WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Tuesday, 26 August 1997

Legislative Council

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

PETITION - EUTHANASIA

Hon Tom Stephens (Leader of the Opposition) presented a petition signed by 49 persons, couched in terms identical to those of a petition presented last week, praying that the House reject any Bill to legalise euthanasia.

A similar petition was presented by the President, by delivery to the Clerk, signed by 19 persons.

[See papers Nos 695 and 711.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Report - Road Traffic Amendment Regulations

Hon Nick Griffiths presented the Twenty-fifth Report of the Joint Standing Committee on Delegated Legislation on the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) 1997 and the Road Traffic (Licensing) Amendment Regulations (No 2) 1997, and on his motion it was resolved -

> That the report do lie upon the Table and be printed.

[See paper No 712.]

MOTION - URGENCY

Goldfields Gas Pipeline - Transmission Tariffs

THE PRESIDENT (Hon George Cash): I have received the following letter -

> Dear Mr President
>
> At today's sitting, it is my intention to move under SO 72 that the House at its rising adjourn until 9.00 am on 25 December 1997 for the purpose of discussing the failure of the Minister for Energy to ensure the gas transmission tariffs on the Goldfields Gas Pipeline are 'fair and reasonable' as required by the Goldfields Gas Pipeline Agreement Act 1994.
>
> Yours sincerely
>
> Mark Nevill MLC
> Member for Mining and Pastoral Region

In order for this motion to be debated, it will require four members to indicate their support by rising in their places.

[At least four members rose in their places.]

HON MARK NEVILL (Mining and Pastoral) [3.39 pm]: I move -

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

Low energy prices are critical for the creation of employment in all areas of this State, whether the south west or the goldfields. If we can get the costs of energy down, our mines will stay open longer; we can afford to mine lower grade ore; we can create opportunities for manufacturing industry to go into those regions, build plants, create jobs and compete. We have a unique problem in the goldfields. The Minister for Energy, Hon Colin Barnett, and this Government have failed to ensure that the tariffs for goldfields gas transmission to Kalgoorlie are fair and reasonable, as is required by the Act. I am not talking about the purchase of the gas but the cost of pumping the gas along the pipeline. The cost for this from the Pilbara to Kalgoorlie is seven times the cost for the transmission of gas from the Pilbara to Geraldton. It costs $3.56 a unit to ship gas to Kalgoorlie. However, for the transmission of gas to the new steel mill at Geraldton the price is under 50¢ a unit.

Hon N.F. Moore: There is no direct comparison.

Hon MARK NEVILL: There is a good comparison. Although the Leader of the House might say that that is a very low price for the steel mill, I would expect costs to Kalgoorlie to be possibly twice as high but not seven times as

high. In that sense there is a very real and direct correlation. The tariffs on the goldfields gas transmission pipeline are demonstrably higher than those anywhere else in Australia. Why are they so high and are they fair and reasonable, as the Act requires under section 22(1) of schedule 1 under "Tariffs", which reads -

> Contracts for transmission of natural gas and associated services negotiated by the Joint Venturers with Third Parties must incorporate tariffs that are fair and reasonable and consistent with the tariff setting principles approved by the Minister under this Agreement.

It is impossible for potential third party gas users to determine if the gas price they are being asked to pay in the goldfields is fair and reasonable. Where a monopoly exists for gas transmission, as it does with the Goldfields Gas Pipeline, it is essential that costs of the pipeline are transparent and are made public to ensure that tariffs are fair. This idea is not novel. Anywhere else in the world where there is a monopoly pipeline, the body involved must make costs transparent to any third party user. The Goldfields Gas Pipeline costs have not been made transparent. Potential third party users really do not know what they are negotiating against. They are being offered a price and told, "Take it or leave it." The Act requires the price to be fair and reasonable. The Minister, Hon Colin Barnett, has failed to cause the goldfields gas transmission company which operates the pipeline to publicly revise what are called indicative tariffs for gas transmission, which would normally be based on the final cost of the pipeline. The pipeline was finished some 12 months ago and we still do not know what the costs are. As I have said, a monopoly pipeline is always regulated. If one goes to Canada, the United States or anywhere else in Australia, that is the case. It seems that Western Australia is the only area in which it is not adequately regulated.

A year ago I asked a number of questions on the disclosure of costs. In October 1996 in the last part of question on notice 952 I asked the Leader of the House, representing the Minister for Energy -

> What is the actual final construction cost of the goldfields gas transmission, and has it been properly reflected in the tariff structures offer to third party users?

The answer in part read -

> The expected final cost is yet to be determined, but it is expected to be close to the $450m estimate.

That answer was given two months after the pipeline was completed. In March of this year I asked the Leader of the House, representing the Minister for Resources Development -

(1) Has the Minister received comprehensive information of the cost of financing the goldfields gas pipeline since it was completed last year?

(2) If not, why not?

(3) If yes, when will a reviewed indicative tariff schedule be available, based on information in (1)?

The answer in part read -

> The actual and final construction cost of the Goldfields Gas Transmission Pipeline is still being confirmed and is not expected to be finalised until mid year.

That was some eight months after the pipeline was completed. In his response to a press release I put out in the *Kalgoorlie Miner* the Minister said on 14 July that the goldfields gas transmission owners were unable at that stage to finalise the capital cost of the pipeline.

During the parliamentary break I took the opportunity of visiting California and Alberta to look at energy matters. I asked a number of people from different government and industry organisations in those two States what was the maximum time one could possibly expect for the costs of a pipeline to be finalised. I asked whether it could possibly be 12 months, as is the position in the goldfields. One of the Canadian executives said that that was possible in Canada, if one got caught by the winter and could not go back for another six months, when one then had to go back, clean up, and finalise one's costs. The executive said that anywhere else in the world at the absolute outside the time would be six months; normally it would be between three and six months. However, here in the goldfields the operating company is allowed to keep the same high tariffs for 12 months and the costs have not yet been finalised. Once the costs are finalised they must be disclosed so that people can see they are paying a fair and reasonable tariff. The goldfields tariffs are the highest in Australia and seven times higher than the shipment costs to Geraldton.

Something is amiss. From the answers to the many other questions I have asked, the Minister does not seem to be interested in the problem and is not doing anything about it. I put it to the House that the Minister for Energy is not doing his job. Potential third party users must have access to those costs. There must be transparency so that they can determine if the costs are fair and reasonable. The Goldfields Gas Pipeline Agreement Act contains a subsection in the section on tariffs which refers to altered circumstances. It reads -

> If the State at any time, as a result of altered circumstances considers that any approved tariff setting principles should be varied, then the Minister shall have the right to consult with the Joint Venturers and to require them to negotiate in good faith . . .

It is a bit of a Clayton's subsection because the Minister cannot do anything about it even after he consults the operators. Circumstances have altered, and from the answers I have received to questions in this place it is evident that the Minister has done nothing. The altered circumstance is that the pipeline has been refinanced using infrastructure bonds. Infrastructure bonds give a tax advantage to both the buyer and the issuer of the bonds. The significant implications of that are a reduction in the risk to those who built the pipeline, a reduction in the cost of debt - in other words, a lower interest rate - and a significant reduction in the debt to equity ratio. Infrastructure bonds worth $479m have been issued on the Goldfields Gas Pipeline. That means it has a 100 per cent debt. Nowhere else in the world are pipelines financed with 100 per cent debt. That will lower the cost of the pipeline, and it should result in a lowering of those tariffs to Kalgoorlie from their present extremely high level of $3.56 a unit. That is a case of altered circumstances.

The risk has shifted from the three proponents to the infrastructure bond holders. The proponents no longer carry the risk for the pipeline. The letter that the Minister tabled when we debated that Bill, tabled paper No 956 of 1994, states -

> The Joint Venturers shall be entitled through third party tariffs, to seek a commercial rate of return. . . . For the purposes of this paragraph, the commercial rate of return shall be commensurate with the business risk associated with the project and the provision of the service sought.

The proponents no longer carry the business risk. That is a significant altered circumstance which the Minister for Energy has failed to address. The failure to review tariffs on that Goldfields Gas Pipeline is a direct reflection on the competence of that Minister. It is no excuse that he receives his advice from the Office of Energy.

I have asked questions about this issue on a number of occasions over the past year, so I have drawn the Minister's attention to the problem and what information he needs to seek. I have seen no evidence that he has attempted to seek that information. In questions to Parliament I asked the Minister to disclose the investment costs, the rate of return and the depreciation period. We do not know whether the pipeline has been depreciated over seven, 21 or 40 years. That affects tariffs dramatically. We do not know the debt costs, or the depreciation methodology. If those items were made public, we could calculate the tariff.

I have done a back of the envelope tariff calculation for the Goldfields Gas Pipeline. Admittedly that is an inaccurate calculation, but that figure comes in at under $2 a unit. Currently it is $3.56. I would not stake my life on that figure, but unless the Minister discloses the costs on that pipeline no-one will know. The Minister has an obligation and duty to do that. The Minister does not seem to care what extra costs he loads on country businesses and commerce. We have seen that in a number of issues that the Minister for Energy has dealt with. I do not believe the Minister for Energy is doing his job properly. I have no doubt that these unreasonable tariffs are impeding the development and growth of the goldfields region and the mines and towns along the pipeline route. If the tariffs are too high and not fair and reasonable and the Government can reduce them, it should do that. The Government should also ensure that the proponents of that pipeline get a fair rate of return on their capital investment. Those two goals can be reconciled.

The Minister for Energy is derelict in his duty and a year is far too long to wait for those costs to be disclosed. He should pull up his socks and do his job properly.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.54 pm]: The complexity of this matter is one of the reasons that an urgency motion is the wrong vehicle to discuss it. I intend to read a response that has been provided by the Minister for Resources Development on the matters raised by Hon Mark Nevill. It is a pity that the member has done nothing except knock this project since its inception. We will argue about that at another time as we already have on a previous urgency motion on the same subject about one year ago. That describes urgency motions more than anything else.

Hon Tom Stephens: It is becoming more urgent.

Hon N.F. MOORE: The Goldfields Gas Pipeline tariffs could never approach the AlintaGas tariff on offer to Kingstream Resources NL. The Alinta pipeline is a large pipeline built many years ago. It is operating near to capacity. The GGP pipeline is small by comparison, built recently and operating well below capacity. This means that the GGP tariff will be higher than the tariff on offer to Kingstream.

The state agreement does not allow the State to directly approve of the GGP tariffs. Instead, the State approves tariff setting principles and must be satisfied that the tariffs are consistent with those principles. The tariffs that have presently been set by the GGP were judged by the State to be consistent with the tariff setting principles.

The test as to whether they are fair and reasonable is left for the marketplace. If a third party is unable to agree to a tariff with the GGP, a determination by the Minister under the agreement of reasonable tariffs is triggered, and that must be consistent with the tariff setting principles. The Minister's determination is arbitrable under the agreement.

The member is claiming that the tariffs are not fair and reasonable. However, the proof of the tariff is to be found in the marketplace where the GGP has signed contracts with Plutonic Resources Ltd and Wiluna Mines Ltd and is close to signing contracts with Anaconda Nickel NL, Jundee, Cawse and Alinta. This market response suggests that the tariffs are fair and reasonable and nobody has sought a determination from the Minister under the agreement.

The GGP will commence deliveries to Plutonic in early September and to Wiluna Mines in early October. Both the GGP and the Jundee and Cawse projects are building the necessary infrastructure and connections to allow both projects to be supplied with gas in late October and March respectively, and final draft contracts have been exchanged. With the announcement by Anaconda that it has project finance, a contract is expected to be concluded shortly for the delivery of gas in March 1998.

It was always expected that a first review of the tariffs would be undertaken when the capital cost for the pipeline was known. The problem has been that the GGP has been unable until recently to finalise the capital cost of the pipeline. As the tariff is very sensitive to capital cost it was sensible to wait until the final cost was known. The tariff setting principles require that any reduced price flows on to existing contracts. This means that projects can contract now knowing that any future lower tariff will automatically flow on to them.

Tariffs were set in the first place to produce the lowest possible tariff consistent with the tariff setting principles. This was because a net present value rather than a cost of service approach was used. This essentially means that the project has estimated the likely sales and costs over the full 42 years of the project and annualised the net cash flow on a discounted basis to produce an NPV of zero using an agreed discount rate. The effect of this is to shift present costs on to the future. The result is a lower tariff in the earlier years of the project compared with a cost of service approach where actual costs on an accounting basis are recovered each year from the volume of gas sent through the pipeline.

Although the State cannot require a tariff review because it thinks the price is too high, it can review the tariff setting principles. If these principles are not being met the State can require adjustments to the tariffs so that they are consistent. However, the State has no evidence from the marketplace that the tariffs are in need of adjustment on any grounds. It has always been understood between the State and the GGP that there would be a review of the tariffs when the project capital costs were known accurately. It seems that this time has now arrived and it is expected that the GGP will commence a review shortly. This may result in lower tariffs, but this will depend on the difference between the projected and the final capital cost. The GGP's success in signing up customers will cause a downward adjustment as a result of sales being greater than projected. There has been comment that the GGP partners have been able to finance their capital requirements on favourable terms. The assumption has been that this should flow through into lower tariffs. The problem is that the GGP tariff model is an artificial model and does not purport to reflect the actual arrangements made by the joint venturers in financing their capital contribution.

The model sets up a pipeline entity that effectively operates as though it is a separate company which raises funds in the capital markets and makes a return on equity as a stand alone company. The rate of return it makes is set by comparison with comparable entities in the marketplace. The rate of return used in the model was reviewed by the State and agreed to as a realistic rate of return, taking into account the commercial risk that project would represent to a stand alone company. This means that the tariff is not affected by the actual borrowings made by the joint venturers or the individual tax positions.

The tariffs have not been judged by the marketplace to be unfair or unreasonable; therefore, the State has seen no reason to act. The tariffs will be reviewed in the near future and this will provide an opportunity for the State to consider all issues relating to the tariff levels and their continued compliance with the tariff setting principles.

I have referred to some notes which were provided to me by the Minister for Resources Development, which seek to respond to the issues raised by Hon Mark Nevill in his urgency motion.

Motions which require a fairly sophisticated knowledge of a particular subject are best dealt with under a normal notice of motion and a debate that has no time constraints, not the 10 minutes I have and the 15 minutes Hon Mark Nevill has in this debate. The Government cannot deal with these issues under that arrangement. I have said on occasions that it does not help the cause of a debate to reach the proper conclusion if an issue is dealt with under the requirements of an urgency motion.

I was told that when my office sought to find out from the Labor Party whether there would be an urgency motion today, it was told that there was no need for that motion to be provided to the Government as a matter of courtesy. The fact that the motion was made available to the Government at one o'clock this afternoon demonstrates to me an

unfortunate state of affairs. If this place is to have urgency motions dealing with complicated issues, it is in everyone's best interests for the other side of the argument to be told what the issues are as early as possible. It would give the Minister, particularly if he is representing someone else's portfolio, the opportunity to find out what the motion is about to enable him to respond in a positive and useful way. To be told that the Government was advised as a matter of courtesy underestimates the importance of getting a decent response. Hon Mark Nevill obviously wanted a response from the Minister on this issue, which he believes to be of great importance. It would assist the Minister, particularly if he is representing a Minister in the other place, if he were given maximum notice of an urgency motion.

It is regrettable that Hon Mark Nevill has done nothing since the pipeline was completed other than to complain about it. I wonder whether his solution is that the Government should buy the pipeline and put an artificial tariff arrangement in place. It is contrary to what is happening to every other pipeline; that is, they are being sold off to the private sector.

In this instance a private company, which has a state agreement Act, has built a pipeline from the Pilbara to the goldfields and has set a tariff which it believes is fair and reasonable. The point the member made in his urgency motion about what is fair and reasonable, and that being a requirement of the agreement Act, comes down to the need for a third party to complain that it is not getting a fair and reasonable tariff. It is not up to the Minister to decide upfront what is fair and reasonable. He is required to make an assessment on whether it is fair and reasonable under the tariff setting principles. The judgment is on the way the tariff is set and not on the actual dollars and cents, the end result of the tariff.

The Government has not received any complaints from a third party that the tariffs are not fair and reasonable, which indicates that the marketplace has determined that the price is fair and reasonable. The Government hoped that the price of energy around Western Australia would reduce, and it has reduced quite dramatically. It regards it as one of its achievements.

The Government is delighted to have the pipeline but it recognises it is a private pipeline and it does not propose to start telling the private sector what should be its tariffs for gas. If that is what the member is suggesting it should do, he should say so. It would be an interesting return to the bad old days of government control over prices. That will not work.

The Government is pleased the pipeline was built and it looks forward to the day that the member acknowledges it is a major achievement in providing infrastructure to remote parts of Western Australia.

HON MARK NEVILL (Mining and Pastoral) [4.05 pm]: A favourite line of the Leader of the House is that I knock the project. That is nonsense. I have always supported the project. I said it was an excellent project when it was commenced. I went through the Bill in great detail when it was debated in this place. I now know a bit more about the gas industry than I did in 1994 and, unfortunately, some aspects of that legislation are deficient.

My complaint with the Government about the Goldfields Gas Pipeline is that its benefits were oversold to the goldfields public. The Premier said there would be a 50 per cent reduction in energy costs, and that has gradually whittled away.

The pricing of energy in the goldfields has been pitched just below the cost of replacing diesel and light oil fired power stations. It has marginally cut the cost of diesel generated power stations. It is relevant to compare the cost of the Goldfields Gas Pipeline with the Dampier to Bunbury natural gas pipeline. That pipeline has incurred a massive debt, thanks to the original take or pay contract with the North West Shelf. The Pilbara to Bunbury pipeline is labouring under many handicaps. It is not simply a big pipeline that cannot be compared with the goldfields pipeline.

I concede that the tariff in Kalgoorlie could be double that in Geraldton. The tariff would then be $1 per unit, but $3.56 is excessive. The tariff cannot be considered to be fair and reasonable simply because Wiluna Mines Ltd and Plutonic Resources Ltd have signed up. They have been sold gas at a price which is just below replacing their diesel fired power stations. The fact that Anaconda Nickel has signed up for a contract with Goldfields Gas Transmission Pty Ltd does not mean it believes the tariff is fair and reasonable. In fact many of these companies have complained to me and the member for Eyre about the lack of transparency, and they do not know whether they are being ripped off or whether the tariff is fair and reasonable.

Hon Peter Foss: They are doing better.

Hon MARK NEVILL: It is marginally better. A company with a monopoly pipeline anywhere in the world is required to make sure its costs are transparent and it is allowed a return on its capital of the long term bond rate plus a percentage -

Hon Peter Foss: Would they rather go back to having people not put up the money?

Hon MARK NEVILL: That is a specious argument. The pipeline is an absolute asset to the goldfields. The Opposition wants the costs to be transparent so that it knows the tariffs are fair and reasonable. The tariffs in the goldfields are the highest in Australia and are seven times higher than the tariffs in Geraldton. Are the tariffs fair and reasonable?

Hon Peter Foss: They are if people are prepared to pay them and they are cheaper than diesel. You are taking a socialist attitude.

Hon MARK NEVILL: The Minister did not defend the fact that it has taken a year to finalise the costs associated with the Goldfields Gas Pipeline. That is unacceptable. The advice I have is that those costs should have been finalised six months ago. Why has the Government allowed that delay to occur? It should have been putting pressure on Goldfield Gas Transmission.

Hon J.A. Scott: Do you think that is stopping people from changing over?

Hon MARK NEVILL: Yes. If the tariff was $2 a unit the amount of gas going down the pipeline would have doubled by now. With lower energy costs comes greater use. I regret that this motion was not brought on earlier. I wrote the letter last night. A staff member asked me at midday today whether I wanted the letter sent to the Minister immediately, and I said that I hoped it had gone first thing this morning. That was unfortunate. I am as keen as anyone to get full information from the Government, because the Government does not have a leg to stand on.

Motion lapsed, pursuant to Standing Orders.

MOTION - LABOUR RELATIONS LEGISLATION AMENDMENT ACT

Appointment of Select Committee

Resumed from 20 August.

Debate adjourned, on motion by Hon Ljiljanna Ravlich.

MOTION - LABOUR RELATIONS LEGISLATION AMENDMENT ACT

Proclamation of Provisions

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.12 pm]: I move -

> That a message be sent to the Legislative Assembly in the following terms, for its concurrence -
>
> > The Legislative Council calls on the Government not to tender advice in Executive Council to His Excellency the Governor to proclaim the provisions of part 3 (Strike Ballots), part 5 (Federal Award Coverage), part 10 (*Workplace Agreements Act 1993*) and sections 25(b), 34, 36 and 37 of part 8 (Miscellaneous Amendments) of the *Labour Relations Legislation Amendment Act 1997*.

I move this motion so that it can be adjourned and placed on the Notice Paper. The motion addresses a number of matters to be worked through as they relate to issues before the Standing Committee on Public Administration and its subcommittee. The motion will remain on the Notice Paper in case the House develops an appetite for activating a message to the Assembly.

I drafted this motion while studying Bill 13-3 that was progressing through the Assembly. An amendment to this motion is necessary to relate it to Act No 3 of 1997 and to accommodate the changes to the clause numbers in Bill 13-3 and the consequent rejigging of the numbers in the printing of legislation, as is normal when a Bill has been substantially changed. Bill 13-3 does not readily relate to the numbers that appear in the Act.

This motion provides government members in this place with an opportunity to join with non-government members - certainly Labor Party members - to express the view to the Legislative Assembly, particularly to the Minister for Labour Relations, that labour relations legislation amendments were wrongly enacted and ill-advised, and that there is still an opportunity for some sections of the legislation to be left unproclaimed. It is the opinion of ALP members that part 3, strike ballot provisions, should not be proclaimed. I understand that the federal award coverage provisions in part 5 are yet to be proclaimed. That part should not be proclaimed. Part 10 of the Workplace Agreements Act has been proclaimed. However, sections now numbered 34, 35(b), 36 and 37 have not yet come into operation. They should not be proclaimed.

Parts 2 and 4 of the legislation, dealing with duties of officials and organisations and political expenditure, came into operation 28 days after the Act received royal assent. Therefore, one cannot do much about that situation until the

Government develops an appetite to repeal the legislation, although I hope this House at some early point might express a view on those questions as well.

The motion provides an opportunity for placing on the Notice Paper a vehicle that can be subsequently used and moved up the Notice Paper if the review of the Act were to arrive at the same conclusion as I - that much of the legislation should be not proclaimed or should be repealed if that becomes necessary.

Debate adjourned, on motion by Hon Ljiljanna Ravlich.

NOTICE OF MOTION - STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Withdrawal

THE PRESIDENT (Hon George Cash): I am more than happy to hear the Leader of the Opposition on this matter. However, I advise the House that this motion is not capable of performance. As such, it should be discharged from the Notice Paper.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.18 pm]: I was about to move that the motion be discharged. I appreciate your direction, Mr President. Can I seek leave to discharge the notice of motion?

The PRESIDENT: You must seek leave to withdraw the notice of motion.

Hon N.F. Moore: It is the most disgusting notice of motion ever in this House!

Hon TOM STEPHENS: I seek leave to withdraw the notice of motion. Members will understand that events have overtaken it.

[Leave granted.]

Notice of motion withdrawn.

MOTION - STANDING ORDERS COMMITTEE

Private Members' Business

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.19 pm]: I move -

> That the Standing Orders Committee devise and recommend to the House a procedure that enables private members' business to be considered and cleared at regular intervals.

Australian Labor Party members feel very strongly about this issue.

Hon N.F. Moore: Have you changed your mind since changing sides, again?

Hon TOM STEPHENS: I am very hopeful that the motion will be seconded and carried by the House in double quick time. I hope that members on both sides will appreciate that this is an exceptional motion.

Since the last election, the processes by which non-government members' issues of interest and concern are brought forward for consideration and resolution have become extremely tortuous and difficult. It is important for the Standing Orders Committee to take on board the change in circumstances in this place; that is, that this Chamber has on the floor of the House a non-government majority.

Hon N.F. Moore: That is not new; it has been the case for many years in the history of this House.

Hon TOM STEPHENS: What is new is that this non-government majority -

Hon N.F. Moore: What is new is that you have got the numbers for the first time.

Hon TOM STEPHENS: This Government deserves scrutiny like no other, and this Opposition is determined to give this Government scrutiny as has never been the case previously. I was in this House when the former Opposition failed in its duty to provide the scrutiny that former Governments deserved.

I have learnt from the mistakes of members opposite, and I want to ensure that this House fulfils its destiny as a House of Review and keeps this Government, despite the best intentions of some members opposite, honest and accountable to the people of Western Australia. It is clear that this Government needs the help of this House to be a better Government and needs to be subject to the scrutiny and review that it deserves.

Hon N.F. Moore: I am happy for that to occur.

Hon TOM STEPHENS: The Minister for Elle Racing and Global Dance, and for every other fiasco that has taken place in the short time that he has held his portfolios -

The PRESIDENT: Order! I ask members to cease their interjections so that we can hear the Leader of the Opposition.

Hon TOM STEPHENS: This Government deserves the full scrutiny of this House of Review in both its legislative functions and its functioning as a government.

Hon N.F. Moore: I am happy for that to occur.

Hon TOM STEPHENS: The Labor Party wants to give the Government that opportunity. As we have seen, that means that in the first hour of business -

Hon Peter Foss: We know what you want. You want to take the business of the Parliament out of the hands of the Government.

Hon N.F. Moore: And Hon Kim Chance wants to be the Minister for Fisheries.

Hon Kim Chance: I would do a better job than the current Minister. I would make the right decisions.

Hon TOM STEPHENS: The Government has the right to have its legislative program considered by this House and dealt with in an orderly way through the processes of this House. However, this House has the right to function as a full and complete House of Review, as a House which holds this Government accountable through all the processes available to this place. What we have seen displayed in this House in the few weeks since we celebrated Queen Victoria's birthday in May, when the numbers in this place finally changed and the election results were enshrined in the form of a non-government majority on the floor of this House -

Hon Peter Foss: That happened because we elected a President, not because you got a majority. Do not forget that.

Hon TOM STEPHENS: The combined effect of the need for the Government to elect a President, the Government's obligation to put in place a functioning House, and the will of the people resulted in this House being given the opportunity to meet its destiny as a House of Review.

Hon Peter Foss: It has been done dozens of times before. We had a majority for years.

Hon TOM STEPHENS: This Government when in opposition did not act appropriately as an Opposition. Members opposite were more interested in grandstanding and big noting themselves than in ensuring that there was full and appropriate scrutiny of government and better legislation.

If I remember correctly, the Western Australian Exim Corporation or the Western Australian Development Corporation legislation was amended by the coalition when in opposition - I think by a National Party member - to remove from scrutiny some of the government enterprises that subsequently were at the heart of the issues that were the subject of criticism by the WA Inc royal commission.I pledge to this House that this Opposition is determined to ensure that it does not repeat the mistakes made by this Government when in opposition, and it wants to ensure that the standing orders provide it with that capacity.

The royal commission has spoken about the way in which this place should function, as has the Commission on Government. It does not matter how determined the Leader of the House is to avoid scrutiny and to protect himself from the dirty deals that are associated with some of the catastrophes that are on display -

Hon N.F. Moore: I beg your pardon?

Hon TOM STEPHENS: It is important that this Government's dealings with some its friends and partners, whether it be Global Dance or -

Hon N.F. Moore: Like whom?

Several members interjected.

The PRESIDENT: Order! I ask the Leader of the House and the Attorney General not to interject.

Hon TOM STEPHENS: This Government is rapidly toting up losses to the people of Western Australia by the mismanagement of taxpayers' funds in a variety of ways, not least of which are the two examples that I just gave the House.

Hon N.F. Moore: I beg your pardon? Which ones?

The PRESIDENT: Order! The Leader of the House will come to order.

Point of Order

Hon PETER FOSS: Mr President, I am very concerned about this, because I would dearly like to have the opportunity of replying to the Leader of the Opposition, but I suspect that if I did reply to the Leader of the Opposition it would be said to be slightly irrelevant to the argument. That is a fairly good test of whether what the Leader of the Opposition is saying is relevant. My objection is not that he is not speaking to this matter, because I would like the opportunity, while he is on the topic, of refuting what he is saying.

The PRESIDENT: Order! I have read the motion and it seems to me to be asking that certain procedures be put in place to enable private members' business to be considered and cleared at regular intervals. It is probably not unreasonable to say that the Leader of the Opposition is spending a fair bit of time on matters of the past. However, in this case, although I cannot see that the Leader of the Opposition has strayed so widely from the motion that he is out of order, I ask him to read the motion, because it is important that he relate his comments to the motion and not stray any wider than he has. Equally, the Attorney General will be accorded the same discretion.

Debate Resumed

Hon TOM STEPHENS: Thank you, Mr President. I intended to conclude my remarks about the issues that we were canvassing.

Hon N.F. Moore: Just as well, because you were telling one lie after another.

Withdrawal of Remark

The PRESIDENT: Order! I ask the Leader of the House to withdraw that comment.

Hon N.F. MOORE: I withdraw.

Debate Resumed

Hon TOM STEPHENS: The Government must recognise that there is a need to ensure that this House does not regularly find itself in a gridlock where the non-government majority on the floor of the House wants to pursue a course, I suspect in the area of government accountability, that the Government is not prepared to go along with.

As we have seen in the past, certainly as we concluded our sittings in late June, there are a limited number of ways of finally bringing to resolution any matter that the non-government majority wants to pursue on the floor of this House. Regrettably, some of those processes have required a bit of sabre rattling and cajoling of the Government. I am not attracted to that approach. I am not well disposed to threatening and intimidating the Government with strategies on the floor of the House.

Hon Peter Foss: You seem to do it all the time.

Hon TOM STEPHENS: I would be more appreciative of a set of standing orders that allowed the House to process material in an orderly way, where the Government could proceed with the passage of its legislative program, and initiatives that were moved by this side of the House could be brought to conclusion. For instance, as members opposite will know from the Notice Paper, it is becoming obvious that some matters will be considered under the terms of this motion.

Debate adjourned, pursuant to Standing Orders.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION - REPORT

Breach of Standing Orders - Referral to Select Committee of Privilege

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

> That the Order of the Day for consideration of the report of the Public Administration Committee tabled on Thursday 21 August be discharged and the report be referred to a Select Committee of Privilege, with power to send for persons, papers and records and the committee to report not later than 11 September 1997.

Select Committee of Privilege - Appointment

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

> That the members of the Select Committee of Privilege be Hons N.D. Griffiths, B.K. Donaldson and Norm Kelly.

STATEMENT - ATTORNEY GENERAL

Courts and Tribunals - Reforms

HON PETER FOSS (East Metropolitan - Attorney General) [4.32 pm] - by leave: I draw to members' attention the significant range of judicial and administrative reforms which have been successfully implemented within the Western Australian court system in recent years. It is appropriate, from time to time, to pause and reflect on the achievements made to date and initiatives planned for the future which will take our State's court system successfully into the next century.

A comprehensive approach to reform has been successfully introduced into the Western Australian court and tribunal system. The reform process is ongoing; however many initiatives have already been introduced with tangible benefit to the community. The reform achieved to date falls into the two broad categories of court practices and court administration. The changes introduced have been successful because they are part of a clearly defined strategic direction and context.

What has been achieved to date in respect of reforming court practices and administrative services? A noteworthy achievement has been a reduction in the backlog of court cases. In the Supreme Court we have seen the implementation of civil case management which has improved civil listing and reduced delays; and the establishment of a criminal registry and appointment of a Registrar of the Court of Criminal Appeal to provide for the central recording and processing of indictments to ensure the correct presentation of matters before the Court of Criminal Appeal. The adoption of a new set of criminal practice rules has eliminated outdated and inefficient practices, and implementation of a delay reduction project for civil appeals including the introduction of mediation and time limits for legal argument significantly reduces delays within the civil jurisdiction. Matters which in the past would have resulted in trials are now being resolved through mediation resulting in a saving of actual court days. This saving is of real benefit to the community in greater efficiency and speedier access to justice.

In the District Court, considerable inroads have been achieved in respect of the reduction of delay and backlog of criminal cases by the introduction of procedural reform. In particular, a "flexi-list" system has been successfully introduced, and together with an expedited - fast-track - plea system, it has achieved a significant reduction in the backlog and the introduction of a more effective and efficient system for court customers generally.

Civil case management was introduced into the District Court in April last year. The court now actively manages cases lodged, setting clear time lines for completion of action including a self-enforcing computer generated notice when these are not adhered to. This system also includes the time standards for the delivery of judgments.

In the Magistrates' Courts a newly convened committee is reviewing listing practices to improve the efficiency of the Perth Magistrates' Courts. The committee has already made a number of achievements and has started listing matters in the afternoon to reduce the waiting time for court clients on the day. The review is expected to be completed by the end of this month and will address those matters recently raised by the Auditor General in his report "Order in the House - Management of the Magistrates' Courts".

In the Local Court, the Ministry of Justice is about to commence training of managing registrars to become accredited mediators. Local Court matters across the State could then be mediated, in the first instance, rather than being dealt with by formal court processes. This will reduce the number of civil matters going to court and hence reduce the delay in this jurisdiction. There will also be benefits to the parties in reduced costs.

In this context, it is important to mention that considerable attention is being given to other alternative dispute resolution options to complement the formal court processes. The advantages of these alternative mechanisms are clear and I have asked the Ministry of Justice to ensure this is a policy priority over the coming period in both the civil and criminal jurisdictions.

Members will recall that I recently took the initiative to table in the House the "Courts Quarterly Workload and Listing Interval Reports". The most recent report, for the January to March quarter this year, is tabled here today. It is clear from these reports that the delay reduction initiatives are effective and I am sure members will continue to monitor the outcome of such strategies through these comprehensive reports.

The court-related legislative program will be of considerable interest to the House. First is the introduction of a proposed new Enforcement of Judgments Act. The proposed Enforcement of Judgments Act is a court reform item which is receiving considerable attention. This is key legislation which will unify the enforcement process, regardless of jurisdiction, to ensure a consistent and effective approach to the collection of unpaid debts. The abolition of imprisonment for the non-payment of judgment debts is a positive step, as I am sure members will agree, in approaching enforcement in a modern way consistent with society today.

Significant change is being progressed to the structure and operation of Magistrate's Courts and will include the

establishment, for the first time, of a single Magistrate's Court in WA. A proposed new Magistrates' Courts Act will combine the existing Local Court and the Courts of Petty Sessions. From a customer and operational point of view, there will be one court with separate divisions. Magistrates, however, will be able to operate or access the different divisions in the one case if necessary. This is an important step towards greater consistency in the administration of justice.

The new Magistrates' Court will have a small disputes division, similar to the one that currently exists in the Local Court, but with extended powers to enable it to deal with small claims applications. The success of the small disputes division of the Local Court in handling small debts and residential tenancy matters in an informal, inexpensive manner, suggests that consumer claims could be catered for in a court environment, if the court had the appropriate powers. It is envisaged that all the current powers of the Small Claims Tribunal and the advantages it possesses would be transferred to the new court without any loss of benefits or addition of disadvantages. In addition there is the advantage of consumers of these matters being able to be heard across the State.

Amendments to the restraining order system are worthy of mention. The new Restraining Orders Bill greatly simplifies application procedures and distinguishes between violent and misconduct restraining orders. The new Bill provides for a restraining order to be made to prevent a person convicted of previous sexual offences against children, or who has behaved in a similar way in the past, from loitering near schools or places frequented by children. Another key provision of the new legislation allows for telephone restraining orders to immediately allow the police to enforce the order. The seizure of firearms is also a key feature of a restraining order and is yet another factor that must be considered when attempting to safeguard a threatened person's home.

The recent amendments to the Criminal Injuries Compensation Act to enable, among other things, more than one assessor to be appointed at any one time are also of note. A second assessor has now been appointed and action is in hand to progress additional appointments to ensure the backlog of victims' compensation claims are dealt with more expeditiously.

The new Coroners Act, which established the position of State Coroner and the Coroner's Court of Western Australia in April this year, is certainly worthy of mention in this context.

I turn now to other achievements of the court system. The introduction of the fines and infringement enforcement system was one of the most important and one which has invited considerable interest in other Australian States and New Zealand. It is of note that the WA fines enforcement system is now recognised as the benchmark of fines enforcement in Australia. New South Wales recently introduced similar legislation into its Parliament while Queensland and South Australia are considering the adoption of the WA legislation.

Currently 34 prosecuting agencies use the facilities of the Fines Enforcement Registry which diverts time-consuming actions from the formal court process. Other key prosecuting agencies which continue to use the formal court process are now being consulted about the advantages of using the services of the registry.

The fines enforcement system was designed to strengthen the integrity of fines as a sentencing option, increase the proportion of fines paid without enforcement, minimise enforcement actions and ensure fine defaulters do not go to prison. A recent review of the system shows that the system has clearly achieved these aims as well as releasing an estimated 23 police officers from fines enforcement duties.

Aboriginal fines liaison officers have been appointed whose role it is to explain the court system in the language that the Aboriginal people understand and generally assist in matters affecting Aboriginal clients in the court system. The Ministry of Justice is also negotiating with service providers in respect of the training of Aboriginal court interpreters. The Government has allocated specific funding for this initiative and a training officer specialising in this area should be appointed to the ministry in the next financial year. In addition, a video and accompanying booklet are being developed by the ministry, in conjunction with related commonwealth and state agencies, to train people dealing with Aboriginal clients. This will help reduce any communications problems experienced by Aboriginal people in the court system.

The establishment of the Child Victim Witness Service is certainly worthy of mention when considering the achievements of the court system. This service, a joint initiative of the Ministry of Justice and the Ministry of Family and Children's Services, has been operating for close to two years now and is of enormous assistance in supporting and easing the trauma for child victim witnesses associated with their court appearances.

A more recent achievement is the introduction of a Courts Customer Service Charter and Standards in April this year. This promotes a greater customer focus in the provision of all court administrative services in this State. The Customer Service Charter is critical to effective longer term reform as it ensures customers will know what to expect. Court staff now have a recognised standard of service for which to be accountable. A number of customer orientated initiatives have been developed in conjunction with the Customer Service Charter, including a set of information

brochures for court users for display in the registry area of each courthouse. These brochures are the first in an ongoing series and are aimed at providing easy to understand advice on a range of practical issues which confront people in their everyday dealings with the courts. All court administrative staff have been provided with name badges so that they are easily recognisable to court customers. Staff have also been issued with service cards to be given to customers who may require their assistance again in the near future.

Properly trained and developed court staff are essential to providing a professional service. This year the justice studies department of Edith Cowan University offers for the first time graduate studies in court management. These courses have been designed with significant input from the Ministry of Justice and provide potential and current court administrators with the latest developments in the field. Units covered include case flow management, alternative dispute resolution and the use of technology in courts. Edith Cowan University, again in conjunction with the Ministry of Justice, is developing and presenting the revised justices of the peace training course. This course provides an accredited basis for training and ensures access to the latest information and training of this State's justices of the peace.

The provision of child minding services is certainly a positive initiative for court customers. A Ministry of Justice pilot project to provide authorised court clients with a choice of free child minding at private child care centres was initially implemented at Rockingham and Albany. More recently the scheme has been extended to the Joondalup and Perth Children's Court justice complexes. Child care services are available to those jurors, victims of crime, witnesses, defendants and litigants who do not have access to a child minder and who would otherwise have to bring their children to court.

The structure of court fees is currently under review by the Ministry of Justice with a view to striking a balance between user pays, while at the same time not denying access to justice. Court fees are a subject of much debate nationally and the review is expected to be completed in the near future.

I am sure members will agree that it is fair to say the standard of courthouses throughout the State is generally not acceptable. To ensure the most effective use of available funding and most effective solutions, a statewide survey and review of court accommodation was undertaken. Following on from this has been the development of a strategic accommodation plan to address and clearly prioritise all court accommodation needs and priorities. As part of this, the Government recently endorsed a building program that will upgrade or rebuild Magistrates' Courts in metropolitan and country regions over the next eight years. Rockingham, Fremantle, South Hedland, Halls Creek and Busselton are the most immediate priorities. Other key country courts to be upgraded under this program include Albany, Broome, Derby, Kalgoorlie, Karratha, Kununurra, Mandurah and Northam. The proposed new co-located Supreme and District Court is part of the strategic accommodation process. Co-location is premised on the basis that it will achieve significant increases in efficiency as well as provide a high standard of physical facility to provide Supreme and District Court judicial and non-judicial services.

I now refer to the recently developed courts strategic information plan. This plan addresses the needs associated with the current systems as well as the information needs of a single integrated and homogenised set of systems for all courts and tribunals, including linkages between systems, and the potential for new technologies to provide efficiencies for whole of courts' operations. This last element is essential, as with the strategic accommodation planning process, so that the efficiencies of the reform of court practices and administrative services can be fully realised and consolidated on an ongoing basis.

Of particular note in the information plan is a messaging model which, for the first time, enables the effective exchange of operational information between the different agencies, including the legal profession, related to and working with the court system. This is an innovative approach, which will utilise state of the art technologies to enable the exchange of information at minimal cost. Importantly, the agencies involved in the exchange of information do not need to have compatible computer systems. In the longer term, this process will ensure ready access to information, subject to security issues, for those agencies involved in the system and a significant reduction in processing and administrative paperwork which now occurs. From a customer perspective, there is also clear benefit in terms of greater and speedier access to relevant information.

Another noteworthy achievement in the information technology area is the introduction of video conferencing and closed circuit television in courts. Video conferencing has been of considerable benefit in reducing the number of remand prisoners who need to physically appear in court and more recently in enabling remote witnesses to give evidence without the need to attend the court. Likewise the advantages of closed circuit television to vulnerable witnesses are, I believe, well known. Lessening the trauma for victims is a fundamental principle of the Government. These technologies are now being combined into one application at the Central Law Courts to provide greater flexibility in the use of the technology as well as greater ease for users. This enhanced, combined technology will be progressively introduced into regional courts over the next few years.

As a final item, the development of closer working relationships with other Asia-Pacific region court systems is worthy of mention. The so-called "strategic alliance"being developed with the Singapore subordinate courts system is of particular note in this context. This alliance will progressively include the exchange of information, training and technologies between the two court systems. Singapore is developing some very exciting technological systems and solutions which are of real interest to this State. I make mention of this as the pursuit of such relationships is a key strategy to ensure that the focus of our court system is not inward but continues to look outward and develop in excellence. I am confident that members will acknowledge the worth of these achievements outlined here today and the important role they play in preparing our court system for the challenges and opportunities ahead.

Consideration of the statement made an order of the day for the next sitting, on motion by Hon Nick Griffiths.

PARLIAMENT HOUSE - VISITORS AND GUESTS

THE PRESIDENT (Hon George Cash): I take this opportunity to welcome the Chairman, Stan Neilly, and members of the New South Wales Legislative Assembly's Public Bodies Review Committee who are present today in the President's Gallery. They are in Perth for the purpose of gathering information and evidence with respect to the terms of reference of their committee. Welcome to Perth.

[Applause.]

MOTION - DISALLOWANCE

Health (Meat Inspection and Branding) Amendment Regulations (No 3)

Resumed from 20 August.

HON NORM KELLY (East Metropolitan) [4.45 pm]: I said last Wednesday when speaking in the debate on this motion that the main reason for the disallowance was to ensure that the significant standards for protecting meat consumed on the domestic market are maintained. Much has happened since last Wednesday, to which I will allude in a few minutes. Last week before closing I was about to quote from the May edition of the Australian Food Industry Legal and Business Affairs' newsletter "foodmonitor". I feel that the comments in this publication are relevant and should be noted because the entire debate revolves around this subject. The article is written by Felicity Rafferty and states -

> The meat industry is adopting complex quality management processes, but under the deregulated system they are undertaken by company employees, whose primary loyalty is to their employer.
>
> The industry also relies heavily on casual labour, which can be quickly and easily shed. It is difficult to engender a quality culture in a casual and poorly trained workforce, and every carcase trimmed or diverted from the human food chain is a commercial loss to the company. The temptation to take the risk on marginal defects or turn a blind eye to minor contamination (like grease, rust, wool, hair, pelt dust) is ever present and when faced with choices between production and quality, commercial interests dictate that productivity prevails.
>
> The need to balance obligations to the company with obligations to the broader public interest presents the company employee with a conflict of interest not easily resolved, and public accountability is lacking.

That has been the main thrust of this disallowance motion. Subsequent to the debate on Wednesday, Hon Kim Chance, Hon Christine Sharp and I met with officers from the Health Department. We expressed our concern that if solely company employed meat inspectors were used in abattoirs and meatworks, it could result in a deterioration of standards, as was outlined in the article I have just quoted. Today I received a letter from the Minister for Health acknowledging the concerns raised and stating, in part, the following -

> . . . I have indicated my full support for the provision of one government meat inspector where a company has obtained approval to employ its own meat inspectors under an approved Quality Assurance Arrangement.
>
> I acknowledge the current position is only specified in a policy document but not in a regulation, and I have therefore agreed to an amendment to the Health (Meat Inspection and Branding) Regulations mandating the requirement for one government inspector.

The Minister attached a draft regulation. It must be finely tuned but the Minister made it clear that the thrust of the regulation will remain the same. The draft regulation is -

> The Executive Director, Public Health is not to approve a quality assurance arrangement under clause 4 of

the adopted standard unless he or she is satisfied that at least one government inspector will be present at the relevant processing premises when animals and carcases are inspected.

Even though there remains a fear of some deterioration in standards, I am now satisfied with the Minister's assurances. It is still not an ideal situation because there might be one government inspector and five or six company inspectors in a meat works, with the possibility of that government inspector needing to override the company inspectors. It is still a matter of some concern, but I will not support the disallowance motion because I am satisfied with the Minister's assurances.

HON J.A. SCOTT (South Metropolitan) [4.49 pm]: Although a number of matters relating to these regulations have been cleared up, I know Hon Christine Sharp is still concerned that this regulation is one of many that are supposed to underpin the health and safety aspects of the industry. It is unfortunate that we do not know what will happen; that is, when or whether the new regulations will be put in place. The Greens WA will seek from the Minister an assurance that the promised regulatory framework underpinning health and safety will be dealt with soon. The industry is too important to wipe out the current safeguards and not replace them adequately.

Hon E.J. Charlton: I have already spoken on this, therefore I cannot make any further comments. However, I confirm what Hon Norm Kelly has read out and also that the Minister has given the commitment that the Government will table the amendments to the new regulations forthwith.

Hon J.A. SCOTT: Given that interjection, I will conclude my comments.

HON KIM CHANCE (Agricultural) [4.52 pm]: Subject to the discussion which has already been referred to by Hon Norm Kelly and which involved opposition members and senior officers of the Health Department of Western Australia last week, the Australian Labor Party has agreed to vote against the disallowance motion.

This altered course is not the result and should not be interpreted to be the result of any satisfaction with the proposal in respect of company-employed meat inspectors on the part of the Australian Labor Party, nor I gather on the part of my colleagues on the cross-benches. Rather, the position we find ourselves in - and found ourselves in last week at the meeting with departmental officers - arises from advice from the Crown Solicitor to the Minister for Health in respect of a reinterpretation of the Act. The Opposition cannot address its concern in the manner in which it had planned given that it assumed that the change in policy arose from the regulations. The two seemed to happen concurrently and, not being privy to the Crown Solicitor's advice, members on this side were not able to determine that a reinterpretation of the Act caused that change.

Having arrived at that position, it is fair to say that, to a degree, the Opposition had to retreat from the position it held. Nonetheless, members on this side hold the very strong view that it is clear government policy that there be at least one state-employed meat inspector at each meatworks. However, that policy was not reflected in the regulations. Members of the Opposition sought the inclusion of that policy and the Minister has been generous enough to take on board our concern and has given the undertaking in the letter referred to by Hon Norm Kelly. The undertaking entirely satisfies me and my colleagues, and we are extremely grateful to the Minister for acting with promptness and for providing that assistance. I mean that genuinely; the Minister acted very quickly and we are entirely satisfied.

However, we remain unsatisfied with the fundamental proposition that the people inspecting meat and abattoir operations in Western Australia will be employed by the same company upon which they rely for their wages. I do not care about the situation in other States, except to the extent that I now have a new concern regarding the effect of the mutual recognition principles and the degree to which this State is now bound to accept qualifications that are acceptable in other States for meat inspectors. That is a separate matter and it is out of order for me to raise it in this context. I mention it simply because I will be asking questions on that matter in the near future. I have announced the Opposition's intention to vote against the disallowance motion. However, at the first opportunity I will encourage members of my party to seek amendments to the Health Act 1911 so that the question of the reinterpretation of the Act in respect of who may be appointed as meat inspectors in Western Australia can be clarified and to make it clear that this State will permit only state-employed inspectors to take care of the health of Western Australian consumers.

Question put and negatived.

MOTIONS - DISALLOWANCE

Road Traffic (Drivers' Licences) Amendment Regulations and Road Traffic (Licensing) Amendment Regulations - Cognate Debate

On motion by Hon N.D. Griffiths, resolved -

That Orders of the Day Nos 1 and 2 be debated cognately.

Pursuant to Standing Order No 152(b), the following motions were moved by pro forma by Hon N.D. Griffiths -

> That Regulations 3(c) and (d) of the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) 1997 published in the *Government Gazette* on 26 March 1997 and tabled in the Legislative Council on 8 April 1997 under the Road Traffic Act 1974, be and are hereby disallowed.
>
> That Regulation 3(a) of the Road Traffic (Licensing) Amendment Regulations (No 2) 1997 published in the *Government Gazette* on 26 March 1997 and tabled in the Legislative Council on 8 April 1997 under the Road Traffic Act 1974, be and is hereby disallowed.

[Questions without notice taken.]

HON N.D. GRIFFITHS (East Metropolitan) [5.32 pm]: I propose to deal with this matter in the following way: I moved these motions in my role as Deputy Chairman of the Standing Committee on Delegated Legislation. In that context, it is appropriate that I make some observations about the role of the committee; give a very brief summary of the substance of the committee's argument; consider the meaning of the regulations; consider the relevant Statute and case law and, in accordance with the committee's instructions, apply that Statute and case law to the facts outlined; make some brief observations on the effect of the disallowance; and conclude by referring to the recommendations of the committee.

Earlier today, in accordance with the committee's instructions, I tabled the Twenty-fifth Report of the Joint Standing Committee on Delegated Legislation. I understand that is the accepted practice when considering disallowance motions which emanate from that standing committee. The primary role of the Standing Committee on Delegated Legislation is to scrutinise legislative instruments the creation of which the Parliament has delegated to the Executive. In carrying out that task, both Houses have assigned to the committee certain terms of reference. Those terms of reference are set out on the inside front cover of that report. It is appropriate to refer to those terms of reference so that members know from where the committee is coming, because the committee is essentially a process committee. It is not talking about the pros and cons of the policies effected by the regulations that are sought to be disallowed. The task of the committee, as circumscribed by its terms of reference, is as follows -

> It is the function of the Committee to consider and report on any regulation that:
>
> (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;
>
> (b) unduly trespasses on established rights, freedoms or liberties;
>
> (c) contains matter which ought properly to be dealt with by an Act of Parliament;
>
> (d) unduly makes rights dependent upon administrative, and not judicial, decisions.
>
> If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

With regard to paragraph (a), paragraph 1.2 of the report of the committee states -

> Where the Committee is of the opinion that any regulation ought to be disallowed, Rule 6 of the Committee's Rules places an obligation on the Committee to report that opinion and the grounds thereof to the House before the end of the period during which any motion for disallowance of those regulations may be moved in either House.

The House has now received that report. I am pleased that this debate will not be finalised before we adjourn, because that will give members an even greater opportunity of digesting what is in that report. It is a matter of some regret that the report was tabled today. I, and I think all members of the committee, would have preferred the report to be tabled at an earlier stage of the proceedings of the House. However, no time is the ideal time, and we have to deal with the world the way it is; when committees were formed is now a matter of history. The committee has no control over the volume of delegated legislation. It has no real control over how long it takes to receive answers to questions. Although it exercises a degree of control, it seeks advice and is dependent upon getting opinions within an appropriate time frame.

It is a matter of great regret that we gave this report to the House for its consideration relatively late in the day, this being the last day upon which these matters could be considered. Given that the House has just received this report, I will spend more time on it than I otherwise would. The House may note that last Thursday, I dealt with two reports of the Standing Committee on Delegated Legislation in less than half an hour, taking into account other speakers.

Hon E.J. Charlton: Obviously you will have the opportunity, having moved the motion, to sum up at the end. I ask

you to consider in your comments that we all be given the opportunity of putting in our two bob's worth, and you can then take some more time to sum up, rather than using up all your ammunition at the beginning. Hopefully we will make some comments that will assist you in your deliberations.

The PRESIDENT: Order! The Minister for Transport is interrupting Hon Nick Griffiths' speech.

Hon N.D. GRIFFITHS: It is appropriate, subject to standing orders, for an occasional degree of assistance by way of a question which might benefit the House in its deliberations. However, it is incumbent on me to be relatively expansive in my comments for the reasons I have outlined.

Essentially the Standing Committee on Delegated Legislation believes that the regulations are not within power because no legislative basis exists for that and that a consideration of the law is to the effect that they are a tax. That is evident in the light of when the impost in each case is to be extracted from the general public and when regard is had to the benefit received by the payer of the fee prescribed; that is, there is such a lack of sufficient particularity that when the facts are analysed and the law is applied, there is a very strong probability that a court, in considering its validity, in each case, will find that the regulations are ultra vires.

Taxation is a very important matter; it is what Parliaments are mostly about. Parliaments were first called together in our system to give authority for taxation. It is part of our Constitution that taxation can be imposed only by the authority of the Parliament. It cannot be imposed by the authority of the Executive. Parliament can give its authority in two ways. It can provide for the tax in an Act and it can set the rate, or it can provide for the tax but empower the Executive to set the rate by delegated authority.

However, when, as in this case, the Act, pursuant to which the regulations are made, allows fees or charges licences, there is a strong presumption that the imposition of a tax is not allowed. The test that the law applies in the 1990s is considerably narrower than was understood to be the case as recently as the early to mid-1980s. There is a relatively recent High Court authority and very recent Federal Court full court authority on the point. I propose to outline the situation briefly by reference to the report tabled, so that members can more easily follow the facts with respect to the regulations under discussion. I will be a little more expansive than I otherwise would because it is appropriate to place this on the record rather than to refer to item numbers. The facts relating to regulations 3(c) and (d) of the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) 1997 are dealt with in point 4 of the report. It is indicated at page 2 that these regulations -

> . . . increase the fees payable in respect of the issue of a drivers' licence from $26 to $29 for an annual licence and from $90 to $92 in respect of a five-year licence.

The committee sought information from the department and formed the view that the increases were required to meet the costs of new digital imaging technology to be used in the production of the plastic licence card that each driver receives. This would allow for photographs on licence cards to be digitally recorded and for related security features such as holograms and security patterns on the licence. There is no argument about that being a good thing, and it seems an appropriate policy.

The committee is concerned about how the Executive will obtain the funds to do it and that it does not have the necessary parliamentary authority. In paragraph 4.2 of the report reference is made to the department's advice on a number of matters. This is crucial when the House has regard to the timing and the benefit to the person who pays the fee. The card is currently produced by a contractor at a cost of $2.64. A new contract will be required for the supply of the new card using the technology. That contract has not been finalised and a tendering process is under way. The benefits are in the future, and the committee notes the departmental advice that it anticipates the contract will be in place by the end of the year. Reference is made to certain matters of costings, to which I think the House should have regard. The department estimates that the cost of the new card will be - it is all futuristic - approximately $4.50, representing an increase of $1.86. These points are relevant to the secondary part of the argument. With this increased cost in mind, the department has increased the licence fee by $3 for an annual licence and $2 for a five year licence. The report states that the additional $1.14 and 14¢ are supposed to reflect administrative costs associated with the issue of the card. However, in what I suggest is crucial, the committee notes that details of these administrative costs have not been provided, and nor has an explanation been given of additional ongoing administrative costs associated with the new card. These are the pertinent facts with respect to the drivers' licence regulations from the committee's perspective.

With regard to the licensing regulations, I refer the House to paragraph 5.1 on page 2 of the report and the statement that -

> Regulation 3(a) of the *Road Traffic (Licensing) Amendment Regulations (No 2) 1997* increases the "recording" fee payable in respect of vehicle licences from $12.50 to $14.

That is approximately a 12 per cent increase. Again, the report refers to information obtained from the department. I cannot enter into debate on the committee's deliberations, other than as they are set out in this document. However, the House will note that the committee, in making an assessment, has relied on the facts presented to it by the department. Its view of the law is different, although it has received advice from the department as well as from other counsel.

Hon E.J. Charlton: Who did you receive that advice from?

Hon N.D. GRIFFITHS: From Dr Schoombee, and that is referred to in the report at the bottom of page 1 and the top of page 2. The Minister is no doubt aware that the department very appropriately provided the committee with a copy of an opinion it had obtained, and reference is made to that.

Hon E.J. Charlton: From?

Hon N.D. GRIFFITHS: Crown counsel. I do not know whether it is appropriate to go into that detail, but I am happy to do so.

Hon E.J. Charlton: When did you receive that?

Hon N.D. GRIFFITHS: When did the committee receive that? I cannot recall the precise date. The committee clerk would have received the document on behalf of the committee. When did I first see the document?

Hon E.J. Charlton: Having got one legal opinion and then got a Crown Law opinion -

Hon N.D. GRIFFITHS: No. The Crown Law opinion was received from the department. A subsequent opinion was sought and obtained by the committee. The Crown Law opinion was received from the department for which the Minister has responsibility as part of the department's putting its view to the committee. That is a perfectly proper course. In presenting these matters, I am carrying out a function as part of my role in the committee and I am doing my duty as I see it.

With reference to the case law, I wish to mention a particular decision on which the department seems to be placing great reliance. The committee thinks it is misplaced, that there has been a misreading of that decision to an extent, and that the decision is far outweighed by what the committee considers to be authority of greater weight.

Sitting suspended from 6.00 to 7.30 pm

Hon N.D. GRIFFITHS: I have referred to the facts and pointed out to the House matters raised on page 3 of the committee's report. I have also referred members to the advice received by the committee from the department that the increases were required to meet the cost of funding the State's commitment to participate in the national exchange of vehicle and driver information scheme. This scheme will apparently provide a better exchange of information between the States. At the moment this is done by what is fast becoming very old technology - faxes, telephone calls and so on. I will not say it is a hit-and-miss approach because the people concerned carry out their duties very professionally. However, there are better ways of undertaking this task and the scheme will have a higher level of technology.

The department's view is proper and one on which the committee, as a process committee, does not form an opinion either way. The department believes that the scheme is directed toward providing significant benefits to the community. It advised the committee that there would be direct cost savings as a result of the improved collection of fees with reduced numbers of unregistered vehicles on the roads, better collection of fines, a reduction in transaction times, a reduction in car fraud, a reduction in accidents with problem vehicles and problem drivers and a reduction in licence fraud. These are very good objectives and can be fairly said to represent very good policy. Unfortunately that is not the issue; if it were, there would not be a debate.

The report refers to the department's advice that NEVDIS is a five-year program at an estimated total cost of $12.5m. Reference is also made to the increase being on the basis that it will bring that amount into the consolidated fund over a five-year period. Mention is made of efforts to break down the figure and it is stated that the first phase relates to "purification" of the existing data on the system, at a cost of $724 874. That phase has already commenced - in terms of policy, that is good - and it should be completed by early 1998. The significance is that the first phase has not been completed.

The committee observes that -

> The balance of the initiative appears not to have been fully costed and, although some very rough estimates of the breakdown of expenditure have been provided, the Department has not been able to quantify or detail these even though the Committee sought such information in an attempt to verify that the regulations were within power.

That is relevant to the second part of the argument in relation to discernible benefit to the payer of what is nominated as a fee.

The committee also refers to the fact that the new technology, which this is meant to fund, is not yet available and that the State will not be participating fully in 1997. It emphasises the point that payment has been made from 1 April 1997 even though the improved benefit for service is not being provided. The committee also casts doubt on the administrative aspect of the costings and reinforces its view that the fee increases are taxes levied to defray the department's general administrative costs.

Those are the facts as the committee sees them and presents them to the House. In each case in clause 2 under the heading "Commencement", the regulations state -

> These regulations come into operation on 1 April 1997.

The authority for the licensing fees is contained in the Road Traffic Act, three parts of which are relevant. Section 19 refers to the prescribed recording fee being paid to the director general for the granting or renewal of any licence for a vehicle. Section 47(1) says that such fee as prescribed shall be payable on the issue, and renewal, of the driver's licence. Section 111 deals with the power to make regulations, the pertinent part of which allows a regulation to be made for giving full effect to the provisions, and the due administration, of the Act for the licensing, equipment and use of vehicles. Section 111(2)(j) states -

> Prescribing matters for or in respect of which fees shall be charged or charges shall be made and prescribing the amounts of such fees or charges.

That Statute pursuant to which these regulations have been made does not authorise the imposition of a tax. That is not controversial. In the context of members having had the opportunity to read the report of the committee over the past hour and a half, I refer somewhat more briefly than I intended to recent decisions which deal with this question of tax and fees for service. I am aware the Department of Transport places a reliance on a decision of the Full Court of the High Court of Australia; that is, Air Caledonie International and Others v The Commonwealth of Australia, reported in the Commonwealth Law Reports at page 462.

This case involved the determination of whether a provision in the Migration Act was a tax. Section 34A of the Migration Act provided that when passengers travelled to Australia on an overseas flight they had to pay a prescribed fee for immigration clearance services, the fee being collected by the international air operator and the international air operator paying the money to the Commonwealth the amount of the fee payable by the passenger, whether or not the international air operator collected that amount from the passenger. For the purpose of the judgment the court had to determine whether that impost amounted to a tax.

In doing so, the Court considered the precedents. There was no dissent in the joint judgment of the High Court, which involved all seven judges at the time. They reviewed the law and the authorities from the days of Chief Justice Latham. They noted the character of the tax and the compulsory collection of money by a public authority for public purposes enforceable by law and not for payment for services. On page 467 the judges note a general statement, but not an exhaustive definition. It states -

> On the other hand, a compulsory and enforceable exaction of money by a public authority for public purposes will not necessarily be precluded from being properly seen as a tax merely because it is described as a "fee for services". If a person required to pay the exaction is given no choice about whether or not he acquires the service and the amount of the exaction has no discernible relationship with the value of what is acquired, the circumstances may be such that the exaction is, at least to the extent that it exceeds that value, properly to be seen as a tax.

The judgment then goes on to give detailed consideration of that section - again this has great relevance to the matter under discussion now - and at the bottom of page 470 Their Honours point out -

Hon B.M. Scott: Which judgment are you reading from?

Hon N.D. GRIFFITHS: This is the joint judgment of all the High Court justices in Air Caledonie and Others v The Commonwealth of Australia, reported in the Commonwealth Law Reports. I am referring to the judgment at the bottom of page 470 which states -

> . . . moneys intended to be raised by the purported impost were not related to particular services to be supplied to particular passengers, but were intended to provide, when paid into consolidated revenue, a general off-setting of the administrative costs of certain areas of the relevant Commonwealth Department including, for example, the administration costs involved in maintaining facilities for the issue of visas in overseas countries and "general administrative overheads".

The judgment concluded that the fee, at least insofar as it related to passengers who were Australian citizens, was a tax and the relevant provision was imposing taxation. That decision was handed down in 1988.

The High Court considered the issue of fees for service and tax again in 1992 in the case of Northern Suburbs General Cemetery Reserve Trust v The Commonwealth of Australia, reported at 176 Commonwealth Law Report on page 455. This case concerned the training guarantee. Members will recall that the previous Commonwealth Government imposed a training guarantee levy to an amount equal to an employer's yearly training guarantee shortfall. I refer to the headnote on pages 555 and 556 of the *Commonwealth Law Report*. It was determined that the impost was taxation because the Act did not require those employers who had incurred a liability to expend the amount on eligible training programs. Accordingly, the charge was not a fee for service or akin to a fee.

That is looking at the Air Caledonie International proposition from another angle, but it lends weight to the argument. Before I leave that case, I make reference to the joint judgment of Chief Justice Mason and Justices Brennan, Deane, Toohey and Gaudron as outlined on page 565 of the CLR. Not surprisingly, they endorse the observation in the Air Caledonie case. It is not necessary to go through that aspect again; but they made an observation on page 568 of the report on the question of discernible benefit: When dealing with this aspect of a fee for service and tax, "the Act does not by its terms establish any sufficient relationship between the liability to pay the charge and the provision of employment-related training by the ultimate expenditure of the money collected to regard the liability to pay the charge as a fee for services or as something akin to a fee for services".

A single-judge judgment was handed down recently on 14 February 1997 - it was not reported, but was available on the Internet - by His Honour Justice Branson of the Federal Court of Australia. He had occasion to review these issues and the pertinent law and authorities regarding a case which arose from the collapse of Compass Airlines. To simplify the situation, Compass Airlines was required under legislation to pay an amount to the commonwealth department governing civil aviation for matters such as the provision of airport facilities. I am simplifying this matter, which relates to complex legislation. I picked up this report on the Internet earlier today, so I have only skim read it. This cost was held not to be a fee for service because the impost required Compass to pay for facilities it was not using.

This was the finding even though the general effect of the impost was to benefit the state of affairs - the state of the air - and the aviation industry in general. Strong economic evidence was cited on the point. I am happy to hand this review of the law report over to any interested member. It sets out a number of High Court cases dealing with issues consistent with the Air Caledonie and Northern Suburbs matters.

Page 37 of the Federal Court judgment contains a concise summary of the High Court's decisions on the issue. I refer to the Monarch Airlines Limited and Others v Airservices Australia 1997 decision. Any member is welcome to look at that Internet report, which is a shorthand summary of relevant law. A wealth of other case law is available on this point, and I have referred to cases in the High Court, the highest authority in Australia.

In its consideration of the regulation before us, the Department of Transport has placed a degree of reliance on a decision by a senior judge of the Supreme Court of New South Wales. In so far as it goes, the decision is fair enough. This 24 May 1984 decision by Justice Cohen refers to LAI Corporation Pty Ltd v Sydney City Council, and concerns the use of a section of the New South Wales Local Government Act through which the Sydney City Council regulated to license places of amusement and amusement machines. This case deals with fee for services, direct benefit and whether one can take on board administrative costs. From the department's point of view, at best on a very brave reading, the matter is equivocal. However, a closer scrutiny of the decision shows that its part which has meaning in this context is consistent - I am sure Justice Cohen would be pleased to hear this - with the findings of the High Court.

Frankly, we must have regard, whether we like it or not, to what the High Court says. It is not the Delegated Legislation Committee's job in its considerations to say what it would like the law to be; it must express its opinion on the law, and in reaching that opinion it must be mindful of the place of the High Court in the Australian hierarchy of courts. To be fair to the department, I will refer quickly to a few passages in the report of the judgment in 53 LGRA at page 144. At page 147 His Honour's judgment reads -

> There being no doubt as to the power of the council to charge a fee as a condition of the granting of a licence the question is whether the amounts set forth in . . .[the resolution which gave rise to the impost] constitute a proper fee or charge. The plaintiff says that this must be a reasonable fee and must be referable to the purpose for which it is sought. It cannot be an amount which is claimed as a tax or one which is for the purpose of producing revenue for the council.

That issue was not in dispute and is relevant for our consideration. Reference is made on page 149 to matters referred to in Air Caledonie and the other High Court judgment Stevens v Perrett and the case of great relevance to Western

Australian of Marsh v the Shire of Serpentine-Jarrahdale. In Chief Justice Barwick's judgment in that case he noted "that the fee bore no relation to the cost of administering a licensing system and was evidently not a charge fixed as a reasonable fee for the issue of licences". It was common ground that there was no provision for a fee to be charged to raise revenue as a form of taxation. The question is whether the fee is related to the reasonable costs of issuing and administering a licence system. The department no doubt draws great comfort from page 151. I am just about to conclude my observations on this case. I know you will be disappointed in that, Mr Deputy President.

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Greatly disappointed.

Hon N.D. GRIFFITHS: I am mindful of the time with the new arrangements. The judgment reads -

> I am of opinion that, if a council in these circumstances fixes a licensing fee with the intention and in the belief that the fees to be recovered will be required for the purposes only associated with the licences and not by way of general taxation or the raising of revenue, and if on a subjective test the revenue so raised is in fact within a reasonable range of the expenses associated with the licences, then it cannot be said that the fees imposed are ultra vires the Act.

On those words to a great extent hinges the department's position. When cases come before the courts it is important to note matters of general principle such as those I have read. Particularly when we are dealing with cases before single judges, we must be conscious of the facts of the case because it is only if one is lower down the scale that one should be mindful of the decision. Its facts restrict the application of that case to the cases that follow. I am not trying to give a law lecture. This is a shorthand way of saying where the case comes in the hierarchy of cases. If I was trying to give a law lecture, I have obviously failed.

Hon B.K. Donaldson: You could expand on it.

Hon N.D. GRIFFITHS: I could. Page 152 reads -

> The only evidence before me that there is a strong correlation between the fees which in fact have been collected and the expenses which have been incurred in the issuing of the licences, the supervision of the premises and the work carried out by the youth worker.

There is a distinction between that situation and the situation with regard to these regulations. There is no such correlation with regard to these regulations. That is the second leg of the argument on tax once the preliminaries are sorted out. The first leg is the timing; they are charging for something which is nonexistent. The second leg is the lack of sufficient particularisation. That briefly is the law. I have referred to the facts.

The committee applied the law to the facts and summarised its points on page 4 of its report under the heading "The Legal Position". I refer to it briefly because these questions have to be decided tonight. As I have said, members have had these documents before them for some hours, even though they received them only today. I am sure those interested in speaking have taken the time to digest the contents.

Hon B.K. Donaldson: I am listening very closely to your argument.

Hon N.D. GRIFFITHS: I am most obliged. I am sure Hon Bruce Donaldson would. He found himself in a position similar to mine by having to fulfil a duty to put forward the view of the Joint Standing Committee on Delegated Legislation. Through his good work on that committee, for which he is held in very high regard, he would have an understanding of these issues. Through him a number of reports were presented in the last Parliament, but regrettably those reports have been ignored; hence the motion this evening.

The committee refers to the test. It reiterates the Air Caledonie formula and points out at paragraph 6.2 that it formed the view -

> . . . that the fees exacted by the regulations are not for identified services that are rendered to the customer. The increases applied notwithstanding that digital imaging technology will not be available until the end of the year and WA will not be a full participant in NEVDIS for 5 years.

It makes the obvious point that the services are just not there for those who paid fees. The committee then expressed its view that the imposts are not fees for service and do not constitute an exception to the concept of a tax. That view is in accord with the authorities the committee mentions and the matters I referred to earlier. The committee points out at paragraph 6.3 that "the Department has been unable to show that the person who pays the fee now will receive any related benefit specific enough to satisfy the legal definition of what is a fee". It sets out in a summarised form at paragraphs 6.4, 6.4.1, 6.4.2 and 6.4.3 the legal position as it sees it. It points out, as I mentioned a few moments ago as an aside through you, Mr Deputy President, to Hon Bruce Donaldson that this is not the first time that the Standing Committee on Delegation Legislation has raised the issue. It refers to the seventh, tenth and twentieth

reports. It points out that it has taken advice on this question from Queen's Counsel, experts in constitutional law. It also points out that its advice is consistent with that which has been said this evening by me on instructions from the committee.

The committee's opinion is that each set of these regulations goes beyond that power and it recommends that they be disallowed. The committee foreshadows that it does not propose to leave the issue there. The committee wishes to work constructively with the Government to overcome any difficulties that the disallowance may cause. The committee proposes to consider how these matters may best operate in the future. The committee foreshadows putting something on the issue before the House very soon. This report contains no criticism of government policy. This is not a policy issue; it is a process issue. The committee is saying to the Executive that there are ways of doing things. Taxation can be levied only by parliamentary authority. What the Government wishes to achieve may be good and in an appropriate way the Parliament as a whole may expedite that. However, what has been done to date is inappropriate.

The committee has raised this issue on many occasions. It is now saying, basically, that enough is enough and these regulations should be disallowed as a strong inducement to the Executive generally - in this case, the Department of Transport - to take note that the committee is serious about doing its duty.

HON J.A. SCOTT (South Metropolitan) [8.12 pm]: I second the motion. I will reiterate the function of the Joint Standing Committee on Delegated Legislation, which has made this report to the House. That function is spelt out at the beginning of the committee's report. Basically, this House has delegated to the committee the authority to consider and report on any subsidiary legislation that has not had the scrutiny of the Parliament and that -

> (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;
>
> (b) unduly trespasses on established rights, freedoms or liberties;
>
> (c) contains matter which ought properly to be dealt with by an Act of Parliament;
>
> (d) unduly makes rights dependent upon administrative, and not judicial, decisions.
>
> If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

Further to that delegated responsibility of the committee I refer members to paragraph 6.6 of the committee's twenty-fifth report, which states -

> The Committee reiterates that it is the function of the Committee to consider and report on any regulation that appears not to be within power. Further, where the Committee is of the opinion that any regulation ought to be disallowed Rule 6, of the Committee's Rules places an obligation on the Committee to report that opinion and the grounds thereof to the House. The Committee is of the opinion that these regulations are beyond power and would be struck down as *ultra vires* by a court if challenged. . . . The Committee is very supportive of the intention of the Department, the Minister and the Government in respect of these fee increases.

That is the subject of the disallowance motions. The report continues -

> However the Committee would not be performing its task given to it by the Parliament if it were to ignore regulations which are not within the powers granted in the Act to the Executive and which the Committee believes would be struck down by the courts if subjected to challenge.

Members should realise that a vast quantity of such regulations pass through this House and through the Delegated Legislation Committee - far more than there are Statutes. In fact with the late start of committees this year there was a great deal of delegated legislation that had to be dealt with quickly.

Previously, under the chairmanship of Hon Bruce Donaldson, the committee made a strong attempt to educate the various departments on its role and the way in which delegated legislation should be handled. I believe the committee was successful in its educative role. Despite this the odd department found it difficult to properly provide the information that the committee asked for in its explanatory memorandum. That put a lot of pressure on the committee to ensure that the regulations that passed through this House were properly examined in the time available. In some cases the committee had to rush to get through the amount of work that was required. That put a huge workload on the staff of the committee.

A number of devices which are used by various departments to avoid proper scrutiny have come to the notice of the committee. Departments use terminology such as orders, notices and resolutions, which do not fall under the powers

of the committee. In that way the Executive can slip past the committee regulations which could be challenged in court, and about which the committee can do nothing. Members must consider that background when a regulation like this comes forward. A lot of work is required to ensure that delegated legislation is properly examined.

In this case there has been a thorough examination of the issues. The House should keep in mind the consequence of a regulation being declared invalid by the court; that is, a vast liability to the State. Members of the committee would not be doing their jobs properly if they did not ensure notice was given to this House so that, at the very least, action could be taken to ensure that such regulations did not get past this House in that form.

Hon Nick Griffiths has pointed out many examples of why these fees and charges are a tax. Paragraph 6.3 of the committee's report states -

> The Committee has asked the question what benefit does a person receive for paying the higher fee?

That applies in both cases. The report continues -

> The Committee must determine the validity of the regulations when they become operative. These regulations became operative on 1 April 1997 and the Department has been unable to show that the person who pays the fee now will receive any related benefit specific enough to satisfy the legal definition of what is a fee.
>
> . . . In light of the above the Committee's legal advice is that . . . such imposts equate to taxes; . . . nothing in the *Road Traffic Act* 1974 appears to authorise the imposition of any charge amounting to a tax; and . . . for these reasons the imposts in question are *ultra vires* or beyond the power contained in the Act to impose by way of regulation.

More importantly, paragraph 6.5 states, and I am fully aware of this from my time on the committee, that -

> This is not the first occasion that the Committee has addressed this issue. Numerous other subordinate legislative instruments have forced the Committee to ask what costs are recoverable under a legislative provision which authorises a fee for service or a fee for licence. The Committee has reported on a number of regulations in the past . . .

It then refers to the seventh, tenth and twentieth reports. To continue -

> . . . and concluded that they amount to taxes that are not authorised by the relevant legislation. The Committee has taken legal advice from Queens Counsel and experts on constitutional law who have consistently advised the Committee that only costs that are related to the provision of a specific direct benefit to the individual required to pay the fee are recoverable under a general legislative provision which authorises the rendering of fees for services or licences. The legal advice that the Committee has been provided with on this occasion is consistent with the advice the Committee has received in the past.

It is nothing new. The committee, under the rules by which it operates, is bound to carry out its scrutiny role to the fullest extent possible and to report to the House in the way it has done. I agree with Hon Nick Griffiths that the advice to hand is good advice, as it normally is. Therefore, I am happy to add my support to the motion.

The committee's principal role is to ensure that the role of members of Parliament in this House and the other place is not usurped by the Executive by its slipping through regulations, notices, orders or resolutions which should really be in the form of an amendment to an Act.

I am very happy to second this motion and reiterate that it is important for this House, as a House of Review, to ensure that the Executive is kept accountable and public servants are not making the laws and introducing taxes in this State for which the Parliament should give approval.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [8.23 pm]: Out of all the comments I have heard tonight from Hon Nick Griffiths and Hon Jim Scott I agree that it is the role of the committee that is appointed by the Parliament to carry out this function. I make it clear at the outset that the actions taken by the Government, by me as Minister for Transport and by the Department of Transport to implement these recommendations must not in any way be construed as an attempt to bypass the system.

The Department of Transport, in consultation with the Government through me as Minister for Transport, has a responsibility to ensure that firstly, the Government abides by the Act and, secondly, it properly carries out its responsibilities. In implementing the regulations the Government has not tried to sidestep any part of the process. In fact, it is to the contrary; the Government is attempting to implement a revolutionary system that will save the taxpayers' money and, as a consequence of an efficient and effective system of recording, provide a database on which all licences are kept. The information will be provided to not only the holder of a licence, but also the

enforcement agencies, which ultimately will lead to the exchange of information across Australia. It will be a unique system.

This Government has taken the appropriate action to revamp the operations in licensing to meet the community's expectations. It deserves to have its expectations met in 1997. If there is any criticism it is that this should have been done earlier.

As members know, the Department of Transport took over this responsibility from the Police Department a year or two ago and it has worked strenuously to provide the changes that should be put in place to meet the community's demands while, at the same time, providing an effective continuity of service. That is the basis for the change.

I acknowledge the community's comments in support of that. It is saying it is a good decision. It comes down to the Government being in a position to legally implement these changes. Hon Jim Scott said the committee has that responsibility. Of course it has and the Government acknowledges that.

The issue comes down to one of two things: Firstly, whether the committee's interpretation is correct and it has had sufficient time to deal with this issue in the way it would like to; and, secondly, whether the Department of Transport had sufficient time to respond to the committee's deliberations. I ask the House to consider those two points because from where I sit I do not consider the committee had sufficient time to properly consider this issue. I certainly did not have the opportunity to respond to the committee's deliberations as I would like to.

The motion for disallowance was moved some weeks ago in accordance with the system under which this House operates. It must set in train the process to allow members to deliberate on whether the regulation should be disallowed. The second part of that process is the time constraint put on a member of Parliament to move a motion to deal with it. That is the issue that has to be considered along with the legal complications to which Hon Nick Griffiths quite properly referred.

Over recent weeks I have sought a response from the committee regarding the progress of its deliberations. I wanted to provide departmental information in connection with the disallowance motion to assist the committee's deliberations. Until yesterday I was not aware of the legal opinion that had been obtained by the committee. I emphasise that I am not arguing about whether the committee should have received such advice. To the contrary, the committee should have the opportunity to seek whatever advice it considers appropriate. However, it is important that the Government, the department and the people who are responsible for the implementation of the regulations have an opportunity to consider that advice, bearing in mind that Crown Law had advised the department of the process as far as it believed proper.

The legal advice was made available to me today. The problem is that the committee has time constraints placed on it but it had to make a decision; just as we have rules regarding the time taken to deal with and make decisions on disallowance motions, before automatic disallowance occurs. The committee made a decision and, as a consequence, this report was tabled today. In a perfect world, we could have adjourned the matter, considered the report and then responded. At least then we would have been more comfortable with any action that needed to be taken. The problem is, for all the reasons I have outlined, sufficient time was not available.

I am advised that the committee raised a number of issues as part of the process of obtaining further information on the fees so that it could decide whether to proceed with the motion. In response to some of the committee's concerns, the department sought legal advice from the Crown Solicitor's Office. The key points from this opinion are summarised in this way -

> The manner in which the High Court in the *Air Caledonie* case construed the term "fees for services" does not preclude a fee being charged for the provision of a series of connected services, such as those provided by your Department in the context of the administration of the drivers' licensing system. In my opinion, the collective cost of providing these services, of which the drivers' licence is a tangible result, includes any administrative costs associated with designing, developing and improving the licensing system in light of technological change.
>
> In the present matter, unless the costs of change are only incurred from the date upon which the new licences are available, those costs can properly be reflected in driver's licence fees prior to the new licences being issued. To suggest otherwise is to hold that only the direct or immediate costs of producing the licence can reasonably be recouped, with any other costs of administering the licensing system which cannot be directly or immediately connected with the person to whom the licence is being provided being unrecoverable. This would not only be an unsatisfactory result, in my view it would be an incorrect application of the legal principles discussed above.

That opinion will be considered by the committee in the future. The problem is that it cannot be considered now

because time has run out, and that is why I describe it as a very unsatisfactory situation for the committee and for the Government if the motion is agreed to and the regulations are disallowed. We are putting in place a new system not for the benefit of the Government but for the benefit of the community. The Government has not acted in this way to satisfy some policy. The new drivers' licence system and the national exchange of vehicle and driver information system will provide all the benefits outlined by Hon Nick Griffiths.

The rejection of this disallowance motion will allow the Government to respond in a couple of ways: It can either change the Act or clarify whether the committee's decision is correct. I am very happy to respond either way. However, the Government itself must respond. We may need to amend other legislation, and if that is necessary we will do so. The Government should respond to the legal aspects. I think we can satisfy both the committee and the Government if both sides of this House agree that there needs to be a change.

I have already informed Cabinet about the consequences of this disallowance motion being carried. Therefore, we need to take appropriate action. Action is under way to ascertain whether we need to amend legislation individually, or whether we can introduce one Bill to amend legislation in which a fee for service is implied and not considered a tax. We will make that determination on the basis of legal advice. The best way to deal with the matter would be for the Government to make a commitment to this House and to the committee that that will be done. That has been the basis of discussions I have had in the past 24 hours, having discovered that the committee was likely to present this report.

I am advised that the Department of Transport will seek to amend the Road Traffic Act prior to the end of the financial year to ensure that the legal underpinnings of the fee are adequate. This will ensure that any amendments to these fees for the 1998-99 financial year are not subject to a similar motion. A satisfactory outcome for the committee would be to receive that commitment. That outcome would benefit the Government because it does not want motions to disallow regulations to be introduced every time regulations are produced. That would give us the confidence to implement changes to benefit the community.

The financial information that I have been given indicates that $8 000 has been spent and a further $17 000 will be spent on photographic drivers' licences and associated technology; and $220 000 has been spent and a further $295 000 will be spent on NEVDIS. Therefore, $228 000 has been spent and a further $312 000 will be spent, making a total of $540 000. We cannot decide one day to change something and implement it the following day. We needed to engage legal consultants, and to consult with the other States and the Commonwealth, because in some cases appropriate legislation must be introduced in other States.

We wanted to introduce a new driver's licence for heavy haulage vehicles which would include the new categories, and I was promised that that would be introduced in March 1996, as I told the world would be the case. We could have gone it alone, but it did not make sense to introduce that system in Western Australia alone and not be in tune with what was happening in the other States. I am now told that that system will be introduced in two months. That will obviously be of great benefit, because the trucking industry operates across Australia but in the past people who have been apprehended for one reason or another have not been able to provide the appropriate information because they have not been carrying their licence. We experienced the same problem last year with the taxi industry, where we did not know the driving or criminal record of people who came from interstate. NEVDIS will enable us to access information from other States.

I realise that the committee is not arguing against these proposals, but I want members to understand the many benefits that these changes will provide. People will no longer need to attend a licensing centre and perhaps queue for a long time. It is a waste of time for people to spend hours at a licensing centre when they could be running their business or doing whatever they want and need to do. The service that has been provided by those centres has been poor. Much of the information that has been recorded in a person's name has been inaccurate. We need to do a lot of work to get it right. However, it will be like fixing up a house: Once we get it right, it does not take a lot of maintenance to keep it right. The current licensing system is inadequate -

Hon Mark Nevill: Some of the facilities are inadequate. Forrest Place is not all that flash.

Hon E.J. CHARLTON: Absolutely. The driver assessment and vehicle examination functions will be reviewed and reformed. The agency arrangements will be reformed to include Australia Post, chemists, service stations and people associated with motor vehicle operations. Telephone credit card payments will be introduced. Metropolitan branches will be delisted from the White Pages and all licensing inquiries will be handled by a central call centre. A dealers' network registration scheme will be established to allow dealers to electronically license and transfer vehicles without the need to attend a licensing centre. Licensing operations will be streamlined to enable the development of more efficient work flows and staffing levels. Aged people will no longer need to go to a licensing centre to undergo an eye test but will require a certificate from their doctor stating that they are fit to drive.

Hon Mark Nevill: I have difficulty reading the numbers on my licence.

Hon E.J. CHARLTON: The member needs to go to his doctor. He is not 75 yet, so he will be right for a couple of years.

Hon N.D. Griffiths: He wants you to resign so that he can take over your job and have your chauffeur!

Hon E.J. CHARLTON: I do not use a chauffeur often.

Hon N.D. Griffiths: You should!

Hon E.J. CHARLTON: A system will be implemented to pursue the recovery of outstanding licence plates and get them out of the system, because people have been driving vehicles with licence plates that are not current.

Hon Mark Nevill: In every other State in Australia you can get a permit to drive an unlicensed vehicle for seven days, but in Western Australia it is for only 24 hours, so if you cannot get it licensed in time you need to get another permit. Most people in this Chamber would have been caught by that silly rule.

Hon E.J. CHARLTON: Hon Mark Nevill is right; they are the things we are doing.

Hon Mark Nevill: Simple things.

Hon E.J. CHARLTON: Yes. In addition we are implementing the levy which we are discussing tonight. I have attempted to make the point, sincerely, that I would have liked another week to sit down and work through issues as we did on the meat issue, on which we took appropriate action.

I reiterate my undertaking that we will introduce appropriate amendments to ensure that the Standing Committee on Delegated Legislation is not required to repeat this process. In the light of the evidence and the comments I have made tonight, I hope the committee will reconsider its support of the disallowance motion and not proceed with it. We should get on with the job of implementing the regulations, which will greatly benefit the community. They will not save the department or the Government money; they will save the community time by providing it with a greater service, such as the example referred to by Hon Mark Nevill.

Once that is done, over the next few weeks I will keep members up to date. In response to Hon Nick Griffiths' advice and in the light of Crown Law advice - I am not judging which is correct - we will consider what is the appropriate action. I make the commitment to the committee that we will resolve this once and for all.

Another disallowance motion on the Notice Paper has some days to run. By the time we must make a decision we will have a proposal in place so that we can deal with it along the lines I mentioned. I ask the House not to support the disallowance motion because there is a better way of resolving the matter and so that we, not as a Government but as a Parliament, can proceed.

I will keep members up to date with the process of NEVDIS and the other licensing initiatives the Government is taking so that they are implemented as quickly as is humanly possible despite the conditions under which we are forced to operate. We hope to convince the rest of Australia to do that at the same time. As each initiative is implemented the community will benefit.

HON B.M. SCOTT (South Metropolitan) [8.53 pm]: As a member of the Standing Committee on Delegated Legislation I will put into perspective some of the reasons for its decisions on this disallowance motion. Most of the essential points have been covered by the previous speakers. However, for a number of new committee members on this Delegated Legislation Committee, in the first instance, the committee had a late start in June. The committee had difficult time frames within which to work and report to the Parliament to comply with standing orders.

This evening we heard a long and detailed case by case legal argument by Hon Nick Griffiths that this is a tax rather than a fee. I respect the fact that he has the benefit of a legal background and is able to compare opinions; we do not all have that.

Hon Derrick Tomlinson: It is still only an opinion.

Hon B.M. SCOTT: Obviously many cases have been presented on this issue in the past and most of us are aware of some of them. I do not think there is any doubt in the mind of each committee member that the community will benefit financially from the proposed changes. As the Minister pointed out, a national vehicle licensing scheme will save in the vicinity of $20m year. That is a huge saving.

The concept of digital imaging technology to produce a card for drivers' licences will also benefit the community, and no-one disputes that. That is not the issue. The issue was the legal argument of whether the levy would be a tax or a fee. From my perspective, however, the legal case presented by the Crown Solicitor's Office to the Department

of Transport was discussed only briefly by the committee in the absence of some members of the committee.

On Thursday when we had to make a final decision Dr Schoombee's clear case convinced the committee that it was a tax rather than a fee. However, we had about five minutes to assess his legal opinion. At no time last Thursday were any experienced members present other than the deputy chairman. All four committee members present on that day were new members.

Hon Jim Scott referred to point 6.5 in the committee report and said it was not the first time the committee had considered this situation. The members at the committee meeting on Thursday had neither the benefit of that hindsight nor experience of other legal cases. I do not mean to indicate in any way that that is an excuse for the committee's decision. However, the members did not have the benefit of other cases being referred to the committee. Only one very convincing case was presented to it. It was not at that stage suggested that the contrary view of the Crown Solicitor should be considered again even for a short time.

With the benefit of hindsight and the deliberations of the Minister in the House tonight it is very clear to me that committees - certainly the Delegated Legislation Committee - require more time to study complex issues if they are to do justice to the Parliament and play a role in checking departmental and Executive decisions. The Parliament and the Government must accept that it is appropriate that members at least have the benefit of time to consider both sides of an argument. The Delegated Legislation Committee did not have that time. I support the Minister's move to take appropriate and urgent action by amending the Road Traffic Act.

The benefits which will accrue to the community as a result of these regulations are very clear. I have examined my diary and find that the committee meeting times were shortened because of the difficulty of maintaining quorums during July and August. Although I need not detail them here, it is clear that at no time did all the committee members have time to consider that second legal opinion. Because we do not have the benefit of legal training and are not familiar with a number of cases, it is difficult to compare opinions.

The benefits of the regulations are obvious and the pressure on the committee to report to the House in time was a difficult matter which must be re-examined. I appreciate the Minister's explanation to the House.

HON NORM KELLY (East Metropolitan) [8.57 pm]: I appreciate the remarks of the Minister and Hon Barbara Scott, particularly in relation to the work of the committee and the time frames under which we worked on this matter. I also appreciate the Minister's remarks about the value of the work of the Joint Standing Committee on Delegated Legislation. In matters such as this, which have legal ramifications, we must defer to expert legal opinion. The committee structure, as a small working group, is the best way these matters can be dealt with.

However, I have a problem with the fact that we were presented with this report this afternoon and we had to deal with it tonight. I understand the time pressures the committee was under in making a decision on this issue. I appreciate Hon Nick Griffiths' comments about the time frame that is available to the committee and reasons that we were not presented with a report before today.

Hon J.A. Scott interjected.

Hon NORM KELLY: I appreciate the comments by Hon Jim Scott. It is important, especially for me as a new member in this House, to understand the workings of committees and the procedures involved in reporting to the House. The Minister also referred to the other disallowance motion we dealt with today on meat inspections. In a similar situation at a very late stage we had to deal with the relevant department and examine conflicting points of view before making a decision. After I and other members of this House had a meeting with officers of the Health Department last Thursday, they were well aware that when a disallowance motion is raised the department affected must make its point of view known to other members of this House at the earliest possible opportunity. It will serve the department's cause to do so. That was the case with the Health Department and the Department of Transport this week. In a meeting with departmental officers last Friday on other matters, this issue was casually raised in conversation. I had a briefing only yesterday on the extent of the ramifications if these regulations were disallowed.

Hon E.J. Charlton: I have been trying to get through the need for that information because I totally support what you are saying. It was only yesterday that this other legal opinion was made known to us and we were able to respond. That is the problem.

Hon NORM KELLY: I appreciate that, but months ago the department decided to introduce these regulations and the moment the disallowance motion was raised it should have flagged to the department that there was a problem with the regulation and further work was needed. Even if it were on the basic notion of the department supporting its argument, at least it would provide a grounding on how the argument might develop and how to support it when further legal opinion is obtained. It is interesting to note that legal opinions on both sides of this argument refer to the Air Caledonie International case as supporting their argument. I refer to the statement in the committee's report

that fees for service should be read as referring to a fee or charge exacted for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment.

On that basis, members can understand the reason for the committee's findings. The Minister mentioned the other argument, which is that the manner in which the High Court in the Air Caledonie case construed the term "fees for services" does not preclude a fee being charged for the provision of a series of connected services. Both arguments are valid at face value. Hon Barbara Scott said that not all members have legal experience, and I include myself in that category. It can be difficult when confronted with these varying legal opinions at the last minute to make a decision on the basis of them. In my discussions with officers from the Department of Transport they said they had legal advice from the Crown Solicitor's Office, and had decided against obtaining an independent legal opinion. It is difficult to say whether that would have helped. It may have resulted in our arguing about a third legal opinion with different conclusions.

Hon N.D. Griffiths: They can be expensive.

Hon NORM KELLY: Exactly. One could also question whether the department would have decided to utilise that information if it were not in its favour.

The Minister mentioned the need to look at legislation. Obviously, bearing in mind the possible disallowance of these regulations, there should always be a contingency plan to enact something else in their place. I agree with the Minister that this case and previous cases indicate a definite need for legislative action to correct what has happened. Within reason, I would support legislation that would clarify what the department can and cannot do.

Hon E.J. Charlton: We will do that anyway.

Hon NORM KELLY: It is a matter of time, and I appreciate the Minister's argument that these regulations should be allowed and he will guarantee to enact the new legislation or make changes to the regulations. The difficulty for members in the House tonight is that they must decide on the matter now and they do not have time to get a written guarantee from the Government, such as that I quoted earlier from the Minister for Health on the other disallowance motion.

Hon Derrick Tomlinson: Trust me, I am the Government.

Hon NORM KELLY: Where have I heard that before? That fell down a few years ago.

Hon E.J. Charlton: In this case we do not want to face a disallowance motion again, so we will do it.

Hon NORM KELLY: I realise it is in the Government's best interests to ensure that, but we are dealing with two separate issues. The first is about the need for this money, and we have heard comments about the national exchange of vehicle and driver information system. We understand the department is gearing up for the introduction of that system next year and I understand it will be introduced in May. I am sure all members support the introduction of NEVDIS, which will provide the benefits spoken of earlier. When obtaining some background information on the management of this system and the other ways in which the department handles these licensing areas, I was amazed to learn that the database provided for recording drivers' licences is a separate database from that recording vehicle licences. I understand the systems cannot talk to each other and there is no way of cross-referencing the databases. The increased funds to the department for this new system will alleviate that. It will provide a compatible system for this State and one that can also be hooked into the national network and provide more safeguards in that way.

I also recognise that some of these changes occurred during the transfer of responsibility from the Police Service to the Department of Transport two years ago. That may be partly responsible, but the fact remains that the current standard of database fidelity is somewhat less than it should be. It appears that much of the money is being used to increase the purity of the system, which is well overdue, and the standard of security and fidelity of the system is something the community expects from the department as a matter of course. It is playing catch-up to bring it to the standard expected of it.

The committee's report also highlights the savings to be gained from the introduction of NEVDIS. With regard to the need to provide increased fees for the new system, it is interesting that the department has said the savings will include the improved collection of fees, better collection of fines, and a reduction in transaction times and licence fraud. I am sure we all expect the department to save the State considerable money in these areas, yet we are still being told there is a need to increase the fees in order to provide such a service.

One of the crucial points in the committee's report relates to the timing of the introduction of these fees for services. Although the fees were introduced in April some of the services - the new drivers' licence cards - will be introduced in November this year and the NEVDIS system for car and drivers' licences will be connected in May next year.

I appreciate that the department has spent some money and will spend considerably more before the system is introduced. Nevertheless, it appears clear that those paying this fee are not receiving any direct benefits beyond those they should expect from a high fidelity data system for licences.

Hon E.J. Charlton: We will have the new driver training in October. All that is being worked up now. That is all relative to this as well. It is not part of the committee's direct deliberations, but they are the benefits that will save lives. One hundred other things are being done at the same time.

Hon NORM KELLY: I appreciate that. There is no argument that the direction of money into these new services is warranted. The monetary and social benefits not only to the State but also to the entire community are to be applauded. I am sure the Minister will get total support for that in this House. However, we are addressing how that money is raised and whether it is within the legal ability of the department to raise it in this manner.

Looking through the various legal opinions to which I have had access, it is clear that the main argument is whether the money raised is a fee for service or a tax. I will not go into the legal decisions; Hon Nick Griffiths explained at length the variety of decisions supporting the argument that this is not a direct fee for service.

Hon N.D. Griffiths: It was not at length: It was a brief summary.

Hon NORM KELLY: I am sure only a lawyer would say that.

Given Hon Nick Griffiths' comments and the committee's work on this subject, it would be improper for me to contradict that opinion. We have standing committees to do that more detailed work on these issues.

I reiterate that I am not happy that we must decide this matter at this time with such limited notice. Hon Barbara Scott has made similar comments. I am sure members of the committee would have wished otherwise.

Hon N.D. Griffiths: Absolutely; I am not happy.

Hon NORM KELLY: I found the departmental officers very helpful. They were perhaps not totally forthcoming with all the information I requested. Earlier notification would have been better. The Department of Health and the Department of Transport have been put on notice. I am sure I can speak for the cross-bench parties in saying that, given our workload during sitting weeks in particular, the earlier we receive notification or advice the better. We would appreciate that.

Hon E.J. Charlton: I have said that any time you want to know something you should say so and I will try to get the information.

Hon NORM KELLY: I appreciate the Minister's offer. Nevertheless, I had to request a briefing at this late stage. It should not be necessary for me to hunt out that opinion. If a department feels strongly enough that the disallowance motion should be rejected, it should make the effort to inform members of its case.

Hon Derrick Tomlinson: How does it know what you want to know if you do not ask?

Hon NORM KELLY: It is easy enough for me to request a briefing. However, in the case of a disallowance motion - where the department has said that it believes the regulations are correct - the moment the disallowance is flagged alarm bells should ring. The department should then put across its point of view.

Hon Derrick Tomlinson: Should it do that while the issue is before the committee? Are you suggesting that the department should attempt to frustrate the work of the committee before it reports?

Hon NORM KELLY: No, I am not. However, it would help other members who are not members of that committee or privy to the meetings and discussions, especially in a case such as this where the committee report has been presented on the final day. Perhaps it would be different if we still had another week to make a decision.

Hon Derrick Tomlinson: Alternatively, the motion for disallowance should not be moved until after the committee has reported. Perhaps someone has made an error of judgment in that respect.

Hon NORM KELLY: We have already heard that the committee was late starting this year. I am not sure of the exact time frame.

Hon N.D. Griffiths: Hon Derrick Tomlinson has made reference to a misjudgment. Any reading of *Hansard* will show that the report was tabled before I moved the motion.

Hon E.J. Charlton: That is right.

The PRESIDENT: Order!

Hon NORM KELLY: I appreciate that and the member will expand on it more fully in his response.

Hon Derrick Tomlinson: Notice was given. The point is well taken.

Hon NORM KELLY: I feel strongly that the position we are in - we received the report only a few hours ago - of having to decide the issue tonight is not ideal. I am sure it is not in the interests of the committee that it be put in that position.

For the reasons I have discussed, the Australian Democrats support the disallowance of this motion, albeit it is not ideal that we have had to deal with it in this manner.

HON B.K. DONALDSON (Agricultural) [9.19 pm]: I will not belabour the point because I know Hon Nick Griffiths has spelt out the committee's reasons very well. I commend the committee on recommendation 7.2, in that it is continuing to look at a complex issue that has been dogging the committee for some time; that is, whether a fee is a fee for service or a tax.

Hon N.D. Griffiths: It has become something of a black letter in recent years.

Hon B.K. DONALDSON: As Hon Nick Griffiths pointed out, perhaps the Government has been a little slow in reacting to some of the concerns raised from time to time by the Joint Standing Committee on Delegated Legislation.

I will relate a couple of precedents: First, the raising of a licence fee for managed fisheries. I can remember moving a holding disallowance in the House before the new standing orders were introduced that allowed issues to be expedited. We were able to work through this issue. On one hand a Queen's Counsel was saying that it was raising a tax; it was not a fee for service. On the other hand the Crown Solicitor did not agree. As a lawyer, Hon Nick Griffiths will know that when there is disagreement between lawyers about a case, the ultimate test is in a court. We did not want the matter to go to that extent. Both Queen's Counsel who were involved, the Clerk of the Legislative Council and the Minister were able to sit down with the staff of the Fisheries Department and work through this issue and come up with a formula for the coming year.

The formula for assessing the fee had been based, in part, on production. Because it was part of the formula, the fee was deemed to be a tax. We were correct. I made an explanation to the House when the motion for disallowance was withdrawn. The committee realised that had we proceeded with that disallowance in this House, it would have impacted severely on the budget of the Fisheries Department for the coming year. We have one of the best managed fisheries in the world and it would have been a disaster for the fish stocks and those involved in the industry. The House accepted my explanation in support of the withdrawal of the motion at that time.

On another occasion Mr President, you were involved in a similar issue as the then Minister for Lands. A fee had been raised for developing the Western Australian land information system. The fee was of a capital nature for the establishment of the state of the art computer system that was installed. The system was recognised around the world as a leap forward in technology, resulting in the previous Labor Government selling it to various countries. The then Minister for Lands gave certain undertakings to the House. We would not remove the motion for the disallowance of the regulation until the Minister explained the situation to the satisfaction of the House. Although I cannot remember the exact detail, it involved an amendment to the Act, and further that within 12 months, the departmental officers meet with members of the committee. They brought with them the departmental budget for the coming year, including all the relevant costings, prior to the gazettal of the regulation setting out the amended fees. We went through them one by one and spent a considerable time ensuring they would meet the appropriate legal guidelines.

This is not unique to the Department of Transport. It cuts across all government agencies and it has been a vexed question for a long time. We also saw during that time the consumer price index being used as a cost recovery review process. Different CPI figures were being used by various government agencies. A figure was plucked out of the air which fitted closest to a department's requirements. Subsequently Treasury has issued advice to agencies about any increase in fees. At least now there is some consistency in any increase in fees, rather than the previous method of basing these increases on a flexible CPI movement.

The Government has supported the work of the committee. I recognise the outstanding contribution the committee makes, and it has potential to provide further assistance to the Parliament and Executive Government. Hon Tom Helm is a former deputy chairman of the committee. I am sorry he is not here this evening; he is away on urgent parliamentary business. I often said when we were getting a little gung-ho that the Joint Standing Committee on Delegated Legislation was not here to hinder government, but to assist it and to ensure that processes used to raise funds in any form meet the legal requirements.

I welcome the part of the report that states that the committee is continuing to pursue this matter. In the past 12 or 15 months the Attorney General has indicated to me some ways in which the Executive Government can ensure the processes it is using are legally binding. He has suggested to some of his colleagues some ways in which that can

be done so that we do not have matters being taken to court unnecessarily, because having matters tested in court would be very messy.

During the debate involving the fees to be increased by the Fisheries Department, one of the leading seafood manufacturers in Western Australia told me that it could take the Government to court and probably win because those in that industry realised the formula was wrong. The large seafood companies respected the fact that the committee members sat down with them and worked through a system to ensure that any further increasing of licence fees was empowered under the legislation through the regulations. The formula was changed so as not to breach those provisions.

I understand the explanation of the Minister, and we should take that on board. I say that sincerely because I respect the work of the committee. I have no problem with it. There are ways and means of working through this issue without disallowing the regulations this evening. I know the Minister has given an undertaking, but I wish he could have spelt it out more clearly and given a more definitive explanation to ensure the Government moved as quickly as possible with the committee to get rid of the grey area surrounding the never ending question of when money raised is a fee for service and when it becomes a tax.

It is important that the Government treat this very seriously. It has been talked about by members wandering around the corridors and not judged as seriously as many of us in this House probably realised it should be. I commend the work of the Delegated Legislation Committee. I wish the Minister could have given a greater assurance this evening, put in place some time constraints and advised the acting chairman of the committee of certain things that he expected should happen. The committee expected that sort of guarantee would have been given this evening.

Hon E.J. Charlton: I would have loved to meet the committee to do that. I have never had the opportunity.

Hon B.K. DONALDSON: It is very easy to say, "Let us disallow it, so we can all go home and do other things." I know Hon Nick Griffiths was not suggesting that; rather, he was trying to explore the different ways of addressing this issue at this time. Most importantly, I encourage Hon Nick Griffiths and the rest of the committee to continue that work with the Government immediately to ensure that this matter is resolved as quickly as humanly possible.

HON SIMON O'BRIEN (South Metropolitan) [9.30 pm]: Like several other members, I am a relatively new member of the Joint Standing Committee on Delegated Legislation. Hon Barbara Scott and others commented on the lack of time available to consider this complex matter. In the last month or two, particularly during the winter break, a thread of difficulty regarding quorums and other matters seemed to find its way into the committee's meeting schedule.

Hon N.D. Griffiths: You and I saw each other there often.

Hon SIMON O'BRIEN: Yes, and I was delighted to do so. It was a pity that on a number of occasions we had insufficient colleagues to form a quorum immediately, or on other occasions the time available to consider this issue was truncated. It was coincidental that something happened every time this issue was on the agenda, and this caused the committee to be unable to give it sufficient consideration. Importantly, the Delegated Legislation Committee is a good committee, and I am finding my membership to be a useful exercise. Recently, two other reports were presented by the deputy chairman, Hon Nick Griffiths - one relating to disallowance motions and the other to the whole issue of subordinate legislation - which were well received by the House.

Let the impression not be formed that the committee is not functioning properly. The officers assisting the committee must have torn out their hair by the roots as a result of the unfortunate circumstances which attended on us when this matter was due to be considered. We had the benefit of Dr Schoombee's advice as late as our meeting last Thursday. A problem with a joint standing committee is that its members are drawn from both Houses, which can sometimes present problems with quorums. Members will be aware that Order of the Day No 12 is a motion to consider amending the committee's rule 10, which I hope will alleviate future problems in this regard.

Hon N.D. Griffiths: It would be useful to deal with that matter tomorrow.

Hon SIMON O'BRIEN: It would be useful indeed.

On this issue, I had Dr Schoombee's advice available to me only at the last meeting on Thursday, and the committee's report on the matter before the House was the product of that advice. Also, I did not examine the Crown Law advice until after that meeting. That was not an oversight on the part of the committee's officers, as I simply had not been around. I can speak only for my situation - it may apply to other members - but the only advice available last Thursday was that the fees involved were taxes and, therefore, we should reverse the position by proceeding with the disallowance motion. However, Crown Law counsel's advice was to allow the disallowance motion to lapse. I was of the understanding that if we were to keep the disallowance motion alive, it would extend the options available to us. If I am wrong in that regard, I will stand corrected, but I do not believe that I am.

Numerous speakers have already commented on the positive aspects of the report. It was indicated that the committee would pursue the whole question of fee for services versus pseudo tax.

The PRESIDENT: Order! Too many audible conversations are being conducted in the Chamber.

Hon SIMON O'BRIEN: I come to the view, more strongly with each speaker's contribution, that the way to proceed with this disallowance motion is to address all the many occasions on which such questions arise in various state subordinate legislation. That is as opposed to singling out this issue. Members could ask: Why not start here? However, this matter is already finished, as the regulations dealing with the licence fee increase were gazetted earlier in the year and applied from 1 April - perhaps an appropriate date.

The other day the Delegated Legislation Committee's deputy chairman, Hon Nick Griffiths, placed on the Notice Paper our next motion for consideration. This is what I call a holding disallowance motion on the next lot of road regulations for a subsequent increase in licence fees which applied from 1 July. While we are considering the disallowance of the regulations which came into effect on 1 April, the next lot of regulations are already in the public domain. To rub salt into the wound, our committee clerk went to renew her driver's licence and paid not the new $29 fee under consideration, but the $30 which applied from 1 July. For those reasons, all sorts of subordinate legislation should be caught in this net of review. The Government should introduce legislation to catch all such subordinate measures in one fell swoop.

I now indicate one of the many and varied forms the tax versus fees issue can take, and I hope this point was not mentioned when I was briefly out of the Chamber. The twenty-fifth report of the Delegated Legislation Committee, at paragraph 6.4.2, reads -

> nothing in the Road Traffic Act 1974 appears to authorise the imposition of any charge amounting to a tax;

Nevertheless, subsequent to the presentation of the report to the House, I received information to draw my attention to section 22 of the Road Traffic Act which provides that an amount equal to the licence fee component shall be credited to the main road trust account for the purposes of funding road infrastructure. I mention that as further evidence of the incidence of the difficulty.

In closing, I commend our deputy chairman, Hon Nick Griffiths, for the way he has spoken on this matter. I appreciate that he finds himself in a slightly invidious position: He has spoken well and comprehensively on the committee's view as it was resolved on Thursday. Unfortunately, further information has come to light since then.

HON N.D. GRIFFITHS (East Metropolitan) [9.38 pm]: I note the observations made by a number of members. First, I will not comment on the deliberations of the committee, save where matters are dealt with in the report. The report discloses that the committee sought information from the Department of Transport. The bottom of page 1 refers to the fact that I gave notice of the motion of disallowance on 10 June 1997, and that the committee required more information from the department. Page 2, subparagraph 3, reads -

> The committee addressed its concerns with the Department.
>
> Relevant officers of the Department were called before the Committee to give evidence and the Department was given the opportunity to take legal advice on the issues that were raised by the Committee. At the completion of these investigations and after the Committee took its own independent legal advice from Dr J T Schoombee, it is the Committee's opinion that these regulations are beyond the power . . .

It then goes on to state -

> It is stressed that Dr Schoombee's advice was provided to the Committee in light of the legal advice provided to the Department.

Paragraph 4.1 refers to "On the basis of information supplied by the Department of Transport to the Committee".

Hon E.J. Charlton: When did the committee discuss the response from the department; was it back in June?

Hon N.D. GRIFFITHS: I understand that I cannot venture into the deliberations of the committee. I might be wrong in that.

The PRESIDENT: You are very right. I was becoming concerned about that with some of our other speakers. You are concentrating on the report that has been tabled.

Hon N.D. GRIFFITHS: That is what I am endeavouring to do, Mr President. The report makes a number of references to receiving information from the department. On the basis of that information the committee reached its view on the facts. With respect to the law, the committee again stresses that it took legal advice after receiving the legal advice of the department. That is a matter of record and set out in paragraph 3. Several other references are

made to the consultations between the committee and the department. Please note that the motion was moved pro forma on 12 June and I gave notice of motion on 10 June.

If I may comment briefly on the observations made by a number of members, I note that Hon Jim Scott stressed the importance of the work of the committee. He pointed out the very real precedents about which we should be concerned, namely the fact that the committee has brought this issue before the House on a number of occasions and yet we still find ourselves arguing about something which is becoming somewhat patent; that is, when due consideration is given to the legal authorities, it is clear that what is in these regulations is a tax. I went through the legal opinion of crown counsel with respect to the case which it relied upon, which was an interpretation of a decision of a single judge of the New South Wales Supreme Court. I referred the Minister, through the Chair, to a passage in that decision which somewhat constrained its operations, so much so that the decision which crown counsel relied upon was consistent with the subsequent authorities which make it very clear that we are talking about a tax. It is not a grey area, as Hon Bruce Donaldson suggests, because of the facts which the committee has set out and because of the law, which I again suggest to the House is fairly patent.

The Minister has spoken appropriately about the position in which he and the department find themselves. He has referred to the benefits for which the money will be used. That is not at issue and nor is the motive of the Government, as I was at pains to point out in my observations. That the legal test that operates in the 1990s is narrow is a matter of regret, but that is the world in which we find ourselves. Perhaps I wish it were otherwise, but so be it. The commitment given by the Minister is very welcome. I look forward to having the opportunity as a member of the committee to participate in constructive action with the Minister and his department and other departments of state, if that opportunity should arise.

This is not a long report. It is for others to say whether it is well set out or otherwise, but it is rather easy to follow and at pains to use not particularly difficult language. I was available to answer questions by way of interjection. It is of great regret that this report was tabled today and that this committee was not in operation until June rather than in March. The committee should be constructive, but at this stage the appropriate course of action is to note the Minister's undertaking and also the words of Hon Bruce Donaldson to the effect that a further undertaking should have been given. That further undertaking is probably implicit in what the Minister has said.

Hon E.J. Charlton: Read *Hansard* and see what sort of commitment I made. I do not know what more I could say.

Hon N.D. GRIFFITHS: I accept the Minister's bona fides. Notwithstanding that, given the history of fees for services and the regulations that members have experienced, particularly in the last Parliament, the appropriate course of action this evening is for the House to give due consideration to the recommendation of the Joint Standing Committee on Delegated Legislation, which it is clear has had this issue before it at least since 10 June 1997, and to vote accordingly; that is, to vote in favour of the two motions before the House to disallow the relevant regulations.

The PRESIDENT: The first question is that the motion to disallow regulations 3(c) and (d) of the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) 1997 be agreed to.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Norm Kelly	Hon Tom Stephens
Hon J.A. Cowdell	Hon Mark Nevill	Hon Ken Travers
Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon John Halden	Hon J.A. Scott	Hon Cheryl Davenport *(Teller)*
Hon Helen Hodgson	Hon Christine Sharp	

Noes (13)

Hon E.J. Charlton	Hon Barry House	Hon B.M. Scott
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith
Hon Max Evans	Hon N.F. Moore	Hon Derrick Tomlinson
Hon Peter Foss	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan		

Pairs

Hon Tom Helm	Hon M.D. Nixon
Hon E.R.J. Dermer	Hon W.N. Stretch
Hon Bob Thomas	Hon M.J. Criddle

Question thus passed.

The PRESIDENT: The question now is that the motion to disallow regulation 3(a) of the Road Traffic (Licensing) Amendment Regulations (No 2) 1997 be agreed to.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Norm Kelly	Hon Tom Stephens
Hon J.A. Cowdell	Hon Mark Nevill	Hon Ken Travers
Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon John Halden	Hon J.A. Scott	Hon Cheryl Davenport *(Teller)*
Hon Helen Hodgson	Hon Christine Sharp	

Noes (13)

Hon E.J. Charlton	Hon Barry House	Hon B.M. Scott
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Hon Max Evans	Hon Murray Montgomery	
Hon Peter Foss	Hon N.F. Moore	Hon Derrick Tomlinson
Hon Ray Halligan	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*

Pairs

Hon E.R.J. Dermer	Hon M.J. Criddle
Hon Bob Thomas	Hon M.D. Nixon
Hon Tom Helm	Hon W.N. Stretch

Question thus passed.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [9.55 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Manslaughter Verdict

HON SIMON O'BRIEN (South Metropolitan) [9.56 pm]: Members of this House were criticised in passing by an opinionated commentator in the media when it became known I would be speaking on this matter late tonight.

Hon Tom Stephens: Who was that?

Hon Mark Nevill: That comment covers just about everyone in the media.

Hon SIMON O'BRIEN: Perhaps it does apply, Mr Nevill.

The fact is that in due course the House will adjourn and members will find their way home to their families and, ultimately, will retire for the night. However, a young man by the name of Phillip Vidot will not be going home tonight, tomorrow night or any other night in the next 50 or 60 years that he might reasonably have expected to go home to his family. He will not be going home because in late 1995 he was done to death in an ugly incident which took place in a suburban park.

I will not go into the detail of that hideous incident. I will give members a brief outline of what happened according to the evidence in the court. Phillip Vidot, a 14 year old, accompanied by his friend Tyron Williams, who was also a teenager, were at the Carousel Shopping Centre, where they met up with three young men. They accompanied those three young men in a car and they drove around. Ultimately, they came to Centenary Park. The real reasons for what happened - if there can be any - will probably never be accurately known. After some words were exchanged, Phillip Vidot and his friend Tyron Williams were subjected to a brutal attack involving fists, boots and a cricket bat. They had their jackets and shoes stolen and they were left in the dark in Centenary Park. According to the testimony of the three assailants, they drove away and at some point away from the scene they decided that because they might be recognised in any subsequent action they had better go back to Centenary Park and, I believe the words were, "finish them off".

There is conflicting evidence - all of it from the accused - as to whether they then assaulted Vidot and Williams again, went away and then came back a third time to check that the pair were really dead or whether they returned to Centenary Park to "finish them off" once. The court heard that one of the accused was tasked with the job of finishing them off and was to use a knife to cut their throats, but did not have the guts to do it when he saw the forlorn

and bloody state of the two boys. Another of the assailants then took it upon himself to drive his vehicle over these two young men. As a result of the injuries sustained by these acts Phillip Vidot died somewhere between two and six hours after the initial assault. Tyron Williams was in a coma for eight days and probably will continue to suffer the effects of this brutal bashing for the rest of his life. Sadly, this sort of thing has happened since the day of Cain and Abel and will probably happen again. It was an ugly incident which had no redeeming features.

The hearts of the community went out to the families of these victims on hearing about this hideous offence. Indeed, the hearts of members must go out to the families of Phillip Vidot and Tyron Williams.

There are no winners from this ugly and tragic incident. They were two young men and now one is dead and the other is permanently injured while their families are permanently scarred. The families of the three young men who were responsible for this incident will also have a shadow cast over them for the rest of their lives. It was a sad, tragic and senseless incident.

Last month the court eventually delivered a verdict of manslaughter against the two principal and adult offenders. Considerable dismay was expressed by those close to the victims. It is not for me to comment in this place on that court's decision. I have no adverse reflection to make on the jury system nor on those who serve on juries and do their best to faithfully discharge their duty.

However, considerable community uproar was sparked by this verdict which manifested itself in a couple of actions. Firstly, statements were prepared by the relations of the victims, copies of which I have in front of me. Secondly, there was a march and rally last Friday, of which some members would be aware, at which the organisers delivered these statements into my custody. They include 13 bound volumes and since then I have received another five volumes. These bound volumes make a number of demands and statements which I will come to if time permits.

The march and rally was under the banner "justice for all". A couple of messages were clearly made in the addresses that took place on the front steps of Parliament House. The rally wanted the messages brought to the attention of the House and I agreed to do that. In the time available to me I hope I can summarise them adequately. Basically, the community wants justice. They perceive that the courts, particularly some of the lower courts, are too lenient on repeat offenders. They want to know whether they can rely on their Parliament and Government to take the necessary action to ensure that appropriate standards of law and order are maintained. It is important that they know they can.

I desperately wanted to bring this issue to the attention of the House tonight because it is essential that members reflect on the fact that it is very sad when a number of people in the community feel committed to express their disappointment, whether rightly or wrongly, in one of our institutions, in this case the judicial system. It is something of which all of us and particularly the judicial system should take notice. I find it poignant and noteworthy that in expressing their displeasure and calling for assistance and more support they put their faith in another institution - the Parliament.

I understand the documents in front of me contain approximately 18 000 signatures and I will hand them to the Attorney General and ask him to respond in due course to their contents. As he has agreed to do that I will not seek to mention some of the initiatives which have been taken in this respect.

In conclusion, the people in our community have a need to understand that when this Parliament legislates for a Criminal Code which prescribes offences and penalties it means them to be taken seriously by the courts. I thank the House for allowing me to make this representation.

Adjournment Debate - Drug Problem

HON LJILJANNA RAVLICH (East Metropolitan) [10.06 pm]: On two occasions last week I had the misfortune, when looking out of the window of my electorate office, of seeing young people chroming. The ages of these children ranged between 10 and 17. I felt a sense of despair for what the future holds for these young kids.

I bring this issue to the attention of the House because what do these children have to look forward to? With youth unemployment at such a high level many of them will not have a chance of securing employment.

Hon Greg Smith: Did you bring it to the attention of the police?

Hon LJILJANNA RAVLICH: The bottom line is that these kids are doing these things everywhere. It is not only a police problem, but also a community problem. I am sick of hearing that one sector of the community is responsible for this problem. There must be a coordinated, interagency approach to prevention as well as intervention by the Government.

Lately there has been an increase in heroin deaths and there are far too many. Chroming and glue sniffing is on the increase and in the past week we have heard about school suspensions, the information for which was obtained

through freedom of information. The indications are not good. The Minister for Education said that if members thought school suspensions were too high they should look at the truancy figures! It is difficult to see any future for the children who are alienated. I am concerned that many of them will move into the area of harder substance abuse.

I put a question to the Minister for Transport, representing the Minister for Family and Children's Services, about the increase in heroin-related deaths. The reply I received was that in 1992 there were 26 deaths and in 1995 there were 81; therefore, the figure nearly quadrupled. If that is not an indication that society needs to do something, I do not know what is. This year, up to 20 August, there have been 54 heroin-related deaths. That figure will exceed the 1995 figure and it is time for real action.

I refer to a report which was prepared for the Government in September 1995 by the Task Force on Drug Abuse. It came down with approximately 150 recommendations and I am very keen to find out how many of those recommendations have been fully implemented. My guess is that it would be nowhere near as many as should have been implemented.

I quote from "Protecting the Community", the report of the Task Force on Drug Abuse, which reads -

> It is estimated that there are between 50 and 100 chronic solvent abusers in Western Australia.
>
> There is occasional or episodic abuse of solvents in conjunction with poly-drug abuse by some at-risk young people.
>
> The extent of experimental solvent abuse is substantial but its occurrence is localised and periodic.

Not quite two years ago the estimation was between 50 and 100 chronic solvent abusers, and if that is still the case I think that I have a high percentage of that number in front of my office. The figures need to be reworked because we need an assessment of the magnitude of the problem. I understand that many young Aboriginal children are caught up in substance abuse, but that does not make it any less an important community issue. The matter must be considered and resolved. Firstly, I am very concerned that not enough funding is provided in this area. Secondly, the funding that is made available is not directed to the right areas. At page 9, the report refers to expenditure by government as follows -

> The Task Force surveyed State and Commonwealth government agencies, local government authorities and non-government agencies in Western Australia to determine the level of their expenditure that is attributable to the drug problems of the clientele or population they serve.
>
> On the basis of the returns received, the estimated level of expenditure by these organisations for the year 1993/1994, as funded by the various levels of Government, was calculated to be $239,784,778. A breakdown of this expenditure is outlined below.
>
> Nearly 80% of the expenditure was incurred in two major areas:
>
> > $116,549,440 (48.6%) through justice and law enforcement agencies (including WA Police $60,176,100 or 25.1% and Ministry of Justice $49,991,994 or 20.8%); and
> >
> > $72,727,594 (29.9%) through inpatient hospital stays.

It appears to me that money is being spent at the wrong end of the problem. We must consider strategies which are preventive and interventionist, not strategies which are dealing with the end result of a very grave community problem. The bottom line is that for some of these children there will be no future if we attempt to deal with the problem at that end.

Some of the issues must be addressed early in the piece. School suspensions are a problem. Certainly the children in front of my office should have been at school. I understand the magnitude of the problem for the education system in attempting to deal with the situation. However, those children were not at school, and there does not seem to be any officer responsible for chasing them up and making sure they are where they belong. As a consequence, the children go wherever they want whenever they want, and generally create a health problem for themselves and a community problem for us. *The West Australian* of 21 August states -

> WA's State schools have handed out 12,662 suspension notices in the 18 months to June this year and expelled 55 for offences ranging from drug peddling to assault.

That should be a real concern to us all. That number does not necessarily relate to children but to suspension notices. However, on any given day a large number of children in the community can be tempted to go down the path of substance abuse and be at risk to themselves and to the community. As a society we need to accept that the problems are real. Because they may not be so prevalent in the community in which we live but be prevalent in some other

community, it does not mean that we should turn a blind eye. We should acknowledge the problem. We should acknowledge that it is everyone's problem - not only an Education Department, Health Department or Police Department problem.

We must deliver a social dividend, and we must deliver it to this sector of the community as much as to any other. If we do not, I fear that Western Australian youth will continue to hurt under this Government's policies, and that is not something I would want for the future of Western Australian young people. We should give due consideration to this area. We must adopt a more cooperative and preventive approach. This may be too little, too late, but we can at least try some interventionist measures and not wait until the problem is unsolvable before we move.

Adjournment Debate - Parental Responsibility

HON E.J. CHARLTON (Agricultural - Minister for Transport) [10.16 pm]: I wish to pick up both serious comments, and leave the House with one thought. I was recently in the United States where I heard one of most interesting comments on these issues. Governments can be responsible and do what they need and want to do. However, Reverend Jesse Jackson's words impressed me a great deal. He said that, at the end of the day, parents are responsible. No matter their socioeconomic situation, when it comes to the education of children and how they carry on in society, no matter the support or the opportunities they have, the most important point is that parents have prime responsibility for their children.

Adjournment Debate - Manslaughter Verdict

HON PETER FOSS (East Metropolitan - Attorney General) [10.17 pm]: Hon Simon O'Brien raised the question of the assault on Phillip Vidot and Tyron Williams. The overwhelming factor in this matter is the effect it has on the families concerned. It leaves everything else pale by comparison. We can try to imagine the grief and feeling of total bewilderment as a result of this unexplained violence. However, we can never understand what the parents must feel as a result of losing a child in such tragic circumstances. That overwhelms every other consideration in this case. However, if one felt bewildered by seeing the effects of this violence, one would feel even more bewildered after having seen how the legal process works. I can understand that the parents wonder what it is all about. They must also have the feeling that they must do something to prevent any repetition. Therefore, I understand the thought behind their petition: That as citizens who have been very singularly affected by the senseless violence and bewildered by what they saw as the process of the law, they want to do something about it. They are dealing in areas which have been difficult for people to tackle, both in Australia and overseas. The valid points raised have always bothered and bewildered and been difficult to deal with. We are still grappling with them today. Some matters are being dealt with at the moment.

One request involves the relationship between a sentence and the amount of time the convicted person must spend in gaol before becoming eligible to leave. That is a matter being considered by a committee headed by Chief Justice Hammond, a judicial officer who has the greatest respect among Western Australians. I think he will plainly confess that it is not a simple problem. It has been suggested that we can make the sentence a minimum of two-thirds before consideration of parole. We are considering the question of whether to give a sentence and that be it; that there be no eligibility for remission or parole, and that any parole will be an add-on to the sentence. That has been tried in various places. The question is what is the appropriate sentence so that the community will know that the person will serve the sentence that has been imposed.

The question of minimum sentences has been considered not only in this State but all around the world. The difficulty is that in the same way as this case is unusual in that it is unusually horrifying, other cases in the same area of law will be unusual in the other extreme. The difficulty with minimum sentences is that in some ways we need the common law situation where there is no maximum sentence but the judge applies whatever sentence appears to be appropriate. It might be argued that the Parliament should not impose a maximum but should require that people be dealt with according to the seriousness of their crime. This is definitely a case where the idea of manslaughter is at the very extreme of how one can describe it, but other cases are at the other extreme. It is probably necessary to give judges discretion, particularly in the case of manslaughter, where a wide variety of circumstances can lead to that offence. There is a place for minimum sentences.

The next question is racist violence. Many members who were in the House when the legislation committee considered the racial hatred amendment to the Criminal Code argued that it was an extra element that deserved a higher penalty than would otherwise be the case, but that it should be in the context of some form of criminal offence. We tackled that matter effectively in that case, so I have no difficulty with that proposition. It is a matter of how we incorporate it into the law.

The next question is whether we should have judges or juries. Juries have been an important feature of our system. Under the federal Constitution, a jury trial is obligatory. Generally speaking - there will always be exceptions - trial

by jury is an important right. Although at times a jury trial has bewildering results that lead us to question that system, in questioning it we need to keep in mind some of the cases where juries have provided an important protection of the rights of the citizen. While I have considerable sympathy for the argument that is raised in the petition, and it is a matter that I would like to take up and discuss with the people who promoted the petition, we need to consider what we will do if we get rid of the jury system. In South Africa, for example, there has been a significant abuse of people's rights. I remember a speech by a significant Queen's Counsel, who acted for Steve Biko, about how the South African people had lost many of their rights of free speech, not by a change in the substantive law but by a change in the procedure by which matters were tried.

Many of these matters are ones that we are considering and will continue to consider. It is not a simple solution. Each of these matters highlights a real concern about the administration of justice, not only in this country but in many other countries. We do not have easy solutions.

The petitioners put their finger on each of the problems and suggested some solutions. I only wish there was a simple solution. It is a matter that we as a Parliament will shortly need to tackle. I will be bringing legislation forward, and I believe that in this House in particular we will have some debates in which we will have to search our souls and what is happening around the world to see what changes we should make. Each of these issues will come up in one way or another in that legislation.

Hon Kim Chance: Will alteration of the rules of evidence be included in the changes that you mentioned?

Hon PETER FOSS: They may be. Some rules of evidence stand in the way of justice. We need to look at these things every time we make a change to see what the effects will be. All these changes will come up. We will need to have some serious and difficult discussions in this House. It is interesting that the petitioners have so quickly put their finger on some of the most difficult matters at issue in our society at the moment.

As was said with regard to chroming, in the end people must take personal responsibility. It is the same type of decision that people make when they decide to eat too much fat, drink alcohol or smoke. We sometimes find it difficult to understand how people get into those things in the first instance. We need to understand that many issues in our society are a matter of personal responsibility and that by passing laws we do not prevent tragedies from occurring. Often by putting a lot of effort into social work we do not prevent tradegies from occurring. They can happen to people from a high socioeconomic background or from a low socioeconomic background, from a loving family or from a disjointed and non-loving family. Many of these human behaviours are extremely difficult to explain. All we can do with the law is react after the event. Personal decision is an important part of what each of us must do in society.

Question put and passed.

House adjourned at 10.26 pm

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

COMMONWEALTH GOVERNMENT GRANTS - RECEIPTS

346. Hon MARK NEVILL to the Minister for Finance representing the Treasurer:

(1) How does the Treasurer reconcile the receipt and expenditure of the following Commonwealth Government Grants to the State of Western Australia-

1994/95	$2 275 000	Sewerage WA	p 84 Fed Housing & Regional Development Annual Report 1994/95
	$6 500 000	Urban recreation facilities WA	
	$8 775 000	TOTAL	
	$4 765 000	shown as received by WA	Supp Budget Paper No. 7 p 38 "other" 1995/96
1993/94	$8 270 000	Sewerage WA	p 84 Fed Housing & Regional Development Annual Report 1994/95
	$1 500 000	Urban recreation facilities WA	
	$9 770 000	TOTAL	
	$ 0	shown as received by WA	Supp Budget Paper No. 7 p 38 "other" 1995/96
1992/93	$8 020 000	Sewerage WA	p 385 Federal Dept Housing, Health, Local Govt and Comm Services 1992/93
	$7 520 000	shown as received by WA	Supp. Budget Paper No.6 p 30 "other" 1993/94
1991/92	$35 000 000	Transport Improvement Grant WA	CAPITAL PURPOSES TABLE 32. PA 40 PA Commonwealth Financial Relations with other levels of Govt 1992/93 Budget Paper 4.
	$69 605 000	Financial Assistance Local Govt WA	
	$49 346 000	Local Govt identified roads WA	
	$153 951 000	TOTAL	
	$91 930 007	shown as received by WA	Supp Budget Paper p32 "other" 1992/93

(2) As the Supplementary Budget Paper No. 7 is no longer published in its previous form (ie. it only deals with the Consolidated Fund) how are members to track the receipts from the Commonwealth to various funds other than the Consolidated Fund of amounts totalling approximately $500m?

Hon MAX EVANS replied:

(1) The following Commonwealth grants are reconciled as follows:

1994/95	$2 275 000	Sewerage WA	See note (a)
	$6 500 000	Urban recreation facilities WA	See note (b)
1993/94	$8 270 000	Sewerage WA	See note (a)
	$1 500 000	Urban recreation facilities WA	See note (b)
1992/93	$8 020 000	Sewerage WA	See note (a)
1991/92	$35 000 000	Transport Improvement Grant WA	See note (c)
	$69 605 000	Financial Assistance Local Govt WA	See note (d)
	$49 346 000	Local Govt identified roads WA	See note (d)

(a) According to the Water Corporation, a total of $19.5 million was received from the Commonwealth for the WA Sewerage and Wastewater Quality Infrastructure Program as follows:

1992/93	$8 020 000
1993/94	$6 037 000
1994/95	$4 765 000
1995/96	$ 243 000
1996/97	$ 435 000

Receipts and expenditure for the program were the subject of annual acquittals by the Water Corporation to the Commonwealth and were certified by the Auditor General. Although the Water Corporation's annual reports do not include the Commonwealth funds received, details of Commonwealth funds expended on capital works for the program are shown in its annual reports.

(b) The Commonwealth funding can be identified on page 57 of the Western Australian Planning Commission's 1995 Annual Report.

(c) The $35 million can be identified on page 23 of the 1992/93 Consolidated Revenue Fund Estimates as Commonwealth Specific Purpose Grant revenue in respect of the Railways Program.

(d) The $118 951 000 can be identified in Table 3 - General Purpose Grants in the Local Government Grants Commission's 1992/93 Annual Report.

(2) The data on non-Consolidated Fund agencies provided in the previous Budget Paper No.7 was incomplete in that it did not cover all agencies outside the budget. Furthermore, with improvements in the accountability and annual reporting requirements of all agencies through documents such as annual reports, and the devolution of responsibility to accountable officers (who are now accountable through their Ministers to Parliament in accordance with the Financial Administration and Audit Act), it was considered inappropriate to continue to include non-budget sector data in the annual budget papers.

Members wishing to track Commonwealth receipts to various funds, other than the Consolidated Fund, should raise the matter direct with the relevant State agency or refer to the agencies' annual reports.

CORRUPTION - ANTI-CORRUPTION COMMISSION

Police - Provision of Staff and Facilities

562. Hon N.D. GRIFFITHS to the Attorney General representing the Minister for Police:

(1) Pursuant to section 7 of the Anti-Corruption Commission Act 1988 has any arrangement been made for the provision of staff or facilities of the Police Force?

(2) If so, on what date(s)?

(3) What are the terms of each such arrangement?

Hon PETER FOSS replied:

(1) Yes, a Memorandum of Understanding between the Western Australia Police Service and the Anti-Corruption Commission has been signed.

(2) 23 May 1997.

(3) The Memorandum of Understanding covers the following matters:

the appointment of Special Constables
exchange of information

utilisation of specialist services
appointment of Liaison Officers

ROYAL COMMISSIONS - MARKS

Report - Solicitor General's Advice

567. Hon CHERYL DAVENPORT to the Attorney General:

(1) On what date was the Marks royal commission report referred by the Attorney General to the Solicitor General for consideration?

(2) On what date did the Solicitor General reply or forward his advice to the Attorney General?

(3) Did the Attorney General refer the matter back to the Solicitor General and, if so, on what date?

(4) Did the Attorney General receive a second reply or advice from the Solicitor General and, if so, on what date?

(5) Did the Attorney General give any direction to the Solicitor General on the matter?

(6) When was the matter referred to the Director of Public Prosecutions and by whom?

(7) Did the Attorney General, or any member of his staff, consult the Premier, or any member of his staff, on the matter at any stage and, if so, on what occasion or occasions and what were the circumstances?

(8) Did the Attorney General's principal private secretary, Ms Karry Smith, view the advice of the Solicitor General in relation to the matter?

Hon PETER FOSS replied:

(1) 15 November 1995.

(2) 28 November 1995.

(3) Yes. 30 November 1995.

(4) Yes. 29 March 1996.

(5) Yes, I requested him to refer the question whether or not any charges should be laid against any person or persons arising out of the royal commission to the Director of Public Prosecutions for his consideration.

(6) On 10 April 1996, by the Solicitor General.

(7) No.

(8) No, but she would have opened the letters and referred them to me as is the usual with all correspondence from the Solicitor General to me.

ADOPTIONS - ACT

Contact Vetoes - Breaches

585. Hon CHERYL DAVENPORT to the Minister for Transport representing the Minister for Family and Children's Services:

(1) Under the Adoption Act 1994, has any person been fined or imprisoned for breaching the contact veto provision in 1995 or 1996?

(2) If so, how many?

(3) If not, have any breaches, without penalty, occurred?

(4) Were the breaches by adoptees or relinquishing parents?

Hon E.J. CHARLTON replied:

(1) There is no provision in the Adoption Act 1994 for a breach of a Contact Veto.

(2)-(4) Not applicable.

ADOPTIONS - ACT

Contact Vetoes - Reassessment

586. Hon CHERYL DAVENPORT to the Minister for Transport representing the Minister for Family and Children's Services:

(1) Has the Director General of Family and Children's Services ever used the discretionary power granted to him/her under the Act to contact any person in the Adoption Triangle to ask for reassessment of a contact veto since the Act was proclaimed?

(2) If so, were the approaches successful?

Hon E.J. CHARLTON replied:

(1) Yes.

(2) The approaches resulted in the vetoes being varied, confirmed or cancelled.

ADOPTIONS - ABORIGINES

Number Adopted by Non-Aboriginal Parents

587. Hon CHERYL DAVENPORT to the Minister for Transport representing the Minister for Family and Children's Services:

(1) Under the Adoption Act 1994, how many Aboriginal children were adopted by non-Aboriginal parents in 1995 and 1996?

(2) What was the age of each Aboriginal child when the adoption occurred?

(3) How many children from overseas were adopted in 1995 and 1996?

(4) What was the age of each child when the adoption occurred?

Hon E.J. CHARLTON replied:

(1) One child.

(2) The child was aged 1 year 10 months when the Adoption Order was granted.

(3) 31.

(4) The 31 children were aged as follows:

Age (in years) when Adoption Order granted	Number of Children
1	13
2	1
3	5
4	3
8	3
10	3
12	1
18	2

MINISTERS OF THE CROWN - ATTORNEY GENERAL

Visit to Japan - Itinerary

641. Hon CHERYL DAVENPORT to the Attorney General:

(1) Did the Attorney General, in his former capacity as the Minister for the Environment, visit Japan in 1996?

(2) On what date did the Attorney General depart from Perth to Japan?

(3) On what date did the Attorney General return to Perth from Japan?

(4) Was the Attorney General accompanied by any ministerial staff or departmental staff?

(5) Who accompanied the Attorney General?

(6) On what date did each of the people who accompanied the Attorney General -

(a) depart from Perth; and

(b) arrive back in Perth?

(7) What are the names of the hotels or other accommodation places the Attorney General and ministerial staff stayed at while in Japan?

(8) Was a formal itinerary prepared for the Attorney General prior to his trip to Japan?

(9) Is a copy of that itinerary still available?

(10) How many official meetings with Japanese officials did the Attorney General have during his stay?

(11) On what dates were the meetings held?

Hon PETER FOSS replied:

(1) Yes and also in my capacity as Minister for the Arts.

(2) 24 May 1996.

(3) 1 June 1996.

(4) Yes.

(5) Mrs K Smith, Dr S Shea and at various times Michael Dixon, Department of Commerce and Trade (Osaka Office) and Michael Walker, Premier's Department (Tokyo Office).

(6) (a) Mrs K Smith, 24 May 1996
Dr S Shea, 26 May 1996

(b) Mrs K Smith, 1 June 1996
Dr S Shea, 1 June 1996

(7) Ryozenji
Isaku Ryokan
Osaka Hilton
New Otani
New Oji

(8)-(9) Yes.

(10) One.

(11) 27 May 1996.

FAIR TRADING - MISLEADING GOVERNMENT ADVERTISING

660. Hon BOB THOMAS to the Minister for Finance representing the Minister for Fair Trading:

(1) How many complaints has the Ministry for Fair Trading received in relation to misleading or false Government advertising in each of the last three years?

(2) What is the figure to date this year?

Hon MAX EVANS replied:

(1)-(2) Nil

MR VICTOR BRINCAT - PETITION FOR MERCY

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

(1) Has the Attorney General received an application for an ex gratia payment and a petition for the exercise of the Royal Prerogative of Mercy from Mr Victor Brincat?

(2) If so, on what date?

(3) Has Mr Brincat subsequently written to you on April 21, 1997, May 9, 1997 and June 11, 1997?

(4) What response, if any, have you provided to Mr Brincat?

(5) What is the reason for the delay in responding, if any?

(6) Have you made a decision with respect to the matter?

(7) If so, what is it and the reasons therefore?

(8) If you have not yet made a decision when do you anticipate making a decision?

Hon PETER FOSS replied:

(1) Yes.

(2) The Petition for the exercise of the Royal Prerogative of Mercy was received on the 24 February 1997. The application for an ex gratia payment for legal costs for a pending criminal trial was received on 23 June 1997.

(3) Yes.

(4) A detailed letter of response in respect of the Petition for Mercy was sent on 6 August 1997.

(5) There has been no delay.

(6)-(8) A decision has been made in respect of the Petition for Mercy. The application for an ex gratia payment in respect of a pending criminal trial is presently being considered and will soon be taken to Cabinet in the usual manner.

MINISTERS OF THE CROWN - ATTORNEY GENERAL

Visits to South America and Japan

671. Hon CHERYL DAVENPORT to the Attorney General:

With reference to my questions on notice 641 and 642 of 1997 in relation to the Attorney General's trips to South America and Japan, can the Attorney General advise if there are any photographic or video recordings or copies of recordings of either or both of those trips?

Hon PETER FOSS replied:

Only if made in private capacity.

STATE SUPPLY COMMISSION - MID WEST REVIEW OF SUPPLY

Status

676. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Services:

(1) What is the current status of the Mid West Review of Supply policies being undertaken by the State Supply Commission?

(2) What are the issues regarding the Trade Practices Act and the Competition Policy Agreement which remain to be resolved?

(3) What is the regional buying compact and will the Minister for Services provide a copy?

(4) When will the proposed compact be submitted to Cabinet?

(5) What interest groups have been consulted during the progress of this review and proposed buying compact?

Hon MAX EVANS replied:

(1) The Mid West Review has been completed and will be forwarded to Cabinet in the near future for consideration.

(2) The Commission has examined the policy to ensure consistency with the provisions of the Trade Practices Act and the Competition Policy Agreement. The results of the examination will form part of the Cabinet Submission.

(3) The regional buying compact is the proposed new policy and will form part of the Cabinet Submission.

(4) As soon as possible.

(5) The Mid West study involved extensive consultation with industry associations, suppliers and Government agencies in the Mid West region. All Regional Development Commissions and key policy and operational agencies.

HEALTH - HOME AND COMMUNITY CARE

Services Directory

677. Hon CHERYL DAVENPORT to the Minister for Finance representing the Minister for Health:

(1) Will the Health Department release a public directory of Home and Community Care services for the use of GPs, public and private hospitals and non-Government community service agencies?

(2) If not, why not?

Hon MAX EVANS replied:

(1) Yes, a public directory of Home and Community Care Services is currently in final draft and is to be released shortly in both hard copy and on computer disc.

(2) Not applicable.

AGRICULTURE - COMMUNITY AGRICULTURAL CENTRES

Location

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

With reference to the Government's current building program, where does the Government propose to build Community Agricultural Centres?

Hon MAX EVANS replied:

The Community Agriculture Centre concept evolved to support National LandCare Program (NLP) co-ordinators working with and close to communities from locations away from the established offices of the former Department of Agriculture. Shires supported these centres with office accommodation and administrative services. The effectiveness of the close partnership with the community at these centres encouraged similar arrangements for agency employed development officers.

The Minister for Primary Industry has announced that funds will be made available to establish 40 Community Agriculture Centres over three years. In some cases, the centres are likely to be where Agricultural Protection Board officers were located in the past and the new centres allow for collocation of other agency personnel with Production Resource Protection staff and community employed (NLP funded) co-ordinators.

DRIVERS' LICENCES - EXTRAORDINARY

Number

683. Hon TOM STEPHENS to the Attorney General:

How many extraordinary driver's licences were granted in -

(a) 1990;
(b) 1991;
(c) 1992;
(d) 1993;
(e) 1994;
(f) 1995; and
(g) 1996?

Hon PETER FOSS replied:

Courts only maintain records on a financial year basis of the number of applications made for extraordinary driver's licences. The following response is therefore provided:

1989/90	3448
1990/91	3491
1991/92	4285
1992/93	4485
1993/94	3968
1994/95	4021
1995/96	3666
1996/97	3938

To obtain details as to the number of extraordinary driver's licences issued, questions should be directed to the Minister for Police and the Minister for Transport.

PRISONS - BROOME

Improvements

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

With reference to the Government's current building program -

(1) What are the planned improvements to the Broome prison?

(2) When are they to be completed?

(3) What is the budgeted cost of these improvements?

Hon MAX EVANS replied:

(1) (i) Cell intercom installation - Capital funded.
(ii) Mechanical/electrical services and building minor improvements (various), e.g. generator replacement - Capital funded.
(iii) Maintenance - bar refurbishment to maximum security and recreation area.
(iv) Restoration of retaining wall and storm damage.

(2) (i) September 1997.
(ii) Yet to be programmed - in 1997/98.
(iii) July 1997.
(iv) To be programmed - in 1997/98.

(3) (i) $180,000.00.
(ii) $100,000.00.
(iii) $42,000.00.
(iv) $6,500.00.

GOVERNMENT CONTRACTS - BUILDING AND CONSTRUCTION INDUSTRY CODE

Sanctions

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

I refer the Minister for Works to page 12 of the Building and Construction Industry Code of Practice booklet dated August 1996 and the sanctions described therein as "preclusion from entering into agreements with the Government" and "preclusion from tendering for any Government work for a specified period". In relation to these sanctions -

(a) against how many persons, including corporations, have these sanctions been applied;

(b) how is the period of any preclusion determined;

(c) by whom is it determined; and

(d) which persons or corporations are currently subject to preclusion under the code?

Hon MAX EVANS replied:

(a) As Minister for Works I am not aware, at this time, of any sanctions to any persons or corporations being applied.

(b)-(d) Not applicable.

GOVERNMENT CONTRACTS - BUILDING AND CONSTRUCTION INDUSTRY CODE

Sanctions

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

I refer the Minister for Works to page 12 of the Building and Construction Industry Code of Practice booklet dated August 1996 -

(1) Which agencies have applied sanctions against clients, owners or developers for non-compliance with the code?

(2) In addition to the sanctions detailed in paragraph 5.1, what other sanctions are applied against clients, owners or developers for breaches of the code?

(3) What appeal or review rights do clients, owners or developers have if they disagree with a decision to apply sanctions against them?

Hon MAX EVANS replied:

(1) No agencies within my portfolio have applied any sanctions against clients, owners or developers for non compliance with the Code.

(2) No other sanctions are applied.

(3) Clients, owners or developers may appeal to the Minister if they disagree with a decision to apply sanctions against them.

GOVERNMENT CONTRACTS - RECYCLING

Procedures

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

(1) Are procedures in place to ensure that Government contractors are recycling materials?

(2) If so, what are those procedures?

(3) If not, why not?

Hon MAX EVANS replied:

(1) There are no procedures in place to ensure that Government contractors are recycling materials.

(2) Not applicable.

(3) The focus of Government policy is to encourage the purchase of recycled or recyclable products. However, in that area of wastepaper, the Government has encouraged agencies to recycle wastepaper which is sold under tender arrangements to wastepaper manufacturers.

COURTS - PRE-SENTENCE REPORTS

Work Overload

693. Hon TOM STEPHENS to the Minister for Justice:

(1) Is the Minister aware of the extreme overload of work for personnel in preparing pre-sentence reports for the court diversion program?

(2) What number of personnel are involved in the preparation of pre-sentence reports?

(3) How many pre-sentence reports are required for Western Australian courts each week?

(4) Is the Minister aware that prison officers at Perth's remand centre do not have details of the telephone numbers for prisoners seeking telephone access to the court revision report personnel?

(5) What steps will the Minister take to rectify this situation?

Hon PETER FOSS replied:

(1) I am aware of a 28% increase in referrals over the past two years.

(2) Two.

(3) Not known. In 1996-97, there were 450 referrals to the Court Diversion Service, all of which generated at least one report.

(4) Prison officers at the Remand Centre do have access to the telephone numbers for the Court Diversion Service personnel.

(5) The Alcohol and Drug Authority and the Ministry of Justice are jointly exploring alternative service delivery models. I expect to receive a detailed report within three months.

HEALTH - DENTAL

Fixed Clinics - Location

696. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) What are the current locations of fixed dental clinics outside the metropolitan area?

(2) How many dentists are currently based at each of these clinics?

(3) How many clinics currently have no dentists based at them?

(4) In each clinic at which no dentist is currently based, when was a dentist last based at each clinic?

(5) In each clinic at which no dentist is currently based, who provides dental services to patients in the clinic's area?

Hon MAX EVANS replied:

(1) Adult Clinics: Albany, Goldfields, Ravensthorpe, Bunbury, Vasse, Leonora, South Hedland, Geraldton, Derby, Fitzroy Crossing, Halls Creek, Exmouth, Onslow, Meekatharra.

School Dental Service: Bunbury, Albany, Geraldton, Collie, Australind, Boulder, Busselton, Carnarvon, Port Hedland, Esperance, West Kambalda, Karratha, Manjimup, Narrogin, Newman, Kalgoorlie, Northam, Pinjarra, South Hedland, Merredin.

(2) Location of Clinic: No of Dentists -

Albany	2.4
Goldfields	1
Ravensthorpe	1
Bunbury	3
Vasse	2
Leonora	0
South Hedland	1
Geraldton	1
Derby	2
Fitzroy Crossing/Halls Creek	1
Exmouth/Onslow	1
Meekatharra	1

(3) Leonora.

(4) 8 August 1997.

(5) A service is not provided. Leonora patients may seek care from the Government clinic or private practitioners in Kalgoorlie.

HEALTH - DENTAL

Commonwealth Dental Health Program - Eligibility Criteria

697. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) Are participants in the Commonwealths' CDEP scheme entitled to assistance under the dental services scheme?

(2) If yes to (1) above, what assistance can participants obtain?

(3) If not, why not?

(4) Are most CDEP participants Aboriginal people?

(5) Is the oral health of Aboriginal people inferior to that of the general Western Australian community?

(6) If so, will the Minister for Health ensure that the dental assistance scheme includes participants in CDEP schemes who have oral health treatment needs?

Hon MAX EVANS replied:

(1) Yes.

(2) Full treatment when treated through services provided at Aboriginal communities and emergency care when treated at public clinics.

(3) Not applicable.

(4) Yes.

(5) There is no recent data on the oral health of adult Aboriginal people although the School of Oral Health Sciences have been funded to undertake research in this area. Data on Aboriginal children from a number of communities covered by the School of Dental Service indicates a comparable level of oral health with the general population.

(6) Not applicable.

GOVERNMENT CONTRACTS - ROOFING

Stress Grades for Battens

705. Hon BOB THOMAS to the Minister for Finance representing the Minister for Services:

(1) Is it practice (or policy) for State Government contracts for roofing to specify F8 stress grade jarrah or karri battens?

(2) Why has the Government not followed the private sector lead and moved to softwood alternatives such as MGP10 and MGP12 stress grade pine battens?

(3) Does the Government intend to review this practice or policy to ensure that all future contracts specify equivalent softwood products for battens?

(4) If not, why not?

Hon MAX EVANS replied:

(1) It is not CAMS policy to direct commissioned consultants and facilities managers with regard to the selection and specification of timber roofing materials.

(2) Nearly all design and documentation for building works is now undertaken by private sector consultants or facilities managers. CAMS contracts with these consultants and facilities managers require them to comply with relevant building standards such as the Building Code of Australia and Australian Standards.

Apart from the strength requirement for roofing timbers, consideration needs to be given to durability. Where resistance to termite infestation is necessary, some hardwood such as jarrah is a more durable timber than some softwood alternative such as untreated radiata pine.

(3)-(4) Not applicable.

MULTICULTURAL AND ETHNIC AFFAIRS - "ACCESS" NEWSLETTER

715. Hon N.D. GRIFFITHS to the Minister for Finance representing the Minister for Multicultural and Ethnic Affairs:

(1) Who printed the newsletter entitled “Access”, Volume 3, Number 8, July 1997?

(2) What was the total cost of the newsletter?

(3) What was the cost of the distribution of the newsletter?

(4) To whom was the newsletter distributed?

Hon MAX EVANS replied:

(1) Sands Print.

(2) The artwork and printing totalled $1,840.00.

(3) $199.00.

(4) Ethnic Community Groups
Peak bodies
Key service providers (non-government organisations)
Government agencies
Local government

Members of Parliament
Chambers of Commerce

LAW REFORM COMMISSION OF WA - OFFICERS

Redeployment

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

(1) Who were the officers of the Law Reform Commission of Western Australia when the Chairman of the Law Reform Commission advised on August 8, 1997 that they would be redeployed?

(2) In each case what years of service had they provided to the Law Reform Commission and to where have they been redeployed?

Hon PETER FOSS replied:

(1)-(2) All the members of the Commission's staff are to be redeployed. They are:

Name	Years
Dr P R Handford, Executive Officer and Director of Research (Class III). Not yet redeployed anywhere.	14
Mr M G Boylson, Senior Research Officer (Level 7/8) Not yet redeployed anywhere.	22
Mr A A Head, Senior Research Officer (Level 7/8) Not yet redeployed anywhere.	22
Mr L McNamara, Administrative Officer (Level 3) Not yet redeployed anywhere.	8
Mrs S K Blakey, Personal Secretary (Level 2) Redeployed to Office of Criminal Injuries Compensation.	8
Ms M Ryan, Officer (Level 1) Not yet redeployed anywhere.	6
Ms K L Chamberlain (Level 1) Not yet redeployed anywhere.	11

HEALTH - PATIENT ASSISTED TRAVEL SCHEME

Cost

728. Hon BOB THOMAS to the Minister for Finance representing the Minister for Health:

(1) How many patients received assistance under the Patient Assisted Travel Scheme from each of the following hospitals for the period 1996/97 -

(a) Albany Regional;
(b) Denmark District;
(c) Mt Barker District;
(d) Manjimup Warren District; and
(e) Bunbury Regional?

(2) What was the total cost of that assistance in 1996/97 for each hospital listed in (1) above?

(3) How much has been allocated to the Patient Assisted Travel Scheme for each of the hospitals listed in (1) above for 1997/98?

Hon MAX EVANS replied:

(1) (a) 904 patients.
(b) Denmark District Hospital changed their recording system, they do not count patients, they only count trips and cost.
(c) 74 patients.
(d) 1660 patients.
(e) 2262 patients.

(2) (a) $264,700.
(b) $25,100.
(c) $29,100.

(d) $84,945.25.
(e) $156,538.02.

(3) (a) $257,000.
(b) $25,100.
(c) $29,100.
(d) $55,000.
(e) $81,610.

HEALTH - PATIENT ASSISTED TRAVEL SCHEME

Cost

729. Hon BOB THOMAS to the Minister for Finance representing the Minister for Health:

(1) How many patients received assistance under the Patient Assisted Travel Scheme from each of the following hospitals for the period 1995/96 -

(a) Albany Regional;
(b) Denmark District;
(c) Mt Barker District;
(d) Manjimup Warren District; and
(e) Bunbury Regional?

(2) What was the total cost of that assistance in 1995/96 for each hospital listed in (1) above?

(3) How much has been allocated to the Patient Assisted Travel Scheme for each of the hospitals listed in (1) above for 1996/97?

Hon MAX EVANS replied:

(1) (a) 906 patients.
(b) 297 patients.
(c) 69 patients.
(d) 1558 patients.
(e) 1553 patients.

(2) (a) $219,707.
(b) $35,790.
(c) $19,252.
(d) $61,889.52.
(e) $90,881.65.

(3) (a) $252,100.
(b) $35,500.
(c) $24,000.
(d) $65,000.
(e) $169,610.

BANKRUPTCIES - STATISTICS

735. Hon HELEN HODGSON to the Attorney General:

(1) What are the names of the thirty individuals who have been declared bankrupt in Western Australia with the most debt owing at the time of declaration, for the period from January 1993 to June 1997?

(2) How many and which of these have been jailed, and for what offences?

(3) With regard to those bankrupts, can the Government provide the names of any banking, legal, audit, accounting, valuers and other organisations largely instrumental in professionally advising and servicing the above persons and businesses of these persons prior to bankruptcy?

(4) Has the Government contracted the services of any of the organisations identified in (3) above to undertake any significant work for, or on behalf of, the Government during the period 1993 to 1997, and if so, what organisations and what was the nature of the services undertaken?

(5) What is the selection process undertaken by the Government in the investigation of banking, legal, audit, accounting, valuers, or other organisations prior to contracting the services of such organisations?

(6) Does that selection process identify whether such organisations have been principal advisers to convicted corporate personnel or major bankrupts?

(7) If so, what action is then taken?

Hon PETER FOSS replied:

(1)-(3) The Bankruptcy Act 1996 (Clth) and its administration are matters within the jurisdiction of the Commonwealth and its agencies such as the Insolvency and Trustee Services of Australia.

(4)-(7) These are issues which should be directed to the Minister for Services, the Hon M F Board JP, MLA.

QUESTIONS WITHOUT NOTICE

CRIMINAL INJURIES COMPENSATION - ASSESSOR

Appointment

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

I refer to the ministerial statement just read out by the Attorney General and note his observation that a second criminal injuries compensation assessor has now been appointed.

(1) Who is that assessor?

(2) What was the date of the appointment?

(3) When did the assessor start work?

Hon PETER FOSS replied:

(1)-(3) The second assessor is Pippa Thompson, the appointed chief assessor who has been on maternity leave. It has been arranged that she should return from maternity leave and start working. For the past year, or some considerable time, she has not been performing any duties.

Hon N.D. Griffiths: When will she start duties now?

Hon PETER FOSS: Offhand I do not know that. She may have started already. The essential part of the arrangement is that she should come back from maternity leave and start performing her duties. Arrangements are being made for the completion of certain matters relating to the current occupation of the third assessor, to enable that person to commence work as soon as possible.

LEGAL AID - COMMISSION

Funding - Amount

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

(1) Has the State Government now examined the necessity for supplementary funding to assist the activities of the Legal Aid Commission for the current financial year?

(2) What is the amount of this supplementary funding?

Hon PETER FOSS replied:

(1)-(2) That is being examined, and will continue to be examined. A committee involving people from Legal Aid, the legal aid review and Treasury will continue with that process. It has been decided that whatever funding is necessary will be provided, but that will depend on efficiencies within the Legal Aid Commission. Obviously those efficiencies involve looking at the operation and gaining the acceptance of people within the Legal Aid Commission to that process. It will be a continuing process. The funding at the previous rate has been guaranteed. The remainder that is required will be determined by the time it is needed.

POLICE - DRUGS

Squad - FTEs and Operating Budget

687. Hon TOM STEPHENS to the Attorney General representing the Minister for Police:

What was, and is, the FTE allocation and operating budget for the drug squad in -

(1) 1995-96;

(2) 1996-97; and

(3) 1997-98?

Hon PETER FOSS replied:

I thank the member for some notice of this question. I was very interested to hear the posturing of Hon Tom Stephens on ABC Radio at lunchtime today because it indicates where the Opposition is coming from. If the purpose of the Opposition in asking this question is to ensure additional resources are being allocated to the drug squad to guarantee a real attack on drug abuse, I can say yes and I would applaud the question. However, if the reason is to score political points over whether a figure on a piece of paper has gone up or down due to changes in the structure of the drug squad, I can only condemn the Opposition for its pathetic stance on the current drug problem in Western Australia. Rather than support the Government as it coordinates all the available resources in the Western Australia Police Service and indeed across many agencies to fight the surge of drugs in our community, the Opposition wants to bicker about whether a figure on paper has gone up or down. As the Minister for Police has detailed, both publicly and in the other place -

Hon Kim Chance: What patronising piffle.

Hon PETER FOSS: Those opposite probably have not read the transcript of the posturing by Hon Tom Stephens. He has suggested this enormous scenario because he does not know this information. I suggest members opposite read it, because they will find what an extraordinary proposition Hon Tom Stephens has put up.

To continue: As the Minister for Police has detailed, both publicly and in the other place, the Western Australia Police Service has provided a wide range of initiatives and resources to the matter of drugs. As the Minister told the other place last week, all officers of the Police Service are potentially involved in drug law enforcement. Whether they be primarily involved in traffic operations, general duties, the independent control group, the tactical response group or any other section, all members of the Police Service are involved with drug law enforcement. If there is a need for increased activity in any area of police operations, additional officers can be, and are, brought in from other areas - this is exactly what has happened over the last few weeks.

Hon Ken Travers: You will not answer the question.

Hon PETER FOSS: The member should listen; he may not like the answer, but he will get it.

Hon Ken Travers: The people of Western Australia will not like it.

Hon PETER FOSS: This Government has provided a level of resources to its Police Service to allow it to swing people and technology into an area at short notice as a major problem arises. Unlike the previous Labor Administration, this Government has dramatically increased its expenditure on areas such as capital works and operational equipment.

Hon Tom Stephens: What about the drug squad?

Hon PETER FOSS: Listen!

Hon E.J. Charlton: Why don't members opposite go out there and do something about it, rather than playing politics with people's lives?

Hon Tom Stephens: What about you? You want to call in the Army because you've cut the drug squad.

Several members interjected.

The PRESIDENT: Order! The Leader of the Opposition will come to order.

Hon PETER FOSS: We have not cut the drug squad.

The PRESIDENT: Order! The Attorney General will come to order. There is no need for the interjections. I ask the Attorney General to wind up his answer, and I remind him that when he has finished he should take a look at Standing Order No 140(a) in relation to ironical expressions and other comment.

Hon PETER FOSS: When this Government came to office in 1993, the Police budget was $240m, and this financial year that equivalent budget is almost $400m. When we came to office, some police stations did not have facsimile machines and police were being asked to fight crime with one hand tied behind their backs.

Hon Tom Stephens: What about the drug squad?

Hon PETER FOSS: We are getting there. If the member stopped interjecting, I could reach the end of the answer and he would find out.

Police now have the facilities and equipment to match those held by criminals.

Point of Order

Hon MARK NEVILL: Rules cover replies to questions as well as their asking. Standing Order No 138 requires the Minister to be concise, relevant and free from argument or controversial manner. The Attorney General has well and truly transgressed that standing order, and should be brought to order.

The PRESIDENT: The Attorney General has not transgressed Standing Order No 138, which is "replies"; he is transgressing Standing Order No 140(a), and I ask him to wind up his comments.

Questions without Notice Resumed

Hon PETER FOSS: I can inform members that officer numbers at the drug squad have increased over the last three years, and as a result of initiatives announced in the last few weeks, those numbers are being supplemented from other areas within the Police Service. However, as the Leader of the Opposition is so preoccupied with the single number, I now provide it -

(1) 42.

(2) 44.

(3) 44.

WATER RESOURCES - JANE BROOK CATCHMENT AREA

Overflow of Effluent

688. Hon NORM KELLY to the Minister representing the Minister for Water Resources:

Some notice of this question has been given.

(1) Is the Jane Brook catchment area designated for future use as a water resource?

(2) If yes, what is its current priority?

(3) Is the Minister aware that treated effluent and stormwater from the Mundaring wastewater treatment plant has overflowed into the Jarrah Road drain and local creeks?

(4) Can the Minister guarantee that this water resource can be protected for future human consumption?

Hon MAX EVANS replied:

As I do not have the answer, I ask that the question be placed on notice.

RAILWAYS - KENWICK-JANDAKOT

Statistics

689. Hon J.A. SCOTT to the Minister for Transport:

Further to question without notice 659 of 20 August 1997, I ask -

(1) What are the non-rail vehicle movements between Rockingham and Kenwick?

(2) What is the distance of the proposed rail route between Kenwick and Rockingham?

(3) What is the distance between Fremantle and Rockingham along the existing rail line?

(4) How was the department able to estimate the level of patronage on a Kenwick-Jandakot line when no rail line exists in that area?

(5) Which station on the Armadale line has the largest patronage, and what is that level?

Hon E.J. CHARLTON replied:

I had the answer to that question last week, along with an answer to a previous question asked by Hon Jim Scott. I do not have the answer with me today.

TOURISM - ELLE RACING

Contract - Misleading by Minister

690. Hon LJILJANNA RAVLICH to the Minister for Tourism:

On Friday, 30 May 1997 during the Estimates Committee hearings, I put to the Minister a question relating to the evaluation of government contracts. The Minister responded by saying, "If the member is suggesting that the Elle Racing contract is in trouble, I suggest she does not understand what is going on. If she is also suggesting that the State of Western Australia should not enter its own boat, she should say that upfront also. That would carry her view of politics to an absurd extreme." He also said, "There are no problems with that contract as far as I am aware."

(1) Did the Minister have any idea that the Elle Racing contract was in trouble as at Friday, 30 May?

(2) Why was the Minister not aware of any problems with the Elle Racing contract at that time, given that the rest of the State was aware of them?

(3) Was the Minister out of the State during the weeks preceding and, if so, where was he?

(4) Was the Minister attempting to mislead the people of the State and the Western Australian Parliament?

Hon N.F. MOORE replied:

(1)-(4) I regret I do not have an absolute photographic memory of what I was doing and saying on 30 May, and I suspect the member has not either. I will answer on the basis of what the member has read out as my comments at the time. If on 30 May I said to this House that I believed there were no problems with the Elle Racing contract at that time, that is what I believed.

Several members interjected.

The PRESIDENT: Order! Let the Minister respond.

Hon N.F. MOORE: I do not come in here to say things that are not correct. I have had just about enough of some of the rubbish from the Leader of the Opposition and some opposition members on this issue. The Leader of the Opposition has suggested twice in recent times that I have been responsible for blowing taxpayers' money on this deal. I invite him in the nicest possible way to say that outside the House and I will take the strongest possible legal action against him because it is absolutely and totally untrue. The fact of the matter is that we have paid $540 000 to Elle Racing Pty Ltd, in exchange for which we have eight television commercials which are being shown interstate and internationally. They are considered by most people in the industry to be excellent promotional advertisements for Western Australia. If members are prepared to ask people in the industry, most will tell them that that price for those advertisements is a very good deal.

As far as the contract with the yacht is concerned, I cannot tell the member exactly when it came to my attention that the yacht would not sail. I had been provided with information on an ongoing basis from Mr Harvey and the Western Australian Tourism Commission that there was every prospect that Mr Harvey would be able to enter a yacht in the race. I can only presume that on 30 May that was my understanding of the situation. Since that time it has come to our attention that Mr Harvey could not deliver on the contract he has with the WATC. Following a recommendation from the commissioners it was decided to terminate the contract, which was done. Mr Harvey was paid any funds that were owing to him at that time. It is very regrettable that Mr Harvey was unable to put together his part of the bargain, which was to obtain a yacht, organise a crew and enter the Whitbread race. The fact remains that that section of the $1m contract with Mr Harvey that related to the sponsoring of the yacht has not been paid and will not be because no yacht is sailing under the name of Elle Racing Pty Ltd. The advertisements that we have received for the dollars spent are now in the ownership of the WATC and are being shown around the world. That is a favourable situation.

Again, I advise the Leader of the Opposition that if he wishes to imply or preferably state outside the House that I have blown some money, I will be very delighted to meet him in the nearest court.

Hon N.D. Griffiths: Have you been to Singapore recently?

Hon N.F. MOORE: Yes, I have.

Hon N.D. Griffiths: Did you take advice there?

The PRESIDENT: Order!

Hon N.F. MOORE: If this is a question without notice, I went to Singapore to launch the advertising campaign there.

It has been exceptionally successful, and I will bring to the House in the near future some figures which demonstrate how successful that campaign has been. I hope that the cynical members opposite will be pleased that more and more people from Singapore are choosing to come to Western Australia for their holidays. Every time a tourist comes to Western Australia our economy benefits.

Hon Kim Chance: Is that why you are going to give them that GST?

Hon N.F. MOORE: It seems that the only people who are supportive of tourism and growth in our economy are people on this side of the House. Members opposite have done nothing but knock, scream and whinge ever since the inception of this campaign. Members opposite cannot stand the thought of anyone but Blinky Bill or a character like that promoting Western Australia. Members cannot stand the thought that somebody has come up with a great idea.

SCHOOLS - INTERACTIVE SERVICES

Mining and Pastoral Region

691. Hon GREG SMITH to the Leader of the House representing the Minister for Education:

When will interactive services become available to all schools in the Mining and Pastoral Region and has the Government budgeted for the higher STD charges that these schools will incur?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. The Minister for Education has provided the following reply: The Government has provided a budget of $2.5m a year over three years from 1996-97 to 1998-1999 to provide all schools with the opportunity to access education information and interactive services via the Internet.

The budget for this initiative has been distributed to enable all schools access to sufficient funds to establish an Internet access point in their schools. Regional schools, including those in the Mining and Pastoral Region, have received additional funds on a pro rata basis. The amount provided to these schools has been determined by the cost of calling their closest Internet service provider and sustaining that call for 45 minutes for each of the 110 school days in the year. The pro rata amount provided to schools will be recalculated each year. It is expected that as more service providers establish a presence in regional Western Australia, the cost of access will decline and consequently the funded access times in schools will increase beyond the current 45 minutes.

In addition, the Education Department's Information and Technology Directorate is constantly monitoring the cost of telecommunications and investigating alternative models for delivering the services required by regional schools. Substantial discounts have been negotiated with Telstra over the years amounting to a current average saving of 40 per cent when compared with standard call costs. The Education Department is also investigating models that will allow regional schools to capitalise on the department's own emerging wide area network infrastructure - EdNet. It is expected that schools will be able to access a range of interactive services across this wide area network. This will enable rural schools in particular to take advantage of the availability of greater band width and the opportunity to spread telecommunications costs over the number of services that will run across this network.

MINING - KALGOORLIE CONSOLIDATED GOLD MINES PTY LTD

Land Clearing

692. Hon GIZ WATSON to the Minister for Mines:

I refer to a document obtained under the Freedom of Information Act identified as HMT670XY/Mem and signed by the former Minister for Mines on 17 February 1995. This document seeks reasons from Kalgoorlie Consolidated Gold Mines Pty Ltd as to why it should not forfeit its tenement or be fined $5 000 a tenement for clearing bushland in association with the building of KCGM's Fimiston II tailings storage facility without the approval of the State Mining Engineer. This document identifies the KCGM officer responsible for the clearing of the land in association with construction of the Fimiston II tailings structures. It also identifies that the Department of Minerals and Energy believes that approximately $70 000 worth of sandalwood was lost as a result of KCGM not adhering to the Department of Conservation and Land Management's land clearing procedures. In light of this document -

(1) Can the Minister explain why he stated in response to my question of 21 August that "It is not known which individual officer or officers of KCGM was or were responsible for authorising the company's activities. The company was held responsible." and " . . . no sandalwood was lost"?

(2) Will the Minister apologise for misleading the House?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The minute to the Minister dated 17 February 1995 referred to by the member was based on a preliminary investigation. Subsequent investigations have shown that no sandalwood was lost. I cannot confirm which officer was responsible for authorising the company's activities. This was not considered relevant as the action was against KCGM and not the individual.

(2) I do not believe I have misled the Parliament.

TRANSPORT - CONCESSIONAL FARES

Availability

693. Hon KIM CHANCE to the Minister for Transport:

Some notice of this question has been given; however, I advise the Minister that I have changed two descriptive terms, but the changes do not alter the effect of the question.

(1) Are fare concessions on public transport available to -

(a) people receiving Job Search benefits; and

(b) people on the labour market programs known as the community development employment program?

(2) If so, are these concessions available to people in country Western Australia?

(3) If not, why not?

Hon E.J. CHARLTON replied:

The member acknowledged that the terminology is different from the terminology in the copy of the question I received. I advise members that part (1) of the original question reads -

Are fare concessions on public transport available to -

(a) people receiving unemployment benefits; and

(b) people on the work for the dole scheme known as the community development employment program?

In answer to the original question, I thank the member for some notice of this question.

(1) (a) Yes.

(b) If people on the community development employment program are issued with a valid health care card or health benefits card they would be eligible for concession fares.

(2)-(3) People who receive unemployment benefits and are issued with a pensioner health or transport concession card are eligible for concession fares throughout the State.

FUEL AND ENERGY - TARIFFS

Regional Areas

694. Hon MARK NEVILL to the Minister for Transport:

(1) What proposals are under consideration to increase energy charges to regional port authorities in Western Australia by Western Power?

(2) What action is the Minister taking to resist this regressive move?

(3) What effort has the Minister made to draw to the Minister for Energy's attention the damage the implementation of this proposal will cause to regional Western Australia?

Hon E.J. CHARLTON replied:

(1)-(3) Obviously the member is aware of something I am not aware of. Increased charges are not being levied on ports or on anybody else. There has been a fair bit of speculation by a number of people that it is Western Power's intention to do that, but to date that has not transpired. I am sure the member, like everyone else,

is supportive of the Minister in his duty to ensure that this State has a fair and equitable power grid system. That is exactly what this Government is working towards delivering.

QUESTION WITHOUT NOTICE - OUT OF ORDER

695. Hon E.R.J. DERMER to the Leader of the House representing the Premier:

Some notice of this question has been given. I asked this question last week and I am hoping that the Leader of the House has an answer to it. I refer to the Premier's answer to Legislative Assembly question on notice 807 -

Hon N.F. Moore: I asked you last week to put that question on notice.

The PRESIDENT: We are starting to deal with whether questions have been asked twice. If the question has already been asked and the Minister asked the member to put it on notice, it has gone on notice. If it is on notice it cannot be asked orally in this place a second time. Has the question been asked orally before?

Hon E.R.J. DERMER: I asked a question last week which the Minister asked me to put on notice. Subsequently I wrote to his office asking him to advise me whether it was not suitable for me to ask him the same question today. I did not receive a response

Ruling of the President

The PRESIDENT: I appreciate the member did not receive a response, but it does not alter Standing Order 139 which does not allow a member to ask the same question twice. The question the member is attempting to ask is not in order.

TOURISM - ELLE RACING

Mr John Harvey - Payment of $140 000

696. Hon KEN TRAVERS to the Minister for Tourism:

I refer to the 19 December payment of $140 000 by the Western Australian Tourism Commission to John Harvey.

(1) Can the Minister confirm this was the cash component of a "contra" deal with Harvey?

(2) If yes -

(a) was the "contra" deal related to the costs associated with the home porting of the Elle yacht in Fremantle; and

(b) what was the costing placed on goods and services accepted as "contra" by Harvey?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I have not had the opportunity to discuss the matter with the Tourism Commission. I ask the member to place the question on notice.

BUILDING INDUSTRY - BUILDING AND CONSTRUCTION WORKSITES

Deaths - Statistics

697. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Labour Relations:

(1) How many work related deaths have occurred on building and construction worksites to date in 1997?

(2) How many work related deaths occurred on building and construction worksites in -

(a) 1992;
(b) 1993;
(c) 1994;
(d) 1995; and
(e) 1996?

(3) If there is a reduction, how much of it can be attributed to -

(a) the Government contracting out work and with it contracting out responsibility for occupational health, safety and welfare;

(b) the fact that deaths which result from journey or commuting claims are no longer recorded;

(c) the fact that deaths involving workers not covered by the Western Australian workers' compensation system - that is, self-employed persons who are not proprietary limited workers, employees, police officers and employees of the Commonwealth Government - are no longer recorded?

(4) Is it true that the Government includes in its statistics only deaths occurring on worksites and not those deaths where a person dies as a result of incurring a work related injury?

(5) In view of these factors, can the Minister guarantee that the reduction in the overall frequency rate of deaths on WA worksites is real rather than simply a manipulation of statistical data?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) One.

(2) 1992 - 3
1993 - 4
1994 - 1
1995 - 4
1996 - 3

(3) There has been no change in the manner in which statistics are collected for the period in question.

(a) There is no direct relationship between the Government contracting out work and work related fatalities. The Government has the same responsibilities in providing a duty of care to its employees as all other employers.

(b) Fatalities from journey or commuting claims have historically not been included in the statistics unless the Police Department - as the key agency responsible for investigating traffic fatalities - indicates there is a categorical relationship between occupational safety and health issues and the fatality in question.

(c) All workers irrespective of workers' compensation coverage, other than commonwealth employees and police officers killed in traffic accidents, are included in the statistics.

(4) No. All work related fatalities are included in the statistics provided the direct cause of death is attributable to the work related accident.

(5) Yes.

FORESTS AND FORESTRY - PEMBERTON MILL

Viability - Analysis

698. Hon NORM KELLY to the Minister representing the Minister for the Environment:

(1) In evidence to the Legislative Council Estimates Committee, the Executive Director of the Department of Conservation and Land Management stated that CALM had "carried out an analysis of the impact of the long term viability of the Pemberton mill without the long term logging of Giblett block, at the request of the Minister". Will the Minister table a copy of that analysis?

(2) If not, why not?

(3) Has the Minister made any attempt to examine alternative supplies of karri logs for the Pemberton mill to substitute for logs planned to come from Giblett block in 1997 and 1998?

(4) If not, why not?

(5) If yes, will the Minister report on her findings?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I note that it is also nearly identical to question 610 in the Legislative Council.

(1) I seek leave to table a copy of a report dated 28 May 1997 received from the Executive Director of the Department of Conservation and Land Management.

(2) Not applicable.

(3)-(5) The supply situation for 1997 has been made particularly difficult due to the deferred forest assessment/regional forest agreement process. The areas available to supply karri sawlogs for the Pemberton mill during 1997 are contained in the 1997 harvest plan produced by the Department of Conservation and Land Management for the southern supply area.

There are no alternative areas prepared for harvesting during 1997 sufficient to replace the karri sawlogs planned to be delivered to the Pemberton mill from Giblett block.

To illustrate this matter, I seek leave to table two copies of "Summary of 1997 Harvest Plan Sawlog Volumes" dated 27 September 1996 and updated 12 March 1997 extracted from the 1997 harvest plan for the southern supply area. It is anticipated that Giblett block will also be needed to provide resource under CALM's 1998 harvest plan which is presently in preparation.

[Leave granted.] [See paper No 713.]

TOURISM - MARKETFORCE

Contract

699. Hon KEN TRAVERS to the Minister for Tourism:

On 27 November 1996 the Western Australian Tourism Commission signed a contract with Marketforce to develop a long term brand position for Western Australia.

(1) Can the Minister confirm that Marketforce was paid $392 262 by the WATC for work carried out on this task in April 1996?

(2) If yes, can the Minister explain why this money was paid to Marketforce more than six months before a contract was signed?

Hon N.F. MOORE replied:

I thank the member for some notice of the question and advise him, as I did with the previous question, that I have not had the opportunity of discussing this matter with the Western Australian Tourism Commission. Therefore, I ask that the question be placed on notice.

ALINTAGAS - NORTHGATE COMMUNICATIONS

Collocation of Facilities

700. Hon E.R.J. DERMER to the Leader of the House representing the Minister for Energy:

I refer to the AlintaGas media statement of 20 August 1997 that AlintaGas and Northgate Communications have been unable to reach a satisfactory conclusion in negotiating to lay underground telecommunications cables in gas trenches in Kalgoorlie-Boulder.

(1) Did the negotiations referred to in this statement include consideration of a comprehensive cost benefit analysis?

(2) If not, why not?

(3) What cost to Northgate Communications would AlintaGas levy in return for the collocation of gas lines and telecommunications cables?

(4) What would be the additional cost to AlintaGas of providing for the collocation of gas lines and telecommunications cables?

(5) Which other two telecommunications service providers were approached regarding participation in the project?

(6) Were each of these other two service providers given the opportunity to consider comprehensive cost benefit analysis of the prospective project?

(7) If not, why not?

(8) Why were only three telecommunications providers invited to participate in this prospective project?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) No.

(2) The cost benefit analysis was relevant to the service providers only.

(3) No levy was to be imposed as all additional costs would be borne by the service providers.

(4) There would be no additional costs to AlintaGas. The project would have been cost neutral.

(5) This is confidential.

(6)-(7) See (2).

(8) Participation in the project was based on evaluation of initial responses from a number of service providers.

Points of Order

Hon TOM STEPHENS: Mr President, this is the first available opportunity I have of asking you to consider the practice that has developed whereby a Minister indicates to a member who has asked a question that the answer is not yet available and asks that member to place the question on notice. I ask you to confirm that no question is placed on notice unless the member has requested that the question be placed on notice; that is, a question is placed on notice not just by virtue of the request of a Minister. I ask that question because the experience of many of us in opposition is that if a question is placed on notice that a member does not seek to be placed on notice, it joins a series of other questions that end up never being answered, or being answered only after some months have gone by.

Hon N.F. Moore: That is not true.

Hon TOM STEPHENS: Standing Order No 140(c) states that the President may disallow any question that is the same in substance as one already answered. That is an appropriate standing order, but it does not prevent a member from asking a question that has not been answered, particularly if that question has been altered in some way so that it is a different question, as was done today by two members; that is, where the preamble asks a Minister whether he has an answer to a question that has been asked previously; and, if so, to now provide that answer. Mr President, can you confirm, firstly, that it is not the Minister who puts the question on notice but the member, if the member so choses; and, secondly, that a question which has been varied in that way is in compliance with the standing orders.

Ruling by the President

The PRESIDENT: I am happy to comment on the point of order but not on all of the comments made by the Leader of the Opposition. The Leader of the Opposition wanted me to confirm, firstly, that a question would be placed on notice only if a member wanted it to be placed on notice. I confirm that that is the position. To expand on that, notwithstanding the fact that under Standing Order No 139(a) a Minister may request that a question that was asked orally be placed on notice, the member who asked the question has the option of deciding whether that question will be placed on notice. Therefore, that requires the member to advise the Clerks if he does want the question to be placed on notice.

In respect of the second question, I would need to look at the whole of the Leader of the Opposition's comments, because it is certainly not the case that a member can continue to ask the same question until he receives a reply. If a member changed a question in some way but it appeared to be the same question, it would be out of order; if he changed the question substantially so that it was another question, it would be in order. I trust that will assist the Leader of the Opposition in the immediate term. I will look at the comments that he made to see whether I wish to add anything further.

Hon PETER FOSS: Mr President, with regard to the practice of this House, my understanding of the ruling of the previous President, and of your ruling, was that a member had the option of deciding whether a question should be placed on notice, but as a means of exercising that option he should inform the officers of the House if he did not want a question to be placed on notice, because there was some concern about where the responsibility lay. I would be grateful if at the same time as you considered the remarks of the Leader of the Opposition you would look at that practice, because previously there was some confusion about this matter.

The PRESIDENT: I am happy to consider those remarks and the remarks made by the Leader of the Opposition, and I will come back to the House in due course with some statement that I hope will make the matter less confusing for members.
