WESTERN AUSTRALIA

Parliamentary Debates
(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1999

LEGISLATIVE COUNCIL

Thursday, 27 May 1999

THE PRESIDENT (Hon George Cash) took the Chair at 11.00 am, and read prayers.

WINE TAX

Amendment to Motion

Resumed from 26 May on the following motion -

The Western Australian Legislative Council recognises that -

(1) Most of Western Australia's wineries are small wineries, producing approximately 25 per cent of Australia's premium wines, and are a vital part of the State's small business, tourism and export sectors.

(2) The Federal Government's intention to tax wine on an "ad valorem" basis will severely impact on most of the grape growers, wineries and associated industries in Western Australia.

(3) And requests that the Federal Government amend the tax package, to tax wine on a "volumetric" basis to provide equity across the industry.

(4) And urges all Western Australian representatives in the Federal Parliament to oppose the "ad valorem" wine tax in favour of a "volumetric" tax to demonstrate support of the successful and emerging wine tourism industry in this State.

to which the following amendment was moved -

To delete paragraph (4) and insert the following -

And that this House resolves to notify the Prime Minister, the federal Treasurer and all Western Australian federal members of Parliament of this House's opposition to the "ad valorem" wine tax and request them not to support such a tax measure but to instead pursue a "volumetric" tax measure.

HON NORM KELLY (East Metropolitan) [11.06 am]: When debate was interrupted yesterday I was talking about the taxing initiatives which have been introduced in different jurisdictions, the first of which was in the Northern Territory. In 1992 a levy of 20¢ a litre was imposed on beers with an alcohol content of more than 3 per cent. At the same time, a levy was imposed on cask wine at almost twice the rate of that imposed on bottled wine. The revenue raised by these levies was used to help resource community programs such as youth services relating to the use of alcohol in society.

A study of the impact of this levy showed that between 1991 and 1994 the consumption of low-alcohol beer in the Northern Territory rose from 0.4 per cent to almost 31 per cent of the total beer market. There was also an 18 per cent reduction in the per capita consumption of absolute alcohol after the introduction of the levy. Factors other than the taxing initiatives which would have influenced the increase in consumption of low-alcohol beer may have included advertising or a general community acceptance of the values of lower strength beer. However, we can see that taxing initiatives can influence the way the community consumes alcohol. What is probably more important is that that research included a study of other impacts of alcohol on society compared with impacts noted in the previous decade. That study found a 30 per cent reduction in alcohol-related road facilities, a 31 per cent reduction in alcohol-related road accidents and a 29 per cent reduction in breath test results exceeding the legal limit. Raising taxes in this manner is cost-effective and reduces the costs of alcohol to the community by reducing health costs, injuries and domestic violence.

A levy imposed in New Zealand raises approximately $6m a year. That money is channelled into its Alcohol Advisory Council. The funds are used for campaigns for the prevention of alcohol-related harm in areas such as law reform, alcohol advertising and public education. It is progressive and positive to hypothecate some of these alcohol excises so that they can be used to treat some of the problems flowing from alcohol misuse.

As I said, there are many reasons for supporting a volumetric or alcohol content based tax on wine over any arguments for an ad valorem tax. It is important to Western Australia that we maintain the growth of our wine making industry and of the related tourism activities that partially depend on the development of the wineries. More particularly in the south west but also in recent years in my electorate of East Metropolitan with the increasing development of the Swan Valley wineries, there has been an associated growth of restaurants, galleries and the like to encourage people to not only sample wines but also enjoy a meal, buy some art or experience the many other benefits that the Swan Valley offers. A volumetric or alcohol content based tax provides a perfect opportunity to place an excise on the health imperatives associated with alcohol consumption.

I applaud both Hon Barry House and Hon Christine Sharp for moving these motions.

HON BOB THOMAS (South West) [11.12 am]: I also commend Hon Barry House and Hon Christine Sharp for moving these motions. It is important that we realise that this problem for the wine industry has arisen because the Federal Government is a captive of the PLO!

Hon Barry House: Who?

Hon BOB THOMAS: It is a coalition of self-interest groups which are dictating policy -

Hon Barry House: Is that Yasser Arafat's organisation?

Hon BOB THOMAS: It is a coalition of self-interest groups who are dictating policy to the Federal Government. I am referring to Penfolds Wines, Lindemans Wines and Orlando Wines - the big three.

Hon N.F. Moore: That is clever.

Hon BOB THOMAS: I could include Hardys Wines and a few others. As Hon Barry House said the other day, the 20 largest wine makers in this country produce about 98 per cent of wine in Australia. The PLO are by far the largest producers and as a result have a major influence on government policy. The proposal for an ad valorem tax arises from the large producers. I will not reiterate ground covered by other members in this debate. However, in the Barossa and Hunter Valleys there are mile after mile of vineyards. The big three are able to produce wine very cheaply and therefore they have control of the cheaper wine market, casks, etc. They are able to cross-subsidise their premium wines. That is what creates the problem for us in Western Australia. The cross-subsidisation of those premium wines makes them more competitive than the Western Australian wines. Most Western Australian producers are boutique wineries which make some of the world's best quality premium wines. However, they are unable to compete with wines of a similar quality that are subsidised by the cheaper cask wine market.

Many people enjoy a chardonnay and I am sure many people have bought Lindeman's Bin 65 Chardonnay, one of the world's finest chardonnays. Lindeman's produces several million cases of it each year; more than the total production of chardonnay in Western Australia. It retails for less than $10, but if it is on special it sells for about $8. Less the carton discount it can no doubt be bought for $7.30 a bottle. The best comparison of a Western Australian chardonnay sell for $12 or $14.

Hon N.F. Moore: Which are they; I would like to buy some?

Hon BOB THOMAS: The CastleRock Chardonnay produced in the Porongurups by Wendy and Angelo Diletti is excellent.

Hon N.F. Moore: For $12 you must send me a case.

Hon BOB THOMAS: For members who like a riesling, I recommend the Henschie Julius, one of the finest wines we can buy, although I am unable to afford it very often. It is a premium riesling produced in the Eden Valley in the Adelaide hills. It is on special at Con's Liquor Stores at Carey Park, Bunbury at $16 a bottle. If bought by the carton it brings a 10 per cent discount which makes it a $14 or $15 bottle of wine. The Howard Park Riesling produced in Denmark, Western Australia is $21 a bottle. One of my favourites, the Penfold Kalimna, Bin 28 Shiraz -

Hon Ken Travers: I will take a mixed dozen!

Hon BOB THOMAS: - sells once again at Con's Liquor Stores for $15 a bottle if bought by the carton. It is an excellent wine. A local comparable wine is the Plantagenet Shiraz produced by Tony Smith, who I am sure is known to many members. It sells for $28 compared to the Kalimna at about $16. One of the cheapest but good quality tawny ports we can buy is the Penfolds Club Port at $6 to $8. There are no Western Australian tawny ports available for under $10 a bottle.

It is obvious that an ad valorem tax will discriminate significantly against Western Australian producers, who are already at a price disadvantage. The large volume, cheap-wine producers are able to subsidise their premium wines gaining an unfair competitive advantage over premium Western Australian wines. It is extremely important that we make our federal representatives understand in no uncertain terms that an ad valorem tax will significantly increase this price difference and therefore damage an emerging industry here in Western Australia.

Hon Barry House referred to the importance of the wine industry to tourism in Western Australia. It is an integral part of our tourism product in the south west. We need only travel through Busselton, Yallingup, Dunsborough and Margaret River to see the number of people visiting that region not only for the natural attractions, but also for the vineyards and the restaurants. If the Federal Government proceeds with that tax proposal, it will have a major deleterious effect on an emerging industry in the region. It will "nip in the bud" an industry that is only just beginning to take off in Manjimup. Manjimup has enormous potential to develop a wine industry. People such as the Peos brothers, the Muirs and the Constables are just starting the move in the Manjimup area where some serious research is being done into developing the wine industry. If the Federal Government were to persist with this policy, that push might be thwarted.

Another point that we should make to our federal representatives is that the industry has already been badly affected by the Federal Government's removal of the accelerated depreciation allowance of 150 per cent in return for a reduction in the company tax rate from 36¢ in the dollar to 30¢ in the dollar. However, many of the people who are moving into the wine industry are not incorporated companies but are partnerships and sole proprietors, and they need to invest a lot of money in capital equipment such as pumps and reticulation equipment to get these wineries off the ground, and now that they have lost the accelerated depreciation allowance -

Hon Greg Smith: Has that happened yet or is it proposed in the Ralph report?

Hon BOB THOMAS: I am sure it is in this year's federal budget. I believe it has already happened; and if it has not, it will happen.

Hon Greg Smith: I do not think it has happened yet.

Hon BOB THOMAS: People who were contemplating developing vineyards on their properties will be less inclined to do so, because that tax concession on which they would have based their feasibility studies has changed. People who are not incorporated companies will not enjoy the benefit of a 6¢ cut in the company tax rate.

Hon Greg Smith: That has not happened yet.

Hon BOB THOMAS: I am sure it has; but even if it has not, it is in the pipeline, and it will have a major deleterious effect on the wine industry.

Hon Greg Smith: And on the mining industry.

Hon BOB THOMAS: Yes, but we are talking about the wine industry at this time. It will have a major impact, and we should impress upon our federal representatives that we cannot accept that.

I commend those members who have brought this matter to the attention of the House and have contributed to this debate, because this is one of the most important issues that we will need to deal with in the south west and great southern over the next year. I wish the Leader of the House well in his attempts to convince our federal representatives to recognise the seriousness of the problem that will be created and the need to change their policies.

HON B.M. SCOTT (South Metropolitan) [11.24 am]: I support the motion.

Hon Tom Stephens: Do you have a vested interest in this, by any chance?

Hon B.M. SCOTT: Yes. I enjoy fine wine, and my family, but not me, is involved in the winemaking business and in the emerging, successful wine industry in Western Australia.

I reinforce the valid points that have been made by Hon Barry House about the proposed change in the wine equalisation tax regime. In essence, the Federal Government's tax reform proposal will compound the current inequities in respect of small producers and will significantly benefit one sector of the industry to the detriment of the other.

Much of the debate on this topic has focused on the major wine producing sector in this State and this nation. Although the largest volume of wine is produced by a few major wineries and conglomerates, there are a large number of small wineries, particularly in this State. Other speakers in this debate have referred to the emerging tourism industry, the cottage industries and the other offshoots of the boutique wine industry in the south west of this State. I will take a different tack in this debate from that of other speakers and focus on the impact of the boutique wine industry on employment and educational opportunities for young people in Western Australia. I endorse the sentiments expressed by other speakers, but I wish to draw the attention of the House to the importance of the boutique wine industry and the small wineries in promoting Western Australia and Australia as producers of fine wines. The fine wines that are produced by those wineries appear on the shelves in shops in Europe, America and other nations, not in casks but in bottles. Cask wine is not benefiting this nation from the perspective of tourism and wine sales. It is the bottled, well labelled and high quality fine wines that are produced by the smaller wineries that is attracting international attention to the wines that are being produced in Western Australia and Australia.

We all know that employment prospects in the future will be found in different areas of industry. The tourism industry provides a large number of jobs in this State, particularly in the south west. The boutique wineries there offer tourists many attractions in the form of food, art, pottery and the like, which may have developed as small cottage industries in the first instance, and which add not only to the income of the wine industry but also to the culture of that area. Some members will have had the benefit of visiting wine producing areas in other countries; for example, France. From my experience, this State has as attractive cellar door sales opportunities, boutique wineries, restaurants and other attractions as any I have seen elsewhere in the world. I have not been to the Nappa Valley in California, but I believe that is extremely good. Here in WA we are producing wines of a quality that is equal to the wine that is being produced in the best wine growing regions in the world.

I will spend a few moments not only on the tourism benefits of the wine industry to Western Australia but also on how this proposed tax will impact on small wineries. This tax will have a negative impact on the majority of wineries across the nation. The figure that was quoted was that there are about 914 small wineries, which produce the majority of the value, although not the majority of the volume. This method of taxing small wineries will have an impact on their production and profit. It could curb two very successful areas of industry that have emerged as a result of the production of fine wine; that is, tourism and education.

Most members are aware that until a few years ago Western Australians who wanted to study the wine industry had to travel to Roseworthy College in South Australia or to Charles Sturt University in New South Wales. I have first-hand experience of this because my eldest son is studying wine science at Charles Sturt University and he cannot do that in Western Australia at the moment. That is one of the educational opportunities that will result from further success in our industry. One can study viticulture at Curtin University and the Margaret River TAFE college. Many young people in that region working at wineries are realising that their skills must be upgraded if they want to earn more than $10 an hour or if they want to improve their qualifications.

The expansion of the wine industry in the south west has had an educational benefit. The Charles Sturt University now offers an external course and many young people working in wineries in the south west have taken up that opportunity. Curtin University has moved to provide these courses and the Margaret River TAFE college is also offering an introduction to viticulture course. Clearly this is a growth industry for universities like the Edith Cowan University at Bunbury. An increasing number of young people will want to finetune their skills in this area.

Some of these small wineries have a winemaker and most have a viticulturist. This huge expansion means job and training opportunities that we never expected in this State when those areas of the south west were, in the main, devoted to dairy farming. It is a rapidly growing industry that offers opportunities for education and training, and the State has responded to that by providing those opportunities.

If this tax is imposed as a result of the tax package revision, it will impact very negatively on the many small wineries in Western Australia. I very strongly recommend that the House agree with this motion and consider the amendment moved by Hon Jim Scott. We must look at putting pressure on the Federal Government to amend the tax package so that the tax is applied on a volumetric basis, which will provide equity across the industry. That will also boost two of our emerging industries - tourism and education - which provide jobs and training for young people in Western Australia.

HON DERRICK TOMLINSON (East Metropolitan) [11.35 am]: It was not my intention to speak on this issue, neither perhaps is it necessary, because everything that should be said has been said with one exception. That one exception is that the most important wine producing area of Western Australia has not been mentioned. Of course, I refer to the Swan Valley. I say advisedly that it is the most important area because I do not pretend that it is the premium wine producing area of Western Australia. Every member knows that that is Mt Barker. One could not claim that Swan Valley wines would match some of the excellent wines produced by the Margaret River wineries. However, John Kosovich's chardonnay from Westfield holds its own anywhere in the world; it certainly holds its own with anything produced by other wineries in Western Australia. Houghton's White Burgundy is regarded as an ordinary wine, but it is universally drunk - perhaps I should say "imbibed".

I make a particular plea for the wineries of the Swan Valley. Large wineries such as Houghton and Sandalford produce a greater volume of wine in Western Australia than do the boutique wineries, which tend to concentrate on premium wines. Houghton and Sandalford take the grapes and juice from their vines in Margaret River, Mt Barker and the great southern region, and then crush and process them in the Swan Valley.

I will focus on producers such as Talijancich Wines. Talijancich Wines would not be regarded as producing premium whites and reds. However, its muscat liqueur is one of the muscat liqueurs of Western Australia, and certainly of Australia. Jane Brook winery is a little boutique winery on Toodyay Road, and I recommend its wine, but it has a very strong presence in the Japanese market. The Lamont winery is one of the stars of the Swan Valley, but the wine maker would not claim he is producing outstanding wines; he is producing good, drinkable and quaffable wines that are very popular.

Each of these wineries has a cellar door market. This ad valorem tax on the cellar door market will have a greater impact on those producers than on some of the BRL Hardy wineries and other large concerns - they will absorb that tax. Who determines the price of the bottle of wine sold at the cellar door? The vigneron calculates that price according to his or her costs and market. Some of the small wineries in the Swan Valley produce wines that on a comparative basis would be described as quality but cheap. Those quality cheap wines are serving a cellar door market attracted to them because they are value for money. Now we add to that the ad valorem tax of 10 per cent.

I add a word of warning: We have had a great problem with the taxing of cellar door sales for some time. The tax depends entirely upon an assessment made by a taxation assessor visiting the winery and determining for the purposes of taxation what should be the cellar door price of that wine and then imposing a tax accordingly. It is not based upon the vigneron's determination of price.

Hon Bob Thomas: Can they not claim it back?

Hon DERRICK TOMLINSON: Some of my dear friends in the Swan Valley have had tax bills of $18 000 which they would very much like rebated.

I give an example of some of the consequences. As these people are licensed for cellar door rather than retail sales, taxation is assessed on their cellar door price as calculated by the tax inspector. If those cellar door sales proceed to another outlet, where they are sold with a meal, the calculation of the taxable value is not the cellar door price determined by the vigneron but a hypothetical retail value. This is because the wine bought at the winery is taken to another place and attracts an assumed retail value. For example, if the Parliamentary Services Committee, in its wisdom, were to visit Lamont's winery in the Swan Valley to taste some of its delights, be it a cabernet sauvignon or even a white burgundy, and bought a volume of it at cellar door price and it were made available to members in the dining room for purchase at Parliament House price, not the cellar door price, what tax value would the winery pay? It would pay tax upon the price imposed by the Parliamentary Services Committee. The anomaly is imposing a tax upon the producer which reflects not the price received, but the price charged elsewhere. Therefore, having a fine Lamont white burgundy in the dining room of this place imposes an unfair tax burden upon the winemakers. We promote good Western Australian wines in this place. Whenever I have guests for a meal in Parliament House, and I am handed the wine list, I invariably choose a good Western Australian wine.

Hon N.F. Moore: That is all there is on the wine list!

Hon DERRICK TOMLINSON: I take the word of the Leader of the House in that regard as I have not tried all the wines available in this place - although I am working on it.

I was not joking when I said that the Swan Valley is the most important winemaking region in Western Australia. I do not pretend it is the State's premium wine making area. However, it was the first winemaking area in Western Australia. Dr Ferguson's vineyard, which is now Houghton's, was established not long after the colony was established in 1829. Jack Mann's white burgundy was almost universally imbibed. Those vineyards in the Swan Valley were the birth place of the Western Australian wine industry. Jack Mann's son Dory was the aviculturist with the Department of Agriculture with responsibility for the first planting of vines in Mt Barker, which is now the premium winemaking area of Western Australia. Sons of the winemakers of the Swan Valley identified the potential of Margaret River as a winemaking area. The Swan Valley is important as the birthplace of the Western Australian wine industry.

Small winemakers are found in the valley, with the exception perhaps of the Houghton Wine Company and Sandalford

Wines. These small operators who rely on their cellar door sales will face a severe impact from the Federal Government's tax. Let us examine the consequences of that on the Western Australian Government's policy. When we came to government in 1993, the Government's policy was to protect the Swan Valley by statute as an agricultural and tourism area. It is the jewel in the crown of the metropolitan area. It is one of the most attractive day tripper tourism sites in Western Australia and only 14 kilometres from the central business district. Market analysis suggests that at least 60 per cent of people who go to the Swan Valley for wine are of mature vintage; namely, people in the over 55 years of age category. These people visit the Swan Valley not to kick up their heels and have a fine time, but to enjoy the wine, food and ambience of the area. It has enormous potential, not only with the day tripper market, but also with recreational opportunities for Perth dwellers - that is, those forced to live in the suburbs south of Geraldton.

Also, it has great potential as a destination for international day trippers; namely, those who visit Perth for two or three days and stay in a Perth city hotel and look for a day trip. Where do they go? They tend to go to the Pinnacles, which is the most attractive day trip area in Western Australia. They might go to the south west for a day or two. If they stay for two or three days, and are interested in wine, they will visit the Swan Valley, not Mt Barker or Margaret River, because it is convenient.

This Government has legislated for the protection of the Swan Valley and to encourage the operations of restaurants, tearooms and barbecues associated with wineries. The Government will do what it can to cultivate tourism in the Swan Valley. However, the Federal Government intends to impose a tax burden on small winegrowers which can only be to the detriment of the programs vigorously supported by the State Government and the Minister for Tourism. It makes no sense for a Federal Government to impose a tax which unfairly discriminates against the small businessperson because he or she produces quality wines sold by the bottle, rather than the inferior reconstituted grape juice found in wine casks.

We should never penalise excellence or enterprise. When we have a taxation reform climate moving towards a tax upon goods and services, and at the same time we have this policy which imposes a tax upon excellence and enterprise which is detrimental to the tourism policies of this Government, we have a responsibility as a Parliament to express our strong opposition to it. I express that strong opposition on behalf of my constituents in the Swan Valley. Other members have expressed opposition on behalf of their constituents in other areas of Western Australia. As Hon Barry House said, we are not talking about comparative values, although we will vigorously promote our own areas; we are talking about the protection of something important to the Western Australian economy. I commend the motion.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [11.50 am]: For the sake of the exercise, the Government supports the motion and is prepared to support the amendment because it is a stronger wording than the original motion. I would like to finish this debate by 12 noon so that we can send a message in time to the Senate before it makes any silly decisions on this matter. It would not be the first time the Federal Government made a mistake about taxation policy. I am reminded of the fringe benefits tax as an example.

Hon Tom Stephens interjected.

Hon N.F. MOORE: Accelerated depreciation has not come in yet; it is part of the Ralph report and has not been adopted. This Government is vigorously opposing that on the basis of the effect it will have on a range of our industries, particularly the mining industry. The Government supports the motion and the amendment and I hope it can be dealt with today.

Amendment put and passed.

Motion, as Amended

HON BARRY HOUSE (South West) [11.52 am]: I thank members for their comments, which were all relevant and add to the compelling need for the Federal Government and the Federal Parliament - because it is probably in the hands of the Federal Parliament more so than the Federal Government - to take some notice. The Leader of the House is correct; a time imperative is involved and it would be good to get this out of the way by 12 noon today and to send a strong message to the Federal Parliament. I will make only a few brief comments so that that can be done in time.

I am comforted by the fact that all of the speakers in this debate support the motion not only because they like a good wine, but also because they support the Western Australian wine industry. Hon J.A. Scott's amendment has tightened up the motion and given it more focus. It brings together the two motions on this subject; mine and that proposed by Hon Christine Sharp. Inevitably some parochialism will creep into debates such as this about "mine is better than yours", and the wine regions each of us represents may be better than somebody else's. Whether we are talking about the Swan Valley, the hills region, the great southern or the Margaret River region, all of them are unanimous in their support of the view that the Federal Government should change the basis of taxation from ad valorem to volumetric.

I will briefly mention three points which illustrate the point of view from the area I know best - the Margaret River wine growing area. Three indications of the wine industry's progress in that area provide very compelling reasons to support this motion. Three events have grown around the wine industry. The first is the Margaret River wine industry field day, which was held for the third year on 8 May this year, which I had the pleasure of opening. In three years, that event has grown from a small local event comprising about 60 exhibitors in the first year to almost 200 exhibitors this year. It is acknowledged in the wine industry as the biggest and perhaps the most important commercial event in the wine industry in Australia. That is a phenomenal growth and reflects the impact that the wine industry and its ancillary benefits have had on that region.

The second one is wine tourism. The first national wine tourism conference for Australia was held in Margaret River last year. The next international conference on wine tourism will be held in Margaret River in the year 2001. That on its own acknowledges the superb job that has been done by concentration on quality and excellence in that region. The winegrowers have established the infrastructure surrounding the wine industry, which everybody has mentioned - the restaurants, galleries

and so on - and which has made it a region that outstrips anything else I have seen in Australia. I have not seen many other winegrowing areas in other parts of the world, but the only one which comes close to it from my personal experience is the Sonoma Valley in California. It is acknowledged worldwide that the Margaret River area has established an enormous asset through the way the industry has approached the area.

I was pleased to hear Hon Barbara Scott mention the educational aspects of the wine industry. The third aspect is a futuristic event, and that is a proposal to establish a wine science centre of excellence in Margaret River. That proposal is now entering the full feasibility stage, which is being funded by the State Government through the South West Development Commission. The purpose of this stage is to investigate the feasibility of a wine science centre for viticulture and oenology in Margaret River. This involves the Curtin University relocating its faculty for viticulture and oenology to Margaret River. It will involve all of the other ancillary education aspects in the area. That will ensure that our young people have the opportunity to pursue their career in wine, whether it be in the purely viticulture aspects, or the winemaking, wine marketing or some tourism aspect associated with it. This is a very exciting development that will provide a focal point for the Margaret River region wine industry.

I have made my comments to illustrate how far the industry has come in the past few years and what an exciting future it has. However, the dark clouds on the horizon are the taxation system. The compelling reasons to change it in addition to all those factors number three: Equity; the Western Australian industry and how it has grown and structured itself; and the health aspects that have been adequately described by various members. I commend the motion to the House and thank all members for their supportive comments. The next step is in the hands of the Federal Parliament and those involved in the current negotiations over the future of the tax package. The fact that the tax package is being debated and discussed in such depth at this stage gives us an excellent opportunity to get a few of these things right in Australia. The basis on which the taxation is imposed on wine is wrong, certainly from our point of view, and it should be changed and needs to be changed in the next few weeks. With those comments, I thank members for their support and commend the motion to the House. More importantly, I commend the sentiments expressed in the motion to the Federal Parliament.

Question (motion, as amended) put and passed.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Inquiry into Government Proposals for Westrail Freight Operations and Associated Infrastructure - Motion

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [12 noon]: I move -

> That the House direct the Standing Committee on Public Administration to inquire into government proposals for the sale or lease of Westrail freight operations, track network, rolling stock and associated infrastructure.

Debate adjourned, pursuant to standing orders.

SELECT COMMITTEE OF PRIVILEGE

Report on a Failure to Produce Documents Under Summons

HON B.K. DONALDSON (Agricultural) [12.03 pm]: I move -

> That the report be noted.

On 8 December 1998 the Select Committee of Privilege presented a report on a failure to produce documents under summons. The House established that select committee in response to the summons issued on behalf of the Parliament by the Clerk of the Legislative Council, Mr Laurie Marquet. Dr Murphy, from the Department of Resources Development, had failed to produce two documents for the Standing Committee on Estimates and Financial Operations; namely, the Bird Cameron report and the McLennan Magazanik report on gas tariffs. These reports were the basis of a decision to be made by the Minister for Resources Development and the Department of Resources Development on the commercial viability of the existing tariffs on gas and the future tariffs to be applied.

When this committee was established it recognised that it had to satisfy itself on a number of issues. First, was the summons issued correctly? Second, was it issued to the correct person; that is, the person who had control of the documents? Third, was the non-compliance of the production of documents of a technical nature; that is, was there loss of control of the documents once the ministerial direction had been given? Fourth, was the contempt purged at this time? Fifth, was the time factor, of 4.30 pm on 29 September when the summons had to be responded to, taken into consideration in any form by Dr Murphy and those advising him? Sixth, was Dr Murphy still required to respond to that summons, even after the ministerial direction had been given at 2.30 pm on 29 September? Seventh, what efforts were made to communicate that ministerial direction to the issuer of the summons, Mr Laurie Marquet, the Clerk of the Legislative Council? Eighth, if a contempt or a breach of privilege was vindicated, should a penalty apply? Ninth, what advice or lack of advice was given to Dr Murphy during the six-month period. Tenth, what was the culpability of others?

I preface my remarks by saying that the report in no way took into consideration the events preceding the summons. The report is about contempt of the House for Dr Murphy's failing to produce documents. Before the summons was issued the committee took evidence from the Chairman of the Standing Committee on Estimates and Financial Operations, Hon Mark Nevill. It also took evidence from the advisory research officer and from the committee clerk by affidavit. However, that was not relevant to the matter being examined and investigated on behalf of the House, which was simply the production of documents under summons.

At no stage did the committee intend to communicate, and it was not indicated in the report, that the credibility or

professional expertise of Dr Murphy was in question. He is a very senior officer and I understand that has been indicated by his promotion to acting chief executive officer of the Department of Resources Development, which took place following the retirement of Dr Des Kelly. In that sense, in no way was the committee reflecting on Dr Murphy's integrity or credibility.

The other issue on which the committee had to satisfy itself when taking evidence from Dr Murphy, was the points of law raised during that time. Annexure A to the report is a letter written to the chairman of the committee by the Clerk of the Legislative Council, pointing out the relevant Acts, the defence mechanisms, and whether a contempt or breach under different guidelines had been vindicated.

It became apparent to the committee as it took evidence that the parliamentary guidelines that had been, and still are, in operation were issued in February 1987 by the then Premier of the State, Hon Brian Burke. Unfortunately, they must have been tucked away in some dusty file in a bottom drawer, and it was clear that no-one knew anything about them. Whether they did or did not, the committee has made a recommendation on this in a further report. The committee was not privy to legal advice received from Crown Law. The only legal advice communicated to the committee was that received at 11.59 am on 29 September. The advice was to produce the documents or seek a ministerial direction to refuse to produce those documents because of commercial sensitivity.

The committee had no quarrel with the minister's direction, because it is a customary usage of the Parliament. It still raises the point of law of whether those documents should have been produced. I cannot talk about what has happened since. I understand that those documents may have been provided to the committee, but it was not part of our investigations. At the time, in taking the legal advice, members of the committee were disturbed that certain sections - not only under the Parliamentary Privileges Act - were not carefully examined. Advice to Dr Murphy was short in the sense that it did not reflect to Dr Murphy the importance of his response to that summons. If I were issued a summons to produce documents or appear in person by a certain time, irrespective of whether someone intervened to say that I could not produce those documents, or some circumstance did not allow me to meet that deadline, appear at the committee or communicate that message to the person who issued the summons, I would feel the full weight of the law. If a court had issued me with a summons, I would not be standing here now. It is a responsibility and an obligation on any member of the community, no matter who that person is, and that is commonsense. That is the first failing.

The committee also had to look at whether the summons was issued correctly. From the legal advice we received, and also following a later inquiry by the Attorney General into whether that was the case, it was issued correctly and would stand up in any court. There are precedents to this; the Aboriginal Legal Service and the Egan v Willis cases. At the end of the day, the advice the committee received vindicated its report that that was the case. Was he the correct person to whom to send the summons? Did he have control of the documents? Yes, and that is where the transcripts of evidence were very useful. At all times, it was indicated clearly by Dr Murphy that he was in control of those documents. More importantly, the minister to whom he is responsible - a minister in the other place - also assured the committee in writing of the confidence he had in Dr Murphy and the control he had during this process. We have no argument with that. It was clearly indicated to the committee that he was the correct person and had control of those documents.

Was the non-compliance of the production of documents of a technical nature? We viewed this at great length and the answer was no, it was not of a technical nature, simply because of the inadequacy and the lack of effort put in to communicate a ministerial direction at 2.30 pm on 29 September. It did not exonerate the responsibility or purge that contempt at that stage by being simply a ministerial direction, unless that direction was indicated clearly to the person issuing the summons. It might have meant that when the issue was raised in the House, a Select Committee of Privilege might or might not have been established. Simply, the House might have viewed the fact that, as a ministerial direction was given and a communication to that effect was clearly put to the issue of the summons, the House might have taken a different path. That is only supposition of course. One cannot second guess what this House might do because it is the right of the House to make that decision.

Hon Ljiljanna Ravlich: Did you examine the role of the minister and what his obligations were?

Hon B.K. DONALDSON: The minister is in the other place. There is a responsible minister in this House. Standing orders apply to ministers in another place and, from what I understand, they do not appear before committees.

Hon Derrick Tomlinson: It was not in the terms of reference either.

Hon B.K. DONALDSON: Hon Derrick Tomlinson is correct. It was a clear examination. The difficult position in which the committee found itself was ascertaining whether it was between 2.30 and 4.30 pm. It became clear from a telephone log - one could hardly say that it was other than a token effort - that a call was made to Parliament House at 3.30 pm for the duration of one minute and three seconds, if I remember correctly, to the telephone number of the Clerk of this Parliament. It was also indicated to us that a second call was made to Mr Michael Smyth, an advisory/research officer in the committee office, and a message was left on the machine. There was no indication on the telephone log into Parliament House that a call was made to that number. We cannot validate that; we just accepted that an attempt was made. What was more interesting was that a circle was drawn around the facsimile number of the Clerk of this Parliament. I am not a lawyer; I am just an ordinary person. We were told at that stage that there was a computer malfunction; there was a hiccup between getting letters signed and delivered. However, there is still a facsimile machine. We have great technology today. Thirty-five years ago a person would have cycled up St Georges Terrace to inform the Clerk of the reason that the documents would not be coming. Once again, the committee was of the view that that piece of technology could have been employed in communicating this message. It would have been up to the House then to decide whether a Select Committee of Privilege was the correct way to go.

Was Dr Murphy still responsible? Yes, because the summons was issued to him. If the control of the documents was taken away from him verbally by the minister and then confirmed in writing, which was then faxed to Parliament between 5.30 and 6.00 pm that evening, it seems interesting that they could not fax that information prior to the time constraint of the summons at 4.30 pm of that day. He was issued the summons and he was still responsible. I am surprised that the information was not given to him from the advice that was given. I will not go into what that might have been, because we were not privy to much of that advice. If this were to be the case and a contempt were found to have occurred, the House had asked the committee to look at whether a penalty would be appropriate; that is, a reprimand or a censure. Certain defences were used from time to time, specifically section 23(4) of the state agreement Act. When asked why that defence was not pursued, it was said that the committee probably would not go along with it. I find that disturbing. If that was legal advice, I presume it was concrete legal advice and it would continue as a defence; however, it was scrapped. It was strange. We looked at the fact that the parliamentary guidelines had fallen from people's memories. They certainly had not been produced properly on a desk in a government agency for many years. Another point was that those documents were removed from Dr Murphy and he might have been given advice that it would not have been in his best interests. The culpability of others may have been involved in this process.

When considering section 8 of the Parliamentary Privileges Act and the circumstances in which a fine can be imposed, the committee went back to section 59(1) of the Criminal Code. Some of that information is contained in the annexures which are at the back of this report. It is important to recognise that a fine or imprisonment could be imposed. I think the committee indicated that at that stage the fine was $7 500 or $8 000.

During this process the committee took various mitigating factors into account, but, unfortunately, members believed that there were a number of issues on which they could not report. However, a later committee was able to do so. The first mitigating factor was the fact that the parliamentary guidelines had unfortunately dropped out of the system. The committee also needed to ensure that there was a better communication process and a better procedure with respect to the guidelines under which it operated. Although the committee was unable to report these matters, it was led to understand, as a result of the debate that took place within the committee, that that communication had been extended to the committee officers, the advisory/research officers and other members of committees. We were also led to believe that because this particular Select Committee of Privilege had raised this missing document - these parliamentary guidelines - that was also being dusted off and would certainly be reviewed.

At the end of the day, when considering the penalty that we felt should be applied, it was about one-fifth of that which a court would normally impose as a maximum fine. That is a rule of thumb. We felt that its purpose was not to be a deterrent, but it matched what we believed was appropriate for a contempt of the Parliament. That is what the committee adjudicated.

It is also important to realise that, thankfully, matters of this nature are fairly rare. As a result of this report, I hope that there will be a better understanding of what the responsibilities of the bureaucracy are, what the responsibilities of members of Parliament are when they are sitting on committees, and what the responsibilities of advisory-research officers and committee clerks are. We do not want to set up a barrier between the bureaucracy and the Parliament. It is important to have a good working relationship, and 99 per cent of the time that occurs. Members of the House would realise that.

However, at the end of the day a summons was issued. Whether it was issued to me or Hon Kim Chance does not matter. The fundamental basic principle is that when a person is issued with a summons to produce papers and is directed to appear at a nominated time and place, a person is obliged to do so. If I had been asked to appear, for argument's sake, at Geraldton at 9.30 this morning, and if after eight inches of rain the aeroplane in which I was travelling was not able to land at the airport, or perhaps there was no seat for me on the aeroplane, that would be a mitigating factor that a court would probably take into account. If Hon Kim Chance, Hon Murray Nixon, Hon Murray Criddle or I had been summonsed to appear in those circumstances, we would be bending over backwards to make sure that that communication was given to the person who issued the summons.

Hon Derrick Tomlinson: What would you do if you had a computer malfunction?

Hon Ljiljanna Ravlich: Use a fax machine. Don't you listen?

Hon B.K. DONALDSON: I would use a fax. I do not know whether people do not have much time in their daily lives, but it would not take more than a minute and a few seconds to make a phone call about a matter as important as this. I wondered whether this matter was treated in a cavalier way by some people. When the committee presented its report on 8 December, we believed that contempt, not of a technical nature, had certainly been committed, and we believed that an appropriate penalty should be imposed. We deliberated on that penalty. I inform members that each decision that was made was left lying on the table for a minimum of one week so that members could reflect on it. Therefore, it was not an emotive response to something that had been put in front of us. We had a week to reflect at each stage before the final decision was made. It is important to remember that. We can all be a little gung-ho at times. However, in the cold light of day, members had an opportunity to consider and reflect in order to satisfy themselves of their decision. As to any legal points that had been raised, members had the opportunity to consult with the legal team which was advising the committee.

HON KIM CHANCE (Agricultural) [12.25 pm]: I regret that the infectious disease which afflicts me at the moment will prevent me from speaking at length on this matter. I support the comments of Hon Bruce Donaldson and the findings of the Select Committee of Privilege. It is coincidental perhaps that this event took place at much the same time as events in the New South Wales Legislative Council which have been referred to; that is, the Egan v Willis case in New South Wales. However, in each case the gravity of an order of a Parliament has been underlined, and at least in our case - I cannot speak for New South Wales - the message has got through very effectively.

When Parliament makes an order, it is not something to be taken lightly. Whether that order is made against one of its own

members, as was the case in New South Wales, or against a person outside the Parliament, as was the case with the Department of Resources Development, it nonetheless is an order which must be met; it must be satisfied. Hon Bruce Donaldson has explained fully and accurately under what conditions that order might not be complied with. To summarise that, suffice to say that one either satisfies the order or finds a legal excuse for failure to satisfy it. In this case, that simply did not happen. The legal excuse was not provided by the appointed time on the appointed day, and as at 4.30 pm on that day the contempt became complete. There can be no other determination that the House can make. It is a simple black-and-white matter. No matter how much people who hold an alternative view may want to introduce shades of grey into the issue, it is a black-and-white situation: Contempt or not in contempt. It is as simple as that.

I do not know Dr Murphy and I have met him only on two occasions, when he appeared before those Select Committees of Privilege. However, from conversations with those of my colleagues who know Dr Murphy and regard him extremely highly, I am delighted, as I am sure is Hon Bruce Donaldson, that this event has not inhibited his career. Indeed, there is no reason why it should inhibit his career. I am told that he is an extremely capable officer and that he has the potential to make a huge contribution to this State's wellbeing. I wish him well in the future and in his career. Nonetheless, Dr Murphy did hold this place in contempt. There is no other judgment that we can make. If we are allowed to be positive about the matter, what has flowed out of this incident is that in future those persons who, for one reason or another, may be the subject of an order from this Parliament will know much more clearly where their responsibility lies.

Hon Bruce Donaldson referred to the guidelines issued in 1987. It is a pity that those guidelines have not been brought to the attention of public officers in a more prominent manner than they have in the past. On reading those guidelines retrospectively, which I hasten to add I was not aware of either, I believe that they provide sound and accurate advice to persons who may be subject to such an order. I understand that the Ministry of the Premier and Cabinet will be working on updating the guidelines and making them more prominent in the minds of those people who might be affected by them. That is one of the good outcomes of this case.

Hon Bruce Donaldson also referred to the legal advice received by Dr Murphy. I am somewhat constrained in what I can say about that; however, I believe I am able to say in summary that Dr Murphy in this case either received good legal advice and failed to follow it or received lousy legal advice and followed it to the letter. I am not allowed to say which I think it is. However, Dr Murphy was let down by people on whom he relied, and was correct to believe that he should be able to rely on them. In saying that, I do not refer only to the Crown Solicitor's Office because his department may have supported him better than in fact it did. Notwithstanding that, I wish Dr Murphy well in his future. Having made a judgment in my mind and with my colleagues on the committee that he was in contempt of the House, I think it should stand, remain at that and should not influence his future in any way. I hope that we all, the whole of the public sector collectively, are able to take away from this incident something which will be of benefit to public administration in the State of Western Australia.

HON MARK NEVILL (Mining and Pastoral) [12.33 pm]: I support the committee's report. There was mention that the document about giving evidence to committees had been out of circulation for some time and, although it was available, not many people were aware of the report. I will go back through the history of this issue to outline why I believe Dr Murphy should have been fully informed. When he gave evidence on 4 March, 1998, I read to Dr Murphy part of the document that he signed as a prospective witness. Members will know what that says. I said -

> A committee hearing is a proceeding in Parliament. As such, you must not deliberately mislead the committee and you must respect the members of the committee and the committee's orders and procedures. If you do not comply with these requirements, you may be subject to legal penalties.

That is read to every witness before they give evidence.

Hon Derrick Tomlinson: Is there a reference to the Parliamentary Privileges Act in there?

Hon MARK NEVILL: I think there is that reference in the sheet that is given to witnesses. Page 27 of the evidence reveals that I asked Dr Murphy for information required to calculate tariffs in relation to the goldfields gas pipeline, including investment costs. Dr Murphy responded -

> Those numbers are not given in the submission. Some confidentiality aspects apply with some of those numbers under the state agreement which meant that we could not release those figures. If you want specific numbers in response to that question, we would need to consider whether we were able to release that information within the framework of the agreement's confidentiality requirements.

He continues on the same issue. I then asked Dr Murphy -

> Do you have that information?

Dr Murphy replied -

> Obviously, yes, we have that information. It is used to derive the tariff. However, it is a question of whether we are able to release that information to the committee. We would need to seek legal advice on that.

I asked for the information and he said he had to seek legal advice on that. Further in the transcript I asked him for some information on what basis Goldfields Gas Transmission was selected as the preferred bidder. The transcript reads -

> The CHAIRMAN: Could you also advise us with what you are not providing, just in terms of the general description of documents?
>
> Dr MURPHY: Within the bounds of whatever advice I receive, yes.

The CHAIRMAN: This committee can subpoena that information, so we want to know what we are not getting.

The transcript continues -

> The CHAIRMAN: Could you provide the committee with the expressions of interest of the four short listed applicants for the pipeline?
>
> Dr MURPHY: I would again need to take legal advice. I do not know what sort of caveats were put on the information provided to us, but within that constraint, yes.

All that legal advice would have been basically on the impact of the Parliamentary Privileges Act in that situation. On 15 May 1998 the committee received a letter signed by Dr Murphy in respect of the provision of documents about the four short listed applicants. At the end of the letter Dr Murphy says -

> DRD advised representatives of each of the four applicants of the Committee's request. Their responses were as follows: . . .

The last response reads -

> The Australian Gas Light Company advised that it would consent to the EOI -

That is the expression of interest -

> - being disclosed to the Committee subject to conditions. DRD is reviewing these with the Crown Solicitor's Office and the company before deciding on a response.

That refers to further legal advice on the crux of the question before the Department of Resources Development.

On 9 September, 1998, there was further correspondence from Mr Peter Kioses, manager of projects, wherein he said -

> I refer to your facsimile of 1 September 1998 advising that the Standing Committee has requested copies of the Bird Cameron and McLennan Magazanik reports.
>
> Your request has been noted and we are presently reviewing the documents that you have sought. This review has required, careful consideration of their contents as some of the information has been provided confidentially to DRD by the Goldfields Gas Pipeline Joint Venture.
>
> This review will need to be undertaken in conjunction with the seeking of advice from the Crown Solicitor's Office, since the information is being sought while the formal negotiations under the Goldfields Gas Pipeline Agreement Act (1994) are being undertaken.

Again, there was recourse to legal advice. When the clerk issued the summons, the committee took that action in the knowledge that DRD had, on numerous occasions, advised us that it had sought legal advice on this central issue. It was not as though they were ambushed at the last minute and did not know what their obligations were under the standing orders of this House or under the Parliamentary Privileges Act. Officers of the Department of Resources Development cannot in good faith argue that they were not aware of the legal consequences. It may be they took legal advice. I can only come to the conclusion that the legal advice was poor and they acted on it or that it was competent and they ignored it. I do not think that the members of the committee have seen that advice, but that is the only conclusion one can really come to.

I do not want to reflect on the competence and ability of Dr Peter Murphy. He is without doubt the most competent officer I have dealt with in DRD. However, when Dr Murphy failed to comply with the terms of the summons, I had a duty to report it to the House, which I did forthwith. I might add that each time an extension was requested by officers of DRD, they were given an extension. On a couple of occasions they got extensions.

There is an important issue at stake here. Sometimes committees subpoena information as a matter of course so that individuals are not singled out. When committees of this Parliament are frustrated in seeking documents, their patience comes to an end and they have a summons issued by the Clerk, it is important that the summons is taken seriously. I cannot see any redeeming reasons for the report not being delivered in the terms issued under that summons. There seem to be no redeeming features in this whole episode. If computers were broken down, people could have made a handwritten note or appeared personally. There are many actions they could have taken. They could have contacted the President or the Clerk to see what action they could take if they were having difficulties and they wanted to get a second opinion on the legal advice they had been given.

I find it quite odd that over such a long period of time, DRD and its officers can have legal advice which goes right to the core issue of this matter and still not appreciate their obligations under the Parliamentary Privileges Act. The Act must be one of the smallest Acts of Parliament. There are only two relevant provisions. It is a very old Act. Bearing in mind the vintage of the Act, the provisions are written in fairly straightforward terms. There is no cross-referencing but just a straightforward procedure. Therefore, I cannot see what the difficulty is with the legal advice that they received. If the legal advice from Crown Law was incompetent on that issue, I suggest Crown Law needs to look at the competence of its lawyers. If the legal advice was competent, they are even more culpable because they ignored it.

Whether Dr Murphy pays the $1 500 himself, as recommended in the report, does not particularly worry me. I would not be surprised if there were a few more people in the department who caused the delays that inevitably occurred. If it comes to that, they can always pass the hat around the department to help him out. This Parliament needs to send a message that when a summons is issued it is serious.

The committee's findings and recommendations are sound and well-based. They are not a reflection on Dr Murphy's professional competence in the advice that he gives to government on resources matters, but in this area Dr Murphy and DRD have failed to comply with a summons of this House and that is a clear contempt and should be dealt with as such.

HON NORM KELLY (East Metropolitan) [12.45 pm]: I support the comments made by Hon Bruce Donaldson, which I believe gave a very full and accurate account of this matter. I will not go into great detail about the contents of the report. The reasons the committee came to the findings and recommendations it did are laid out quite explicitly. I agree with the comments of Hon Kim Chance. I believe Dr Murphy was not well served by the legal advice that he received. I have not had much to do with Dr Murphy but from my understanding and my observations, I believe he is a very competent, hardworking, well-meaning, public servant as the acting chief executive officer of DRD. Anybody who reads the committee's report will see it contains nothing that is trying to make any inference on his quality as a public servant. He has been let down to a certain degree with the advice that he received on how to deal with the summons that was served on him.

It is very important that as a Parliament we strongly support the work of our committees in conducting legitimate investigations, such as that carried out by the Standing Committee on Estimates and Financial Operations. It would appear to me that in the evidence the committee received the regard for a summons coming from the Parliament was probably not treated as seriously and as diligently as it should have been. The responses that we received regarding attempting to contact the Clerk of the Council and the acting research officer of the committee I find mediocre and not sufficient in light of the seriousness of the summons that was served.

I believe that this report will make it clear to public servants and particularly to those senior public servants who have contact with parliamentary committees that a summons issued by the Parliament through the Clerk must be taken very seriously indeed. That is one of the reasons the committee came to make the recommendation that it did. Under section 8 of the Parliamentary Privileges Act the range of penalties that could have been imposed include reprimand, censure and indeed imprisonment.

Hon Derrick Tomlinson: Imprisonment was an option.

Hon NORM KELLY: It was, but in this instance the committee did not believe, with all the mitigating circumstances surrounding the events of 29 September, that imprisonment was an appropriate penalty.

The guidelines that were issued by then Premier Brian Burke on 13 April 1987 are comprehensive. If public servants had been aware of these guidelines they would have been a good manual on how to deal with parliamentary committees. Unfortunately, it seems that with the effluxion of time these guidelines have gone into deep cavities within the public sector. I am glad that the committee report has provided the opportunity to bring them out again, so they can be acted upon to provide public servants with appropriate guidelines in these dealings.

In tabling the report I felt I was well aware of the ramifications that such a report would have on the individuals concerned, and members constantly need to be reminded of that. The committee's report has made it clear, and debate such as this reinforces in my mind that Dr Murphy should not feel maligned by this report. The true benefit that comes out of this report is how public servants relate to parliamentary committees. It also serves to strengthen and enforce in the minds of the staff of parliamentary committees and also in the minds of members of Parliament how we must ensure that we follow the appropriate procedures to the letter to ensure that there is proper justice for all concerned. I feel that justice was made available to all concerned in this matter. I cannot comment too deeply on the advice that was provided to Dr Murphy on this occasion because the committee was not privy to all the details of that advice. However, on the evidence that the committee received it is clear that there was some failure to indicate to Dr Murphy the seriousness with which he should have treated the summons and the seriousness of responding to that 4.30 pm deadline. If I felt it was serious enough, as was presented in evidence, to try to make contact with the Clerk of the Legislative Council I would have done more than just make a solitary telephone call to contact the Clerk. If I were not physically able to do that myself I would have had somebody continue to telephone the Parliament to make that contact or have somebody come to the Parliament, which is only a few minutes walk away from the Department of Resources Development to try to establish some contact to ensure that all possible avenues were explored prior to that 4.30 pm deadline. Although it was put to the committee that advice was provided a little over an hour after that deadline had elapsed, the contempt had been committed at 4.30 pm. It was on that basis that the committee acted.

I feel that a number of positives will come out of the committee report. The main benefit is that it will strengthen, I hope, the relationship between parliamentary committees and the public sector.

HON LJILJANNA RAVLICH (East Metropolitan) [12.55 pm]: As opposition spokesperson on public sector management I could not allow this opportunity to comment to pass. I support the motion. This is a complex issue which probably should never have arisen. However, due to a number of key factors it has arisen. We can learn some lessons from what has happened.

I have no doubt there was a contempt of the State Parliament, and that is a very serious matter. The seriousness must be conveyed not only to bureaucrats, particularly senior bureaucrats working in government agencies, but also to the Western Australian population. We also need to consider the circumstances of how it arose. These were clearly outlined by my colleague Hon Mark Nevill. It related to information being sought by a parliamentary committee on tariffs and the calculation of tariff costs as they apply to the gas pipeline. Dr Murphy considered the information was commercially sensitive and in the first instance could not provide it. I am concerned at the length to which members of Parliament must go in order to obtain information and the steps we need to take in order to access that information. There is a need, given the amount of privatisation and contracting out undertaken by the Government, to clearly define what is meant by

commercial confidentiality. The way in which the Government has interpreted that and the way it is translated to its senior bureaucrats is broad indeed. If one asks anything about the commercial activities of this Government, senior bureaucrats are loath to provide any information whatever. It was as a result of Dr Murphy wanting to protect his minister and not wanting to get him into further difficulties by providing this information that caused the series of events that resulted in a contempt of Parliament.

Hon Derrick Tomlinson: It is within the power of the minister to say no. It is then up to the Parliament to determine the action against the minister.

Hon LJILJANNA RAVLICH: I accept that. However, one of the missing factors in this issue is why the minister said no. The information that was eventually provided to my colleague, the chairman of the committee, was not commercially sensitive. That goes to the heart of what I said earlier; that is, we must have a clearer definition of what is commercially sensitive, otherwise bureaucrats, particularly senior bureaucrats, will be too scared to take action or provide information. That invariably will interfere with the operations of or the work that is done by this Parliament. There is a siege mentality with ministers and senior bureaucrats.

Point of Order

Hon N.F. MOORE: What is the relevance of this line of argument? The motion has nothing to do with ministers and siege mentality; it is all about Dr Peter Murphy who may or may not have breached parliamentary privilege.

The PRESIDENT: I understand the point of order. However, the report before the House discusses in general administrative acts by public servants, in particular by one public servant. The issues raised by Hon Ljiljanna Ravlich are related to the substance of the report and are within the debate. However, if Hon Ljiljanna Ravlich launches into debate on the Public Service in general that would be outside the rules. To date she has not done that.

Debate adjourned, pursuant to standing orders.

Sitting suspended from 1.00 to 2.00 pm

STATE FOREST No 69

Revocation - Motion

HON MAX EVANS (North Metropolitan - Minister for Finance) [2.00 pm]: I move -

> That the proposal for the revocation of state forest No 69 laid on the Table of the Legislative Council on 27 May 1999 by command of His Excellency the Governor be carried out.

It is proposed to revoke the dedication of state forest No 69 at Joondalup so that the land involved - about 12.3 hectares - can be sold. The Government has made a commitment to establish a state-of-the-art police academy next to the Edith Cowan University and the West Coast College of TAFE at Joondalup. Part of state forest No 69 - an area of about 3 ha at the northern end - has been earmarked for inclusion into the police academy site. The balance of state forest No 69 is located in the middle of the Edith Cowan University campus. It already contains some campus facilities and is currently leased to the university to allow the progressive development of more facilities. The university would like to acquire this area and negotiations to that end are continuing.

The Government has given approval to the Department of Conservation and Land Management to use the proceeds from asset sales to assist in the funding of the maritime pine afforestation project under the State's salinity action plan. This project is aimed at establishing large areas of maritime pine plantation on saline-prone land in the Agricultural Region and on the Swan coastal plain. The land in state forest No 69 has a current market value of about $6.5m. It is proposed that the proceeds realised from the sale of the whole of this land be directed totally into the maritime pine afforestation project.

The proposed revocation to enable sale of the land for this purpose has been endorsed by the Lands and Forest Commission, which is the vesting body for the state forest and must be consulted about any plans to alter the forest estate by revocation. State forest No 69 is a pine seed orchard, but is no longer required for that purpose due to changes in technology and genetic improvements. Notwithstanding future development, many of the existing pine trees on state forest No 69 are likely to be retained. The Department of Conservation and Land Management will ensure that it can continue to access genetic material from these trees as a backup to other seed orchards. The revocation proposal was referred to the Department of Land Administration, the Department of Minerals and Energy, the Ministry for Planning, and the City of Joondalup for comment. There were no objections from these instrumentalities.

The Department of Land Administration is in the process of assessing native title implications. It has also prepared a draft notice of intention to take land - the area required for the police academy - for the purpose of a public work. This notice includes a statement to the effect that the taking of the land will proceed only if the revocation of state forest No 69 occurs. I commend the motion to the House, and I ask members to support it.

Debate adjourned, on motion by Hon Tom Stephens (Leader of the Opposition).

SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL

SENTENCE ADMINISTRATION BILL

Second Reading

Resumed from 26 May.

HON PETER FOSS (East Metropolitan - Attorney General) [2.04 pm]: Earlier in the debate, I was dealing with the right

of appeal relating to sentences imposed under the matrix. Some very strange and inaccurate remarks have been made about the consequences of the supposed reversal of the onus. For all intents and purposes it is not a reversal of the onus of proof. Generally, people will be able to appeal on the normal grounds. There will be a further ability to appeal with regard to the severity of a sentence - when a third matrix applies and a court has not followed that matrix when the sentence is imposed; that is, when there is a third stage matrix, and the court refuses to follow it.

It will impose a sentence which is either greater or less than that in the matrix. Obviously if the sentence is greater than that recommended by the matrix, the defendant will be the party that will appeal. There will be no worries when the sentence imposed is less than what is in the matrix. In those circumstances it is appropriate that the usual rule - that is, where the appellant must show cause why the sentence is inappropriate - should be reversed. The defendant who has been sentenced outside the matrix should be able to say that he was so sentenced, and it is up to the Crown to justify that. Hon Helen Hodgson referred to a case which shows some ways in which the law, though clear, is not very clear as far as the individual is concerned. She referred to a case where it was said that, on appeal, what had to be shown was not a comparison with a totally similar case, with totally similar circumstances, antecedents and aggravating and mitigating factors. It is not enough to show that somebody else got a lesser sentence; it must be shown that it was not within the range. If it is a wide range, it would have to be shown that the sentence could not have been imposed by the court. I am sure that is very good law; however, it will not provide a great deal of comfort for the individual, who has got a seven-year sentence and somebody in exactly the same circumstances got only five or three years, to be told it is within the range.

The matrix tries to set a more explicable tariff. If, on one hand, that tariff is exceeded, it is quite right that the Crown should have to justify it. If, on the other hand, the tariff is less, it is quite appropriate that the Crown has the right to appeal and it is up to the respondent to show that the matrix should not have been followed. That is appropriate. The matrix gives a presumption of what the sentence should be. It is probably fair to say that if people get a sentence over that in the matrix, they will appeal and will be grateful to have the resumption in their favour. If it is under that in the matrix, it is up to the Crown to appeal. In some cases it may appeal, and in some it may not. It is not quite the same necessity for the Crown to appeal as it might be for individuals who have been sentenced to what they regard as an excessive period of imprisonment. I do not think it will change the situation, except for persons who have been jailed for more than the time set out in the matrix, who will have a much better chance before the appellate court than they currently do.

All the other grounds of appeal exist, and the same rules apply to them. Hon Helen Hodgson made another point about giving the Chief Stipendiary Magistrate the power "to make guideline judgments". They are not guideline judgments, although I agree that they have been made into guideline judgements. It is a matter of some concern. We cannot make the court give guideline judgements. The former Director of Public Prosecutions made a number of applications for them and was disappointed when he did not get them. Hopefully now that he has been appointed to the Supreme Court, a different attitude to guideline judgements might apply because somebody is there who is a firm believer in them.

Hon N.D. Griffiths: I do not think that is appropriate. His Honour is now wearing a different hat and you should not make an assumption.

Hon PETER FOSS: Hon Nick Griffiths is quite right, but His Honour certainly understands the arguments. His Honour will wear a different hat but no doubt have an understanding of how useful guideline judgments would be. This was done in the United Kingdom on an artificial basis. The magistracy there has a tendency to follow the direction of the Chief Stipendiary Magistrate more closely than ours does in Western Australia. Until we have a Magistrate's Court, the position of Chief Stipendiary Magistrate is a somewhat equivocal one. There has been a degree of complaint from the criminal bar about inconsistency in sentencing in the summary courts. A non-binding tariff has been published by the Chief Stipendiary Magistrate in the United Kingdom and has resulted in greater consistency in sentences. We believe that a non-binding tariff and the Chief Stipendiary Magistrate having the authority to publish that tariff will be useful here in the same way it has been in the United Kingdom. It is a different process from a guideline judgment. A guideline judgment sets out the principles which should be applied in a particular case whereas the tariff to be published by the Chief Stipendiary Magistrate will simply be guidelines with a tariff set in the stipendiary magistrates' courts. The tariffs are not binding but they give people an idea of the sort of tariff being applied in various places.

Some of the other comments made by various members were criticisms of the exercise of judicial discretion. Hon Tom Helm's story was a classic example of a complaint about the exercise of judicial discretion, the very thing being supported by Hon Helen Hodgson. We can say two things about those complaints: They are either justified or they are not. If they are justified, we are acknowledging that there are occasions on which the judicial discretion errs and one can correct those errors by appeal. However, that is often far too expensive to contemplate. To take an appeal to the Supreme Court from a court of summary jurisdiction costs thousands of dollars and, generally speaking, legal aid will not be awarded. Appeal in those circumstances is beyond the contemplation of most people. A woman wrote to me about being convicted of dangerous driving in her absence. She went to the magistrate and told him that she had not been notified. The clerk of the court said the records indicated that she was not notified, but the magistrate refused to accept that and convicted her; he would not set the case aside and hear it again. Therefore, the woman had to appeal. She had already been through the period of suspension from the conviction, so there would not have been great benefit in appealing. All she would have done was spend several thousand dollars to have the case set aside. Where is the justice in that? How is an appeal an adequate remedy to a person in those circumstances? It is not adequate. Every now and again a person will disagree with a finding but decide that an appeal is not a real option although it may be theoretically correct. We would like to have a system in which the judicial discretion is guided and leads to a better result than otherwise.

The alternative is that the criticism is misguided in that people criticise the judicial discretion because they do not have a full and adequate understanding of the sentencing system or the details of the case. The first and second parts of the matrix

are designed to deal with this alternative. We are trying to have a simple process which is useful to ordinary members of the public. The sentencing system generally works, it is just that we do not hear about the cases in which it does work and if we do hear about them, we do not understand the process anyway. There is a lot to be said for the Government providing that information in a form which is understandable by the public, not just lawyers. I have read Supreme Court summaries. They must involve a considerable amount of work. They are very useful, well written, comprehensive and understandable by lawyers but I doubt they are very understandable by ordinary citizens. They are like a good headnote to a law report but I suspect that a general member of the public who does not want to make a study of the criminal law would not gain much by browsing through them. The biggest problem is that they take too much time - the issuing takes up judicial time - and the value to the public is small. I would like to have a system in which these summaries do not take a lot of judicial time and the value to the public is higher. With the new computerised sentencing information system and the first and second parts of the matrix we will be able to give the public this information and that will result in a better understanding of the role of the judge and of the role and principles of sentencing, and greater satisfaction with sentencing as it currently stands.

Another point which was made in the debate is that this process leads to longer sentences. In itself this Act cannot change any sentence. The matrix legislation members are being asked to pass does nothing to a sentence. Not until something is introduced into this House to bring in a matrix will members start to affect sentencing. Members of this House have the final say as to whether the third matrix is introduced. If members are concerned about the form of the matrix, that is the time to say so. Members might as well say we should not have a Criminal Code because criminal codes lead to people being jailed. We could possibly increase the penalty for every crime to life. We could do that in the Criminal Code, but until a Government introduces an amendment to say that every single criminal offence will carry a life sentence, it is not appropriate for us to say that the Criminal Code will lead to everybody receiving a life sentence for everything. This Parliament must approve, must positively affirm, the third stage matrix when it is introduced. It is not a matter of a regulation having to be disallowed; the matrix must be introduced into both Houses of Parliament and be positively affirmed by both Houses before it becomes law. Even then it is still qualified by the law as it stands. The matrix cannot require a person to receive a higher or lower sentence than the maximum or minimum set by Parliament. The sentence will still be within the parameters the Parliament has set in all the criminal laws it has passed.

It is very different from the American system, which is a simple two-dimensional system. We have provided for a wide range of sentencing options. The matrix does not deal only with sentencing but includes the full range of sentencing options and allows for a considerable range. The appropriate way to go in the second stage is to take what the judges themselves are doing and render that in a matrix. That has the benefit of providing criminals under charge and awaiting sentence with some idea of what they face. What people really hate is uncertainty. As human beings we all know that uncertainty is the hardest thing to bear. If one knows one is going to die, one can face it, but knowing there is a chance one is going to die is worse.

Hon N.D. Griffiths: We all know we are going to die. Are you advocating certainty along the lines of one of the Democrat members?

Hon PETER FOSS: This is a serious point, as Hon Cheryl Davenport is aware. This goes back to when I was Minister for Health. I made certain that breast cancer clinics were held the same day as testing. If a woman underwent a mammogram, she could attend one of these clinics the same day to find out definitely whether she had breast cancer. There was nothing worse than waiting for a month to find out one way or the other. The women knew the same day; they could turn their minds to it and deal with it. If they were cleared the same day that was fantastic, but the month of not knowing was one of absolute dread.

It is human nature to dread not knowing - knowing enough to know that something is up; but not knowing what is wrong is the difficult part. Once it is known we can face it. We hope that this system will provide greater certainty about what sentences criminals are likely to receive. How many sentences in our Criminal Code are for 20 years or life? A number are for 20 years or life, but nobody ever receives 20 years or life. A lawyer can say only that the sentence could be up to 20 years. There is a big difference between a discharge from sentence and 20 years. However, if an offender bashed an old lady, had a record as long as his arm, stole $100 000 which he had not returned, was in company with four other criminals and had a gun, we could make the assessment based on the matrix that he will get 10 years.

Hon Ljiljanna Ravlich: You could get a computer to do that.

Hon PETER FOSS: It will be on the Internet. Anyone will be able to check the likely sentence on the basis of current sentencing practices by judges.

Hon Ljiljanna Ravlich: Will that not make judges obsolete? Someone must press the button.

Hon PETER FOSS: More important, someone must know which button to press. Hon Helen Hodgson said that it takes away judicial discretion. It does not do that. The determination of guilt is made by the jury. However, the most important role of the judge is to decide, firstly, what are the mitigating and aggravating factors; secondly, how extreme are the mitigating and aggravating factors; and thirdly, how to balance those factors. The role of the judge will remain. The judge will have a tremendous amount of discretion because he may decide to discount a person's youth or someone's background. There will be a significant "fudge" factor. However, the judges will still need to follow the rules. They must endeavour to make the decision judicially. Their role is to judge the involvement of the mitigating and aggravating factors.

It is Parliament's role to provide the appropriate range of sentencing. That already happens. By providing a penalty of one year's imprisonment, we have set a maximum. By setting a maximum penalty at 20 years, we have set parameters. By setting the penalty at life we have done that. There are a number of penalties of life and that is what the person must be sentenced

to. However, it does not mean that there is no room for judicial discretion. The judicial function is to determine the discretion. We would be taking over the judicial role if we tried to determine by Act of Parliament whether the facts had occurred or whether a person were guilty. We are leaving the judicial role to judges. Parliament's role is to set the range of penalties within which the judges can operate. That is appropriate.

Hon Tom Helm referred to people driving without a licence. There is no doubt that because of the greater detection on the roads more people have been caught driving without licences, and particularly driving under the influence. Booze buses have increased the detection of people driving under the influence. I have some notes made by a magistrate of some of the people who have come before him related to driving without a licence to give an indication of the prevalence of the record. Person A was caught for driving twice with a blood alcohol level above 0.08 per cent, driving under the influence once, five offences of driving while under suspension and an extensive driving record. Person B had five offences of driving under suspension, five for driving with a BAC of 0.08 per cent, others for stealing, etc. Person C had been caught for driving with a BAC of 0.08 per cent, driving under the influence, two offences of driving under suspension and an offence of assault occasioning bodily harm. Person D had seven offences of driving under suspension, and an extensive record. Person E was caught for driving four times under suspension, and twice for driving with a BAC of 0.08 per cent. Person F was caught for three reckless driving charges, six offences of driving while under suspension, three offences of driving with a BAC of 0.08 per cent, and others of burglary, etc. Person G had three offences of driving while under suspension, assault occasioning bodily harm and stealing. Person H had seven offences of driving while under suspension, and others of reckless driving and stealing a motor vehicle.

We are finding that it is not that more people are driving when they are drunk, but that the extra police resources are picking up people who may have got away with driving without a licence. A high number of people are driving while under suspension and while drunk. It is appropriate to mention that in some instances we must deal with the underlying problem. I will be introducing further legislation to deal with the treatment of people who come into the criminal system due to a form of addiction. It has been difficult legislation to draft. We are trying to do much the same as that which Hon Joe Berinson did with drunkenness; that is, to bring people into treatment rather than dealing with them along criminal lines. The drafting is reaching the stage that will allow me to introduce it probably next year.

As was rightly said, some offences take place due to an underlying addiction. Other offences occur due to an underlying weakness of people to keep themselves under control. Even addictions cannot necessarily be resolved without treating the reason behind the addiction.

Hon Ken Travers interjected

Hon PETER FOSS: Yes. Merely treating the addiction does not deal with the reason the person is an addict. There are often far deeper social problems. That can be an appropriate way to deal with some people. We must have addiction dealt with as a medical problem and taken out of the criminal system at least for the period of the treatment.

Hon Mark Nevill asked whether work release was still possible. There are possibilities for work release under the Prisons Act, although probably not as extensive as work release under the Sentence Administration Act and home detention will not be available once the change has occurred, except for those people sentenced under the previous system.

Hon Mark Nevill referred to the ability to ensure that programs are delivered in the community either through home detention or work release. Certainly work release will continue which will allow a process by which people can work and gain employment and when they are released from prison go straight into that employment. That was a recommendation of the committee - I do not believe it is a major recommendation - for the sake of purity in the system to get greater truth in sentencing. People have not written to me saying that home detention or work release should not be an option. There is probably support for them as concepts in that people are strictly speaking still prisoners, but they are at large in the same way that people in a minimum security prison are not locked up in the same way as people in a maximum security prison.

I thank Hon Ray Halligan for his contribution. He plainly studied the problem and examined the matrix very carefully. As he pointed out, there are all sorts of other things we should do. Unless we have a world in which there is no crime and we have addressed all the causes of crime, we should act. People will commit offences.

Hon Kim Chance queried whether we should imprison people who have not been violent. That poses a very difficult problem. The case of Alan Bond is a clear example. He was initially sentenced to a fairly short term in prison, but after an appeal to the Federal Court he was given a longer sentence. Under our sentencing legislation, imprisonment is imposed for one of two reasons: Either the offence demands it or the protection of the public demands it. The difficulty is that if we were to take Hon Kim Chance's view that rather than going to jail Alan Bond should spend a number of years as a fund raiser for the Cancer Foundation of WA -

Hon N.D. Griffiths: He could be a painter.

Hon PETER FOSS: Yes. I think he was charged with fraud relating to about $135m, not a relatively small amount. When it comes to even a seven-year sentence, which would not amount to imprisonment for exactly that long, many people might say, "Why not do that?" Why should I as a member of our community obey the law when I can get this tremendous reward and all I need to do is go to jail?" People sometimes think that jail is not enough. If Alan Bond had not lost his freedom and all he had to do was work for the Cancer Foundation, most people would be indignant. One of the reasons we punish people is that while it does not necessarily deter criminals, it deters right-minded people. It is interesting that for us in this Chamber, the concept of spending even one day in jail is horrifying. However, for some hardened criminals, while they would rather not serve seven years in jail, it does not create the same feeling of horror. It is the same as saying that locks on doors are only to keep out innocent people; they do not keep out crooks. I recall that when tax evasion started to be

practised, the only people who were not highly indignant about it were the small number of people who were doing it, but when it continued for year after year, more and more people started to think," If other people can get away with it and it is treated as being okay, why should I not do it?" I remember that towards the end of that period, very few people - I must say I was one of them - said, "I do not care. I think it is wrong, and I will not do it." I flatly refused to be involved in a tax evasion scheme. I thought it was wrong, and I would not do it. However, that attitude became increasingly an isolated attitude in the community. If we do not have punishment and retribution for people who do the wrong thing, people who do the right thing will feel intense injustice, and it will undermine the morality of society. Whatever we might say about the value of community service, if Alan Bond had not received a substantial jail sentence for having lost $135m, many people in society, including me, would say, "Come off it! What is the point of being honest if that is all that happens to you if you are dishonest?"

I am not saying this to be provocative, but in the days of WA Inc, the high-flyers, many of whom got their money out of tax evasion -

The PRESIDENT: Order! The minister appears to be going off on a tangent. I can partly relate it to the Bill, but is it part of the right of reply?

Hon PETER FOSS: I am responding to Hon Kim Chance, who said that some people should not be jailed for an offence because they do not pose a risk to society. I am saying that the risk is a moral risk. If we do not jail those people, those people in society who do not participate in that wrongdoing will feel that they may as well participate, because nothing has happened to those people. It is an important point. Hon Kim Chance has attacked the underlying logic of this legislation by saying that people should be jailed only if they pose a danger to society.

Hon Ken Travers: That does not mean you do not need to punish them.

Hon PETER FOSS: I am saying that jail is often the only thing that society regards as an adequate punishment. I do not believe community service for a person who has taken $135m would be regarded as appropriate.

Hon Mark Nevill: I do not dispute that. Some offences are so serious, even though they may not be violent, that they do warrant a term of imprisonment. However, they should be kept to a minimum.

Hon PETER FOSS: I agree, and that is what the Act says. Hon Mark Nevill and I are coming from the same point of view, whereas Hon Kim Chance, who has said he is putting not the Labor Party point of view but his personal view -

Hon Kim Chance: I am probably the only person in Western Australia who thinks that way.

Hon Mark Nevill: He is more compassionate.

Hon PETER FOSS: We are all compassionate.

Hon N.D. Griffiths: You are not as compassionate as Hon Kim Chance.

Hon PETER FOSS: I know. I certainly cannot outdo Hon Kim Chance on compassion. However, I do not agree with him, because I believe jail is a necessity for society when, as stated in the Act, the offence demands it. If we do not jail people who commit those types of offences, they will be seen as not having been punished, and society will then be seen as not frowning on that type of activity. The punishment of the wrongdoers is the reward for the rightdoers, because if we do not have punishment for the wrongdoers, we make no distinction between the wrongdoers and the right doers and we remove some of the incentive for people to behave rightly. Some people will behave rightly whatever the punishment may be, other people will behave wrongly whatever the punishment may be, and a large number in between will be persuaded to behave rightly by knowing that the wrongdoers will be punished. We will undermine the morality of our society if we do not do that. I disagree with Hon Kim Chance on that point. One of the things that came out of WA Inc was the necessity to punish people for their actions, because the impact on our society in the end was quite significant. Large amounts of money disappeared out of the revenue of this State which could have been spent on measures to prevent crime. Would it not have been wonderful if the Labor Government had had an extra $1.25b to spend on social measures?

Hon Ken Travers: Get back to the issue!

Hon PETER FOSS: I do not need to get back. Members opposite need to be reminded every now and again, because it was not just the loss of money -

Hon N.D. Griffiths: The previous Liberal Government lost billions when it -

Hon PETER FOSS: Not at all.

Point of Order

Hon LJILJANNA RAVLICH: Mr President, the minister is not addressing the subject. At this point, he is diverting from the matter at hand.

The PRESIDENT: Order! Let us try to keep the debate on track. Hon Ljiljanna Ravlich has raised a point of order, and she is correct. The minister was not relating to matters that come within the scope of the right of reply. I ask the minister to confine his comments to those matters properly within the scope of the right of reply.

Debate Resumed

Hon PETER FOSS: The essence is that this legislation has been wrongly described as legislation which is about imprisonment. However, it does happen to deal with some parts of the principal legislation which are related to

imprisonment, and it is, therefore, necessary to refer to imprisonment. The matrix itself is not about imprisonment, because the matrix relates to all forms of punishment which are encompassed within the Sentencing Act. We do not get to the stage of imprisonment until we get to the third stage of the matrix. This legislation does not do any of those things. It is like the Criminal Code. We always have the possibility of making amendments to the Criminal Code. However, until such time as an amendment to the Criminal Code comes before this House, it is only a possibility. Until such time as a matrix comes before this House which would increase penalties, we cannot say that this Bill will increase the penalties. All we can say is that it will require some gathering and publishing of information about what the judges are doing. I ask members to support this legislation. It is good legislation. I accept that there are some imponderables with regard to the parole and remission part of the legislation, and that is one of the reasons the Hammond committee took two and a half years to examine this matter, because it found from the experience in the United Kingdom, New South Wales and Victoria that the solution is not simple. Even now, we are not saying this is the solution. We are saying, "This is our best endeavour, given all the experience, to do what we believe should be done."

Hon Mark Nevill: Will you bring it back to this Parliament quickly if it does not work out as you anticipate?

Hon PETER FOSS: Undoubtedly. One of the imponderables is how the courts will react to it, because similar legislation was brought into New South Wales and Victoria, which said plainly that the court will adjust the sentence to take into account this change, so that the sentences will be moved down and people will spend the same amount of time in jail. In Victoria, there was no problem. They did it.

Hon Mark Nevill: There has been a problem.

Hon PETER FOSS: Lately there has been a problem, but generally speaking Victoria had no conceptual difficulty with it and did it. New South Wales said it would not do that and ignored it, and its prison population doubled. I assure members that I believe we have drafted this legislation in such a way that there is no option. I am concerned by the Chief Justice's statement. Judge Hammond says that he does not have a difficulty with the concept. The Chief Justice has asked how it can be done because some absolute sentence must be given. He said that the fact that one-third of the sentence was removed immediately still did not stop it being the correct sentence.

Hon Mark Nevill: What about the magistracy?

Hon PETER FOSS: The magistracy and the District Court do not have a problem. The matters handled by the Supreme Court, the appellate court, will not be a problem. The Supreme Court handles murder, and the mandatory sentence is life. It handles some other serious cases for which the sentences are severe in any case. The bulk of criminal work is now done in the District Court. I would be concerned if cases were appealed to the Supreme Court and people lost that reduction. I cannot imagine the Crown appealing, nor can I imagine any defendant who enjoys the benefit appealing. People would appeal only if they felt they had not benefited.

Hon N.D. Griffiths: You still have the royal prerogative as the last resort.

Hon PETER FOSS: I can deal with that in the meantime. If I find the Supreme Court taking the attitude that the New South Wales court took, as opposed to the attitude taken by the Victorian court, I will instantly introduce legislation. The wording is clear; I do not have a problem with it and nor does Judge Hammond. If the Supreme Court or the High Court has a problem, I will come straight back to this place with legislation, and I do not believe any member will oppose such legislation. It is the universal opinion of members that the changes to parole and remission are not intended to change the amount of time people spend in jail. That was made clear in the second reading speech and in the Bill, and I have made it clear in this place. I have not heard any member express any other intent.

If, despite what we think, the wording appears to be unclear to the court, I will introduce legislation. I am confident that I will have the support of both sides of the House in expediting such legislation to ensure that we do not cause a massive change in the amount of time people spend in jail. I look forward to confirmation of that during the committee stage. I commend the Bill to the House.

The PRESIDENT: The question is that the Sentencing Legislation Amendment and Repeal Bill be read a second time.

A division taken with the following result -

Ayes (24)

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

Noes (4)

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

Question thus passed.

Bill read a second time.

The PRESIDENT: The question is that Sentence Administration Bill 1998 be now read a second time.

A division taken with the following result -

Ayes (24)

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

Noes (4)

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

Question thus passed.

Bill read a second time.

SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL

Instruction to the Committee of the Whole

HON N.D. GRIFFITHS (East Metropolitan) [2.50 pm]: I move -

> That it be an instruction to a Committee of the Whole House on the Sentencing Legislation Amendment and Repeal Bill 1998 that it have power to divide the Bill into two or more Bills and report them separately to the House.

This is simply an enabling motion, which in itself does nothing.

HON HELEN HODGSON (North Metropolitan) [2.52 pm]: On a point of clarification, I assume that the Committee will determine which parts of the Bill are to be divided.

The PRESIDENT: That is my understanding, and the mover indicates that that is his intention. The motion will proceed in that way.

HON PETER FOSS (East Metropolitan - Attorney General) [2.53 pm]: As Hon Nick Griffiths stated, this motion will do nothing to the Bill. I am not in favour of the Bill being divided and the appropriate time to deal with that matter is when we reach the motion to divide the Bill in committee. I will vote against this motion, but not call a division.

Question put and passed.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Hon N.D. GRIFFITHS: I move -

> That the Bill be divided as follows -
>
> (1) Parts 1, 2, 4, 5, 6 and the schedule to be Sentencing Legislation Amendment and Repeal Bill 1998, being a Bill for an Act to amend the Sentence Act 1995 and Young Offenders Act 1994 and to repeal the Sentence Administration Act 1995 and for related purposes, to be cited as Sentencing Legislation Amendment and Repeal Bill 1999; and
>
> (2) clauses 2 and 3 and part 3 to be Sentencing Matrix Bill 1999, being a Bill for an Act to amend the Sentencing Act 1995 and Young Offenders Act 1994 and to provide for a sentencing matrix, to be cited as Sentencing Matrix Bill 1999.

The proposed Sentencing Legislation Amendment and Repeal Bill, the first Bill resulting from this division, is proposed to contain within it all of the clauses of the Bill currently before the Committee, save for part 3 headed "Amendments about appropriate and consistent sentencing". The second Bill which will result from this division is proposed to be called the Sentencing Matrix Bill and will contain part 3 and clauses 2 and 3 of the Bill before us. The reasons for that I trust are easily understood; that is, clause 2 provides for commencement and clause 3 makes reference to the legislation to be amended. Those clauses are to be included in an appropriate way and should not be controversial matters.

Much has been said about the issues before the Committee and about whether the Bill should be divided in this way. This division was a decision the Australian Labor Party arrived at some six months ago; that is, it was of the view that matters relating to parole and remission were worthy of support, and that other matters in the Bill, not dealt with in the Hammond

report, could be appropriately and adequately dealt with, certainly at this stage, in committee. The Labor Party determined that the proposed Sentencing Matrix Bill would be better served by sending it to the Standing Committee on Legislation for consideration and report.

The motion before the Committee does not seek to make that reference - it seeks merely to divide the Bill. If the motion is successful, a number of subsequent motions will be required, as I understand the standing orders. So that members are familiar with the procedures that I will ask the Committee to adopt, I will briefly outline the course of action involved. I will not speak on the merit of the procedures, and I will be as succinct as possible.

If this question is determined as I suggest to the Committee, the Bills will be reported to the House. The Chairman of Committees, unless the Chair is occupied by a Deputy Chairman, will then report to the President that the Committee has considered the Sentencing Legislation Amendment and Repeal Bill 1998 before us; namely, Bill No 50-2.

The Chairman will then report to the President that the Bill has been divided in the manner that the Committee decides. Following that, it is my intention, if we get that far, to move motions to what will then be two Bills. I foreshadow that one of the motions will be that the Sentencing Matrix Bill be referred to the Legislation Committee for consideration and report. With respect to the other Bill - again, if we get that far - it will be dealt with at the next sitting of the House or whenever, but I think in the course of the afternoon, subject to progress, the Attorney General might convey to me whether he wishes to proceed with that other Bill this afternoon or have it dealt with at the next sitting of the House. That is the procedure that I am proposing the Committee adopt.

I do not want to go into the reasons that a clause or part of the Bill should be sent to the Legislation Committee for consideration and report because that would be the subject of discussion when we deal with that stage of the proceedings. However, I note in that context that only those matters which form that Bill, if the division takes effect, will be the subject of such a motion. I do not want to go over ground which has been canvassed by so many so often over the past six months. I want to move on and accomplish what the Australian Labor Party decided was a worthwhile course of action six months ago.

The CHAIRMAN: In putting the question that the motion be agreed to, I ask the mover whether under this motion he envisages that part 6 should lapse, as it is included in neither of the proposed new Bills.

Hon N.D. GRIFFITHS: I moved that after the numeral "5" in the first line, the numeral "6" be inserted. My voice must have dropped when I said it.

Hon HELEN HODGSON: I am very much in favour of having as much as possible of this Bill reviewed by the Legislation Committee. As I indicated previously, I think the whole Bill should be reviewed; however, that debate has finished and we are now dealing with this motion. I understand that a later stage will be available to debate the actual referral, at which point I will raise the issues that I want to cover with respect to the part in question. However, at this stage I wish to move an amendment to the motion before the Chair. I move -

> To delete the number "2" following "Parts 1" in paragraph one, and to insert the number "2" following the word "Part" in paragraph two.

This would have the effect of ensuring that the provisions relating to parole were part of the separating out Bill, and the split would then ensure that the parole provisions as well as the matrix provisions were in the part of the Bill which is proposed to be split out from the Bills currently before us. I appreciate that this may not have the support of the mover of the motion, but I think it is important at this stage that I place on record that I believe those provisions must be reviewed. The best way to do that is to incorporate them in the referral to the Legislation Committee that will happen at a later stage.

Hon N.D. GRIFFITHS: The Australian Labor Party is opposed to the amendment for reasons which have been canvassed frequently; namely, that these issues of parole and remission have been the subject of great consultation and deliberation, and that we are on record as having a go at the Attorney General for taking too long in doing something about it. We will be consistent; therefore, we oppose the amendment.

Hon PETER FOSS: I entirely agree with the last remark of Hon Nick Griffiths. I cannot even face the concept of going to the public once more on this issue because we have done it for two and a half years and we have not resolved any of the differences. One of the things about the whole process of consultation is the amazing consistency of everybody's comments and the amazing inconsistency between everybody on what they believe should be done.

Hon N.D. Griffiths: You do not want to debate Order of the Day No 29 any further.

Hon PETER FOSS: Yes, that is right. I do not agree with Hon Nick Griffiths' first remarks, and we have probably canvassed that. The matrix should be dealt with immediately. It is very much a policy matter. I certainly agree that full debate and wide consultation should take place once we get to the stage of having a third stage matrix. That will receive a lot of debate with regard to its practicalities and usefulness. My concern is that to put this off any longer really puts off what will be a lengthy process in arriving at matrixes. We should as soon as possible gather the information from judges and derive an empirical representation in the matrix. I do not think it is urgent to get to the third stage of the matrix, but I believe the first two stages are the most important part of the matrix legislation.

I am opposed to the principal resolution moved by Hon Nick Griffiths, but I entirely agree with him about the proposed amendment to that.

Amendment put and a division taken with the following result -

Ayes (4)

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

Noes (24)

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

Amendment thus negatived.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon N.D. Griffiths	Hon Mark Nevill	Hon Ken Travers
Hon J.A. Cowdell	Hon John Halden	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon Greg Smith
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Simon O'Brien	Hon W.N. Stretch
Hon Max Evans	Hon N.F. Moore	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Pairs

Hon Christine Sharp	Hon Dexter Davies
Hon Tom Stephens	Hon Derrick Tomlinson
Hon Tom Helm	Hon Barry House

Question thus passed.

Report

Bill reported, with an amendment dividing it into two Bills, and the report adopted.

SENTENCING MATRIX BILL 1999

Referral to Standing Committee on Legislation

HON N.D. GRIFFITHS (East Metropolitan) [3.20 pm]: I move -

> That the Sentencing Matrix Bill 1999 be referred to the Standing Committee on Legislation for consideration and report.

The matters contained in this Bill are novel to the State of Western Australia. They are potentially radical in their effect on the sentencing laws in Western Australia. They have not been subject to full and proper consultation within the community at large, and in particular have not been the subject of consultation with those who will be required to play a significant role in the implementation of the matrix, namely the judiciary.

Those matters are the subject of a report to this House and the other place by the Chief Justice, pursuant to an opportunity granted to His Honour under a provision in the Sentencing Act. They are matters of significance. He sets out in his report a concern, not only about the lack of consultation but also about what will be the effects of the legislation, having particular regard to the status of independence of the judiciary, but more important, as I read it, the effective operational independence of the judiciary. It should not be taken lightly.

Governments have a right to raise matters of this kind. However, legislators and Oppositions have a duty to give full consideration to matters such as this, which are novel and radical, before making a final determination. The Chief Justice stated eloquently his concerns. I do not propose to go over them again. I note in passing in the context of getting to this stage in dealing with this measure that the relevant paragraphs have been read out and/or alluded to on more than one occasion.

HON PETER FOSS (East Metropolitan - Attorney General) [3.25 pm]: The Government is totally opposed to this motion. The principle of the matrix has been before the public for many years. The Bill in itself is not a procedural Bill; in fact, the procedural part of this legislation will be brought before the House when a matrix is to take place. That is the appropriate time to deal with the practical implementation of it. Practical implementation will come from the matrix, not from this Bill. This Bill is no more than a framework that will allow it to take place.

The legislation has been very carefully framed so that it states the principle. I find the principle unobjectionable. The first stage of the matrix requires the judges of this State to report on why and how they are sentencing people. From talking to judges, they accept that it is a responsibility and I cannot find any objection to it other than they do not like being told to do it. To some extent they say that it is being carried out. However, the information being provided is insufficient to enable proper public comprehension of the sentencing system in this State.

In fact in this country that situation applies. Across the nation there is a general lack of understanding of the principles and processes of sentencing. Judges themselves have complained that people do not understand it. It is not satisfactory to have a situation in which people do not understand one of the most important processes of the judicial system. The statement of principle contained in the Bill is clear; that is, that judges should report. I believe we can set up a system that enables it to happen in an efficacious way, and it is up to me to consult and carry this through. That is when that debate should take place.

The second part of the matrix requires that the results from the first stage of providing information be put into a non-compulsory matrix. It would show in a form, not only to the public but also to the accused, what would be the net result of the misdemeanour for not only individual cases but also a summary of cases. People will be able to see across the board what people have been sentenced for. That is a process to which I have not found anyone objecting. Again, the only objection I have found from the judiciary is that they do not like being told to do it. Notwithstanding we have had the capacity under the new Sentencing Act and the new forms of issuing press releases to inform the public, they still do not understand the process. It does not serve that process to put out a document which, in its terms, is essentially a legal document. Of course judges must put out legal documents. The useful thing is that as long as they give us that information we can put it out pursuant to the authority of statute without running the risk that it will be a basis for some sort of appeal. Judges cannot make statements without the potential for them to lead to an appeal. We do not have that constraint. Provided we have that information, we can publish it in a form that will be useful to the public. More important, before we reach the third stage we must have the information from the first stage and the experience from the second. It is urgent that we have the capacity to do that, because the more we delay that the more we delay the day when we can use a third matrix.

I find that unacceptable because we have broad statements of principle that do not affect the fundamental way in which things can be done. It is not until the process is ready that we need to have input from the judges on that. The policy is a matter for government and for Parliament. It is unusual to hear Hon Nick Griffiths advocating this input from the judges. On a number of occasions he has berated me in this House when I have said that we have consulted the judges and they are in favour. He has said that the judges are not part of the political or parliamentary process; they are the judicial process.

Hon N.D. Griffiths: You invited interjection and misrepresented my position. I think judges should be consulted in matters concerning the operation of the courts and matters such as this which are in the nature of substantive law, but it is inappropriate when you come before this House with a measure to say that the Chief Justice or Chief Judge supports it and therefore it should be adopted. When that occurs you are politicising the judiciary and I do not agree with that.

Hon PETER FOSS: I agree with Hon Nick Griffiths. If the judiciary says what it should and should not do in advance of legislation coming before this Parliament they are making a political statement. I have some difficulties with that, and I agree with Hon Nick Griffiths in that respect. This Act puts in place a process for the judiciary to report on how the legislation has worked. It is not for the judiciary to become part of the political process by having some kind of legislation brought into effect. The Parliament did not intend that section of the Sentencing Act to be used as a lobbying process. It intended it to be used as a reporting process. A report to Parliament on legislation that does not exist is not within the purview of that part of the Act. I understood the report to be a report on legislation that does exist, and on the operation of that legislation, rather than on whether there should be another Act. However, be that as it may, the report has been made, and it deals with matters which have not even been brought into legislation. That is inappropriate. I do not believe we will see eye to eye with the judiciary on this matter. However, the practical implementation, by regulation, of stages 1 and 2, and the practical implementation, by resolution of the House, of stage 3, are matters about which it is appropriate to consult the judiciary, and of course I will do so, and I offered to do so some time ago. That invitation has not necessarily been taken up. I do not expect sometimes that the judiciary will consult. Consultation must be a two-way process, and sometimes it is only a one-way process. I do not believe anything will be gained by consultation at this stage. I have consulted with the judiciary to this stage as much as possible. We agree that stages 1 and 2 are an appropriate role for the judiciary, but the judiciary does not agree it should be told to do it; and we do not agree on stage 3, and we never will agree. I have been willing for some months to consult on the practical implementation, and I remain willing to do so, and had it been a two-way process, we probably would have concluded that consultation by now. I do not believe we will even be able to commence that consultation until such time as the legislation has passed this House, and I will consult at that stage. I believe we will not get much further until such time as we pass this legislation. I believe the broad framework and policy of the legislation is acceptable not only to this Parliament but also to the people of Western Australia, who will be intensely disappointed that the legislation will be delayed by this process. I hope sincerely that it will be dealt with expeditiously. I suspect we will not be able to finish this legislation until the spring session of Parliament, but I hope I will receive an assurance from the Opposition that it will agree to the restoration of the legislation to the Notice Paper at the stage it has reached thus far so that we will not lose too much time in dealing with this matter by reason of its referral to the Legislation Committee.

HON HELEN HODGSON (North Metropolitan) [3.33 pm]: The matrix should be reviewed, and there should be consultation with the people who will operate within its framework. Many different versions of this matrix are available throughout the world. We were told that the Attorney General based this matrix on the Oregon model.

Hon Peter Foss: No.

Hon HELEN HODGSON: That was always my understanding.

The PRESIDENT: Order! I do not want any cross-Chamber chatter. We are debating whether this matter should be referred to the Legislation Committee.

Hon HELEN HODGSON: These issues should be reviewed, because many different systems are in place in various States of the United States and in other countries. A lot of academic work has been done in this area. For example, the New South Wales Law Reform Commission report on sentencing, to which I have referred earlier in debate, deals with the principles of matrix-type sentencing. It is important that this work be reviewed and taken into account in determining whether we should have a matrix; and, if we should, how it should work.

I am also very concerned that after examining these provisions, and following briefings, I still have some difficulty working out how the legislation will hang together. That may be because, as the Attorney says, it is merely a framework, and that framework needs to be fleshed out before its practical operation can be worked through. However, I am not convinced that it will operate in effect either in the way the Attorney says it will operate, or in a way that will be in the interests of the justice system of this State. While I remain unconvinced that the words of the legislation will give effect to the principles that are said to underlie this legislation, I will be extremely concerned about its being enacted in law without proper scrutiny. The Legislation Committee is in a position to examine how the legislation does hang together and to make sure it will work in the way the Attorney says it should work, and to compare it with other systems that are available and determine whether it is desirable to implement this system in this State. That is quite apart from the issues that have been raised by Hon Nick Griffiths in respect of consultation and the views of the judiciary, who will have to implement this legislation. This is a third best option, but if I cannot get a review of other parts of the Bill, it is certainly necessary to have a review of this part of the Bill, and I will support the motion.

Question put and passed.

SENTENCE ADMINISTRATION BILL

Committee

Progress reported and leave granted to sit again.

Point of Order

Hon PETER FOSS: Mr President, will these Bills remain cognate Bills?

The PRESIDENT: They have been split. We now have three Bills, as I understand it. One of those Bills has been dealt with.

Hon PETER FOSS: I seek the leave of the House for the remaining two Bills on the Notice Paper to be debated cognately.

Hon HELEN HODGSON: My understanding is that we will be debating these Bills clause by clause. Is there anything to be gained from debating them cognately as we have concluded the second reading stage and are now at the committee stage?

The PRESIDENT: Hon Helen Hodgson is quite right. I should not be saying whether Hon Helen Hodgson is right or wrong but I understand what she is getting at and one way of solving the problem is to deny leave.

Hon PETER FOSS: The reason for my request is so that we have to go into committee only once instead of coming out and going back again. It would save time in the long run.

The PRESIDENT: Members, the Attorney General has asked that leave be granted for the Bills to be debated cognately. Members know that it is not usual to even discuss the matter. The reason for putting this matter to the House is to ensure that the whole of the House agrees to the proposition.

Leave denied.

Sitting suspended from 3.41 to 4.00 pm

[Questions without notice taken.]

CRIMINAL CODE AMENDMENT BILL 1999

Second Reading

Resumed from 24 March.

HON N.D. GRIFFITHS (East Metropolitan) [4.36 pm]: The Australian Labor Party supports the second reading of this Bill. It deals with two areas of policy, one of which we consider to be non-controversial. It seeks to place the videotaping of interviews by the Anti-Corruption Commission under the same Criminal Code regime that exists for videotaping by police officers. It is good to see that restrictions and obligations will be the subject of statute. I note that the Bill provides for access on the part of the Parliamentary Commissioner.

However, the other area of policy is controversial. It relates to the so-called three strikes regime. It seeks to have a category of dealing with an offender made a strike when it clearly is not a strike under the law. As the Attorney correctly pointed out in his second reading speech, the matter arises as a result of a decision before the Court of Criminal Appeal that dealt with section 67 of the Young Offenders Act. The Opposition disagreed with the Attorney in particular over the words, "The amendments are little more than procedural in matter." They are procedural in the sense that they provide for something to be a strike under the three strikes regime when before it was not a strike and currently it is not a strike.

When the Parliament in its wisdom implemented the three strikes regime and noted that it applied - I should say to infants -

to young offenders under 18 years of age, it was aware of the provisions of the Young Offenders Act, which predates the three strikes provisions. The three strikes provisions define what constitutes a strike. The relevant words are contained in section 400(4)(b), of the code and read -

> a conviction includes a finding or admission of guilt that led to a punishment being imposed on the offender, or an order being made in respect of the offender, whether or not a conviction was recorded;

In division 3 of the Young Offenders Act are the words "No punishment but conditions". Section 67 is headed "undertakings and informal punishment". There is a bit of a contradiction between "no punishment" and "informal punishment". There is either punishment or there is not; nonetheless, those words do not constitute the law. The real law is contained in the operative words of section 67, namely -

> The court may refrain from imposing any punishment upon being satisfied that . . .

Clearly section 67 is to do with circumstances which require no punishment. This was the subject of the case that was heard by the Court of Criminal Appeal. The court quite correctly read the words as meaning that they do not constitute a strike for the purposes of the three strikes provisions. It seems to the Australian Labor Party that if something done by a young offender is so minor that no punishment is to be imposed, it should not be a strike for the purposes of the three strikes provisions. Members should think about it. One incident may be too minor to warrant any punishment - strike one; another incident too minor - strike two; and, whoops, before we know it something that is deserving of punishment in the eyes of the court and the circumstances of the case has occurred, one more strike, and under the current law it would lead to incarceration.

In dealing with these sorts of matters, we are extending the three strikes provisions to a degree that we believe is not warranted. There is no evidence that the aspect of the three strikes law which is beneficial - namely, sending a strong message to the community about the seriousness with which Parliament views the offence of burglary - is being undermined. There is no need to extend the three strikes provisions to the degree the Government is proposing. We support the second reading of the Bill, because it contains areas which are very welcome - namely, those matters that pertain to the Anti-Corruption Commission - and I foreshadow that we will do something else in committee.

HON HELEN HODGSON (North Metropolitan) [4.41 pm]: We also have divided these clauses into two areas. The first area is the clauses that relate to the Anti-Corruption Commission. We believe those provisions are consistent with provisions that exist in other legislation, and we have no difficulty in supporting that part of the Bill. However, probably the shortest clause in the Bill, other than the short title, and the one that causes us the most concern, is the extension of the three strikes provisions. I was not present in this place when these provisions were first inserted, but I believe it was a retrograde step to go in that direction in the first place, and I cannot be a party to extending the operations of the three strikes provisions in any way. That basic philosophical objection is fundamental to our beliefs. Therefore, even though it may be only a technical amendment, we cannot support this amendment in any way.

In some instances, the three strikes legislation mandatory sentencing has been problematic. For example, recently the former President of the Children's Court of Western Australia, Alan Fenbury, refused to sentence several offenders to the mandatory period of 12 months because he said, referring to a 12-year-old child, that 12-year-old children like him should not be locked up. In some instances, the circumstances that need to be taken into account are such that the mandatory sentencing regime is inappropriate. Another recent example from another jurisdiction is in the Northern Territory, where under its version of mandatory sentencing, a person was jailed for 12 months for stealing a towel because he was cold, it was night time and he needed some warmth, and that was his third property offence under the NT mandatory sentencing legislation. That is outrageous. We should not imprison a person who is basically in need of shelter and some form of social support.

Hon N.D. Griffiths: Are you aware that the Northern Territory is now moving away from this provision?

Hon Peter Foss: That is not the case under this legislation.

Hon HELEN HODGSON: I know it is not, but that is an example of the consequences of mandatory sentencing.

Hon Peter Foss: I agree. We would not think of doing that here.

Hon HELEN HODGSON: I wish I could be so confident! Judges should have a certain amount of discretion in the way they deal with offenders and should be able to take into account mitigating circumstances, in the same way that we discussed when dealing with the Sentencing Legislation Amendment and Repeal Bill, when the Attorney was at great pains to assure us that these sorts of mitigating and aggravating factors would be taken into account. That is contrary to the principles of the three strikes-type of sentencing.

Hon Peter Foss: Of course it is. That is the difference between the two types of legislation.

Hon HELEN HODGSON: At this stage, judges have the discretion to not record convictions, for whatever reasons are appropriate. Judges are in the best position to determine that matter, and that is the reason for those provisions. However, it is a bit ludicrous to say it is not a conviction, but it is still a strike for the purpose of the three strikes legislation.

This legislation was first introduced in late 1996, as a consequence of what was believed to be this State's high home burglary rate. Western Australia was the first State to introduce this type of legislation. However, the figures for 1997, and the overall figures for the past decade, for these kinds of crimes indicate that this legislation has not prevented the incidence of these crimes. That is just another instance of what we argued previously; namely, sometimes draconian measures do not have the preventive effect that people believe they will have. Sometimes this kind of legislation is far less effective than

implementing a proper rehabilitation process and dealing with the causes of crime. This legislation has not prevented citizens from becoming the victims of crime, and that should be the priority when introducing measures of this kind.

Pages 8 and 9 of the annual report of the Crime Research Centre indicate that unlawful entry statistics in Western Australia are still the highest in the nation, and page 10 indicates that home burglary rates have not decreased since the introduction of the three strikes legislation. The three strikes legislation has no deterrence value to crime and, therefore, no value to the people of Western Australia. The three strikes policy is not effective, it is a failure, and it should not be pursued.

The three strikes laws are also contrary to the United Nations Convention on the Rights of the Child, which was ratified by Australia in 1991, in particular article 37(b), which states that the detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. If the State's legislation provides that imprisonment shall be a measure of last resort, that is being totally overridden by a three strikes policy which provides that a person who has committed three crimes shall be locked up. That is not last resort as far as I am concerned. The Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission have said the legislation has such serious violations of international and common law as to warrant federal legislation to override the laws. That can be found in ALRC Report No 84, and in the 1997 HREOC report entitled, "Seen and Heard: Priority for Children in the Legal Process".

This is another piece of legislation which limits the discretion of the court to deal with all of the circumstances of the offence when sentencing a person. It is wrong for the Parliament to override the sentencing principles that are developed in the courts. I appreciate that the Parliament has the legal power to do that and that it sets the laws which establish the framework for sentencing. However, when it comes to day-to-day sentencing, I do not believe I, and most of the other members of this place, have the experience to set in place laws that override what the judges who are dealing with these matters daily must address. Any steps which override judicial discretion are problematic, and we should not use our legislative powers in that way.

The New South Wales legislation contained a similar provision that did leave in place some judicial discretion. However, the New South Wales Law Reform Commission recommended the abolition of that provision, because it is in effect a sentence passed by Parliament which removes judicial discretion and amounts to an unwarranted intrusion of judicial independence. That can be found in New South Wales Law Reform Commission Report No 79, paragraph 9.11. This provision was repealed by the New South Wales Parliament as a consequence of that adverse report.

The three strikes provisions also have a practical impact on the operation of the courts because offenders are less willing to plead guilty and take advantage of the fast track systems and so on that are available to them. When a person is guaranteed to get a prison sentence, there is no incentive to admit guilt. One of the first steps in applying restorative justice is for the person concerned to admit his guilt. If a person is assured of a prison sentence if he admits his guilt, he will not do so and will be forced into the adversarial system and could end up with a prison sentence anyway. This has direct implications on the delivery of justice in our court system as well as on any new directions planned for the justice system.

The three strikes provisions also tend to be used against people already disadvantaged in society. There is a link between burglary and poverty and between drug addiction and burglary. Indigenous people still comprise a high proportion of socially disadvantaged groups. This legislation has a direct implication for a number of indigenous people in our prisons. For example, a 1994 study referred to in the "Katherine Juvenile Justice Crime Workshop Outcome Document" showed that an Aboriginal youth was 14 times more likely to be charged with a property crime than a non-Aboriginal youth.

The Australian Democrats oppose mandatory sentencing for those reasons. The three strikes provisions are a classic case of mandatory sentencing. It is too late to vote against those laws in principle because they are in the legislation. However, I cannot be a party to extending their operation, particularly given that we are taking into account an offence that the judge believes should not be recorded as a conviction in the first place.

The Democrats will allow the second reading to proceed, because one clause is very easy to deal with in the committee stage. By allowing the second reading stage to proceed, I in no way support that part of the Bill. With that in mind, I am happy for the Bill to proceed.

HON GIZ WATSON (North Metropolitan) [4.52 pm]: As has been stated by the previous two speakers, the problem with this Bill is the extension of the three strikes provision. This is not the correct approach to justice. It is inappropriate and I agree with Hon Helen Hodgson's remark that it is questionable whether it has achieved what it was claimed it would. The Greens (WA) were not in a position to vote on the Bill when it was first introduced. If we had been here, we would have opposed it outright. We do not support any extension of the three strikes provisions and will oppose them in the committee stage.

HON PETER FOSS (East Metropolitan - Attorney General) [4.54 pm]: I sometimes despair of the attitude of people to protection of our community. When the Government drafted this legislation it did not, unlike the Northern Territory, merely pick out property offences. This legislation specifies the offence of home burglary. There is no such thing as a minor home burglary. It is an iniquitous offence because not only is it a property offence - the offender has invaded a person's home and stolen property - but it is an invasion of a person's life. People who have been burgled feel that their home has been desecrated and they no longer feel safe. There is a world of difference between a property crime as referred to in the Northern Territory legislation and home burglary. Home burglary strikes at the essence of people's perception of their safety in the community. Frequently what is taken is irrecoverable. A person's home should be one place in which he feels safe. A victim of such an offence would not see it as minor.

The court may take an attitude as far as the antecedents of the offender are concerned that it is not appropriate to impose

a punishment. That is what the Young Offenders Act does. Although Hon Nick Griffiths talks about it being a minor offence, there is no such thing as a minor home burglary offence - it is a major offence. However, it is not always appropriate to throw the book at young people as a first response. It may well be appropriate not to record a conviction or impose any punishment.

The whole concept of the three strikes provisions is to give people a chance. We are not talking about three offences; in many cases we are talking about hundreds of offences. Sometimes these offenders have a list of burglaries as long as their arm. To get to a third strike, an offender must have been to court on a charge of home burglary and have been found guilty. He is then given a chance. He may have committed 10 or 12 offences. He then goes out into the community and commits another offence or a string of offences. That is often the case; it is seldom that these people come before the court having been accused of committing only one burglary. For the second time the court says that it is dealing with a child and, although the offence is serious because it is a home burglary, we give him another chance. It is only on the third occasion that he appears in court that it asks where is the balance. I do not have a problem defending the three strikes provisions because jail has been made the last resort.

We must take into account that we are also dealing with human beings who are the victim of home invasion. I am reminded of a famous New Guinea case that dealt with the question of "accident". A man was charged with killing his wife. He said he accidentally shot her with his rifle. The only problem was that it was a single-shot rifle and he shot her twice. We have gone beyond accident when a person comes before the court for the third time after being given two opportunities. The fact that he has been granted leniency previously is all the more reason he has exhausted the situation. On the third occasion something should be done, and it is appropriate that Parliament prescribe what should be done. I reject the idea of a minor home burglary. The Bill is perfectly consistent with the intent of the House. We certainly allowed for the fact that an offence should count as a strike even when there is no conviction. The Young Offenders Act even talks about punishment. It could be that people know that dad will give the kid a good belting, but the fact that the punishment has not been imposed by the court seems to be neither here nor there. If someone gets a belting from his father instead of a community service order from a court, it is not a strike. I am totally dismayed at the failure, particularly of the Labor Party, to support this. It is departing from the original idea. This legislation is mild in comparison with its original legislation in 1992.

Question put and passed.

Bill read a second time.

ADJOURNMENT OF THE HOUSE

Special

On motion by Hon N.F. Moore (Leader of the House), resolved -

That the House at its rising adjourn until Tuesday, 15 June.

Ordinary

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.03 pm]: I move -

That the House do now adjourn.

Petition to the Senate - Adjournment Debate

HON GREG SMITH (Mining and Pastoral) [5.04 pm]: I will make a few comments on a speech made by Hon Tom Helm regarding a petition that I am circulating. The petition is a result of actions of the Australian Labor Party. Government members have been in the electorate holding people off and saying that we will try to make native title work. Small prospectors, big mining companies and people who want to use their land in places like Port Hedland have been asking us, "For God's sake, when can you fix it?" We said when we had the federal amendments coming through that we would be able to do something. The amendments came through. We brought legislation into this place to try to put in place a state regime, so that we could try to give Western Australia a system under which we could administer land. The Australian Labor Party rejected that legislation.

I was in Port Hedland on Monday night. Since there seems to be no end in sight, the friction that has been created is getting stronger and stronger. People are feeling frustrated. The frustration is being felt not so much by companies like Hamersley Iron and BHP which have the money to buy their way through the system if they need to, but by little people. Some people want to develop gravel pits. A fellow at Port Hedland mines stone. His name is John Vandenouden and his company is called Rock Shop. Hon Tom Helm probably knows him. People say to him that they want a $300 sitting fee and for him to pay for their lawyers and those sorts of things, but he is not in a position to do that. He does not have the financial wherewithal to buy his way through the native title regime as it presently exists.

That is what the State Government was trying to fix. It was trying to put in place a system which anybody could access and through which people could sit down and negotiate. When we were at Cue a couple of weeks ago we were told that Mt Magnet is developing a vanadium mine 60 kilometres away and it cannot get light industrial land there. I was most perplexed by the attitude of Hon Tom Stephens, who was at that meeting. People had been trying to negotiate with the various claimants. He said, "We can fix it. We will come up and negotiate with you." It was almost a challenge that if we did not let the ALP have government and it was not in power, it would make sure that the native title claimants did not get a resolution. Those were the undertones to his statement at that meeting. It worried me when he made those statements because the insinuation was that we were not able to negotiate and did not have the will to negotiate. The State Government has been trying to negotiate. Any suggestion that it has not is totally farcical.

What has happened in the Senate in the past day has reinforced the requirement to do something. Make no mistake, the State

Government would love nothing more than to have a workable native title regime in this State. We are quite prepared to accept native title. We have a system that can be workable but very few resolutions have been reached. Hon Tom Stephens holds the Rubibi people up as an example of what can be done. Three years down the track, people are not much further on in developing the Broome airport. That is as a result of what is held up to be one of the best systems that is actually working.

Since Senator Harradine and the ALP, the Australian Democrats and the Greens have decided to disallow the state regime in the Northern Territory, Queensland has had to withdraw its legislation and amend it, and the ALP opposition shadow cabinet has said that it would approve only those laws agreed to by local Aboriginal groups. What the ALP has done is to hand land management in Australia over to indigenous groups. It is absolutely shameful. I cannot wait to go back out to the electorate and tell people that when we talk about native title, members on the opposite side of the Chamber laugh; they think it is a great joke. My electorate, which is also the electorate of Hon Tom Stephens and Hon Tom Helm, will have no union people in another 10 years the rate things are going because there will be no work or mines coming on.

Hon Tom Stephens: That is what you want.

Hon GREG SMITH: That is the last thing we want. We know that to make this State a vibrant and economically viable place we must produce minerals to provide the wealth. Forests and mines must be kept going. Members opposite are happy to sit there and laugh at native title. I am more than happy to have Hon Tom Stephens explain his position to us. I was at Cue where he tried explaining it to the people there, and they did not believe him.

Hon Tom Stephens: You invite me, and I will fix it up.

Hon GREG SMITH: I am looking forward to Hon Tom Stephens explaining it, because every time he tells us about native title, I have another example to take out into the electorate to show people exactly what his opinion is.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [5.07 pm]: One of the most ill-informed contributions that this House has ever heard was a moment ago made by Hon Greg Smith. He has not even properly read the play of what is occurring in Canberra or with the Northern Territory legislation. He does not seem to realise that the Northern Territory Government is at this very moment proceeding to change its territory provisions because it well and truly appreciates that it has Buckley's chance of its territory provisions surviving the processes that will necessarily come into play when its provisions are considered first by the Senate and subsequently by the High Court of Australia. We have said to this House time and time again that the legislation that was proposed by this Government was unsustainable and would not survive the processes that it was required to survive; that is, it would not survive the process of obtaining -

Hon N.F. Moore: Give it a go.

Hon TOM STEPHENS: We have; we have given the Government legislation that it can enact. Members of the Government are holding up the process. They are the problem.

Several members interjected.

The PRESIDENT: Order!

Hon TOM STEPHENS: They are causing the delays. They have in place legislation that is workable, sustainable and can survive.

Several members interjected.

The PRESIDENT: Order! Hon Tom Stephens, one moment. Would Hon Greg Smith and the Leader of the House please desist from interjecting. Hon Greg Smith was heard in relative silence. I ask that the Leader of the Opposition be heard in equal silence.

Hon TOM STEPHENS: Today I have had the opportunity of speaking to Senator Brian Harradine about what is going on in Canberra. It is not that which is described by the member a moment ago; it is a different situation altogether. At this stage Senator Brian Harradine is sitting back and watching the process of discussions going on in the Territory between the indigenous land councils and the Territory Government that will see produced through the Territory Parliament next week, legislation that would put in place Territory provisions that will in future handle the administration of native title in a way that will survive the assaults and attacks that would otherwise be forthcoming, firstly in the Senate and subsequently in the courts of this country.

It is not the case that the Labor Party is abrogating its responsibilities in this area. The Labor Party put on record what it considered to be acceptable, sustainable and workable legislation in the area of native title. The Government seems to want a problem, a meal ticket to the next state election on this issue. The Government is saying that there is a problem somewhere that is caused by someone else. There is a problem. The Government is causing that problem, and compounding the problem. The Government is determined to drive the economy of this State into the ground for the one narrow political purpose of getting itself re-elected over the bodies of the workers of Western Australia. It is driving the economy of this State to the point where there will be no jobs by virtue of the decisions being made by this Government. The Government is driving the economy of the State into the ground by ensuring there is no workable native title framework in place.

On offer is a workable framework, and the Government is not prepared to accept it. Today the framework the Opposition provided was vindicated in the Senate. Dr Geoff Gallop has been vindicated by the decisions made in the Senate. Dr Gallop said to the people of Western Australia, to our party room and, in turn, to the Government that the Opposition could provide legislation that would survive the challenges of, firstly, a federal minister and, secondly, the Senate. Finally, the Opposition

can fireproof that legislation against assault in the High Court. The Government chose the alternative path to that. If the Opposition rolled over tomorrow and passed the Government's legislation, it would be guaranteed not to survive the Senate or the court and would be driven through the injunctive processes that would end up dragging the economy of this State into a mire out of which it might never recover. The Opposition has given the Government an alternative.

We commend to the Government the path that is now held up to it as a result of the invitation that has been taken up by the Northern Territory Government. The Territory's Chief Minister, Denis Burke, is showing more foresight in this regard than are these backwoodsmen of Western Australia. It is saying something when a chief minister in the deep north is showing more enlightenment than these people of the far west. We have cowboys running this State who, for cheap political purposes, are prepared to drive the mining industry and all forms of industry into the ground and, as a consequence, to cause job losses and economic damage to the fabric of this society. That is the point I made to the Cue parliament the other day. My message in the Cue parliament is not easily understood at this stage, because, unfortunately, the Government's message to some extent has been accepted by members of the community. The game is only at three-quarter time, and I predict that the people of Western Australia will increasingly wake up to the Government's game plan.

The problem with native title has been caused by the Government. The Government is compounding the problem and it needs to be damned because of it. There is a way to come to a resolution of indigenous land use agreements. That is the path I have commended to the Government. A multi-party select committee of this State put on record a unanimous report on the issue. Hon Barry House, Hon Murray Nixon, Hon Murray Criddle, the Greens (WA) member and I put on record in this place the way forward. What does the Government choose? It chooses litigation and use of taxpayers' funds. This will inevitably lead to damages and legal costs claims against the Government. When will the Government give up? How much of taxpayers' funds will the Government waste in this process?

The PRESIDENT: Order! The member should not thump the table.

Hon TOM STEPHENS: I have never seen on the other side of the House any sign of life, hope or security for the people of Western Australia. The Government is the problem. When the Government finally wakes up it will be too late. What will happen to this Government is what happened to conservative Governments of British Columbia led by W.A.C. Bennett and W.R. Bennett. They did exactly the same things as this Government is doing. Wacky Premier Bennett and his son wacky Premier Bennett junior did exactly what Premier Court senior and Premier Court junior have done; that is until the people got their hands on that Government and took it by throat and left it with one seat in the whole Legislature. That is what will happen to this Government. Hon Greg Smith should mark my words: The Government is causing the problem. The likes of Hon Greg Smith and the Leader of the House are compounding the problem. The Government is the source of division in the community. The Government has rejected an alternative approach.

This nation desperately needs leadership and a government with the capacity to produce some cohesion within our society. This community desperately needs a government capable of leadership, and cohesiveness based on fairness and equity within Western Australia and across this nation. The Opposition is capable of providing that leadership. The Government has never displayed any capacity other than for partisan, divisive, racist behaviour that it thinks will produce its meal ticket back into office. I have a message for members opposite: It will not work. It might have worked in the short term, but it will not work in the long term.

Members opposite will become the victims of the path the Government has charted. Regrettably, in the meantime there will be workers and industries that will be adversely affected by the game plan upon which the Government has embarked. In the end the community of Western Australia will sheet home the blame for this to the people who deserve that blame, and that is the Government. The likes of Hon Greg Smith and his accomplices in this process have trampled over this State from top to bottom with their venom and subtle texts of divisiveness. They are causing the problems that can be solved if only they had the foresight to participate in the process.

Nursing Homes- Adjournment Debate

HON GIZ WATSON (North Metropolitan) [5.17 pm]: Although I am aware that the issue of nursing care is largely a commonwealth responsibility, some matters have been raised by people in my electorate about which we should all be concerned. I hope that some of these serious aspects of lack of care in nursing homes in Western Australia can be addressed seriously. I consider that some of the matters that have been brought to my attention in the past few weeks perhaps warrant an inquiry into the state of nursing homes in this State.

The first case was brought to my attention by a constituent who is a qualified nursing sister. She had concerns about the poor standard of care she had seen in a nursing home in which her mother had recently died. In fact, her mother's death was a result of medical neglect. Gangrene had set into her mother's leg and the nursing home failed to seek appropriate medical assistance in spite of the daughter in this case informing the nursing home that something needed to be done.

I raise the issue tonight because this was not an isolated case, and I will mention a number of other matters which have been raised with me. I suggest there is a need for some sort of inquiry to look into these allegations, perhaps through the department of public health at the University of Western Australia. The issue of supervision - or lack thereof - especially of residents in nursing homes who require fairly constant supervision was also raised. I was informed of a recent coroner's finding concerning a man who eventually choked to death, largely because of inadequate supervision. The suggestion was that there were insufficient staff members to attend to him. The staff members claim that they were not willing to answer his persistent calls because this man was considered to be troublesome. We must be very concerned about these sorts of examples regarding residents in nursing homes, especially as in this State the aged population is increasing. People are likely not just to be living longer, but to be living in these sorts of residences for longer.

It has also brought to my attention that residents of nursing homes have been left for unacceptable periods without being attended to when they are wet or dirty and in need of assistance, notwithstanding that their family members have complained to the staff in that regard. Another complaint is there is a lack of quality staff to implement a better standard of care for residents.

I am concerned that there is insufficient advocacy on behalf of these elderly residents. Often they are in a very vulnerable situation and are unable to get sufficient attention on their own. The information I am receiving is that even when their families ask for assistance, it is not being received. The standards agency reported real concerns about nursing homes, but failed to warn families of the problems when nursing homes continue to admit residents even before the complaints about the level of care are sorted out. That is of major concern.

Another matter raised with me relates to the nutrition levels of food supplied to residents in some nursing homes. People are not receiving optimum food or hydration. Some of the most basic requirements are not being adequately met in the nursing homes.

I am aware that several other members would like to speak in the adjournment debate if there is sufficient time, so I will conclude by asking members to be aware of these issues in their electorates and to support the call for a inquiry into this area, which might be necessary to ensure these elderly members of community are not being neglected in these nursing homes.

MetroBus Redeployees - Adjournment Debate

HON LJILJANNA RAVLICH (East Metropolitan) [5.23 pm]: I wish to bring to the attention of the House the matter of redeployees in general, but specifically MetroBus redeployees, given the comments of the Premier during an estimates committee hearing yesterday which resulted in a media release today.

I am getting very concerned at the growing number of redeployees; in particular, at the way in which this Government has managed the process of dealing with them. The Government's behaviour has been deceitful and dishonest, and disrespectful of the rights of workers. This Government was well aware that there were no opportunities in a shrinking public sector when it offered redeployment to 437 MetroBus workers who took up that option. They were advised that they would be retrained, that positions would be found for them, that they would have job security and be located appropriately in government agencies. Yesterday the Premier announced that he will be approaching the Federal Court of Australia to seek arbitration in removing the remaining 294 redeployees who have not had any success in being relocated. These people have been redeployed for at least a year. There are many more than just the 437 redeployees resulting from the MetroBus privatisation. Currently in excess of 740 redeployees are registered, but many others would not be showing up formally.

I assume the Premier intends to go to the Federal Court to vary what is known as the 3R agreement, redeployment being one of the options under that agreement. This will make the consideration of future negotiations, particularly with the unions, considerably more difficult. The way in which MetroBus redeployees have been treated, the announcement in the newspaper this morning by the Premier that the drivers' skills were no longer required by the Government following the sell off of MetroBus, and further comments that the Government does want to be employing people with a skill that is no longer appropriate, are a disgrace. This is the Premier who in June 1998 supported the Minister for Labour Relations when that minister offered great hope of permanent employment for these people.

One can only conclude that the Government has been involved in an absolute sham in the treatment of the MetroBus workers, in particular, although I think the same applies to all redeployees who currently are caught in a vicious cycle where they are put to work in pretty meaningless employment opportunities. They are shunted from pillar to post and no agency has been prepared to take them on, particularly the MetroBus redeployees. The agencies will not take them on for numerous reasons. One is that while MetroBus pays the wages for these employees, other government agencies are quite happy to take them on in a temporary capacity, knowing full well that the wages are funded by MetroBus, but they will not take them on if they have to pay for them out of their budget. I notice that in all of the budget papers no provision is made by the Government to finance or resource these redeployees being put in permanent position. There is no intent by the Government to do the right thing for the 294 MetroBus redeployees who do not have a hope in hell of finding a permanent job or of surviving in the public sector, given the revelations of the Premier during yesterday's estimates committee hearing. Quite clearly, already there are no jobs for redeployees. As I have said from the beginning, this is just a sham. There are no jobs in a shrinking public sector to facilitate the 437 MetroBus redeployees, let alone any others. More than that, other workers are faced with the prospect of redeployment. I refer specifically to Westrail. Given that the power generation division of Western Power has come under extreme attack and is likely to be privatised, the unions representing those workers have a right to drive the hardest of bargains in the current negotiations regarding the future of the workers they represent.

All workers have been sold a lemon by this Government. There has been no intent by the Government to do the right thing. I will remind the minister of what he said in the press statement on 2 July 1998.

> Following initial training and assessment, placements are to be made across the public sector, including 100 employees to be absorbed into the Police Department for clerical and similar duties.

It did not happen. What happened to those 100 job opportunities in the Police Department? They never eventuated. It goes on -

> There is a wide range of positions being arranged, including work opportunities in the Public Service for 100 employees who have passed the public service entry level examination.

I know for a fact that MetroBus drivers sat a public service entrance examination. Why were they made to sit this examination when the Government knew full well that there were no jobs for them to go to? What an absolute disgrace.

It continues -

> Those seeking redeployment will have opportunities with the Kings Park Board, the Rottnest Island Authority, TAFE, the Karrakatta Cemetery Board, Keep Australia Beautiful Council, Metropolitan Local Government Authorities, Fremantle Port Authority, CALM and the Premier's graffiti team.

I know for a fact that the bulk of the people ended up on the graffiti team. What happened to the opportunities in those agencies? None of them eventuated. I am referring to a ministerial statement and none of these opportunities eventuated. This is the joke of all time! It continues -

> The 437 MetroBus employees who have requested redeployment within the public sector will now participate in one of the most comprehensive career transition packages ever put in place in this State.

What an absolute disgrace! The Leader of the House has lied and has been deceitful.

Withdrawal of Remark

The PRESIDENT: Order! The member cannot say that a member has lied, especially when it appears as though she is directing it to a particular member. She must withdraw that word.

Hon LJILJANNA RAVLICH: I withdraw that word.

Debate Resumed

Hon LJILJANNA RAVLICH: The Government has been less than truthful about this matter. No comprehensive career transition package was put in place. These people were absolutely sold down the gurgler. Any future negotiations with this Government on future privatisations and the future of the work force of people within those government agencies will force people to look carefully at what the Government does with the MetroBus redeployees. We may be conned once - we have been conned - but we will not sit and take it. We will not be conned again. I assure the Government of that. Its members should hang their heads in shame at the way they have conducted themselves in this matter.

Minerals Exploration Industry - Adjournment Debate

HON TOM HELM (Mining and Pastoral) [5.33 pm]: I want to comment on some statements the Minister for Mines made during the adjournment debate yesterday. I want to inform him of information given to me by his office, with all its staff. In two hours, my research officer, Nuala Brown, found 77 mining lease exemptions for Sons of Gwalia which tied up 55 805 hectares of country. If it is too onerous a task for the minister or if his 15 officers are too busy, perhaps Nuala could volunteer her services and help him out. I need to correct some of the things the minister said yesterday. I was a bit put out in that he did not deal with the issues. He had a go at me and at some of the things that he said were involved with the case.

Hon N.F. Moore: I tried to help your colleague, Hon Mark Nevill.

Hon TOM HELM: He was trying to create a rift between the member for Eyre, Hon Mark Nevill and me. He said that it was not an issue and nobody really cared. Some very quick research this afternoon found an article from *The West Australian* dated 28 October 1994. The headline is "Act will hurt prospectors, Grill warns". The article states -

> The death knell has sounded for WA's prospectors, according to Opposition resources spokesman Julian Grill.

It continues -

> But Mr Grill - who owes his position in the Opposition front bench to the regard in which he is held by the mining sector - maintained that prospectors would be decimated by the amendments.
>
> "The worst fears held by prospectors in 1978 when the new Mining Act was introduced have come to fruition," Mr Grill said.

Hon N.F. Moore: What happened to this legislation? It was passed with your support, as I recall. It is an improvement for the prospectors.

Hon TOM HELM: The minister has missed the whole point. He should just settle down. I will not say anything contentious. If I have misunderstood it, the minister can clarify it any time he likes; he can do it without any notice, as he usually does. Is someone else not concerned or is it is only me?

Several members interjected.

The PRESIDENT: Order, members! I am trying to listen to Hon Tom Helm.

Hon TOM HELM: Another article in the same newspaper stated -

> Pilbara prospector Don North has no doubt that recent changes to Mining Act exploration licences will squeeze out many struggling small operators.
>
> Mr North . . . said too many big companies had tied up too much land at the expense of people like himself.
>
> They had pegged big tracts of land all over the State, leaving smaller companies and operators with nowhere to go but their existing tenements.

Hon Tom Stephens: What year was this?

Hon TOM HELM: This was in 1994. Only I am interested and can see the issue. Another article, which is possibly from the *Kalgoorlie Miner* of 13 March 1995, states -

> The Amalgamated Prospectors and Leaseholders' Association has established a special working party to investigate a tenement system which prospectors believe is unworkable.
>
> APLA State vice-president Bob Sheppard said special prospecting licences were virtually impossible to obtain under the current system and yet provided the only means for a prospector to mine small areas of land under tenement.

Hon N.F. Moore: They are getting them now.

Hon TOM HELM: The minister said that he will bring in legislation and that nothing is wrong. He has said that he will introduce legislation to fix it, when there is nothing wrong.

Hon N.F. Moore: You are confusing two sorts of tenements.

Hon TOM HELM: The minister also said that it is an issue about which only I cared. Members of the Amalgamated Prospectors and Leaseholders Association of WA are members of a subcommittee with the Mining Industry Liaison Committee, which he has said is so good. Some recommendations, which were sorted by the Association of Mining and Exploration Companies, related to issues which the minister said were only mine, and for which he would introduce legislation to address. The AMEC agreed with the subcommittee that the changes proposed in 1995 could not be accepted by MILC. MILC has a majority of members from the Chamber of Minerals and Energy of Western Australia and from the minister's department. The minister should not say he has had only two years to look at this issue. It has been going on now, as the member for Eyre and the prospectors have said, since 1994. At least in 1995, MILC, the organisation that the minister thinks is offering him all this advice, gave him and the department some advice, but he did not cop it. He has had it ever since, and has done nothing with it.

Hon N.F. Moore: I have been the minister for only two years, you clod.

Hon TOM HELM: I know that. Did the minister bring all his departmental people with him? I have said that either the minister is incompetent or he is a captive of his department. If the department had some recommendations from a group for which he is supposed to be responsible in 1995, and it did not tell him, whose fault is that? Is it the department's fault? In 1995, the minister had a way of resolving this issue that he says only I care about. He did not take that advice on board.

Hon N.F. Moore: Do not attack me personally, because I was not the minister in 1995.

Hon TOM HELM: It does not matter. Hon Norman Moore is the minister now. Can he not understand that he is responsible for his department? Nobody else is responsible for his department. He gets paid a lot of money to be responsible. Why does he not try being responsible for a change and stop feeding off somebody else and saying it is somebody else's fault?

Hon N.F. Moore: Will you give me a chance to respond to this?

Hon TOM HELM: Does the minister really want to? I did not start off by attacking the minister, but he opens his mouth and provokes people into saying things they do not really want to say.

Hon N.F. Moore: If you want to get Julian Grill on side you will have to do a lot more than this.

Hon TOM HELM: I do not need to get him on side. He is already there. We are comrades. We are in the same party. We are not like the minister's mob.

The PRESIDENT: Order! I must call a halt to the proceedings.

Hon N.F. Moore: The 40 minutes has expired. That means I cannot respond. I would like to speak about the Leader of the Opposition's absolutely outrageous remarks.

Question put and passed.

House adjourned at 5.41 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

ELLE MACPHERSON, MEETINGS IN NEW YORK

1244. Hon KEN TRAVERS to the Minister for Tourism:

In relation to the meetings held in New York in February and August 1997 between Elle Macpherson's managers and lawyers and Grant Donaldson of the Crown Solicitor's Office -

(1) Can the Minister confirm that there were no written records kept in any form of either of these meetings?

(2) If yes, is it usual practice for the WATC to have a lawyer represent them at important meetings at overseas venues and there be no requirement for a written report from the lawyer?

Hon N.F. MOORE replied:

(1) Yes, no formal records were made.

(2) It depends on the circumstances. The lawyer was in frequent telephone contact with the Western Australian Tourism Commission.

DEPARTMENT OF RESOURCES DEVELOPMENT, MR W. PRESTON'S TRIP TO CANADA

1449. Hon TOM STEPHENS to the Leader of the House representing the Minister for Resources Development:

(1) What was the reason for the trip by W Preston of the Department of Resources Development and to where in Canada was the trip?

(2) To whom was the advice on diamond development experience in Western Australia given?

(3) Who initiated the trip?

(4) If the trip was in response to an invitation, from whom was the invitation?

(5) Was one or more papers given?

(6) If so, will the Minister for Resources Development table those papers?

Hon N.F. MOORE replied:

(1) At the request of the Canadian and Northwest Territories governments, to discuss the approaches taken in Western Australia to the management of the Argyle diamond mine through the State Agreement (particularly in relation to royalty, processing and infrastructure matters) to assist those governments in their management of the major diamond development being undertaken by BHP in the North West Territories. To discuss a range of resource development issues of mutual interest between Western Australia and Canadian Federal and Provincial counterparts. Yellowknife (NWT), Ottawa, Toronto and Vancouver were visited.

(2) Government of Northwest Territories – various Departments
Territory/Federal Working Group on Diamonds
Diamond Processing Task Force, City of Yellowknife
Federal Department of Indian and Northern Affairs, Yellowknife and Ottawa

(3) The visit was initiated by the Department of Resources, Wildlife and Economic Development of the Government of Northwest Territories which offered to meet the costs in travelling to and from Canada and all within Canada costs associated with diamonds. The opportunity was taken to have wider consultations and the extra costs of these visits were carried by the State.

(4) The invitation was issued by Andrew Gamble, and successor Joe Handley, Deputy Minister of Resources, Wildlife and Economic Development of the Government of Northwest Territories.

(5) No papers were presented, but a variety of publications and range of information were provided on resource development in Western Australia.

(6) Not applicable.

ABORTION, NUMBERS

1476. Hon N.D. GRIFFITHS to the Minister for Finance representing the Minister for Health:

(1) How many decisions leading to an abortion have been made pursuant to section 334 (7) of the *Health Act 1911*?

(2) With respect to the medical practitioners involved in making the clinical judgement, how many cases have each of them been involved in?

Hon MAX EVANS replied:

(1) Since the panel was appointed on 27 July 1998, 14 such decisions have been made.

(2) For each decision, at least two of the members appointed to the panel were involved in making the decision and, in some cases, the whole panel considered the case. Decisions were always unanimous.

ABORTIONS, LETTER FROM DR J.A. CUMMING

1513. Hon N.D. GRIFFITHS to the Minister for Finance representing the Minister for Health:

(1) What are the terms of the letter from Doctor J A Cumming, Executive Director Medicine, King Edward Memorial and Princess Margaret Hospitals re *Acts Amendment (Abortion) Act* to the Minister for Health dated July 9, 1998?

(2) Will the letter be tabled?

(3) If so when?

(4) If not, why not?

Hon MAX EVANS replied:

(1) The letter requested the Minister for Health to provide King Edward Memorial Hospital with advice on the panel to be appointed for the purposes of section 334(7)(a) of the Health Act 1911.

(2) No.

(3) Not applicable.

(4) There is no need to do so, given the answer to (1).

GOVERNMENT DEPARTMENTS AND AGENCIES, CONTRACTS CANCELLED

1562. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Health:

For all Government departments and agencies under the Minister for Health's control -

(1) How many contracts were cancelled in -

(a) 1996/97; and
(b) 1997/98?

(2) What project was the contract awarded for?

(3) What was the value of the cancelled contract?

(4) Who was/were the contractor/s?

(5) Were any costs incurred by the department or agency as a result of the contract cancellation?

(6) If yes, what was the cost?

(7) Has the contract been re-awarded?

(8) If yes, to whom?

(9) If no to (7) above, when will it be awarded?

Hon MAX EVANS replied:

(1) (a) 1.
(b) 4.

(2) (a) Provision of General Management and Clerical Services to the Boards of Management of Harvey and Yarloop District Hospitals.
(b)(1) Consultancy for Aboriginal Health Coordinated Care Trial IT Services.
(b)(2) Supply of Library Information System Software for HDWA.
(b)(3) ISO Accreditation.
(b)(4) Dental Instruments.

(3) (a) $155,000 per annum for two years with three twelve month extension options.
(b)(1) $35,000.
(b)(2) $223,804.
(b)(3) $40,000.
(b)(4) $32,000.

(4) (a) Adamwood Hospital Administrative Services Pty Ltd, trading as Emcare
(b)(1) Working Systems Software Pty Ltd.
(b)(2) Stowe Computing Australia.
(b)(3) Systems Intellect.
(b)(4) AMA Services Medical Products.

(5) (a) No.
(b)(1) No.
(b)(2)-(4) Yes.

(6) (a) Not applicable.
(b)(1) Not applicable.
(b)(2) $198,265.
(b)(3) $29,225.
(b)(4) $16,000.

(7) (a) No.
(b)(1) No.
(b)(2) Yes.
(b)(3) No.
(b)(4) Yes.

(8) (a) Not applicable.
(b)(1) Not applicable.
(b)(2) EliAS nv.
(b)(3) Not applicable.
(b)(4) Dentsply (Aust) Pty Ltd.
Halas Dental Company.
Rudolf Gunz & Co Pty Ltd.
W9 Pty Ltd.

(9) (a) It will not be re-awarded.
(b)(1) It will not be re-awarded.
(b)(2) Not applicable.
(b)(3) It will not be re-awarded.
(b)(4) Not applicable.

MINISTRY OF SPORT AND RECREATION, CHIEF EXECUTIVE OFFICER

1576. Hon LJILJANNA RAVLICH to the Minister for Sport and Recreation:

(1) Has a new Chief Executive Officer been appointed for the Ministry of Sport and Recreation?

(2) If yes, who was appointed to this position?

(3) What are the qualifications of the appointee?

(4) What is the total salary for this position?

(5) Who made the appointment?

Hon N.F. MOORE replied:

(1) No.

(2)-(5) Applicants receiving an interview have been advised that the Public Sector Standards Commissioner formulated his advice on 29 April 1999 and submitted this to the Minister for Public Sector Management. The process now to be followed is that the Minister for Public Sector Management will make his decision and the Governor in Executive Council will then be asked to approve his decision. Applicants are aware that the process may take a number of weeks. No decision has been made on the salary for the position.

STATE BONDS, CONFIDENTIALITY OF CLIENT INFORMATION

1622. Hon JOHN HALDEN to the Minister for Finance representing the Treasurer:

I refer to the changes that were made in 1998 to the administration of the Western Australian State Treasury Corporation's State Bonds and ask -

(1) What steps, if any, has the Western Australian Treasury taken to ensure that the confidentiality of client information is ensured under new arrangements which sees a private registry services provider assume responsibility for these bonds?

(2) Were holders of these State Bonds consulted or given any prior warning of the changeover in registry services provider from the Reserve Bank of Australia to a private sector provider?

(3) Does this changeover mean that information about holders of State Bonds will be used by private sector interests for unsolicited marketing or other commercial activities?

Hon MAX EVANS replied:

(1) The Registry Service Agreement with National Registry Services Pty Limited ("NRS") contains a confidentiality clause that precludes NRS from disclosing records, programs and program documentation to any person without the prior written consent of the Corporation. NRS also procures that each of its officers, agents, consultants, and employees shall at all times honour this requirement of confidentiality. This clause is similar to the one WATC had with the Reserve Bank of Australia.

(2) WATC wrote to each of its stockholders personally, informing them of the change and installed a temporary Freecall telephone service so that they could contact WATC to express their comments or concerns about the transfer. Less than 12 calls were received from the 5000 stockholders written to. All were satisfied with the change.

(3) See answer to (1) above.

QUESTIONS WITHOUT NOTICE

PRIVATE BUS COMPANIES, DISPUTE WITH DRIVERS

1273. Hon TOM STEPHENS to the Minister for Transport:

I refer to the minister's refusal to take responsibility and intervene in the current dispute between the private bus companies and their bus drivers.

(1) Is it not correct that the Government is providing these operators with in excess of $115m a year of taxpayers' funds to provide these services, and that the Government has every reason to take an active role in settling a dispute which is disrupting the delivery of vital services to the public?

(2) Alternatively, does the minister agree that privatisation of these services has resulted in a loss of public control, notwithstanding massive inputs of public funds?

Several members interjected.

Hon TOM STEPHENS: The Leader of the Government knows more about this than most!

The PRESIDENT: Order! I will say it only once more before ruling questions of this nature out of order: The next time the Leader of the Opposition or any other member sits down to write a question, he or she will be aware of my ruling. Standing Order No 140(a) refers to the fact that questions shall be concise. It then lists a number of matters questions should not contain, one of which is argument. The question just posed by the Leader of the Opposition has been framed in a manner which invites argument and debate. It could have been framed in another way to invite a statement on the facts. Members, please look at this standing order. I know all members write their own questions, but all members seem to be falling into the same difficulties.

Hon M.J. CRIDDLE replied:

(1)-(2) These private operators have every right to strike an agreement with the work force they employ. It is not my intention to be involved in negotiations for an agreement between a private employer and his employees. The inference from the Leader of the Opposition is that the standard of the bus services is deteriorating in some way, and that we are not receiving a very good service in Western Australia. The Government has just received results from the independent group Donovan Research which surveyed nearly 2 600 people. This survey indicates that 71 per cent of people are satisfied with the services they receive, and that nine out of 10 people who used the previous service are happy with the new service. Also, 75 per cent of commuters expressed satisfaction with the service frequency during peak times. Approximately 7 000 kilometres has been added to the transport network, along with 14 additional routes. Initiatives such as the "night alight" service and the circuit route have been implemented. A very good transport service is operating in the community. If operators can provide such service to Western Australia, they have done a very good job and they have every right to be involved in negotiations with their work force.

PRIVATE BUS OPERATORS, FINES

1274. Hon TOM STEPHENS to the Minister for Transport:

(1) Can the minister advise whether the private bus operators will be fined for failing to provide services between 10.00 am and 2.00 pm on Monday to Wednesday of this week as required by their contracts?

(2) If not, why not?

(3) What incentives do the Government's contracts provide to ensure private operators adopt responsible and competent industrial relations processes?

Hon M.J. CRIDDLE replied:

(1)-(3) I have answered the question with regard to the obligations which the bus operators have in agreements made last year. The processes will be carried out.

Hon Ljiljanna Ravlich: They have breached the contract and you have let them get away with it!

Hon M.J. Criddle: That is not the case.

The PRESIDENT: Order! Hon Nick Griffiths will wait one moment until we finish some argument between Hon Ljiljanna Ravlich and the minister.

LEGAL AID COMMISSION, FREMANTLE OFFICE

1275. Hon N.D. GRIFFITHS to the Attorney General:

Yesterday in answer to a question about legal aid funding, the Attorney stated that it has been assessed that the Government

has more than adequately made up for the shortfall in commonwealth funds as this can be met by appropriate efficiency improvements within the Legal Aid Commission. In those circumstances, why does the Legal Aid Commission have before if this afternoon a proposal to close its Fremantle office?

Hon PETER FOSS replied:

Among other things, the Legal Aid Commission is required to see whether it can be more efficient. I understand that it should look at its Fremantle operation to see whether it can be provided in a more efficient method.

Hon Kim Chance: By closing it.

Hon PETER FOSS: If members opposite think that merely opening offices increases efficiency, they will regard opening legal aid offices in every suburb of Perth to be efficient. The commission has looked at ways in which many of its services can be provided in alternative ways. One way to do so is through private providers. Before criticising the Legal Aid Commission, members opposite should look at the services to be provided. If a more efficient service can be provided in that way, I hope -

Hon Ljiljanna Ravlich: There you go - privatising legal aid!

Hon PETER FOSS: I am not privatising the Legal Aid Commission. Members opposite are a mob of hypocrites! Who said only a short time ago that the Attorney General was a terrible person because he was daring to exercise some of his powers under the Act with the independent Legal Aid Commission? Here I am innocently standing by as the Attorney General watching what is happening at the Legal Aid Commission as it tries to become more efficient. Members opposite do not care whether it is more or less efficient, or whether more or fewer people receive legal aid. They only want to know whether the service is being delivered by civil servants. Opposition members do not care about the end result for the taxpayer, or about how public funds are spent. Members opposite want money handed over so that as many public servants as possible are employed, irrespective of whether the public receives more legal aid from that money. What would members opposite see as the test of efficiency at the Legal Aid Commission?

Point of Order

Hon MARK NEVILL: It is not the job of the Attorney to be asking the Opposition questions.

The PRESIDENT: We are turning question time into a kindergarten, members. I have not said anything for the last few minute to let members go on their merry way and waste each other's time. Hon Mark Nevill is right: It is not the Attorney General's job to seek answers from the Opposition. However, as I have clearly observed, the Attorney General seems to be doing no more than responding to myriad interjections. I do not know which interjection number the Attorney General is up to at the moment. I have no idea how long he will take to answer interjections made by members who have indicated - names are listed before me - that they want to ask questions.

Questions without Notice Resumed

Hon PETER FOSS: I assure you, Mr President, that my questions were entirely rhetorical. I do not expect any answers whatsoever from the Opposition because I hope that everyone here accepts that the most important thing about the money provided for legal aid is that it gives the maximum number of people the best legal aid. Before members opposite jump to the assumption that the Legal Aid Commission has erred, keeping in mind it is a fairly illustrious body, it has considered it very carefully and believes it can deliver a better service and provide better value for the Western Australian taxpayer and litigants by doing so. If that is correct, I support it. Having appointed it to do the job, I trust it to do it appropriately.

SAFER WA, MEN'S MEETING PLACE

1276. Hon J.A. SCOTT to the minister representing the Minister for Health:

(1) Did the Minister for Health agree to approach Safer WA for a funding grant for the Men's Meeting Place; and, if so, when?

(2) Did Safer WA indicate that it would help to fund the Men's Meeting Place? If so, why did this funding take so long? If not, what reason was given for not providing such funding?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No.

(2) Not applicable.

WESTRAIL FREIGHT BUSINESS, EXPRESSIONS OF INTEREST

1277. Hon NORM KELLY to the Minister for Transport:

(1) How many companies or consortiums have expressed an interest in purchasing the Westrail freight business?

(2) What are the names of these companies or consortiums?

Hon M.J. CRIDDLE replied:

(1)-(2) We have not reached the stage of requesting expressions of interest in Westrail's freight business at this stage.

Hon Norm Kelly: Companies have expressed an interest in purchasing it.

Hon M.J. CRIDDLE: A number of companies have expressed an interest but off the top of my head I could not give the name or the number of the companies that have expressed an interest. Our people have been to the United States to let people there know of the sale. Obviously when the expressions of interest are called for, we will canvass as many operators as we can. We are looking at a class 1 operator; in other words, we are looking for the very best operators around the world to give an expression of interest in the freight service. The intention of the Government is to attract people who can give a very high priority to the services in Western Australia so that Western Australia can get the best possible result from the sale, whoever the successful operator may be. I certainly know of expressions of interest from people in Germany, the United States and the United Kingdom.

ALBANY POLICE STATION

1278. Hon MURIEL PATTERSON to the Attorney General representing the Minister for Police:

I refer to the recent debate in Albany and ask that the minister clarify for me how many police are currently operating from the Albany Police Station, and what provision has been made in the recent budget for capital equipment upgrade and maintenance.

Hon PETER FOSS replied:

I thank the member for some notice of this question.

Forty-two police officers are operating from the Albany Police Station.

Peter Hunt Architects have completed a draft feasibility study of an existing site and other possible sites. The study was commissioned in conjunction with the Ministry of Justice to assess the feasibility and options of redeveloping the existing police station and court sites; to identify a suitable site for a collocated district police and court complex; and to identify suitable sites for stand-alone district police and court complexes.

The Ministry of Justice has funding allocated in 1999-2000 to progress the planning of a new court complex. The Police Service will participate in this process to progress the feasibility of collocating the proposed district police complex with the new court complex. In the interim, while it is recognised that the existing police station is too small, it is still operational in its present state. Police property services in conjunction with the southern regional command has already examined the premises and arrangements have been made for architect and property services to look for possible solutions until such time that the new police station can be constructed. The consultant appointed is in Albany today.

The Police service maintenance program for 1999-2000 is currently being assessed by a Department of Contract and Management Services-appointed private consultant to determine the level and scope of maintenance for the Albany district. No specific allocation is made for maintenance and capital works as this is funded out of recurrent.

Since I became the Minister for Justice, we have tried to tie police capital works programs with justice capital work programs because of the obvious need for the two premises to relate to one another. It would be preferable if they were alongside each other because it would make it much easier to transfer prisoners from the police station to the court lock up. Obviously occasions may arise when it is impossible to have them collocated, but if that were a decision to be made, it would not be made until all possibilities to collocate them had been considered. From an operational point of view for both the police and courts, it is desirable that we keep that cooperation between them and ensure that there is one project for both complexes.

PUBLIC TRANSPORT, FARE INCREASES

1279. Hon MARK NEVILL to the Minister for Transport:

Given that public transport fares have increased since 1992-1993 by up to 262 per cent, is the minister aware that increases in public transport fares negatively affect patronage of public transport? How does the minister justify the increase in public transport fares in this budget?

Hon M.J. CRIDDLE replied:

I thank the member for that question because we have tried over the years since 1992 to catch up some of the ground to bring the cost recovery up to 40 per cent; this budget brings it to about 33 per cent.

Hon Ken Travers interjected.

Hon M.J. CRIDDLE: The bus fleet. While the other services are very good, they are costing us much money, especially the train service to the north. However, I do not criticise that because it is a very good service. Fifty-six per cent of patrons surveyed rated the fares as excellent to good value, while only 14 per cent considered the fares expensive. That clearly demonstrates that people accept the fares charged.

BUNBURY HOSPITAL PAMPHLET

1280. Hon BOB THOMAS to the minister representing the Minister for Health:

I refer to the glossy pamphlet sent to all residents in the Bunbury area hailing the new hospital.

(1) What was the total cost of the printing and distribution of this pamphlet?

(2) What are names of the companies which were involved in the production?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) State Government's contribution $28 442.40
St John of God Health Care's contribution $ 6 112.00

Approximately 40 000 pamphlets were distributed to households in the south west region.

(2) The project coordinator was AA Media Services, on behalf of the Health Department of WA, Bunbury Health Service and St John of God Health Care.

BANDYUP WOMEN'S PRISON AND NYANDI

1281. Hon GIZ WATSON to the Minister for Justice:

I refer to the transfer of prisoners from Bandyup Women's Prison to Nyandi.

(1) How many women are now at Nyandi?

(2) Have operational conditions changed since it was established?

(3) If yes, why?

(4) Are all prisoners section 94 prisoners?

(5) What are the criteria for women going to Nyandi?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Twenty-seven as at 27 May 1999.

(2) No.

(3) Not applicable.

(4) All prisoners who currently reside at Nyandi are eligible to participate in the section 94 program. However, at times a prisoner may be subjected to a loss of privileges for a misdemeanour and prevented from such participation for a stipulated period. The prisoner must attend numerous community projects within the metropolitan area.

A number of prisoners remain at the prison each day to meet the needs of the day-to-day operation of the facility; for example, preparing meals, laundering and cleaning. Such duties are rostered to provide all prisoners the opportunity to attend community work. If the prisoner is required to attend court, a medical appointment or participate in a course, she does not participate in the section 94 program on that day.

(5) Prisoners are required to be rated as minimum security in line with the director general's rule 2B. If a prisoner is minimum security but has successfully applied to have her child reside with her, as no facilities are available at Nyandi she must remain at Bandyup Women's Prison. To reside at Nyandi, the prisoner must have a medical clearance from medical staff. Prisoners are precluded from being transferred to Nyandi if they are on the methadone program or any other schedule 8 drug. Careful consideration is given to prisoners assessed as being at risk of self-harm. In view of limited accommodation for at-risk facilities at Nyandi, limited nursing facilities and forensic case management team services, the management of such prisoners is difficult and they are generally managed at Bandyup Women's Prison.

PRISONERS' GRIEVANCE PROCEDURES

1282. Hon HELEN HODGSON to the Minister for Justice:

(1) Is a review of the grievance procedures for prisoners in Western Australian prisons being undertaken?

(2) If so,

(a) by whom;

(b) on what date did it commence; and

(c) when is it due to report?

(3) Will this include a review of the procedures for handling -

(a) grievances between prisoners;

(b) grievances between prisoners and Ministry of Justice staff; and

(c) matters that arise from time to time between the Ombudsman's office and the MOJ?

(4) Will it include a review of whether prisoners have access to due process and natural justice in the handling of grievances?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Yes.

(2) (a) Justice and Forensic Services (Pty) Ltd.

(b) December 1998.

(c) May 1999.

(3) (a) No.

(b)-(c) Yes.

(4) Yes.

PAROLE ORDER BREACHES

1283. Hon JOHN HALDEN to the Minister for Justice:

How many parole orders were breached in 1995-96, 1996-97, 1997-98, and this financial year?

Hon PETER FOSS replied:

Before I answer the question I should clarify to the House what breach of a parole order is. It is a strange term. Strictly speaking, a breach of a parole order occurs when a person on parole breaches the conditions of that order. However, within the Ministry of Justice community-based services, the term "breach" means when the ministry determines that a breach has occurred and causes that person's parole to be terminated. I should make it clear because that terminology differs quite considerably from what the ordinary person in the street might think the term "breach" means.

I thank the member for some notice of this question. The annual reports of the Ministry of Justice indicate breaches of parole orders as follows: 1995-96, 329; 1996-97, 335; 1997-98, 309; and 1998-99, up to and including 30 April 1999, 361. The ministry has instigated a stricter regime with regard to the breach of parole orders. It has identified high-risk offenders; that is, those who, if they were to breach parole, likely to do so in a way that is of greater risk to the community. A protocol has been put in place for those high-risk offenders whereby they are much more likely to have their parole breached than a person of lower risk to the community. People who are likely to be of higher risk to the community are being breached with more regularity and are ending up in jail. That accounts for some of the significant increases in prison numbers and is probably the single largest factor. It is obviously not a continuing factor because we are getting through most of those high-risk offenders and they are returning to jail. There is not an inexhaustible supply of high-risk offenders who are being breached.

NORTH WEST COAST, SECURITY

1284. Hon GREG SMITH to the Leader of the House representing the Premier:

(1) Has the Premier formally approached the Federal Government about increasing security along Western Australia's north west coast?

(2) If so, what options have been discussed?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) A comprehensive whole-of-government Western Australian submission was forwarded on 7 May 1999 by the Ministry of the Premier and Cabinet to the Prime Minister's task force on coastal surveillance. The Western Australian submission consolidated the views of the following Western Australian agencies: Fisheries WA, Western Australia Police Service, Agriculture Western Australia, Department of Conservation and Land Management, Department of Transport, Office of Youth Affairs, WA Drug Abuse Strategy Office, and Ministry of the Premier and Cabinet.

On 13 April 1999 the Premier also wrote to the Minister for Defence expressing concerns about the vulnerability of the Pilbara and Kimberley coasts, and requested further consideration for a permanent defence presence in these areas.

(2) The Western Australian submission to the Prime Minister's task force on coastal surveillance highlights the need for effective coastal surveillance that detects and deters illegal vessels from encroaching upon vulnerable areas to the north west of Western Australia. It also highlights the need for adequate protection from criminal activities in drugs and illegal immigration, and ensures that conservation, environmental, agricultural and fisheries interests are safe from unlawful encroachment.

LAND "STERILISED" FROM MINING ACTIVITY

1285. Hon TOM HELM to the Minister for Mines:

(1) In response to question 1272 yesterday, the minister said it would probably take 15 people 15 years to calculate the number of exempted mining leases. How many man-hours did it take to determine that 11 000 tenement

applications and more than 230 000 square kilometres of land in this State were effectively sterilised from significant exploration?

(2) If the number of exempted mining leases is so difficult to calculate - bearing in mind the minister has people in his department to sort out these matters for him - does he accept that mining titles are more complicated than native title claims?

Hon N.F. MOORE replied:

(1)-(2) I suspect that my comment about 15 people taking 15 years to work it out was a slight exaggeration. It was made in the context of debate about an issue. I am happy to talk to officers in the Department of Minerals and Energy to see whether they can provide a figure on the area of land subject to exemption from expenditure conditions.

Hon Tom Helm: The figures for this year will do.

Hon N.F. MOORE: That is all I intend to provide; I will not go back in history. I will ask if the department can provide figures for the existing tenements, without putting too many people to a great deal of extra work. I repeat the point I made yesterday: That figure has no relevance because the land is not sterilised and they are areas over which a title has been allocated. There are very good reasons that some companies have been given an exemption from expenditure conditions for a period - usually a maximum of one year - and that requires something to be done in the following year, otherwise they lose the lease. It is an academic exercise, but I will see if the department can provide the information without significant difficulty.

OFFICE OF SENIORS INTERESTS

1286. Hon CHERYL DAVENPORT to the minister representing the Minister for Seniors:

(1) Is the Office of Seniors Interests to become part of Family and Children's Services from 1 July 1999?

(2) If so, for what reason has this decision been made?

(3) If so, will the chief executive officer of the Office of Seniors Interests be answerable to the chief executive officer of Family and Children's Services?

(4) Will the Office of Seniors Interests remain an independent organisation answerable to the minister?

(5) If not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(5) The Government has decided to bring the Office of Seniors Interests and the Women's Policy Development Office into the same administrative arrangement with Family and Children's Services as that already in place for the WA Drug Abuse Strategy Office. The Family and Children's Policy Office will be established under the same structure.

This does not change the role of either the Office of Seniors Interests or the Women's Policy Development Office. The executive directors of both organisations continue to report to the minister on policy matters, while the Director General for Family and Children's Services will become the accountable officer under the Financial Administration and Audit Act. This more efficient structure will strengthen each agency's capacity to coordinate the policy development and implementation in areas that are a high priority for the Government.

SETTLEMENT ROAD TO NARRIKUP ABATTOIR

1287. Hon J.A. COWDELL to the Minister for Transport:

(1) Can the minister confirm that the total cost of widening and sealing Settlement Road to the Narrikup Abattoir has jumped from a 1998-99 Main Roads budget estimate of $3.369m to a 1999-2000 budget estimate of $5.959m?

(2) What is the reason for this increase?

(3) Is the Fletcher Group of Benale Pty Ltd contributing to the cost of this road project?

(4) If not, has the Government asked the Fletcher Group to contribute to the project?

(5) If not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(2) The 1998-99 budget figure of $3.369m was based on preliminary planning estimates. Following a more detailed examination of the scope of the works, the cost estimate has been revised to $5.959m.

(3)-(5) No; Settlement Road will provide improved access to the Narrikup abattoir, which is a project of significant benefit to the great southern region and the State's economy in general. The road will also form part of an important east-west link between Albany Highway and the Albany to Lake Grace road and service the emerging plantation timber industry and other freight needs as well as the local community.

FORMER GERALDTON RAILWAY BUILDING

1288. Hon KIM CHANCE to the minister representing the Minister for Lands:

I refer to the disposal of the heritage listed former Geraldton railway building.

(1) Who carried out the valuation of the building?

(2) Who bought the building?

(3) What commercial connection, if any, exists between the valuer and the buyer?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The Valuer General.

(2) The building has not yet been sold. An option to purchase has been negotiated.

(3) None.

Points of Order

Hon TOM STEPHENS: Is there any procedure that can be used to enable Hon Ljiljanna Ravlich to ask her question before orders of the day are called on?

The PRESIDENT: No; there is no procedure.

Hon TOM STEPHENS: Will the Leader of the House provide an opportunity for her question to be asked?

The PRESIDENT: That is not a point of order. If the Leader of the Opposition wants to take up that matter at the management committee he should do that. On my behalf, he can take up the issue of interjections which continually deplete question time and prevent other members from asking questions. Members other than Hon Ljiljanna Ravlich did not get an opportunity to ask a question today. I have their names written here.

Hon LJILJANNA RAVLICH: I thought I was very well behaved today.

The PRESIDENT: That is not a point of order; it is a point of view. I have said that before. All I can say is that if Hon Ljiljanna Ravlich thinks that, she is improving.