WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FOURTH PARLIAMENT
FOURTH SESSION
1996

LEGISLATIVE COUNCIL

Tuesday, 5 November 1996

Legislative Council

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THE PRESIDENT (Hon Clive Griffiths) took the Chair at 10.00 am, and read prayers.

BILLS (4): ASSENT

Message from the Governor received and read notifying assent to the following Bills -

1. Acts Amendment (Assemblies and Noise) Bill.
2. Competition Policy Reform (Taxing) Bill.
3. Competition Policy Reform (Western Australia) Bill.
4. Skeleton Weed and Resistant Grain Insects (Eradication Funds) Amendment Bill.

MOTION - URGENCY

Hospitals, Elective Surgery Waiting Lists

THE PRESIDENT (Hon Clive Griffiths): Members will be delighted to know that I have received this letter addressed to me, dated 5 November 1996 -

> Dear Mr President
>
> At today's sitting, it is my intention to move under SO 72 that the House, at its rising adjourn until 9.00 am on 25 December 1996 for the purpose of discussing the alarming rise in the number of patients awaiting elective surgery in Western Australia which has occurred during the term of the current Government, and the failure of the Government's policies to deliver acceptable outcomes of health care.
>
> Yours sincerely
>
> Hon Kim Chance MLC
> Member for Agricultural Region

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

[At least four members rose in their places.]

HON KIM CHANCE (Agricultural - Leader of the Opposition) [10.07 am]: I move -

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

I thank members for their support in this matter. Hospital waiting lists are one of the most visible outcomes of a health care system when it is not functioning properly. It is one of the most sensitive areas by which the public health system shows that it is delivering outcomes that the community wants. The issue of hospital waiting lists is among the most sensitive and strongly presented matters with which members are confronted in their constituencies. Few things are more distressing than to sit opposite a person who has been waiting for surgery to correct a condition which, although perhaps not life threatening, is disabling and painful, and to hear that person say that he or she has been waiting more than two years for that surgery.

In March 1993 a total of 9 094 people were awaiting elective surgery at Western Australia's teaching hospitals. Three years later, in March 1996, that number had increased by over 2 500 to 11 660 - an increase of, roundly, 28 per cent. In August of the same year the figure stood at 12 324, an increase of 3 230 or more than 35 per cent. In addition, the median waiting time has risen slightly, from, I think, 4.4 months to 4.5 months, and more than 2 500 people have been waiting for more than a year for the surgical correction of ailments that are disabling and painful. The source for those figures is a publication entitled "Teaching Hospital Selective Surgery News", published by the Health Information Centre of the Health Department of Western Australia.

On 16 October, in an answer to a parliamentary question from the Minister representing the Minister for Health, I received confirmation that in the same period - that is, from 1993 to present - the public hospital system had shed 377 full time equivalents from its nursing staff and 523 full time equivalents from its medical and technical support staff; that is, a total of 900 skilled and highly trained personnel. Those 900 people have been displaced from our hospital system as a direct result of the Court Government's policies. Is it any wonder that thousands of additional patients have joined the queue for surgery? Our hospital system has been continually under pressure for many years - I must

concede, under both Governments - but probably more so in the past four years than ever before. We are shedding people from the system at a time of continuing demand for services in public hospitals, a demand which is freely acknowledged in the 1996-97 budget papers. The change which has occurred over the period under discussion cannot be written off as an unintended consequence of the restrictions in public health funding. At page 90-20 of the 1996-97 Program Statements, it is noted that a reduction of 363 full time equivalents was estimated as an outcome of the Budget during the current year. We are not dealing with a shortage of professional personnel with the ability to work in the area; we are dealing with a carefully planned and anticipated outcome of government policies. The Government cannot walk away from the situation, and even in the Health arena the Government cannot put it down to a shortage of personnel. It has been government policy to progressively reduce hospital staff, and it cannot be argued that it is anything other than a predictable outcome of that policy that waiting lists will increase.

Public statements by the Government, however, would seem to deny that. At page 90-21 of the Program Statements, the Government seems to be attempting to defy gravity on the matter. Under significant issues and trends, it is stated that a reduction of waiting lists and waiting times for elective surgical procedures is a high priority, but that reduction has not occurred. We have seen an increase of around 35 per cent. Among the list of professed social dividends contained in a grossly misleading taxpayer funded Liberal advertising brochure entitled "Responsible Financial Management", with the subheading "Paying Dividends" - a document which appeared about the time of the last State Budget - is the comment that "a major priority is to reduce waiting lists; our target is a 50 per cent cut over two years". Some amazing statements are made in the document. A graph headed "Climbing out of the debt trap", with a little tricky perspective, misrepresents the entire state debt situation. It extends exponentially the so-called growth in state debt as a result of the so-called "WA Inc debt spiral" through to the year 1995-96. How that is possible, I am not sure, but it is a wonderful bit of smoke and mirror trickery by the Government's public relations people. My objection is that the taxpayers were required to pay for it.

We have in this little taxpayer funded tract an indication from the Government that it intends to decrease the waiting lists for public hospital surgery by 50 per cent. It is not a bad effort to have an increase of 35 per cent in waiting lists for elective surgery at public hospitals, and at the same time to tell Western Australians - some of whom no doubt will believe it - that the Government is aiming for a 50 per cent cut in waiting lists. It is a good thing to aim at, but when the Government does nothing to correct the situation, it is unreasonable to expect anyone will believe it. The fact is that the whole of the social dividend represented in another part of the pamphlet to spend an additional $82m on important community initiatives was nothing more than a con. Members opposite know very well that in the important social programs listed in the pamphlet - health, environment, and education - the Government had cut budgets so far as to make it very clear it would not be able to fulfil even its normal financial requirements. At the time, the Opposition made it clear that in respect of the Health budget, the Government would run out of funds between one and a half and two months before the end of the financial year. The Government had to top up the funds because its prediction of savings flowing from some of the initiatives, including privatisation and contracting out, did not come true. The Government had to cover its embarrassment by saying it would pay a social dividend of $82m so that everything would be all right. In fact, all it was doing was topping up funds which it should not have drawn from the system in the first place; but to try to represent that as a new initiative which could ease the waiting lists was nothing more than a confidence trick on the Western Australian public. The Government knew that the waiting list numbers were rising, that it was doing nothing to control the waiting list, and that it was blowing out.

I concede that the latest figures date only from August 1996. I hope there has been a change for the better between that August and November 1996, but on the currently available figures the Government's contribution to easing the waiting list has been to increase the waiting list by more than 35 per cent. It is one thing to cite statistics - even though they are accurate and government sourced - but it is another thing to consider how the people affected by this extension in the waiting list feel about it. Dr Gallop, the then opposition spokesman for Health, made a statement in that regard concerning a man by the name of Fred Taylor. Fred Taylor has been waiting two years and four months for an operation to replace his left knee joint. He is a 67-year-old man, and he has been told he might get his operation by next May. By that time he will have waited two years and ten months. In the meantime Mr Taylor is on a diet of painkillers every day, and his level of frustration can only be imagined. In 1992 Mr Taylor underwent an identical operation on his right knee. His waiting time for that operation was six months. Now, he will have to wait at least two years and 10 months for his left knee replacement. Like many other Western Australians, Mr Taylor wants to know why our once great public hospital system has failed him. He is one of 3 592 people who are asking the same question. Like Mr Tailor, those people are waiting for orthopaedic surgery in this State. Incidentally, that number represents an increase of more than 60 per cent in the past 12 months.

It would be reasonable for the Government to ask the Opposition what it would to do to fix that. One of our suggestions is that waiting list information be more publicly available than it is now. There was a time in the past when that information was freely and readily available. It is not the easiest thing in the world to access, certainly on a hospital by hospital basis. The indication we have at this stage is that Fremantle Hospital is probably the worst

affected of the major teaching hospitals. What is happening at Fremantle? The Woodside Hospital in East Fremantle - this matter was determined in a parliamentary question just the other day - is to radically reduce its services and as a result place an additional load on Fremantle Hospital, which is already under immense pressure trying to meet its current commitments. The Opposition in government would certainly want to do something about that. The Opposition believes that it is most important that the Government adopt a policy that no patient have an operation cancelled for a third time.

HON PETER FOSS (East Metropolitan - Attorney General) [10.21 am]: Sometimes these urgency motions are Dorothy Dix-like.

Hon Kim Chance: I would not call it a dorothy dixer. The point raised by Dr Gallop is an important one.

Hon PETER FOSS: I let the Leader of the Opposition speak in silence and I have less time than he does. The most important issue is the amount of time people must wait for surgery. As no doubt the Leader of the Opposition will understand, it has become quite clear that virtually two sets of waiting lists exist within the Health Department, those in need and those who have a tendency to keep moving further down the line. Certain procedures are always delayed such as plastic surgery for minor matters that are considered purely cosmetic rather than essentially cosmetic. The doctors are responsible for deciding urgency priorities and, clearly, they make decisions on that basis. If Perth were to double in size the length of the waiting list would no doubt double because the size of the waiting list must have something to do with the size of the town. One would not expect Merredin to have as many people on the waiting list as Perth, purely because Merredin's population is smaller. The number of people presenting for surgery is a factor. The important issue is how long they must wait. In January 1993, the month before the coalition took office, the average waiting time for surgery was 5.3 months. The average waiting time now is 3.9 months - a 30 per cent decrease in the waiting time.

Hon Kim Chance: Those are very different figures from those that were published.

Hon PETER FOSS: They are not; these are the correct figures. The average waiting time for surgery is 3.9 months. That is the important issue. Over the same period the number of surgical operations performed has increased by 15 per cent. Throughput is very important. The medium time represents a very broad range of waiting time for patients, some of whom may wait for a considerable period because their procedures are not seen as urgent. Since the coalition took office the average waiting time for surgery has decreased by 30 per cent, while throughput has increased by 15 per cent. Under the previous Government some people gave up thinking they would ever have an operation and took their name off the list with the intention of seeking it through private health.

Hon Kim Chance: That is the case through any waiting list; it is the Orange Hospital data.

Hon PETER FOSS: Of course that is the case. The point I am making is that because we have reduced the average waiting time, more people are coming through the system. I am sure that neither our population nor people's bad health has increased by 15 per cent. We have improved the throughput of those hospitals; therefore more people are using the public hospital system. Notwithstanding that or the 15 per cent increase in the number of procedures, the average waiting time for surgery has decreased by 30 per cent.

The Minister for Health released a media statement on 30 October to which I assumed the Leader of the Opposition would refer. The Minister referred to the fact that the average waiting time for elective surgery in Western Australia had reduced dramatically. He went on to say -

> According to Health Department figures, in January 1993, when Labor was in Government, the average waiting time for elective surgery was 5.3 months.
>
> As a result of our strong commitment to provide a better health system for all West Australians, we have reduced that waiting period to 3.9 months.
>
> This is despite the fact that the number of surgical procedures at our hospitals have also significantly increased.
>
> More than 30,000 surgical procedures would be performed in Western Australian hospital this year - which represented a 15 per cent increase on the 1993 figure of 26 289.
>
> These figures clearly show that the State's public hospitals are performing better than ever.

The member referred to those issues; nonetheless hospitals have increased their throughput by that number. He went on to say -

> The number of people waiting for elective surgery has increased by 21 per cent over the past three years, however what is more important is the length of time people wait on the list.

> The Government is concentrating on reducing the waiting time for patients on the list through targeted funds and a comprehensive strategic approach.
>
> We are investing $30 million over the next two years to reduce the number of long wait patients awaiting surgery for ear, nose and throat complications, and in other specialty areas including opthalmology, orthopaedics, plastic surgery, urology and vascular surgery.
>
> We plan to reduce the number of long wait patients in the targeted specialty areas by 50 per cent by June 1998.

However, what is more important is the length of time people spend on the waiting list.

Hon Kim Chance suggested that nobody should have his operation cancelled for a third time. Operations are not cancelled at whim; they are cancelled because emergencies must be dealt with. We are dealing with the difference between emergency and elective surgery. I am sure that management could make certain people who have already had two cancellations are not at the end of the list and more likely to be cancelled. It is a very good suggestion and I will take it up with the Minister for Health. An alternative to doing that would be to run hospitals at less than 100 per cent capacity. Our teaching hospitals in Perth alone represent more than $500m investment by this State. If we were to run them at only one per cent less capacity it would cost $5m and at 10 per cent less, $50m. It is essential that our hospitals are run as close as possible to 100 per cent all the time so that they are able to deal with the maximum number of both urgency and elective procedures. That method has been used by successive Governments, and it is appropriate. To build in further room to take up more elective surgery cases to cover urgent matters would cost $5m for every 1 per cent off the top usage on a hospital. We could invest another $50m purely to provide extra space, allowing us to maintain 90 per cent capacity. That would not be satisfactory use of our hospital's capacity.

The most important achievement is increased throughput. In the end that will solve this problem. The Government has done a very good job of increasing throughput in our hospitals and should be congratulated for the reduced waiting time. Surely the Opposition must accept that the most important factor is how long people must wait? If in New York the waiting list were 10 times bigger than here, but people waited for only a week, who would be better off? The important factor is not the number of names on the list, but the amount of time people spend on the list. That is the essential factor that makes a difference. If this Government has reduced that figure by 30 per cent, it has met a significant challenge and should be congratulated by the Opposition. Surely Hon Kim Chance must agree that is the most important measure. The number of names on the list can vary enormously, depending on people's expectations. People may put their names on the list because the numbers are down, and that will increase the number of names on the list. The Government has touched that important point of the time an individual must wait for treatment, which in human terms is far more important than the number of names on the list. The Government has dealt with that part of the problem. The Opposition has adopted a far too simplistic and statistical attitude, rather than a personal attitude, towards the effect on the individual in the system of that significant reduction in the waiting time. The Minister for Health should be congratulated and members opposite should go back to the drawing board to determine in realistic human terms what the effect has been.

HON JOHN HALDEN (South Metropolitan) [10.31 am]: I am always pleased when the Attorney General is given a dorothy dixer by the Opposition, and I am pleased that the Whip allowed me to remain seated while the Attorney General trotted out the tripe we are accustomed to hearing about hospital waiting lists. He said that the most important factor about waiting lists is not the number of people on the list, but how long people wait for treatment. He presented some statistics which raise further questions. He said his statistics were from the Health Department or the Minister's office. However, the health information centre of the Health Department of Western Australia provided statistics indicating that the average waiting time for an operation in March 1993 was 4.4 months and in August 1996 it was 4.5 months. Who is correct? Is it the Minister's office or the Health Department? Must we listen to more of this nonsense from the Attorney General? It is quite clear that it is not right. Alternatively, the Health Department information service needs to be reviewed, because its statistics are not accurate.

The Attorney General also said that the length of time a person spent on the waiting list depended on whether the surgery was essential or non-essential. He said the waiting list for essential surgery is decreasing. However, the statistics from the health information centre of the Health Department indicate that in September 1995, 2 227 people were waiting for orthopaedic surgery in this State. Eleven months later in August 1996 the figure was 3 592. Has the Attorney General verified his statements or is the Health Department of Western Australia wrong?

Hon E.J. Charlton: How long have they been waiting?

Hon JOHN HALDEN: The median waiting time has also increased for those people. I am pleased the Minister is assisting me in this debate.

Hon E.J. Charlton: You need all the help you can get.

Hon JOHN HALDEN: The Minister said he had figures on the median waiting time.

Hon B.M. Scott: Are you talking about elective orthopaedic surgery?

Hon JOHN HALDEN: Yes. The Minister said that the throughput has increased by 15 per cent. Of course, he did not indicate the nature of that surgery or the procedure. If it relates to the removal of toenails, for example, it is easy to increase the throughput, but not if it relates to major surgery. We get no facts from the Attorney General; we hear only the sort of diatribe contained in the budget document which was circulated throughout Western Australia, including the media, at enormous public expense. The Attorney General said in that diatribe that the Government's major priority was to reduce the waiting list, and its target was a 50 per cent reduction over two years. That announcement was made on 31 May when there were 12 241 names on the waiting list, and by August that figure had increased to 12 324. In three months it increased by 100 names, in spite of the announcement of an injection of funds of $15m per annum over the next two years.

The Minister also said - this is absolute nonsense and it is not based on fact - that it was most important to consider how long patients had been on the list for periods of more than 12 months. According to the statistics from the Health Department the waiting time for people who have been on the waiting list for elective surgery for more than 12 months has increased by 14 per cent. Who is wrong - the Attorney General representing the Minister for Health or the statistics from the Health Department?

Hon E.J. Charlton: Tell us what they are on the list for. You are so full of knowledge.

Hon JOHN HALDEN: I am backing up my argument with statistics, not diatribe as the Attorney General does.

Hon Kim Chance: Those details are not published.

Hon E.J. Charlton: He does not know.

Hon JOHN HALDEN: How could I know if they were not published? Be sensible, Minister.

Hon Kim Chance: The Labor Government used to publish them but this Government does not.

Hon JOHN HALDEN: I have just been provided with interesting information from the community relations section of the Health Department. The Attorney General said the median waiting time had decreased; however, the September 1996 figure for the median waiting time is 4.8 months, not 3.9 months as he said two minutes ago. I will table that document. Of course, he gave no source for his information. Members of the Opposition are sick to death of the diatribe from the Minister for Health and his protege in this House. He made up a number and spruiked it in this House.

Hon E.J. Charlton: Nobody believes you, Mr Halden.

Hon JOHN HALDEN: This clearly indicates that the Government does not know what is happening in this issue.

Hon B.M. Scott: What is the difference between the median and the average?

Hon JOHN HALDEN: I will table the document. The number of people on the waiting list in September was 12 200. The number of cases admitted to the list during that month was 2 592, and the number of cases deleted that month was 538. The Minister did not provide the median waiting time. I can see from this information how the Minister conveniently got it wrong. It was inexcusable. He spoke about the clearance time. Again, he stretched the facts to suit his argument. The Attorney General had the temerity to say we should deal with the individuals in pain, look at the statistics case by case and consider individuals. He spruiked nonsense because he has no concern for these people whatsoever. The clearance time is 3.9 months and the number of additions to the list in September was 3 055.

After last year cutting the Health budget to an unrealistic figure, the Government had to fix up the problems in the past month by injecting $80m into the system. The Government also reduced the number of staff in hospitals by 900. The Attorney General came up with another pearler when twisting the facts. He said hospitals must operate at 100 per cent capacity. The Government achieves that by closing wards to save money. It has done so at Woodside, Fremantle, Armadale, Swan District and Wanneroo for any reason at all except patient care.

Hon E.J. Charlton: Has the throughput increased?

Hon JOHN HALDEN: I do not know; I do not have the figures.

Hon E.J. Charlton: Of course you don't know.

Hon JOHN HALDEN: It does not matter.

Hon Kim Chance: It has increased marginally.

Hon JOHN HALDEN: Again, to suit the Government's political ends the Ministers have twisted and distorted the facts about individuals who are suffering. It is absolutely clear that it was nonsense for the Government to say it would reduce the number of people on the waiting list by 50 per cent. How will the Government cut waiting lists by 50 per cent? The moment a new procedure is found, it will ease the suffering of people, particularly the aged, and more people will go onto the waiting list. That will be nobody's fault. However, when the stupid comment is made that the Government will cut waiting lists by 50 per cent, it takes take no account of the advances being made in medical science. The Government cannot make those sorts of stupid comments, because it will never be able to justify them. Medical science is moving so fast that more and more people will place demands on surgical procedures. It was a nonsense from the beginning. The Government's whole approach to health has been a nonsense. It cannot cut it to the bone like it did. Its policies of contracting out and privatisation have been a nonsense. Its policies of staff reduction have not worked. Now the policy of a 50 per cent reduction in waiting times is nothing more than a transparent grab for votes. It is nothing more than that because the facts reveal that the Government cannot achieve it.

HON CHERYL DAVENPORT (South Metropolitan) [10.42 am]: I draw to the attention of the House two issues that I have come across in attending a recent public meeting in Kardinya in my electorate. The first issue concerns the waiting list at Fremantle Hospital for tonsillectomies and the second concerns the provision of an open heart surgery unit at Fremantle Hospital that was promised by the coalition parties in the lead-up to the last election. First, it was drawn to my attention that children in the south metropolitan region who are public patients are being advised that they will have to wait up to 12 months for tonsillectomy operations. I felt moved to ask questions on that front. Question 665 which I placed on notice on 28 August was answered on 23 September. It states that that is the case at Fremantle Hospital. One great concern of parents is that high levels of antibiotics are being used to prevent tonsils from becoming inflamed. That seems to be a contradiction in terms because, as children grow, their immune systems develop. We all know that antibiotics lower immunity against other diseases, not only for children, but also for adults. I am concerned, as are many parents, that children are being given high levels of antibiotics because they are unable to access public hospital treatment in the Fremantle area.

I do not subscribe to the removal of tonsils. As a child and as a teenager I suffered from tonsillitis. I had breaks of four and five years when I did not suffer from it. However, in my mid-30s I had such bad bouts I finally gave in. My mother was a nurse and subscribed to the view that tonsils were there for a reason; that is, to stop other infections. Therefore, I grew up thinking we have them for a reason, and we should not have them removed. However, the last two bouts of tonsillitis were worse than the operation to remove my tonsils that I had as an adult. Therefore, I can speak from some experience on that. I am concerned there is a waiting list of 12 months at Fremantle Hospital for children to access that kind of surgery, given they are required to be treated with high levels of antibiotics to keep the bugs in check.

The second concern is that the heart surgery unit at Fremantle, which was promised in the lead-up to the last election, is still not completed. I have been told by some older members of the community that one of the reasons they live in the Fremantle area is that they have limited access to heart care at Fremantle Hospital. However, although angioplasties - a heart test - are done at Fremantle Hospital, patients are required to sign a form that says that if complications arise during the procedure, patients give the hospital permission to transfer them to Royal Perth Hospital if surgery is required. While these people have the convenience of going to Fremantle Hospital, older people and their families are concerned that the procedure may not be successful and the patient may have to be transferred. It creates a lot of stress for patients and their families in the lead-up to the treatment. The wife of a gentleman with whom I spoke said that, because she was panicky about her husband having the treatment at Fremantle Hospital, they chose to go to Royal Perth in case something went wrong. When I asked questions about how long it would be before those procedures could be done at Fremantle Hospital without causing that concern, and what the Government was prepared to do to alleviate that concern, I was told that construction of the facility was under way and it would be completed some time in mid-1997 - not so far off. However, it is important to note that the community is concerned about the access of children to waiting lists and about older people's peace of mind. Twelve months is far too long for children to have to wait for tonsillectomies.

HON B.K. DONALDSON (Agricultural) [10.47 am]: It is important for us to remind ourselves of the impact the public health system has had on private health insurance in the last few years. The population is ageing; minimum intervention surgery technology has improved; theatres in private hospitals are not being fully utilised; and there has been a massive drop in the number of people who have private health cover. In relation to the latter, the Federal Government proposes to introduce a tax rebate. If family based, that will be of some benefit. However, many people have walked away from private cover, especially during the critical years for the private insurers, because, except for parents raising children, they need people of low risk to take out health insurance. The Federal Government

outlays $20b a year for health. If we are to continue with the dual health system, public and private, we must get it right. One of the options is to scrap altogether the private health cover and move to a public health system.

Hon Bob Thomas: Why?

Hon B.K. DONALDSON: Those people with private health cover are loaded with increased health cover rates year after year.

Hon Bob Thomas: It is a private business; if it is not attractive, people will not take it.

Hon B.K. DONALDSON: People must wait for surgery in the public health system, because the system is overloaded. If one has private health cover, one's chances of getting surgery are rapidly improved, because there are no waiting lists in private hospitals. It is all very well to criticise the current system. We should address what is causing some of those problems before we openly criticise the waiting time. It does not matter at this stage whether the time spent on the waiting list is 3.5, 5.3 or 5.8 per cent higher than it was when we came into government; we should look at how to resolve the problem. It should not be a political debate; we should adopt a bipartisan approach. We should encourage more people to take out private health cover. The Federal Government has gone about that in some way by offering a tax rebate. I do not believe that the tax rebate is sufficient.

Hon Kim Chance: You made it into a political debate.

Hon B.K. DONALDSON: The Federal Government will impose a higher surcharge on high income earners who do not take out private health cover.

We must look carefully at what is happening with Medicare provider numbers. This House recently debated the pharmaceutical benefits scheme, which is under great pressure. Australians are probably the greatest pill poppers in the world. Our doctors prescribe one pill one week, and the following week will prescribe another batch of pills of one sort or another. The system encourages them. We also debated the problems in teaching hospitals. They absorb large sums of money from both the Federal and the State Government.

Only this morning I was told about one family practice in the northern suburbs that was closed by seven o'clock last night. The public can get sick only between 8.30 am and 7.00 pm! An answering machine provides the numbers of two locum services, and stresses that a particular number should be called only in an emergency. Valuable dollars are being wasted in the health system. We should get that balance right. If we can save money in some areas to provide another $100m or $200m of either federal or state funds in another area, the waiting times for elective surgery will be reduced. We cannot reduce the waiting time for elective surgery unless we address the reasons for the delay. The Opposition has not addressed that problem this morning. As there have been great improvements in surgical techniques, and the time spent in hospital following a surgical procedure has been reduced considerably, one would expect that the waiting time for elective surgery would also be reduced.

We will improve the system if we provide inducements that encourage people to take out private health insurance cover. That will assist in minimising the waiting time for elective surgery.

HON KIM CHANCE (Agricultural - Leader of the Opposition) [10.54 am]: I thank members for their enthusiastic contributions to this important subject. Hon John Halden and I have established that the median waiting time for elective surgery in Western Australia has increased and not decreased in the term of this Government. The Attorney General spent some time on the issue of throughput. It might be interesting to consider the degree to which throughput in our public hospital system has increased. Throughput has increased; however, it has not been spectacular. According to the 1996-97 budget papers it is only 2.7 per cent greater than the 1993-94 figure. That is not a spectacular increase in throughput; in fact, it barely keeps up with the increase in population over that period. The average cost per case weighted admission has decreased from 1993-94 to 1994-95. It has not decreased by a great deal. However, in teaching hospitals it has decreased from $ 3 444 per case weighted admission to $3 424. How has that happened, and how has that throughput increased? It is simple. That has been achieved by early discharge. The cost savings have been made by the cuts in full time equivalents, as is clearly enunciated in the Budget, and by an increase in the waiting list as a result of an increase in the median waiting time and empirical numbers.

To indicate how the higher throughput has been achieved by means of early discharge I will refer members quickly to some data from Sir Charles Gairdner Hospital. In 1992-93 there were 605 staffed available beds; by 1994-95 that had reduced to 586. How did that reduction in beds come about? I refer to a statement by Ms Pat Martin, the then acting chief executive officer of Sir Charles Gairdner Hospital in the Staff Bulletin Volume 11 of 14 March 1996, who stated that the existing closed beds were the result of generally shorter hospital stays. How much shorter were they? In 1992-93 the average hospital stay was 5.16 days; in 1994-95 the average was 4.62 days. How are early

discharges achieved? I acknowledge that less intrusive surgery is available these days, but basically they are kicked out while they are still bleeding.

Several members interjected.

Hon E.J. Charlton: Did the union ask you to say that?

The PRESIDENT: Order! I ask members to stop their interjections.

Hon KIM CHANCE: Members opposite should ask those people who have been affected by early discharge programs how they feel about being sent back into the community after surgery before they are adequately prepared, and how well they are supported after that.

Hon Peter Foss: I had early discharge from a private hospital for an operation; it was far better than a stay in hospital.

Hon KIM CHANCE: Unfortunately, many people do not share the Attorney's view.

Hon Peter Foss: It is outrageous to say that as a generality.

The PRESIDENT: Order!

Hon KIM CHANCE: The more one speaks to people who have been affected by early discharge programs and sent back into the community without support, including elderly people discharged from public hospitals at ungodly times of the morning - three o'clock in the morning in one case -

Hon E.J. Charlton: When the unions become a bit more flexible we will get more flexibility in the health system.

Hon KIM CHANCE: I can assure the Minister for Transport that the unions have the same point of view as I have in this instance. The unions are leaders in the community in this area. The Parliament has been misled, albeit inadvertently, by the Attorney General on this matter.

[The motion lapsed, pursuant to Standing Order No 72.]

FIREARMS AMENDMENT BILL

Assembly's Message

Message from the Assembly received and read notifying that it had agreed to the amendments made by the Council.

MENTAL HEALTH BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Peter Foss (Attorney General), read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [11.00 am]: I move -

That the Bill be now read a second time.

The Mental Health Bill represents the culmination of several years work within the Health Department and is a response to a process of review of the Mental Health Act 1962 stretching back over 15 years. Recent major contributors to the review process included members of the Mental Health Task Force established by Hon Graham Kierath. The task force provided an avenue for a broad range of views to be expressed and culminated in the excellent report released in March 1996. Simultaneously the Health Department produced the state mental health plan. The task force report and the state mental health plan both highlighted the need for legislative reform in the mental health area. That this Bill has been introduced late in this term of government is a reflection of the level of consultation which has taken place and the complexity of the issues in this area. The Bill is drafted in 10 parts as follows:

Part 1 establishes the definitions and objectives of the Bill. The objectives reflect the United Nations' principles for the protection of persons with mental illness and the national mental health statement of rights and responsibilities, principles which have informed the Bill generally. The definition of mental illness provided is the definition used by the United Nations Working Party on Mental Health.

Part 2 sets out the administrative provisions for the Bill. It establishes the functions of the Minister and the Chief Psychiatrist, and provides for a register of psychiatrists, authorised medical practitioners and authorised mental health practitioners. Provision is also made for the authorisation of hospitals and for the establishment and functions of a

registrar of the Mental Health Review Board. The functions of the Minister include promoting the development and coordination of services for the care and treatment of persons who have mental illness, and the development of voluntary and self-help groups and other agencies for assisting persons who have mental illnesses and their families.

Other important functions of the Minister are to ensure that the special needs and views of groups within the community are sought by consultation with particular reference to persons who have or have had mental illnesses, community groups, and ethnic groups and to encourage the development of advocacy services to facilitate the works of the Mental Health Review Board and the Council of Official Visitors.

Under division 2 of part 2 of the Bill, the Chief Psychiatrist is given responsibility for the welfare of involuntary patients and commensurate power to investigate complaints about the care of involuntary patients. The Chief Psychiatrist is also given the power to investigate complaints or concerns with respect to voluntary patients.

Part 3 governs involuntary patients, detention in an authorised hospital, and treatment of involuntary patients in the community. The central clause in part 3 is clause 26, which sets out the criteria upon which a decision is to be made about whether a person should become an involuntary patient. The criteria in clause 26 must be met before a person can be made an involuntary patient.

Part 3 provides the mechanism by which persons suspected of having a mental illness may be referred to a psychiatrist either in the community or at an authorised hospital. If a person is referred to a psychiatrist at an authorised hospital, the person may be received and detained at the hospital for up to 24 hours and must be seen within that time by a psychiatrist. If a person is seen by a psychiatrist in the community, that psychiatrist may order the person's receival and detention in an authorised hospital for a period not exceeding 72 hours. The psychiatrist who examines the person at the authorised hospital may order the admission of the person for a period not exceeding 28 days, order that the person be observed for a further period not exceeding 72 hours from the time of arrival, or make no order, in which case the person may leave. Although a person may be detained at an authorised hospital, a person is not admitted involuntarily to an authorised hospital until a psychiatric examination establishes that the clause 26 criteria have been satisfied and the appropriate order is made. If a decision is made by a psychiatrist to make a person an involuntary patient, the Bill provides that the psychiatrist is obliged to consider whether the person could be more appropriately treated in the community before ordering admission to the authorised hospital.

The Bill introduces community treatment orders to Western Australia, which will allow some involuntary patients to remain in the community and to be treated in the community under a treatment plan. The Bill also establishes a mechanism for monitoring persons on community treatment orders. The Bill requires that the status of all persons who are involuntary patients be reviewed at intervals of not more than six months, and also allows for the release of involuntary status at any time.

Part 4 is about interstate movements and is consistent with the Australian Health Ministers' Advisory Council guidelines prepared in relation to this area.

Part 5 governs the treatment of patients. Under the Bill certain treatments - deep sleep therapy and insulin coma or sub-coma therapy - will be prohibited. Certain other treatments will require the informed consent of the patient and, with respect to psychosurgery, the approval of the Mental Health Review Board. Other forms of treatment can be administered without a patient's consent, but only in an emergency or where the patient is an involuntary patient. Except in an emergency, electroconvulsive therapy can be performed only with the patient's informed consent or, if the patient is an involuntary patient, following agreement by two psychiatrists. There are mechanisms in the treatment provisions to safeguard the rights of patients. These mechanisms include obtaining the opinion of another psychiatrist and seeking the involvement of the Chief Psychiatrist. The treatment provisions also include provisions for emergency treatment seclusion and mechanical bodily restraint.

Part 6 establishes the Mental Health Review Board, which will be constituted by a lawyer, a psychiatrist, a community member and, in cases of psychosurgery, a neurosurgeon. The Mental Health Review Board will be an independent review body. It will review the admission of all involuntary patients, whether those persons are detained in a hospital or are in the community, as soon as practicable and in any event not later than eight weeks after their admission to involuntary status and, if they are still involuntary patients, every six months thereafter. In addition persons may appeal to the Mental Health Review Board at any time about matters pertaining to their detention or involuntary status.

Part 7 provides for the statutory protection of patients. The Bill provides for patients admitted to authorised hospitals to be given an explanation of their rights and entitlements both orally and in writing. Patients will also have the right to an interview with a psychiatrist, and subject to exceptions in particular circumstances, the right to retain personal possessions, to receive and send correspondence and to have access to a telephone and visitors of their choosing. The Bill also introduces in part 7 the innovative concept of allowing the possibility of second opinions sought by

patients to be by way of audiovisual means; that is, teleconferencing. This will facilitate the timely review of patients who are in remote areas.

Part 8 relates to community support services, and gives the Commissioner of Health the power to allocate funds for community support services, and the power to enter into funding and services agreements with a person or body for the provision of community support services.

Part 9 establishes the Council of Official Visitors. Visitors are not required to have any particular experience or qualifications, but will receive training in their functions, which will include visiting authorised hospitals at least once a month, visiting other facilities upon the direction of the Minister and to advocate on behalf of affected persons as defined. Visitors will assist affected persons with the making of applications or appeals. The Council of Official Visitors will report to Parliament each year, and is to give the public access to its records after removal of identifying information from those records.

Part 10 contains miscellaneous provisions, which include the powers of the police when apprehending a person suspected of having a mental illness, provisions relating to the establishment of inquiries, restrictions on practitioners in certain circumstances, and other matters, including regulation power. In relation to the powers of police, this Bill is designed to ensure that once persons suspected of having a mental illness are apprehended by the police, they are to be taken as soon as practicable for examination by designated persons. It is appropriate that the police take into account all available knowledge in approaching a person who may have a mental illness, and police may involve a mental health expert. It is intended that there be a clear education program and training for all relevant personnel including the police and that existing protocols between the Health Department and the Police Service on working arrangements be reviewed and expanded to address all operational issues associated with the new Bill.

The Bill is a balanced piece of legislation sought by consumers of mental health services and the community in general. It responds to the demands of the public for greater protection of persons who have mental illness, and represents significant progress in mental health in Western Australia. Undoubtedly, amendments, such as drafting amendments, will be made to this legislation in the not too distant future, as refinements will be required after six months' operation. The Minister has indicated that he will bring an amending Bill to the Parliament, probably mid-next year, to enhance the legislation even further. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

MOTION - MINING LEASE 70/835 ON CHINOCUP A CLASS NATURE RESERVE

Assembly's Message

Message from the Assembly received and read notifying that it had concurred in the Council's resolution.

MENTAL HEALTH (CONSEQUENTIAL PROVISIONS) BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Peter Foss (Attorney General), read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [11.10 am]: I move -

That the Bill be now read a second time.

This Bill contains the provisions that are consequential to the Mental Health Bill 1996 and the Criminal Law (Mentally Impaired Defendants) Bill 1996, which I will refer to as the new legislation. Generally these provisions provide for the transition from the current Mental Health Act 1962 and other legislation which deals with or refers to mentally ill or mentally impaired persons, to the new legislation and the amendments necessary to make other existing laws consistent with the new legislation.

The transitional arrangements are set out in part 12 and follow the clause repealing the Mental Health Act 1962. The general principle that applies in each case is that a person is to be put in a corresponding position under the new legislation. Wherever a review is required to be carried out in relation to a person's status under the new legislation and there is doubt as to the time within which it is to be carried out, the review is to be carried out within the time specified or as soon as is practicable. The other provisions in that part continue existing licences or approvals and the status of approved hospitals, and enable persons who are currently registered as psychiatrists to continue as psychiatrists for the purposes of the new legislation.

The other provisions either correct existing references to the Mental Health Act 1962 or provide substantive changes to existing laws. The most significant of the latter are the proposals to bring the licensing of private psychiatric

hostels under the licensing provisions of the Hospitals and Health Services Act 1962 so that a single set of administrative regulatory provisions will apply to both hospitals and private psychiatric hostels. This will also rationalise the resources required for regulation in this area.

Other substantive amendments are effected to the Bail Act 1982, the Criminal Code, the Electoral Act 1907, the Guardianship and Administration Act 1990, the Justices Act 1902 and the Sentence Administration Act 1995. Amendments have been made to the Criminal Code to reflect the change to the term "mental impairment". Mental illness for the purposes of the code has been defined in the terms adopted by the High Court in R v Falconer. Another substantial change is the adoption of the recommendation in the Murray review of the Criminal Code to restrict the scope of the unfitness to plead provisions to those defendants with a mental impairment. Defendants who for some other reason are unable or unwilling to plead will be presumed to have pleaded not guilty. The other amendments to the Criminal Code and the other Acts are required because those Acts have been affected by the schemes contained in the other Bills. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

CRIMINAL LAW (MENTALLY IMPAIRED DEFENDANTS) BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Peter Foss (Attorney General), read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [11.13 am]: I move -

That the Bill be now read a second time.

The Criminal Law (Mentally Impaired Defendants) Bill together with the Mental Health Bill and the Mental Health (Consequential Provisions) Bill will implement the Government's commitment to improving and modernising the law relating to the treatment of people with a mental impairment who are charged with a criminal offence, including those defendants with a mental illness. The criminal law does not deal with people who have a mental illness as a separate category from those people who are mentally impaired for some other reason. The Bill does not seek to change this approach. Rather it consolidates and modernises the criminal law relating to all mentally impaired defendants.

It has been recognised for many years that this area of law has been in need of modernisation and clarification. The substantive criminal law which applies to mentally impaired defendants has not been amended since the Criminal Code was enacted in 1913. The Mental Health Act 1962, which provides the procedure for dealing with people held at the Governor's pleasure due to a mental illness, reflects community views from over 35 years ago. This Bill reflects the views contained in a number of reports published on these areas of law since 1983 when the general review of the Criminal Code prepared by the now Mr Justice Murray was published. This Bill has been based on a review of all relevant reports. Through this legislation and other initiatives the Government remains committed to the paramount goal of a safe and secure environment for all Western Australians while ensuring that all participants in the criminal justice system are treated fairly and equitably and the process itself is cost efficient and effective.

In accordance with these goals the Government has maintained the view that the Governor in Executive Council is the appropriate body to be responsible for the ultimate release from custody of mentally impaired defendants who have been violent or caused property damage. However, the Bill provides that it is the role of the courts to determine first whether in all the circumstances of the case the defendant should be made the subject of a custody order. Where the offence is of a minor nature the defendant will be discharged either unconditionally or conditionally by the courts. Thus, this Bill shares the same three goals as the broader criminal justice system. These are to protect the public, to ensure the fair treatment of those involved in the criminal justice process and to minimise the incidence of personal and property violence in the community.

The Government accepts that there must be modification to the criminal justice system to accommodate factors specific to mentally impaired defendants. The main factor to recognise is that mentally impaired defendants are not criminally responsible for their acts and omissions. Consequently, although it may be necessary to protect themselves or the community from them if they are violent, that should occur in a proper context. The Criminal Law (Mentally Impaired Defendants) Bill contains provisions that apply to mentally impaired defendants from when they are first charged with an offence through to their ultimate release from a custody order. Mental impairment is defined to be intellectual disability, mental illness, brain damage or senility. Mental illness is defined according to the interpretation given to those words in the criminal law context by the High Court in R v Falconer. These definitions replace the old fashioned and vague terms of mental disease and natural mental infirmity that are currently used in the Western Australian Criminal Code. The Bill makes it clear that the term "mental illness" has a different meaning in the criminal law from the meaning used in the Mental Health Bill 1996.

The Bill empowers any judicial officer who has denied bail to a defendant who appears to have a serious mental illness to remand him or her to an approved hospital for the purpose of a psychiatric examination. There are two criticisms of the current law which the Bill seeks to overcome. Firstly, the Mental Health Act 1962 provides that courts of summary jurisdiction have the power to remand defendants for such a reason but does not expressly empower any other courts to do likewise.

Secondly, that Act provides that a defendant may be remanded for up to 28 days. It has become routine for justices to remand for the full 28 days whether or not this is fair to the defendant or necessary for completion of the required assessment. The Bill provides that any judicial officer who refuses bail may make a hospital order but that its duration is limited to seven days. These powers are in addition to the powers of judicial officers to grant bail on condition that the defendant undergo psychiatric or other appropriate expert assessment or treatment.

The Bill then deals with mental unfitness to stand trial, both in the summary and superior courts. Currently there is no statutory expression of a summary court's power to find mentally impaired defendants not fit to stand trial. Neither are there provisions for a procedure to make such a determination in a summary court or provisions for determining how defendants should be disposed of if found to be unfit to stand trial by a summary court. The Bill remedies these omissions. The Bill provides a list of the appropriate criteria for determining whether a defendant is not mentally fit to stand trial. It then provides that the question of fitness may be raised at anytime before a defendant is convicted or acquitted of an offence.

Consistent with the recommendations of the Murray review of the Criminal Code and the WA Law Reform Commission's report on the criminal process and people suffering from mental disorder, the question of whether a defendant is fit to stand trial is made a question for the presiding judicial officer. Currently a jury determines the question. Summary courts are given the power to release unconditionally a defendant found unfit to stand trial for a simple offence and who is either never likely to be fit to stand trial or after six months has not become fit to stand trial. As the now Mr Justice Murray commented in his review, " . . . the seriousness of the offence does not warrant further effort or interference with the defendant in the context of the criminal law." However, the Bill recognises that some defendants, even though charged only with a simple offence, may be a danger to themselves or the community. In these cases summary courts are given the power to make a custody order in relation to the defendant. Before making a custody order a court must be of the opinion that a custody order is appropriate having regard to the strength of the case against the defendant, the circumstances of the commission of the offence, matters personal to the defendant, and the public interest. The custody order will ensure that the defendant is kept in custody until it is appropriate that he or she is released by the Governor in Executive Council.

Superior courts have similar powers and restrictions. However, whereas a defendant released under this Bill by a summary court will not be able to be recharged with the same offence, in accordance with the traditional approach, a defendant released by a superior court may be reindicted.

The Bill then provides for the procedure for dealing with defendants acquitted on account of unsoundness of mind. The substantive law relating to the defence of unsoundness of mind will remain in the WA Criminal Code. Currently, unsoundness of mind at the time of the commission of the acts constituting an offence may be raised in both summary and superior courts. In the summary courts there is no power to take a special verdict and so any defendant found not guilty by reason of unsoundness of mind would have to be released unconditionally. This is unsatisfactory from the community's standpoint because it fails to make allowance for the protection of the community or the treatment of the person charged. In superior courts a special verdict must be taken and this results in all those defendants being kept for an indeterminate time at Her Majesty's pleasure in either strict or safe custody. This is unsatisfactory. The aim of this Bill is to consolidate, modernise and streamline these procedures.

Summary courts are given the power to release those defendants either conditionally or unconditionally. Further, on the same criteria for the making of a custody order for a person found unfit to stand trial, a summary court may make a custody order in relation to a defendant found not guilty by reason of unsoundness of mind. Superior courts have the same powers except that in the case of serious indictable offences involving violence or damage to property, a superior court is required to make a custody order. The much criticised concept of "strict or safe custody" has been abolished because it is a distinction which is not based on any firm principle. The Bill will enable the place and extent of mentally impaired defendants' custody to be determined according to their particular characteristics and needs. These provisions ensure that the Government's goals of protection of the public, fair treatment of mentally impaired defendants and minimisation of violence in the community are met.

Defendants who are subject to a custody order under the Bill are called mentally impaired defendants. The Bill will establish the Mentally Impaired Defendants Review Board, which will be responsible for making decisions about the place of custody of a mentally impaired defendant, determining the details of leave of absences if permitted by the Governor in Executive Council and making recommendations to the Minister about the timing of the release of a mentally impaired defendant. The Governor in Executive Council may release a mentally impaired defendant from

a custody order either unconditionally or on any conditions, including conditions relating to treatment, training, residence and supervision.

It is the Government's intention that the board will play an extremely important role in all matters relating to mentally impaired defendants and plans for their release. For the first time in Western Australia, mentally impaired defendants will have one body supervising their custody and plans for their release. To ensure that the board conforms with the Government's commitment to the introduction of cost effective and efficient processes, it will use some of the expertise and administrative support of the existing Parole Board. The chairperson of the Parole Board will be the chairperson of the Mentally Impaired Defendants Review Board, and the three lay members of the Parole Board who are appointed by the Governor will also be members of the Mentally Impaired Defendants Review Board. In addition, the board will have a psychiatrist and psychologist as members. This Bill is significant because for the first time all provisions which relate to the procedures for dealing with mentally impaired defendants are contained in one piece of modern and easily understood legislation. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

CRIMINAL CODE AMENDMENT BILL (No 2)

Assembly's Amendments

Amendments made by the Assembly now considered.

Committee

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

The amendments made by the Assembly were as follows -

No 1

Clause 5

Page 6, after line 16 - To insert the following subsection -

(5) A court shall not suspend a term of imprisonment imposed under subsection (4).

No 2

New clause 6

Page 6, after line 21 - To insert the following -

Review

6. (1) The Minister administering this Act is to carry out a review of the operation and effectiveness of Section 401 of the Code as soon as practicable after the expiration of 4 years from its commencement.

(2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 5 years after the commencement of Section 401 of the Code.

Hon PETER FOSS: I move -

That the amendments made by the Assembly be agreed to.

The message contains two amendments of quite different import. The first is to clause 5, which imposes a minimum period of imprisonment for 12 months for a third time offender of the offence of home burglary. It was the intent of the Parliament that an offender who has had two chances should, on a third opportunity, serve a term of imprisonment. The problem that arose was that with the new sentencing laws that came into operation yesterday, a person could be given a further chance, because when sentencing the person to imprisonment, the judge could suspend that term of imprisonment. This amendment will make it clear that a sentence of imprisonment will be served as opposed to a sentence of imprisonment which might be suspended.

The second amendment, which will insert a new clause, provides that the Minister administering the Act must carry out a review and bring a report based on the review to each House of Parliament within five years after the commencement of section 401 of the Code. We want to keep this matter under constant review, because it is important to note the effect of taking away from judges the discretion to sentence. Therefore, it is quite sensible that

at the end of four years, the Minister in charge of the Act should prepare a formal report and table that in the Parliament. I suspect that such a report is likely to be prepared and tabled before the end of that four year period, but it is appropriate that it be required within five years because that would have provided sufficient experience of the operation of the Act for it to be not just the first flush of offenders but the effect when the Act had settled down. These amendments are appropriate and sensible and I commend them to the Committee.

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

Report

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

TRUSTEES AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [11.24 am]: I move -

That the Bill be now read a second time.

This Bill makes the most significant amendments to the Trustees Act 1962 for many years. Minor amendments are made also to the Public Trustee Act 1941 and the Trustee Companies Act 1987, and consequential amendments are made to many other Acts which authorise organisations to invest surplus funds according to law. Trustees have always been required to act prudently in making investments on behalf of a trust estate. However, boundaries have been placed on the range of those investments by what the Trustees Act describes as "authorised trustee investments". This has sometimes been described as the "designated list", a term that has led to misinterpretation of the effect of being on or off that list. While it is true that many investments that are authorised are clearly very safe investments, it is possible for quite unsafe investments also to be contained within the definition. Furthermore, a trustee has a duty to invest in the best interests of an estate, and to place all investments in low yielding, cast iron investments may be a breach of that duty. Unfortunately, many trustees believe there is some sort of assurance from government by inclusion within the definition and that no more inquiry need be made so long as an investment is "authorised". Neither proposition is correct.

This amendment removes the concept of "authorised trustee investment" and leaves behind the prudent person duty. This duty has been expressly stated in the amendments, but it is not a new concept. The amendments also re-enact, in light of the change, various other measures in the Trustees Act relating to investment, and clarify some of the areas that have proved unsatisfactory over the years and which are usually corrected by any properly drawn trust deed. Attempts have made since 1990 to secure the agreement of the States and Territories to proposals for uniformity throughout Australia on authorised trustee investments. The Council of Australian Governments has noted a working group recommendation that the prudent person approach be adopted across Australia and has effectively referred the matter back for individual States to adopt as they each see fit.

The Government, like the South Australian, Victorian and Northern Territory Governments, has determined that it is appropriate to adopt the prudent person approach to authorised trustee investments. The amendments are based on the changes made in the other States, which are modelled on legislation enacted in New Zealand some seven years ago. The investment powers of trustees are listed in the Trustees Act 1962. The Act lists the investments in which trustees are authorised to invest where no express powers of investment have been given by the court, a statute or the instrument creating the trust. Authorised trustee investments listed in the Act are within power and thus permissible for trustees, although trustees must still consider whether a particular listed investment is suitable or prudent in the circumstances of the trust or of the current facts.

The designated list in practice has effectively diverted the trustees from their responsibility to determine whether investment in a particular category - for example, government bonds, shares and so on - is prudent. The designated list approach has many shortcomings. It has the potential to mislead the inexperienced trustee and the public because it is read as implying a basic presumption that those investments included on the list are safe but does not indicate which investments are suitable for which types of trust. In fact, some investments which have complied are, on examination, quite hazardous. Rothwells Ltd is a case in point. It met the test of capital and dividends, but prudent inquiry would have cast great doubt on its probity.

In addition to being a moral hazard for the Government, its inflexibility means that in a rapidly changing financial environment many new investment instruments likely to be just as sound by objective criteria are not authorised

investments. Examples of companies that do not meet the requirements because of their lack of dividend history are Qantas, the State Government Insurance Office and BankWest. If Telstra were floated, it similarly would be out of power for Western Australian trustees.

The Bill repeals the designated list. This means that a trustee can invest in any kind of investment so long as it is prudent, having regard to the circumstances of the trust. As already noted, a trustee must always act prudently, so the effect is to take away that boundary line over which trustees could not previously step. This is the so-called prudent person approach to trustee investments. The prudent person rule requires the trustee to act prudently in determining the suitability of a particular investment as well as when considering actual proposals for investment. I believe this change is similar to the change effected when the ultra vires rule was effectively removed from corporations. The duty to act remains the same, but the artificial limitations and boundaries have been removed as to where the act can take place.

The flexibility and diversification that the prudent person approach brings to investment choices could be considered vital to the wellbeing of any trust fund in today's economy. Indeed the practice among professionals who draw trust instruments to confer wide investment powers on trustees has meant that, to that extent, those trustees have been operating under this regime. Investments should be labelled as prudent or imprudent not because of their being on a list, but because of their appropriateness taking into account the terms, purposes and circumstances of the trust.

The proposed amendments are based on the South Australian and Victorian Acts. They give trustees power to invest in any property, unless the instrument creating the trust otherwise provides. A trustee exercising any power of investment is required to exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of others. A trustee whose profession, employment or business is, or includes, acting as a trustee or investing moneys on behalf of others is required to exercise the care, diligence and skill of a prudent person engaged in that profession, employment or business in managing the affairs of others - that means that a higher standard is required for professional trustees.

An important feature of the provisions is the codification of factors which should be considered by trustees in making investment decisions. The purposes of the trust and the needs and circumstances of the beneficiaries are important factors. Other matters include diversification and factors such as value of the trust estate, duration of the trust, risk of capital losses/gains, costs, tax and marketability, which can all be critical depending on the circumstances of each trust. Further, the court may set off investment gains and losses. The provisions recognise that in a managed portfolio of investments, trustees should be given protection against the claims for loss on individual investments if they can demonstrate that the investments were part of a diversified management strategy which was established and operated in a prudent manner. Additionally, the Bill clarifies the ability of trustees to utilise the electronic processes of the Reserve Bank of Australia information transfer system. RITS is a system which provides a means of transferring and settling transactions in securities. RITS is destined to play an increasing role in the transfer of securities in the future, and it is essential that trustees should not be denied access to the system. By an amendment to the Trustee Companies Act 1987, the Bill allows trustee companies to invest estate common trust funds and investment common trust funds in prudent person investments as authorised by the Trustees Act 1962.

The Government has decided to preserve the designated list in relation to two particular matters pending a review to be undertaken by Treasury in 1997. A number of statutory authorities, which are largely taxpayer funded, and the Public Trustee will continue to be bound by the current regime in the interim. The passage of the Bill will once again demonstrate this Government's commitment to the Western Australian economy. With the repeal of the designated list of trustee investments there will no longer be emphasis on the securities of a body achieving trustee status to the point where achieving and maintaining such status becomes more important than achieving a record of good financial management. Competitive advantages will be removed from those institutions which by explicit statutory authorisation qualify for authorised trustee status. Adoption of the flexibility and diversification encompassed in the prudent person approach to trustee investment will ensure investment decisions are based on market prices and returns and assessment of financial and other market information in Western Australia's rapidly changing financial environment, rather than an outdated approved list of investments. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

PARLIAMENTARY COMMISSIONER AMENDMENT BILL

Second Reading

Resumed from 24 October.

HON N.D. GRIFFITHS (East Metropolitan) [11.33 am]: In my speech on 24 October I set out a number of matters of concern; had I spoken faster on that occasion, I might have concluded my remarks by 6.00 pm. I will backtrack a little so that the relevance of what I am about to say can be taken on board. I pointed out that the second reading

speech refers to a number of recommendations to bring current legislation up to date. Among other things, I noted a number of recommendations of the Commission on Government had not been taken on board, to the degree that the policy of the Bill is arguably deficient.

My comments, in essence, were canvassing the matters, rather than going to their merit. I referred to recommendations 154.1 and 154.2 and I pointed out recommendation 154.3 does not appear to be dealt with in the Bill. That recommendation stated -

> Statutory authorities, whether corporatised or not, should be subject to the jurisdiction of the state Ombudsman.

The final recommendation of the Commission on Government to which I referred is No 158, particularly the part that deals with the method of appointment, and I do not propose to refer to it again in detail. In my earlier comments I noted that the position of the Ombudsman, which originally was provided by a process of selection by the equivalent of the Swedish Parliament in 1809, is an Executive appointment.

Since I made my comments on 24 October, I note Mr Eadie has presented his final report to the Parliament. In doing so, he provided members with a copy of his letter to the President dated 31 October 1996. For the record, it is appropriate to note what Mr Eadie had to say about the question of appointment. On the first page of his letter he states that he believes it is highly desirable to place the office under the umbrella of a parliamentary committee. He suggests that the role of the parliamentary committee to be appointed for that purpose should not be confined simply to monitoring and reviewing the activities of the Parliamentary Commissioner. He said that it would also be appropriate for the committee to provide support for the Parliamentary Commissioner, particularly on such matters as securing the acceptance and implementation of recommendations made by the Parliamentary Commissioner. I would like to see the Parliament go down that path.

In that context one committee of this House has made recommendations supportive of the role of the Parliamentary Commissioner. That committee dealt with an area of policy and arrived at a view of the role of the Parliamentary Commissioner different from that put forward by the Commission on Government. So be it. I say that, not just because I am a member of that parliamentary committee, but because of the reasons advanced in the committee's report. It is appropriate that the committee's view, rather than that of the Commission on Government, be accepted.

It is a deficiency in the policy of this Bill that it does not address those matters raised in the report of the Select Committee on the Western Australian Police Service. I refer the House to that report at pages 109-111. I note at the conclusion of page 109 the following -

> The Committee recommends that changes should be made to the *Parliamentary Commissioners Act 1971* so that it reflects aspects of legislation in other jurisdictions.

Page 110 sets out the relevance of those changes. I do not propose to read the document, but it is appropriate that I make some passing reference to them. The Parliamentary Commissioner in his final report takes up some of these suggestions. I refer particularly to the current arrangements between the Commissioner of Police and the Parliamentary Commissioner. The select committee is of the view that those arrangements should be enshrined in legislation. It states -

> . . . currently these matters form part of an "Administrative Arrangement" between the WAPS and the Ombudsman's Office. However these are matters which the Committee believes should be enshrined in legislation for their authority to be recognised, and should not rely on the goodwill of the incumbents of the Commissioner of Police and the Ombudsman.

The arrangements are proper. The committee says that they should be the subject of legislation, not merely an administrative arrangement. The committee then makes specific recommendations for sections 14 and 17 of the Act. To the degree that those recommendations are not taken up in this legislation, the policy of the Bill is deficient.

In the twenty-fifth report of the state Ombudsman, which was tabled recently, Mr Eadie, at page 54 in dealing with the Select Committee on the Western Australian Police Service, says that he is pleased to note that the committee made certain recommendations. In particular, he points out -

> . . . that I should have the power to conduct direct primary investigations of complaints against the police in the public interest; and
>
> that I should have the power to conduct "own motion" investigations into complaints against police . . .

Notwithstanding the deficiencies to which I have referred, the Bill contains measures that will be of considerable benefit to the people of Western Australia and, therefore, I agree with the proposition that the Bill be second read.

HON MARK NEVILL (Mining and Pastoral) [11.43 am]: I appreciate that we are in the last week of this sitting, or that that is the intention of the Government.

Hon N.F. Moore: I'm not sure that is the case. We are heading towards the end of the session: Christmas is coming; the ducks are getting fat.

Hon MARK NEVILL: I will make my speech. We are getting towards the end of the sitting.

It is disappointing that there is not more involvement in this debate by members in the House because the Parliamentary Commissioner is an officer of the Parliament and it is an office about which we should all be concerned. It is an office of the Parliament around which great debate has occurred in recent years with the recommendations of the Royal Commission into Commercial Activities of Government and Other Matters, the comments of the Ombudsman in his reports, and the recommendations of the Commission on Government. There is plenty of substance for members to consider. The Commission on Government's recommendations are a little like consultants borrowing someone's watch and telling him the time: There is not a lot that is new in the Commission on Government's report. I was a member of the Joint Standing Committee on the Commission on Government. It is a question of whether one agrees with its views on what should be changed and what should not be. Members have views on how the legislation should change. Those same issues have been considered by the Commission on Government, and, frankly, in this case not much has changed my view in that area.

My colleague Hon Nick Griffiths spoke about the scope of the Parliamentary Commissioner's jurisdiction, which will be broadened by this Bill. I support that. I support also the view that the Parliament should be involved in the appointment of the Parliamentary Commissioner. It is unacceptable that the Executive has the sole say in who is the Ombudsman, who is an officer of the Parliament.

Hon N.F. Moore: How do you anticipate the selection being made?

Hon MARK NEVILL: That could occur in many and varied ways. A panel of names could be suggested; it could be done by a recommendation of a committee of the Parliament to the full Parliament; or there could be an involvement of both the Parliament and the Executive. However, the final say should be from both Houses of Parliament.

The new Ombudsman may be quite capable. However, I have some misgivings about the way the Australian Securities Commission discharges its role. As a minority shareholder in a company I was recently grossly penalised by the failure of the Australian Securities Commission to, in my view, discharge its duties. I would like to put questions to any person who offers himself for the high office of Parliamentary Commissioner.

The Ombudsman's position could be strengthened in two areas. The first is that there must be some response to the Ombudsman's reports. Over the years a number of reports by the Ombudsman are presented in the Parliament. They are tabled and, in all probability, gather dust. A response should be given by the Parliament and the Ministry of the Premier and Cabinet to the Ombudsman's reports. I am not talking about the annual report, but reports on his inquiries. Perhaps those reports could go to a committee of this Parliament, such as the Standing Committee on Constitutional Affairs and Statutes Revision, that would report back to the House on what action should be taken on the Ombudsman's recommendations. There is not much point in spending a lot of money on these reports if they are not given thorough consideration. That does not necessarily mean that Parliament implement everything that is recommended, or, in some cases, anything. However, there should be a time limit within which an Ombudsman's report and any outstanding recommendations are considered and addressed by this Parliament.

The next very important issue is the need to broaden the jurisdiction of the Ombudsman to investigate complaints about core government services which are contracted out. A real problem is emerging in that area. The Commonwealth Ombudsman, Philippa Smith, who has done a brilliant job since her appointment, devotes a chapter in her annual report to the changing boundaries of government. She notes that Governments and their agencies are contracting out the tendering of the supply of goods and services, including core government services; that many non-government agencies are now undertaking the traditional tasks of government; and that the Ombudsman's jurisdiction does not cover those areas. She points out that the rules associated with contracting out can be muddy and contradictory and, in some cases, not yet written; contracting out certainly has a role in government but there must be an improved choice and standard of service for consumers. She went through some 300 complaints from people who were involved with contracting out, and listed a number of issues, which include the inability of consumers to recover their losses due to the actions of contracted service providers; standoffs where the client is told to prove certain things or to take legal action before the situation is resolved; and buckpassing of responsibility between various parties - the department, the contractor and the insurer. No-one wants to know about the problem. If the contractor runs over a letter-box, the contractor will say the consumer should go and see the department. When the person goes to see the department it says the person should go and see the contractor. If that fails, the person is told

to see the insurer. Therefore, the average Joe Blow gets kicked from pillar to post and must use expensive civil remedies to deal with the situation. It is a ground properly for the Ombudsman to take in as part of his or her jurisdiction.

In her annual report, the Commonwealth Ombudsman notes inadequate and ambiguous contractual arrangements in relation to required service standards and changing service obligations during the course of a contract, and the procedures relating to the termination of contracts. She points out an absence of accessible and effective dispute resolution procedures between contractors, the Government and other people. Recently an infill sewerage project was in process on the block beside my property in East Fremantle. Two loads of soil were dumped on the vacant block next door, which belongs to my brother. There was a misunderstanding, and those things should be resolved between the contractor and the owner of the property. However, it took the contractor a fortnight to shift the material. It was not removed until I rang him a second time to tell him to remove it, because he did not have permission to dump the sand on the block. If he had asked me, I would have given him permission. It was removed 16 days later, and that was not good enough. My point is that if such issues cannot be resolved between the parties, perhaps there is scope for the Ombudsman to intervene. The contractor did an excellent job on the infill sewerage program; he did not make a mistake after dumping the soil on the property. I would not like to reflect on the quality of his work.

In her annual report the Commonwealth Ombudsman comments on the oppressive behaviour by some government agencies towards small business. She refers to a government agency arbitrarily terminating a contract and failing to take into account any financial damage that may have been caused the contractor. The agency concerned told the contractor to exercise his common law right if he wished to dispute the termination of the action. That would have incurred a prohibitive cost for the contractor, as it would for the majority of small business providers. The Commonwealth Ombudsman referred to favouritism or misleading information in tender processes. That is a fertile area for the Ombudsman and one about which questions have been asked in this House. We do not see much resolution regarding who is right or wrong or the truth of the matter in that area.

Lastly the Commonwealth Ombudsman referred to the inappropriate use of statutory powers by agencies during commercial disputes. Obviously it cannot be addressed by amendments in this debate, but it is an area that we should examine with a view to extending that jurisdiction. It is important that the Ombudsman works effectively and has scope to take action in areas where a vacuum exists, as is the case in contracting out at the moment.

I have circulated an amendment relating to the tabling of reports, which we can deal with in Committee. I am concerned that when Parliament is not sitting, reports are sent to the President or the Clerk for tabling, but the Parliamentary Commissioner and the Auditor General can publish the reports. They are reports to Parliament and it is the Parliament that publishes the reports, not the Ombudsman or the Auditor General. I have only just circulated the amendment. I hope members will look at it before it is debated in Committee.

I support the Bill. We, as a House, should be debating a number of other issues because the Ombudsman is an officer of this Parliament. A number of suggestions regarding how this legislation should be amended are not addressed by this Bill, which is really a creature of the Executive. As members of Parliament we should be taking greater interest in this legislation, which relates to an officer of this Parliament.

Sitting suspended from 12.00 to 2.00 pm

HON TOM HELM (Mining and Pastoral) [2.00 pm]: This is an opportune moment to put on the record my appreciation of the work done by Mr Eadie as the Parliamentary Commissioner for Administrative Investigations - the Ombudsman. The House should be particularly aware of the work he and his officers have undertaken in the north west of our State advising people of his role and how they can access his office when they need to. I am aware of a number of people who work in the office with him. I am saddened that he no longer commands the confidence of the Executive and is to be replaced by somebody else. His departure will be a sad loss.

I hope the policy he initiated of his staff travelling throughout the State to inform people about his work and encourage them to take advantage of it will continue. That action has cushioned the despair felt by some of my constituents when they have run into a blank wall of bureaucracy. On many occasions people have come to my office, as no doubt they have to all upper House members of Parliament, about matters confronting them. They sometimes feel like very small fish in a big pond full of mines and barbed wire and are uncertain of how to deal with bureaucracy when it takes control. On their trips north, Mr Eadie and his officers were always available to advise and help people.

The reputation of Robert Eadie was second to none for maintaining a culture established by the introduction of Ombudsmen to both Australia and the rest of the world. Nonetheless a wealth of ignorance exists in the community, particularly in remote areas, about the ability of the Ombudsman to fight bureaucratic decisions made on our behalf with which we may not agree. It was not unusual to see Robert Eadie or some of his staff in Newman, Hedland or

Karratha on the odd occasion that they decided to visit the north west. He not only publicised the fact that he would be in town but also made an effort to come to my office. Reading reports is not as effective as meeting someone face to face who is down to earth and who speaks a language that everyone understands, without being intimidating. Those are the qualities that enabled people to take advantage of his office. With those few words I congratulate Mr Eadie and wish him well in the future.

HON J.A. COWDELL (South West) [2.04 pm]: The Opposition supports this Bill such as it is, with amendments. However, we are gravely concerned that it is the considered government response to the recommendations of the Commission on Government and the Joint Standing Committee on the Commission on Government. The Minister's second reading speech contains much with which we agree, specifically -

> The principal area of concern was the scope of the Parliamentary Commissioner's jurisdiction. When the present legislation was enacted in 1971, the jurisdiction of the Parliamentary Commissioner was defined as government departments and other authorities specified in the schedule to the Act, plus additional bodies which from time to time may be declared to fall within that jurisdiction.
>
> The legislation did not provide for automatic inclusion but relied upon appropriate bodies being nominated. With the passage of time a number of government bodies have not been nominated and, as a result, do not fall within the jurisdiction of the Parliamentary Commissioner.

The Minister specifically refers to "inadvertent exclusions" which I hope these changes will now include. The list includes: At the time of enacting legislation for new bodies; when a body was replaced with another; and when a subsidiary body has been created under broader statutory powers. The Opposition agrees with the Bill to the degree that those "inadvertent exclusions" are now covered. We also agree with the Minister that this amending legislation should change the previous approach. In his second reading speech he says -

> The Bill provides for all departments and authorities to be subject to scrutiny of their administrative actions by the Parliamentary Commissioner, unless specifically excluded.

The amendments to other parts of the Act with which we agree and which the Minister defined as the most important are -

> New sections 30A and 30B to provide protection against reprisals or harassment for complainants and persons providing information to an investigation. . . .
>
> Providing under section 27 for the Parliamentary Commissioner's reports to be lodged with the Clerks of Parliament in the event that Parliament is not sitting . . .
>
> Allowing for faster informal complaints handling in circumstances where the Parliamentary Commissioner considers this appropriate.

We support all those objectives in so far as they will be achieved by this Bill. However, I note the delay in the introduction of this legislation, which does not appear to be warranted. The Minister stated that in November 1994 the Premier advised that the Government was prepared to introduce amending legislation once we had gone through a proper process to bring about change. The Government defined "a proper process" as putting this on the agenda of the Commission on Government as a referral. The Opposition did not believe that was warranted given the Ombudsman's specific advice over the years on what amendments were necessary. The Opposition supported direct action on that advice rather than a further inquiry. Nevertheless, a further inquiry was held. In the interim, Dr Gallop, a member of the Opposition in another place, introduced the Parliamentary Commissioner Amendment Bill in 1994, which proposed substantively the reforms now before us at the end of 1996. That was specifically to amend section 13 of the Act so that the whole of the public sector was covered, except for those specific instrumentalities that were deleted, and the schedule was removed. Mr Catania in another place also initiated the Parliamentary Commissioner (Police Investigatory Powers) Amendment Bill in 1994. The Opposition is disturbed that the Government has taken a further two years to introduce these amendments that were seen as necessary by the Parliamentary Commissioner many years ago, that attempts to implement these obviously necessary reforms were blocked by the Government in 1994 and that consideration of this matter has been delayed since that time.

Having gone through those provisions in the Bill with which the Opposition agrees, I turn to those aspects with which it does not agree; specifically, the amended form of section 13. I refer to the following provision in clause 10 -

> Section 13 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections -
>
> (1) Subject to subsection (2), this Act applies to all departments and authorities.

The Opposition has no problem with that. It is inclusive unless an agency is specifically excluded. The clause then contains a list of organisations. The principal Act contains a list of exclusions and a schedule. The list of exclusions in section 13 of the Parliamentary Commissioner Act 1971 is in paragraphs (a) to (f). The Act contains a schedule of the instrumentalities and government authorities to which the jurisdiction of the Ombudsman applies. This Bill contains exclusions in proposed paragraphs (a) to (n). The Opposition has no concern about proposed paragraphs (a) to (m), but it is most disturbed that proposed paragraph (n) will add to the list of exclusions -

> Any department or authority specified in Schedule 1 . . .

Schedule 1 is subject to change by the executive arm of government. This proposed change to the Act directly contravenes recommendation 153.1 of the Commission on Government which states -

> That the *Parliamentary Commissioner Act 1971* should be amended so that the jurisdiction of the State Ombudsman includes the entire public sector except those departments and agencies specifically excluded by Parliament.

Now these departments and agencies are to be excluded by the Executive. It is a direct nullification of the recommendation of the Commission on Government.

Hon Peter Foss: Hardly so.

Hon J.A. COWDELL: It could be used as a direct nullification. In any case, the power is vested in the Executive and the recommendation is that the exclusions be vested in Parliament.

Hon Peter Foss: It means you are in unless you are out.

Hon J.A. COWDELL: I commended the Government on that at the beginning of my comments, but recommendation 153.1 specifically states that Parliament should define what is included and not the Executive. The objection of the Opposition to this Bill is that it specifically vests this power in the Executive rather than in Parliament. This Bill can be considered as an attack on the report of the Commission on Government for what it does not contain rather than for what it contains. I refer to the rhetoric in the Minister's second reading speech -

> When this Government came to office a commitment was made to address issues related to the legislation administered by the Parliamentary Commissioner for Administrative Investigations, the Ombudsman. In November 1994 the Premier advised that we were prepared to introduce amending legislation once we had gone through a proper process to bring about change. The process is now complete and I am pleased to present the Parliamentary Commissioner Amendment Bill.

The Government has been dealing with this matter since 1994, it has been an extensive process which has now been completed, and the Government has introduced the Bill to the Parliament. This must be a matter of grave concern to anyone interested in Commission on Government recommendations 83.10, 115, 158.1, 158.3, 158.4, 151.5, 156 and 154.1. This Bill remains silent with respect to all those recommendations - some in their entirety and in others the major part. The Government has spent two and a half years on this consultative process and these are the changes. I refer to the Commission on Government recommendation 158.1 -

> The proposed Legislative Council Public Administration Committee should participate in the selection of the State Ombudsman. The process for selecting the State Ombudsman should be set out in the *Parliamentary Commissioner Act 1971* as follows:

I will not go into the details of that, but the Commission on Government said that the original Act should be amended to provide a role for Parliament in the selection of the Parliamentary Commissioner. No role is provided for the Parliament in this amendment. This matter is particularly disturbing in view of Mr Eadie's letter to the President last week in which he states -

> I had hoped to be able to continue to serve this Parliament and the people of Western Australia for a further term, but this was not to be.
>
> When I wrote the first draft of Chapter 1 of my report just a few weeks ago, and recorded with pride the *Gold Award* made to my office "for distinguished achievement in accountability for operations and performance through annual reporting", I did not think this would prove to be my last report. At that time, I still believed that, in the final analysis, I would be judged by the Government (which, somewhat paradoxically, and in contrast with the Northern Territory and New Zealand, (in effect) appoints the Parliamentary Commissioner) on the basis of my overall record of achievement during the past five years, and not merely on the basis of the outcome of a selection and appointment process which, I believe, left a great deal to be desired, both procedurally and in other respects.

We are considering amendments to the Parliamentary Commissioner Act at the very time that the Government is ignoring any role for Parliament in the selection process. The Parliamentary Commissioner has said that the selection process conducted by the executive arm of government is seriously flawed. He writes further -

> It seems to me that, as I indicated in a submission to the Commission on Government in January this year, in the interests of the independence of the office of Parliamentary Commissioner, the time has come to look more closely at the selection and appointment process (and the term of office) for the position. . . .
>
> In addition, I believe it is highly desirable to place the office of Parliamentary Commissioner under the umbrella of a Parliamentary Committee . . .

He raised doubts about the way in which the Executive selects the Parliamentary Commissioner. He further wrote -

> The attached article contains the statement that I was "a Labor Government appointee". It has been pointed out to me, whatever the intention may have been, this statement is open to the inference that I was appointed to the position of Parliamentary Commissioner in 1991 on the basis of some perceived association or sympathy with the Labor Party. Any such suggestion is entirely without foundation. I was appointed on the basis of my qualifications and experience, . . . I have scrupulously followed the path of political neutrality, and have striven to be totally impartial and objective (but at the same time helpful) in my dealings with members of all parties.

Obviously, the Parliamentary Commissioner, taking account of his own case, has trodden on a few feet along the way and has now been executed by the executive arm of government. He has especially refuted that he should be executed by pointing to his record of performance and his political neutrality. However, that has been overlooked.

We are dealing with considered government amendments to the Parliamentary Commissioner Act. At the same time as a controversy is raging about the appointment of the new Parliamentary Commissioner and how the old Parliamentary Commissioner was disposed of, Parliament is being excluded from a role. No action has been taken about Commission on Government recommendation 158(1); it is to be a dead letter. Recommendation 158(3) states -

> The budget of the Office of the State Ombudsman should be the subject of a permanent appropriation. The proposed Public Administration Committee should determine the budget of the Office annually with due consideration of any advice from the Treasurer.

It includes a suggestion for additional funding of the Ombudsman's office if necessary on the recommendation of the committee. The joint standing parliamentary committee considered recommendation 158(1) and endorsed it. It also considered 158(3), that the parliamentary committee have some role in determining the appropriation for the Ombudsman's office. The parliamentary committee did not accept the recommendation of COG in precisely that form. However, it made some worthwhile recommendations on how Parliament could be given a role in the funding of the office of the Parliamentary Commissioner, but without quite as much power as suggested by COG. Nevertheless, it was a unanimous recommendation of the joint standing committee. There is no mention in this Bill of recommendation 158(3). Therefore there will be no role for Parliament or its committees in determining adequate funding.

Recommendation 158(4) states -

> The Office of the State Ombudsman should be established as a statutory authority. Recruitment and staffing policy should be determined by the State Ombudsman, subject to annual review by the proposed Public Administration Committee.

Once again no action has been taken by the Government on that recommendation. Recommendation 158(4) is a dead letter. The problem with this Bill is that if, as the Government claims, it is the considered response of the Government to the commissioner's pleadings for the past 10 years and the Commission on Government's recommendations, not to mention the royal commission's recommendations, it is a very poor response because it not only directly contravenes COG recommendation 153(1), but also renders a dead letter COG recommendations 158(1), 158(3), and 158(4).

The Bill also ignores one area of investigation by the Commission on Government; that is, the resolution of the situation that universities should not be subject to review by both the parliamentary commissioner and a visitor and that there should be one regime or another. It suggested that if it were decided that the Parliamentary Commissioner should have the role, the role of the visitor should be dispensed with. That was COG recommendation 151(5). That has not been addressed in this legislation.

COG recommendation 156 deals with the quite legitimate area of the exclusion of courts and quasi judicial tribunals. I have followed over the years the fight between the Parliamentary Commissioner and, I think, the Small Claims Tribunal. I noted the war of words between the Ombudsman and one of the tribunals.

Hon Peter Foss: It was Mr Burton.

Mr COWDELL: It could have been the Small Claims Tribunal. There was a specific concern that the tribunal used its quasi-judicial position to obstruct the Ombudsman's reporting on gross delays in its dealings and inadequacies in operational matters. I am not sure whether this amending legislation comes down in favour of the tribunal or the Ombudsman in rectifying that problem, or even whether it addresses the problem as set out in COG recommendation 156. There are so many matters that the legislation does not address that the balance of probabilities is that it does not address the issue at all.

Hon Peter Foss: Most people do not need to address it, because it is clear.

Hon J.A. COWDELL: I am sure the Attorney will adequately explain that.

Hon Peter Foss: It does not need to be explained, it is clearer than the current Act. It is just that some people do not accept that.

Hon J.A. COWDELL: Who did not accept that?

Hon Peter Foss: The referee.

Hon J.A. COWDELL: I welcome the Government's assurance on that. The Commission on Government wants to extend the Ombudsman's power to review outsourcing; that is, where public money is delivered to the private sector to provide services. Where large sectors of our hospital system are outsourced to the private sector and significant amounts of public funds are involved, members of the public should be able to seek redress from the Ombudsman. Certainly in my electorate about $38m of public funds has been provided for the new Mandurah Hospital, which will be entirely in private hands for the next 20 years. To ensure that the Ombudsman has the capacity to address complaints in that area we should address COG recommendation 154.1. However, that recommendation has not been addressed.

Recommendation 83.10 states -

> The Parliamentary Commissioner Act 1971 should be amended: -

Some of that recommendation is addressed in this legislation, but not all -

(a) to allow oral complaints to be made to the State Ombudsman;

(b) to enable the State Ombudsman to resolve complaints in a timely manner by conciliation or mediation;

(c) to enable the State Ombudsman to accept complaints lodged on behalf of another person; and

(d) in s.17(5) by deleting 12 months and substituting six years.

Some of those issues are addressed by this legislation. However, I would like the Minister to advise whether all that is contained in recommendation 83.10 is addressed in this amending legislation.

Although the Opposition welcomes what is before the House, such as it is, we cannot condone the continued exclusion of Parliament from playing a role in selecting the Ombudsman, given the current controversy; in having a say in the adequacy of funding to the Ombudsman's office; and in securing greater autonomy for the Ombudsman's office. The Opposition cannot support the removal from Parliament to the Executive of a class of exclusions that will be managed by the Government. The Opposition is concerned that in this minor legislation the Government has not addressed the significant concerns of the Commission on Government in recommendations 83.10, 115, 151.5 and 154.1. It is a matter of grave concern that this legislation is such an inadequate response to the Commission on Government's recommendation. It is also an inadequate response to the joint standing committee that considered, and to some degree altered, the recommendations that I have gone through, but, nevertheless, supported in principle. The Opposition views this legislation as a very poor response from the Government, after two and a half years' consideration of not only the recommendations of the Parliamentary Commissioner and views of members of the public but also the recommendations of the Commission on Government. I conclude with the Minister's comments in the second reading speech -

> The process is now complete and I am pleased to present the Parliamentary Commissioner Amendment Bill.

If that process is now complete, and this is the product, it stands as an indictment of this Government in substantively failing to provide for the adequate reform of the position of the Parliamentary Commissioner as envisaged by both the Parliamentary Commissioner and the Commission on Government.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.37 pm]: I thank members opposite for their lukewarm and qualified support of this legislation. During the addresses made by Hon Nick Griffiths and Hon John Cowdell I was reflecting on their damascene conversion on the road to accountability: St Nick and St John have decided that this country needs accountability! I reflected on some of the reports of previous Ombudsmen and the criticism that was made of the previous Government. Those reports are littered with comments by previous Ombudsmen about the lack of activity by the previous Government; in particular, I refer members to the 1993 report of the Ombudsman and his comments about the previous 10 years. Hon John Cowdell would be a little embarrassed, having spent some time in this House being highly critical of what he perceives to be a lack of action by this Government, when he compares that with the actions of the former Government.

Hon J.A. Cowdell: That was our embarrassment; this is your embarrassment.

Hon N.F. MOORE: This legislation is a significant change to the way in which the Ombudsman operates. The most important change that has been made by this legislation is to extend dramatically the Ombudsman's jurisdiction. It is interesting that for 10 years in government members opposite did nothing about the Ombudsman's jurisdiction, and when this Government does something about it they start nitpicking around the edges about who decides the Ombudsman's salary, and who appoints him and things of that nature. It is interesting when we reflect on the COG recommendations how selectively members of the Opposition choose the recommendations that suit their arguments and use them as some sort of doctrine that we must all automatically agree with.

Hon Peter Foss: Members of the Opposition are the only ones allowed to agree with it.

Hon N.F. MOORE: However, when members opposite do not agree with the recommendations, they simply say, "We do not agree with that." For example, they do not agree with the recommendations relating to extra members of Parliament, to members who resign prematurely paying for their own election -

Hon J.A. Cowdell: No, we did not.

Hon N.F. MOORE: - even though such resignation occurred with an opposition member.

Hon Mark Nevill: That is not a correct.

Hon N.F. MOORE: I do not want to take time on this matter. As this legislation is the first major change to the Ombudsman's Act since its establishment in 1971, I thought the Opposition would have been far more fulsome in its praise of the measure than it has been.

I now deal with some points raised by members opposite. The current Ombudsman, Mr Eadie, had a contractual appointment, as is provided for under the Act. At the end of his term, the position was advertised and a selection panel, supervised by the Commissioner for Public Sector Standards, recommended that someone else be appointed. If the Government had rejected that proposition and reappointed Mr Eadie, it would have been subjected to enormous criticism for avoiding and ignoring the proper processes of appointment.

Hon Tom Helm: I do not think so.

Hon N.F. MOORE: To suggest that he was rejected by, and lost the confidence of, the Executive is total rubbish. The public sector appointment process, overseen by the Commissioner for Public Sector Standards, was put into operation, and the resulting recommendation was for Mr Allen to replace Mr Eadie. The proper process was undertaken. Had the Government not accepted that recommendation, the Opposition would have been the first to criticise its decision. Mr Eadie has not been reappointed on the basis of a decision by an independent panel. It had nothing to do with the Executive, which simply agreed to the recommendation of the panel.

Hon Tom Helm: Your hands are clean, in other words.

Hon N.F. MOORE: The panel made the decision and the Government accepted its recommendation. That process was overseen by the Commissioner for Public Sector Standards; if members opposite do not like the outcome, they should complain to him.

This is good legislation because, as Hon John Cowdell said, it stipulates that all government organisations will be subject to the Ombudsman’s jurisdiction, except those bodies excluded by the Act. Some mention has been made about the handling of the exclusions. Schedule 1 of the principal Act lists the agencies to be excluded from the jurisdiction of the Ombudsman, and the Bill provides for that exclusion list to be amended by way of regulation. I

understand that the Opposition does not support that proposition - it suggests that the matter should come to the Parliament as legislative amendments.

One of the reasons for the present bind in respect of the Ombudsman's jurisdiction is the necessity under current law for Parliament to include new agencies for application under the provisions. The Act must be amended every time a new agency is created so that it falls within its provisions. However, no-one has made those legislative changes. If inclusion were performed by regulation, a new agency would automatically be subject to the Act and the Ombudsman's jurisdiction. Also, an agency would be removed from the legislation by regulation should it disappear or be abolished. Parliament has the competence to allow or disallow regulations and, as we know, it can accept or reject legislation. This amendment is one way to overcome this problem regarding bodies which fall within the Ombudsman's jurisdiction. If the regulation making power is included, we can keep an up-to-date list of applicable agencies.

I understand that the Opposition will oppose the regulation making power. However, it should consider the point of view of ensuring the application of the spirit of the legislation; that is, that the list of agencies subject to the Ombudsman's jurisdiction be amended by regulation. Therefore, that list will be up-to-date. This will overcome the problems which have arisen in the past.

Hon Nick Griffiths referred to the situation regarding the Director of Public Prosecutions and described some sort of policy change. It is not intended to change policy. The Ombudsman can, under section 23 of the Act, refer to the Director of Public Prosecutions matters relevant to the Anti-Corruption Commission. If in the course of his investigations the Ombudsman comes across issues relating to the ACC's activity which he thinks are important to the DPP, he can refer the matter to the Director of Public Prosecutions. This Bill envisages that the Ombudsman can consult the Anti-Corruption Commission and the Director of Public Prosecutions in respect of issues he thinks are important to both organisations, and that he can disclose information to both bodies. This extends his ability to ensure that matters which become available to him, which may be of significance to the Director of Public Prosecutions and the Anti-Corruption Commission, can be relayed to those two bodies. This extension is important in the context of his coming across information which might reflect some corrupt activity which it would be in the interests of those organisations to investigate.

We should remember that the long title of the Act states that the Parliamentary Commissioner for Administrative Investigations is to investigate the administrative action taken by, or on behalf of, certain government departments or other authorities. Basically, he looks at administrative matters. Any issue which relates to corruption and associated matters should go to the Director of Public Prosecutions or the Anti-Corruption Commission.

Hon Nick Griffiths referred to police complaints. The Commission on Government concluded that the Ombudsman should not be involved in police complaints, but this Bill disagrees with that point of view. It is argued that the Ombudsman should be involved with complaints against the police, but only complaints of an administrative nature and that any serious misconduct by the police should be subject to the jurisdiction of the Anti-Corruption Commission. The Anti-Corruption Commission deals with corruption and improper behaviour.

Hon Nick Griffiths also raised the question of the way in which complaints can be lodged. He suggested that the process should be expanded so people can make complaints verbally and on the telephone, and third parties may make complaints. It is important in this context to give some thought to natural justice. It should not be an easy activity to lodge a complaint with the Ombudsman about another person; that complaint should be taken very seriously. We must be aware of the requirements of natural justice. Therefore, we must take every step to ensure that malicious, vexatious or false complaints are not made to the Ombudsman. It is important for people to at least put the complaints in writing.

Contracting out was mentioned by a number of members. Clause 4A of the Bill contains a very broad definition covering a range of government and semi-government organisations. Obviously, the Ombudsman will have jurisdiction over persons involved in decision making in respect of contracting out. However, it is not necessarily appropriate that a private company carrying out activity as part of a contractual arrangement should be subject to the Ombudsman's jurisdiction, other than regarding how the funds were allocated to the contract in the first place. The Ombudsman has the capacity to ensure that the contract is entered into correctly, and that the proper administration process is followed in determining who succeeds in a tender process. There is no problem. If members were to read the extension of the definition of a government body in subclause (4)(a) they would see that it covers a vast range of government agencies and deals with most of the concerns about contracting out.

Hon John Cowdell raised the question of tribunals. Again, they are established to hear the different sides of an argument and to make decisions. If one then makes them subject to the Ombudsman one wonders who investigates the Ombudsman in the event that someone thinks that he is getting it wrong. Who audits the Auditor General? At the end of the day, someone must make the final decision. The tribunals in our quasi judicial system comprise people

of substance who make decisions based on the arguments put to them. To have their decisions subject to investigation by another body such as the Ombudsman adds an unnecessary burden to the system. Again I raise the question: Who investigates the Ombudsman? The answer is that we must make a decision at some stage as to who is given the right to make the ultimate decision.

This legislation is a substantial response to the many questions that have been raised about the Ombudsman's role. It significantly increases the jurisdiction of that office; in fact, it makes every government agency - except those that are excluded - subject to the Ombudsman's jurisdiction. That is a very significant change. It also provides for that list of agencies to be upgraded on a regular basis so that it is always current and it gives Parliament the power to allow or disallow the regulations that might change the agencies that are subject to that jurisdiction. It is an attempt to bring the role of the Ombudsman up to date and to ensure that his relationship with the other agencies involved in the investigation of corruption is proper and appropriate. In the context of the Government's nearly four years in office, this Bill makes fundamental and significant changes to the role of the Ombudsman. It does not go as far as some members want; however, that will always be the case no matter what we do.

The Government is considering the question of whether Parliament or the Executive should appoint officers such as the Auditor General, the Ombudsman and perhaps the Electoral Commissioner. The current public sector management legislation has the effect of sidelining the Executive in the appointment of people such as the Ombudsman. However, it is worth considering whether Parliament should have a greater role. I interjected on Hon Mark Nevill and asked how we would do it. That issue would need to be carefully assessed. Knowing the way Parliaments operate, the end result might well be the same as if the Executive had appointed the officer in the first place, but that might not be the case. The issue of whether Parliament should determine remuneration and so on again is a matter of policy that needs to be considered. The Government believes that all these things should be looked at collectively. It would be premature to have Parliament involved in the appointment of and remuneration for the Ombudsman and to ignore the other agencies that have a similar relationship to Parliament; they should be dealt with concurrently. That will be considered in the course of the next Parliament by both parties, regardless of which party is in government.

In the past four years of government we have dealt with a huge range of issues. I concur to a large extent with the comments of Professor Harry Phillips in today's *The West Australian*, where he said that the Government had done a pretty good job in response to the matters raised by the Commission on Government. He acknowledged that the Government's first obligation was to do something about the economy. Of course, that has been our prime focus. The Government has a good record in respect of the other issues raised by COG. The package of legislation dealing with corruption and other matters has been significant.

This is the first substantial change to the legislation since it was introduced in 1971. In the context of the huge amount of reform that has been undertaken in the past four years, it is a very commendable effort. While the Opposition has indicated support for the Bill, that support has been rather lukewarm. Members opposite had 10 years in government and did nothing about this issue. They should acknowledge that this legislation goes a long way towards addressing the fundamental problems that have faced the Ombudsman for some time.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Commencement -

Hon N.D. GRIFFITHS: I do not know whether the Parliament is due to finish its substantive business soon. I congratulate the Government on the wording of this clause; that is, I am pleased that the legislation will come into operation on the day on which it receives royal assent.

Clause put and passed.

Clauses 3 to 15 put and passed.

Clause 16: Section 27 amended -

Hon MARK NEVILL: I move -

Page 13, lines 25 and 26 - To delete "-(a)".

Page 13, lines 27 and 28 - To delete "; and (b)" and substitute "who shall".

This amendment corrects a fundamental error. According to this clause, when the House is not sitting a report is sent to the Clerk of both Houses of Parliament, and the commissioner may make the report available to the public. In this case, the Parliamentary Commissioner is publishing the report. I understood that the Clerk publishes the Auditor General's report, but found the Financial Administration and Audit Act contains the same procedure. That is wrong. These are officers of the Parliament and they should report to Parliament and not the public. If my amendment were accepted, the new section would read -

> If neither House of Parliament is sitting at the time when the Commissioner wishes to lay a report in accordance with subsection (1) then the Commissioner may send copies of the report to the Clerks of both Houses of Parliament who shall make the report available to the public.

In this way the Clerks shall publish the report and not the Parliamentary Commissioner. This is not the case with the Auditor General's report. It is a fairly simple amendment, but it is an important issue that these officers report to the Parliament, and no-one else. That is not to say that the Clerks should sit on that report. The amendment makes it clear that the Clerks shall make the report available to the public, and that should not delay its publication.

Hon N.F. MOORE: I have some sympathy for the amendment because I can understand that Hon Mark Nevill is seeking to achieve that reports to Parliament should be made public by the Parliament, but I have a problem in agreeing with the amendment on this occasion. I would prefer, if Hon Mark Nevill is agreeable, to look at the range of reports which are in the same category. Hon Mark Nevill referred to the Auditor General, and the Auditor General does what this Bill seeks to do in respect of reporting. Although there is some merit in this proposal, I would not want to make a change in respect of the Ombudsman and not other officers. Therefore, I would prefer to put the sentiments of this amendment to government and ask whether that could be looked at across the board, because it would be better to deal in globo with the other sets of circumstances where this situation arises, if the Parliament thinks that is a worthwhile policy change and accepts that amendment to various pieces of legislation.

The Ombudsman and the Auditor General might not appreciate not being able to make their own reports to the public, because that is their day in the sun, particularly the Auditor General -

Hon A.J.G. MacTiernan: He likes having pictures taken of him!

Hon N.F. MOORE: If he had to allow the Clerks to receive the same degree of publicity, he might not be as enthusiastic about the amendment as is Hon Mark Nevill.!

Hon MARK NEVILL: I will not pursue the amendment. I take that as a commitment by the Minister that the issue in respect of these officers and the Acts under which they report to the Parliament will be examined. I am sure the Clerks of the Parliament will not be publishing the Auditor General's report in its current form, ring bound!

Amendments, by leave, withdrawn.

Clause put and passed.

Clauses 17 and 18 put and passed.

Clause 19: Section 33 inserted -

Hon N.D. GRIFFITHS: The operative part of this clause is the words "The Governor may make regulations for amending Schedule 1". That is relevant because of what the Committee has already decided with respect to clause 10, which will become section 13(2)(n), which states -

> any department or authority specified in Schedule 1 but if the extent to which this Act does not apply in respect of a department or authority has been set out in the item in Schedule 1 relating to that department or authority then this Act does not apply to that extent.

Clause 10 deals with section 13, jurisdiction. Clause 19 seeks to provide that regulations can allow for agencies of government to be excluded from the jurisdiction of the Parliamentary Commissioner. In our view, that is more properly the role of Parliament. That is what the substantive form of this Bill is all about. The fact that the Commission on Government made the recommendation does not make the proposition right or wrong; but given the way things are in Western Australia, some may regard it as significant that Commission on Government recommendation 153 states -

The Parliamentary Commissioner Act 1971 should be amended so that the jurisdiction of the State Ombudsman includes the entire public sector except those departments and agencies specifically excluded by Parliament.

I note the rationale given by the Minister in the second reading speech and what he said in concluding the second reading debate. I accept that it provides for a degree of administrative efficiency. However, we consider that the role of the Parliamentary Commissioner is so important that the exclusions should be sanctioned by Parliament in the first instance, and that is why we propose to divide on this clause.

Hon N.F. MOORE: The proposition in this Bill is that schedule 1 can be amended by regulation. Schedule 1 lists those entities to which the Act does not apply; in other words those government agencies that are not subject to the jurisdiction of the Ombudsman: The Anti-Corruption Commission; the Director of Public Prosecutions and the Deputy Director of Public Prosecutions; the Electoral Commissioner and the Deputy Electoral Commissioner; the Commissioner for Equal Opportunity and the Director for Equal Opportunity; the Auditor General; the Information Commissioner; the Commissioner for Public Sector Standards; the Parliamentary Commissioner, which is interesting - the Ombudsman cannot investigate the Ombudsman -

Hon N.D. Griffiths: It would be an interesting investigation.

Hon N.F. MOORE: Yes. One wonders who would investigate him if that needed to be done; however, that is another question. It also excludes any royal commission, and the Solicitor General. They are a pretty elite lot, in the broad sense of that word. They are not regular government agencies; every other government agency is subject to the jurisdiction of the Ombudsman. It is proposed that the Government be able to, by regulation, add to or delete from that list. I cannot imagine that anybody would want to delete from that list, and I imagine that any regulation which was introduced to delete from that list would not get much support from either side of Parliament. On the other hand, the intention is to provide an opportunity for the list to be updated on a regular basis as circumstances change.

Hon J.A. Cowdell: Does that include the Electoral Commissioner?

Hon N.F. MOORE: Yes.

Hon J.A. Cowdell: What happened when Eric Freeman investigated Les Smith a few years ago and he was hopping mad? Is he now included under this?

Hon N.F. MOORE: He is certainly included under this.

Hon J.A. Cowdell: It is good to see that state elections are run in a ridgy-didge fashion! Is this a beneficial exclusion?

Hon N.F. MOORE: It depends on the result of the election. I have no doubt that the election will be run in a very efficient and effective way; whether the result was the right one would have little to do with the Electoral Commissioner, I suspect. For the convenience of ensuring the schedule is kept up to date and relevant, it should be able to be amended by regulation, bearing in mind that the Parliament can disallow regulations if it thinks that is necessary. It simply means we can avoid the problems of the past where we had to legislate every time a change was envisaged about who would be part of the jurisdiction of the commission.

Hon N.D. GRIFFITHS: This has nothing to do with the problems of the past. At the moment, unless and until this Bill is passed through both places and receives royal assent, the current position remains; that is, areas are not subject to the Parliamentary Commissioner's purview unless specified in the schedule. This is a different situation where, if clause 19 were to be rejected, the Parliament would need to amend the schedule. That is appropriate. The Minister has said that a unique group of bodies is involved. He referred to them as elite. At this stage I do not think this clause is appropriate. I could go through each of the bodies and talk about the merit, or otherwise, of their being in the schedule. In general terms, what the Minister has said is accurate; they are unique vis a vis other government agencies. However, we should be concerned with matters of substance, rather than form. It is not good enough for us to say that we should keep it up to date. Of course, we could keep everything in government up to date, including all of the legislation, by dealing with it through regulation, but that is inappropriate, particularly in this Parliament. We have seen how important the Parliamentary Commissioner is to our systems of accountability, such as they are. Given that situation, it is appropriate that the committee reject clause 19. I note what the Minister says. There is some force to his argument, but not a great deal.

Hon J.A. COWDELL: I seek some clarification from the Minister about this clause. He has indicated that this now excludes the Electoral Commissioner from the purview of the Parliamentary Commissioner. It appears that in the past the Parliamentary Commissioner did exercise jurisdiction in that area. I wonder what alternative avenue of redress there is with respect to that; for example, if people think some administrative problem might act to their detriment in the operation of the Electoral Commission. People can get particularly worked up about this area.

Hon N.F. MOORE: The Electoral Commissioner is also a chief executive officer under the Public Sector Management Act. The administrative actions of the person who is the chief executive officer are subject to the scrutiny of the Parliamentary Commissioner. For example, in the capacity of chief executive officer, running the Electoral Commission and the administrative functions attached to that position, the person is subject to scrutiny; however, as the Electoral Commissioner carrying out the role of the redistributions etc, the person is not subject to that scrutiny.

Clause put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell, I cast my vote with the ayes.

Division resulted as follows -

Ayes (14)

Hon George Cash	Hon Barry House	Hon M.D. Nixon
Hon M.J. Criddle	Hon P.R. Lightfoot	Hon B.M. Scott
Hon B.K. Donaldson	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon Max Evans	Hon Murray Montgomery	Hon Muriel Patterson *(Teller)*
Hon Peter Foss	Hon N.F. Moore	

Noes (10)

Hon Kim Chance	Hon Val Ferguson	Hon Mark Nevill
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Bob Thomas
Hon Cheryl Davenport	Hon A.J.G. MacTiernan	Hon Tom Helm *(Teller)*
Hon Graham Edwards		

Pairs

Hon W.N. Stretch	Hon Tom Stephens
Hon I.D. MacLean	Hon Doug Wenn
Hon E.J. Charlton	Hon John Halden

Clause thus passed.

Clauses 20 and 21 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon N.F. Moore (Leader of the House), and transmitted to the Assembly.

MOTION - DISALLOWANCE OF OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

Pursuant to Standing Order No 152(b), the following motion was moved pro forma by Hon A.J.G. MacTiernan -

> That the Occupational Safety and Health Regulations 1996 published in the *Gazette* on 27 September 1996 and tabled in the Legislative Council on 15 October 1996 under the *Occupational Safety and Health Act 1984*, be and are hereby, disallowed.

HON A.J.G. MacTIERNAN (East Metropolitan) [3.18 pm]: We sought to move disallowance of the occupational safety and health regulations a few weeks ago when it became obvious to us that there were a number of concerns about the regulations that had been gazetted, one might say, in a bit of a flurry, on the day when a rally was being held by various members of the work force to express concern about the performance of WorkSafe Western Australia and, in particular, in relation to the demolition industry. One gains the impression that the regulations were brought on very speedily to scotch some of the criticism made about the lack of enforcement of provisions within the demolition industry and the paucity of provisions regulating that industry. For whatever reason, the regulations were brought on, and the Opposition was aware that there were concerns. Interestingly, the concerns that were raised with me in the first instance came from industry and not from the union movement.

Hon Max Evans: You're a friend of industry now, as well?

Hon A.J.G. MacTIERNAN: We are prepared to govern for both. As we have always said, there are many reasonable employers. It has always been the Opposition's concern that this Government, through the way it enables less scrupulous members of the capital class to conduct their business, makes it difficult for employers who want to do the right thing by their employees.

Hon Derrick Tomlinson: Tell us that Len Buckeridge rang you.

Hon A.J.G. MacTIERNAN: This is not 1 April, Mr Tomlinson, otherwise I would have used that one!

The Opposition moved the disallowance motion to keep the options for debate open and not because it had concluded whether the regulations should be disallowed. Even at this point the Opposition is in two minds. We recognise that in a range of areas these regulations constitute a real improvement.

Hon Max Evans: They've taken five years. I hope they will make some improvement.

Hon A.J.G. MacTIERNAN: That is right; however, we have had an opportunity over the intervening couple of weeks to see that in some areas the protection of working people has been curtailed by this legislation. In other areas opportunities have been missed. Over this long process of consultation recommendations were made and passed up. Some were passed up by the Minister for Labour Relations, notwithstanding the advice the Minister received from the WorkSafe Western Australia Commission.

I am concerned about the response the Opposition received from both the Minister and the Chief Executive Officer of WorkSafe when it moved the disallowance motion. A disallowance motion is a fairly standard procedure. I understand it is likely that if the Opposition had not moved this motion, the Chairman of the Joint Standing Committee on Delegated Legislation - I hope I am not misrepresenting him - would have had to do so to keep the matter alive so that a decision could be made, just as the chairman of that committee has moved a disallowance motion that lies at Order of the Day No 1 in this place relating to the Bunbury Port Authority.

Having taken what we thought was an orthodox position in moving a disallowance motion to ensure that the matter was debated, I am astounded and horrified by the response of, first, the CEO of WorkSafe, who made a number of highly critical and inappropriate comments in the newspaper about this disallowance motion. He said that it was a gross political stunt for the Opposition to move for this disallowance. Second, the Minister for Labour Relations came out in total support of him. On numerous occasions since then, particularly when other areas of WorkSafe's performance have been criticised, the Minister has raised the flag of this disallowance as inappropriate.

I also found it extraordinary that WorkSafe WA instructed its inspectors that they were no longer to provide Trades and Labor Council occupational health and safety courses because the TLC had supported the disallowance that was moved by the Opposition. The justification given in the memo to departmental staff was not that there was a problem and that the regulations could not be enforced now, which in itself would be an incorrect assumption by WorkSafe, but rather, that the TLC was to be denied the benefit of training on these regulations because it had the audacity to support the Opposition's move to disallow, notwithstanding the fact that the movement to disallow can be a pro forma act to allow debate to occur and issues to be aired.

I was even more concerned when the Opposition received copies of correspondence just this morning between the Minister and the Trades and Labor Council in which the Minister indicates that he is no longer prepared to discuss with the TLC matters concerning the occupational health and safety regulations because it supports the disallowance motion and that it was most appropriate that the matter now be debated in the Legislative Council. However, at the same time the Minister was happy to engage in discussions and negotiations - there is nothing wrong with that - and have his department engage in discussion and negotiations with the Western Australian Farmers Federation, which was likewise concerned. The federation shared the concerns, albeit around different provisions. It mooted from time to time that it may push the various rural members of this place to support a disallowance. That did not result in Minister Graham Kierath cutting off all discussions and negotiations with the WA Farmers Federation; however, it was used as an excuse to sever all negotiations and discussions with the Trades and Labor Council. That is an appalling state of affairs and reflects badly on that Minister's preparedness to govern for all Western Australians and to adopt a tripartite approach to these regulations.

The Opposition was keen to have this motion brought on last week so the matter could be progressed. It was the Opposition's aim in moving the disallowance motion to air the shortcomings in the regulations and to see what could be done to resolve the areas of dispute. The Opposition recognises that areas exists in which these regulations amount to a substantial improvement. The aggressive response that has been adopted by the department and the Minister to legitimate concerns has not advanced the cause of the occupational health and safety debate.

The Opposition will raise a number of issues that fall into different classes. The first relates to those areas in which the regulations were changed after the Minister received a submission from WorkSafe WA in August 1996. Those recommendations were not unanimously agreed to by the industry representatives, union representatives and departmental officers; however, I suppose they represented a compromise package. They were then sent to the Minister some time in August. Subsequent to their gazettal the department was advised of various changes that had been made by the Minister. I have concerns about the matters that were changed and what had led the Minister to change the package that had been developed in a tripartite way. However, it also appears that the list the Minister provided to WorkSafe WA, and subsequently on questioning in Parliament provided to the Parliament, was not a complete list. We find that at least in one very important area a substantial change was made but was not listed. That is the one we wish to highlight today.

Another area of concern is the substantial diminution of the protection that has occurred as part of the package. The area we particularly want to discuss is related to classified plant. Finally, we want to raise questions of omission from the package - areas in the original 1988 terms of reference for this review where reference was made and recommendations developed but which were not proceeded with. These provisions are of particular concern to the Trades and Labor Council and include those relating to young workers.

Hon Derrick Tomlinson: Were those matters discussed by the consultative committee?

Hon A.J.G. MacTiernan: Yes. Some of those matters were adopted by the tripartite committee and some were not.

Hon Derrick Tomlinson: Were some of those matters decided on the vote, and others not?

Hon A.J.G. MacTIERNAN: Yes. They fall into two categories. Some fell by the wayside and we think it is appropriate to raise such significant issues, and others received a positive vote at the meeting in August 1996 and were subsequently changed -

Hon Derrick Tomlinson: They do not include those which were rejected by the vote.

Hon A.J.G. MacTIERNAN: I will be raising those. Provisions in relation to young people were rejected at the August meeting.

Hon Max Evans: Were representatives from the TLC at the August meeting?

Hon Derrick Tomlinson: Yes.

Hon A.J.G. MacTIERNAN: I understand that they were. I am not sure.

Hon Derrick Tomlinson interjected.

Hon A.J.G. MacTIERNAN: I still think it is important, regardless of whether the commission had endorsed them. Bearing in mind that in all areas there was not a unanimous vote, if we believe there are areas of concern notwithstanding that they might have been signed off by a majority which was part of the WorkSafe commission, it is appropriate to bring these matters here. We are trying to set out the various classes of concern. Many of them are what we might call sins of omission. They are matters which are not attended to in the pre-existing regulations but which we should have more fully sought to cover in the new regulations. Although we want to address those issues, we most clearly are concerned about areas where the new regulations appear to set back the course of protection of working men and women in this State.

We hope to set out in more detail some of our concerns in those areas, and then await the Government's response before we decide which course of action to take and whether to support a disallowance. It is a genuine attempt to have the issues debated. In a couple of areas we contemplate moving a resolution to amend certain regulations. I understand we have the capacity by way of resolution of both Houses of Parliament to amend the regulations. We would consider doing that, depending on the advice we receive. In other areas we would be looking for some sort of commitment from the Government - indeed from this House perhaps - that the areas of concern we have raised will be reviewed if the regulations go forward and are passed. We are very much attempting to adopt a cooperative and constructive approach to this area.

First, I turn to the area where the regulations set us back and are not as good as the pre-existing regulations. The existing regulations specify that a range of plant is required to be inspected and registered. Generally that is equipment which involves a considerable degree of risk for the workers using it. Obviously the regulations have been designed to ensure that only properly designed and fully operational equipment is in use. Plant of this type is traditionally called classified plant, and the regulations specify a number of requirements: Firstly, we note a contraction of the range of plant that will be covered. The plant that will no longer be covered includes all overhead travelling cranes; bridge and gantry, monorail and vehicle loading cranes; boom-type elevating work platforms,

colloquially known as cherry pickers; certain classes of pressure vessels, including medical autoclaves; men and materials hoists; mobile cranes with a capacity of under 10 tonnes, and vehicle hoists. From my discussions with industry, it appears no justification has been put forward for changes of this type.

Hon Max Evans: Are you saying that they are all specified in the previous regulations?

Hon A.J.G. MacTIERNAN: Yes. They were listed in the regulations until the new regulations were gazetted. All that equipment, plus more, was included in the list of classified plant that needed to be inspected and registered before it could be used. That sub-set has now dropped off.

The second important change in this area of classified plant has been the downgrading of the inspection process, even for the group of plant that remains on the books. Certain other categories of pressure vessels, lifts, 10-tonne plus cranes and, interestingly, amusement park machinery, and other equipment of that nature are still classified and require inspection. However, I note a significant difference in the process required to obtain registration. Plant still needs to be certified by a competent person, but what constitutes a competent person has been changed significantly.

Under the old regulations a competent person was "someone who, in the opinion of the commissioner, has acquired, through training qualification or experience, the knowledge and skill required to carry out the inspection, and who is sufficiently independent to render an impartial report based on that inspection". Two very important concepts are embedded in that definition: One is that the competence of the person must be determined by an outside agent; that is, the WorkSafe Western Australia Commission. The second is that the person must be sufficiently independent from the operator of the equipment so that he is able to render an impartial report. The new regulations provide for a more general definition of competent person: "A competent person means in relation to the doing of anything, a person who has acquired, through training qualification or experience or a combination of these things, the knowledge and skills required to do that thing competently". Competence is no longer judged by reference to any external measure. The person is not required to satisfy the commission of his competence. Effectively the changes amount to a total deregulation of the class of persons who will carry out these inspections.

They remove the requirement for any independence or impartiality in the inspection reports. These inspections can be performed by a person in-house. A person responsible to the company for maintenance may have to compile a report on equipment. A number of factors would therefore come into play: First, the person doing the inspection may be responsible for the maintenance of equipment. If he had not adequately carried out the maintenance, the equipment may not be satisfactory, in which case he would not want to reflect badly on himself by effectively condemning his own work. Second, of course - even members opposite will recognise this - employees may be rather fearful of making a determination that an expensive piece of equipment that is part of their employer's operation, is not in optimum condition and therefore must be declassified. That would not endear someone to his employer. Individual performance appraisals - much loved by Mr Kierath and those who adopt workplace agreements - may jeopardise a person's incremental step up the company ladder.

Real concerns arise from this change to the notion of a competent person. It would be clearly a backward step to remove any reference to independence and impartiality from those reports. It also would be a very negative step to remove external monitoring of the competence of the parties undertaking inspections.

Sitting suspended from 3.45 to 4.00 pm

Hon A.J.G. MacTIERNAN: I have pointed out two problems relating to plant and equipment. First, certain plant had been declassified without any justification for that declassification and, second, the whole process with the plant that remains classified has been undermined by the deregulation of the entire inspection process. An inspector is no longer required to be authorised or approved by the commission; nor is that person required to have any independence from the operator of the machinery. The problem obviously will be exacerbated. We know that WorkSafe no longer performs random inspections, and the Opposition feels it is a total deregulation of the operation of this plant and equipment. The registration process will be very much a sham. It is important to note, and the department has said this from time to time, that most workplace deaths involve machinery. However, the regulation of some of the most dangerous equipment in the workplace will be completely undermined.

There is a substantial difference between the regulations in non-mining areas and those in mining areas, and I am very keen to hear the Minister's response to that situation. Most of the plant I listed as having been declassified in the non-mining areas remains classified under regulations made pursuant to the Mines Safety and Inspection Act. The process of the inspectorate is much stronger under the Mines Safety and Inspection Act than it is in the non-mining area. In the Mines Safety and Inspection Regulations the equipment required to be registered must have been inspected by a private sector inspector who has been approved in writing by the Department of Minerals and Energy, or an inspector of the Department of Minerals and Energy. Far from the deregulated process in the non-mining sector, there is a substantial level of regulation and external monitoring of the capacity and performance of the inspectors.

What is the difference between an elevating work platform in the construction industry and an elevating work platform in the mining industry? Why will these two different standards apply to equipment which has the potential to be equally lethal in either circumstance?

The Opposition would particularly like to know whether, subsequent to these regulations, if they go ahead, similar changes will be made in the mining sector. I have discussed these provisions and the issue with a number of people in industry, and they commented on the processes and the very high level of consultation with industry that occurred with the formulation of the regulations under the Mines Safety and Inspection Act. They contrasted that to the processes adopted by WorkSafe. I understand that for a number of years WorkSafe had the regulation review committee which was a tripartite organisation. However, obviously not everyone was represented by that committee and not everyone is a member of the Chamber of Commerce and Industry of Western Australia. It was felt that industry had only one opportunity to respond to these provisions, whereas the Mines Safety and Inspection Act was available for public comment, a determination was made, and the public had an opportunity to comment a second time. It was felt that there was deeper engagement with a broad sector of the mining industry than had occurred with these regulations. To be fair, I recognise that a potentially larger group of employers is affected in the non-mining sector, but it was an interesting observation from people involved in and affected by the processes with both sets of regulations. I recall the general accolades following the approach by then Minister Cash for the way in which he handled the regulations and the legislation. It is a pity that more Ministers do not follow his example in the way he sought to progress his legislation.

The third area of concern in relation to the plant and equipment is the uncertainty about the way in which national standards are called up. Two national standards are referred to in the legislation - AS148 and AS2550 - and they relate to part 4 of the regulations. Concern has been expressed to me that AS2550 relates to the use of much of the classified equipment to which we are now referring, and it has been generally embraced around Australia. Generally it is taken to require that after 10 years of operation plant must be stripped down, fully inspected and rebuilt. It is said - I would like this to be clarified - by industry that the department is now interpreting the reference to this standard in a quite different way that will not require this major 10 year inspection and rebuilding. An annual inspection and proper records being kept of those inspections would be satisfactory to comply with the standard referred to in Western Australia's regulations. This has led to a number of concerns because the annual inspections, it is said, are nowhere near as likely or able to reveal structural faults that occur over time as machinery ages. One example given to me was by a fellow who had recently stripped down a boom which, on a normal exterior examination, appeared to be quite functional and to have no major problems.

Hon Max Evans: A boom?

Hon A.J.G. MacTIERNAN: A boom on a crane, as I understand it. When he pulled the thing apart he found 100 structural flaws or cracks that had appeared in that boom, none of which would have been apparent by the normal process of annual inspection. It seems that this equipment, which has the potential if it fails to cause great damage to life and limb, is not being subjected to the full rigour of the national standard. Does the department intend interpreting the standard in that way?

The second concern is that because local machinery will not be repaired to full working order in many instances, and because the standard is being read differently in the Eastern States and the rebuilding process is required, equipment will be dumped in Western Australia. Rather than Eastern States' organisations going to the expense of rebuilding equipment that has reached the end of its 10 year life - often it will cost $25 000 to rebuild a large crane or work platform - that equipment will be shipped to Western Australia where there is no requirement for rebuilding. That could again see the standards in Western Australia fall as we get a larger percentage of aged equipment.

Similar concerns have also be expressed about AS1418, which is a standard relating to design factors. The argument appears to be that there are similar differentials in the way WorkSafe is interpreting the calling up of that standard. In respect of part 4 and the general area of liability of inspection standards, who has to do what, when it must done and by whom, it has been said by a lawyer, a Les Bookbinder, who appeared recently at a seminar on this subject given by the engineers, surveyors and inspectors association, that on the basis of the confusion that was apparent in the legislation, he had ordered a yacht and was waiting to know how big the yacht was that he was buying because he anticipated a vast surge in his turnover as a result of the work that he would attract trying to sort out the problems relating to part 4 and the plant provisions of the regulations. We must give very close attention to that. We do not want the lack of clarity in the regulations being a cost to business. Over and above that, we do not want a substandard set of regulations that will increase the risk to those people who are working with equipment of this type.

Our first couple of criticisms are in black and white: The regulations provide less protection to working people in that they reduce the range of equipment that must be classified and the whole classification procedure is undermined by the slackening of the rule about who can inspect. There seems to be uncertainty about the other areas and the calling up of national standards. We therefore want clarification about that.

The regulation relating to hazardous substances is worse than that which it replaces. This is one of those areas about which there was a change to the legislation between early August when the WorkSafe Commission signed off on its regulations and the regulations went to the Minister. The provision that has been inserted is an exemption from part 5 for the health industry, which is the part relating to hazardous substances. Clause 5.2 states that the regulations in relation to hazardous substances do not apply in relation to, first, a radioactive substance; second, a substance used in or in conjunction with the prevention, diagnosis, curing or alleviation of a disease, ailment, defect or injury in human beings or animals; and third, a substance that may be hazardous only by reason of it containing any disease causing organisms. The very real concern is with 5.2(b); that is, a substance used in or in conjunction with the prevention, diagnosis, curing or alleviation of a disease or ailment. That provision was inserted by the Minister after the regulations were signed off. I understand that the justification is that it was realised that the national standard in that regard had not been complied with and the Government sought to incorporate into the provision the national standard in respect of that issue.

However, the way that provision has been worded goes well beyond that which is required to meet the national standard. The relevant provision of the national standard states that the national model regulations shall apply to all hazardous substances, to all workplaces in which hazardous substances are used or produced, and to all persons with potential for exposure to hazardous substances in those workplaces. It says also that there is a limited number of substances which are exempt from these national model regulations where their use is not related to work activity. It then lists them and one that it lists is therapeutic agents. However, there is a vast different in the effect of those two provisions.

The national model states that where a chemical described as a therapeutic agent is used but it is not used in relation to one's work activities - the definition for a therapeutic agent is reflected in our legislation as a substance used in connection with the prevention, diagnosis and alleviation of disease, etc - the occupational health and safety regulations do not apply. However, that has been done differently in the state model. That states that where the substance is used therapeutically, not only do the regulations not apply to the patient, but also they do not apply to any person that may come in contact with those substances as ancillary to their therapeutic use.

The most reasonable interpretation of the way the state rules have been constructed is that health workers who come in contact with these substances, provided these substance are being used on a third party for therapeutic purposes, do not have any protection under the occupational health and safety rules in relation to those substances. That puts them at a great disadvantage compared with the situation in which they now find themselves because no such exclusion applies. This is not just a theoretical problem. This is a real problem in the health industry. One area of course is that relating to mercury. Nurses and health workers in hospitals use thermometers daily. In that instance, mercury would certainly come under paragraph (b) of clause 5.2. It is a substance used in connection with the diagnosis, curing or alleviation of a disease or ailment. However, no provision in the occupational safety and health regulations will control the use of mercury, and I was assured by nurses that there are frequent spills of mercury from the breaking of thermometers.

Another equally common problem relates to glutaraldehyde, a product used in sterilisation, particularly of equipment that is used internally. Again, because of the way in which the exemption is described in paragraph (b) glutaraldehyde will not be subject to occupational safety and health regulations. Apparently there have been many causes of concern and claims that medical staff have been exposed to glutaraldehyde. It is a particular concern to pregnant women. Over and above the possible effects to a foetus, glutaraldehyde has the capacity to cause skin rashes, arrhythmic heart patterns and respiratory problems, so quite serious medical concerns can arise from the use of glutaraldehyde. However, a most reasonable interpretation of the legislation is that that substance will not be restricted.

Another issue is formaldehyde, which is used in film development of X-rays and as a fixative in laboratories for human tissue. Formaldehyde is a related substance to glutaraldehyde and shows similar side effects.

Hon Derrick Tomlinson: That is a broad interpretation of the section to which you are referring.

Hon A.J.G. MacTIERNAN: It is a reasonable interpretation.

Hon Derrick Tomlinson: It might be reasonable, but it is very broad.

Hon A.J.G. MacTIERNAN: It is one that could be used. The very real concern is that people could take action under occupational safety and health legislation, particularly in the private health sector, to control or to impose certain regulations or, for example, to obtain a prohibition or improvement notice, using the argument that their action is exempt. A body of opinion is saying that is what will happen. That would easily be corrected by taking the phrase "where their use is not related to work activity" that is contained in the national regulations and adding it to paragraph

(b). That would achieve the desired result of limiting the operation of those provisions to situations where the use is a therapeutic use and would not relate to those people who become exposed ancillary to that therapeutic use.

Hon Derrick Tomlinson: If you say they are exempt, it is hard to consider that in the context of, say, nursing as much of that is about the application of those therapeutic agents.

Hon A.J.G. MacTIERNAN: That is if their use is not related to the individual patient. These provisions were drawn up to try to exempt situations where there is exposure to those products other than in a work environment, so they do not become a matter for occupational safety and health regulations. For example, the situation where hospital patients have poked into them a camera that has been washed in glutaraldehyde is a matter more appropriately dealt with by the therapeutic goods legislation or whatever. That is how the national model has been designed; however, this legislation provides a broader interpretation.

Another area is cleaning agents. It could be argued that as asepsis is critical to western medicine and to the role of hospitals generally, the application of these cleaning fluids could also then be excluded under paragraph (b). I hope that is not what is intended. However, I can see that that is a legitimate and even a reasonable interpretation of that regulation as it stands. That should be altered.

Again, the way in which this regulation has been handled contrasts very much with Hon George Cash's handling of the mines safety regulations, where we did not see this sort of problem emerging. This problem has emerged because a regulation was inserted without any consultation. It was not mentioned at all in the tripartite discussions. It did not form part of the regulations that were signed off and sent to the Minister. Perhaps the Minister received subsequent advice from the department and included it without speaking to any of the people who might be affected by it. That is an irresponsible way to deal with occupational safety and health. Given that the whole notion of occupational safety and health under the Robens system is that we should bring everyone into the process, it is irresponsible of the Minister to impose unilaterally a provision without any dialogue whatever and, one might argue, to deliberately conceal it. Concerns were raised by people who thought the regulations were being changed without discussion, so I asked the Minister whether he would table in Parliament a list of changes that had occurred since the matter was signed off by the WorkSafe Commission. That provision did not score a mention in the Minister's response. It was only after a Health Department circular was issued that people became aware of the addition of a whole new paragraph (b).

Hon Max Evans: They became aware of the improved wording to it.

Hon Derrick Tomlinson: Is it that you do not object to its inclusion, but to the form of words?

Hon A.J.G. MacTIERNAN: I do not object that people who are receiving treatment will be excluded from the operation of the Occupational Safety and Health Act. I object to the breadth of the regulation, as it goes much further than that and leaves health workers exposed. Although there have been statements from the Health Department that it will not interpret the provision in that way in the conduct of public hospitals, there are many private hospitals and public hospitals run by private operators where the decision by the Health Department may be of very limited consequence and these hospitals may rely strictly on the exemptions provided under the regulations. It is one of those unfortunate issues for which the Minister must take the blame. If the Minister had adopted a proper consultative process when this area of concern was discovered and if he had arranged for the various agencies to get together, we could have solved this problem without the disputes that we are seeing now. For a Government which prides itself on open and accountable government, this is a sorry state of affairs.

Hon Derrick Tomlinson: So it is still the nature of the words, rather than the principle that is contained in the legislation, that concerns you?

Hon A.J.G. MacTIERNAN: That is right if the member agrees that the principle is for the types of people excluded under the national rules to be excluded in this case. I am keen to reach some accommodation on how this might be altered. I understand from the Clerk that the capacity exists to alter this by way of resolution - such alteration would be very positive.

Another area which the Minister changed between the time the regulations were signed off and were gazetted - these were found only at the eleventh hour - was hearing levels, an issue of considerable opposition concern. The Labor Party, when in government, moved, through then Minister Henderson, to change the regulations for exposure standards for noise from 90 decibels to 85 decibels. That regulation had been proclaimed shortly before Labor lost government, but unfortunately one of the first actions of this Government, presumably on advice from the department, was to change that regulation to restore the exposure standard for noise to 90 dBA. That has been a very retrograde step. It is out of sync with the Mines Safety and Inspection Act Regulations.

It was agreed at a tripartite level that the standard must be changed. Although not happy about this aspect, the Trades and Labor Council agreed to support the provision of a 15 to 18 months phasing-in period. The standard was to take effect in January 1998. However, the Minister has determined that the phase-in will occur over a much longer period. The period approved by the Chamber of Commerce and Industry was unsatisfactory, and the change will now not occur until 1 September 1999.

It was claimed that this would give workplaces time to make appropriate alterations to their noise control strategies. However, the 1998 change has been on the books for some time, and the chamber agreed that the phase-in period to 1998 was adequate. Needing such an extensive phase in period - we are talking in the order of nearly three years - to put in place adequate noise control strategy can only indicate a complete lack of commitment on the part of the Minister to protect the hearing of workers outside the mining sector in Western Australia. It is ridiculous to require a period of three years before that standard applies.

I will be interested to hear the Minister for Finance's comments on another area of concern. Although this is not one of the matters changed by the Minister for Labour Relations - some of the changes to which I refer were introduced by the Minister and signed off by the WorkSafe Commission - the introduction of the phrase "as far as practicable" causes problems. A whole range of protections are being watered down by the inclusion of those words.

The housing construction industry, where some considerable achievements had been made, is an area of concern. We appeared to be en route to apply a regulation by which builders were required to provide on-site generation of electricity once a home construction had reached plate height. This is an important issue for the housing industry and for subcontractors. A death occurred last year and some very nasty accidents arose through the use of portable generators, which are very expensive and noisy. Dangers are involved not only on the job but also with contractors driving around with large volumes of petrol in the back of their vehicles to fuel these generators. I am concerned about how the introduction of the words "as far as practicable" - I am not arguing that those words were introduced by the Minister in that instance, although he has changed many other regulations - will water down the regulation, and how the regulations will be policed.

Let us consider a building site on which construction is beyond plate height and the carpenter is about to construct the roof. Let us exercise our imagination and optimism and consider a WorkSafe inspector on the housing construction site, although we do not see them on-site! What factors would an inspector take into account to determine whether the "as far as practicable" element had been achieved? Indeed, that principle applies not only to that regulation, but also to many others the Minister has amended. For example, regulation 3.1 deals with identification of hazards; 3.4 with manual handling; 3.6 with movement around workplaces; 3.7 with access and egress to and from workplaces, and so on. Can we have some guidance from the Minister on how it is believed that that determination might be an achieved?

Another issue relating to the failure to grasp the nettle in providing first class protection to workers in Western Australia is that of post-introductory safety and health representative training. When a person is elected as an occupational health and safety representative on the worksite, the employer has an obligation to fund training for that person. Elections take place every two years. Under the existing Act, a person who has already undertaken occupational health and safety training does not have an automatic entitlement to subsequent training. As I understand it, tripartite support was given to the notion of further training where a representative is re-elected. Basically, a representative needs to be kept up to date with regulations and needs to freshen his skills. It was not suggested that the representative needs a full five day course on his reappointment - a shorter course would suffice.

The concern has been expressed that a person might be an occupational health and safety representative for six or 10 years and only ever receive training in the first instance and not have any entitlement to undertake a refresher course. That notion was supported and formed part of the package presented on 7 August. Why was that changed? That is a very negative amendment to the regulations as approved by the commission. I understand that the Chamber of Commerce and Industry of Western Australia probably got to the Minister. It does not seem to be a valid concern. If a new person were elected, the employer would be obliged to provide further training. There does not appear to be any good economic reason why a person reelected should not also be entitled to some refresher training. I note the Minister nodding his head and I hope that that indicates he agrees with me. I know that if a person wants training they can have it, but the employer is not required to pay for it. That is a meaningless provision unless there is some element of obligation. It would be similar to a situation where, instead of having a whole range of laws relating to speeding, we said that we would prefer it if people did not speed. Basically, we have been left with a motherhood statement and not a realisable, practical provision.

The Trades and Labor Council has raised other areas of concern with a number of members. It has focused on a small number of issues of considerable concern and they are very valid. The first is the failure to include the provision relating to young workers. We are talking about workers 14 and 15 years of age. Provisions were drawn up to provide protection for those young people. The whole philosophy of this legislation is based on empowering people

to spot hazards and to take action about them. Younger workers face two difficulties: Firstly, they are less likely to be able to spot hazards; and, secondly, they are less likely to have the confidence to insist on pointing them out to the employer. Earlier this year a 14 year old male worker in Karratha was killed. At that stage Minister Kierath made some very direct public statements about the need to protect younger workers, but we find here a failure to support that need.

I understand that concern was expressed by the Department of Productivity and Labour Relations about this issue. I do not know whether that was because the department perceived that it would make it harder for young people to get work. We have a special obligation to young people because they face a particular disability. Often they do not have the physiological development to meet the protective standards as set down. Young men, particularly if they are tall, are often required to undertake heavy jobs in factories or to assist in moving heavy weights in the transport industry. They might have an underdeveloped musculoskeletal structure and consequently suffer a lifetime of nagging back injuries as a result of undertaking that work at far too early an age. That is why we need these protections. Mention has been made of a code of practice for young people, but such a code without any regulation is quite meaningless. I am very surprised, particularly after the statements made by Minister Kierath earlier this year, that the Government has backed down on this issue.

Another area of concern is induction training. It is recognised that employees face their greatest risk when they first start on the job; there is a disproportionately high rate of injury during the early weeks of employment. A regulation was extensively drafted and it seemed reasonable; it was not an unduly onerous requirement for employers. However, it failed to attract the support of the WorkSafe Commission. Given that he was prepared to review a number of the other decisions made by the WorkSafe Commission, the Minister could have reviewed that issue.

The TLC also raised concerns about record keeping. I can understand that many members would think that the requirement on business to keep records in relation to audits of hazards could be an undue burden and create more red tape for people to rail against. However, the union movement has pointed out that this process of identification of hazards and the determination of risk minimisation in respect of hazards is at the heart of the legislation and the whole scheme that we are seeking to implement. The regulations require that employers undertake an audit of hazards and that they determine a strategy to minimise the risks associated with those hazards. In that context, it does not seem unduly onerous to require that employers record that audit process. They are not required to undertake a new process; this would simply require them to keep some documentation of the audit. The record does not need to be excessively formal, but it will encourage a systematic approach to controlling hazards in the work environment. It could prove useful for an employer in the event of an accident where civil or departmental action is taken if they were able to produce a record showing that they had undertaken this process of identification, assessment and control that is pivotal to minimising hazards in the workplace.

The Opposition would have liked to see further regulation in relation to hours of work. Concern has been expressed in the community about the increasing length of shifts. It is not unusual now for people to be required to work 12 hour shifts. This has become very prevalent in the mining industry. The State Mining Engineer has expressed grave concern about workers' capacity to work effectively over those 12 hours and has reported that his inspectors have told him that people have been falling asleep on the job, and that is creating a hazard. The same applies in many other areas, particularly manufacturing and construction.

Hon Max Evans: You might want to limit the hours that we sit in the Parliament.

Hon A.J.G. MacTIERNAN: That is right, but our chances of falling down and injuring ourselves -

Hon Max Evans: We might fall asleep!

Hon A.J.G. MacTIERNAN: Notwithstanding the comments of one union official, I do not think Parliament House is one of the most hazardous work sites in Western Australia, unless we believe boredom is a major work hazard. Clearly in white collar jobs, while working long hours might present a substantial risk to one's psychological health and family life, it does not present the same exposure to risk to life and limb.

There is concern that we not have bitten the bullet and done something to regulate hours of work. One of the points made was that all the exposure standards that we have set for hazardous substances have been based on eight hour days and that those exposure standards are neither relevant nor a sufficient safeguard when people are working longer shifts. In the case of many of these hazardous substances, not only is there an incremental effect on people's health but also there is an exponential effect the longer that people are exposed. The chemicals to which people are exposed in the rubber industry is a classic example, and the amount of time that people have off between shifts is of crucial importance in minimising the damage of exposure to those chemicals.

Some concern was raised about violence in the workplace for mental health workers, cab drivers, prison officers -

Hon Bob Thomas: Electorate secretaries!

Hon A.J.G. MacTIERNAN: Yes, and, unfortunately, teachers may also be exposed to an unusually high risk of violence. There was concern that nothing has been done to oblige employers to identify, assess and control risks of that type.

The final area of concern that was raised by the union movement is the timber industry. The level of deaths in the timber industry has been high, particularly when compared with the number of employees in the industry. There is concern that the Timber Industry Regulation Act and regulations, which have been evolving since 1946, will be repealed on the passage of these regulations. There has been a lot of concern because the timber industry unions have not been involved in this process. Will the Minister clarify the intention with regard to the Timber Industry Regulation Act and regulations, and will a package be introduced that is quite discrete from these regulations?

We have canvassed all the issues that concern us. Hon Kim Chance will raise some issues about the Western Australian Farmers Federation, and Hon Tom Helm will raise some concerns about plant and equipment and working at heights. These regulations constitute a step backwards, and we are very concerned about supporting this package if we cannot do something to ameliorate that move. We are also concerned that positive recommendations have been put forward to enhance the level of protection of working people in this State, without being an undue fetter on business, but that the opportunity to embrace those recommendations has been denied within these regulations.

Hon Max Evans: But the rest of them are not too bad?

Hon A.J.G. MacTIERNAN: With a regulations review committee that has worked together for a long time - I have been fully aware of the work that Bob Bryant and Amanda Keynes have put in - we would expect to see some really good regulations. However, we are very concerned about embracing a package that includes some areas of great concern. Hazardous machinery is one of the greatest causes of death and injury, and we are concerned about embracing a set of regulations that will provide for less regulation of that machinery than was the case previously. We look forward to the Minister's response, because we want good regulations to be implemented.

HON TOM HELM (Mining and Pastoral) [4.57 pm]: I, too, have some concerns about these regulations, primarily because we may be accused of throwing out the baby with the bath water. Some of these regulations are the result of close consultation and the working together of a tripartite group comprising employers, employees and the State Government, each of which is a major stakeholder in the production of safety and health regulations and an Occupational Safety and Health Act that we can be proud of and that will reflect the safety and health laws that were the result of the Robens report in the United Kingdom in 1972, which has been adopted by almost every western nation. It is a matter of looking at the cost of production in dollar terms and also at the cost to employees of dangers in the workplace. People have a right to expect that when they go to work in the morning, they will come home in one piece to their spouses and families. The whole push of these regulations and the concerns that are part of that Act is the understanding by all parties that we have a responsibility as a society to see that we do the work not only efficiently, cheaply and competitively, but also safely.

[Questions without notice taken.]

MINISTERIAL STATEMENT - MINISTER FOR FINANCE

Fretting Mortar Reports Tabling

HON MAX EVANS (North Metropolitan - Minister for Finance) [5.30 pm] - by leave: I seek leave to table two reports on fretting mortar. On Thursday, 31 October, in responding to part (1) of question without notice 1069 by Hon Alannah MacTiernan, I indicated that the report of the technical working group on fretting mortar was complete and that I would table the document. In answering part (2) of that question, I advised that the report had been completed in February 1996. In fact the report was finalised in October 1995 and accepted by the Government steering committee on fretting mortar in November 1995. The report remains titled the "Interim Report of the Technical Working Group" as it is not a final report on the subject of fretting mortar. A further document was produced by the Ministry of Fair Trading in February 1996. This document summarised proposals for further testing to determine the causes of fretting mortar. As I indicated in part (4) of my response to question 1069, this testing program is being assessed to determine its feasibility and likely effectiveness.

Discussions on progress of this program are taking place with the Fretting Mortar Action Group. In providing its response to part (2) of question 1069, the Ministry of Fair Trading inadvertently gave the completion date of this latter document and not, as requested, the completion date for the "Interim Report of the Technical Working Group". I apologise to the House for providing this incorrect information. I now table both documents to which I referred in the statement; they are: Ministry of Fair Trading/Builders Registration Board; Fretting Mortar Investigation

Interim Report of the Technical Working Group October 1995 and Ministry of Fair Trading/Builders Registration Board; Fretting Mortar Investigation-Proposed Test Program, February 1996.

Leave granted. [See papers Nos 827 and 828.]

MOTION - DISALLOWANCE OF OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

Resumed from an earlier stage.

HON TOM HELM (Mining and Pastoral) [5.35 pm]: Before question time I was making the point that the Trades and Labor Council and the Opposition are concerned that the baby should not be thrown out with the bath water. Although some parts of these Occupational Safety and Health Regulations are welcome, the tripartite group - that is, the employers, the employees and the Government - came extremely close to reaching an agreement. Goodwill and hard work on all sides in putting together an agreement is evidenced by the background work in the public domain. It is a great pity that these regulations are flawed because that tripartite consultation was not concluded. We would prefer to have a document in front of us that revealed differences and disagreements.

The best we can say is that, for the most part, no consultation took place. In fact, sections of these regulations are positively dangerous as a result of some omissions and misrepresentations. The key issue summary in the TLC background submission subtitled "Concerns Relating to the Occupational Safety and Health Regulations 1996", the regulations which came into operation on 1 October 1996, is almost exclusively about the concerns raised by the TLC. It also reflects some of my experiences when I was in the work force as a member of the construction and demolition industry. It reads -

> What needs to be clearly understood is that what is currently contained in the Occupational Safety and Health Regulations 1996 does not reflect -
>
> (a) what was considered by employers, experts, government and unions as being required to be covered by regulations; and
>
> (b) what was considered by the public of Western Australia during the public comment phase; and
>
> (c) what was subsequently drafted by Crown Law into proposed regulations.
>
> Therefore, the current regulations can in NO way be considered to form a complete package for the prevention of occupational injury, disease or death amongst the people of Western Australia.
>
> The regulation review process that was undertaken in 1988, prior to the introduction of the Act, was a consolidation of 21 sets of regulations falling under the former Acts. Regulations that were no longer relevant were discarded. Even then, it was obvious that, at some point in the future, new regulations would have to be written to cover the many other areas of industry. No capacity existed in the first regulation review to introduce new regulations.
>
> During the most recent review the process was very different.
>
> (a) The committee was denied the opportunity to check the detail of parliamentary counsel's work against the intent of the parties; and
>
> (b) commitments given during the process did not materialise.
>
> The protection of workers safety and health at work is a social and economic question and concerns the conditions in which workers are offered employment.
>
> On average, 27 people are killed at work each year in Western Australian workplaces. Last year (1995 calendar year) we saw the above average number of 34 people lose their lives at work.
>
> (a) There are a significant number of people who are not counted into Western Australia's fatality statistics.
>
> (b) In addition to the fatalities above there are thousands of accidents (approx 30 000 in WA) occurring each year, some minor, many very serious. All of these could have been avoided.
>
> An important part of informing employees on Occupational safety and health lies in the provision of information. Currently the provision process has complications and is too slow.
>
> Workers have traditionally relied on the government of the day establishing and then enforcing a set of regulations which constitute the minimum expected standards of safety performance in workplaces.

The regulations that have been promulgated by the Minister on October 1, 1996 do not reflect a consensus position and should not be read in such a way as to conclude that unions support the outcome contained in the proclaimed regulations.

Throughout the review process the three Trades and Labor Council of WA nominated Commissioners have argued for comprehensive regulation in hazardous work areas.

Their argument has been phrased as a claim to improved safety and health for all workers irrespective of union membership.

The demolition industry is an extremely hazardous industry that requires the demolition contractors to be competent and licensed. Competency based licensing should be capable of being withdrawn where poor performance is demonstrated.

Despite the results of the public comment phase expressing considerable support the proposed draft regulation 3.2 was deleted entirely. There is no longer a requirement for a record to be kept of the processes outlined in regulation 3.1.

The current 24 hour single day accident reporting system contained in the *Timber Industry Regulation* must be retained. (It is proposed to delete regulations specifically relating to the timber industry)

(a) According to reported figures there were 124 work related fatalities in the timber industry between 1946 and 1993; and

(b) In 1995 there was a statistically significant increase in the odds of being killed on the job with over 80 times more chance of you being killed in the timber industry when compared to all other industries.

The public comment draft regulations contained provisions for young workers in Part 7. A meeting of the Worksafe WA Commission removed Part 7 in its entirety. This removal was done without warning and without consultation between the tripartite parties on the Worksafe Commission.

The Post Introductory Safety and Health Representative Training regulation approved by the Worksafe WA Commission, without any further consultation with the Commission or all parties on the Regulation Review Advisory Committee, the regulation was gutted by the Minister basically rendering the regulation worthless.

There should be a mandatory requirement for induction and ongoing training for all employees with the potential for exposure to hazards in the workplace.

The number of hours worked should be quantified and limited by regulation to ensure that no employee at the workplace works such hours which may result in diminished capacity to function safely or cause ill effect.

There should be a regulation requiring the control of risks relating to violence in the workplace. This is a significant issue in the fields of education, health care workers, taxi industry and sectors of the retail trade.

A regulation on stress is required to ensure that, as far as is practicable, an employees workload, work conditions, hours of work and job content do not lead to a deterioration in the physical or mental health of that employee, and provision of an appropriate and effective critical incident response plan for dealing with critical risk situations and potential post traumatic effects.

There should be a regulatory requirement for effective measures to be taken to protect employees from the risk of infection from organisms in the workplace which could be transmitted in the course of their work. Hepatitis, HIV/AIDS, Legionnaires disease, Tuberculosis, Q Fever, Brucellosis, Leptospirosis and other Zoonotic diseases found in the meat industry are areas of concern.

Regulations should ensure that no employee at the workplace is exposed to whole body vibration at levels in excess of the "exposure limit" as defined in Australian Standard 2670 *Evaluation of human exposure to whole body vibration*.

There needs to be a regulatory requirement to identify and assess plant, materials and substances at the workplace for reproductive hazards and to ensure that employees are not exposed to those hazards.

Regulations should include a requirement to specifically protect employees from the adverse effects of electromagnetic radiation by ensuring employees are shielded, or distanced from the electromagnetic fields of emitting equipment.

> There needs to be regulations setting out the criteria, processes and procedures relating to the review of notices under (2.8) issued by Worksafe WA and the granting of exemptions under 2.12, 2.13 and 2.14 of the regulations.
>
> Enforcement of the General Duty of Care has deteriorated over the life of the Act raising concerns about the effectiveness of the regulatory package and the ability of the Worksafe WA Inspectorate to perform its statutory function.

That is an outline of the concerns of the Trades and Labor Council. They can be addressed only by the motion before us to disallow these regulations, or by at least asking the Minister to respond to the concerns raised. It has been demonstrated that many of the regulations are acceptable and welcome, but some need clarification from the Minister or his department.

Hon Alannah MacTiernan brought to the attention of the House those regulations relating to hazardous substances that could be exempt from part 5 of the regulations. She advised that a number of areas were of some concern to the TLC and the Opposition. The exemptions can apply to water treatment, sewage treatment, and airconditioning fluids to prevent legionnaire's disease. Some apply to animals, and not just veterinary use. Sections of part 5 are supposed to reflect the national health standards. I am led to believe that when the Minister was asked whether the regulations reflected the national health standards, he said they did. However, the opposite is the case. It may be a mistake in the drafting or wording of the regulations, but it needs to be addressed.

The Opposition's argument is that it seems to be the desire of the Minister, his department or WorkSafe to get away from the general thrust which was the subject of so much cooperation throughout the State. That cooperation involved endless meetings and a genuine desire to set up a workplace in this State of which we could be proud, and which would be a model for the rest of Australia. Work can also be done on the national models using these standards.

In my section of industry - rigging, scaffolding and working at heights - a matter of concern was brought to my attention by the proprietor of Roof Safe Pty Ltd, Don Hayman. It appears that it is against regulations for scaffolding to be provided to prevent someone falling from a height of 2 metres, but other regulations would allow people to fall from a height of 3 metres. That is a ludicrous situation. Members may be surprised that I am raising an issue brought to my attention by a manufacturer of roof safety specialist gear and mobile scaffolding, rather than my being a messenger from the Trades and Labor Council.

Hon A.J.G. MacTiernan: It shows that we are broadminded and speak to everyone.

Hon TOM HELM: We do indeed, and we are concerned about the matters raised. Although members of the Opposition consider themselves to be experts in their fields and they have hands on experience, they recognise that it is useful to speak to the people who provide the tools with which the work is done. Don Hayman is a safety expert who provides different types of scaffolding, and he wrote to Minister Kierath on 20 September 1996 as follows -

> Dear Sir
>
> A cursory examination of the proposed revision to the above regulations, in particular those regulations in *Division 5 - Prevention of Falls at Workplaces* 3.49; 3.50 and 3.55 has identified inaccuracies which detract from the general thrust of scaffolding safety. This observation is not being pedantic, however, by highlighting these issues it will allow the legislation to be interpreted by the regulatory authorities, and those practising the trade without costly and emotive dispute.
>
> The expression *a person in control of the workplace* would also indicate that a Worksafe Western Australia safety inspector, once on the work site, could be debated that they are in charge of the workplace.

That may need to be clarified. What is the role of the safety inspector on site vis a vis the role of the proprietor, the contractor or other persons? The letter continues -

> Reg 3.50 The use of industrial fall arrest systems should only be used in conjunction with edge protection to eliminate the pendulum effort. Is it the intention of these regulations to demand that industrial fall arrest systems are to be used when the roof area is fixed wire meshed?
>
> Reg 3.50 (g) refers to *competent person*, however, who is going to police what competency? As there is no trade qualification demands for persons already operating in the trade.

That issue was raised by Hon Alannah MacTiernan. The letter continues -

> This safety issue gathers importance when the regulations continue to demand that a competent person must produce evidence of regular inspections of the anchorage point. How is this inspection to be conducted and will Worksafe Western Australia demand commonality in the inspection reporting system?
>
> Reg 3.55 *Edge protection*: the proposed regulation 3.55 (b) correctly identifies that edge protection is required at a height of two metres in line with Australian Standard AS1657 and AS 1576 that both stipulate two metres, however, in 3.55 (c) the regulation deals with open edges and then raises the necessary protection to three metres. To ensure commonality with interpretation we recommend that the height remain at two metres for both sections of that regulation.
>
> Reg *3.55 Edge protection*: the proposed regulation 3.55 (b) also identifies a fixed platform which under AS 1567 and AS 1657 are flat working platforms, however, a tiled roof requires a minimum of seventeen degree (17') pitch which can be covered by a ceramic finished tile. These proposed regulations seem to ignore this important safety factor.
>
> Western Australia tile manufacturers have historically stipulated that any tiled roof over twenty-seven (27') will require a flat working platform around the perimeter of the building. This safety rationalisation has been omitted from the proposed legislative changes.
>
> Reg 3.57 *Working on or from fragile roofing*: greater interpretation will be required as the tiling industry recognises that ceramic tiles or any tile roof can be extremely fragile. An uninformed worker could be physically shredded by falling through tiles breaking under their weight. The size of the tile when broken would easily accommodate a leg to the thigh. This type of injury is well documented with workers' compensation files.
>
> Another safety issue for consideration is that the tiled roof at (17') pitch is an average height of 2.4 metres. A greater danger than the 2 metre scaffolding. The regulation fail to consider safe working practices on any sloping roof, whether tile or tin. A Roof under construction from the time that a first membrane is laid it then commences as a working platform. Once the roof is completed it not only provides shelter from elements - but is a working platform for maintenance.
>
> Summary: The above observations are offered in an attempt to eliminate legislative deficiency in the roofing industry. The greatest of which is differing interpretations by the inspectorate. Historically, on many occasions the industry has received differing interpretations of safety regulations by the same inspector. Such clarification of the regulations could reduce confrontation and ensure that self-assessment could be maintained.

He is suggesting of course that once the standards have been laid, everyone in the industry is equal; therefore, a quote given by one tile manufacturer will contain the same safety elements for every manufacturer.

Hon Graham Kierath replied -

> Thank you for your letter of 20 September 1996, with respect to the Occupational Health and Safety Regulations. From our previous discussions, you will be aware that I have personally negotiated with the industry with respect to edge protection regulations.
>
> It was clear to me at that time that I had two general options - if I imposed unacceptable conditions on the industry I could not ensure compliance, but if I proclaimed regulations which reflected my consultation with industry, there was a greater likelihood of cooperation.
>
> Nevertheless, I will be keeping these regulations under review, and will liaise with WorkSafe should any concerns arise as to the workability and effectiveness of the current regulations.

In other words, "Dear Don, I am copping out; I do not care what you say." This man makes his money by making workplaces safe for people to work. He is not a union man. He employs people to manufacture and install these products. He has been told by someone who should have an equal amount of interest in the industry, a conservative Minister, that it is no good his putting regulations together because he is not sure whether people will comply. One does not have to be a Rhodes Scholar to understand that the thrust of the letter from Don Hayman is that the Minister should lay down regulations that make sense; in other words, he should not say in the same document that it is not okay to fall from 2 metres, but it is okay to fall from 3 metres. He has suggested that the Minister should put something together that everybody understands, and that we should work from there. The regulations do not reflect that. They reflect more of a laissez-fair attitude; people will be able to judge themselves!

We should not be getting away from the stakeholders in the health and safety game setting the standards and allowing each contractor to do it. That is not fair. We all approach safety differently. We are all responsible for safety.

Sometimes some of us have responsibility for the safety of others. Just as, as a rigger, I was responsible for others' safety and had to ensure that what I did was safe so others would not be injured and killed, we in this Chamber have an inherent responsibility to lay down the standards we expect from others so it is not left to people claiming workers' compensation. We should allow the courts to prove that somebody was guilty of neglect. We should not alow the courts to prove that the duty of care provisions were not complied with. Don Hayman is asking, in the same way as the TLC asked, and without any collusion with the TLC, why we should not set the standards. As a rigger, I have always recognised that we must look at toe boards and safety rails and lifting anything over 2 metres. There are different ways of rigging things if they are being lifted less than 2 metres. Two metres is a specific standard; that is reasonable. People should not be exposed to falling materials. It is a painful for me, dealing with those sorts of things, particularly as I worked in the construction and demolition industry, to say that there are cowboys about the place. Whether they are employers or employees they must be dealt with.

Because Don Hayman was so keen on my getting this information, I would be remiss if I did not conclude by referring to the fax that he sent me from a meeting at the Albany Club on 15 October 1996. It was a meeting of tilers. The fax was written by J.C. Turner and states -

> At the meeting the new regulation for safe working at heights was discussed. During this discussion the use of pre fabricated scaffolds was brought up.
>
> One of the builders brought up the requirements for handrails on two storey houses.
>
> The question was if the scaffold was up to 2 meters below the gutter line was there a need to have a handrail at the gutter line. To which the reply was no. That if the person could only fall 2 meters onto the scaffold it was OK.

This is a WorkSafe person giving advice to a meeting in Albany! The fax continues -

> No mention was made about the fact that the width of the scaffolding was insufficient to catch the person falling or that most prefabricated scaffolding is not up to the current standards of top, mid rail & toe board. The fact that a person could impale themselves on the standards stick up etc.

I have some photographs which I will show to members later.

Sitting suspended from 6.00 to 7.30 pm

Hon TOM HELM: During the dinner suspension I had an opportunity to speak to Tony Cooke, Bob Bryant and Stephanie Mayman from the Trades and Labor Council who are concerned about safety and health matters. We talked in passing about the construction and demolition industries. One of the worst jobs in those industries is on a demolition site. I was surprised to learn that these regulations make no provision to license demolition contractors. Building contractors must pass an examination to be registered, and Australians expect builders to be aware of the safety aspects in their industry. However, demolition contractors are not required to be licensed. We have an informal structure that relates to the competence of the demolition contractor; however, that is not legally binding. The large number of accidents that occur on demolition sites reflect the current state of the industry.

The headline in *The West Australian* of Wednesday, 2 October is "Put safety first: unions". Buried in that report is a passage that states -

> Vince Diangelo, president of WA's Demolition Industry Association, said yesterday there were valid concerns about safety in the industry.
>
> And the new regulations did not go far enough because they related only to commercial jobs and had no bearing on the housing industry, which had the worst safety problems.
>
> The industry had pushed for licensing over the past four years but did not have the support of WorkSafe WA.

The Minister should explain why he has rejected the advice of the unions and industry and has not put regulations in place that will require the industry to be licensed.

Hon Max Evans: I have the answer to the licensing question.

Hon Bob Thomas: It will be the first time.

Hon TOM HELM: The article continues -

> Another demolition contractor, Steve Marshall, said it was hard for good operators to spend money on public indemnity insurance and workplace safety because they had to compete with ridiculously low bids from unscrupulous competitors.

My argument is that those people who bid for jobs without paying attention to safety will put in a lower price than their competitors who do pay attention to safety and the lowest bid will win the contract. We must have a level playing field.

Another matter that is close to my heart is the safety aspect of noise levels. Members will recall the long debate in this place about reducing the decibel exposure from 90 decibel readings on A scale to 85 dBA. The former Minister for Industrial Relations, Yvonne Henderson, passed a law to reduce the acceptable level to 85 dBA. However, that was increased to 90 dBA after the election of a new Government in 1993. The commissioner has agreed that the level should now be returned to 85 dBA. Every other State in Australia accepts that exposure to 85 dBA over eight hours is dangerous, although it is accepted that the industry should gear up to engineer noise out of the workplace. These regulations will reduce noise levels to 85 dBA over three years, not 18 months as agreed. Instead of March 1998 being the target date, it has been extended to 1999. In the meantime all the machinery that does not meet the standard set for the rest of Australia can be used in Western Australia. The hearing of workers in Western Australia will be severely impaired because WA will become a dumping ground for machinery that is substandard in the rest of Australia. That is not good enough and the Minister should look at that.

Hon Max Evans: I have an answer to that. I have the TLC submission that you are reading out.

Hon TOM HELM: By gum, the Minister for Finance has loads of answers! They need to go on record. That is the whole point of the disallowance motion. Hon Alannah MacTiernan has used this motion to canvass these issues, so they can be answered.

I hope the Minister has a response to part 5, "Hazardous Substances", to which I referred prior to the dinner suspension. The Opposition proposes that the regulation incorporate a form of words from the National Health and Medical Research Council guidelines. The current wording of the regulation does the opposite to that which is required by the national model. People in Western Australia can be exposed to hazards that the national standard states are unacceptable. For example, people can sell nicotine in the form of cigarettes, but they cannot be exposed to the effects of passive smoking. These regulations make it possible for people in this State to be exposed in that way.

The Opposition is concerned that the problems with these regulations reflect a lack of communication and cooperation between the three stakeholders. Members in this place have been lobbied by representatives of employers and employees - the TLC, the Western Australian Farmers Federation and other industries. That is a pity.

The noise regulation was first discussed back in 1983. The mining industry in this State, of its own volition, agreed that workers should be exposed to only 85 dBA. Research indicates that the appropriate noise level for this State, as supported by standards in the rest of Australia, is 85 dBA over eight hours' exposure. However, 12-hour shifts are the norm in our industry, so people will be exposed to 85 dBA over 12 hours. Obviously, research and evidence is available indicating that certain things should not be done. The regulations reflect a cavalier attitude to the evidence before us. Worse than that, although these people have been gathering evidence for some time - I do not hide from the fact that taxpayers paid a substantial sum to acquire the evidence - and have put the regulations out for public comment, it appears that the public comment has not been listened to; it has almost been laughed at, or at least no action has been taken on that advice.

I will be interested to hear what the Minister says in that regard. The TLC representatives to whom I referred earlier have been involved with these issues for a long time, and they must be recognised as experts in the field of health and safety. Other people have more knowledge of individual cases, but those people, paid by our union dues and by state and federal government contributions, have collected the evidence, both scientific and anecdotal.

Someone in this place will no doubt say, "If we were ultra-safe, we would never do anything." That is perfectly correct. However, some practical compromise must be made in this area. I do not know the underground mining industry, but I know of nothing more dangerous than the demolition industry. Of course, construction is dangerous if one is working at height on a steel girder. Frankly, I am not sure I would want to work in the construction industry any more because the safety requirements are very rigorous. In the past, the industry had an element of one against the elements and activities could be construed as dangerous. In the past, we did not know what we were doing regarding safety. It was an exciting and dangerous job which everybody enjoyed performing; with all the restrictions in place today, I am not sure that people enjoy the job. However, we have a responsibility to reduce the number of deaths and people badly injured in these industries. I do not want to give the impression that the regulations do not

reflect that ambition, but the House and the Minister must understand that the Opposition believes that the regulations do not reflect the available evidence as it relates to safety standards.

I was not going to mention this point; however, it is right and proper to do so. I know that the Chairman of the Joint Standing Committee on Delegated Legislation will mention this matter, but the committee's role is to look at regulations and how they fit into its terms of reference. With some reluctance, accepting that the consultation process was a drawn out method of discovering whether our terms of reference have been offended, the committee had a problem in using the disallowance provisions available to it. It is a matter of a committee member knowing in his or her heart that something is missing, and not being able to do much about the problem as it relates to the committee's terms of reference.

I hope I have been able to explain to the House that it was not intended not to allow these regulations. We can only disallow them all, and pinpoint the regulations which do not reflect the industry standards and how we should best proceed. I hope the Minister for Finance will provide an acceptable explanation of why the regulations do not reflect those points. Will the Minister say, "The member is right"? As the Delegated Legislation Committee has learnt over time, Ministers and public servants come back and say, "We will change them to do certain things." Without fuss, the regulations are then changed to reflect the committee's wishes. In this case, I hope the Minister will come back and produce regulations which reflect the work carried out and the concerns expressed about them.

HON B.K. DONALDSON (Agricultural) [7.46 pm]: I do not intend to speak at great length. The issues have been covered by Hon Alannah MacTiernan and Hon Tom Helm, and no doubt Hon Kim Chance will comment on the concerns which the Trades and Labor Council also expressed to the Government. Hon Alannah MacTiernan mentioned that the Joint Standing Committee on Delegated Legislation could have moved a protective disallowance motion. Primarily, that is not done because at the stage of that determination we had no indication that the committee felt anything was wrong under the terms of reference. When one has a comprehensive package of regulation, such as that dealing with the Occupational Health and Safety Regulations 1996, it takes a great deal of time for the research officers to scrutinise the regulations one by one to ensure that they fall within the terms of reference under which the committee operates. I have been informed that after undertaking the due process, there is certainly no concern for the committee in that regard. I cannot make that statement for sure until Thursday morning when the committee meets; however, I have been informed that that is likely to be the case.

The other group with some concerns was the WA Farmers Federation. We have met with that group on a number of occasions and have been kept well informed of the progress of negotiations between the Minister and the WorkSafe Commissioner on some of those changes. I was informed yesterday by the General President of the WA Farmers Federation, Mr Kevin McMenemy, that early in the submission process the federation had a good deal of concern about some 43 regulations. The number of regulations about which the federation was concerned reduced to 13, and Mr McMenemy indicated to me yesterday afternoon that the federation now had concerns about only four regulations. Like everybody in the House, on both sides, and also reflected in the TLC's position, we certainly do not want to see the baby thrown out with the bathwater, as Hon Tom Helm said.

The committee met 60 times between May 1992 and December 1995. It released for public comment on 19 December 1995 a package of draft regulations, and nine codes of practice supporting the draft regulations. That process closed on 15 March 1996. The review committee could not reach consensus on a number of those regulations. A period was made available during which submissions could be made, and I understand that more than 700 printed copies of the draft regulation were distributed by WorkSafe Western Australia.

The 85 written submissions commenting on the draft regulations were considered by the committee over another 19 meetings. A considerable amount of time was spent on consultation. Very extensive consultation also took place in the development of the new Local Government Act. A large package of regulations was promulgated. There will always be dissent about some regulations, but most of the comments made in this debate relate to regulations that should have been included. Those comments have been documented for the Minister and the Government to consider.

We have seen the development of the farm safe program, which involves education. Complacency is something we can never eliminate from the workplace. We all become very familiar with the plant we are operating and the conditions in which we are working. Many accidents in the workplace can be attributed to complacency. Recently a drilling rig operator did maintenance on a rig while it was running. He opened a cage designed for easy access when the machine is turned off, with dire results. The operator, who had been operating for a long time, thought he would take a short cut and consequently an accident occurred.

One concern repeatedly raised by the Western Australian Farmers Federation and many farmers related to the use of protective clothing and footwear in the shearing industry. No regulations stipulate the type of clothing that should be worn in that industry. Many shearers work in moccasins - they find them easier on their legs and far safer - and

some work in bare feet, but it is well known that very few foot injuries occur in the shearing industry. While a farmer can point out to a shearing contractor that his employees might be better off if they were to wear more appropriate footwear, moccasins have been very much part of the shearing industry. Steel capped boots have a lot of relevance in a large industry but not much in the shearing sheds.

Hon Max Evans: How do the regulations stand on that issue?

Hon B.K. DONALDSON: There is no code of practice about the type of protective clothing and footwear that should be worn in the shearing industry.

Hon Murray Montgomery: Would it not be fair to say that if a shearer were told he should not wear moccasins he would probably take the shed out and the farmer would not get his sheep shorn?

Hon B.K. DONALDSON: That is the concern, but it will never come to that. Many of the 1988 draft regulations have been transferred to the 1996 legislation. As a farmer, I have been employing staff since 1988 without really understanding those regulations. We operated very safely -

Hon Graham Edwards: That is a tribute to your wife and her practices.

Hon B.K. DONALDSON: At the end of the day, we all try to ensure that we provide a safe workplace, and no-one in this House would disagree.

The Minister has changed only two of the regulations recommended by the advisory committee. That suggests that, after extensive consultation, most of them must be right. Taking into account the Western Australian Farmers Federation's viewpoint as of yesterday, after much consultation, I will not support the disallowance motion.

HON KIM CHANCE (Agricultural - Leader of the Opposition) [7.55 pm]: I support the comments made by Hon Alannah MacTiernan about the blatant politicisation to which this matter has been subjected. I have refrained from making any comment, public or private, on this matter earlier simply because it was inappropriate at that stage and because Hon Alannah MacTiernan was quite able to look after herself. Mr Bartholomaeus has no right to make the comments he did about Hon Alannah MacTiernan's actions in moving the disallowance and the Minister should not have defended his actions.

Lest I be accused of attempting to censor Mr Bartholomaeus, I want to make some issues very clear. If MrBartholomaeus wants to make a comment as a private citizen about anything that happens in this Parliament, as far as I am concerned he is most welcome to do so. If he wants to make a comment as a CEO about what is happening in this place, again, he is welcome to do so if he believes that actions in this Parliament are adversely affecting the way in which he must perform his job. However, that comment must be limited to the precise actions and effect it will have on the way he does his work; it must not extend to accusations that a member of this place is using cheap politics in order to score a point. As far as I am concerned, he is not entitled to make comments as a political commentator from the positiont he occupies, because that is making unfair use of his public service position.

Hon Alannah MacTiernan has already said that it was my intention to move the disallowance of these regulations in any case and for reasons entirely unconnected with the issues which have been raised by my colleagues and which are of interest to the Trades and Labour Council. That is a fact: I did advise the member that it was my intention to move disallowance on the basis of the matters that had been raised with me by the Western Australian Farmers Federation. I advised Hon Alannah MacTiernan of my intention long before she gave notice of the disallowance motion. My intention was based on the very serious reservations which the Western Australian Farmers Federation had raised and which have been referred to by Hon Bruce Donaldson and other members.

I am left now to wonder - because we will never know the answer - whether, if I had given notice of disallowance rather than Hon Alannah MacTiernan, Mr Bartholomaeus would have made the same statement; that is, whether he would have accused me and, by implication, the Western Australian Farmers Federation, on whose behalf I would have been acting, of politicising the effect of the regulations. If he had not done that, if his reaction had been different, it is fair to say that his action was aimed at doing nothing less than the maximum political damage to Hon Alannah MacTiernan that he could. It is not often that I name public servants in this place in this way, and I make no apology to Mr Bartholomaeus for doing so. I believe he put his reputation on the line when he took that action. It was a disgraceful action, one that the Minister should have condemned immediately. He failed to do that and, as a result, Hon Graham Kierath is equally as guilty as Mr Bartholomaeus.

This disallowance motion was justified at the time, on a number of grounds. It certainly is not the Opposition's intention to sprag the wheel, so to speak, so as to affect the proper operation of the Act. Members on this side of the House have acknowledged that a great deal of very good work has gone into the review process. However, I need to deal with some issues that have been raised by the Western Australian Farmers Federation. I support the comments of Hon Bruce Donaldson. The advice that I received from the Farmers Federation late this morning was very much

in line with his comments. They were basically that if the disallowance motion did go ahead and the default position occurred - that is, the old regulations became effective - WAFF's position would not be a great deal better.

One of the things that has been said is slightly inaccurate. I do not think Hon Bruce Donaldson said that this evening, but the comment has been made that most of the problems of the Farmers Federation are problems with the Act rather than the regulations. That is not strictly true, because only one of the problems is in the Act and also in the regulations. Basically, only four of the considerable number of difficulties that the Farmers Federation has with the regulations are contained in the new regulations. The majority of the problems already exist in the old regulations. This is a matter that the Farmers Federation needs to sort out. The Farmers Federation's difficulties have arisen because the regulations have not been binding upon it simply because they have not been policed in the past.

Hon Max Evans: Hon Bruce Donaldson confirmed that.

Hon KIM CHANCE: Quite.

With respect to the reasons that the regulations have caused the Farmers Federation some difficulty, there has been a considerable amount of consultation, none of which has led me to believe, until probably the last four or five days, that this disallowance motion should not go ahead. The consultation has been widespread and it has run entirely parallel with the consultation we have had with the Trades and Labor Council of Western Australia. Indeed, there has been consultation between the Trades and Labor Council and the Western Australian Farmers Federation, but the Farmers Federation has already consulted Hon Geoff Gallop, the Minister or the Minister's representatives, me, on a number of occasions, and a number of other people in order to try to come to terms with what it regards as the effect of the Act and the regulations.

Hon Max Evans: It seems to me its main problem is a misunderstanding of the old and new regulations and the Act.

Hon KIM CHANCE: No. I thought that might have been the case, and in some instances the Minister might be right, but if I could put the regulations into two pigeonholes, the first pigeonhole is that the application of the regulations to farming creates a difficulty for farmers, for the reasons that Hon Bruce Donaldson has outlined,. The second pigeonhole is that the Farmers Federation has brought to our attention that while farmers have been separated from the application of the regulations, albeit in a de facto sense, there has similarly been no attempt to make the regulations fit the needs of farmers, and the regulations have been drafted essentially without any consultation with farmers. When we try to apply to other workplaces regulations which are designed for workshop or building site conditions, it is inevitable that those regulations will look pretty silly and will cause significant problems. The real reasons fit broadly into those two pigeonholes. The Farmers Federation still finds some real difficulty with only four of the new regulations. Some of those are not major, but some are quite serious.

The first difficulty fits into part 3.59 and relates to electrical installations. The regulations require that power plugs that are used in workplaces be either sealed or transparent. The difficulty of the Farmers Federation is that when farmers use transparent plugs outside, which is generally where farm workshop equipment ends up being used, because a lot of the equipment is far too big to fit into the average workshop, the sun gets at the transparent plastic and within a few days the point is longer transparent because of the effect of ultraviolet light, so a frayed wire is not visible. Its first argument was that plugs which are neither transparent nor sealed, rather than be prohibited under the Occupational Safety and Health Regulations, should be banned from sale because they are unsafe, and they would eventually disappear from the market. The answer they received to that cogent argument is that they are still approved for home use. It is fair to ask: If it is safe to use a plug of that nature with a hair dryer on a wet floor in a bathroom, why is it not safe to use that plug in a farm workshop to operate a drill? If they are not safe, they are not safe and should not be sold, and we should apply the Australian Standard. If the Australian Standard is not adequate, let us change the Australian Standard, or at least begin lobbying to have it changed. It is a small argument, but it is entirely fair.

The other matter which is rather more important relates to part 3.64 of the regulations, which provides that overhead cables shall be a minimum height of 6 metres above the ground. That is a difficult regulation to enforce. We are all familiar with the amount of additional cable sag which occurs in very hot weather as metal expands. Whether 6 metres is the appropriate height, I do not know, but this matter needs to be looked at because the cost of complying with that regulation may be very high.

Another concern of the Farmers Federation was that the regulations propose that work records must be kept for 30 years. That is a ridiculously long period. There are intergenerational changes in management and great physical difficulties in maintaining records for that length of time. What would inevitably happen is that they would be put into a plastic bag, or a cardboard box, at best, and stacked in the corner of a shed where the rats would promptly nest in them -

Hon Max Evans: Food for the white ants!

Hon KIM CHANCE: It would be impossible to find them after four years, let alone 30. Taxation records must be maintained for seven years. That is difficult enough, but it is probably a more reasonable level of requirement. I may be wrong, but at least we should be advised why 30 years is seen to be an appropriate period.

Hon Max Evans: What number is that one?

Hon KIM CHANCE: I am sorry, I do not have the number. The Western Australian Farmers Federation is concerned about that part of the Act relating to the duties of a person supplying plant. All that is required is a quite minor amendment spelling out what is a supplier of plant. Is a supplier, for example, John Deere Ltd, or is it Fred Bloggs, the ex-farmer who is having a clearing sale? A machine can be bought from the John Deere corporation in Illinois, or from a clearing sale. What constitutes a supplier? It is not a problem, but a minor deficiency in the Act that needs to be spelt out a little.

Similarly, to go back to the new regulations, regulation 3.21 - I think - requires the location of services to be shown. This provision was in the old regulations, as I understand it; however, it has changed slightly in the new regulations to include the need for a diagram. In itself, that is not a huge difficulty, but it can create problems for owners of farms of very significant size to draw up a diagram of that nature.

Hon Max Evans: In the metropolitan area it can be difficult, too.

Hon KIM CHANCE: Yes. However, drawing a diagram including all of the services that exist on a 70 000 acre property involves considerable difficulty. What would be more practical and sensible - it would probably give employees a great deal more safety - is a requirement that before any excavation takes place on a property, the owner of the property must inform the employee or the operator of the services that exist in the area. Again, it is not for me to suggest that; it is a matter for the Government and the Farmers Federation to resolve.

I come now to a question of the degree to which farmers, up to now, have not been covered by any effective regulation under the Act. We all know the regulations have always applied, but the fact is that in practice they have never been applied to farmers in any real sense. That all changed a couple of years ago as a result of a fatal accident in Corrigin, when a tractor, which was being repaired and had one side of its main drive wheels removed, fell from the supporting structure and tragically killed an employee. WorkSafe Western Australia prosecuted that farmer successfully and as a result a very substantial fine was levied against the farmer for unsafe work practices.

It came as something of a culture shock for farmers because, although they should have expected this would occur at some time, when farmers challenged WorkSafe to show them what safe practice was, WorkSafe, for many good reasons, was unable to demonstrate that. Its argument - it is valid - is that its task is to enforce safe practice, not demonstrate it. Members can imagine how that argument left farmers feeling: On one hand, one farmer was being prosecuted after he thought he had done everything right and, on the other, when other farmers - not on his behalf, but because they were concerned about their own practices - asked what was safe practice, it was not possible for that to be demonstrated to them.

It is a happy outcome of the whole affair that the Farmers Federation stepped in and, under the supervision of WorkSafe, organised a number of demonstrations showing safe practice, during which different aspects that did not meet what WorkSafe deemed to be safe practices could be pointed out. It has been a valuable lesson. I understand that the most recent of those demonstrations was held today or yesterday in Merredin. I know a lot of demonstrations have been held. There has been a good outcome.

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! I am sorry to interrupt the member, but at any time six private conversations are being conducted around the floor of the Chamber. It is rather disturbing to hear that undercurrent, and is contrary to the procedures of the House. I ask members to conduct their conversations elsewhere.

Hon KIM CHANCE: I am most appreciative, Mr Deputy President. As I was saying, the Corrigin incident was simply the tip of the iceberg. We are aware of the inordinately high number of serious and fatal accidents that occur in farming. Quite properly, the regulations of the Occupational Safety and Health Act are to apply in the farming industry. I hope an outcome of that wider application will be that we will see a reduction, or some form of amelioration, in those serious and fatal accidents in that industry.

Hon Max Evans: That should have an impact on workers' compensation.

Hon KIM CHANCE: Yes, although workers' compensation premiums are surprisingly low. Although farm fatality rates are high, the general farm accident rate is not too high. We all know it is cheaper to kill somebody than it is to seriously injure that person - in terms of workers' compensation premiums. Workers' compensation premiums on farms are not high by comparison with those of other industries such as butchering and the metal trades. Leaving that aside, it is not an excuse for us not to make the maximum effort to improve conditions.

One outcome will be that we will need to have a pretty serious rethink of how they apply in workplaces that are not the typical establishments for which the original regulations were designed. That includes farms and pastoral properties, but it may also include a wider range of workplaces. For example, I am in some doubt as to the applicability of some regulations in the fishing industry. I cannot see that they were drawn up with the work deck of a fishing boat in mind; they were drawn up more for workshops, building sites and, to a much lesser degree, demolition sites. I encourage the further consultation which I believe will occur between WorkSafe and the farming industry's representatives generally. At the same time, I urge a degree of goodwill in these discussions. I am sure from the point of view of both WorkSafe and the farm lobby groups - the Farmers Federation, the Rural Action Movement, and the Pastoralists and Grazers Association of WA - that goodwill will be forthcoming.

I am not sure whether the representative Minister in this place has been briefed on the discussions between the Minister for Labour Relations and the Farmers Federation representatives; however, in the context of this debate I would like to hear whether the Government is prepared to enter into those negotiations with the farmers, in particular, fairly urgently. I am not insisting that it be done within the next couple of months, but that it be done with a commitment to fixing the problems that exist and, hopefully, taking away the imperative for people like me to seek to move a disallowance of regulations based on what has been represented to me by farmers, in particular, or any other group.

Hon Max Evans: The Minister picked it up at the start of 1991-92. The union pulled out of it then. It has gone on for five years, and now we are trying to get some finality. It might not be perfect, but it is better than we had before.

Hon KIM CHANCE: I am happy with that, and that is why the Opposition is taking the position it is at this stage. I would like to see an undertaking from the Government that it will commit to addressing those areas in which the regulations are inappropriate, at least from where I sit, when applied to workplaces of that kind.

HON J.A. SCOTT (South Metropolitan) [8.20 pm]: Given that I have heard one side of the story and I am interested to hear the other, I am concerned at the process of these regulations being put before the House. I am not saying that there has not been consultation or input from the key players, but important recommendations are being ignored once again and the approach is being changed at the last minute, to suit, one can only assume, certain vested interests. I have read the correspondence sent to me by the Trades and Labor Council between the Minister, his chief executive officer, Mr Bartholomaeus, and the TLC. One can assume from reading that correspondence only that a confrontationist approach is being taken by both the Minister and his CEO - rather a winner take all position instead of an easily achievable and conciliatory approach. I would like to hear from the Minister for Finance what the problems are in negotiating such an outcome rather than to see the Government stirring the pot by pushing ahead.

Hon Max Evans: We're not stirring the pot; we've just brought it to a head. We are trying to solve a problem. It is up to this stage. You are lucky to have it that far.

Hon J.A. SCOTT: I understand that a lot of improvements have been made and that it would be a terrible shame for these two regulations to be disallowed. However, after considerable debate and considerable time, a position was arrived at with which all the players involved were happy. That position has been overturned since those recommendations were passed. I often wonder why members have a chance to amend a Bill that a Minister puts before the House, but not regulations. It seems silly that we cannot change something put forward by public servants, but we can change something that is put forward by Ministers. I know that that is a rule of this place and that I cannot do anything about it, but it should be considered, because we could flesh out and debate those problems and arrive at a consensus, given that some members on the other side of the House also have problems with these regulations. We could then push through the regulations without a problem rather than there being an all or nothing situation as exists at the moment.

I have read the Australian Nursing Federation's letter on radioactive substances and substances used in connection with the prevention, diagnosis, curing or alleviation of disease, ailment, defect or injury in human beings or animals, and I also see a substance that may be hazardous only by reason of its containing a disease causing organism. The nursing community confronts those sorts of risks constantly in its work. For the life of me I cannot see why in any sensible regulations those sorts of things are not catered for. Hazardous materials are now recognised by the most recent research to cause six times as many deaths in the workplace as physical injuries, and I assume that the non-life taking diseases that are caused by hazardous materials correspondingly cause a higher level of permanent injuries.

I would like to hear from the Minister in this place why those concerns of the TLC cannot be addressed and why those hazardous materials as outlined by the nursing federation cannot also be included in these regulations and brought back to this place, therefore ensuring a much better set of regulations.

HON SAM PIANTADOSI (North Metropolitan) [8.25 pm]: I am concerned about the letter that was circulated by the Australian Nursing Federation and also about radioactive substances that nurses and other hospital staff come into

contact with daily. Time and time again instances have occurred in which workers were not completely informed and protected from chemicals and gases and a number of other factors.

Hon J.A. Scott: Or trained.

Hon SAM PIANTADOSI: Yes. I raise one example that occurred with radioactive waste disposal at Sir Charles Gairdner Hospital 16 years ago. The waste was dumped, untreated, into the sewer.

Hon Max Evans: Not with all those cockroaches?

Hon SAM PIANTADOSI: I assure Hon Max Evans that it did not take care of even the cockroaches.

Hon Mark Nevill: The cockroaches have reinvaded the sewer since they got into government.

Hon SAM PIANTADOSI: When I was in the water supply union I extended an invitation to members of the then Court Government for a tour of the sewers, but they declined. At the time no safeguards were in place for the handling of radioactive waste. I was concerned at what was occurring. The waste was dropped down a sink - out of sight, out of mind. No procedure existed for safe practice. I expected that the medical and health industries would be at the fore in ensuring the safe handling of radioactive waste; however, that is not occurring. Past experience has proved that that has not occurred. The expression of concern by the nursing federation indicates that a significant risk exists of that practice recurring.

We must allay the fears of workers in the industry because past practice was to dispose of such material in any way, as long as it was disposed of; however, no consideration was given to the workers. That is not to say that the practice continues, but concern has been expressed by workers in the industry because they firmly believe that even though they work in the health industry they have not received salient information about certain events or about safeguards to protect them from radioactive substances. Both the workers in the industry and those who avail themselves of the industry must be warned of the dangers prior to entering that environment. I look forward to hearing the Minister's comments regarding any protective mechanisms and safeguards that the Government proposes for people in the industry.

Debate adjourned, on motion by Hon Max Evans (Minister for Finance).

STRATA TITLES AMENDMENT BILL

SETTLEMENT AGENTS AMENDMENT BILL

Cognate Debate

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

That leave be granted for the Bills to be discussed cognately through all stages.

Second Readings

Resumed from 30 October.

HON MARK NEVILL (Mining and Pastoral) [8.32 pm]: The Opposition supports the Strata Titles Amendment Bill. This is an interim measure which addresses some of the issues which have arisen out of the amendments which were proclaimed in April this year. However, some outstanding matters have not been addressed by legislation. Having read the consolidated Act with amendments, it is clear to me that when an Act such as the Strata Titles Act is changed it inevitably creates more problems. In this case, people will be able to have survey strata lots and, unless restrictive covenants are put in place, those people will be able to construct buildings without approval from a next door neighbour even though the neighbour's view may be affected. Problems will occur because this Act is so complex that people will not know their rights no matter how much information is made public. It is not until a problem confronts people that they focus on the contents of the Act. One could say that with every action there is an opposite but hopefully not equal reaction.

Hon Derrick Tomlinson: According to Mr Newton.

Hon MARK NEVILL: Yes, it is the fifth law of gravity.

The aim of the 1995 amendment was to simplify the Act, but the Act is now twice as thick; in some ways it is more simple, but it is a much bigger tome now than it was prior to the 1995 amendments. When last year's amending Bill was proclaimed in April it caused great anguish among strata title owners. Many of the people affected are senior citizens, and many other people who live in strata title properties are not well off. Therefore, small unanticipated changes to their budget could cause great distress. Many people going through that period wished they had never

bought a strata title property; many wanted to get out because they had lost confidence in their investment. Because of the problems being aired in the Press, people thought perhaps their property values would decrease. They were the real concerns, and it was fairly clear to me and to other members of the Opposition that this was not a situation that should be exploited politically - although I can guarantee it could have been easily done because there was so much stress and anguish in the community.

Unfortunately, I became shadow Minister within a fortnight of the earlier amendments being proclaimed. Frankly, I did not know what had hit me when the issue started being aired. I was not very closely involved in the 1995 amending Act. Members cannot follow closely every Bill that goes through this House. We tend to cover a large proportion of Bills, but we do not really focus our minds on others. I took a great interest in the 1995 amendments. I had some background in the Act, but it was a sharp learning curve for me. It was obvious that whatever the merits of the legislation that passed through this House last year, the education program was not really adequate because people did not understand what the changes entailed or some of the existing requirements under the Act. It was also a revelation to find how uninformed were real estate agents and insurers. I daresay that many of those people, particularly real estate agents, are still uninformed about the Strata Titles Act. I cannot remember the person's name, but I have met only one real estate agent who has been able to convince me that he knows more about the Act than I do! I expected those professionals to be conversant with the Act but that was not the case. Real estate agents had been selling strata title properties to people without having a clue about what they were selling. People who bought the properties thought they had exclusive ownership of the properties. Those two professions have let down the public, considering their level of knowledge and the competency of advice they have given to the public.

I found it very difficult to advise people. I received an avalanche of telephone calls and letters, many of which had been redirected from the offices of other members of Parliament. The advice given by the Department of Land Administration was, first, for people to look at the strata plan involved. Therefore, I began looking at some strata plans. I was familiar with the pre-1985 strata plans because of my involvement with a strata title property. However, the strata title plans were equally confusing. There were three different generations of strata plans, or broader groups, which had many variations among them. It was not clear what was common property. The strata statements on the plans were unintelligible to lawyers to whom I showed them. In many cases reading the strata statement and looking at the strata plan was absolutely no use to me. Surveyors to whom I spoke seemed to know more about strata plans and the Strata Titles Act than the lawyers. I found the surveying profession of great assistance in explaining the new amendments and bringing me up to date with the Act as amended by the 1995 Bill.

Within a fortnight of the amendments being proclaimed I moved an urgency motion in this House to draw the Government's attention to the problem. I am pretty sure that at that stage the Government was also rapidly becoming aware of the problems. I later followed that up with a motion to disallow the regulations. Although that motion would not have helped the situation, it focused attention on the issue and it brought to bear some political pressure on the Government to introduce an amending Bill before the end of the year.

If they have never been in government, Oppositions are blissfully unaware of the difficulties in getting legislation into the Parliament. One of the reasons for moving those urgency and disallowance motions was to give the Minister for Lands some extra clout in Cabinet in order to have the problems urgently considered. I think the urgency motion was moved on 2 May and the disallowance motion was debated on 22 May. The Opposition took a constructive role in that debate and identified most, if not all, the issues. They included problems with joint insurance, what was common property, some companies not being able to provide workers' compensation insurance and effecting all the property insurance with a range of insurance companies, the lack of information available on the Strata Titles Act and the need for a fairly comprehensive plain English guide to strata titles. New South Wales has a guide titled "Strata Living" and Ian Laird from John Dethridge and Co of Fremantle has "The Plain English Guide to the Rights and Responsibilities of Owners of Strata Title Properties", which although a bit out of date is a good guide. Something between those two, or one of each, would be useful. Many people live in strata title properties, and this style of property will become more popular simply because it is a cheaper way of owning a residence.

The Opposition pointed out the need for mechanisms to convert strata titled properties to exclusive ownership, particularly detached duplexes and units with separate entrances. We also suggested a mechanism for converting common property to exclusive use. I thought it was an elegant solution. I was a bit disappointed that the Government did not adopt that solution. I quote from the disallowance motion in the *Hansard* of 22 May. As I said, it relates to converting common property to exclusive use so that owners have ownership of the whole property, and walls are not jointly owned by other members of the strata group -

> We can find a solution to the problem, but I am not sure whether the Government is doing anything about it. I have discussed strata plans with some surveyors. We need to reword the statement on the strata plan where we have two separate dwellings; that is, the dwellings are detached, say, on a duplex block. Under the post 1985 changes the outer walls were common property. If we can delete the words "except where

covered" and amend the description to say that the boundaries of the building are the external surfaces rather than "the external surfaces of the walls except where covered" -

Hon Derrick Tomlinson: Except where covered?

Hon MARK NEVILL: Yes.

- the external boundaries of the building would be the edges of the gutters. There would not be a problem if they were close to the lot boundaries; they would not need to be offset.

In other words they could overhang and that would not be a problem. To continue -

- That would define the outside of the building as not the walls but the outside gutters and roof. If that became the description of the building and we deleted the words "except where covered" it would mean the person would own the building totally, and the external area to the lot boundary could be described as being owned totally. By that mechanism the common ownership of the walls could be resolved.

I admit that that is a rather obtuse way of getting the message across, but that turned out to be the basis of converting common property to exclusive ownership. Proposed section 3AB(1) reads -

Where this section applies the boundaries of any cubic space referred to in paragraph (a) of the definition of "floor plan" in section 3(1) are, regardless of the exact location of the lines referred to in that paragraph -

(a) the external surfaces of the building occupying the area represented on that floor plan . . .

The changes also include, as part of property exclusively owned, hot water systems and other attachments to the outside of the building. That has resolved that problem.

The other problem we identified was the need for a consolidated Act. It was very difficult during that period to give people advice when the amending Bill was almost as big as, if not bigger than, the existing Act. It was a three day cut and paste job to put them together. This time the Minister has provided one document - the Strata Titles Act - which includes the proposed amendments with the words to be added and deleted. That makes it very easy to read the amendments. I have not found any glaring problems with the amendments. The people at the Department of Land Administration have done a very good job and, bearing in mind the extent of the amendments, they have obviously worked very hard to get the Bill to this stage. It is only an interim measure and it does not cover all the areas that need to be addressed. This Bill deals only with single tier strata title properties with between two and five lots. It addresses the issue of insurance. People will now be able to choose individual insurance policies, and companies will be able to offer workers' compensation insurance through an agency arrangement for approved insurers. These amendments seem to be entirely sensible.

On the ownership issue, the Bill contains a number of provisions to minimise common property and it provides mechanisms for the conversion of property. Four options are outlined in the Bill and the circumstances will determine the most suitable option. There is provision for an automatic merger of buildings within a six month period, if the owners have not already amalgamated or if there is no objection. There is provision for merger by resolution of buildings, merger by resolution of lands and, finally, conversion to survey strata plan which will be a relatively easy and simple process. The costs have been reduced and I understand they will range between $200 and $600, depending on the complexity of the situation. The fencing provisions are the same as those contained in the Dividing Fences Act.

Considering the time available to DOLA staff to complete this legislation, the Bill has been well drafted. I compliment them on the work they have done, and I also compliment the Minister's officer from DOLA, Simon Proud, whom I found most helpful and obliging during the stressful period between May and August.

I have not covered those issues the Bill does not address, such as conversion to green title. I am not sure of the Government's intent in that area. The information issue has also not been addressed. The Opposition has made some suggestions in that area. The Opposition identified early in the piece some of the problems with the strata titles referee, in that the decisions of that referee could not be enforced and it would be an expensive process for people without much money to enforce them in the Local Court. The Opposition considered the New South Wales legislation, under which a strata titles commissioner is appointed. It has committed itself to introducing that measure next year should the Labor Party win the election.

Hon Derrick Tomlinson: What is the function of that commissioner?

Hon MARK NEVILL: Mainly to provide information on the operation of the Strata Titles Act. This person may work only one, two or three days a week. I do not envisage that it would be a full time position.

Hon Derrick Tomlinson: Is it the same as a referee under the Western Australian Act?

Hon MARK NEVILL: No, because the New South Wales strata titles commissioner can enforce judgments. The other duties I have listed for the commissioner are: To provide information on ways to overcome disputes; provide a plain English guide to the Act and information on the different ways disputes can be resolved; and to publish relevant reports on the operation of the Act. The commissioner can also investigate complaints and provide a conciliation or mediation service. That is a general outline. It would not be desirable for such a body to deal with every dispute and every strata title property. A filtering process would be required to ensure the commissioner dealt only with the more serious disputes. If that were not the case, anyone with a problem would run to such a person with that problem. I am not sure what that filtering mechanism might be, but I envisage a couple of people working with the commissioner and providing advice to the general public. The commissioner would be involved only in the more serious issues.

I anticipate that those outstanding matters will be addressed next year. I do not intend to repeat the debate held in another place. I see no point in debating the clauses in Committee. I have read all the clauses and I am satisfied as to their intent and meaning. I have no need to pursue any more detail at this stage. With those comments, I indicate my support for the Bill.

HON GRAHAM EDWARDS (North Metropolitan) [8.58 pm]: I am pleased that this legislation is before the House, and I compliment the Government on achieving that. Perhaps in other circumstances and at a different time the Opposition might go through this Bill with a fine tooth comb. However, Hon Mark Nevill's comments about his attitude, my attitude and the attitude of the Opposition make a lot of sense. Hon Mark Nevill has conferred with members of the Opposition and we have all looked at the detail of the Bill. Despite the fact that members of the Opposition have some concerns, we feel that at this stage we must take the Government and the Minister on good faith. I have no doubt that the strata title issues will be revisited fairly early next year by the next Government. I certainly hope that will be the case.

Having said that, I want to take to task the Minister in another place with responsibility for the Strata Titles Act for his handling of the issue, the way in which he played unnecessary politics with the matte, and the confusion he helped to create. If the Minister had woken up to the problems that existed within the community, particularly among those in the aged community who have strata titles, he may have been able to resolve much of the concern, worry and frustration that people had. In about May of this year I, along with many other members of Parliament, was approached by constituents on this issue, to such a degree that in the first week or so of June, we were getting so many contacts that I decided to organise a meeting and get into my office some of these people who were telephoning. I put a small advertisement in the newspaper and was overwhelmed by the number of people who responded and the number of people who came to my office to discuss the issue. As I said, a large number - by far the greatest majority of those people - were elderly people.

Following that meeting I wrote to the Minister. The letter was dated 11 June 1996, and is headed "Strata Titles Act". It states -

> Dear Minister
>
> At a meeting in my office last evening, which was well attended by residents in the northern suburbs, the following two resolutions were passed:
>
> 1. *That the meeting calls on the Government to clarify as a matter of urgency the obligations and responsibilities of duplex and triplex owners under the recent changes to the Strata Titles Act, particularly as they relate to insurance.*
>
> 2. *That the meeting calls on the Government to exempt free standing duplex and triplex owners from the new insurance provisions.*
>
> Minister, there is incredible confusion in the community over these changes and this confusion is leading to immense concern, felt particularly by elderly people.
>
> Residents seeking direction are receiving all sorts of advice from DOLA, from the Citizens Advice Bureau, from WorkSafe and indeed from your own public statements, some of which is conflicting.
>
> The most recent advice regarding insurance is that duplex/triplex homeowners should not conform with the insurance provisions because you have it under active consideration.
>
> In view of this, I would appreciate your advice - as a matter of urgency - as to whether this group of people should be taking out Building Insurance, Workers Compensation and Public Liability insurance, as per the provisions of the Act, or whether they should wait pending the outcome of this active consideration.

People were being encouraged to ring the strata titles hotline. Many people were hanging on for 10 or 15 minutes and some were hanging on for up to half an hour. When they got through, they received conflicting information from the person with whom they were talking to that which the Minister was saying or what they were getting from some other part of the public sector.

Hon Derrick Tomlinson: Who was right?

Hon GRAHAM EDWARDS: No-one was right in the end, because people were told that they should be making moves to get this joint insurance, but they should not worry because the Minister had it in hand and he would be making changes. This was back in about June. I rang the hotline. I did not tell the person on the other end of the line who I was. I said that I had some queries and I would like information. That is exactly what I was told. That confusion was in part leading to the concern. Within the next day or so I put out a press release which stated -

> The Court Government must act urgently to resolve the enormous concern of duplex and triplex owners over new joint insurance requirements on their properties.
>
> The new law requires duplex and triplex owners to take our joint insurance over the total building, workers compensation and for public liability.
>
> Lands Minister Kierath's law has caused immense concern, particularly amongst the elderly. MPs' offices are being swamped with complaints. Many people are hopelessly confused.
>
> The confusion has been caused by Mr Kierath's constantly changing position on the issue.

I have said publicly before and I say again that I accept the Minister was not the Minister responsible when the Act was changed.

Hon Derrick Tomlinson: The insurance provisions were not in the amendments.

Hon GRAHAM EDWARDS: There were insurance provision in the amendments. I have heard that argument before. People who were endeavouring to defend what had occurred were saying that nothing had changed. If nothing had changed, why were people being told that they could no longer take out separate insurance? If nothing had changed, why were insurance companies telling them that they would no longer accept individual insurance applications and that they wanted joint ones? What had changed in the legislation - I am sure the member knows - was the situation which enabled strata developments to decide to take out individual insurance. To this day I wonder to what degree the insurance industry in this State had lobbied the Government to get that changed. No-one has been honest enough to tell me. However, it is interesting that a representative from the insurance industry was in attendance at all the meetings that we had. I think the Government asked for that representation because it wanted that person to defend the changes.

Hon Barry House: Strata title changes go back five or six years.

Hon GRAHAM EDWARDS: The problem related to the legislation that went through this place last year and which was due to become law in about April of next year. The member should tell me why and how the insurance companies were able to change their insurance of strata units policies if there was no change. They did that because of the changes that were contained in the 1995 legislation. That is the truth of the matter.

Other concerns eventuated because of the statements made at a number of public meetings. The Minister was not fronting up to meetings. He was sending someone from his office and at one meeting I went to in the northern suburbs that person made a pretty good fist of trying to defend what had happened. However, the situation was compounded by Hon Cheryl Edwardes telling a packed meeting not to worry because everything was under control. She said something would be going to Cabinet within a week.

Hon Mark Nevill: It took the new Minister weeks to get on top of the issue, too.

Hon GRAHAM EDWARDS: Exactly. I do not blame Graham Kierath for that. However, it seemed that some government Ministers instead of fronting up to the issue and accepting there was a problem were trying to explain it away or hope it would go away. However, it was not going to go away. I have read to this House before letters from people who wrote to me. I want to read a couple of letters. The first is not addressed to me. It was addressed to Liz Prime, the ALP's candidate in Wanneroo, because she had been doorknocking and people raised this issue with her. It states -

> Mrs Prime
>
> I am writing to voice my concern over the changes to the Strata Titles Act. I m a widow who shares a strata block. No I am not a duplex. My home is a free standing structure with no property.

> We are both fenced on three sides.
>
> Many older people are still not clear on their obligations under these ludicrous rules. When my late husband and I purchased this property we paid for the land and the building thereon. Now I find that I do not own the exterior walls, roof or land. Why were we charged for something that we do not own. To think that my neighbour can come in and use the land to have a B.B.Q. or anything else she wishes to do and vice a versa. I have a good neighbour at present but what happens in the future should she sell?
>
> At my age I do not need these hassles. I am losing sleep and getting very stressed our over it all. I know I am not alone in this - elderly people whose health has been affected by these ludicrous changes.
>
> Many strata title owners are struggling to meet ends and could not afford the extra expense involved in amending their title plan to gain exclusive use of the land.
>
> As far as I am concerned it is an unjust invasion of my civil liberty and my privacy to have the Government tell me that I cannot insure with whom I choose. I lose money. Also my neighbour is on a low income and found it more convenient to pay her insurance fortnightly. It cannot be done on joint insurance which is forcing a financial hardship on her.

Much of what is contained in that letter is true; it goes back many, many years. The Minister in his second reading speech noted that it is only because of the changes in the 1995 Act that many people became aware that they did not own their little plot of land or their driveway. Of course, that led to lots of concern. I need not quote any more of these letters. I am sure members are aware of the concern that was generated.

However, I will refer to the development of an organisation called the Strata Titles Action Group. At a meeting with representatives from the group, the Minister accused it of acting in a political way. It was a very unfair accusation. Had the Opposition been mischievous and irresponsible, its members could have gone out and whipped up an immense reaction in the community. That would have impacted adversely on a lot of people in the community and we could have done a lot of damage, although I have no doubt that we could have picked up some political kudos. Therefore it annoys me, because we were so responsible and addressed the issue in a responsible manner, to see the Minister politicise the issue in the way he has, both in his advertisements he ran a couple of months ago and those he is running now. One can justify the argument that there will be some need for an education campaign to inform people of the changes, how people can access the changes and how they will benefit their situation. However, no-one can tell me that there is any justification whatsoever for the types of political advertisements that we have seen in daily newspapers and weekly community newspapers in various parts of the State. While the Minister is patting himself on the back and telling everybody what a great fellow he is, he denies recognising and paying tribute to those people who did so much to ensure that this issue was resolved. Those people from within the community, under our democratic process, organised themselves and forced some change.

I have a very early press release which was put out by STAG. It reads -

> Strata title owners have recently held public meetings in the metropolitan area.
>
> Over 1300 concerned owners attended these meetings. As a result of this overwhelming response, a steering committee has been formed to represent the strata title owners. Many thousands of duplex/triplex owners have been adversely affected by the recently enacted legislation. Called the Strata Titles Action Group (S.T.A.G.) the committee has already been successful in getting one of their members onto the Strata Titles Consultative Committee at D.O.L.A. as a lay member to represent strata title owners. The committee consists of twelve members and will meet each two weeks to progress the issue. Anyone interested in joining the group or wanting further information is welcome to contact the following members.

That was signed by Margaret Lindsay and Connie Sewell. They are two delightful ladies who are very apolitical. They were adopting a leadership role in the community and trying to help resolve the issue and particularly acting out of concern for other people whom they saw caught up in this whole confusing piece of legislation. I appreciate the work that the group did. It should be very pleased with the results it has achieved.

When the Strata Titles Action Group was set up it comprised a growing group of strata title owners who were not confident that the current long standing committee, which is looking into strata titles ownership and insurance matters on behalf of Government, had a full understanding of user needs. In one of its publications STAG wrote that the committee did not appreciate the enormous stress, placed particularly on the elderly, and the strong emotional sense of injustice felt by duplex and triplex owners. Those people formed their action group with these two main objectives -

> For every duplex and triplex owner to have undisputed ownership of their strata property, and all the structures on the lot, including the surrounding land; and,

failing that,

For every duplex and triplex owner to have the absolute freedom of choice in matters related to the insurance of their property.

When the issue developed within the community, I was asked by this group if I would receive a petition on the steps of Parliament House. The group indicated that it did not want to stage a big political rally but wanted to come here to present the petition and just go through the process of democracy, to ensure that its voice was being heard. As I Graham Kierath came out and spoke to them and we received the petition.

On 12 September representatives of this group had the opportunity to meet with Hon Graham Kierath. According to the minutes, they came away with mixed feelings. They wrote that, seemingly, the politicians and other involved parties considered that the issue could become a political hot potato. They felt that Mr Kierath was quite aggressive. They had to explain that they were not politically motivated. When the chairperson of STAG indicated to Mr Kierath that the group was not politically motivated, Mr Kierath immediately questioned the validity of that statement by citing the involvement of Paul Filing and me at its public meetings. Mr Kierath asked the group whether it was after results or just point scoring. That is a sad indictment of the Minister's attitude to a group of genuine people who were endeavouring to do nothing more than have the Government attend to their concerns and worries.

Hon Mark Nevill: They would not let me speak out the front because they thought it would make it too political. Then the Minister was invited to speak and I said a few words after him.

Hon GRAHAM EDWARDS: In fairness, STAG asked Paul Filing and me to speak and we both took a fairly balanced line. Graham Kierath arrived as the meeting closed. The meeting was reconvened to allow Mr Kierath to speak, and it was felt that Hon Mark Nevill as the shadow Minister should also have the opportunity to speak. STAG is a group of ordinary people in the community. This issue concerns the members of that group as individuals. The group held a series of quite spontaneous meetings on a common cause that united its members. They formed an organisation to seek change. That is one of the things that people in our society should be able to do without being accused of acting in a political way. I do not know where the Minister for Lands gets off by taking that sort of attitude to these people.

In his second reading speech the Minister, and the Government, should have recognised STAG's work and complimented its members for involving themselves in the process of seeking change. Because the Government has not, I compliment STAG on the excellent job it has done. Many other people in our community could take a lead from that group. Many people in our society sit back and whinge and moan about things, but will not get off their backsides to do something positive to seek the changes they want. I also compliment some of the senior officers from the Department of Land Administration who attended many of the meetings that were held around the metropolitan area. Those officers bore the brunt of the concern generated by the Government's policy. They are public servants who had to face the ire of people in the community who were affected by these changes. On a couple of occasions I was pleased to be able to say to people, "You should not attack these officers. They are public servants who must carry out the Government's policy; give them a fair go. You might not like what they have to say, but do not attack them. They are simply doing their job."

Hon Mark Nevill: Famous words.

Hon GRAHAM EDWARDS: It was nice when one of those officers contacted me and thanked me for my support at those meetings, because he said that it helped to calm hotheads who wanted to get stuck into them. I feel it is the politician's role to take that flak head on. As a former Minister for Police, I had to do that many times. I stood in front of public servants; I did not hide behind them. This issue could have been better and more quickly resolved if the Minister had exposed himself to the sorts of arguments and issues that were being raised at these meetings.

Another issue is the Minister's statement in the second reading speech that in appointing the members of the task force he was concerned to ensure that ordinary strata title owners played a leading role. I was at the meeting where those people stood up and demanded that they be represented on the committee that was looking at those issues.

Some of the issues that I have raised might be construed as critical. I hope they will be accepted as positive criticism. I compliment the Government on getting this legislation to this place in the time that it did. I will reserve my judgment on the legislation. Perhaps at any other time we would have sought to send this legislation to the Standing Committee on Legislation to consider. However, that is not appropriate at this stage. We must take the Government and the Minister on good faith, and we must be prepared to revisit this matter should the need arise - I am sure that it will - in the next Parliament. I support the Bill.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [9.26 pm]: I thank members of the Opposition for their support of the legislation. As they have mentioned, and the second reading speech acknowledges, this is

an interim measure and there is a need for the whole of the strata titles legislation to be rewritten from beginning to end. We are all aware of the circumstances which caused this problem. Although the Government takes prime responsibility for legislation that comes to Parliament, if in the process of enacting legislation in Western Australia it goes through Parliament unopposed or fully supported, the Parliament as a whole must take some responsibility for the legislation that it passes.

Hon Graham Edwards: That is exactly what we are doing here tonight.

Hon N.F. MOORE: The Government must accept a degree of responsibility for the consequences of the 1995 legislation. However, the Parliament considered that legislation and passed it. We did not collectively recognise or contemplate the sorts of problems that have arisen. In a sense it is proper that this debate should be a non-party political exercise, because we all bear a degree of responsibility for the problem in the first place. Had we been more diligent as a Parliament the problems might have been addressed in 1995 when the legislation first came to the House.

Hon J.A. Cowdell: I doubt that.

Hon N.F. MOORE: I acknowledge that the Government takes prime responsibility, because it sponsors the legislation. By taking that responsibility the Government has rapidly brought legislation to the House to try to resolve most of the issues that became apparent during the past six or eight months. I recognise that the Opposition has taken a responsible approach to this legislation. I hope that we can overcome the problems of the Strata Titles Action Group and other citizens that were raised by Hon Graham Edwards. The Government recognises the contributions they have made, and by taking into account their points of view it has sought to resolve the problems they have raised. As has been mentioned, this is an interim process to resolve the problems; a number of areas have yet to be addressed. However, it was felt by the Government and the Minister that we should bring in this legislation now to resolve most of the problems prior to the election, so people do not have to hang around for a long time before the next Government is in place and these matters are resolved. The Government gives an absolute assurance that, in the event it is the Government after the election, the process of rewriting the legislation will continue. The matter that Hon Mark Nevill raised will be addressed, and the result will be legislation that everyone can live with. Indeed, it is very complex, and it is a difficult area for people to understand. It would be helpful for everybody concerned if we had a much simpler strata title system so everybody knew exactly where he or she stood in respect of property. The legislation, as we have been told, deals with many problems which were exposed by the lengthy public consultation period. The matters not addressed in this Bill will be addressed in the future.

As Hon Mark Nevill said, a consolidated Act is needed. The Blue Bill is a good way of presenting legislation to the Parliament so members can see how amending legislation fits into the parent Act. The Clerk is looking very pleased about that comment as he has been arguing for the presentation of legislation in this way for some time. We should present Blue Bills with most complicated legislation to outline how a principal Act will be amended.

A number of areas are not addressed in the Bill, such as green titles. These matters will be addressed in the future. Hon Mark Nevill spoke also about a plain English guide to the strata title area, which is clearly necessary. He also spoke about dispute resolution, which the Government is also considering.

In respect of Hon Graham Edwards' comments about the current advertisements being run by the Minister for Labour Relations, a political advertisement is often in the eye of the beholder - it is a subjective business. However, the bottom line is that the public need to be told about this issue to understand the action being taken to resolve the problem about which members have spoken tonight. We have particularly heard about elderly people who have been very concerned about the consequences of the legislation. It is important that they understand that the matter is being resolved. The only way to ensure that understanding in our society is to advertise to make information available as widely as possible. It is appropriate that the Minister run advertisements giving people comfort in respect of the problems they have experienced. The Opposition says that they are political advertisements, and the Government says that they are not.

Hon Mark Nevill: I have no problem with the ads, but they could be more informative.

Hon N.F. MOORE: Perhaps they could; however, a simple message needs to be delivered indicating that the problems are being fixed. People can then relax and feel better about their circumstances. I believe that Minister Kierath, who was criticised by Hon Graham Edwards, has done an extraordinary job in delivering such timely legislation to the House. Hon Mark Nevill has been in government, and he knows what a long and arduous task it is to have legislation drafted, and to have it pass through the Cabinet and party room processes into the Parliament. It takes a long time. Since I have been a Minister, I have found the process to be about 10-times longer than I imagined, and I had been here for sufficient time prior to that to form a rough idea how these processes work. For Minister Kierath to respond as quickly as he has to present interim legislation before the House is a tribute to his determination and his recognition of the need to sort out a problem. He brought people together, and through long

meetings and hard work produced some solutions. The Bill indicates that this is a very complex area. To achieve these amendments in the context of the complicated nature of strata title is a great achievement.

I thank members for their complimentary comments about the Department of Land Administration staff. I will advise them that members are pleased about their work. Simon Proud was particularly mentioned by Hon Mark Nevill as a helpful person from DOLA and the Minister's office.

I conclude by thanking members for their support. We look forward to further work being performed on strata titles in the future so that we can sort out the problems once and for all and the Parliament can say that it has sorted out problems and put in place legislation which provides security to people regarding the future ownership of property.

Question put and passed.

Bills read a second time.

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bills.

Strata Titles Amendment Bill

Bill passed through Committee without debate.

Settlement Agents Amendment Bill

Clause 1: Short title -

Hon MARK NEVILL: I realised only late tonight that these two Bills are related, but, even reading the Bill, it is not clear how they are related.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 31 amended -

Hon MARK NEVILL: Clause 4 relates to real estate settlement agents. As well as having a licence to carry on a business as a real estate settlement agent, a holder must also have a current triennial certificate in respect of that licence. In amending section 31, the Settlement Agents Supervisory Board will require people with a licence to meet prescribed educational requirements. I presume that this is to bring them up to date with the Strata Titles Act. If these two Bills are related, the two groups which most need educating are real estate agents and insurers, not just settlement agents. I find it strange that the amendment Bills require two critical players in this industry not to meet prescribed educational requirements in respect of the Strata Titles Act. Does the Government propose to make any changes in the other two areas?

Hon N.F. MOORE: The member is right in his understanding of this clause. It is intended that the Settlement Agents Supervisory Board will have the power not to renew a certificate if the licensee does not meet some professional development requirements. It is all because of the need for them to understand better the requirements of the strata titles legislation. Because the complexity of the legislation and the problems resulting from the changes that have been brought to our attention in recent times, it appears necessary to require further professional development for settlement agents to ensure they know exactly what they are doing in respect of strata titles. I cannot respond in respect of the others, but I agree that other people in the industry should be required to know more about this issue. At the end of the day, the most important people are the settlement agents, because they put together the contracts and arrangements between the purchaser and the vendor, whereas the agents bring them together. I acknowledge that agents need to be better educated to understand the processes so that the initial advice they provide is better. However, fundamental to the achievement of the contract between a purchaser and a vendor is the role of the settlement agents. They need to be very aware of the new legislative requirements, therefore it is appropriate that additional professional development programs be attached to their holding a licence. I will refer the matter of real estate agents and insurance salesmen to the Minister and advise him of the member's concerns, and I indicate that I share them.

Hon MARK NEVILL: If I were dealing with this Bill and this amendment were to be made to section 31 of the Act, I would have had the lazy drafting corrected. Subclauses (1) and (2) commence with the words “Subject to this Act". I do not like seeing that in legislation; it should cite to which sections of the legislation it is referring. I, like others who read that clause in order to appreciate what this amendment is designed to achieve, do not have the time to go thumbing back through the Act to find out which sections it might affect.

Hon GRAHAM EDWARDS: In his second reading response, the Minister said that the Parliament must take some responsibility for the fact that the legislation was passed in the first place. That is fair enough. However, I compliment Hon Mark Nevill on the work he has done on this issue generally and on these two pieces of legislation in particular. It is all right for the Minister with all the resources of government to say that Parliament must properly peruse and examine legislation, but Hon Mark Nevill has indicated how difficult that is for Oppositions to do. It is something we should all recognise. Therefore, I compliment Hon Mark Nevill generally, but in particular for the way in which he has gone through these Bills and for his attention to detail.

Hon N.F. MOORE: In respect of the matter raised by Hon Mark Nevill, everyone was in such a hurry to get something to the Parliament before it rose that they probably did not worry about the lazy drafting in the other clauses. The point is noted and I will draw it to the Minister's attention so that the next time the settlement agents' legislation is addressed the lazy drafting can be rectified.

In respect of Hon Graham Edwards' comments, I have been in opposition for longer than I care to remember. He is quite right: The resources available to Oppositions are minimal and I know how much work members do in opposition. Hon Mark Nevill always takes a keen interest in legislation and examines it very thoroughly. I also commend him for the way he has handled this legislation.

Clause put and passed.

Clause 5: Schedule 2 amended -

Hon MARK NEVILL: This clause seems to be a rewriting of the existing section and it simplifies the existing legislation. However, the Government has introduced the matter of the Registration of Deeds Act 1856, which was not included previously in respect of documents to be registered or lodged by a licensee. Why has such an old Act been introduced?

Hon N.F. MOORE: I do not know at the moment. If the member wishes, I can seek advice. On the other hand, I can talk to him about it later.

Hon MARK NEVILL: I can understand a new Act's being introduced, but one that old is odd.

Hon N.F. Moore: Yes.

Clause put and passed.

Title put and passed.

Reports

Bills reported, without amendment, and the reports adopted.

Third Readings

Bills read a third time, on motion by Hon N.F. Moore (Leader of the House), and passed.

APPROPRIATION (CONSOLIDATED FUND) BILL (No 3)

Second Reading

Resumed from 24 October.

HON DOUG WENN (South West) [9.49 pm]: I make it clear that I am not the lead speaker on this Bill. I thank the Leader of the Opposition for giving me the opportunity to speak first. Later this week I have duties outside this place and I will not be able to take part in the debate. I also make the point that this may be my last speech in this House - other than interjections; I will not give up on them yet!

One of the beauties of the appropriation Bills is that members can refer to whatever they wish. I will reflect on my just over 10 years in this place. I was elected to this place in 1986, along with you, Mr Deputy President (Hon Barry House). It was unexpected, because South West Province, as it was then known, had never been held by a Labor member of Parliament, but I was fortunate to have the support of many very good people in the district who gave me the opportunity to defeat a Liberal member and become a part of the history of the Burke Government at the time and of nearly 11 years of the administration of this place.

There is no doubt that I have had many highs and equally as many lows. In 1986 I opened my first office in Busselton, against the advice of many of my colleagues, but I thought it was a good move, and even today I do not have any doubt that it was a good and proper move. Hon Barry House, who was elected in 1987, and I have represented that area and we have been able to work together fairly well. We do not always agree and I do not think

we ever will, because we represent different sides of politics, but even to this day I have been able to tell Hon Barry House that he is wrong or right and he has been able to tell me that I am wrong or right, and we have been able to work amicably in many of the things that we have achieved in that district. I must admit that during his maiden speech in this place I nearly fell out of my chair when Hon Barry House took a great deal of the credit for the building of the new Margaret River Hospital. He had only been in here five minutes -

Hon J.A. Cowdell: They are a bit like that.

Hon DOUG WENN: Yes, they certainly are. In fact, everybody laughed when I coughed and nearly choked on a glass of water, which I rarely do. The building of the new Margaret River Hospital took many years of work by the Labor Government, and even Barry Blaikie, the member for Vasse, complimented the Labor Government for that achievement, because it had been an ongoing situation for many years. That hospital is well used. The only drawback about that achievement is that many people had commented that the existing hospital was uninhabitable. However, immediately after the new Margaret River Hospital was opened, a group got together and decided that the old hospital was so well worth keeping that it should become an arts centre. I do not have any problem with that, but I do have a problem with the fact that many of those people who suddenly turned it into an arts centre were the ones who had argued that we needed a new hospital because the old one was uninhabitable.

Throughout my time in Busselton, a new fire station has been built; the railway yards have been moved from the Busselton town centre; and the schools have been extended, although not as much as we would have liked, and covered assembly areas have been built, and I am happy that many of the members in that area who are now in government are continuing with that work.

The Augusta-Margaret River-Busselton area is growing very quickly, and those of us who represent that area, including you, Mr Deputy President, understand that the area will need a lot of services. Two major mineral sands companies are about to open up in the area, and even though they are being asked to provide a great deal of money towards the provision of services such as roads, a great deal of work will be required from government. I have asked a question in this place about Sues Road and the input from individual companies for its construction and maintenance. I hope that all the members who will represent that area over the years will continue to service it as it has been serviced over the years, not only under a Labor Government but also under this Government.

I have been involved in many meetings with school and community groups about services that they have demanded. It has been disappointing that there have been lows and that I have not been able to achieve what I would have liked to achieve for that area, but time has always been made, particularly under a Burke Government and consecutive Labor leaders, for them to go to Perth and visit Ministers to put their arguments about why they should be given the right to extend their school, hospital, etc. I hope that in the future, they will always have that right. I admit that even under the Labor Governments in which I was involved, there were times when some Ministers thought that those people had received more than they should have received and we needed to move on. However, as a member representing that area, I have always said that I do not care about that; I care about the people I represent, and I hope Ministers will deliver.

Another low point concerns a matter over which we have no control - nature. Many years ago I was involved in the rescue of whales that had beached in Augusta. I will always remember that night because it was bitterly cold, to start with, but also because the community and I were able to help those whales to go back to sea. There was some regret that a number of parties thought they should be in control, and some people who had come from the Eastern States thought they knew better. I am happy to say that the Department of Conservation and Land Management took total control and we were able to save a large number of those whales. It was significant that the Government at the time, under Barry Hodge, the then Minister for Conservation and Land Management, put up a memorial to the work that had been done by those people, and that was greatly appreciated. That memorial is still standing. I can happily say, given the environment in which we live, that over the years it has been there, vandals have made no attempt to destroy it, possibly because they appreciate the fact that so many people did so much hard work to put those magnificent mammals back to sea.

In talking about nature, I must mention the recent tragedy at Gracetown, when the face of the cliff collapsed and buried those poor people who were standing underneath it. We have spoken in this place about that tragedy and I do not intend to go into that again. It was a very sad occasion on which nature did its own thing. The sentiments of all members in this place have gone out to the families that were involved in that tragedy. Even today, many weeks after the accident, counselling is continuing for many of the families in the area. Negotiations are continuing between the relevant departments in an attempt to ascertain who should have been in charge, who should have been where at the time of the tragedy and who should have been in control. It is disappointing that some recriminations are coming forward. It is a fact of life that some people need to blame others. This tragedy was an act of God. People jumped in to give as much assistance as they could; however, it is unfortunate that some people are now saying that some things should have been done, or should not have been done, or that things should have been done in a different way.

Those sorts of comments will continue for a long while yet. Hopefully, lessons have been learnt from this accident that, where possible, will prevent similar tragedies occurring in the future. The Department of Conservation and Land Management has already been chastised, criticised and blamed because it has made a decision to eliminate the cliff overhangs in areas where a similar tragedy could occur, thereby making it safer for people to use the adjoining beaches. I hope the community supports CALM in that action because it will minimise the occasions on which people will be faced with these sorts of tragedies. As I told the House a couple of weeks ago, my son who is a member of the State Emergency Service was involved in this tragedy. Having on many occasions spoken to him about his involvement, I realise he must live with what he saw for a long time. I do not think any members in this place were hesitant in expressing their sadness to the families who were involved in this tragedy. We must try hard to accept that these acts of nature are unavoidable. The communities of Cowaramup, Gracetown and Margaret River need to be congratulated on the work they did during the crisis in which they found themselves. I find it sad that some people are looking for excuses for the accident and trying to find people to blame, and I hope that will be resolved very quickly.

When I entered Parliament in 1986 I was very fortunate to have the backing of people of the calibre of Hon David Smith; the former member for Bunbury, Mr Philip Smith; and Hon Julian Grill. Those members, and to a lesser extent I, put together the concept of the former South West Development Authority. They had a very strong vision for the south west by the year 2000. Although some members who were then in opposition tried to drag down that proposal, describing it as a government stunt, it was not. Against any argument that is put forward, the South West Development Authority, under the leadership of the now Mayor of Bunbury, who at that time was chairman of the authority, Dr Ernie Manea; Sir Donald Eckersley, a staunch member of the National Party - as I understand it, he was the saviour of the National Party many years ago when it fell into the doldrums; Hon David Smith; and Phil Smith, has been shown to be a magnificent concept. Their vision continued for many years. It is okay for some people who were then in opposition to say that it was a political stunt; however, I can say to you, Mr Deputy President (Hon Murray Montgomery), as a member who represents that area, that the South West Development Authority, as it was then - it is now the South West Development Commission - has achieved great advances for the whole of the south west region. This group of men was able to negotiate with local government councils to achieve its goal. The construction of the new Margaret River Hospital, the new fire station in Busselton, the new libraries and the removal of the railway stockyards from the centre of both Bunbury and Busselton gave those areas the opportunity to expand.

People who have been in and around Bunbury in the past 15 years will notice the tremendous changes that have occurred for the betterment of the south west region as a result of the efforts of those men. The new city square in Bunbury is used almost every weekend, particularly in summer, for community functions. That would not be possible were it not for the removal of the railway yards. The removal of the railway station from the centre of town to Wallaston was a contentious decision, but one that I always supported. I will always support the view that the present location of the railway station is appropriate. The railway station was located in the centre of Bunbury, where it was originally designed to go. As I have said in this place before, as an ex-owner cab driver, I have picked up passengers from the central railway station in town and, when taking them home, passing through the area they had already travelled on the train, they did nothing but whinge and moan about why the railway station was located where it was and why it was not located in the outer suburbs where it is now. I know members of the Government who represent the South West Region will continue to say that the railway station is in the wrong place now. They have a you-beaut dream about relocating it in the town. On numerous occasions I have asked the tourist bureau, the Press, or anybody else who I thought could help me, to provide me with details of the number of people who travel for three hours by train from Perth to Bunbury to go shopping for the day. However, they can still do that from the station if they wish to do so.

The Government at the time was concerned that people might want to go into town. It put on a bus service to take them into town, cheaply, but it was used so infrequently that it withdrew that service. I do not care what government members or others say - the railway station in Bunbury is in the appropriate place and it should remain there. If the Government wants to turn the route into a tourism trip by taking it into town via the existing rail line that is used by the woodchip organisation, it can do so. However, members on the government side, particularly the visitor to Bunbury who suddenly became the member for that electorate, should think seriously about that because in the future he will be shown to be wrong for trying to shift it.

Koombana Drive is also one of those areas that have been done up well to fit in with the city square. It is a magnificent drive into Bunbury. It was created by the previous Government - not the existing Government - and it was welcomed by all the people who come from the Australind-Eaton area to work in Bunbury. It is something of which we can be proud. The previous Government cleaned up an area that badly needed to be cleaned up. It disposed of a caravan park and created a better caravan park, the design of which we can be proud. Hon Barry House and I have had discussions on this matter in the past: It is a clean drive and it is a welcome invitation into Bunbury.

As people come into Bunbury another area that was instigated by the South West Development Authority under the members I referred to earlier is the Marlston Hill project. Members opposite have claimed all the credit for it; however, that project was instigated under the Better Cities plan by a group that was chaired by Phil Smith, the then MLA for Bunbury. I do not try to claim credit for the way that plan ended up. The project has the endorsement of the Government and it continued from the existing plan, albeit it was changed in some ways. The Marlston Hill project is a credit to any Government because it finally got rid of the fuel tanks from that end of town and made that area a better place to live. Even Hon Barry House, although he lives in Busselton, will agree with me that that end of town has become a place of which anyone living in Bunbury can be proud.

All the people who have been involved with the South West Development Authority over the years can be proud that they have been a part of it. I was one of the inaugural members of the South West Development Authority. Even though I cannot claim credit for many of the things that have happened in the past five or six years, the authority set the ball rolling for the future of Bunbury and what the south west has achieved. Hilda Turnbull, the member for Collie, and Paul Omodei, the member for Warren, were also members of the inaugural South West Development Authority. Many of the things that were achieved throughout the south west under the Labor Government that put together the authority resulted from a cross-section of people throughout the area.

The Bunbury Port Authority is in the news at the moment. The events over the past months relating to live sheep export from country ports have been disgraceful. Mr Deputy President (Hon Murray Montgomery), you represent Albany probably more so than Bunbury, which I represent also. I say that without casting any reflection on your work throughout the south west, because Albany is where you live. The impost on the Bunbury port should never have occurred. Some people in Bunbury, Eaton and Australind say that it should not have happened. Deputations have been made from those people to the Government. Vocal disagreement to live sheep exports has been expressed on this side of the House. Many people in the community have made a noise about this matter. The other side of the argument was expressed by the Western Australian Farmers Federation, which said that it should go ahead. However, the Minister for Transport does not have the fortitude to make a decision and is putting on the spot all the other members in the area, particularly those on the coalition side, by not giving a directive on whether the Bunbury Port Authority should continue to pursue live sheep exports through Bunbury.

Ian Osborne, the member for Bunbury, has had deputations to the Minister. People from the area have written to the Minister and public meetings have been held. Letters have been written to the Press and the Press has run the story. However, the Minister says that he cannot do anything about that because it is not in his portfolio area. On the eve of an election, whenever it may be - early, this year, or after the full term of the Government - the appropriate Minister will say that he has suddenly made a decision: Live sheep will not go out of Bunbury; the Bunbury Port Authority will stop all its negotiations on live sheep exports. It is written on every wall that that will happen. Even you, Mr Deputy President, if I may put you on the spot, or other members representing South West Region know that that will happen.

I must admit that probably one of the beauties when I was in government was pork barrelling. The Government will leave people out on a limb and they will make a noise; the member for Bunbury will protest; and the candidate for Mitchell will protest. The Minister will say that he cannot do anything about it and the member for Bunbury will seek legal advice about whether the Minister can or not. However, all members know what will happen: On the eve of an election the Minister will tell the Bunbury Port Authority to stop all action and that no live sheep will go out of Bunbury. It will be a "you beaut" vote getter. In the meantime the Bunbury Port Authority is negotiating contracts with other countries, as it has a right to do. I hope members on the coalition side will be realistic enough to say that that will not happen early. Everyone is awake up to what they are doing. I am telling them what they are doing and they are waking up quickly. The issue will not be big for the member for Bunbury, and particularly not for the candidate for Mitchell, because that will not work any more.

Two months ago I made some predictions about what would happen in the Bunbury area just prior to the election, and now a major inquiry, costing $50 000, is about to be undertaken. That amount of money will be spent on a study into how to rectify the erosion problem on the beachfront in Bunbury, when the same amount would almost fix the situation. The member for Bunbury will chair the investigation - surprise, surprise! This is all happening on the eve of a state election.

Hon J.A. Cowdell: Obviously they are looking for new employment.

Hon DOUG WENN: Yes, and they wish to encourage workplace agreement type employment. Many studies are being instigated in Bunbury, including the study into the new police station at a cost of $25 000.

Hon J.A. Cowdell: It is cheaper than a new police station!

Hon DOUG WENN: The regional commissioner said on television that the police did not know anything about the study, or that it would cost $25 000. As I said, three months ago I predicted that this would happen, and it is happening. I suppose one could say - I have said it in the past - that this is pork-barrelling, but it gets things done for the district and for the electorate. I guess that sort of thing will continue -

Hon B.M. Scott: Are you lobbying?

Hon DOUG WENN: No. Lobbying is being able to approach a Minister and get an answer. It is not putting matters on the back burner, as happened with the live sheep industry; it is not a case of the Minister saying the matter does not fall within his portfolio. I guarantee that within the next two or three weeks - particularly if this House closes this week - the Minister will say that the live sheep trade out of Bunbury must stop because the local people do not want it. I suppose that is the way that Governments work, but this is blatant of this Government. The member for Bunbury is snatching it up and claiming it as his achievement, but the people of Bunbury know better. No doubt the member for Bunbury will do his four years and that will be the end of it, because people know what he is all about. His nickname is "What's his name - the member for Bunbury".

A community group at Gelorup has been lobbying for a bypass road. Delegations have visited the Minister, Main Roads, local members and anyone else the group could see. After 18 months of effort by the group, yesterday, out of the blue, the Minister declared that he would reinvestigate the situation. How much do we need to do to put people on side so close to an election? One must be very wary about what is said, and the general public is very wary. The people are about to be given something - and this happened prior to the last state election - in the form of a promise to build a police station, and to construct a bypass road. However, the promises will not be fulfilled because people have now been told that a study must be undertaken into the erosion at the back beach in Bunbury, at a cost of $50 000. As I said earlier, the problem could almost be resolved for that amount of money. Another statement by the Minister was that no funding could be provided because it is a local government problem. Members should not try to tell me that an election is not around the corner!

Much as I would love to continue to talk about events in Bunbury, I turn now to Collie - another place in which I had the opportunity to play a part. Tom Jones was a hard act to follow in Collie, because he had been the local member for 10 years. I do not think there was anything that Tom Jones had not done for Collie. He lived and breathed Collie; and he lived and breathed the coal industry, from which he came. He was the secretary of the miners' union before being elected to Parliament. He also lived and breathed the union movement. He had a great fellowship with a former Governor of this State who was then the legal adviser to the union. Tom Jones must be recognised as one of the greatest people who has ever represented the Collie electorate. Even following the boundary changes, he was recognised widely in the electorate. It can be said that Tom Jones was one of the best politicians this State has ever seen. He worked hard for the community and his electorate. It was a sad loss for the people of Collie when Tom Jones decided to retire, because he knew how to talk to and negotiate with people. If Tom Jones had been a member of Parliament on the day the decision was made, we would now have a 600 megawatt power station in Collie. I know that members will say that we on this side of the House were in government at the time, and they would be right, but our Ministers thought otherwise and wanted to do other things. It was with the support of Tom Jones and other members on this side of the House that we continued to go into bat for a 600 MW power station but we ended up with a 300 MW power station which met the State's requirements at the time. Tom Jones will always be remembered as the member for Collie, because when one talks to people these days he is still thought of as the member for Collie, and that will remain the case for many years.

It was a sad day for me and for Collie when Tom's wife, Winnie, died. She was a magnificent woman. Any member who represents the south west will know that when Winnie tickled the ivories it was something to behold. For 25 or 30 years, each Christmas Tom would organise a pensioners' day, and Winnie was always there tickling the ivories and accompanying Tom as he sang. One could not call his singing voice great, but it was certainly loud. Her death was a great loss, but she will be remembered by many people throughout the community.

One of my achievements down that way involved the Aboriginal community. Although I was happy to be with them there was also some sadness among them. As members representing that area will know, the Karla Aboriginal Corporation was a community organisation that allowed the youth of the town and the seniors to join at a central point as one. It did a magnificent job implementing many TAFE and other courses. Karla can only be congratulated and admired for the work it did. The one drawback was that a number of people who did not agree with what Karla was doing split from the group. I believe and hope that that group has now almost consolidated. I took Hon Tom Helm and Hon Muriel Patterson to see the work Karla was doing. I am absolutely sure those members came away impressed with Karla's achievements. I do not believe that anyone who saw what it was doing would have been disappointed with the money spent and the way in which that organisation operated. It was just one of those situations where people working within the community worked well. Karla demonstrated the magnitude of its achievements.

As I said, this will probably be the last speech I make in this House. Who knows, I may come back in a couple of years to haunt members! In the almost 11 years I have been here I have seen people come and go. I have seen some good people and I have seen some "good" people. I do not criticise anyone for what they do in this place. It is a place where they represent the people who elect them. It is up to members to decide what they contribute in this place. We may not always agree with each other on both sides of the Houses because we are from different political persuasions. We may not even talk to each other sometimes, but we are elected by the people and we do our utmost to pass the best legislation. At the end of the day, irrespective of what happens in here, I am happy to say that I do not think any members on the other side, bar one, would not say good day to me and vice versa.

Hon A.J.G. MacTiernan: Who is that?

Hon DOUG WENN: It does not matter; he is leaving.

Hon A.J.G. MacTiernan: The tumbleweed from Carnarvon?

Hon DOUG WENN: On the contrary, of all members he and I probably have the best discussions.

Hon A.J.G. MacTiernan: You have me intrigued.

Hon DOUG WENN: We probably drink the same Scotch. When we leave this place most people leave their disappointments or otherwise behind and speak amicably with each other. However, it is this place overall that I am concerned about. When I came in here in 1986 the first thing I looked for was a medical kit, but I could not find one. To this day I still have not found one. I believe it is somewhere at the back of the partition behind the Chair! Can members to tell me where it is? A medical kit does not exist in here.

I was also concerned about the fire hazard in this place - so much so that I wrote a letter to the President, who conveyed it to the appropriate management. To my disgust, a letter from the person who runs Parliament in response to my letter to him was read out in this place by the President. I will never forget that. Since then a fire warning system has been introduced in this building. However, in the ten and a half years I have been here probably only three fire drills have been held. In fact the President - I am sorry he is not here to hear what I have to say - once asked, "What the bloody hell is that noise?" It was a fire alarm bell. That indicates how long it was since it had been heard. I know that staff have now been trained to guide members through the appropriate exits in case of fire. However, I am concerned that no more fire drills have been held. At least one a year should be held so that members know which exits to take. Although during a fire drill we would be guided to the exits by the fire wardens we should know exactly what to do. That policy should be improved, and perhaps it will be improved after tonight. I now put aside my little whinge about this place which I basically have every year, but which is never listened to; maybe it will be noted tonight.

I am concerned about question and answer time in this place, as is the President, who has voiced his concern in the past.

Hon A.J.G. MacTiernan: You mean question and question time.

Hon DOUG WENN: Yes. After watching question time in Federal Parliament today I think we do very well in this place. Question on notice 851 to the Minister for the Environment reads -

> With regard to question 797 of Wednesday, 18 September 1996, will the Minister explain why the amendments to the Wildlife Conservation Act have been stalled for so long?

I find the answer extraordinary. The Minister should be taken to task for it by the government hierarchy. It reads -

> They have not been stalled. If the member wants a factual answer I suggest he asks a factual question and does not indulge in insinuation.

Hon Bob Thomas: Whose answer was that?

Hon DOUG WENN: That was Hon Peter Foss in reply to Hon Jim Scott. He asked a legitimate question. Why could he not receive a legitimate answer rather than that sort of evasion?

Years ago in this place a question was asked by another member of the Opposition, Hon Victor Ferry, on a matter which had already been asked. The then Leader of the House, Hon Joe Berinson said, "Your question has already been asked; please refer to answer such and such." Hon Victor Ferry berated the Government for almost 10 minutes. Hon Joe Berinson was right; the question had been previously asked. With all due respect to the Ministers in this House, why should members put questions on notice if that is the sort of answer they receive? It is disgraceful. I shall never forget the day Hon Vic Ferry berated the Labor Government for the answer supplied by Hon Joe

Berinson. It is becoming an everyday occurrence for Minister Foss to respond in that manner or to say that it will take too much staff time and will cost too much, so an answer will not be provided.

Hon Kim Chance: The fact is that Hon Jim Scott has got the better of Hon Peter Foss and that may have something to do with the quality of the answer.

Hon DOUG WENN: It means the Minister does not know the answer. The President chastises members for the way in which they ask questions and the way in which Ministers answer them. He is trying to ensure the quality of debate in this place. The Minister should be told to stop treating this House with such contempt. It is disgraceful and I would like members opposite to speak to him about it, although I do not think they will.

This is a sad, but in many ways glad, time for me. I have been a member in this place for almost 11 years and I have seen many good and bad things about the way the Parliament has conducted itself. As a member of Parliament one can stand condemned or be congratulated for one's achievements. I must thank a number of people who have assisted me. I start with my family, and particularly my wife Eileen. She shuddered when I first said I would run for Parliament. I must admit that did not last long because at that time the South-West Province was an unwinnable seat for the Labor Party. If I leave this place with any glory at all - I think I can leave it with some glory - it is that I am the first and only member of the Labor Party to have won that seat. In the 100 years prior to that election, the seat had been dominated by Liberal members. I am proud to have that record. My family has supported me over many years. All members will know that it is not easy for their families when they join this place. That applies particularly to those members who live in country areas, because they must be away from home sometimes for three, four or five nights a week and that impacts very heavily on a spouse with young children.

Hon P.H. Lockyer: It is very good for the divorce lawyers.

Hon DOUG WENN: I have not gone that far, although at times I thought I was going to. I am happy to say my family is now stronger than ever and it has four additions; that is, two sons-in-law and, in the past three months, two magnificent grandchildren. I am 48 years of age, and surprised to have lasted that long, and I am very proud of my family around me.

When I first became a member of Parliament in 1986 one of the first things I had to do was employ staff. Eight people applied for the vacancy and, with the help of the staff of David Smith, I went through the applicants. I chose Jackie Baker as the appropriate person to work in my office. She has been extremely loyal to me for 10 and a half years. Some people thought she would not be able to achieve, but she has. My Jackie has achieved very well and she has more contacts within government departments now that I am in opposition than she had when the Labor Party was in government. She knows all the appropriate people to ring for the appropriate decisions and answers. Jackie Baker is in America at the moment. She has been competing in the Seniors Games and has picked up four medals in cycling competitions. I am very proud of her and honoured to have had her working alongside me for the past 10 and a half years. She is very special.

I also must mention a lady I love dearly, Theresa Howard. She was the campaign manager at the time of the election for the seats of Bunbury, Mitchell and the South-West Province. Everyone told me to doorknock in the seats of Bunbury and Mitchell because the Labor Party needed to win those seats. However, I knew that David and Phil could win them on their own. I travelled around under the guidance of Theresa, and she told me where to doorknock and to whom to talk. It is only because of that guidance and assistance that I was able to win the seat of the South-West Province. I want to place that on the record of this House and I intend to send her a copy of my comments. On behalf of the Labor Party and all my friends and associates in the south west who helped us to win those seats I send her a very special thank you.

In conclusion, I thank the staff of the Legislative Council, particularly Laurie Marquet, the Clerk, and Ian Allnutt, the Deputy Clerk - Stuart has only recently joined the staff and I have not known him for long - for the help and service they have given me over the years. At times I may have been excitable and thought I was on the right track until I was told by them that I was not going the right way. I thank them sincerely for their help. I particularly thank the Hansard staff who have been able to put my words on paper or, more recently, on computer disk. Of course, the proceedings are now televised as well. Many of the reporters have been in this place for as long as I have been a member, and I compliment them on having lasted for so long because they have had to put up with many people during that time. I thank the Dining Room staff and all the staff in this place who have been so good to me over the past 10 and a half years. I sincerely thank them for everything.

At the outset I said I am sad but I am also glad. I must not forget my best friend ever in this place, Hon Tom Helm. I love him dearly and will always love him dearly because he has got me out of a lot of trouble in the past. I thank all honourable members.

Debate adjourned, on motion by Hon Kim Chance (Leader of the Opposition).

ADJOURNMENT OF THE HOUSE - SPECIAL

On motion without notice by Hon N.F. Moore (Leader of the House), resolved -

That the House at its rising adjourn until Wednesday, 6 November 1996, at 10.30 am.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [11.00 pm]: I move-

That the House do now adjourn.

Adjournment Debate - WorkSafe Western Australia, Corruption Allegations Inquiry

HON A.J.G. MacTIERNAN (East Metropolitan) [11.01 pm]: There are a number of matters that I want to raise arising out of answers to questions without notice today. As members will be aware, for some time I have been pursuing some serious allegations of corrupt conduct by certain officers in the construction team of WorkSafe Western Australia. One claim members will recall concerned an officer who allegedly took a bribe from a demolition contractor. I have presented the evidence of that contractor to this place. The Government's response has been that this was not a bribe. It was admitted that the officer concerned had taken money from the contractor to prepare the demolition survey which was then to be submitted to WorkSafe. According to the Minister responsible, Mr Graham Kierath, this was a professional charging something for those services. He also agreed that he was receiving additional income but asked what person has not had a part time job. He went on further to say that the inspector had acted inappropriately by not clearing the job with his superiors but that was a minor procedural error. That explanation was incredible. These surveys are designed to determine whether the demolition operator will demolish the building in accordance with safe practice. This survey was developed by the officer without any reference to the operator and was a work of fiction and bore no reference whatever to the intention of the operator. We note today from evidence presented that the WorkSafe inspector had not even consulted the demolition contractor to the extent that he was unaware of the correct spelling of his name in preparing the demolition survey.

Evidence that came courtesy of questions today indicates that, not only did the inspector prepare the survey, but also he was the officer responsible for processing that survey on behalf of WorkSafe WA. It is important to understand that in order for a demolition operator to get a demolition licence from a local authority, the demolition survey must be stamped by a relevant authorised WorkSafe WA officer. The evidence today revealed that the same officer who took the money to allegedly prepare the survey is also the officer who was responsible for processing the document. I have not previously named this inspector, but it is now necessary to do so in order that members understand precisely what happened. The inspector who, it has been acknowledged by the Government took the payment of some $250, was a Mr Brian Tolmei. In the answers to the questions that we were given today, it was revealed that that same Mr Tolmei was responsible for processing the survey and for applying the official stamp of acknowledgment to that survey. His name appears as the authorising officer on the document that was tabled by the Minister for Finance in Parliament today. In the light of this evidence, it is not possible to continue to pass off this $250 as payment for a part time job. It is a profound conflict of interest and in my view a complete abuse of the position with which Mr Tolmei had been charged as an officer of the WorkSafe construction inspectorate.

A second issue that I want to raise concerns the same matter but to which I come from a different direction. We have been assured time and again by the Government that this matter has been investigated by the fraud squad and how dare we raise the issue again when it has been investigated by the fraud squad! We have always found that somewhat difficult to believe given the evidence we have from the complainant that he was never interviewed about this matter by the fraud squad. I have been pressing for answers from the Minister for Police. The first lot of answers indicated that there had been no contact between the fraud squad and the complainant, which is odd when the fraud squad is supposed to have investigated the matter. A further answer suggested that an interview had been undertaken by the fraud squad with the complainant, Mr Ben Jeakings. This was contrary to the evidence of Mr Jeakings. We asked today for details of the interview that was supposed to have taken place.

Hon P.R. Lightfoot: The interview or the investigation?

Hon A.J.G. MacTIERNAN: The interview. It has been admitted in one of the answers that it would be standard procedure to commence an investigation of a complaint by interviewing the person who made the complaint.

Hon Kim Chance: A good place to start!

Hon A.J.G. MacTIERNAN: It is a good place to start. I asked when the police interviewed Mr Ben Jeakings. We were not given an actual date. We were told it was between 16 and 28 March 1995. A range of dates were involved! The Minister was not able to pinpoint precisely when this interview took place. I asked where the interview took place and was told that it was not one of those face to face interviews; it was done over the telephone because

Mr Jeakings had advised the detective that he was too busy to speak with the police. The answer then records that no notes were taken. I asked whether file notes were taken of the interview. One would think that, under normal practice, some record would be kept that the interview had taken place and there would be some record of the content of the interview. This is a most unusual interview because no notes were taken of this interview. The Minister could not tell us where it was held or when it was held. Apparently it was held on the phone at some time on some unspecified day and he cannot tell us what happened at the interview because no notes were kept of this interview. Incredible!

Hon P.R. Lightfoot: It was possible that it was of such consequence that no notes were taken.

Hon A.J.G. MacTIERNAN: I spoke to the complainant again tonight and told him that it was being alleged again that on some unspecified date, there was a telephone discussion between him and Inspector Cubbage. I asked him whether he could have been wrong or may have forgotten the interview. He said that he was not. However, he said that since he last spoke to me a strange thing had happened. Apparently, last week he got a phone call from this Detective Cubbage who said, "You don't really want to follow this matter up, do you?" to which Mr Jeakings replied that he did. Detective Cubbage then said that he wanted to see Mr Jeakings to which Mr Jeakings replied that he would not talk to him because he could have followed up the matter 18 months previously. He asked Detective Cubbage why he had not followed the matter up 18 months previously. He said he knew that the detective was trying to get himself off the hook. Why has this Detective Cubbage begun investigations now, some 18 months after he allegedly made the previous investigations? Why is he ringing Mr Jeakings and attempting to get him to make some statements about previous interviews? It really is a very frightening and alarming circumstance that we have police officers who appear to be not only telling lies but also in fact trying to pressure a witness.

Point of Order

Hon P.R. LIGHTFOOT: I think that it is contrary to standing orders and also grossly unfair that Hon Alannah MacTiernan should have said that someone had told lies.

Hon A.J.G. MacTiernan: "Appeared" I think I said.

Hon P.R. LIGHTFOOT: I think the member said "told". I ask that it be withdrawn.

The DEPUTY PRESIDENT: Order! The word "lie" must be used carefully. It is able to be used as long as it is not used against a member of this place.

Debate Resumed

Hon A.J.G. MacTIERNAN: I thought I had said "appeared" to have told lies. My concern is that there is certainly prima facie evidence that mistruths have been told by a police officer and that same police officer has sought to pressure a witness, and that needs to be investigated.

Question put and passed.

House adjourned at 11.02 pm

QUESTIONS ON NOTICE

ABORIGINAL COMMUNITIES - HALLS CREEK SHIRE, GOVERNMENT SUPPORT

759. Hon TOM STEPHENS to the Minister for Employment and Training:

Since the recent Halls Creek riot, what additional state government support is being made available to the Aboriginal communities of the Halls Creek Shire, particularly the remote communities, to improve access to training and employment opportunities?

Hon N.F. MOORE replied:

Support to improve the vocational education and training needs for Aboriginal people living in remote areas of Western Australia has been a priority focus for the Department of Training. The Halls Creek incident highlighted the need to continue providing Aboriginal people, particularly those living in Halls Creek and surrounding regions, with appropriate education and training in order to create employment opportunities and enhance quality of life. The vocational education and training needs of Halls Creek and adjacent regions are being met by the Kimberley Regional College of TAFE. Twenty per cent of its 1996-97 expenditure of $1.79m has been allocated to courses in the Halls Creek area. Twenty per cent of these courses are delivered at the Halls Creek campus, while 50 per cent are delivered to communities adjacent to Halls Creek, in communities in the North Tanami desert and Fitzroy regions.

Among other short courses, the following are being undertaken -

Number of students	Location	Course
31	Fitzroy Valley	Information Technology Variety of short courses
8	Outer Fitzroy	Tourism and hospitality
20	Balgo	Certificate of General Education, Literacy/Numeracy, Arts and Crafts
18	Biridie	Building course
10	Gillarong	Sewing classes
18	Billiluna	Practical skills courses
18	Mulan	Interpreters course
9	Warnum	Child care
18	Warnum	Interpreters course
12	Warnum	Road plant operators course

Those people already qualified in the road plant operators course at Warnum are now operating their own company which has ongoing contractual work. Further, there are currently three traineeships in operation in the Halls Creek region with a fourth in the pastoral industry currently being developed with the Warnum community.

Staff from the Kimberley College are also working with the Darlgunya community to develop a tourism program for Geikie Gorge. A submission has also been drafted by the Kimberley College aimed at seeking funding for specific industry training for the Fitzroy region. The independent Aboriginal training provider, Karrayili Education Centre, receives $271 600 per annum to service Aboriginal people in Fitzroy Crossing and surrounding regions. Karrayili is currently providing courses in Fitzroy Crossing, Bayulu and Wangkatjungka.

ABORIGINAL COMMUNITIES - HALLS CREEK SHIRE, GOVERNMENT SUPPORT

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

Since the recent Halls Creek riot, what additional state government support is being made available to the Aboriginal communities of the Halls Creek Shire, particularly the remote communities, to improve access to sport and recreation programs and facilities?

Hon N.F. MOORE replied:

Since the Halls Creek riots, no additional support has been provided, but the need to continue the current level of support has been highlighted. The Ministry of Sport and Recreation has been involved in the provision of sport and recreation programs to the people of Halls Creek and surrounding communities through its involvement and support for the Aboriginal sport and recreation organisation, Garnduwa Amboorny Wirnan, which has a local subregional committee based in Halls Creek. Garnduwa also employs a full time sport development officer in Halls Creek who works through the youth service.

GAW has an excellent track record in the provision of sport and recreation programs for the area and is presently working with the shire with the specific goal of improving community access to the shire's sport and recreation facilities.

AIR POLLUTION - DEATHS; CITY NORTHERN BYPASS, NORTHBRIDGE STUDIES

799. Hon JOHN HALDEN to the Minister for the Environment:

Given the Government's own admission that air pollution is killing 75 people a year in Perth, why did not the studies on air pollution commissioned as part of the planning for the city northern bypass and Northbridge tunnel include an examination of particulate air pollution - the cause of the deaths?

Hon PETER FOSS replied:

The Government has made no such admission nor would it be correct to do so. The member seems to be relying upon an inaccurate article in *The West Australian* which contradicted itself within a paragraph or so. The study on smog was commissioned as part of a proposal by Western Power. A study on haze was commissioned by Hon Kevin Minson and will shortly be available.

DIRECTOR OF PUBLIC PROSECUTIONS - ANNUAL REPORT, TABLING DATE

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

(1) Has the Attorney General received the Director of Public Prosecutions' annual report for the year ended 30 June 1996?

(2) When did the Attorney General receive the report?

(3) Will the Attorney General ensure that the report is tabled before Parliament is prorogued?

Hon PETER FOSS replied:

(1) The finalised 1995-96 annual report, incorporating the Auditor General's certificates, was delivered to the Attorney General under cover of a letter dated 7 October 1996.

(2) 3 September 1996.

(3) The report was tabled on 17 October 1996.

ENVIRONMENTAL PROTECTION (NOISE) REGULATIONS 1996 - COMPLETION DATE

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

(1) When will the Environmental Protection (Noise) Regulations 1996 "developmental stage" be completed?

(2) When will these regulations be adopted, once passed?

(3) Will the Minister consider environmental protection vibration regulations in the near future?

(4) If not, why not?

(5) How can the Department of Environmental Protection justify the assessment that the proposed noise regulations 1996 are the same as those currently being attempted by Gwalia Consolidated Ltd given the number of complaints made by residents about the effects of blasting operations in Greenbushes in the last five years?

(6) Is the Minister aware that WA is the only State in Australia that has adopted a blast noise level ceiling in excess of 120 decibels peak linear, and if so, why is this the case?

(7) Considering the loss of amenity and damage suffered by the residents of Greenbushes over the last five years due to blasting operations adjacent to the townsite, can the department justify its conclusion that any amendment to Gwalia Consolidated Ltd's blasting licence conditions would be"premature"?

(8) If so, why?

Hon PETER FOSS replied:

(1) I anticipate that the Environmental Protection (Noise) Regulations will be ready for gazettal during January or February 1997.

(2) These regulations will take effect immediately. However, they must remain on the Table of the House for 14 sitting days during which time they may be debated or disallowed.

(3) For blasting, yes. For other vibration sources, no.

(4) Experience has shown that vibration from sources other than blasting is best managed on a case by case basis. The Department of Environmental Protection currently uses Australian Standard AS 2670-1990 Evaluation of human exposure to whole-body vibration for guidance on acceptability of vibration emissions other than blasting.

(5) The standards applicable to Gwalia Consolidated Ltd for blasting at its Greenbushes premises are the same as those proposed in the Environmental Protection (Noise) Regulations. That these standards are the same is a matter of fact which is not related to the number of complaints received about blasting operations in Greenbushes.

(6) Yes. The airblast levels specified for Western Australia were adopted in 1991 or 1992, through a Cabinet decision by the previous Government, on the advice of the Department of Minerals and Energy. This Cabinet decision requires nine of any 10 consecutive blasts to be less than 120 dB and allows one blast of any consecutive 10 blasts to be up to 125 dB. These levels were drawn from a draft Australian standard (DR 91095) which eventually was not adopted.

The Environmental Protection (Noise) Regulations provide for their review within 18 months of their introduction. During this period the regulations applicable to blasting will be reviewed. In particular, the feasibility of adopting the lower airblast levels used elsewhere in Australia will be considered. Australian Standard AS 2187.2-1993 "Explosive-Storage, transport and use, part 2: Use of explosives" provides the following informative advice in Appendix J of the standard -

> Airblast can cause discomfort to persons and in some cases, damage to structures. Appropriate levels for airblast for local conditions may be required by the relevant authority. A limit of 120 dB for human discomfort is commonly used and 133 dB to avoid structural damage is generally appropriate.

(7)-(8) Yes.

RECYCLING - LOCAL AUTHORITIES NOT OPERATING DOMESTIC KERBSIDE SCHEMES

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

(1) Which metropolitan local authorities do not operate a domestic kerbside recycling scheme?

(2) What efforts or actions is the Minister taking to persuade these local authorities to undertake recycling of domestic waste?

Hon PETER FOSS replied:

(1) Within the metropolitan area the City of Gosnells, the Shire of Peppermint Grove, the Shire of Mundaring and the Shire of Serpentine-Jarrahdale do not operate a kerbside recycling service.

(2) The Government has no power to direct local governments to provide recycling services for the community. Each local government council must decide for itself whether to provide a service or not. In most cases within the metropolitan area local governments have responded to community demand and the encouragement of the Government by providing recycling services.

The Government has not directly approached the four metropolitan councils which are not recycling but each has been provided with information on waste reduction and recycling arising from government studies and inquiries. These include the recent report of the Legislative Assembly Select Committee on Recycling and Waste Management and the 1993 State Recycling Blueprint. The Waste Management division of the Department of Environmental Protection receives many inquiries from residents of these municipalities who are concerned that no recycling service is provided. These inquirers are urged to pursue this matter with their representatives on the council concerned.

WILDLIFE CONSERVATION ACT - AMENDMENTS DELAY

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

With regard to question 797 of Wednesday, 18 September 1996, will the Minister explain why the amendments to the Wildlife Conservation Act have been stalled for so long?

Hon PETER FOSS replied:

They have not been stalled. If the member wants a factual answer I suggest he asks factual questions and does not indulge in insinuation.

TAFE COLLEGES - COMPUTER MANAGED INFORMATION SERVICE (CMIS) SYSTEM, PROBLEMS

859. Hon J.A. COWDELL to the Minister for Employment and Training:

(1) Why has the Department of Training spent $8m adopting and modifying the Computer Manager Information Service system for TAFE colleges when it manifests the following problems -

(a) it is over 10 years old and does not have Windows technology;

(b) it is very slow - much too slow to fulfil its intended role as an on-line enrolment system;

(c) data integrity is poor - for example, there is no link between the subject and the course they come under;

(d) it is so cumbersome to maintain rolls accurately through this system that they will not be maintained; and

(e) it has been declared too labour and time intensive to get reports from CMIS on teaching hours, meaning that the aspect which costs 80 per cent of training dollars cannot be reported on?

(2) Who was responsible for authorising an expenditure of this magnitude, and was it against expert advice?

(3) Will the Minister take steps to investigate this gross waste of public funds?

Hon N.F. MOORE replied:

(1) (a) No component of the system is over 10 years old. Only student management module of the college management information system has been developed with a character base. All other modules have been developed in Ingress Windows 4GL.

(b) System speed has been significantly enhanced by moving from networked multicollege, multiuser systems to 'stand alone' college based system.

(c) Link between subject and course is available on the system.

(d) System enhancements have significantly improved the roll creation and maintenance facility.

(e) Time and attendance records for staff is a function of the separate human resource management system. Enhancement to improve reporting of teaching hours through CMIS is being developed.

(2) Decision made by department's corporate executive. The decision was based on expert advice.

(3) Project is within budget and is not a gross waste of public funds.

JANDAKOT WOOL SCOURING CO PTY LTD - WATER POLLUTION

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

(1) Is the Minister aware that a plume of polluted water from Jandakot Wool Scouring Co Pty Ltd is affecting Lake Yangebup and as a consequence the Yangebup residential development?

(2) Is the Minister also aware that Jandakot Wool Scouring uses a wet processing method and discharges wastewater into effluent ponds on the shores of Lake Yangebup which occasionally overflow into the lake?

(3) Is Jandakot Wool Scouring operating under licence from the Department of Environmental Protection?

(4) If yes, when was the licence issued?

(5) If not, why not?

(6) Is the Minister aware that his colleague, the Minister for Commerce and Trade, announced last year that Jandakot Wool Scouring would be moving to East Rockingham in 1997?

(7) If yes, when is this scheduled to occur?

(8) What action, if any, is the DEP taking to prevent further ground water pollution from Jandakot Wool Scouring?

Hon PETER FOSS replied:

(1) I am aware that discharges from Jandakot Wool Scouring Co Pty Ltd contribute to elevated levels of nutrients and salt in ground water in both Lake Yangebup, local ground water moving in a 400 metre plume

around the south of the lake and deeper ground water moving beneath Lake Yangebup. I do not believe that the presence of this ground water plume is affecting residential development in Yangebup.

(2) I am aware that Jandakot Wool Scouring uses water and detergent to wash wool at the site. Wastewater is discharged to treatment ponds adjacent to Lake Yangebup. These ponds are designed to prevent wastewater overflow into Lake Yangebup. I am advised that on one occasion - February 1996 - in the last 10 years water has flowed directly into the lake. This was water that had seeped through the pond walls and was not straight wastewater. It occurred because of a rain event, where over 200 millimetres of rainfall was recorded over a 24 hour period.

(3) Yes.

(4) I understand that it was originally issued in 1983.

(5) Not applicable.

(6) I am aware that the Minister for Commerce and Trade has made land available at East Rockingham to establish a 'wool precinct'. Jandakot Wool Scouring has been given the option to relocate its operations into this wool precinct.

(7) I am advised that no decision on the relocation has been made by Jandakot Wool Scouring. I understand that a decision will be made around Christmas this year. If Jandakot Wool Scouring chooses to relocate, it will operate at its existing site until the new facility is constructed. I believe that this may take between 24 and 36 months to complete.

(8) The Department of Environmental Protection, in conjunction with the Department of Commerce and Trade, has developed an environmental strategy designed to achieve the development of an environmentally acceptable, financially viable wool scouring industry in Western Australia within a reasonable time. The strategy involves the formulation of licence conditions to address the environmental management of Jandakot Wool Scouring. This includes the management of wastewater treatment and disposal, the monitoring of wastewater discharged from the premises and its effect on the receiving environment. Jandakot Wool Scouring is required to examine the alternatives available for the management of the existing ground water plumes from its operations and to implement an approved ground water management strategy.Because of the current method of wastewater treatment and disposal, there is little more that can be done to minimise the discharge of wastewater to the ground water. Ongoing work by Jandakot Wool Scouring has reduced the level of contaminants being discharged to the environment; however, until a new treatment and disposal method is implemented, the existing discharges will continue.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF - FIMISTON I, FIMISTON II TAILINGS DAMS, POLLUTION

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

I refer to question on notice 1334 of 2 May 1995 -

(1) Has leakage and seepage from Fimiston I and/or Fimiston II tailings dams caused the water table to rise near the surface stressing and killing vegetation on prospecting licences P26/1848 and P26/1858, which are not owned by the owner/operator of the above tailings dams?

(2) If not, why not?

(3) Will the Minister or the Department of Environmental Protection instruct or direct the owner/operator of Fimiston I and Fimiston II tailings dams to carry out rehabilitation on P26/1848 and P26/1858?

(4) If not, why not?

(5) Has the owner/operator of Fimiston I and Fimiston II tailings dams caused "pollution" as defined under the Environmental Protection Act 1986 on prospecting licences P26/1848 and P26/1858

(6) If not, why not?

Hon PETER FOSS replied:

(1) The leases in question do have elevated ground water levels. The Manager - Goldfields of the Department of Environmental Protection had a meeting with the operators of the Fimiston tailings storage facilities and other adjacent operations on 24 October regarding the issue. The cause of the elevated ground water levels

on these leases and other land in the area is yet to be determined. It was agreed at the meeting that an extensive hydrogeological investigation will be carried to determine the mechanisms affecting ground water levels so that appropriate and effective remediation and control strategies can be implemented as soon as possible. The investigations should also determine whether the Fimiston tailings storage facilities are having or are likely to have an effect on the prospecting leases in question.

(2) Not applicable.

(3) Until and unless the operators of the Fimiston tailings storage facilities are shown to have affected the leases as a result of the operation of the Fimiston tailings facilities, no requirement will be placed upon them to rehabilitate the leases in question.

(4) Not applicable.

(5) In the light of my responses to parts (1) and (3) of this question, it is obvious that the issue of pollution cannot be determined at this time.

(6) Not applicable.

MASTER MEDIA AGENCY - CAMPAIGN ADVERTISING COST

940. Hon KIM CHANCE to the Leader of the House representing the Premier:

(1) Does the Leader of the House, representing the Premier, now have the answer to the question I asked regarding the Master Media Agency?

(2) If so, will the Minister now provide that answer?

For the Minister's benefit, the question was -

Given that the Premier has under his control the Master Media Agency, which coordinates and handles all campaign advertising for the Government, will the Premier provide -

(a) the total campaign advertising budget by the Government in 1996-97, compared with the previous three years; and

(b) the reasons for, and total cost of, individual campaigns already scheduled in this financial year by the Government?

Hon N.F. MOORE replied:

(a) Departments and their CEOs have responsibility for expenditure on campaign advertising. Under the program budgeting format used by the public sector expenditure is generally not budgeted for at that level of detail. The Government will not be advised by the Master Media Agency of total campaign advertising expenditure for 1996-97 until the end of the financial year.

(b) Many of the campaigns scheduled so far this year have not ended and it is therefore not possible to provide the final cost. If the member has questions about any particular campaign, I would be prepared to consider providing a response.

DERBY-WEST KIMBERLEY SHIRE COUNCIL - $3M ALLOCATION IN REFERENCE TO WESTERN METALS CADJEBUT MINING PROJECT

941. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) Is the State Government proposing to allocate $3m to the Derby-West Kimberley Shire Council in reference to the Western Metals Cadjebut mining project?

(2) Will the funds be accessed by the mining company for their infrastructure needs?

(3) If not, for what purpose are those funds to be allocated?

Hon N.F. MOORE replied:

(1) The State Government has approved an allocation of up to $3m in the form of a loan to the Derby-West Kimberley Shire to upgrade the Derby wharf facility to allow commercial operation at the wharf to attract companies to use the facility.

(2) Cabinet approval of the funds was for the shire to upgrade the wharf and no direct allocation of funds was approved for Western Metals' infrastructure needs.

(3) See response to (1).

QUESTIONS WITHOUT NOTICE

HOSPITALS - MANDURAH

Funding Arrangement; BZW Investment Australia Pty Ltd

1091. Hon J.A. COWDELL to the Attorney General representing the Minister for Health:

Some notice of this question has been given.

(1) Why is BZW Investment Australia Pty Ltd being paid $500 000 for the sale of Treasury bonds reportedly associated with capital fund raising for the Mandurah Hospital when there is usually no brokerage fee associated with Treasury bonds?

(2) Why is BZW being paid $1m for project management?

(3) What project management is involved when the care aggregated model handles all aspects of building management?

(4) Are these management and brokerage fees paid out of the Health budget or the specific allocation to the Peel Regional Health District?

(5) Is it correct that this method of financing the Mandurah Hospital precludes any parliamentary scrutiny?

(6) Is this another example of WA Inc under this Government?

Hon PETER FOSS replied:

(1)-(6) The use of the word "another" assumes there has been an example. I am not aware of any examples of WA Inc activities under this Government.

Hon Kim Chance: Government advertising, contracting out. How many more do you want?

Hon PETER FOSS: I remember it applying to only the former Labor Government in vast quantities. Unfortunately I do not have any record of this question being asked; therefore, I ask that it be placed on notice.

PAPOTTO, SAMUEL JOHN - DISTRICT COURT CASE

1092. Hon SAM PIANTADOSI to the Attorney General representing the Minister for Police:

I refer to the case of Samuel John Papotto who pleaded guilty in the District Court of Western Australia on 20 June 1996 to a charge of threatening with intent to cause detriment, and I ask -

(1) Have the police received a warrant from the District Court relating to Papotto?

(2) If so, on what date did the police receive the warrant?

(3) Did the warrant relate to failing to comply with the court orders dated 20 June 1996?

(4) Which police station was handling the warrant?

(5) On what date did the police station receive the warrant?

(6) Have the police executed the warrant, and if so, when?

(7) If not, why not?

(8) Are there any other existing warrants?

(9) If so, what are the dates of these warrants and to what matters do they relate?

(10) If so, why have these warrants not been executed?

(11) Has the Police Service conducted its investigation of Papotto giving conflicting evidence in the case of Dominic Casella, who was charged relating to bribery in the Wanneroo Inc matters?

(12) If not, why not?

(13) Is the Police Service giving Papotto favourable treatment for his help in WA Inc?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Yes.

(2) The date of retrieval is not known; however, details of the warrant were recorded on computer on 16 October 1996.

(3) Yes. On 20 June 1996 Mr Papotto was ordered by the District Court to pay a $2 000 fine and was given three months to pay.

(4) The Victoria Park Police Station is handling the warrant.

(5) The warrant was not sent out; an inquiry form was forwarded on 16 October 1996.

(6) Yes, on 30 October 1996.

(7) Not applicable.

(8) No other warrants for Mr Papotto are recorded at the Central Warrant Bureau as of 5 November 1996.

(9)-(10) Not applicable.

(11) There has been no police investigation into Mr Papotto's evidence given in the Dominic Casella case.

(12) Not applicable.

(13) No.

LEGAL AID - FUNDING DECISION

1093. Hon MURIEL PATTERSON to the Attorney General:

I understand there has been an inquiry into legal aid, although I am not sure whether it was into the legal profession as well, and I ask -

(1) Has the Attorney General made a decision about the funding for legal aid?

(2) If so, to what extent?

(3) Who will be eligible for legal aid?

(4) If not, when can a decision be expected?

Hon PETER FOSS replied:

(1)-(4) The Standing Committee of Attorneys General met recently in Canberra at which time the Attorneys General of all States and Territories expressed considerable disagreement with the action of the Federal Government in unilaterally terminating the arrangements with regard to legal aid, and also challenging not just the proposed basis but even the calculation upon which it was done. Since that time, officers have met and have gone over the information we have. At present we are proceeding with a further challenge to the Commonwealth upon two lines: First, the Commonwealth's denial of an obligation to maintain a contribution to those who are called commonwealth persons - that is, people who are subjected to some form of social service support; and, second, on the amount of time devoted to supporting what are commonwealth matters. We believe the unilateral decision of the Commonwealth is incorrect and unsupportable. At this stage we will be putting the matter in some detail to the commonwealth Attorney-General and taking it up at the Council of Australian Governments level. The decision is based upon a misapprehension, and is wrong. We believe it should be dealt with at the highest level. At this stage we will not accept the Commonwealth's decision.

URBAN BUSHLAND STRATEGY - CLEARING OF LAND DEFINED AS DEVELOPMENT

1094. Hon J.A. COWDELL to the Attorney General representing the Minister for Planning:

The Government's urban bushland strategy states that to increase the protection of remnant native vegetation in urban areas "clearing of bushland will be defined as development in the Town Planning and Development Act 1928 and

any proposals to clear bushland over one hectare will require the approval of the Western Australian Planning Commission". I ask -

(1) Has the Government amended the Town Planning and Development Act 1928 and, if not, what other legislative steps has it taken to protect urban bushland in the 16 months since the release of the strategy?

(2) Of the 6 408 ha of urban bushland cleared between 1994 and 1996, is the Minister aware of any areas greater than one hectare in size which received the approval of the Western Australian Planning Commission?

(3) Can the Minister confirm that Agriculture Western Australia, which has authority in relation to clearing land greater than one hectare in the metropolitan area, has been told by the Minister for Planning, or any other person, that it should stick to rural areas?

Hon PETER FOSS replied:

(1)-(3) I thank the member for some notice of this question. The final paragraph in the question I have is worded a little ruder than the question asked by the member. I suspect mine has a typographical error in it, and the member has delivered the question correctly. Unfortunately, I do not have an answer to this question. I request that it be placed on notice. I suspect that some of this may be due to the fact that the other House is not sitting and, therefore, it may not have been possible for the information to have been passed through the other Minister. I will give a small amount of information to tide the member over for the time being. The Environmental Protection Authority is currently working out a protocol with the Soil and Land Conservation Council to ensure there is an EPA interest for the obvious reason that that body has a significant interest in the clearing of land. Shortly all clearing of land will come under an EPA protocol for development.

HOMESWEST - KEYSTART

1095. Hon CHERYL DAVENPORT to the Minister representing the Minister for Housing:

I refer to the Keystart loans scheme, and ask -

(1) Is it true that one or more Keystart agents is advising clients that, firstly, they should commence repaying the loan prior to the clients' house being built and/or handed over to the clients; and, secondly, unless they commence repaying the loan before the house is handed over to them, their repayments will increase above the amounts advised by the agent?

(2) How does the Government expect low income families eligible for Keystart loans to start repaying a loan when the family is not living in the home and may be paying rent?

(3) Will the Government investigate this practice, as it impacts on families?

(4) Will the Government issue a directive to Keystart agents to the effect that agents, firstly, should not advise or place subtle pressure on clients to commence repaying loans before they are able to move into their home; and, secondly, should not increase the schedule of payments where clients are unwilling or unable to commence repaying a loan before they take possession of their house?

(5) If not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(5) It is not a requirement of Keystart for repayments to commence prior to occupation; it is an option. Keystart clients are advised that it is in their interests to start repaying their loan as soon as possible after it has been approved. This is especially the case for loans involving the building of a property where there is some time, normally three months, between the loan approval and final handover of the property to the client. Over this period interest is capitalised to the loan account based on the amount drawn down due to progressive payments being made to the builder. The client is advised, where possible, to make a payment during this period. This payment can be the difference between the advised repayment on the housing loan, less the amount of rent currently being paid by the client. This has the advantage of having the client get used to paying the full loan repayment. If this procedure is adopted, the loan repayment amount, as advised when the loan is approved, will not change. However, if no payments are made during the construction period, which is not a condition of the loan, the repayment will need to be adjusted at final draw down to take account of any capitalised interest. This is necessary to ensure the loan will still be repaid over the

25 year term. Keystart has the clients' interest in mind with this procedure as it helps to reduce the loan balance immediately the loan has been approved, and also helps the clients to get into a regular payment pattern to enable them to service the loan.

ELECTIONS (STATE) - DATE

1096. Hon KIM CHANCE to the Leader of the House:

(1) Does the Government stand behind the Premier's undertaking of 21 March 1996, recorded in *Hansard,* that -

I have told the Leader of the Opposition a hundred times there will not be an early election. He -

That is, Mr McGinty -

- can pick a date in late February or early March . . .?

(2) If not, will the Leader of the House indicate when the election is likely to be called?

Hon N.F. MOORE replied:

Good grief! Perhaps Hon Kim Chance might tell me when he thinks it should be held.

Hon Kim Chance: I'll remain silent on that matter.

Hon N.F. MOORE: I was a little interested in what Hon Kim Chance thought the Government should do.

(1)-(2) The Premier has not yet indicated on what date the poll will be held. However, he has consistently said that the poll will be called only after essential legislation has been passed.

EXMOUTH MARINA - MINISTERIAL VISIT

1097. Hon P.H. LOCKYER to the Minister for Transport:

I understand the Minister had a chance to visit the marina site at Exmouth over the weekend. Was he satisfied with the contract of Thiess Contractors Pty Ltd? Did he have an opportunity to inspect the limestone site?

Hon E.J. CHARLTON replied:

Yes, I inspected both the quarry and the marine facility. I was pleased to see the difference in the operations in the quarry. As the Government has stated in this place when this matter has been debated before, it is disappointing that the work was not able to be done like this in the first place. However, I suppose that is life. The work on the quarry is continuing on a broad front in a staged process of maximising the return from the quarry. I drove around the marine facility with the project manager. The marina is taking shape. Work remains to be done on about 20 metres on one wing. That will complete the outer sections. The water from inside has been drained and material is being excavated. It is taking shape and progressing well, and the project manager is completely happy with it.

WORKSAFE WESTERN AUSTRALIA - GENERAL CONSTRUCTION BRANCH, INSPECTIONS REDUCTION; LEAVE DAYS

1098. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:

(1) Has the number of investigations by the general construction team of WorkSafe Western Australia in the first quarter of this financial year dropped to 158, representing less than one-third of the 514 inspections carried out for the same period in 1995-96?

(2) Of the total working days available to the general construction branch, were more than 50 per cent of those days taken as leave?

(3) Why was so much leave approved during that period?

(4) Why were adequate relief arrangements not made by the department?

(5) How many of the eight inspectors in the general construction team from 1 July 1996 to 30 September 1996 -

(a) have resigned;
(b) are taking paid leave; or
(c) are taking unpaid leave?

(6) Has the chief inspector of construction and engineering taken leave?

(7) If yes, when did that leave commence and how long is it for?

Hon MAX EVANS replied:

I ask the member to place this question on notice.

Hon A.J.G. MacTiernan: You would; it is a disgrace.

The PRESIDENT: Order!

POLICE SERVICE - JEAKINGS, BEN, DOUBLE IMPACT DEMOLITION, INTERVIEW

1099. Hon A.J.G. MacTIERNAN to the Attorney General representing the Minister for Police:

I refer to the answer to question without notice 998 of 23 October 1996.

(1) When did the alleged police interview with Ben Jeakings of Double Impact Demolition take place?

(2) Where did the interview take place?

(3) What matters were canvassed during the interview?

(4) Were file notes taken of the interview?

(5) If yes, will the Attorney General table those file notes?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The interview between Senior Detective Cubbage and Mr Jeakings took place between 16 and 28 March 1995.

(2) Senior Detective Cubbage interviewed Mr Jeakings over the telephone between 16 and 28 March 1995. This was done as Mr Jeakings informed Cubbage that he was too busy to speak with the police.

(3) Senior Detective Cubbage discussed the statement that Mr Jeakings had given to Jim Zaknich.

(4) No notes were recorded during this interview as no matters were raised by Mr Jeakings that were not documented in the statement obtained by Mr Zaknich. It sounds as though Mr Zaknich got it right.

(5) Not applicable.

POLICE SERVICE - CLARKSON STATION CONSTRUCTION COMMITMENT

1100. Hon JOHN HALDEN to the Attorney General representing the Minister for Police:

(1) Has the Police Department or the Government given a commitment to build a new police station at Clarkson?

(2) If so, how much money has been committed to this project?

(3) When will construction commence?

Hon PETER FOSS replied:

(1)-(3) The Police Service intends to acquire land during 1996-97 for a new Clarkson police station from funding allocated for land acquisition. Clarkson is included for consideration in forward estimates for planning and construction in 1999-2000.

INDUSTRY ASSISTANCE PACKAGES - FUNDING PROGRAMS

1101. Hon JOHN HALDEN to the Leader of the House representing the Minister for Commerce and Trade:

Some notice of this question has been given.

(1) What was the level of state funding for industry assistance in 1995-96?

(2) What individual programs for industry assistance received state funding, and how much was received?

Hon N.F. MOORE replied:

I do not have a copy of the question or the answer. The Minister for Commerce and Trade is overseas, which may be the reason there is no answer. I ask the member to place the question on notice.

LAND ADMINISTRATION, DEPARTMENT OF - LAND AUCTION, DWELLINGUP, COSTS

1102. Hon J.A. COWDELL to the Leader of the House representing the Minister for Lands:

(1) What were the costs associated with the abortive land auction conducted by the Department of Land Administration in Dwellingup on Saturday, 2 November?

(2) Given that lots 247 to 358, an area originally designated parkland and recreation reserve, were passed in, will the Government now consider returning this area to the local community as parkland and reserve?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The costs are: Advertising, $1 435; printing, $1 165; and staffing, $459.16, totalling $3 059.16.

(2) No. This development consists of 21 fully serviced and surveyed residential lots and will remain available for sale to the public in the normal manner; that is, lots 337 to 345 and 347 to 358. A large area in the development has been set aside as a proposed reserve for parkland and recreation. The auction also included lots 59 and 247, which were vacant established lots located within the existing townsite.

WORKSAFE WESTERN AUSTRALIA - DEMOLITION SURVEY FOR BEN JEAKINGS, DOUBLE IMPACT DEMOLITION

1103. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:

(1) In respect of the site survey that the Minister has acknowledged was prepared by a WorkSafe Western Australia inspector for Ben Jeakings of Double Impact Demolition, which WorkSafe officers were involved in assessing and/or authorising that survey?

(2) Will the Minister table all papers and records relating to that demolition survey?

(3) If not, why not?

(4) Did any officer in WorkSafe WA at any time interview Mr Jeakings about his complaints against the officer who prepared the demolition survey?

(5) If so, who was that officer and when did the interview take place?

(6) Did any WorkSafe officers check the veracity of the inspector's written explanation of his conduct with Mr Jeakings?

(7) Will the Minister table the inspector's written explanation of the events?

(8) If not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The demolition survey was acknowledged by inspector B. Tolmie in accordance with the requirements of occupational safety and health regulations.

(2) I seek leave to table that survey.

Leave granted. [See paper No 826.]

Hon MAX EVANS: To continue -

(3) Not applicable.

(4) Yes.

(5) The chief inspector, Mr F. Keogh, interviewed Mr Jeakings on 22 June 1995.

(6) Yes.

(7)-(8) No. As Hon Alannah MacTiernan is aware, the inspector has been interviewed by the Police Service and has been subject to disciplinary action under the provisions of the Public Sector Management Act. Given the due process that has been followed properly, I do not consider it appropriate to place him on trial again for this matter.

URBAN BUSHLAND STRATEGY - CLEARING OF LAND CONSIDERED REGIONALLY SIGNIFICANT

1104. Hon MARK NEVILL to the Attorney General representing the Minister for Planning:

The Minister is referred to the Government's urban bushland strategy released in June last year, and the revelation earlier this year that 1 490 hectares of urban bushland considered regionally significant by the Ministers' department has been cleared during the term of this Government. In the light of this information -

(1) Why was the 1 490 ha cleared if it had this classification?

(2) How much of the 6 408 ha cleared in total between 1994 and 1996 was cleared in lots greater than 1 ha?

(3) Having regard to the Government's urban bushland strategy, what percentage of the areas greater than 1 ha in size received the approval of the Western Australian Planning Commission?

(4) If not all of them, why not?

Hon PETER FOSS replied:

I ask the member to place the question on notice.

EDUCATION DEPARTMENT - NEW SCHOOLS, BUNBURY AND MITCHELL COMMITMENT

1105. Hon JOHN HALDEN to the Leader of the House representing the Minister for Education:

(1) Between 1996 and 2000, how many schools has the Government committed to build in the seats of Bunbury and Mitchell?

(2) What are those schools, and when will construction commence?

(3) What is the anticipated cost of each school?

Hon N.F. MOORE replied:

I do not know what has happened to the system today, but I have neither the question nor the answer. I ask that the question be placed on notice.

WORKSAFE WESTERN AUSTRALIA - JEAKINGS, BEN, CONFRONTATION WITH INSPECTOR R. BRIERLEY

1106. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:

In regard to the answer to question without notice 1026 -

(1) Who was the inspector who confronted Mr Ben Jeakings with parliamentary questions and suggested replies?

(2) What were the personally damaging allegations supposedly made by me?

(3) What allegations did the inspector seek to refute?

(4) Why was Mr Jeakings selected by the inspector to express his concern?

(5) Was the inspector attempting to intimidate a person he thought might be revealing information?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Mr R. Brierley.

(2)-(5) The inspector was refuting allegations suggesting he was either incompetent in not issuing several notices on the site or was turning a blind eye to breaches of safety legislation. The inspector was not attempting to intimidate Mr Jeakings. He was expressing his concern at the personally damaging allegations made by Hon Alannah MacTiernan.

TOLL ROADS - KALBARRI-SHARK BAY PROPOSAL

1107. Hon P.H. LOCKYER to the Minister for Transport:

I refer to an article on the front page of *The West Australian* this morning. What progress has been made on the possible toll road between Shark Bay and Kalbarri?

Hon E.J. CHARLTON replied:

Some time ago representatives of Clough Engineering Group approached me with a suggestion about the construction of a road between Kalbarri and Shark Bay. The main thrust of the suggestion was the company's interest in the region and its belief that a road in that area would benefit the tourism industry. I told the company that the Government had a 10 year road funding program and that there was no chance of including in the program the construction of such a road; however, if the company was interested in fulfilling its proposal, we could carry out some preliminary investigations on the alignment of the road. If such a road could not be constructed close to the ocean it would be of little value to the tourism industry. A coast road would be of considerable benefit because it would cut the distance travelled currently from Kalbarri along the highway and into Shark Bay by about 200 kilometres. Preliminary investigations on the proposed road alignment have begun. I look forward to a viable proposal. We will relay that information to the company and see what happens from that point. We support the proposal in principle.

PEDESTRIAN ACCESS WAY- BONNEVILLE WAY, JOONDALUP TO CURRAMBINE RAILWAY STATION

1108. Hon GRAHAM EDWARDS to the Minister for Transport:

(1) Is the pedestrian access way from Bonneville Way, Joondalup to Currambine railway station included in land currently used by the Water Corporation for a temporary pumping station?

(2) Is the access way temporary or permanent?

(3) If it is temporary, when will a permanent access way be built and what is its likely location?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Part of the access way is located on land used by the Water Corporation. Any questions concerning the Water Corporation's use of the land should be directed to the Minister for Water Resources.

(2) The access way is temporary.

(3) It is proposed that a pedestrian bridge be constructed over the freeway, south of Currambine station, when the freeway is extended beyond that point. The temporary access way will then be closed.

ROAD SAFETY - ADVERTISEMENT FEATURING A PERSON WITH ONE EYE, CRITICISMS

1109. Hon GRAHAM EDWARDS to the Minister for Transport:

I assume that the Minister is responsible for road safety.

(1) Is the Minister aware of the road safety advertisement which features a person with one eye?

(2) Is the Minister aware of the criticism of the advertisement by people in the community who claim that it is ineffective and that it turns people off the moment it comes on, and, for that reason, it carries no safety message because people do not listen?

(3) Will the Minister check out the advertisement and - because he is responsible for road safety - review the situation to ascertain that road safety funding is being spent in the best possible way on the advertisement?

Hon E.J. CHARLTON replied:

(1)-(3) I have not seen the advertisement, but I have heard criticism along the lines outlined by the member. I understand that if the advertisement has not been withdrawn, it is being reviewed. Additionally, we are trying to ensure that our advertising program will be reviewed with the passage of the new Road Traffic Amendment Bill which will focus on a number of road safety initiatives.

FISHERIES DEPARTMENT - WINDY HARBOUR-AUGUSTA LOBSTER MANAGEMENT PLAN AMENDMENT (NO 2), TABLING DATE

1110. Hon KIM CHANCE to the Minister representing the Minister for Fisheries:

When does the Minister intend to table the Windy Harbour-Augusta Lobster Management Plan Amendment (No 2) published in the *Government Gazette* on 1 November 1996?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. I am advised that the subsidiary legislation to which the member refers will be forwarded to Parliament on 6 November 1996 for tabling.

URBAN BUSHLAND STRATEGY - CLEARING OF LAND MORE THAN ONE HECTARE, REQUIREMENTS

1111. Hon KIM CHANCE to the Minister representing the Minister for Primary Industry:

According to the Soil and Land Conservation Regulation gazetted on 10 January 1986 the owner of any land in the State proposing to clear more than one hectare must give notice to the Commissioner for Soil and Land Conservation 90 days prior to doing so. Agriculture Western Australia has issued a farm note confirming this. Having regard to the regulations and the farm note -

(1) Why does the Government's urban bushland strategy state that the commissioner's approval is required only for clearing in rural parts of Perth, which is in direct contradiction to the "any land" referred to in the regulations and the farm note?

(2) Can the Minister confirm that the Minister for Planning has advised Agriculture Western Australia that it has no authority in relation to the clearing of land in the metropolitan area, which is also in direct contradiction to the regulations and the farm note?

(3) Is it correct that the Soil and Land Conservation Council decided around September last year, or at any other time, that in residential areas vegetation clearing does not constitute a change in land use or land degradation and therefore is not notifiable?

(4) If so, was this decision made in response to pressure from the Minister for Planning that Agriculture WA should stick to rural areas?

(5) Does the Minister support the council's conclusion that the complete clearing of more than one hectare of land in residential areas does not constitute a change in land use or land degradation; and, if so, on what grounds?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1)-(5) The Soil and Land Conservation Act 1945 is supplementary to a number of other Acts of Parliament. This means that the Soil and Land Conservation Act is supreme unless it contradicts the prime purpose of the other legislation. The Soil and Land Conservation Act has no authority where a development has occurred under the Town Planning and Development Act 1928.

WORKPLACE LIAISON OFFICERS - APPOINTMENTS, ADVERTISEMENT DATE; APPLICATIONS

1112. Hon BOB THOMAS to the Minister representing the Minister for Labour Relations:

(1) When were the five workplace liaison officers level 5, INSP0011 fair workplaces, positions advertised in *The West Australian*?

(2) How many applications were received from -

(a) within the public sector; and
(b) outside the public sector?

(3) How many people were interviewed for the positions?

(4) How many non-public sector applicants were interviewed?

(5) If no-one from outside the public sector received an interview, what were the reasons?

Hon MAX EVANS replied:

I ask that the question be placed on notice.