mr Riebeling	Mr Prince
Mrs Roberts	Mrs van de Klashorst

New clause thus negatived.

Clause put and passed.

Clauses 4.41 to 4.54 put and passed.

Clause 4.55: Grounds on which declaration may be made -

Mr COURT: I move -

Page 61 line 8 - To insert after "State" the passage ", or in the national interest,".

The Government did not include this in the Bill because it did not think it had the constitutional power to do so. However, commonwealth officials have said that it should be included. It extends the grounds on which the responsible minister may overrule a determination of the commission to include the national interest.

Dr GALLOP: The Premier has indicated that the Commonwealth asked the Government to include this additional ground. I find this puzzling because we are dealing with state legislation. The interests of the State would be the concern of the state minister. I do not have any objections to this, but before finalising my thinking on it perhaps the Premier can indicate what is understood by "the national interest" and how it would differ from the interest of the State. I cannot see a huge difference between the two. Why has this been added?

Mr COURT: The only interpretation I can give is that what is in the State's interest may well be in the national interest. In a State like Western Australia, which has extensive development, it would often be the case that what is in the State's interest is also in the national interest.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4.56 and 4.57 put and passed.

New clauses 4.58 and 4.59 -

Mr RIPPER: I move -

Page 62, after line 7 - To insert the following new clauses -

4.58. Copy of declaration to be laid before Parliament

(1) The responsible Minister must cause a copy of a declaration under section 4.53, together with reasons for the declaration, to be laid before each House of Parliament.

(2) Subsection (1) is to be complied with as soon as is practicable after the declaration is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the declaration is made.

4.59. Either House may disallow Minister's declaration

(1) Either House may, by resolution, of which resolution notice has been given at any time within 12 sitting days of such House after a copy of a declaration made under section 4.53 has, in accordance with section 4.58, been laid before it, pass a resolution disallowing such declaration.

(2) If either House of Parliament passes a resolution disallowing a declaration made under section 4.53 the Minister shall, within 21 days of the passing of the resolution, cause notice of the disallowance to be -

(a) published in -

(i) the *Government Gazette*; and

(ii) a daily newspaper circulating generally throughout the State; and

(b) communicated in writing to the Commission.

The Opposition wishes to provide for parliamentary disallowance of a minister 's determination. I think I may have inadvertently misled the Chamber slightly with my arguments on the amendment for the previous disallowance. I argued on that occasion that the issue was one of a minister overriding a determination of the Native Title Commission. In fact, in the previous amendment the issue was about the minister making a determination when the commission had not made a determination within the allotted time. We now come to the override argument. These proposed new clauses relate to when the commission has made a determination and the minister has decided to override it. They provide for the possibility of parliamentary disallowance of the minister's decision. The arguments otherwise are fairly similar. The minister can override on very broad grounds. Essentially it is a political decision and should be subject to a political check and balance. I could repeat all of the arguments I have made in the debate on two previous amendments on this issue, but I will not. We should proceed straight to a vote unless the Premier wants to repeat the comments he made on the previous occasion as well.

Amendment put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Dr Gallop	Ms MacTiernan	Mr Ripper
Mr Brown	Mr Graham	Mr Marlborough	Ms Warnock
Mr Carpenter	Mr Grill	Mr McGinty	Mr Cunningham *(Teller)*
Dr Edwards	Mr Kobelke	Mr McGowan	

Noes (26)

Mr Ainsworth	Mr Court	Mr MacLean	Mr Pendal
Mr Baker	Mr Cowan	Mr Masters	Mr Shave
Mr Barnett	Dr Hames	Mr McNee	Mr Trenorden
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr Minson	Dr Turnbull
Mr Bloffwitch	Mrs Holmes	Mr Omodei	Mr Wiese
Mr Board	Mr House	Mrs Parker	Mr Osborne *(Teller)*
Dr Constable	Mr Kierath		

Pairs

Mr Thomas	Mrs Edwardes
Mr Riebeling	Mr Prince
Mrs Roberts	Mrs van de Klashorst

New clauses thus negatived.

Clauses 4.58 to 4.60 put and passed

New clause 4.61

Mr RIPPER: I move -

Page 62, after line 19 - To insert the following new clause -

4.61. Application fee may be waived

The Executive Director may waive payment of whole or part of a fee payable under section 4.60 where -

(a) having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay the fee, in the Executive Director's opinion, payment of the fee would cause financial hardship to the person; or

(b) for any other reason the Executive Director considers appropriate to do so.

The amendment is similar to a previous amendment that we moved which allows the executive director of the commission to waive part or whole of a fee if there are circumstances of financial hardship for the person required to pay it. The Premier has indicated that the Government is prepared to support the amendment, and we gratefully accept that support.

Mr COURT: I confirm that support.

New clause put and passed.

Clauses 5.1 and 5.2 put and passed.

Clause 5.3: Requirements to be satisfied before a Part 5 act is done -

Mr COURT: I move -

Page 64, lines 5 to 8 - To delete the lines and substitute the following -

done, there is no native title party in relation to any part of the relevant land;

The amendment is basically a terminology change which we have moved before. It is to be consistent with the NTA by referring to native title parties rather than registered native title claimants and native title holders.

Mr BROWN: Is it correct that the amendment is similar to an amendment that was moved earlier to make it consistent?

Mr Court: Yes, twice.

Mr BROWN: I recollect also that the Opposition raised no objection to the earlier amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5.4 and 5.5 put and passed.

Clause 5.6: Identification of proponents in other cases -

Mr COURT: I move -

Page 66, after line 7 - To add the following -

(5) If there is any other consultation party in relation to the act at the time when a notice is given under subsection (4) the Government party must give a copy of the notice to each other consultation party.

Again, this amendment is similar to a previous amendment to ensure that where a proponent is determined by the government party or the determination of a proponent is amended, any person who is at that time a consultation party will be notified of the determination.

Mr RIPPER: The Opposition supports the amendment. I note the manifest similarity between the parts 5 and 3 procedures. I wonder why it has been necessary to have those two different sections which in many ways are so similar. That has added to some of the confusion. We have two parts which require us to re-debate the same issues. I will not subject the Chamber to lengthy debate on issues that we have already discussed with regard to part 3, but I would be interested in the Premier's rationale for having the two different parts of the Bill given their manifest similarities.

Mr COURT: The amendment covers the alternative consultation process which is allowed for in section 43A. Part 5 puts in place procedures to satisfy the requirements of section 24MD(6)(b) of the NTA. That is the explanation that we provided yesterday.

Mr Ripper: There are enough differences between the requirements of sections 24MD and 43A to require separate sections of the Bill; is that the argument?

Mr COURT: The section 43A procedures must be approved by the Commonwealth under the arrangements, but they do not need to be approved under 24MD(6)(b).

Mr CARPENTER: I notice that section 24MD(6)(b) relates to -

. . . an approved exploration etc. act . . .

What is the difference between the proposed act that requires a separate section of legislation to deal with it? What is the difference in the future act that we are talking about?

Mr COURT: A number of the future acts have been excluded from the right-to-negotiate provisions, but some of those have been picked up under section 24MD(6)(b), and that is why we need procedures to cover them.

Mr CARPENTER: Will the Premier give us more explanation?

Mr COURT: I just said that a number of future acts have been excluded from the right-to-negotiate provisions, but some of those that have been excluded have been picked up again under section 24MD(6)(b). Does the member want examples of future acts that have been excluded?

Mr Carpenter: That would be handy.

Mr COURT: They include infrastructure projects, future acts within towns and cities and some acts in the intertidal zone.

Mr CARPENTER: These things are picked up under part 5.

Mr Court: Yes. We need to have a process in place, therefore they are picked up under part 5.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5.7 put and passed.

Clause 5.8: Notification of acts by Government party -

Mr RIPPER: I move -

Page 66, after line 24 - To add the following -

(2) Before a Part 5 act is done, public notice of the act must be given by advertisement -

(a) in a newspaper circulating generally throughout the State; or

(b) in a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph.

There will be debate on this clause as with a similar amendment in part 3 of the Act. Under clause 5.8 the Government must give notice in writing of the act to registered native title body corporates, native title claimants and representative bodies. Our amendment provides for public notice of the act to be given by advertisement. The Government has included a requirement in this Bill for public notice by way of advertisement in its part 4 procedures when it was required to do so by the Commonwealth. In part 3, where it is not required to do so by the commonwealth approval requirements, it left out the requirement for public notice by way of advertisement. In part 5, where it does not have to seek the approval of the Commonwealth, as advised by the Premier, it has again left out the requirement for public notice by advertisement. Therefore, when the Government is compelled by the Commonwealth it includes this requirement; when it is not compelled by the Commonwealth it does not include the requirement.

I have outlined before why this type of requirement needs to be included in the provisions regarding notice. The people affected by this legislation are not living on suburban blocks within 25 kilometres of the GPO. They are living in remote areas of the State which have uncertain services of all types, thanks to the Minister for Aboriginal Affairs. They are living in parts of the State where they may be subject to floods and cyclones which interrupt communications. They are also living a lifestyle which takes them away from their place of residence on cultural business. There will be many circumstances when people may not be at their home when the letter arrives, or when the letter may not arrive. Therefore, there is a need to make every effort to advise people of the possibility of future acts on land in which they have an interest. We must not forget that there are time limits in this legislation which do not go away just because there has been some foul-up in communication. A native title party cannot put up his or her hand and say, "I did not get the letter." That will not work. It is a requirement of the right to negotiate, which the Commonwealth recognised, to insert a public advertisement section into the legislation.

Mr COURT: There is an even stronger case why this amendment is not necessary this time. Our arguments are basically the same. I know the Opposition wants to give more revenues to the newspapers. There is a two month objection period under the Native Title Act provisions. Only registered native title holders and claimants can object under those provisions. There is no point in advertising publicly because these are the only people who can object and they must be notified.

Mr RIPPER: Could someone not seek to become a registered native title claimant for the purpose of lodging an objection under this legislation? The Premier should take that into consideration. It applied to the other parts. I would be interested if the Premier has an explanation why it would not apply to this part.

Mr Court: It is theoretically impossible for that to occur within two months.

Mr CARPENTER: I do not care if it is theoretically impossible. Can the Premier explain why it is impossible for that to happen?

Mr COURT: It is because of the processes that must be gone through in meeting the criteria to be either a native title holder or a native title claimant.

Mr RIPPER: I am concerned about the statement that the Premier just made. This is a matter that, although we might not be able to pursue tonight, we should have a look at for debate in the other place. The Premier is saying that there may be an interest in some land on which a part 5 act will occur; however, an objection cannot be lodged except by a registered native title claimant. It will be impossible for someone to register as a native title claimant in time to meet the deadline for lodging an objection. That is unfair to the people who might not have yet finalised a native title claim when they suddenly find there is a proposal for compulsory acquisition of the land in which they have an interest, or a proposal to issue a mining lease for infrastructure purposes on land in which they have an interest. It is not possible for us at this late hour to pursue this matter. However, in view of the Premier's alerting the Chamber to a potential injustice, we will pursue this matter in the other place.

Mr Carpenter interjected.

Mr RIPPER: The member for Willagee has pointed out that in part 4 of the Bill it is possible for potential claimants to get themselves into a legal position where they can lodge an objection. That is why provision is made in part 4 for people to be notified by public advertisement. It is regrettable that the time lines in part 5 are so tight that it will not be possible for potential native title claimants to get themselves into a legal position where they can lodge an objection. If that is the case, the Premier should alter the time lines under part 5 to make it possible.

Mr Court: We will get the Federal Government to do that because we just comply with what is in the Act.

Mr RIPPER: Once again we have the old excuse that if there is any injustice in the legislation, it does not matter as long as we are complying with the minimum requirements of the NTA. If the minimum requirements of the NTA are unjust, perhaps this Parliament could go a step further. It would not raise the prospect of the Bill being ruled invalid. It will be

ruled invalid if it falls below the minimum requirements. It will not be ruled invalid if it is slightly better than the minimum requirements for indigenous people.

Mr CARPENTER: It may be that my ignorance is the problem. However, often an individual or individuals are representative of a whole group of native title claimants. For example Eddie Mabo may have been the representative for the entire Murray Island population. Therefore, under these notification requirements, in the absence of a newspaper with wide circulation advertising these actions, does the responsibility fall upon the individuals to notify every one of the people they represent in the claim about certain proposed acts?

Mr COURT: In reality, the notification is sent to the legal representatives. In all cases, with a couple of exceptions, notices have been going to the legal representatives.

Mr CARPENTER: The prospect I am investigating is that by not allowing this amendment which would require an advertisement to be carried in a widely circulated newspaper, are we opening up the possibility of people not being informed about proposed acts because a legal representative has the responsibility for informing a large group of people? Some of those involved might have an objection to the proposed act if they knew about it, but for one reason or another, may not be informed in the absence of an advertisement circulated widely in the newspaper. We are relying on a registered claimant, or the legal representative, who may represent a large number of people, knowing all the potential objections of all the people he represents.

Mr COURT: That is clearly the job of that representative body; one has a representative body to coordinate all that takes place.

Mr Carpenter: Will it not be a more failsafe system to require an advertisement to be placed in a newspaper, so greater opportunity arises for all people concerned to be informed of proposed acts?

Mr COURT: Representative bodies inform far more efficiently than newspapers.

Amendment put and a division taken with the following result -

Ayes (14)

Ms Anwyl	Dr Gallop	Mr Marlborough	Mr Ripper
Mr Brown	Mr Graham	Mr McGinty	Ms Warnock
Mr Carpenter	Mr Grill	Mr McGowan	Mr Cunningham *(Teller)*
Dr Edwards	Mr Kobelke		

Noes (25)

Mr Ainsworth	Mr Court	Mr Kierath	Mr Pendal
Mr Baker	Mr Cowan	Mr MacLean	Mr Shave
Mr Barnett	Dr Hames	Mr Masters	Mr Trenorden
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr McNee	Dr Turnbull
Mr Bloffwitch	Mrs Holmes	Mr Minson	Mr Wiese
Mr Board	Mr House	Mr Omodei	Mr Osborne *(Teller)*
Dr Constable			

Pairs

Mr Thomas	Mr Prince
Mr Riebeling	Mrs Edwardes
Mrs Roberts	Mrs van de Klashorst

Amendment thus negatived.

Clause put and passed.

Clause 5.9 put and passed.

Clause 5.10: Notice and subsequent procedures may relate to 2 or more acts -

Mr COURT: As was done previously, the Government will oppose this clause so that it is omitted. This clause would allow the notice of an act and subsequent procedures in part 5 to apply to multiple acts. Without this clause, notices can still be issued which relate to more than one act. However, native title parties will be able to object to any single act or group of acts, as may be appropriate. It is a similar argument -

Mr Ripper: Why does the Government want to do it?

Mr COURT: As I said previously when we were debating a similar clause, we do not want to do it, but it is a request from

the Commonwealth. We basically support the Opposition's position on this. However, the Commonwealth has asked that it be done.

Mr RIPPER: We wanted to retain a similar clause in part 3. We thought it was convenient for both proponents and native title parties to be able to lodge one notice for a group of acts and object to a group of acts with one objection. This deletion of the clause seems to create a situation where both proponents and native title parties will be required to deal with unnecessary numbers of individual pieces of paper. I am bemused by the Premier's argument that the Commonwealth is requiring this clause to be deleted. I cannot see how retaining the clause will disadvantage either proponents or indigenous people; in fact, deleting the clause may disadvantage representative bodies for indigenous people. These bodies are not over-endowed with administrative resources. They are vulnerable to being snowed under by the paperwork associated with native title issues. This clause would have helped them, and the Premier argues that the Commonwealth wants it dropped. I am surprised. We will vote against the deletion and for the retention of the clause.

Clause put and passed.

Clauses 5.11 to 5.13 put and passed.

Clause 5.14: Time limit -

Mr RIPPER: I move -

> Page 69, lines 4 to 12 - To delete the lines and substitute the following -
>
> (2) Where, upon the application of a person before the closing date, the Commission is satisfied that exceptional circumstances so require the Commission may -
>
> (a) fix a later closing date for the lodgement of objections against the act; and
>
> (b) give such directions the Commission thinks appropriate as to the giving of notice of the date so fixed.

I have moved a similar amendment on two previous occasions. This is the Government's version of the Opposition's amendment. It contains two small changes to the Opposition's version. It is basically a replacement of ministerial extensions of the closing date with Native Title Commission extensions of the closing date. I imagine that the Government will support this amendment as it has supported similar amendments on previous occasions.

Mr Court: It will.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5.15 to 5.19 put and passed.

Clause 5.20: Consultation -

Mr RIPPER: The Opposition will oppose this clause, and if it is successful in opposing this clause, it will move to insert the following new words -

> **5.20. Consultation**
>
> In the case of any Part 5 act, the consultation parties must consult with each other in good faith with a view to reaching an agreement about -
>
> (a) minimizing the effect; and
>
> (b) compensating for the effect,
>
> of the act on native title rights and interests in relation to the relevant land and waters.

The proposed amendment is similar to the amendment moved by the Opposition with regard to the consultation procedures in part 3, and it is likely to produce the same sort of debate that we had with regard to that amendment. Therefore, I will repeat the argument in summary. I said during the debate on our proposed amendment to part 3 that I found it surprising that the Government would oppose a requirement that people consult in good faith, because that sends the message that the consultation does not need to be genuine and can be perfunctory. We want people to come to the table with a genuine commitment to reach an agreement. We want people to turn up to meetings, to respond to telephone calls and correspondence, to present proposals, and to present counter proposals if they disagree with the proposals of their opposite numbers. We want people to maintain sufficient consistency of viewpoint to be proper players in the consultations. On the

other hand, we also want people not to be so rigid as to completely stultify the consultations. Those are some of the requirements of consultation in good faith. We do not see why we should send the message that those requirements are not necessary; all people need to do is go through the motions; in the end, the Native Title Commission will deal with the matter; and if they cannot get a decision out of the Native Title Commission, they can go to the minister and get a ministerial override in the interests of the State.

One additional argument needs to be put with regard to this amendment. This clause deals with compulsory acquisitions, where the State acquires the land and then passes that land to a third party for use by that third party. Given that it is a compulsory acquisition, there is even more need for the consultations to occur in good faith and for those consultations to consider the need to compensate for the effect of the act on native title rights and interests with regard to the relevant lands and waters.

Dr GALLOP: We are talking about some land which has native title interests registered over it. It may be that the native title interest has been established by all the established processes. If someone wants to do something on land which happens to be on a pastoral lease for example, we are saying that there must be consultation in good faith with a view to reaching an agreement. That agreement must be about minimising the effect and receiving compensation for the effect. We contrast that with the Government's position which is to consult with one another about ways of minimising the impact of the act on registered native title rights and interests, including accessing that land or the waters or the way in which the thing they require to be done will be done.

That is a very limited form of consultation. It is limited by the fact that there is no requirement for good faith and there is no requirement that they try to come to some sort of agreement about it. What is more, it is limiting the provision to minimising rather than compensating. They are the issues that will arise. People will want to do something on the land that will have an effect on native title rights and interests and they will want to see the ways and means they can minimise that effect and the ways and means by which there can be compensation for that effect. That is reality. The Opposition has built into its definition of consultation the reality of what will happen and in so doing making it clear that there is a property right that has substance.

The Government's approach limits the consultation to looking simply at minimising the impact of the act, and by so doing places a limit on that property right. The Government is crossing the line here between a property right that has some meaning and one that does not have any meaning. As it crosses that line it jeopardises the future of this legislation. The Opposition's view is to play safe and make the consultation process litigation proof. What the Opposition is proposing will achieve that.

Mr COURT: We had this debate at great length last night. The Government's position remains exactly the same. The Opposition's amendment in effect will bring back the right to negotiate in relation to the pastoral lease lands. Opposition members are trying to equate a claim for native title with the rights of a freeholder.

Dr Gallop: A claim for native title is covered in part 4 also.

Mr COURT: The Opposition wants us to do it all under the part 4 requirements. We are trying to address the issues that have developed in relation to pastoral leases and the like. It is the very reason that amendments were moved to federal legislation and why we are trying to implement a process that will work better.

Dr GALLOP: The Premier conveniently leaves out a very important factor from his argument; that is, that the federal Native Title Act has been amended in a very important sense. A much higher threshold is applied in the registration test. As we know, concerns were expressed about the registration process in the original Act and the ease with which someone could become a registered interest. That has been toughened up significantly by the federal Native Title Act so that the people who earn the right to be consulted or to negotiate have a very good case for being given that right. It has already been covered by the federal legislation. To get over the threshold, people must establish certain things. Once they cross that threshold, they earn certain rights. However, the Western Australian Government will make it hard for people who work in WA even if they have crossed that threshold, because it is not keen on this native title business. Even though the Federal Act has given certain rights to people who cross the threshold, the Western Australian Government will not make it easy for them.

The Premier is ignoring the fact that the only people with the right of consultation under part 5 or part 3, or the right to negotiate under part 4, are interests that have had to establish themselves before the tribunal and, ultimately, the court. They must cross the threshold and that is not easy. Once people have crossed that threshold they have certain rights, one of which is to be consulted. That should be done in good faith and with a view to reaching agreement about the matters outlined. The Government has restricted that right to simply looking at ways of minimising the impact of the act. It is a real restriction. I say to the Government now, in the early hours of 26 November, that that is exactly the sort of thing that will get it into trouble in terms of providing certainty.

Clause put and a division taken with the following result -

Ayes (24)

Mr Ainsworth	Mr Court	Mr Kierath	Mr Pendal
Mr Baker	Mr Cowan	Mr MacLean	Mr Shave
Mr Barnett	Dr Hames	Mr Masters	Mr Trenorden
Mr Bloffwitch	Mrs Hodson-Thomas	Mr McNee	Dr Turnbull
Mr Board	Mrs Holmes	Mr Minson	Mr Wiese
Dr Constable	Mr House	Mr Omodei	Mr Osborne *(Teller)*

Noes (15)

Ms Anwyl	Dr Gallop	Mr Marlborough	Mr Ripper
Mr Brown	Mr Graham	Mr McGinty	Ms Warnock
Mr Carpenter	Mr Grill	Mr McGowan	Mr Cunningham *(Teller)*
Dr Edwards	Mr Kobelke	Ms McHale	

Pairs

Mrs Edwardes	Mr Riebeling
Mr Prince	Mr Thomas
Mrs van de Klashorst	Mrs Roberts

Clause thus passed.

New clause 5.21 -

Mr RIPPER: I move -

Page 71, after line 20 - To insert the following new clause -

5.21. Involvement of Commission, including mediation

(1) If any of the consultation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them on the relevant matters mentioned in section 5.20.

(2) The consultation parties must report to the Commission on progress made in the consultations at such time or times as the Commission may in writing direct.

(3) If the Commission considers that the consultation parties or any of them are not making sufficient attempts to resolve their differences the Commission is to use its best endeavours -

(a) to have the parties consult together as required by section 5.20; and

(b) to bring about -

(i) a resolution of the differences between them on the relevant matters mentioned in section 5.20 ; or

(ii) the withdrawal of the objections.

When comparing the consultation procedures under part 3 with those under part 5, we noticed that this clause which was included in part 3 was missing from part 5. There did not appear to be any good reason that it should not be included in part 5. We have therefore moved to insert into the part 5 consultation procedures more or less the same words as can be found in clause 3.26 under part 3. I think the Government has accepted our argument on this and I therefore will not delay the Committee. We are essentially providing for something that is provided in other consultation procedures included in the Bill.

Mr COURT: I have indicated to the Deputy Leader of the Opposition that we will support this mediation clause.

Dr GALLOP: I cannot resist the temptation to rise. We actually have an audience in the Chamber for the first time tonight. This is one of the first occasions which the Government has accepted one of our amendments.

Mr Court: It is not the first.

Dr GALLOP: I am not having a go at the Government. It is one of the first occasions which it has accepted an opposition amendment. I tell all government members who are listening that on this occasion the Government accepted our amendment as being a useful and important addition to this legislation.

Mr Court: I did not say that. You are stretching it now.

Dr GALLOP: It must be useful if the Premier accepted it because he has not accepted much else that we have put up. I ask all government members to consider this: We were right on this issue. I want all of them to ask the question at least in the back of their minds, whether perhaps the Opposition is right on this issue, and the amendments it is moving are necessary to make this good legislation in terms of the politics of it, in terms of the law of it, and in terms of the future court actions of it. I believe they must think about this because their Premier is leading them down the garden path again and they are not taking any interest in it. We have had a contribution to this debate from the member for Vasse, and that is all. Last week the member for Albany made so many mistakes in here that he has been benched. The Opposition welcomes the support from the Government on this clause and we invite members opposite to consider our other amendments, because if they do not they will not get this legislation through the Parliament.

Mr COURT: That last comment was interesting: If we do not support the amendments the legislation will not go through the Parliament.

Dr Gallop: Why does the Premier think we are moving them? Does he think we are playing a game ? We are not playing, and we know about the Premier's 7:0 result.

Mr COURT: It will be interesting to see what the Opposition does in the Legislative Council.

Mr RIPPER: We are pleased that the Government is supporting the Opposition's amendment. The most interesting thing about the progress of this legislation will be how the Government responds to amendments moved by the Opposition if those amendments gain support in the other place. It is not a case of our saying that the legislation will not go through unless our amendments are accepted. The Government must make a choice about whether it wants to proceed with the legislation. It might find it has a choice between state legislation that is not entirely to its liking or commonwealth legislation that is even less to its liking.

Mr Court: This legislation is not to our liking, but it is the best that we can do, and if the Opposition makes it worse it will hardly be worth pursuing.

Mr RIPPER: The Opposition will not make it worse, but better. We may be doing the Premier and the State a favour by amending it to ensure it meets the approval of the commonwealth authorities and the Senate, which will not be averse to making a semi-political judgment. I appreciate the Government's support of the amendment.

New clause put and passed.

Clauses 5.21 and 5.22 put and passed.

Clause 5.23: Commission may notify intention to hear -

Mr COURT: I move -

Page 73, lines 5 and 6 - To delete "and whether or not section 5.10 applies".

The amendment is consequent upon the omission of clause 5. 10 from the Bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5.24 to 5.28 put and passed.

Clause 5.29: Criteria for making recommendations -

Mr RIPPER: The clause deals with the criteria under which the commission can make recommendations following the failure of the consultation processes. The Opposition believes that the criteria set out in clause 5.29 are not adequate. It believes that a much longer list of considerations should be taken into account by the commission when making such a recommendation. The starting point for these considerations is the right to negotiate. If the right to negotiate fails at a national level, that results in a determination by the Native Title Tribunal. The tribunal is required to take into account the criteria listed in section 39 of the Native Title Act.

I appreciate that we are dealing with procedures flowing from section 24MD(6B) of the Native Title Act. However, what is happening should be broadly comparable with some of the requirements of the right-to-negotiate procedures. The Opposition is seeking to insert what it sought to insert in the part 3 consultation procedures; that is, a version of the section 39 NTA criteria that the Native Title Tribunal must take into account when making determinations with regard to the right to negotiate. Because we are dealing not with the full right to negotiate but only with the consultation procedures, the Opposition has not sought to move, either in this amendment or with regard to part 3, the full section 39 criteria.

On this occasion and with regard to part 3, the Opposition has moved the version of the section 39 criteria included in the Queensland legislation. The Queensland legislation was divided into three parts. The first dealt with a set of requirements

that the commission had to consider; the second included a set of requirements with regard to native title parties that the commission might consider; and the third referred to the interests of non-native title holders and a set of criteria which the commission was again obliged to consider.

Finally, the Opposition has amended this amendment, as it did with the amendment to part 3, to take account of the Government's amendment that the commission should consider ways in which the impact of an act might be minimised if it recommended that the act be done. We could have the same lengthy debate that we had on the similar amendment the Opposition moved to part 3. I do not intend that the Committee have that same lengthy debate. However, the Opposition wants to give more content and substance to the consultation procedures provided for in parts 3 and 5 of the legislation. One of the ways in which we can give more substance to those consultation procedures is by expanding the criteria considered by the Native Title Commission if the consultations fail. The criteria that will be taken into account by the commission will in a reverse fashion affect the way in which the consultations are carried out. If people know certain things will be taken into account by the commission, they will be more likely to consult about those matters.

This is the second part of a two-pronged strategy to give more substance to the consultation procedures. The first prong was the unsuccessful amendment in respect of the good faith consultations and the second prong is this amendment to expand the criteria that must be taken into account by the commission should the consultations fail. It is not revolutionary; it is a weaker version of what is in the federal Native Title Act relating to determinations following the failure of the right to negotiate. It has been endorsed by the Queensland Parliament. We believe it is necessary to add some substance, some standing, to the consultation procedures under part 5, and part 3 to which we moved similar amendments, regrettably unsuccessfully.

Mr COURT: I will correct a statement made by the Deputy Leader of the Opposition: The Queensland Government has put the procedures in place only in relation to mining. It has yet to produce legislation in relation to section 24MD(6B). Here we are covering townsite and infrastructure. We had this debate last night. Those opposite want to bring the right-to-negotiate provision into part 4 under these arrangements.

Dr Gallop: It is not those provisions.

Mr COURT: It is most of them. We are not required to put it in, and we oppose it.

Dr GALLOP: Again, I point out that the Premier continues to jeopardise the future of this legislation by not taking into account the messages that have been coming down, one after another, from the High Court of Australia, and as late as yesterday from the Federal Court, about native title. Until we come to terms with that fact in what we do in this Parliament, we will continue to get it wrong. The concept of native title must have some substance. This is one way in which we ensure that right will be protected by the processes we set up. It is a reasonable compromise with the mining interests on one side and the indigenous interests on the other. We tried to come up with a compromise that would protect the rights of both. Obviously the Government is not willing to accept that. I again warn the Government that by continually failing to come to grips with what we are talking about, it is jeopardising the future of the legislation.

Mr COURT: I move -

Page 75, lines 7 to 9 - To delete the lines and substitute the following -

Commission must -

(a) take into account the impact of the act on registered native title rights and interests of the objectors in relation to the relevant land; and

(b) unless it recommends that the act not be done, consider ways in which that impact can be minimized.

Mr RIPPER: As on the previous occasion when we dealt with these issues, we propose to support this amendment because we regard it as an improvement; however, we will then vote against the amended clause because we regard our proposed substitution for the amended clause as being very much better. We have also amended our amendment to take account of the proposed changes to this clause.

Amendment put and passed.

Clause, as amended, put and a division taken with the following result -

Ayes (24)

Mr Ainsworth	Mr Court	Mr Kierath	Mr Pendal
Mr Baker	Mr Cowan	Mr MacLean	Mr Shave
Mr Barnett	Dr Hames	Mr Masters	Mr Trenorden
Mr Bloffwitch	Mrs Hodson-Thomas	Mr McNee	Dr Turnbull
Mr Board	Mrs Holmes	Mr Minson	Mr Wiese
Dr Constable	Mr House	Mr Omodei	Mr Osborne *(Teller)*

Noes (16)

Ms Anwyl	Dr Gallop	Ms MacTiernan	Ms McHale
Mr Brown	Mr Graham	Mr Marlborough	Mr Ripper
Mr Carpenter	Mr Grill	Mr McGinty	Ms Warnock
Dr Edwards	Mr Kobelke	Mr McGowan	Mr Cunningham *(Teller)*

Pairs

Mr Prince	Mr Thomas
Mrs Edwardes	Mr Riebeling
Mrs van de Klashorst	Mrs Roberts

Clause, as amended, thus passed.

Clauses 5.30 to 5.35 put and passed.

Clause 5.36: Consultation before making of determination -

Mr RIPPER: I move -

Page 78, lines 21 to 27 - To delete the lines and substitute the following -

(2) The responsible Minister must give written notice to the Commission requiring it, by the end of the day specified in the notice, to give to -

(a) the Minister; and

(b) each consultation party,

a summary of material that has been presented to the Commission in the course of the Commission making a recommendation under section 5.28 in respect of the act concerned.

(3) The responsible Minister must give written notice to each consultation party that the Minister is considering making the determination and that each consultation party -

(a) may, by the end of the day specified in the notice, give the Minister any submission or other material that the consultation party wants the Minister to take into account in deciding whether to make the determination and, if so, its terms;

(b) if the consultation party does so, must also give each of the other consultation parties a copy of the submission or other material; and

(c) may, within 7 days after the specified day, in response to any submission or other material given by -

(i) any other consultation party; or

(ii) the Commission,

give the Minister any further submission or other material that the consultation party wants the Minister to take into account as mentioned in paragraph (a).

(4) The day specified under subsection (2) or (3) must -

(a) be the same in all of the notices given under the subsections; and

(b) be a day by which, in the responsible Minister's opinion, it is reasonable to assume that all of the notices so given -

(i) will have been received by; or

(ii) will otherwise have come to the attention of,

the persons who must be so notified.

(5) If the responsible Minister complies with this section, there is no requirement for any person to be given any further hearing before the responsible Minister makes the determination.

Clause 5.36 is in division 5 of part 5, which deals with the overruling of recommendations of the Native Title Commission by the responsible minister. The clause specifically deals with consultation before the minister makes a determination, and

it requires that the minister consult with the state minister who is principally responsible for indigenous affairs. What I propose is a more elaborate form of consultation. The minister should seek from the consultation parties summaries of materials that have been presented to the commission in the course of its consideration. The minister should notify the consultation parties that he intends to make a determination, and he should seek submissions from the consultation parties and give the consultation parties the opportunity to comment on each other's submissions. In other words, what I suggest is a version of due process which should apply before a minister makes a determination rather than a minister making a determination by any process which he or she wishes. It should be done in a way that allows all parties to have a proper chance to put their case to the minister and to comment on the strengths and weaknesses of each other's case. I will be interested in the Premier's response. I will sit down now in case there is no further need to argue this matter. If the Premier agrees, we can go straight to a vote.

Mr COURT: I am saying no. It is unnecessary because, under existing common law natural justice principles, the minister must afford the parties the opportunity to have their say and they must be able to put their case. Therefore, this is unnecessary and just not required by the Native Title Act.

Mr RIPPER: The Premier says it is not required by the Native Title Act. However, he has told us also that this section of the Bill will not be subject to commonwealth approval. Therefore, we have more freedom with this section of the Bill than we have had with other sections. Nevertheless, to say it is not required by the Native Title Act does not mean that we cannot insert it and still have the legislation deemed acceptable by the commonwealth minister and the Senate.

It is good to specify procedures that need to be followed. One should be able to read the Act and find out what is allowed and what is required to be done without hiring a lawyer to explain the principles of natural justice and due process. However, the Premier obviously prefers to leave all these matters in that mysterious arena. The Premier just wants to preserve his own legislation. He does not advance a strong argument for opposing this clause. He believes that if people know about natural justice and due process they will be able to do these things. I would need to seek some legal advice before I could verify that assertion of the Premier's because I am not certain that all these things would be required. I do not think we will get much further on this matter. I have a feeling for these matters based on long experience and I doubt that extra argument from me will produce a result on this occasion.

Mr Cowan: You have the antenna out and you are doing well.

Mr RIPPER: My political antenna is working well tonight. I urge the adoption of this amendment; however, I do so with a sinking feeling about its chances of success.

Mr BROWN: I pick up the point raised by the Premier concerning the need for consultation before the responsible minister makes a determination under division 5. The limit of the consultation that must be undertaken by the minister is set out in proposed section 5.36, which is an obligation on the responsible minister to consult with the minister who, as defined in the Bill, "is principally responsible for indigenous affairs". Indeed, there is no other obligation on the responsible minister to so consult. Is the Premier saying - I raise this rather than argue the form - that notwithstanding that clause 5.36 contains nothing else about an obligation on the minister to consult, the natural justice principles require the minister to consult? If so, how does the Premier infer that, given the statutory obligation, only a limited form of consultation is required? Could it not be argued that the limit of consultation required is that set out in clause 5.36? The common law consultation arrangement cannot be inferred given that explicit statutory provision.

Mr COURT: What is set out in clause 5.36 is over and above what the minister must do. One must consult the state minister principally responsible for indigenous affairs. However, in relation to the natural justice principles, the courts have already established that parties must have an opportunity to be heard. If they are not given a proper opportunity to be heard, the Minister will be rolled in court.

Mr BROWN: I am aware that courts have intervened in administrative matters relating to natural justice principles, and have been far more interventionist in recent years. However, the minister is overruling a recommendation of the commission in this regard. Therefore, unless the Bill contained some explicit provision, those who argued that the natural justice principles require the minister to consult more broadly would face an argument from the other side that there is no obligation to consult more broadly because that form of consultation had been conducted by the commission in any event. Therefore, parties had been heard on that matter. This law contains a specific provision relating to consultation, which is silent on the question of the minister needing to consult more broadly; therefore, notwithstanding the decision of Parliament, the courts will interpret that provision as stating that the minister is obliged to consult only with his or her colleague the minister with responsibility for indigenous affairs. One could read into that that the rules of natural justice apply. Is that the Premier's legal advice?

Mr Court: Yes, it is.

Amendment put and negatived.

Clause put and passed.

Clauses 5.37 to 5.39 put and passed.

New clauses 5.40 and 5.41 -

Mr RIPPER: I move -

Page 80, after line 7 - To insert the following new clauses -

5.40. Copy of determination to be laid before Parliament

(1) The responsible Minister must cause a copy of a determination under section 5.34, together with reasons for the determination, to be laid before each House of Parliament.

(2) Subsection (1) is to be complied with as soon as is practicable after the determination is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the determination is made.

5.41. Either House may disallow Minister's determination

(1) Either House may, by resolution, of which resolution notice has been given at any time within 12 sitting days of such House after a copy of a determination made under section 5.34 has, in accordance with section 5.40, been laid before it, pass a resolution disallowing such determination.

(2) If either House of Parliament passes a resolution disallowing a determination made under section 5.34 the Minister shall, within 21 days of the passing of the resolution, cause notice of the disallowance to be -

(a) published in -

(i) the *Government Gazette*; and

(ii) a daily newspaper circulating generally throughout the State; and

(b) communicated in writing to the Commission.

We have had this argument on three previous occasions while debating this Bill. This is yet another occasion when a minister can make a determination which overrides a recommendation of the Native Title Commission. We regard the minister as making a political decision when he or she makes that determination. We therefore think that there should be a political check and balance in the system. In our system of government, that is parliamentary disallowance. That is a brief summary of the argument which I have put on three previous occasions. We maintain that there is insufficient independence and status for the Native Title Commission. If these new clauses are not passed, there will be too much scope for broad political decisions to be made by ministers on every occasion when a ministerial override is provided for in this legislation.

Mr COURT: I will not repeat the arguments against this amendment. It is unprecedented that these new clauses be added in these circumstances. If the Labor Party were in government, it would not consider them in a blue fit.

Mr RIPPER: The Premier has never been, and will never be, a member of a Labor Cabinet. Therefore, he does not know what we would do in government.

Mr Court: I know the Labor Party will support time management.

Mr RIPPER: There is one way to test this, and that is to support our amendment, put it in the legislation, and in two years' time we will be required to live with it.

New clauses put and a division taken with the following result -

Ayes (16)

Ms Anwyl	Dr Gallop	Ms MacTiernan	Ms McHale
Mr Brown	Mr Graham	Mr Marlborough	Mr Ripper
Mr Carpenter	Mr Grill	Mr McGinty	Ms Warnock
Dr Edwards	Mr Kobelke	Mr McGowan	Mr Cunningham *(Teller)*

Noes (24)

Mr Ainsworth	Dr Constable	Mrs Holmes	Mr McNee
Mr Baker	Mr Court	Mr House	Mr Minson
Mr Barnett	Mr Cowan	Mr Kierath	Mr Omodei
Mr Bloffwitch	Dr Hames	Mr MacLean	Mr Pendal
Mr Board	Mrs Hodson-Thomas	Mr Masters	Mr Shave

Mr Trenorden	Dr Turnbull	Mr Wiese	Mr Osborne *(Teller)*

Pairs

Mr Thomas	Mr Prince
Mr Riebeling	Mrs Edwardes
Mrs Roberts	Mrs van de Klashorst

New clauses thus negatived.

Clause 5.40: Definition -

Mr RIPPER: I have one last question which interested us throughout part 5. What type of land is covered by this section? Is it only vacant crown land or pastoral leasehold land, or is the land covered by this part defined by the acts?

Mr COURT: I am advised that it can be any sort of land but, as I said earlier, it would be predominantly townsites and infrastructure.

Clause put and passed.

Clauses 5.40 to 5.42 put and passed.

Progress reported.

MEMBER FOR GIRRAWHEEN, BIRTHDAY

THE ACTING SPEAKER (Mr Osborne): Before I give the call to the Leader of the House, as it is Thursday, 26 November I believe it is the birthday of our colleague the member for Girrawheen. On behalf of all members I take this early opportunity to wish him many happy returns.

House adjourned at 12.54 am (Thursday)

QUESTIONS ON NOTICE

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

FORESTS AND FORESTRY

Timber Processing

756. Dr CONSTABLE to the Minister for the Environment:

What quantities of -

(a) hardwood; and
(b) softwood,

plantation timber can currently be processed each year in Western Australia based on existing infrastructure such as sawmills, veneer mills and wood panel processing plants?

Mrs EDWARDES replied:

(a) Quantities of plantation hardwood which could be processed by existing infrastructure are as follows :

- sawmill production is strongly affected by market demand, and the number of shifts that could be worked by any processing plant. Specific information on actual capacity is not publicly available, but current Western Australian sawn timber production from hardwood plantation timber is estimated as less than one per cent of total volume. The volume processed will increase as plantation age increases and appropriate processing infrastructure is installed.

- existing wood panel manufacturing plants in Western Australia are designed mainly for processing plantation softwoods. Using a proportion of plantation hardwoods is technically possible but is dependent on commercial considerations by the company involved.

(b) Quantities of softwood which could be processed by existing infrastructure are as follows:

- Softwood sawmills are producing close to capacity with 162,000 (provisional) cubic metres of sawn timber produced in 1997/98 from approximately 319,200 cubic metres of logs from Crown land and private land. Increased capacity to produce sawn timber is planned by the major sawmilling company.

- Medium density fibreboard (MDF) and particleboard plants are producing close to capacity, with the company advising a total annual log intake of approximately 550,000 tonnes. The intake during 1997/98 was 304,538 tonnes of industrial logs and 53,010 of woodchips from Crown land, 87,644 tonnes of industrial logs from private land, and the balance was from sawmill residue (sawdust, shavings, woodchips). Additional processing capacity is being considered by the company involved.

- There are commercial operations treating softwood fence posts with copper-chrome arsenic preservative with 18 600 tonnes from State plantations. There is no accurate data on resource supplied to treatment companies by private growers.

CARNARVON SENIOR HIGH SCHOOL, AIRCONDITIONING

898. Mr RIPPER to the Minister for Education:

(1) When will Carnarvon Senior High School be provided with air conditioning for its photographic, art, woodwork and metalwork rooms?

(2) Did the Minister tell the school that the art and photography rooms would be aircooled by the end of 1997?

(3) Are funds available in the 1998-99 capital works budget to aircool any of these rooms?

(4) If not, why not?

Mr BARNETT replied:

(1) Air-cooling equipment will be installed at the school in the early part of next year.

(2) Yes. In a letter dated 23 April 1997, the school was advised that air-cooling would be provided in the art room and the photography room by the end of 1997. At the time this statement was made, advice received from the

Education Department was that there was sufficient funding to include Carnarvon Senior High School in the air-cooling program for 1997. This proved not to be the case.

(3) Priorities for the 1998/99 air-cooling program have been assessed and I am pleased to advise that the provision of additional air-cooling at Carnarvon Senior High School has been included in the program. Arrangements have been made for a mechanical engineering consultant to carry out a detailed investigation and cost estimate for the required work.

(4) Not applicable.

CARNARVON SENIOR HIGH SCHOOL

930. Mr RIPPER to the Minister for Education:

With reference to Carnarvon Senior High School -

(a) how many times have teachers been assaulted by students during 1998;
(b) how many teachers have been or are on stress leave during 1998;
(c) how many teachers are at Carnarvon Senior High School;
(d) what is the total number of days of sick leave taken by teaching staff in 1998;
(e) why is there a shortage of relief teachers at the school; and
(f) what action does the Minister propose to take to improve the situation?

Mr BARNETT replied:

(a) The School has taken action against assaults on teachers on 12 occasions.

(b) Three teachers have been on leave and one is currently on leave for anxiety related reasons. Two of these teachers have successfully returned to work on a full workload, one has returned with some program modifications.

(c) There are 30 teachers at Carnarvon Senior High School.

(d) The total sick days to November for 1998 is 74. This total includes 22 days for two staff, one of whom has a serious, continuing medical condition.

(e) While the supply of relief teachers in Carnarvon fluctuates over time, currently sufficient relief teachers are available to cover the school's needs. There have been more relief teachers available at times during the year, but some were travellers who only remained in Carnarvon for a short period. Carnarvon has the same potential for the under-supply of relief teachers as any other remote location.

(f) A number of strategies to deal with issues at Carnarvon Senior High School are being developed. These include:

- a comprehensive review of the school behaviour management policy in consultation with the school community and all staff;
- investigation of a Work Skill Program as an alternative for some students; and
- placement of a full time relief teacher in Carnarvon during Terms 2 and 3 to serve the three schools in Carnarvon.

In addition, the introduction of the Country Incentives Package, which contains substantial and professional incentives, will assist in attracting and retaining teachers in Carnarvon.

WIRRABIRRA PREPRIMARY SCHOOL

934. Mr RIPPER to the Minister for Education:

(1) How many local children are unable to be placed at Wirrabirra Preprimary School next year?

(2) Why are there insufficient places?

(3) Given the current demand, why did the Education Department of WA decide to remove one of the demountables at the school at the end of last year?

(4) How many of the parents of children who have not been offered places do not have their own transport?

(5) How does the Minister expect these parents to take their children to schools that are not within walking distance of their homes?

(6) Does priority for places at the preprimary school take access to private transport into consideration?

Mr BARNETT replied:

(1) None. It is planned to offer a place at Wirrabirra Primary School to all children who live within the Wirrabirra Primary School boundaries. Approximately 50 pre-primary children will be accommodated in two early childhood education (ECE) facilities on the school site with a further as yet undetermined number of pre-primary children being accommodated in the school's nearby purpose built ECE facility off-site. All children are guaranteed a place in a pre-primary program at a school within the local cluster of schools.

(2) Not applicable.

(3) Historical evidence suggested that only two pre-primary centres would be required on-site in 1998 as well as the school's existing off-site centre. Registrations in fourth term 1997 verified that the third unit was not required for 1998.

(4)-(5) Not applicable.

(6) A list of the selection criteria in order of priority for the placement for preprimary is as follows:

1. Children living in the school's catchment area:

(a) Children who have been formally assessed and recommended for a further year at preprimary level.

(b) Children whose birth dates are in November or December and whose parents wish them to commence or repeat the preprimary year.

(c) Children who will have siblings attending the school in the same calendar year as the preprimary child. (Every effort should be made to avoid parents having to collect children from several government schools).

(d) Access to an alternative centre considering the proximity of that centre to the child's home address.

2. Children living outside the school catchment area but who are in day care centres, family care or other care situations and the care situation is within the catchment area.

3. Children living outside the school catchment area who are not in care in the catchment area. The same selection criteria as for 1.

Access to private transport would need to be considered under criterion 1(d).

TEACHERS, LEVEL 3, SELECTION PROCESS

941. Mr RIPPER to the Minister for Education:

(1) How many applications for selection as a Level 3 classroom teacher were assessed in a manner which was found by independent reviewers to be in breach of public sector standards?

(2) In how many of these cases did the independent review recommend that the application be reassessed?

(3) Were any of these recommendations accepted by the Education Department?

(4) If yes, how many?

(5) For what reason were some or all recommendations that applications be reassessed rejected by the Minister's department?

Mr BARNETT replied:

(1) 62.

(2) 57.

(3) Yes.

(4) 23.

(5) In the remaining 34 cases, recommendations were made for reassessment by the reviewers that were not accepted by the Education Department. This action was guided by Regulation 16 of the Public Sector Management (Review Procedures) Regulations. The Education Department formally advised the Office of the Public Sector Standards Commissioner and a meeting was held on 31 August 1998 to discuss the Department's position. The Department did not accept a number of the recommendations of the Independent Reviewers. Reasons include:

No breach was found, however, reassessment was recommended.
Insufficient evidence was provided by the reviewer to warrant a reassessment.
Some breaches were of a technical and not a material nature and did not affect the outcome.

TEACHERS, LEVEL 3, SELECTION PROCESS

942. Mr RIPPER to the Minister for Education:

(1) Which consultants were appointed by the Education Department to manage the level three classroom teacher selection process?

(2) How were they selected?

(3) How much were they paid for the contract?

(4) Has the company performed in accordance with the contract that was agreed with the Education Department?

(5) How has the company's performance been evaluated?

Mr BARNETT replied:

(1) The Centre for Curriculum and Professional Development, Murdoch University in association with Nexus Strategic Solutions.

(2) They were selected through a competitive tender process.

(3) To date they have been paid $375 000. A further $21 000 will be paid on the satisfactory completion of a report into Administrator's Competencies, which came out of this project, due 24 December 1998.

(4) Yes.

(5) The company's performance is being evaluated through the following measures:

The Education Department has monitored the fulfilment of contract conditions.

A reference group comprising Education Department staff and representatives from the State School Teachers' Union of Western Australia worked with the consultants throughout the process for quality assurance.

The Office of the Public Sector Standards Commissioner has reviewed and validated the selection process.

The professional competency standards developed by the consultants are being validated through a separate process. The validation process will involve comprehensive consultation throughout the education profession on the professional competency standards.

The Education Department has formed a Level 3 Classroom Teacher Monitoring Committee, with representatives from the Department, teachers, the Office of the Public Sector Standards Commissioner and the State School Teachers' Union of Western Australia, to review the selection process and monitor the implementation of the new Level 3 Classroom Teacher positions.

EDUCATION, MONITORING OF STANDARDS

952. Dr CONSTABLE to the Minister for Education:

(1) When was sample testing (Monitoring Standards in Education) introduced in Western Australia?

(2) What testing or monitoring system preceded the MSE system?

(3) In each of the years since MSE was introduced, what percentage of students tested were found to be performing at a satisfactory level for their age and year?

Mr BARNETT replied:

(1) 1990.

(2) No testing system existed before Monitoring Standards in Education (MSE). Monitoring and reporting was previously done in terms of resource allocation.

(3) All results from Monitoring Standards in Education random sample testing are publicly reported. Each report provides a map of the broad range of performance in the particular subject among Year 3, 7 and 10 students in Western Australian schools rather than simply whether students are able to satisfy a minimal level of competence, satisfactory or unsatisfactory. Copies of the MSE reports can be provided to the member if she wishes.

TEACHERS ASSESSED AS UNSATISFACTORY

953. Dr CONSTABLE to the Minister for Education:

(1) How many teachers in each of the last five years have been assessed as "unsatisfactory"?

(2) Under what provision (if any) were they so assessed?

(3) How many of these teachers are still employed by the Department of Education?

(4) In what capacity are the teachers employed by the department?

Mr BARNETT replied:

(1) Only temporary teachers can be classed as "unsatisfactory". Permanent teachers can be classified as "inefficient" under regulation 86A if their performance cannot reach acceptable standards after performance management and review. A data base for tracking unsatisfactory teachers, as identified by temporary teacher ratings, was developed in late 1995. In 1996, 15 temporary teachers were listed as unsatisfactory, in 1997 there were 21, and in 1998 there were another 21. Education Department records indicate that, since the start of 1994, a further 24 teachers have been dismissed or have resigned, as a result of breaches of Education Act Regulation 86A, pertaining to inefficiency, and Section 7C of the Education Act, pertaining to misconduct. None of these teachers are eligible for re-employment with the Department.

(2) Temporary teachers are rated by the principals of the schools at which they are employed under the terms and conditions described in the Education Department booklet, *Performance Evaluation - Temporary Teachers*. Temporary teachers who receive an unsatisfactory assessment have access to grievance procedures. Regulation 86A details a process for addressing concerns about inefficient teachers. Section 7C details the process for dealing with allegations of misconduct against teachers.

(3) No teachers dismissed under the provisions of Regulation 86A and Section 7C are re-employed by the Department. A very small number of temporary teachers with unsatisfactory ratings have been employed in exceptional circumstances in secondary schools. This occurs only when all other avenues of recruitment have been exhausted. Principals undertake a comprehensive performance management process with such teachers to ensure that they achieve and maintain a satisfactory level of teaching. Those who are assessed as unsatisfactory a second time are not re-employed thereafter.

(4) The temporary classroom teachers referred to in (3) above who have been employed with an unsatisfactory rating remain temporary until they can maintain a satisfactory level of teaching.

SCHOOL PSYCHOLOGISTS

955. Dr CONSTABLE to the Minister for Education:

(1) According to the relevant selection criteria, what are the responsibilities of -

(a) Co-ordinator, Student Services;
(b) Manager, Student Services;
(c) the former position of Principal School Psychologist; and
(d) the former position of Senior School Psychologist?

(2) Is it a requirement that the positions in 1(a) and (b) above be held by registered psychologists?

Mr BARNETT replied:

The responsibilities, according to the relevant selection criteria, of the:

(1) (a) Coordinator: Student Services are:

Capacity to provide effective leadership in the management of student services in a district.
Demonstrate understanding of standards, principles and processes for quality assurance of student services programs.
Demonstrated understanding of regulatory frameworks, Education Department of Western Australia student services directions and State issues related to student services.
Knowledge and experience in effective supervision and the application of performance management and professional development of staff.
Demonstrated proficiency in program management.
Proficiency in effective interpersonal skills, including negotiation, mediation and conflict resolution.
Proficiency in written and oral communication for a range of specific audiences and purposes.
Proven high level of analytical and collaborative problem solving ability in a range of cultural and social environments.

(b) Manager: Student Services are:

Demonstrated understanding of regulatory frameworks, Education Department of Western Australia directions and State and National issues related to the provision of student services.
Demonstrated capacity to provide effective leadership to ensure effective development and management in a variety of programs.
Interpersonal skills that demonstrate an ability to work in a collaborative team environment and to work cooperatively with others at all levels.
A high level of proficiency in managing the performance and professional development of staff.
Demonstrated skills in research, data collection and critical analysis.
Organisational skills that demonstrate an ability to plan, coordinate and resource student services programs and activities in an educational setting.
Proficiency in written and oral communication for a range of specific purposes and audiences, including the ability to apply them in public relations and official settings.
Sound understanding and commitment to equal opportunity and principles of social justice.
Demonstrated understanding of the application of standards, principles and processes for quality assurance in student services programs.

(c) Principal School Psychologist are:

Essential Skills and Abilities
Ability to work collaboratively in a problem solving capacity.
Highly developed organisational planning and decision-making skills.
Highly developed oral and written communication and public relation skills.
Effective conflict resolution skills.
Ability to design, implement and evaluate professional development programs.
Analytical ability.

Essential Knowledge
High level of current thought and practice in school psychology.
Sound knowledge of recent development in education policy and practice in Western Australia and its application to student services.

Essential Experience
A proven record as an educational leader and achiever.
At least five years experience practising as a psychologist in a school setting.

Essential Qualification
Appropriate degree and teaching qualification as approved by the Director-General of Education.
Registration as a psychologist with the Psychologists Board of Western Australia.

Desirable
Work experience in a variety of educational settings.
Program management experience relating to school psychology.

(d) Senior School Psychologist are:

Essential Skills and Abilities
Ability to work collaboratively in a problem solving capacity.
Ability to design, implement and evaluate professional development programs.
Ability to demonstrate a high level of communication and interpersonal skills necessary for interdisciplinary liaison.
Proven public relations skills.
Sound organisational planning and decision making skills.

Essential Knowledge
High level of understanding of issues and guidelines for the supervision of psychologists.
Thorough knowledge of a wide variety of approaches used in school psychology.
Thorough knowledge of data collection and evaluation techniques.
Sound knowledge of recent education developments in Western Australia.
High level of understanding of the requirements of effective case management.

Essential Experience
At least 5 years experience practising as a psychologist in a school setting.

Essential Qualification
Appropriate degree and teaching qualification as approved by the Director-General of Education.
Registration as a psychologist with the Psychologists Board of Western Australia.

Desirable
Experience in a supervisory role.
Work experience in a variety of educational settings.

(2) No.

SCHOOL PSYCHOLOGISTS

956. Dr CONSTABLE to the Minister for Education:

(1) How many school psychologist FTEs have been appointed to each school district in 1998?

(2) How many school psychologist FTEs were requested by each school district in 1998?

(3) How many school psychologist FTEs are currently employed by the Department of Education (excluding Co-ordinators and Managers of Student Services who are also registered psychologists)?

Mr BARNETT replied:

The appointment of school psychologists is made in response to requests from district offices.

(1) 167.4 FTE have been appointed to the sixteen education districts.

(2)-(3) 167.4 FTE.

PRIMARY EXTENSION AND CHALLENGE PROGRAM, BUDGET

975. Mr RIPPER to the Minister for Education:

(1) What was the budget for the Primary Extension and Challenge (PEAC) Program for the year;

(a) 1989;
(b) 1990;
(c) 1991;
(d) 1992;
(e) 1993;
(f) 1994;
(g) 1995;
(h) 1996;
(i) 1997; and
(j) 1998?

(2) What is the forward estimate for the Primary Extension and Challenge Program (PEAC) for the year;

(a) 1999;
(b) 2000; and
(c) 2001?

Mr BARNETT replied:

(1) The following table provides details broken into full time equivalent teachers (FTE), contingencies and clerical support.

Year	Teacher full time equivalents		Contingencies	Clerical days	Total $ Expenditure
1989	29.8	$1,011,000	$120,000	$61,000	$1,192,000
1990	30.2	$1,127,000	$120,000	$65,000	$1,312,000
1991	30.2	$1,176,000	$120,000	$67,000	$1,363,000
1992	30.2	$1,222,000	$120,000	$67,000	$1,409,000
1993	30.2	$1,227,000	$121,000	$67,000	$1,415,000
1994	30.2	$1,227,000	$125,000	$67,000	$1,419,000
1995	32.2	$1,321,000	$125,000	$69,000	$1,515,000
1996	32.2	$1,418,000	$135,000	$74,000	$1,627,000
1997	32.2	$1,522,000	$129,000	$78,000	$1,729,000
1998	32.2	$1,562,000	$150,000	$80,000	$1,792,000

(2) The following are the current projections for 1999-2001. These are reviewed annually against population changes and adjusted to take account of CPI changes.

Year	Full time equivalent		Contingencies	Clerical days	Total $ Estimate
1999	32.3	$1,608,000	$150,000	$82,000	$1,840,000
2000	32.3	$1,617,000	$150,000	$84,000	$1,851,000
2001	32.3	$1,617,000	$150,000	$84,000	$1,851,000

Notes:
1. These figures are based on the annual salary of an experienced four year trained teacher who receives a special responsibility allowance.
2. 3.1 FTE clerical assistance is provided to districts to help with the administration of PEAC programs.

FORRESTDALE KINDERGARTEN

1084. Mr RIPPER to the Minister for Education:

(1) Does Forrestdale Kindergarten meet the guidelines under which part-time 5 year old programs can continue to operate in 1999?

(2) Why is the Kindergarten not being allowed to operate its 5 year old program in 1999?

Mr BARNETT replied:

(1) No. Forrestdale Preschool does not meet the guidelines allowing for the continuation of part-time pre-primary program for five year old children.

(2) The Preschool will not operate a part-time program for five year olds in 1999 as it does not meet the guidelines laid down for the operation of such programs. The guidelines specify, amongst other matters, that part-time programs can only operate in preschools if there is no negative effect on local government schools. The operation of a part-time five year old program at Forrestdale Preschool would have a negative effect on enrolments at the local primary school.

SCHOOLS - VACCINATIONS

1109. Dr CONSTABLE to the Minister for Education:

Does the Minister have any plan to introduce legislation which will enable school authorities to deny school attendance to any student who has not been vaccinated?

Mr BARNETT replied:

No. The *School Education Bill* makes provision for the vaccination status of a child to be recorded at the time of enrolment. This will not affect the entitlement to enrol but will ensure that schools have access to the necessary data.

SCHOOL TOILET UPGRADES

1167. Dr GALLOP to the Minister for Education:

(1) How much money was allocated in the 1997-98 budget for school toilet upgrades?

(2) Which schools received funding for toilet upgrades?

(3) How much money was allocated in the 1998-99 budget for school toilet upgrades?

(4) Which schools will receive funding for toilet upgrades in 1998-99?

(5) How many schools are being considered for toilet upgrades in the 1999-2000 budget?

(6) Have these schools been given a priority listing for 1999-2000?

(7) If yes, will the Minister indicate the priority ordering being used for budget consideration?

Mr BARNETT replied:

(1) An amount of $1.5 million was appropriated in the 1997/98 capital works program to provide new and upgraded toilets in schools.

(2) Balingup Primary School*
Doodlakine Primary School*
Ejanding Primary School*

Greenbushes Primary School*
Kalbarri Primary School*
Kirup Primary School*
Moorine Rock Primary School*
Newdegate Primary School*
North Dandalup Primary School*
Wubin Primary School*
Yealering Primary School*
Applecross Primary School - upgrade
Queens Park Primary School - upgrade
Mount Lockyer Primary School - upgrade
Rangeway Primary School - staff toilets

At those schools marked with an asterisk(*), it is proposed to provide an economic, quality pre-fabricated design solution. This strategy has proved to be most successful in 1995/96 and 1996/97, particularly for country schools.

(3) An amount of $1.2 million was appropriated in the 1998/99 capital works program to provide new and upgraded toilets in schools.

(4) A number of feasibility studies to ascertain the scope of work and estimated cost are being undertaken at present. It is expected that an announcement regarding the schools which will receive funding for new/upgraded toilets will be made in December 1998.

(5)-(7) Until such time as the actual funding available for new/upgraded toilets is announced in the 1999/2000 capital works program, it is not possible to indicate how many schools will be included in the program of work. It is anticipated that the names of schools to receive new/upgraded toilets will be announced towards the end of 1999.

EAST MARANGAROO PRIMARY SCHOOL - FUNDING

1169. Mr RIPPER to the Minister for Education:

(1) Is the Minister going to announce funding for a primary school in East Marangaroo during this financial year?

(2) If not, why not?

Mr BARNETT replied:

(1) No.

(2) The existing primary schools in the area have sufficient capacity to accommodate current and anticipated future students. However, the need for a new school in the area will continue to be monitored by the Education Department.

WADDINGTON PRIMARY SCHOOL

1171. Mr RIPPER to the Minister for Education:

(1) How many times has Waddington Primary School been burgled this year?

(2) Have the school classrooms been fitted with deadlocks?

(3) If not, why not?

(4) What is the Education Department doing to reduce the incidence and severity of burglaries at the school?

Mr BARNETT replied:

(1) In 1998, there were a total of 44 reported offences at Waddington Primary School.

(2) No.

(3) Funding to fit deadlocks to classrooms is a school based responsibility, through the school's minor works allocation. Waddington Primary School determined it could not justify directing these funds towards providing deadlocks because:

(a) classroom doors are "window" doors and considered unsuitable for the fitting of deadlocks;

(b) there would remain alternative entry points (eg windows);

(c) it considered Occupational Health and Safety aspects of having children potentially locked in classrooms in emergency situations; and

(d) it was determined that there were higher funding priorities elsewhere in the school.

(4) The Education Department has fitted the school with electronic security, provided mobile surveillance and established a School Watch program. In addition, the school is able to make application for fencing of the site and for a risk assessment to identify further areas requiring attention.

1172 See page 5980.
1182 See page 5983.
1223 and 1226 See page 5998.

TEACHERS - PUBLIC COMMENTS, DISCIPLINARY WARNINGS

1227. Mr RIPPER to the Minister for Education:

On how many occasions in 1997 and 1998 has the Education Department warned teachers that they may face disciplinary action for their public comments?

Mr BARNETT replied:

Two teachers have been informed in 1998 that making comments to the media inconsistent with their contract of employment, may attract formal disciplinary proceedings pursuant to the Education Act 1928.

CHURCHLANDS AND BELMONT SENIOR HIGH SCHOOLS - RENAMING

1228. Mr RIPPER to the Minister for Education:

By what date does the Minister propose to rename Churchlands and Belmont Senior High Schools?

Mr BARNETT replied:

No specific dates have been set. In relation to Churchlands and City Beach Senior High Schools, a working party chaired by Dr Elizabeth Constable is presently coordinating involvement by members of both in determining options and recommendations for a new name to be forwarded to me as Minister for Education. This is to allow time to maximise input. In relation to Belmont and Kewdale Senior High Schools, a working party will make recommendations on the new name. This is expected to be completed late in 1998 or early in 1999 and will then be forwarded to me.

EDUCATION DEPARTMENT - EXPENDITURE

1231. Mr RIPPER to the Minister for Education:

What action is the Education Department undertaking to contain expenditure as a result of its budget overruns?

Mr BARNETT replied:

The Director-General of Education has provided me with a number of options to consider to contain projected expenditure overruns in 1998/99. Discussions are being held with the Under Treasurer to ensure that any options undertaken would be consistent with Government policy and aligned with the Government's fiscal management imperative. Government agencies review expenditure priorities and pressures on an ongoing basis, as has been the case in previous years under previous Governments.

1232 See page 5999.

SCHOOLS - INSURANCE FOR SERIOUS SPORTING INJURIES

1257. Mr CARPENTER to the Minister for Education:

(1) Do State schools have specific insurance for serious sporting and recreational injuries?

(2) If so, are the financial benefits payable under the scheme appropriate, that is, do they reflect the real costs associated with a serious injury?

(3) Are State school children covered during school organised activities held outside school hours?

(4) If State schools do not have sporting and recreation insurance, why not?

(5) How many State school children have been seriously injured in sporting or recreational activities in the past -

(a) year; and
(b) 5 years?

Mr BARNETT replied:

(1) The Education Department of WA does not provide specific insurance for sporting and recreational injuries. Public liability cover is provided to meet the duty of care responsibility of teachers. Personal accident insurance for camps, excursions and work experience is also provided.

(2) The above personal accident insurance has been adequate for claims received in respect of camps, excursions and work experience.

(3) State school children are only covered for school organised activities held outside school hours where such activities are part of an excursion.

(4) All other personal accident cover for State school students is considered a parental responsibility.

(5) As the Department does not provide personal accident insurance outside the parameters mentioned above, accident details are not available.

SCHOOLS - SENIOR COLLEGES AND CAMPUSES

1301. Dr GALLOP to the Minister for Education:

(1) Is the Government reviewing the policies related to the provision of education at the Senior Colleges and Senior Campuses?

(2) If the answer to (1) above is yes -

(a) what are the terms of reference of the review;
(b) who is conducting the review; and
(c) when will the review be completed?

(3) Have discussions occurred between the Government and Western Australian tertiary institutions over the future of the Senior Colleges and Campuses?

(4) If yes, what is the nature of those discussions?

Mr BARNETT replied:

(1) Yes.

(2) (a) Terms of reference are as follows.

Rationale: The review is being undertaken to provide an information base for a re-consideration of policy with respect to Senior Colleges and Senior Campuses.

Terms of Reference: The purpose of the review is to inquire into and report on the policies and practices impacting on the provision of education in Senior Colleges and Senior Campuses with respect to the following matters.

(1) The roles of Senior Campuses and Senior Colleges and the adequacy of these arrangements for meeting the needs of the community.

(2) The nature of the relationships between the Senior Colleges, Senior Campuses, Universities, TAFE institutions and government Senior High Schools.

(3) The nature of the existing client groups, including overseas students, and the extent to which there is potential for this to change under different charters for Senior Colleges and Senior Campuses.

(4) The curriculum offered by Senior Campuses and Senior Colleges and its relevance to further education, training, employment and post school options.

(5) The extent to which the Senior Campuses and Senior Colleges provide equitable opportunities for students from diverse backgrounds.

(6) The extent to which resources should be shared by Senior Colleges, Senior Campuses, Universities and TAFE institutions, and the extent to which the facilities would be adequate for any modifications that may be proposed to the curriculum offerings.

(7) The extent of internal organisational flexibility available to management to enable the Senior Colleges and Senior Campuses to meet the needs of their customers.

(8) The degree to which industrial conditions impact on the capacity of the Senior Colleges and Senior Campuses to meet the needs of the community.

(b) Officers from the Education Department's Evaluation Unit.

(c) The review is expected to be completed by the end of 1998.

(3) Yes.

(4) These discussions are at a preliminary stage and centre on the possibility of developing closer links between the Senior Colleges and the tertiary institutions.

SCHOOLS - PSYCHOLOGY SERVICES

1328. Dr CONSTABLE to the Minister for Education:

In an undated 1997 document entitled *Student Services Summary Paper for Consultation* by Peter Frizzell, Executive Director (Schools), it was stated that "the current (ie 1997) Student Services profile comprised 8 principal school psychologists, 29 senior school psychologists and 160 plus school psychologists. In your answer to question on notice No 2935 of 1998 you advised that there were 188.2 school psychologist FTEs in 1997, including 35 management and policy positions. Which statement is correct?

Mr BARNETT replied:

The member's quotation in the question is not quite correct. The document *Student Services Summary Paper for Consultation,* an internal discussion paper, states that:

> The current Student Services profile is made up mostly by the school psychology service. The Memorandum of Agreement 1991 established:
>
> 8 Principal psychologist positions located in central office, (currently there are 7);
> 29 senior school psychologists (district based); and
> 160 plus school psychologists (district and school based) positions.

The document was prepared to assist consultation on the restructure of Student Services to improve the provision of services to schools. The Memorandum of Agreement 1991 could not specify the number of school psychologist positions that were to exist in 1997. The response given to Parliamentary Question No 2935 is accurate.

HOMESWEST - KALGOORLIE-BOULDER

1332. Ms ANWYL to the Minister for Housing:

(1) How many people are wait listed for Homeswest accommodation in Kalgoorlie/Boulder?

(2) Of those listed how many have been approved for priority housing?

(3) What is the current waiting time for allocation of Homeswest accommodation in Kalgoorlie/Boulder?

(4) (a) How many Homeswest appeals have been dealt with in the years -

(i) 1996-97; and

(ii) 1997-98 to date; and

(b) what was the outcome of those appeals?

(5) How many of those people are of Aboriginal descent?

(6) How many of those wait listed for accommodation have stipulated domestic violence as a reason for their application?

(7) What is current Homeswest policy with respect to domestic violence placements?

Dr HAMES replied:

(1) 272 applicants as at 12 November 1998.

(2) 27.

(3) The current waiting times (approximate) for allocation in Kalgoorlie/Boulder is:

Pensioner 1 bedroom	12 months
Pensioner 2 bedroom	11 months
1 bedroom	2½ years
2 bedroom	2 years 8 months
3 bedroom	2 years 5 months
4 bedroom	3 years
5 bedroom	6 months
6 bedroom	1 year 7 months

(4) (a)-(b)

Year	Number of Appeal Hearings	Number of Appeals Dismissed	Number of Appeals Upheld
1996/97	104	36	40 28 partially upheld/resolved
1997/98	63	28	26 9 partially upheld/resolved
1998/-	42	13	12 7 partially upheld/resolved 6 adjourned 4 unheard

(5) With reference to Question:

(1) 100 Aboriginal applicants are listed wait turn.
(2) 20 Aboriginal applicants are listed priority.
(3) 104 appellants were of Aboriginal descent.

(6) 13 applicants on the waiting list have indicated domestic violence as the basis of their application. A further two applicants are listed on a priority basis.

(7) Allocations to victims of domestic violence are made on the basis of available accommodation which best meets the client's immediate needs with consideration being given to location of the property and its proximity to the perpetrator.

KALGOORLIE PRIMARY SCHOOL - ENROLMENTS

1334. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at Kalgoorlie Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 409.

(2)

Year	Students
1997	406
1996	394
1995	391

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
48	60	53	53	49	41	47	58

(4) 402.

(5) 21.0 FTE.

(6)

Physical Education	1.0 FTE
Music	1.0 FTE
Library	1.0 FTE
Education Support	1.0 FTE

(7) 6.9 FTE.

Note: Student and staffing numbers are as at semester one, 1998.

EAST KALGOORLIE PRIMARY SCHOOL - ENROLMENTS

1335. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at East Kalgoorlie Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 88.

(2)

Year	Students
1997	65
1996	103
1995	69

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
21	11	16	8	10	10	2	10

(4) 130.

(5) 5.0 FTE.

(6) Nil.

(7) 3.5 FTE.

Note: Student and staffing numbers are as at semester one, 1998.

BOULDER PRIMARY SCHOOL - ENROLMENTS

1336. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at Boulder Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 569.

(2)

Year	Students
1997	394
1996	399
1995	322

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
196	60	71	52	53	47	42	48

(4) 559.

(5) 24.6 FTE.

(6) Music 0.8 FTE.

(7) 8.6 FTE.

Note: Student and staffing numbers are as at semester one, 1998.

O'CONNOR PRIMARY SCHOOL - ENROLMENTS

1337. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at O'Connor Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 513.

(2)

Year	Students
1997	462
1996	356

O'Connor Primary School opened 30 January 1996.

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
77	82	71	72	69	45	48	49

(4) 652.

(5) 24.8 FTE.

(6) Music 1.0 FTE.
Physical Education 1.0 FTE.

(7) 8.0 FTE.

Note: Student and staffing numbers are as at semester one, 1998.

NORTH KALGOORLIE PRIMARY SCHOOL - ENROLMENTS

1338. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at North Kalgoorlie Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 643.

(2)

Year	Students
1997	585
1996	604
1995	599

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
152	67	72	74	75	61	70	72

(4) 633.

(5) 27.8 FTE.

(6) Music 1.0 FTE.
Physical Education 1.0 FTE

(7) 9.3 FTE.

Note: Student and staffing numbers are as at semester one, 1998.

HANNAN'S PRIMARY SCHOOL - ENROLMENTS

1339. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at Hannan's Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 479.

(2)

Year	Students
1997	539
1996	478
1995	435

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
62	56	68	69	62	65	52	45

(4) 614.

(5) 23.4 FTE.

(6)

Computer	1.0 FTE
Education Support	1.0 FTE
Speech and Drama	0.5 FTE
Music	0.6 FTE

(7) 8.8 FTE.

Note: Student and staffing numbers are as at semester one, 1998.

SOUTH KALGOORLIE PRIMARY SCHOOL - ENROLMENTS

1340. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at South Kalgoorlie Primary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 790.

(2)

Year	Students
1997	815
1996	805
1995	819

(3)

PP	Y01	Y02	Y03	Y04	Y05	Y06	Y07
121	106	89	95	95	107	89	88

(4) 874.

(5) 34.7 FTE.

(6)

Music	1.0 FTE
Early Literacy and Numeracy	0.5 FTE
Physical Education	1.0 FTE
Drama	0.9 FTE
Commonwealth Literacy Project	0.4 FTE

(7) 13.5 FTE.

Note: Students and staffing numbers are as at semester one, 1998.

WALLACE PARK PREPRIMARY SCHOOL - ENROLMENTS

1341. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at Wallace Park Preprimary School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1)-(7) As Wallace Park Preprimary is part of the North Kalgoorlie Primary School all figures pertaining to the Member's question are included in the answer to Question No 1338.

EASTERN GOLDFIELDS SENIOR HIGH SCHOOL - ENROLMENTS

1342. Ms ANWYL to the Minister for Education:

(1) How many students are currently enrolled at Eastern Goldfields Senior High School?

(2) How does that figure compare with enrolments for each of the past three years?

(3) What is the breakdown of the enrolment figure for the current year according to year of study?

(4) Is there a projected enrolment for 1999 and if so, what is that figure?

(5) How many teachers are employed at the school?

(6) What specialist teachers are employed?

(7) What non-teaching support staff are employed at this school?

Mr BARNETT replied:

(1) 1 319.

(2)

Year	Students
1997	1 318
1996	1 204
1995	1 127

(3)

Y08	Y09	Y10	Y11	Y12
304	312	292	254	157

(4) 1 359.

(5) 93.0 FTE as at semester one, 1998.

(6) Current specialist allocations are:

English as a Second Language	0.6 FTE
Low Achievers	1.0 FTE
Music	1.0 FTE
Reading Resource	1.0 FTE
Art	4.0 FTE
Business Education	2.0 FTE
Computer	2.0 FTE
Design and Technology	10.0 FTE
English	14.0 FTE
Home Economics	5.0 FTE
Languages Other Than English	1.5 FTE
Library	3.0 FTE
Mathematics	12.0 FTE
Physical Education	8.0 FTE
Science	9.0 FTE
Social Science	10.0 FTE
Student Services	1.0 FTE
Career and Vocation Education Coordinator	1.0 FTE
Administrators	4.0 FTE

(7) 13.5 FTE.

ROYAL PERTH HOSPITAL - SHENTON PARK CAMPUS

1472. Dr CONSTABLE to the Minister for Health:

(1) Is the Government considering the closure of the Shenton Park campus of the Royal Perth Hospital?

(2) If the answer to (1) above is yes -

(a) why will it close;
(b) when will it close;
(c) when was the decision to close made; and
(d) who made the decision to close?

(3) If the answer to (1) above is no, what future services will be delivered from the Shenton Park campus?

Mr DAY replied:

(1) The relocation of Rehabilitation Services from the Shenton Park Campus of Royal Perth Hospital was proposed in the Health 2020 Discussion paper which was tabled in this House in June 1998. I anticipate that the Metropolitan Health Strategic Plan will be completed by the end of the year and will be presented to the government for its consideration early in 1999.

(2) Not applicable.

(3) No change to the current range of services has been determined at this time.

CRIME TRENDS - INFORMATION TECHNOLOGY SYSTEM

1474. Dr CONSTABLE to the Minister for Police:

(1) In relation to part (1) of your answer to question on notice No. 771 of 1998, what would it cost to instal an information technology system which could monitor crime trends on a daily basis without the necessity to re-enter data manually onto spreadsheets?

(2) In relation to part (2) of your answer to question on notice No. 771 of 1998 -

(a) how often do District Intelligence Officers use the raw OIS data to map the incidence of crime by category; and

(b) how often do operational commanders use the information to proactively address and target criminal activity?

Mr PRINCE replied:

(1) The Government has recognised and endorsed the requirement for major business systems reform within the Western Australia Police Service amounting to $124 million dollars, to be allocated over 5 years, under the

auspices of the Delta Communications and Information Technology (DCAT) project. The replacement of existing information technology systems to monitor crime trends is a component of the DCAT project, however, it would not be possible to obtain the benefits envisaged without the concurrent investment in:

business process re-engineering;
quality information management;
infrastructure;
information technology architecture;
migration from existing systems, and
training.

This will be completed in the context of a holistic programme of work. As such it is not possible to provide a definitive costing of technology required to monitor crime trends on a daily basis as a discrete item.

(2) (a) district Intelligence Officers access the raw data contained on the Offence Information System on a needs basis which is dependent on the operational and management requirements of their District.

(b) It is unclear who the member is referring to by using the term "operational commander". If the member is referring to a District Officer again, the frequency with which crime data is requested and used will vary between each District and will depend on the individual operational and management requirements of the District.

POLICE - RATIO OF POLICE OFFICERS TO RESIDENTS

1475. Dr CONSTABLE to the Minister for Police:

In relation to part (3) of your answer to question on notice No. 770 of 1998, what, specifically, accounts for the different ratios of police officer to reported crime in Western Australia of 1:53 in parts (a) and (c) and 1:35 in part (b)?

Mr DAY replied:

The latest available data was utilised in calculating all ratios. Where comparative ratios to other states were calculated the latest available comparative data was utilised. The ratio for police officers to reported crime in Western Australia in parts (a) and (c) is different to the ratio in part (b) due to different counting methodology and reference dates. In parts (a) and (c), data for 1997/98 was used. The figures for reported crime are based on the Western Australia Police Service Offence Information System. The methodology used is to count offences. In part (b), data for 1996/97 was used. The figures for reported crime are based on data published in the Australian Bureau of Statistics Report "Recorded Crime in Australia 1997". Data presented in this publication reflects offence types that are common/consistent across all jurisdictions and does not reflect all reported crimes in each jurisdiction. The methodology used is to count victims. The above information was previously included by way of explanation/comment in the answer to question on notice No 770 of 1998.

HEALTH - PSYCHOSIS PROGRAMS

1479. Mr McGINTY to the Minister for Health:

(1) Does the Western Australian Health Department fund any early episode psychosis programs?

(2) If the answer to (1) above is yes -

(a) what are the programs;

(b) who are the programs run by;

(c) when did each program start operating;

(d) how much did each program receive for the -

(i) 1998-99 financial year;
(ii) 1997-98 financial year;
(iii) 1996-97 financial year; and
(iv) 1995-96 financial year, and

(e) is funding for each of the programs recurrent?

(3) Does the Western Australian Health Department have plans to set up early episode psychosis programs in every metropolitan health region?

(4) If the answer to (3) above is yes -

(a) does the Western Australian Health Department have a timetable for implementing these programs;

(b) if so, what is it; and

(c) what progress has been made to date to ensure these programs are set up?

(5) Have the metropolitan health regions been directed by the Western Australian Health Department to set up early episode psychosis programs?

(6) If the answer to (5) above is yes -

(a) what assistance has the Western Australian Health Department given individual health regions to set-up these programs; and

(b) will individual health regions be given extra funding to set-up these programs or will they be expected to fund the programs from within existing budgets?

Mr DAY replied:

(1) Yes.

(2) (a)-(d) First Episode Psychosis Program- Avro Clinic, began 1995 -1996

Funding:1995 -1996	$176,000 (part year payment)
Funding:1996 -1997	$200,000
Funding:1997 -1998	$200,000
Funding:1998 -1999	$200,000

First Psychosis Liaison Unit - Bentley Health Service, began 1995 - 1996

Funding:1995 - 1996	$194,000 (part year payment)
Funding:1996 - 1997	$199,000
Funding:1997 - 1998	$199,000
Funding:1998 -1999	$199,000

Early Episode Psychosis - A System of Care, began 1995 - 1996 Rockingham-Kwinana Adult Psychiatric Service, Ruah Inreach, South Metropolitan Child and Adolescent Mental Health Service, Fremantle Division of General Practice

Rockingham-Kwinana:

Funding:1995 -1996	$111,000 (part year payment)
Funding:1996 -1997	$190,000
Funding:1997 -1998	$190,000
Funding:1998 -1999	$190,000

Ruah Inreach

Funding:1995 -1996	$ 85,000 (part year payment)
Funding:1996 -1997	$140,000
Funding:1997 -1998	$140,000
Funding:1998 -1999	$140,000

South Metropolitan Child and Adolescent Mental Health Service

Funding:1995 -1996	$ 38,000 (part year payment)
Funding:1996 -1997	$ 65,500
Funding:1997 -1998	$ 65,500
Funding:1998 -1999	$ 65,500

GP training program - Fremantle Division of General Practice

Funding:1995 - 1996	Nil
Funding:1996 - 1997	$25,400
Funding:1997 - 1998	$25,400
Funding:1998 - 1999	Program no longer operational

(2) (e) Yes. Funding recurrent but reviewed annually as are all health service programs.

(3) No. The Health Department of Western Australia does not intend to set up early episode psychosis programs in every metropolitan health region. The Health Department is assisting every health region to adopt the principles of best practice demonstrated by the programs listed above in the management of early episode psychosis. The Health Department is also working with the Early Episode Psychosis Advisory Group to devise strategies for the implementation of best practice clinical management for early episode psychosis in all health regions.

(4) Not applicable.

(5) No.

(6) Not applicable.

WHITBY FALLS HOSTEL - FUTURE PLANS

1481. Dr GALLOP to the Minister for Health:

(1) What plans does the Government have for Whitby Falls?

(2) What is the timetable for the implementation of these plans?

(3) If closure is planned, how does the Government intend to provide for the needs of those currently accessing services at Whitby Falls?

Mr DAY replied:

(1) Whitby Falls will continue to provide its current services to the residents who live there while they are reviewed on an individual basis to ensure that a modern approach to community rehabilitation is made available to each resident.

(2) The steering committee responsible for managing the individualised reviews will reconvene as soon as a Project officer is appointed. This is anticipated to occur in December 1998. No time frame has been established for the development and implementation of agreed management plans for each individual. The process might take up to two years or more.

(3) There are no current plans by the Government to close Whitby Falls. Needs of current residents will be managed as indicated in responses to questions 1 and 2. Should Whitby Falls no longer be required for its current purpose the Government will then consider its role.

POLICE - RELOCATION EXPENSES

1485. Ms McHALE to the Minister for Police:

(1) Does the police service pay relocation expenses to police officers who are -

(a) transferred from the metropolitan area to regional police stations; and
(b) transferred from a regional police station to the metropolitan area?

(2) Are there any police officers who have not been paid their relocation expenses?

(3) If so, how many?

(4) What is the median waiting time for reimbursement of relocation expenses?

Mr PRINCE replied:

(1) Employees of the Western Australia Police Service transferred from one headquarters to another shall, if the transfer necessitates a change in the place of residence of the employee, be paid allowances in accordance with the Western Australia Police Service Enterprise Agreement for Police Act Employees, 1996. Allowances include -

The transport of the employees furniture, effects and appliances
Accelerated depreciation and extra wear and tear of furniture and effects,
Storage of furniture that is additional to requirements,
Travelling allowance
Mileage Allowance, or airfares and the transport of private vehicle,
Telephone, electricity and water reconnection,
Mail redirection
Property allowance for reimbursement of expenses incurred by the employee in the sale of residence in the employee's former locality and subsequent purchase of residence in new location.

(2) No.

(3) Not applicable.

(4) Approximately 10 days from receipt of claim.

POLICE - BOOZE BUSES

1486. Ms McHALE to the Minister for Police:

(1) How many 'booze buses' does the police service have in operation?

(2) On the following dates -

(a) 24 December 1997;
(b) 25 December 1997;

(c) 26 December 1997;
(d) 31 December 1997; and
(e) 1 January 1998,

(i) how many booze buses were in operation;
(ii) where and at what time were they located on each day; and
(iii) how many police officers were deployed to staff the booze buses?

Mr PRINCE replied:

(1) Two.

	(i) No. of Booze Buses in operation	(ii) Location	Period	(iii) No of Staff
(a)	There were no Booze Buses operational on this date.			
(b)	There were no Booze Buses operational on this date.			
(c)	2	Causeway, East Perth	0700-0945	8
		Beaufort Street, Northbridge	1940-2230	11
		Thomas Road, Kings Park	2330-0030	11
(d)	2	Marmion Avenue, North Beach	0745-1130	11
		West coast Highway, City Beach	1230-1530	10
		Roe Street, Northbridge	1850-2045	9
		Mary Street, Halls Head	1930-2140	13
		High Road, East Fremantle	2110-2255	9
		Hampton Road, South Fremantle	2320-0310	9
(e)	2	Pinjarra Road, Mandurah	0150-0250	13
		Causeway, East Perth	0720-1130	12
		Garratt Road, Bayswater	1250-1530	12
		Leach Highway, Bentley	1645-2000	13
		Beaufort Street, Inglewood	2110-0100	9
		Kwinana Freeway, Bullcreek	2110-0100	9
		Sutherland Street, West Perth	2130-0015	9

METROPOLITAN HEALTH SERVICES BOARD - PAYMENTS TO MEMBERS

1515. Mr McGINTY to the Minister for Health:

What have been the gross payments made to each member of the Metropolitan Health Services Board since its inception?

Mr DAY replied:

	Total	Board Sitting Fee	Travel and Accommodation
Ian McCall	$187,500.00	$187,500	
Judith Adams	$ 54,645.46	$ 31,250	$23,395.46*
John Atkins	$ 32,900.10	$ 31,250	$ 1,650.10
Agatha van der Schaaf	$ 32,523.86	$ 31,250	$ 1,273.86
Graham McEachran	$ 31,250.00	$ 31,250	
Michele Kosky	$ 25,000.00	$ 25,000	
David Vaughan	$ 25,332.30	$ 25,250	$ 82.30
Erich Fraunschiel	$ 14,250.00	$ 14,250	

In September 1997 the Salaries & Allowances Tribunal determined that the Executive Chairman, Mr Ian McCall, be paid $95,000 per annum, with a loading of $55,000 per annum, for the initial phase of the establishment of the Board. The allowance was to be reviewed after one year.

*Mrs Adams travel and accommodation includes travel to conferences, telephone reimbursement, travel allowance and vehicle allowance until February/March 1998 then an accommodation and petrol allowance.

Fees for Graham McEachran are paid to Ernst & Young
Fees for Erich Fraunschiel are paid to Wesfarmers
Fees for Michele Kosky are paid to Health Consumers Council

Board members sitting fees are from 16.07.98 until 15.09.98. However David Vaughan did not commence until 23 September 1997 and Erich Fraunschiel did not commence until February 1998.

BREASTSCREEN WA - MEDICAL DIRECTOR

1516. Mr McGINTY to the Minister for Health:

I refer to the position of Medical Director, BreastScreen Western Australia, advertised in *The West Australian* on Saturday, 24 October 1998, and ask -

(a) what was the cost of placing the advertisement in *The West Australian*;

(b) what is the name of the employment agency assessing applicants and conducting interviews;

(c) what is the funding allocation for the agency to undertake this work;

(d) how many applications have so far been received by the Western Australian Health Department;

(e) was the same position advertised in 1996, if yes -

(i) how many people applied for the job;
(ii) where was the position advertised and how much did it cost;
(iii) what was the employment agency contracted to assess applicants and conduct interviews;
(iv) how much was the agency paid for undertaking this work;
(v) was the position filled;
(vi) if the position was not filled, what is the reason; and
(vii) if the position was not filled, what subsequent action did the Health Department take to try and fill it; and

(f) why is the WA Health Department advertising the position of Medical Director, BreastScreen WA, if tenders for the contracting out of BreastScreen clinics (Perth City, Cannington, Mirrabooka, Fremantle, Midland, Joondalup and the outer metropolitan and regional mobile unit) do not close until 27 November 1998?

Mr DAY replied:

(a) $2,444.22.

(b)-(c) Not applicable. (Organised by the Health Department of WA).

(d) Two. Applications closed on 19 November 1998.

(e) Yes.

(i) 5

(ii) The West Australian, the Weekend Australian, Canberra Times, Hobart Mercury, Adelaide Advertiser, Melbourne Age, Sydney Morning Herald, Brisbane Courier Mail, New Zealand/Auckland Herald, New Zealand Evening Post, and the Internet. Cost: $25,596.

(iii) Morgan and Banks Limited

(iv) $19,250.

(v) No.

(vi) Uncertainty at that time about the future structure and management of Breast Screen WA.

(vii) The position was readvertised on 24 October 1998.

(f) The Medical Director of Breast Screen WA will provide clinical supervision for the screening and assessment components of the Program.

HOMESWEST - SUBIACO REDEVELOPMENT LAND PURCHASE

1519. Mr CARPENTER to the Minister for Housing:

(1) What provision has Homeswest made to purchase land for construction of rental and/or community housing within the Subiaco Redevelopment Authority?

(2) If none, why not?

(3) If provision has been made, where is the land located and what is its cost?

Dr HAMES replied:

(1) Homeswest is continuing in its negotiations with both the Subiaco City Council and the Subiaco Redevelopment Authority with a view to obtaining development sites in the Subiaco area. If necessary, Homeswest is prepared to consider purchasing land at current market value.

(2)-(3) Not applicable.

PORT HEDLAND INFILL SEWERAGE PROJECT - TENDER

1526. Mr GRAHAM to the Minister for Water Resources:

(1) Was the Port Hedland infill sewerage work put out to tender?

(2) If the answer to (1) above is no, why not?

(3) If the answer to (1) above is yes -

(a) which company was awarded the tender; and

(b) if the winning tender was not the lowest tender, what were the special factors that resulted in it beating lower tenders?

(4) Was the work referred to in (1) covered by the Government's regional purchasing policy?

(5) If the answer to (4) above is no, why not?

Dr HAMES replied:

(1) Yes.

(2) Not applicable.

(3) (a) Ideal Contractors (WA) Pty. Ltd.
(b) Not applicable.

(4) Yes.

(5) Not applicable.

SEWERAGE PROGRAM - WILSON

1530. Dr GALLOP to the Minister for Water Resources:

(1) Which parts of the suburb of Wilson are yet to be sewered?

(2) What is the timetable for the provision of sewerage connections to these parts?

(3) Are there any reasons why these parts have not been chosen for sewerage connection before now?

Dr HAMES replied:

(1) The general area bounded by Wendouree Road, Westlake Street, Bungaree Road and Manning Road.

(2) This project, Cannington 9A, is provisionally scheduled for construction in the fiscal year 2003/04.

(3) The schematic sewerage design for this area requires the construction of a pumping station. Long term planning indicates that the pumping station is best located within the Clontarf College property that is to be redeveloped for residential purposes. This redevelopment has been proposed for a few years and could now eventuate at any time. Funds are limited for the Infill Sewerage Program and it would not be an efficient use of public moneys to construct a temporary pumping station for this infill sewerage area that would become redundant once the redevelopment of the Clontarf College takes place.

REAL ESTATE AND BUSINESS AGENTS SUPERVISORY BOARD - REAL ESTATE AGENTS' TRAINING, FUNDING

1535. Ms MacTIERNAN to the Minister for Fair Trading:

(1) Has any money been provided by the Real Estate and Business Agent's Supervisory Board to Technical and Further Education (TAFE) for the training of real estate agents and representatives since July 1997?

(2) If yes, how much has been provided?

Mr SHAVE replied:

(1) Yes.

(2) $244,151.73.

FORRESTDALE KINDERGARTEN

1579. Mr RIPPER to the Minister for Education:

(1) Does Forrestdale Kindergarten meet the guidelines under which part-time 5 year old programs can continue to operate in 1999?

(2) Why is the kindergarten not being allowed to operate its 5 year old program in 1999?

Mr BARNETT replied:

(1) No. Forrestdale Preschool does not meet the guidelines allowing for the continuation of part-time preprimary program for five year old children.

(2) The Preschool will not operate a part-time program for five year olds in 1999 as it does not meet the guidelines laid down for the operation of such programs. The guidelines specify, amongst other matters, that part-time programs can only operate in preschools if there is no negative effect on local government schools. The operation of a part-time five year old program at Forrestdale Preschool would have a negative effect on enrolments at the local primary school.

ABORIGINAL COMMUNITIES, ESSENTIAL SERVICES WORKING PARTY

1586. Mr GRAHAM to the Minister for Aboriginal Affairs:

(1) Has the Chief Executive Officer Working Party on Essential Services to Aboriginal Communities met since June 1995?

(2) If the answer to (1) above is no, why not?

(3) If the answer to (1) above is yes, on what dates has the committee met?

Dr HAMES replied:

(1) Yes.

(2) Not applicable.

(3) The Working Party met on 1 May 1996. Since that time the Legislative Review Reference Group chaired by Les McCarrey, has developed an action plan and proposals for new legislation for the provision of services to Aboriginal people. The recommendations of the Chief Executive Officer Working Party were a key consideration in the development of this action plan. It is not intended that the Working Party meet again as the Aboriginal Affairs Coordinating Committee, a statutory committee of Chief Executive Officers under the Aboriginal Affairs Planning Authority Act, has recently been reconvened and will have an ongoing role in overseeing the implementation of the Government's Aboriginal affairs program.

QUESTIONS WITHOUT NOTICE

NATIVE TITLE DECISION, APPEAL

468. Dr GALLOP to the Premier:

I refer to the Premier's statement that he is seeking legal advice before deciding whether to appeal the Federal Court's decision in the Miriuwung-Gajerrong case and ask -

(1) Will that advice come from the same people who advised him on -

(a) his failed Land (Titles and Traditional Usage) Act;

(b) his failed High Court challenge; and

(c) his futile and expensive attempt to frustrate, delay and deny the Miriuwung-Gajerrong people their native title rights?

(2) Has the time come for him to cast aside his prejudices and get some new advisers?

Mr COURT replied:

(1)-(2) The Government seeks professional advice on native title issues from a number of different sources. The fact that so much money has been spent by so many parties on legal advice surely gives members a clear message that it is about time this country had some workable native title legislation. People have been going to the courts to seek determinations on native title because there has not been a workable legislative framework in place.

The coalition warned back in 1993 that we would end up where we are today if we did not implement practical, workable legislation. Members opposite have thwarted any attempt to get decent, workable and practical legislation in place at both the state and federal levels. The Labor Party is obstructing attempts to implement a workable state regime.

I will comment on the Federal Court ruling yesterday because it was the first Federal Court determination on native title on the mainland. It is like a number of native title court decisions: It has raised more questions than it has answered. It has created a great deal of confusion in the community, and particularly in the Kununurra community. It is a very good indicator of why we urgently need a workable legislative framework. The elected representatives of this country should be making the law in respect of native title and we should not have to fall back onto the courts. We currently have the courts, whether it be the Federal Court or High Court, making these determinations. Yesterday's decision broke much new ground. It changed the parameters in many areas. On the preliminary advice that has been provided, it has extensively changed the way in which the native title regime will operate with our existing land and resource titles processes.

Dr Gallop interjected.

Mr COURT: The leader seems to be very interested in this issue. Has he been to Kalgoorlie yet?

Several members interjected.

The SPEAKER: Order! I have allowed some interjections, but far too many are occurring, particularly from those on my right.

Mr COURT: I simply said that the most affected area is the Kalgoorlie region and the Leader of the Opposition did not go there for a year.

Dr Gallop: You are a joke!

Mr COURT: When did the Leader of the Opposition go?

Dr Gallop interjected.

Mr COURT: In the part of the State most affected by native title the Labor Party is not on the ground finding out about the issues. I return to my original comment: The reason these matters are going through the courts and we have the courts setting the pace is that we have unworkable legislation. Yes, the Federal Court ruling yesterday does have some far-reaching ramifications. When it comes to professional advice, yes, the Government will receive it.

NATIVE TITLE, CABINET RESPONSIBILITY

469. Dr GALLOP to the Premier:

Given the Premier's abysmal track record, is it not time he stepped aside and handed responsibility for native title to someone else in his Cabinet?

The SPEAKER: Supplementary questions are not meant to have a big lead in and all sorts of paraphrasing; they are meant to be direct questions.

Mr COURT replied:

The cabinet subcommittee on native title has been meeting on a regular basis for six years. A team of ministers has taken a direct interest in the issue. Members on this side forewarned back in 1993 that if we did not have a workable legislative framework -

Several members interjected.

Mr COURT: I would not be proud of the fact that I was a member of a Labor Party that ignored concerns raised about the federal legislation and gave this country -

Ms MacTiernan interjected.

The SPEAKER: I call the member for Armadale to order!

Mr COURT: - unworkable legislation and a level of uncertainty that is not acceptable in our community. As a Government, members on this side have a responsibility to provide a balance. We also have a responsibility to ensure that we are looking after the interests of all Western Australians; and I emphasise "all Western Australians". This Government will continue to do that.

MANDURAH HOSPITAL, JOINT REPLACEMENT SURGERY

470. Mr NICHOLLS to the Minister for Health:

In reference to the new Mandurah Hospital, can the Minister indicate -

(1) Whether residents living in the Mandurah area will be able to have joint replacement surgery at the new hospital?

(2) If so, when will the service be available?

(3) Will this service be available to everyone or will restrictions be imposed on who can access the service?

(4) Can patients currently on the waiting list at other hospitals have their surgery transferred to Mandurah?

Several members interjected.

Mr DAY replied:

Why not wait and see? I thank the member for some notice of this question.

(1)-(4) I take this opportunity to remind the House that the Government has two primary aims in the provision of hospital-based health services: First, to provide a greater number of services and to provide them closer to where people live. For that reason the Government has established new hospitals at Joondalup and Bunbury, and the Armadale-Kelmscott hospital is being planned. Additional services are now available at Swan District Hospital, and the Peel Health Campus to which the member referred is now operating with many more beds than has ever been the case in the past.

Ms MacTiernan interjected.

The SPEAKER: I call the member for Armadale to order!

Mr DAY: That is more than the Labor Party provided in 1988 with the completely inadequate facility it established.

Ms MacTiernan interjected.

The SPEAKER: I formally call the member for Armadale to order for the first time.

Mr DAY: The Government's second aim, which is also being fulfilled, is to increase the number of elective surgery procedures being performed. The program that the Government has put in place involving the injection of an additional $125m over five years has resulted in a significantly increased number of joint replacement procedures being performed. I am pleased to advise that joint-replacement surgery will be available at the Peel Health Campus. In fact, it will commence that surgery next week - on 30 November. The service will be available to people who reside within the Peel Health Campus catchment area, which is very broad. I am also pleased to advise that discussions are already underway between the Peel Health Campus and the Central Wait List Bureau regarding the possibility of transferring patients from waiting lists at hospitals elsewhere in the metropolitan area to have their operation at the Peel Health Campus; for example, if patients on the waiting list at Fremantle Hospital live in the Mandurah or Peel districts, whenever possible there will be an opportunity for them to have their operations performed at Mandurah. When the Premier goes to Mandurah on Saturday to open the new Peel Health Campus, everybody will know that a vastly increased number and range of services is being provided by the Government.

ABORIGINAL MEN - STRESS CARDIOGRAPH TESTS

471. Mr GRAHAM to the Minister for Aboriginal Affairs:

I refer to the minister's call for all Aboriginal men to have regular stress cardiograph tests and to advice from the Minister for Health that such tests are available only in hospitals, and ask -

(1) What steps has the minister taken to ensure that all Aboriginal men in this State have access to those tests?

(2) In particular, what steps has the minister taken to ensure that Aboriginal men in remote communities have access to those tests?

(3) If the minister has nothing to report, as I suspect, will he admit that his original comment, which followed the funeral of a prominent Aborigine, was nothing more than political grandstanding?

Dr HAMES replied:

(3) I have good news on the first two points, but I will deal with the third point first, because that one really annoys me. When I presented the case of the person who died of a heart attack in his forties, his wife was in the public gallery. As a mark of respect for him, we were acknowledging his passing and passing on a message to Aboriginal people that it is extremely important to have stress cardiographs. My role in doing that was not as Minister for Health but as Minister for Aboriginal Affairs. That man had just been elected to chair the regional Nyoongah-Aboriginal and Torres Strait Islander Commission council, but he died on the day following his appointment. I was extremely annoyed at the member for Pilbara for engaging in political grandstanding when we were acknowledging respect for a leading member of the Aboriginal community.

(1)-(2) I had discussions with the Perth Aboriginal Medical Service, which provides a service in the north west and which in some regional centres includes stress testing. As the member stated, stress testing is not available in many areas, especially in remote communities. I have since had a meeting with a leading cardiologist in Perth. That happened to be on a personal visit because of my abnormal stress test, but that is another issue. We spent a considerable amount of his consulting time working out a method whereby we could sponsor him and groups of cardiologists to be set up with stress cardiography equipment and to go to remote Aboriginal communities to do stress cardiographs. They are extremely important. From that, I intend to have further discussions with the Minister for Health and to consider our funding within the Aboriginal Affairs Department and how to sponsor that event and make sure that it happens as quickly as possible.

SEPTIC TANK CONTAMINATION OF LAKES IN BELMONT AREA

472. Mr BAKER to the Minister for Water Resources:

Will the minister advise whether his department proposes to take any steps to safeguard lakes in the Belmont area from septic tank contamination?

Dr HAMES replied:

I thank the member for some notice of this question. The construction of the infill sewerage project Belmont 5A and 1W commenced on 10 August this year and is expected to be completed around July-August next year. In that program there will be a total of 525 blocks, which includes Kewdale Senior High School, which is adjacent to Tomato Lake, of all places, and that will be serviced with reticulated sewerage. The 10-year infill sewerage program began on 1 July 1994, so it is now in its fifth year. I am extremely pleased to say that more than 37 000 lots have been given access to the infill sewerage program. A total of $294.9m has been paid through the Water Corporation. That is a record of which the Government can be extremely proud. We will continue that 10-year program and make sure that we resolve one of the major issues affecting the environment in Perth.

WA FIRE BRIGADE BOARD - UNDER-EXPENDITURE OF CAPITAL WORKS BUDGET

473. Mrs ROBERTS to the Minister for Police:

Will the minister explain to the House why $4m of the WA Fire Brigade Board's 1997-98 capital works budget of $6.6m was not spent as at 30 June this year? Further, why did 12 country and metropolitan fire services either underspend or not spend any of their capital works budgets last year?

Mr PRINCE replied:

Yes, I shall be delighted to explain those matters when I have the information. I do not have it to hand.

Mrs Roberts: You signed off on the annual report.

Mr PRINCE: I know I did. If the member had given me notice of the question, I would have had the answer available. I do not have the information off the top of my head. I will answer the question as soon as I have the information.

VOLUNTARY ORGANISATIONS - PARKING BY-LAWS

474. Mr BAKER to the Minister for Local Government:

(1) Will the minister please advise of the current local by-laws relating to parking availability specifically for voluntary organisations?

(2) What amendments are likely to be introduced to address the real need for voluntary organisations which assist disabled citizens to obtain free and accessible parking facilities?

Mr OMODEI replied:

I thank the member for some notice of this question.

(1) I am not aware of any local laws that relate to parking availability specifically for voluntary organisations. The issue of accessible parking is set out in each local government's town planning scheme.

(2) The Building Code of Australia determines the ratio of accessible parking bays in car parks. The ratio is currently under review. Voluntary organisations which assist the disabled may be eligible to apply for a disabled parking permit. Such organisations should contact the Australian Council for Rehabilitation of Disabled, which administers parking permits, for further information.

LOGGING OPERATIONS - WATTLE BLOCK

475. Dr EDWARDS to the Minister for the Environment:

(1) Have commonwealth government officials raised concerns with the minister about logging operations in Wattle block?

(2) If yes -

(a) exactly what were the concerns raised;

(b) what was the minister's response to each of those concerns; and

(c) given those concerns, why does the minister permit the continuation of logging operations in Wattle block before the completion of the Western Australian Regional Forest Agreement which may find that Wattle block should be included in the conservation reserve system?

Mrs EDWARDES replied:

(1)-(2) Not to my knowledge, but if any concerns have been raised, I repeat that only a proportion of Wattle block is presently proposed for harvesting. The Regional Forest Agreement process has provided for much scientific information on the conservation value of each of the blocks.

CHARITY CAKE STALLS - HEALTH PROBLEMS

476. Mr NICHOLLS to the Minister for Health:

In reference to the legislation proposed by the Australia New Zealand Food Authority relating to charity cake stalls, which is a major issue in my electorate -

(1) Will the minister indicate how many people in Western Australia have reported health problems associated with food purchased from a community cake stall in the past 10 years?

(2) Does the minister support the proposed national legislation which would have the effect of preventing charitable or community groups from holding cake stalls to raise funds?

Mr Marlborough interjected.

Mr NICHOLLS: The member for Peel might not regard it as a major problem, but people in my electorate do.

The SPEAKER: The member should just continue with the question.

Mr NICHOLLS: I ask -

(3) Will the minister outline to the House the background to the legislation and what action community groups can take to express their objection?

Mr DAY replied:

The Australia New Zealand Food Authority, in which Western Australia is a participant, has distributed some draft model national food regulations. I am aware of concern expressed by a number of members of Parliament on behalf of community groups, such as the Country Women's Association and parents and citizens' groups, in this regard.

Ms MacTiernan: Can you smoke near a cake stall?

Mr DAY: I would not recommend it.

The SPEAKER: Order! The member for Armadale will come to order.

Mr DAY: Genuine concern has been expressed by community groups that the draft regulations will have the effect of imposing strict food hygiene and labelling standards on anyone contributing a cake to a cake stall or a school or church fete. Western Australia has had strict food hygiene regulations in place since 1993, which have worked very well. Some exceptions are provided in those regulations for community organisations such as CWAs and P & C groups.

I am not aware of any reported health problems associated with community cake stalls over the past 10 years. The food sold at these events generally are of a low-risk nature and do not pose a food poisoning problem. A meeting of the Australia New Zealand Food Authority, on which I am the Western Australian representative, will be held on 17 December.

Mr Court: Tell them that the cake stall at our local church is keeping the church going, and that they should leave it alone.

Mr DAY: I will pass on the information about the Dalkeith Anglican church and others. I will make it clear at the meeting that Western Australia supports a continuation of the existing system, which is working very well. I will also write to the federal Parliamentary Secretary to the Minister for Health and Family Services, who has responsibility for ANZFA, to make it clear that any legislation should not impose onerous or impractical requirements which unduly impact on community and charity groups.

Mr McGinty: This is a nonsense question - sit down!

Mr DAY: It is an extremely importantly question. If the member for Fremantle has not been approached on the matter, he has not been doing his job.

I met this morning with the Managing Director of ANZFA, Mr Ian Lindenmayer, and I was encouraged by our discussions. I do not expect any new regulations to be enacted which impose an onerous or unreasonable requirement on people making cakes for cake stalls, fetes and similar activities in Western Australia.

JERVOISE BAY INFRASTRUCTURE AND HARBOUR DEVELOPMENT

477. Dr EDWARDS to the Minister for the Environment:

Some notice of this question has been given. I refer to the Environmental Protection Authority report on the Jervoise Bay infrastructure and harbour development and the minister's answer to a question in this place on 12 November in which she said she had not received the further advice that the EPA Chairman, Bernard Bowen, said he would provide.

(1) Has the minister now received further advice or information?

(2) If so, what is the chairman's further advice or information?

(3) Will the minister ensure that the full text of the advice or information is made available to the public?

Mrs EDWARDES replied:

(1)-(3) I have not received any further advice. The chairman said that he would be pleased for the Environmental Protection Authority to clarify its position on environmental acceptance of the proposal if I required it to do so. I have not required the EPA to do that; to date, it has not been necessary.

ELECTRONIC COMMERCE

478. Mr BARRON-SULLIVAN to the Minister for Works:

I refer to the Auditor General's recent report "Send Me No Paper", which identifies the need to review some government regulations which hinder the development of electronic commerce in this State. As the minister chairs the Australian Procurement and Construction Council which has responded to industry by taking the lead in identifying how to make it easier and cheaper for business to trade electronically with government agencies, can he advise the House of the situation in this regard?

Mr BOARD replied:

I thank the member for some notice of this question. The member for Mitchell has raised this issue with me personally a number of times. This issue is important for the development of business, particularly small business in regional areas. The Australian Procurement and Construction Council's main agenda item around Australia is the development of electronic commerce. As Government is the biggest procurer in many ways of many goods and services, the council believes that government has a lead role to play in the development of electronic commerce. It is important to develop a framework in Australia in which the States can cooperate; therefore, we will not duplicate the old railway line mentality. We must create standards, authentication and a system within Australia to which all States and the Federal Government can agree. We must also be able to deal internationally with this system. Small and large business must be able to trade with government in this way.

A whole range of players are involved in this issue. The procurement area for electronic services is one small part of large pie of online services; the Deputy Premier also plays a roll in this activity. Strong development has occurred on the procurement side. All States have agreed on a single window of opportunity; that is, a single web site is developed through which businesses around Australia can trade with all State Governments. This represents a major breakthrough. Standards, authentication, identification and categorisation are progressing well.

I reported to the House a few weeks ago that Australia, particularly Western Australia, was well placed to take advantage of electronic commerce. I am sure that my chairing of the national council will ensure we can continue to provide opportunities for Western Australian businesses.

WA POLICE SERVICE - SEXUAL ASSAULT UNIT

479. Mrs ROBERTS to the Minister for Police:

The minister was unable to give an assurance yesterday that the Police Service's sexual assault unit would not be broken up in a similar way to that which occurred with the armed robbery squad.

(1) Is the minister now able to give an assurance in that regard?

(2) If not, why not?

Mr PRINCE replied:

(1)-(2) I thank the member for raising the matter again. I have had some discussions on this point. It is highly unlikely that any change will occur to that unit, although changes happen in squads from time to time as a result of the nature of cases which come before them and other such matters. Therefore, one cannot guarantee that everything will stay the same.

Mrs Roberts: The child abuse unit has been exempted.

Mr PRINCE: I know. However, as things evolve, changes might take place. To my knowledge, there is no intention to devolve the sexual assault expertise out to district office level. The officers serve in that unit on a rotational basis, usually on a three-year posting. In a sense, by that process, one ends up with increasing expertise at the district office level, generally among detectives. That is highly desirable. In effect, that specialist expertise is moved out of the district office. To my knowledge, there is no intention to deal with the unit in the way the armed robbery unit was dealt with, which was for very good reason.

WA POLICE SERVICE - SEXUAL ASSAULT UNIT

480. Mrs ROBERTS to the Minister for Police:

As a supplementary question, will the minister give a guarantee that he will not break up the sexual assault unit, and that he will exempt it in the same that the child assault unit has been exempted?

Mr PRINCE replied:

No. I will not give such a guarantee; it would be stupid to do so.

Mrs Roberts: It is not stupid to give an exemption for the child abuse unit; the same should apply with the sexual assault unit.

Mr PRINCE: For goodness' sake. Any number of events could occur in the future which would cause the unit to be changed in some way or another. It would be utterly stupid to give a guarantee of that nature.

CAMPING POLICY

481. Mr MacLEAN to the Minister for Local Government:

(1) What conditions apply to persons wishing to camp outside a licensed caravan park?

(2) When will the policy on camping in designated roadside rest places be implemented?

(3) What steps are being taken in other Australian States to encourage caravan and camping tours in Western Australia?

Mr OMODEI replied:

This matter was debated at length in the Parliament in private members' time last week.

(1) Regulation 11 of the Caravan Parks and Camping Grounds Regulations 1997 allows owners or occupiers of land to give permission to camp for up to three days on land which is not a caravan park or camping ground. Regulation 11 also provides for local governments to permit camping on land that is not a licensed caravan park or camping ground for up to three months. The Minister for Local Government can give approval for a period greater than three months.

(2) The question about designated roadside rest places is being addressed by Main Roads Western Australia and should be directed to the Minister for Transport.

(3) The question about what happens in other States about encouraging caravanning and camping tourism in Western Australia should be directed to the Minister for Tourism.

FIRE SERVICES LEVY

482. Mr McGOWAN to the Minister for Emergency Services:

I refer to the Government's new fire services levy which will apply to every rateable property within a permanent fire rescue service area.

(1) Is the minister guaranteeing that insurance premiums will be reduced by the whole amount of the former levy?

(2) If so, upon what basis is the minister giving that guarantee, and is it legally binding?

Mr PRINCE replied:

(1)-(2) I am assured by the major insurance companies, which after all are most of the market here, that there will be an absolute guarantee from them that insurance premiums will come down. There is no way that this new scheme would be in any way equitable unless that happened.

Mr Brown: By the full amount of the levy?

Mr PRINCE: As I understand it, by the full amount of the levy in most cases, but where people are underinsured it probably would not be. It would depend upon the individual circumstances. Where people are fully insured it must be at least for the full amount of the levy, if not more.

Mr McGowan: Do you guarantee that?

Mr PRINCE: I have the assurance of the major insurance companies.

Several members interjected.

Mr PRINCE: I do not control the insurance companies. I cannot give members a guarantee that those companies will do something over which I have no control. I am telling members publicly, and not for the first time, that the insurance companies have given an assurance and have also said that we can audit their books for two years. I intend to do that, to make absolutely certain it is happening.

Mrs Roberts: I hope you audit their books better than you did this one!

Mr PRINCE: For goodness' sake, the member should go back to sleep.

Several members interjected.

The SPEAKER: Order!

Mr McGowan: Do you trust the insurance companies?

Mr PRINCE: In this, yes I do. For nearly 100 years we have had a system where much of the funding for permanent fire services has come from a levy on insurance. However, because so many buildings, particularly large office blocks, are insured overseas, vacant land is not insured and many buildings, whether residential or otherwise, are underinsured, there is a clear inequity. To change to a valuation-based levy is clearly far more equitable for everybody concerned. The insurance industry knows perfectly well that if it attempts in any way to make some sort of windfall profit out of this, it will be caned by me, by the Opposition and publicly by the Press and everybody, and so it should. Competition between insurance companies is also a factor. It requires only one to say that it has put its premiums down and then all the others are at a relative disadvantage. Therefore, for a number of reasons, including the assurance that insurance companies have given, the competitive nature of the market and the effect of the publicity that would flow if they did not do what they say they will, I confidently expect that premiums will come down, particularly for those who are adequately insured.

BIOMAX SEWERAGE SYSTEM

483. Mr BLOFFWITCH to the Minister for Water Resources:

If I fit a Biomax system to my block in Geraldton, will I have to pay rates on the sewer line going past my block?

Dr HAMES replied:

The sad news for the member, who is perhaps expecting a more friendly answer, is yes, he will have to pay for the sewer line that goes past his block. The reason is that the Water Corporation based all its operating and investment costs, particularly with programs like the infill sewerage program, on each individual block past which that sewer line goes paying its share of the total cost through sewerage rates. If people along that line dropped off the system and did not pay the rates,

that would affect the total cost of the system. The person who has the system put in would receive a benefit because although he pays a service charge for the water that also goes past his block, he does not have to pay for the water unless he uses it. Given that 70 per cent of the scheme water in the metropolitan area during the summer is used on gardens, I imagine that if people use the water from the Biomax system to water their gardens, they should achieve considerable savings in their water charges for the year.

FAMILY AND CHILDREN'S SERVICES, CHILD PROTECTION WORKERS

484. Ms ANWYL to the Minister for Family and Children's Services:

I refer to the minister's claims in this place yesterday that Family and Children's Services is adequately resourced with child protection workers.

(1) Is it true that senior executives in the minister's department are engaged in crisis talks with the Civil Service Association, representing child protection workers, about under-resourcing?

(2) Is it not also true that one of the major reasons for the under-resourcing is the huge turnover of child protection workers caused by massive workloads and inevitable management problems?

Mrs PARKER replied:

(1)-(2) I stated in this place yesterday that the Government has placed a high priority on families. There has been an increase of 38 per cent, or $41m, in the budget of Family and Children's Services in the past five years. We have arrangements in the department so that if any area is experiencing a lot of pressure as a result of the caseload of people working in child protection, they can make a request to the central office for extra staff to be sent to relieve that pressure. I am not aware of the talks to which the member referred. They may be taking place. The department has not only had an increase in funding and looked to see how it can better manage its resources and reallocate workers into the field, but it has also improved its systems. As I have said in this place before, it has received a Prime Minister's award for innovation in the public service for new directions in child protection work for the way it has been able to allocate resources, to prioritise and to put in place a system that it sees as being best able to respond to children at the highest risk.
