



WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
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1997

LEGISLATIVE COUNCIL

Thursday, 20 November 1997

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 2.00 pm, and read prayers.

STATEMENT - BY THE PRESIDENT

Select Committee on Western Australia Police Service - Records

THE PRESIDENT (Hon George Cash): I have received a letter from Mr T O'Connor, QC, Chairman of the Anti-Corruption Commission, dated 19 November, addressed to me as President of the Legislative Council which reads as follows -

I refer to the letter of the Clerk of the Legislative Council dated 17 November 1997 and received today by hand (copy attached).

It would be of assistance to this Commission if you could clarify paragraph 2(a) of the Clerk's letter and give some guidance as to what might constitute a breach of the relevant and appropriate powers, privileges, rights and immunities of the Legislative Council.

It would be impracticable for this Commission to comply with paragraph 2(b) of the Clerk's letter which forbids the ACC to make any copies of the evidence and documents. For the Commissioners to consider the evidence it would be necessary to make copies for their use and, on occasion, it may be necessary to provide copies of the documents to other appropriate authorities for investigation or to legal practitioners and other professionals for expert opinion.

Your advice as to how this practical difficulty can be overcome would be most appreciated.

For the sake of clarity I should state that the Clerk, in his letter to the commission, repeated verbatim the text of the House's order; the prohibition on copying the material is part of that order and not a restriction imposed by the Clerk.

I am advised that when the commission's executive officer, Mr Wayne Mann, met three members of the former committee - Hons Derrick Tomlinson, Nick Griffiths and Murray Montgomery - and the Clerk, Mr Mann stated that the purpose of obtaining the material was to check that witnesses appearing before the select committee were also known to the commission and that matters raised by those witnesses were under consideration, or had been discounted by the commission. The impression created by Mr Mann was that the select committee material would be examined solely for the stated purpose.

I am also advised that Mr Mann was told that no part of the material could be used as the basis of a prosecution or adduced as evidence in support of a prosecution at trial. Accordingly, a prosecuting authority would have to make a case without regard for, or reliance on, the select committee material which might otherwise be relevant to such proceedings.

The basis of the advice given to Mr Mann was that the proceedings of a parliamentary committee "are proceedings in Parliament" for the purposes of section 9 of the Bill of Rights 1689 and therefore immune from being questioned or brought under scrutiny in non-parliamentary forums. Reference was also made to the case of *Wainscot v R* [1889] 1 WAR 77 where the Full Court upheld the intent of this House's standing order granting immunity to committee witnesses from consequent legal proceedings.

It appears from Mr O'Connor's letter that the commission intends to use the committee material for purposes other than that understood by the former committee members and the Clerk. To enable that to occur, the House would have to make a further order - that is a matter for the House. However, it is not open to the House, by its own resolution, to waive its privileges or immunities so as to enable the commission or another authority to deal with the material inconsistently with section 9 or the protection given to witnesses under its own standing orders.

It seems to me that the commission should clarify its intention on the way in which it desires to deal with the material if those intentions are different from those communicated to the former members of the committee by Mr Mann.

ROTTNEST ISLAND AMENDMENT REGULATIONS 1997 - DISALLOWANCE

Order Discharged

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

That Order of the Day No 1 be discharged from the Notice Paper.

REVENUE LAWS AMENDMENT (ASSESSMENT) BILL (No 2)*Second Reading*

Resumed from 23 October.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [2.10 pm]: The Bill has two objectives: Firstly, to amend the Land Tax Assessment Act to give the Commissioner of State Revenue the power to extend the time within which an application may be made for the land developers' concession; and, secondly, to amend the Stamp Act to provide relief for corporate reconstructions involving the interposition of a foreign company between a Western Australian company and its shareholders where the interposition occurs for genuine commercial reasons, other than the avoidance of stamp duty. That is the position outlined in both the second reading speech and the explanatory memorandum provided by the Minister, for which the Opposition expresses some appreciation.

However, the second reading speech is deficient in the provision of adequate justification for the proposed changes. I wish to pose some questions to see if the Minister can provide some adequate justification for the House agreeing to this Bill. Part 2 deals with the Land Tax Assessment Act, in which section 23(a) provides some concessional arrangements for unimproved value of certain subdivided land. Under those arrangements, land developers are charged land tax based on the former value of the total lot of land, rather than the higher subdivided value of each lot. The concession applies to lots which are inhabitable and which were created to be used solely or principally for residential purposes.

Currently, a developer is required to notify the Commissioner of State Revenue by 31 August of the full detail of the landholding for which the developer seeks the concession provided under the current Act. If the notice is not lodged by that date the developer is not entitled to the concession. The 31 August deadline was put in place to allow the State Revenue Department to have all the details on hand before the issuing of assessments during September. Under the proposed arrangements, the Bill seeks to amend the Land Tax Assessment Act to give the Commissioner of State Revenue power to extend the date of lodgement of notice to a date prior to the following 1 July where a taxpayer demonstrates reasonable cause for the extension to be granted. Effectively, the current arrangements would apply up until the enactment of the legislation; that is, the 31 August cut-off date for applications for concessions, and during September the assessments are issued by the department. That must be done by 1 July.

Under the proposed arrangements the assessments will continue to be issued by the State Revenue Department but the applications can be lodged any time before 1 July. The indications by the Government are that the proposal will not have a significant impact on revenue but there is no specific explanation for the proposed change. Neither the second reading speech nor the explanatory memorandum explains the reason for the deadline.

Hon Max Evans: I will answer that.

Hon TOM STEPHENS: I will look forward to that, because until we receive that explanation there can be only speculation by this place about why it is being asked to agree to the proposed change. Is one possible reason for the change to ensure that eligible land developers have ample time to apply for the concessional rating? Is that the only reason? Are some land developers not submitting applications for the concessional rating before 31 August? Is there any indication that some land developers are putting in late applications and missing out on the concessional rating? If that is the case, how many developers have been adversely affected by the current cut-off date? Which developers have been adversely affected by the current arrangement? Will the proposed change unnecessarily complicate the administrative procedures involved in the assessment process? Are developers realising only now that they are missing out on the concessional rating, when they receive their land tax assessment forms, presumably in October from the department -

Hon Max Evans: All assessments are dispatched about a week apart during September-October.

Hon TOM STEPHENS: I presume that the developers attend to them at that time. Although this may be the reason for the change, the Minister has not provided that explanation in his second reading speech. Therefore, that speech is devoid of any justification for the changes. I will be interested to discover exactly how many developers have missed out on the concessional rating during the current financial year. The Minister did not comment on any administrative difficulties that may arise under the new regime. The August deadline allowed the department time to assess all the details before the assessments were issued; now we have the prospect of the new arrangement whereby the State Revenue Department may not have, and probably will not have, all the relevant assessment details in place before the assessments are issued in future. That may prompt a land developer, on receiving his land tax assessment, to apply suddenly and consequently for the new rating. This will require a revised assessment to be sent out. One is left to ask the question: Is it a desirable outcome that the change will apply to land tax for genuine circumstances in which people do not want an extension as an opportunity simply to stall their land tax obligations and impact on the state revenue? Those comments relate to the first purpose of the Bill.

The second matter is the amendment to the Stamp Act, which, from memory, was amended last year. Under the arrangements put in place at that time, a provision was made for stamp duty relief for corporate reconstruction. This relates specifically to section 75JA, which was inserted to provide relief in cases where a corporate entity was interposed between Western Australian companies and their shareholders on the basis that certain criteria were met. These restrictions were put in place, it was said, to prevent the exemptions being used as a duty avoidance measure. The criteria included a requirement that transferees be incorporated in Australia.

Under the proposed arrangement, stamp duty relief would be extended to allow for reconstruction where the transferee is incorporated outside Australia, as long as a good business case supports that interposition. The following three additional requirements will need to be met to substantiate such a business case: The transfer company must be at least 50 per cent owned by foreign persons; the foreign interposed company must be listed on a prescribed stock exchange in the country of incorporation within six months of the date of the transfer; and the transfer company must not be land rich for the purposes of part IIIBA of the Stamp Act.

The requirement for the transferee to list on a prescribed stock exchange effectively limits the relief to public companies. It seems unlikely that the company will incur the legal accounting and listing fee costs associated with a foreign listing if a genuine corporate reconstruction is not involved.

Also, a number of criteria must be met to obtain relief when the foreign company is a proposed entity. These are contained in clause 6 of the Revenue Laws Amendment (Assessment) Bill (No 2). I am not, as the Minister well knows and the House appreciates, one who spends much time in this area of revenue law. Nonetheless, I make the quick observation that it is a complicated process.

Hon E.J. Charlton: You have always been all right at spending money!

Hon TOM STEPHENS: I appreciate the need for both.

Why did the Stamp Act amendment of last year not include this amendment? Was it an oversight? What drew attention to the need for the Government to make this change? No real justification is provided within the second reading speech for the changes. The Government claims it is apparent that the requirement for an interposed entity to be incorporated in Australia may unduly restrict corporate reconstruction undertaken for purely commercial, as opposed to stamp duty avoidance, reasons. Given that the requirement that interposed entities be incorporated in Australia was introduced only last year, the Minister for Finance must have been made aware of complaints, or research, to outline the need for this change. Such restrictions apparently are no longer necessary.

If that is the case, in the absence of any mention of complaints received or analysis undertaken in either the second reading speech or the explanatory memorandum provided, I hope that in the Minister's reply to the second reading debate the material I seek will be made available.

HON HELEN HODGSON (North Metropolitan) [2.27 pm]: The Revenue Laws Amendment (Assessment) Bill (No 2) concerns our two major taxing Acts - the Land Tax Act and the Stamp Act - and will rectify anomalies in changes made last year to both measures. I could comment on certainty in tax laws and the fact that people like to know where they stand when sorting out their financial affairs. When an amendment is introduced one year, and amended again within a short time -

Hon Max Evans: It gives a bit of certainty!

Hon HELEN HODGSON: It gives certainty to the view that the law is never the same. It causes problems for people trying to establish corporate structures. Although both amendments could be interpreted as being favourable to taxpayers, they raise the question of whether people can legally structure their affairs in a manner which is suitable to their business environment.

Land tax is based on a person's holding as at 30 June in any year, and the assessments are sent out in September or October of the next financial year. Residences are exempt from stamp tax, which is targeted at commercial and business use land.

The amendment introduced in 1996 allowed subdivisions to be undertaken, and the value of the subdivided land was to retain a pro rata of the pre-subdivision value, rather than using the value after subdivision. This was subject to a couple of provisos: One, that the land must not be sold in the meantime; and two, that notice of the change had to be lodged by 31 August in respect of the previous financial year. This allowed a two-month period for owners to put affairs in order and to let the land tax commissioner know the situation.

The amending Bill will allow a discretion for the commissioner to accept a late application. My experience is that land tax is the least understood of our tax laws. In reality, most people own only their residential block. When one owns a block of land, the purpose of which changes, people are often unaware that it results in land tax obligations.

I can see practical reasons for occasionally granting extensions. I hope that most people involved in commercial subdivisions will be receiving advice of sufficient calibre to ensure that such oversight will not occur. We have problems with companies and business people not being required to finalise their financial affairs until well into the next financial year. Sometimes that two-month period does not allow sufficient time to seek appropriate legal advice on one's obligations.

I can understand the reasons an extension should be made available, especially when previously exempt land suddenly becomes taxable. In that situation it is better to allow some level of administrative discretion.

I was a little concerned when I first looked at this legislation because it contains no provision for appeal or objection. It refers to the provisions under the Land Tax Assessment Act that relate to assessment procedures. In this case we are not looking at a matter of assessment of the value of the land or the use of the land, but at a purely administrative decision.

A body of law encompasses what the commissioner should consider when making a decision: That is all-embraced in the natural justice arena. I hope that body of law is referred to regularly by the commissioner when making decisions on this basis. The commissioner is not above the courts. In cases in which it is seen that the commissioner's discretion has not been exercised appropriately, the courts are in a position to regulate that. Although at first glance it looks as though people's rights may be abrogated, the provision is reasonable because the judicial authority which will ensure that natural justice is applied will remain.

This Bill will amend sections that were introduced last year on corporate restructuring. The provisions that were introduced last year allow stamp duty concessions when one company owns 90 per cent of a subsidiary and the transferee is an Australian company that was previously dormant. It involves a share for share exchange. That means that for every share one acquires in the target company, one issues a share in one's own company. After acquisition, 90 per cent of the transferee's shares should be issued in consideration of the shares acquired from the target companies. There cannot be inflated values: It must be a true value and a share for share exchange.

In some circumstances clawback provisions apply. It is on this area that I want to make a few comments. In common with my normal practice with these Bills, I consulted a few people I know in the profession and asked whether they had any concerns about this Bill. The issue raised with me was the interpretation of one provision which is worded in fundamentally the same way as the provisions that were introduced last year. It provides that the impact on a share for share exchange is that a corporate reconstruction must be in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate. That wording is used in section 75JA(1) of the Act. It was put to me that the wording was being interpreted by the commissioner to make the clawback provisions available whenever the commissioner felt the corporate reconstruction was not in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate. The point was made to me that the Act contains no specific clawback in these circumstances, but that a specific clawback applies under certain other circumstances. The commissioner is applying the broad construction of that provision by applying the clawback whenever he is satisfied there is no other possible reason for the action being taken.

It is being interpreted as though with share transfers there is an automatic five year clawback provision. That provision is available to land rich companies. A five year requirement exists that if companies do not retain their association, they will claw it back. A clawback applies also for conveyance of properties between companies. However, a pure share for share exchange does not involve the clawback provision, but is being interpreted as though it should exist. I was asked whether it was the intention of Parliament that that be the case, because it is not clear from the legislation that it should be interpreted in that way.

Last year when these provisions were introduced specific reference was made to exemption for foreign companies. That makes me ask why we are allowing that to be changed now. It was suggested to me that last year we were not sure whether there would be any impact and this year we know there will not be major problems; therefore, we are going ahead with this legislation. I am not sure whether I find that argument compelling, particularly when the second reading speech indicates that the Government, in consultation with industry, intends to undertake a review of these provisions in two years to ascertain where improvements can be made. Within that two year period an ad hoc amendment has been made. Obviously this amendment is driven by a case that has come to the attention of the commissioner. There is some validity in that. However, more and more of these ad hoc amendments are being made to our taxing Bills in response to certain situations. We must consider whether we can find a more global way of dealing with these issues that allows these ad hoc cases to be dealt with effectively, without the person concerned having to wait for legislation.

Hon Max Evans: If you can think of a better way of doing it, let me know.

Hon HELEN HODGSON: That is why the Minister for Finance is the Minister. The people affected must wait until the matter is resolved through legislation, which is not satisfactory to them. Members' time is taken up with a number of small Bills each year. The practice of dealing with these matters in an omnibus amendment is far more efficient. However, members will deal with a number of Bills that will benefit only a small number of people in any instance.

In my consultation process my attention was drawn to the statement in the explanatory memorandum that a foreign company would be expected to make out a business case. It is interesting because the explanatory memorandum refers to a business case that includes a number of points. The legislation specifies those three points. I was asked whether the listing in clause 6 of the Bill is intended to be an exhaustive listing of the matters to be considered, or whether the commissioner might decide that other matters are relevant that raise the issue of certainty for people applying for relief under these provisions. I appreciate that the explanatory memorandum is subordinate to the Bill. However, the memorandum uses an inclusive provision, whereas the Bill is not framed in the same terms.

Additional protection is available in that land rich companies are not able to seek relief under this provision. For those who have less to do with this portfolio than the Minister and I, I indicate that a land rich company is a company that has an unencumbered value of the land that comprises more than 80 per cent of the assets of that company and the value of the land is more than \$1m.

Hon Tom Stephens: Are you telling me you drive a Silver Shadow as well?

Hon HELEN HODGSON: My experience in the profession was gained in an academic environment where unfortunately the remuneration was not of quite the same standard.

The second requirement is that the transferee company be listed on a prescribed stock exchange. The third requirement is that 50 per cent of shares will be held by non-residents. I was concerned about which stock exchanges would be prescribed, so I contacted Treasury. I was told that they will mirror the existing provisions in the ninth schedule. The prescribed stock exchanges will be London, a number of Canadian stock exchanges, New York, the National Association of Securities Dealers' Automated, Quotation System, Hong Kong, New Zealand, Zurich and Frankfurt. These are all stock exchanges in which Australia has a significant exposure. With the possible exception of Hong Kong, most have fairly equivalent tax regimes to our own. They do not all have stamp duty, but one would be hard pressed to describe them as tax havens.

Hon Max Evans: Toronto and Vancouver have no stamp duty.

Hon HELEN HODGSON: That is under the Canadian jurisdiction. They are not tax havens as such, so we are not likely to find people entering into deals that might be seen to be deliberately set up in these countries to defraud revenue here, whether it is stamp duty, income tax or any of the other revenue areas. They are also markets in which Australia already has significant exposure. I then asked an economist, as opposed to my professional tax colleagues.

Hon Max Evans: That is dangerous.

Hon HELEN HODGSON: I do not always agree with economists. I asked if they knew of any significant impacts that might be to the detriment of the State. Basically they advised that we are already exposed on those exchanges and there was some doubt as to whether introducing this Bill would lead to a rush of companies expanding overseas. They felt that the companies likely to go overseas were already doing so, and this will facilitate it. Also, the amount of tax involved, while a cost of the changeover, would not be such a significant cost that it would be a huge encouragement to raise capital offshore. There would normally be commercial reasons for doing so and this will facilitate the process.

Another interesting point is that this person believed that the existing clause may not be necessary, because already in some of the jurisdictions within Australia we have zero stamp duty payable on share transactions. If someone were trying to avoid stamp duty it would be easier to set up an interposed Australian company in one of those jurisdictions.

Hon Max Evans: There are no zeros at the moment. Queensland dropped its rate to 0.3 per cent.

Hon HELEN HODGSON: The comment to me was that the Territories and Queensland paid zero stamp duty on share transactions.

Hon Max Evans: Queensland halved its rate. It is not relevant at all, because we all have the same rates. Seven or eight years ago we were considering following the London Stock Exchange which proposed zero stamp duty. New South Wales gets \$450m from stamp duty. London did not go ahead.

Hon HELEN HODGSON: If one wanted to set up structures to avoid stamp duty there would be ways of doing it that are far easier than going into capital reconstruction in an offshore regime. In that sense it is not something that is likely to be entered into for purely tax avoidance reasons. On that basis there is no real evidence that will

encourage people to move offshore in a way that will have a negative impact on the revenue of this State. At the moment that is a very important consideration, because there are already so many negative impacts on the revenue in this State. On that basis the Democrats support the Bill.

HON MAX EVANS (North Metropolitan - Minister for Finance) [2.44 pm]: I thank the opposition parties for their support. I point out to Hon Tom Stephens and Hon Helen Hodgson that I have brought in a lot of ad hoc amendments to this place since I have been in government. That is mainly because of anomalies that have created uncertainty. In some cases people have been paying a tax they should not have been paying. That was the case in discretionary tax and in payroll and land tax until we passed some amendments. When I came into government I asked how many requests had come from State Revenue to the Minister pointing out anomalies. For 10 years none of those anomalies was cleaned up. I tried to do that. We put these omnibus Bills through on that basis.

The land tax was brought in at the specific request of Hon Richard Lewis, the former Minister for Planning. Many developers were delaying development projects until well after June to miss the change in land tax following subdivision. The member said that land was previously exempt. That was not the case. Broadacres were subject to land tax and if the subdivision was delayed until after June it would save another year's land tax. That was delaying a lot of land coming onto the market. In conjunction with the industry and at the request of the Minister for Planning we brought that in. Once the legislation was passed an application had to be made by 31 August. The commissioner had no jurisdiction to extend that; he was locked in. Only one developer missed out and he paid the extra amount of money. He was not crying. Timing was not a factor in this sort of thing. We were trying to help these people.

Hon Tom Stephens: Is that information publicly available?

Hon Max Evans: It was one developer. He was entitled to it. He will not get any rebates. He just paid up because did not get it in time. The Minister for Planning wanted developers to keep bringing their land on and not keep delaying it. We received the extra money out of it. It has worked fairly well in bringing land on. If we compare the land tax on 100 acres of broadacre land with 400 blocks the difference is considerable. The commissioner thought it was difficult. However, he could not give an extension of time. There are not a lot of new developers coming into the market. If it does happen that someone overlooks that we can do it.

Hon Tom Stephens said that 31 August was the deadline for issuing the assessments. We can issue new assessments. We do 130 000 to 140 000 new assessments each year. Some years ago the previous Government got in a bind and issued 110 000 assessments twice. They found no problem then, so we could issue one or two without any real problems. It will not affect the revenue.

We have the issue of stamp duty related to an intergenerational farm transfer. Eventually that also allowed transfers to the family trust. Many people want that broadened further than I do. One can add up all the stamp duty we might have got that we did not get. At the same time we have seen corporation reconstructions. Our legislation is better than most of the other States. It should be, because we were the last to implement it.

In New South Wales and Victoria there were no real guidelines under the Act. One went to the commissioner who gave a ruling. Those States are now rewriting the legislation to give certainty to the situation. We had clawbacks, as members mentioned. That was in case they did not go ahead with what they intended to do. Clause 4 provides for a clawback. If they do not go ahead and list on a foreign stock exchange we will claw back the stamp duty on that.

I have explained about this company. Hon Helen Hodgson asked a question about the list of stock exchanges. When the list of overseas stock exchanges was originally created, a number of mining companies were raising capital overseas. They had raised some equity capital in Australia and were seeking another \$30m, \$50m or \$100m in Toronto, for example. The problem was that no stamp duty applied in Toronto, but it did apply in Western Australia. Therefore, it was necessary for those companies to keep their records separate to pay Western Australia the amount of stamp duty applicable to the transfer of the same shares on the Toronto Stock Exchange. This issue first arose when a company wanted to go to the London Stock Exchange to raise \$12m. It could not raise the money in this State. At the time the London Stock Exchange had a stamp duty rate of 0.05 per cent and in Western Australia the rate was 0.06 per cent. It was decided that because the amounts were similar, the company would pay the rate of 0.05 per cent.

At one time the Vancouver and Toronto banks were working hard to attract Western Australian companies, goldmining companies in particular, to list on their Stock Exchange because many investors in that country wanted to invest overseas. When preparing this legislation the Government went to many large companies in Western Australia to find out which stock exchanges they were listed on. The 12 stock exchanges listed were the only ones mentioned. The Government wanted to cover those stock exchanges, where it considered the situation was bona fide.

In this case 95 per cent of the shares held in the Western Australian company are owned by foreigners. The company originally started in Western Australia in the 1980s, and developed all its business overseas. It may have a small secretariat in Western Australia. It had raised a small amount of capital in Western Australia, but the remainder of its capital was raised overseas. It has been on the primary board of the Australian Stock Exchange, and on the secondary board of the London Stock Exchange. Being listed on the London Stock Exchange imposes a few limitations, because companies are listed under certain categories, but it is much easier for the company to raise money there.

The company had two choices about its future. It saw the possibilities overseas. It wanted to raise more capital for its business, which is easier to do overseas than it is in Australia. The company came to me about a scheme of arrangement. I draw the attention of Hon Helen Hodgson to the fact that Challenge-Westpac Bank came to me about a scheme of arrangement. This was done not with the intention of avoiding stamp duty, although that would have been the outcome. Shares would be swapped in Challenge Bank and Westpac Corporation. One lot would be cancelled and a new lot would be issued, and that would avoid stamp duty. The Government made a statement two days before the annual meeting indicating that it did not approve of the proposal. Legislation was approved to prevent that scheme of arrangement. It involved about \$1.9m in stamp duty. The company looked at two other schemes of arrangement and asked if the Government would approve them. I said it would not because the company was trying to bend the rules.

I said in the second reading speech -

Under the current exemption regime, only an Australian incorporated company may be interposed between a Western Australian company and its shareholders. This restriction was considered necessary to prevent the corporate reconstruction exemption from being used as a duty avoidance mechanism.

It has taken some months to introduce this legislation, and the delay occurred because the Government went around Australia making sure that the legislation would avoid rorts. This is not seen to be any problem at all. Ninety-five per cent of the shares of the company are held in Western Australia. A company will be incorporated in England, the shareholders will transfer their shares from this company to the other company, and the same amount of shares will be issued in the English company. The status quo will remain, as it should. Those people own the same company they had before, and they have the same assets but they will hold them in a slightly different vehicle; that is, a company listed on the London Stock Exchange rather than the Australian Stock Exchange. They believe that has big advantages for them. The alternative was to pay stamp duty of \$2.5m, although that amount has decreased and increased as the share prices have varied. They had that option to pay it off under the intergenerational farm transfers. They had the option of whether or not to make the transfers. The Government tried to help. I wanted to clear up this matter as quickly as possible, which has been my pattern since being Minister for Finance. If there is an anomaly and the Government can help businesses to get ahead, it will do so.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Section 75JA amended -

Hon HELEN HODGSON: I raised two questions in the second reading debate to which I did not receive a clear answer. In proposed new subsection (1a) are the criteria listed as requirements to qualify for the concession intended to be a complete list?

Hon MAX EVANS: Yes, it is a full list, including the provisions already in the Act.

Hon HELEN HODGSON: If the transferee later issues or cancels shares or varies rights attached to those shares, will the clawback provision apply?

Hon MAX EVANS: This is a transfer from a public company to a public company, and the shares will be listed on the London Stock Exchange. Anything can happen. The shares can change hands on this exchange and on the London Stock Exchange. A clawback provision could not be imposed. The company has done the basic thing of transferring the shares from this company to the other company. The London company owns the Western Australian company which owns the business, and they are all operating in England.

Hon HELEN HODGSON: If the transferee has a dealing with the shares, that will not of itself bring the clawback provisions into play?

Hon MAX EVANS: Yes.

Clause put and passed.

Clauses 7 and 8 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Max Evans (Minister for Finance), and transmitted to the Assembly.

SUNDAY OBSERVANCE LAWS AMENDMENT AND REPEAL BILL

Second Reading

Resumed from 15 October.

HON N.D. GRIFFITHS (East Metropolitan) [3.00 pm]: On this day, Thursday, 20 November 1997, I am pleased to speak to this Bill.

Hon Derrick Tomlinson: It feels like a Sunday.

Hon N.D. GRIFFITHS: Yes. The Bill deals with two matters: The Act which it seeks to repeal, and a rule of common law. It is interesting that in 1997 we propose to deal with a piece of legislation which was passed in 1677. In considering what stance the Australian Labor Party should adopt on this Bill, I thought it appropriate to read the primary Act. It is also appropriate that I give the House the benefit of my research. This Act is referred to as being in the twenty-ninth year of his late Majesty's reign. I find that interesting, because 1677 is a couple of years short of the twenty-ninth year following the Restoration. I wonder whether it is calculated from the death of the late Lord Protector of the Commonwealth, and when the Attorney replies he may provide me with that missing piece of the mosaic of our constitutional history. If he does not, I will probably look it up myself this evening when I return home.

Hon J.A. Cowdell interjected

Hon N.D. GRIFFITHS: I think we are in need of protection from time to time, certainly from the current Commonwealth Government.

Some aspects of this Bill should be borne in mind, because they form part of the tapestry of our constitutional history, which we often forget about. They also remind us of the development of the English language, which is fundamental to how we carry on in this Parliament. The Act that is proposed to be repealed is referred to in the long title as the Sunday Observance Act 1677, but it should be more appropriately known by the words by which it was first described; namely, "An Act for the better observation of the Lords day commonly called Sunday." This Act has been with us for 320 years. Although I am a member of the Australian Labor Party, I am very conservative in some respects, and I am loath to repeal a piece of legislation that has been with us for 320 years without giving it due consideration.

Hon Derrick Tomlinson interjected.

Hon N.D. GRIFFITHS: I know that Hon Derrick Tomlinson is well aware of the fact that the Legislation Committee has very little work to do and wants to receive this Bill, but I am not sure whether members on his side, or the Greens or the Democrats, will agree to that motion. Therefore, I will not move it, as much as I would like to oblige him.

Hon Derrick Tomlinson: It is the only way to scrutinise legislation.

Hon N.D. GRIFFITHS: It is the only way to scrutinise legislation properly. Hon Derrick Tomlinson may be thinking that all of his Sundays have come at once and he has been born again, as it were; he has received some waters.

I will refer to section 1 of the Act so that people who are interested will have some understanding of the step that we are about to take, because many people in the community share with me a loathing for changing something that we have had for 320 years. His late Majesty had a very interesting reign, and it has been the subject of a number of movies from time to time. Section 1 commences with the words -

FOR the better observation and keeping holy the Lords day commonly called Sunday bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the lords spirituall and temporall and of the commons in this present Parlyament -

We have been misspelling that word for all these years.

Hon Derrick Tomlinson: Not only do you not know what it means, you cannot spell it.

Hon N.D. GRIFFITHS: I am giving members the benefit of 320 years of British constitutional history. The member reminds me somewhat of a branch of the royal family of France in the eighteenth century. I will not go further on that because I will get away from the Stuart monarchy if I deal with the Bourbons. It continues -

- assembled and by the authoritie of the same that all the lawes enacted and in force concerning the observation of the Lords day and repaireing to the church thereon be carefully putt in execution.

I am not sure whether it is put or putt, because there was a bit of germanic overlay as a result of certain events early in the eighteenth century.

Hon Peter Foss: Certainly the modern word would be put.

Hon N.D. GRIFFITHS: It continues -

And that all and every person and persons whatsoever shall on every Lords day apply themselves to the observation of the same by exercising themselves thereon in the duties of piety and true religion publicly and privately and that noe tradesman, artificer, workeman labourer or other person whatsoever shall doe or exercise any worldly labour -

The world has changed a little since 1677, but the mind-set of those opposite has not changed, except for this: They now want the workers of Western Australia to work 24 hours a day, seven days a week for very little money and they no longer honour the Lord's day. This is liberalism - a view of the world that has been decried by many, and properly so.

That is the sort of measure that the House is now considering. I very much regret the passing of a view of the world that people should have a day of rest, that they should spend time with their family and commune with their friends. This was an important piece of social legislation and we are proposing to repeal it. I also regret to say that we in the Australian Labor Party will join with the Government in repealing it. It goes to show that my personal views on these matters do not hold the sway I would like them to hold. That does not make this matter unique; that is the way of the world.

As is stated in the long title, the Bill seeks to repeal the Sunday Observance Act 1677 insofar as it is still applicable. The balance of opinion is that it has no application, but it is better to be safe than sorry. We are really concerned with the residue because of the operation of so many Statutes. There is a common law rule that there should not be service of process on a Sunday. It is arguable that it still applies under the Criminal Code and the Justices Act, and a similar observation can be made about judicial acts. The Bill provides that such acts and services of process can take place. That is the common law aspect, and the Bill seeks to remove that. There is a retrospective application, but I will not deal with the detail of that at this stage.

There are not many opportunities in this House or any House of Parliament to deal with such a sage piece of work as this, and it would be remiss of me if I did not make reference to section 6 of the Act for the better observation of the Lord's day, commonly called Sunday. Insofar as it is argued that the Act has any application at all, it is section 6 that may have some, although I have some doubt. Section 6 is a lovely piece of prose -

PROVIDED alsoe that noe person or persons upon the Lords day shall serve or execute or cause to be served or executed -

In those days they did execute people, but this refers to a writ -

- any writ, processe, warrant, order judgement or decree (except in cases of treason, felony or breach of the peace) . . .

In those days that covered just about everything. I do not believe it necessary or appropriate that I take up the time of the House by quoting any further. If any member is interested, I am happy to provide a copy of the document.

The Australian Labor Party supports the proposition - as I put it consistently, although sometimes it is misinterpreted - that the Bill be second read.

HON HELEN HODGSON (North Metropolitan) [3.14 pm]: As has already been said, this Bill seeks to repeal an extremely old Act that we believe has been incorporated in the Western Australian Statutes by virtue of the history of our settlement. However, I also understand that some people disagree with that view and believe that there is some doubt about the issue, which is why it is cleaner to repeal the matter than to leave it on the Statute book to be argued.

The Sunday Observance Act provides that it is unlawful to do a number of things on a Sunday, including handing down a verdict or any other court proceeding, executing a warrant and serving a summons. We have found over the years that this can inhibit the courts' processes and can cause problems. Much of the legislation enacted in more recent times contains specific provision for certain things to be done on a Sunday. That fact alone lends support to the notion of repealing the Act.

Many arguments have been put as to what one should and should not be able to do on a Sunday. I lean very strongly to the view that everyone needs a day of rest, and in our culture Sunday has traditionally been that day. However, I recognise that there are occasions when judicial acts must be performed on a Sunday as a notion of the right of the people affected by the decision.

When I was fairly new in the work force I worked at the Taxation Office in the defaults section, as it was then called. It is one of those nasty offices that sends out warrants chasing people who are not doing the right thing. I vividly remember quite late one Christmas Eve a woman coming to the counter in tears because the bailiffs had turned up at her premises and were repossessing goods. Most people believe that Christmas Eve is a family time and they do not want those things happening then.

Hon N.D. Griffiths: It is my birthday too.

Hon HELEN HODGSON: Happy birthday for then.

I also recognise that we cannot inhibit the judicial process by enshrining in law every significant day of every religion practised in this State. Different people observe different religious practices, and although Christmas Day, Sunday and Good Friday might be important to Christians, they are not to those who follow other creeds. People of other faiths have special days that are equally important to them. We must be consistent. Although I believe in a day of rest, we should not rely on religious arguments to say that Sunday should be a day on which we cannot do certain things.

In principle, there are good reasons for this Act to be repealed. Another important aspect of this Bill is the provision allowing retrospective application. I understand that that matter will be raised later. I sometimes have difficulty with retrospectivity. As I said earlier today on a different matter, we need certainty, and retrospectivity is an enemy of certainty. However, we must also look at the circumstances and the type of act involved.

When I started examining this legislation I found that it is basically procedural. At common law there is no presumption against retrospectivity on a procedural act; that is, where the court is doing something that may be illegal because it is done in a certain way, it can rectify that by saying that is the correct way of doing it but it will institute another method. I am sure we will revisit that argument.

When I asked what sorts of acts were likely to be invalidated if anyone challenged them because they took place on a Sunday, I found that some of the common judicial acts are those that affect people's rights under the Bail Act and the Restraining Orders Act. Under the Bail Act and the Restraining Orders Act we may have a situation where somebody needs urgent relief. A person may need either to be released from prison or to have urgent protection from another party. In those sorts of instances there are competing priorities of the protection of those people compared with the issue of saying that we should have certainty in acts that are taking place.

All of those issues are part of the thought processes that I had to go through when deciding my position on this Bill. Basically I am in support of the Bill. The issue of retrospectivity in this instance is justified because having the legislation applied retrospectively is protecting people's rights, otherwise we would find that many bail applications and restraining orders could be subsequently challenged as being invalid. On that basis the Australian Democrats support the Bill.

HON PETER FOSS (East Metropolitan - Attorney General) [3.21 pm]: I thank members for support of this Bill. As picked up by Hon Nick Griffiths, there is an apparent inconsistency in the regnal year of Charles II. The way in which the Protectorate was treated on the Restoration was rather interesting. Quite remarkable legal reforms took place during the reign of Lord Protector Cromwell. Some of them have never been reinstated, although they might just be from the Western Australian Law Reform Commission present recommendations. It took 200 years before some of them were brought into law. There were some quite sensible and, particularly in the area of equity, quite modern and practical reforms to the law. On the Restoration the period of the Lord Protector Cromwell was treated as a nullity. They did not even bother to repeal his Acts.

Hon N.D. Griffiths: From 1647 to 1677 that is probably right.

Hon PETER FOSS: The regnal years of Charles II were dated from the execution of Charles I. The Lord Protector Cromwell was interestingly described as His Royal Highness Lord Protector Cromwell.

Hon J.A. Cowdell: The perfect compromise for the monarchy!

Hon PETER FOSS: The same thing happened when his son Richard took over. A strong belief is that the Restoration of Charles II could have been resisted had the Lord Protector Cromwell taken the monarchy. There was a period of time when it seemed very likely that Lord Protector Cromwell would in fact become King Oliver I. Had that happened it would appear, certainly under one of the earlier treason Statutes, there would have been a greater willingness for people to follow him. It certainly appeared that there would have been a greater acceptance had he taken the monarchy. He came very close to it at one stage. He started the debate on it but in the end did not do it.

Hon N.D. Griffiths: Almost a Bonaparte.

Hon PETER FOSS: Exactly. The reason Bonaparte eventually stayed, although it upset people like Beethoven, was that he took the crown.

Hon N.D. Griffiths: That is arguable.

Hon PETER FOSS: It certainly upset Beethoven. Many of the French found Bonaparte more acceptable in that form.

Another thing that was important at the time of the Restoration and continued beyond the Glorious Revolution was a two party division on matters religious with interesting degrees of religious intolerance between the Whigs and the Tories, which was starting at that stage to emerge. Both had degrees of religious intolerance but they applied it in different places. The Sunday Observance Act therefore is a slight manifestation of that particular era.

There are some other interesting aspects of the whole question of these Acts. If anybody in the Chamber is interested, I might ask them to join me on a current problem that we have.

Several members interjected.

The PRESIDENT: Order!

Hon PETER FOSS: This Act is mentioned in the law reform paper on the repeal of United Kingdom Statutes. I share the same reluctance as Hon Nick Griffiths to get rid of something merely because one cannot see a current use for it. Although a lot of these Statutes cease to have current relevance, they can be part of the constitutional law and have some constitutional relevance. I have been going through these Statutes. If anyone else has the same interest in how we may preserve them but, nonetheless, where we do not want them to have a particular effect or we do want them to have a particular effect, we may find some way of doing that. That might be referred to the Legislation Committee. It might be suitable for the committee to look at. Members will notice in section 4 of the Act that in those days they had the fastest ever 10 day limitation period.

I thank all members for their support of this Bill. It is interesting historically and raises some quite interesting constitutional matters as to what is the effect of such a law on a country which does not have a state religion. For the safety and certainty of the minds of the people of Western Australia, this measure with both the repeal of the Act and the retrospective change to common law is very important.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1 put and passed.

Clause 2: Commencement -

Hon N.D. GRIFFITHS: When I look at this clause and note what is to follow, if the words which are to follow remain, great inconvenience may be caused to people who thought that something was the case and it ceases to be the case. If I go any further I will be foreshadowing comments I propose to make on clause 4.

Hon Peter Foss: I am not sure what the member has asked me to do.

Hon N.D. GRIFFITHS: The Attorney General is not asked to do anything. I merely point out that this Bill will come into operation at the so called stroke of a pen when later we are dealing with an aspect of retrospectivity. Normally there is some publicity, or so we are told.

Hon PETER FOSS: In some ways, if I might say, when we have retrospectivity the day the Act comes into effect is somehow slightly irrelevant because it would be deemed to be in effect before the day it would come into effect.

Hon N.D. Griffiths: People should have the opportunity to rearrange their affairs.

Hon PETER FOSS: I do not think they will be doing so. All people have to do is to omit to do something. If they omit to do it in the belief that they cannot, I do not think there is really any great harm in omitting to do it. I suppose to some extent there is a degree of warning because the day on which His Excellency signs it will not be a Sunday but a Monday to Friday. At least people would get Saturday if he signed it on a Friday. Especially when it will act retrospectively and it requires people to desist from doing things, I really do not think there is any problem in making it effective immediately on assent.

Clause put and passed.

Clause 3 put and passed.

Clause 4: *Interpretation Act 1984* amended and validation -

Hon N.D. GRIFFITHS: I move -

Page 3, lines 1 to 4 - To delete the proposed subsection.

I have an abhorrence of retrospective legislation unless there is a very good reason for it. No such good reason has been demonstrated by the Attorney General in his second reading speech. If there is one, I invite him to advance it.

Hon PETER FOSS: The high court of Parliament has always insisted on its capacity to be the highest court in the land. We are able not only to make statute law, but also to declare the common law. When the common law is declared, as it has the capacity to be declared by both courts in this Parliament, we do not say that it has retrospectivity, because having declared it, it is declared as having always been the case. For instance, if the question of whether the common law applied came before the court, and the court said that it did not apply because there was no continuation, that would be deemed to have always been the case. Particularly in this area we have an Act which is intended to bring certainty. We do not know of any circumstance under which it could be argued that a particular process is invalid.

We are seeking to take over the role of declaring for the certainty of the people what the law is and what it was. In the same way as the court says that this is the law, we, as the high court of Parliament, are saying that. If we do not do this, members of the public will lose the very benefit that we are seeking to give them - certainty. There would be a period between 1829 and 1997 when we are not quite sure whether the common law applied. I certainly accept that it is the mark of Parliament, when dealing with these common law declarations, if it is aware at a particular time of a particular case, we would accept that and we would leave it for the courts to work out what the law is in the matter. Of course, they may very well come to the same conclusion as the Parliament. We are not aware of any such case. This is intended to be a measure for the benefit and certainty of the public. Without retrospectivity, we lose 168 years of certainty. What we are seeking to achieve generally is beneficial. As was mentioned by Hon Helen Hodgson, when we look through the areas in which it might apply, it applies in some ways which I do not think will be relevant. The courts which will be caught by this provision include the Local Court -

Hon N.D. Griffiths: It is unlikely to have any relevance at all.

Hon PETER FOSS: On one hand it is unlikely to, but on the other hand it is the difference between a person being slightly pregnant or not being pregnant. We cannot have slight certainty from now on. We are really looking for certainty. It could affect the Local Court, the Courts of Petty Session and the Family Court, and various other jurisdictions of justice under other Acts. There appears to be only two major statutory areas where it is possible. The Bail Act is one, where people have been bailed on a Sunday. That is not an infrequent situation.

Hon N.D. Griffiths: That would enhance it. It works in two ways.

Hon PETER FOSS: The other area would be the restraining orders Act. One Act would restrain a person. We could still argue a public benefit to the extent that the person has been restrained. It is not like the case of *Horne v Horne* when the case has been made. We know of no case where anyone has raised it.

Hon N.D. Griffiths: That is different because of the ex parte nature of it.

Hon PETER FOSS: I understand that. For the general effect in terms of the certainty of the subject and the intent of the legislation, I believe it is better to have that certainty. Once the legislation is passed, we will know that the line has been drawn and all people will know where they stand. In the end, I do not think it is of great public benefit to have uncertainty in that area. It only produces litigation, which is expensive to the parties.

Hon N.D. Griffiths: I am concerned that people might act on the basis that what they were concerned with did not matter. They, no doubt being advised of the particular circumstances, might as a result find themselves the subject of penal sanctions.

Hon PETER FOSS: Although I understand that and although I do not have the possibility of control over all penal sanctions, to the extent they fall within my capacity I will deal with them. I do not know whether that covers the entire ambit of the field, but it covers a fair part of it. I believe the benefit to the public is in the certainty, the avoidance of litigation. We are not aware of any action being taken. We should do this for the benefit, peace and contentment of the public, and we should make this certainty retrospective.

Hon N.D. Griffiths: Issues have been canvassed and motions have been moved, but we do not propose to divide on it.

Hon HELEN HODGSON: The Minister has been referring to a declaratory Act. When I researched this matter I looked to *Statutory Interpretation in Australia*. In relation to declaratory Acts it states -

Acts that declare or interpret the meaning of earlier Acts are regarded by the courts as forming an exception to the presumption against retrospectivity. They are treated as if they came into operation on the date on which the Act that they are interpreting came into operation. The reasoning behind this presumably is that such Acts are not altering the law in any way but are only making its meaning clearer. Persons affected by the law are therefore not subjected to any greater liability than previously existed and thus the rationale of the retrospectivity rule is negated.

My understanding of this Bill is that it is not just declaring a law that was previously brought into effect. The example given in this text is one where the phrase "testamentary expenses" has been passed in an Act without being defined. Subsequently the legislation was amended to incorporate a definition of that term. I do not believe that this is simply a declaratory Act. It is a procedural Act. The reference I cited previously states -

It has been stated in many cases that the general rule that statutes are not to be given retrospective operation does not apply to statutes that are concerned with matters of procedure only.

It continues -

... the distinction between procedural and other statutes as being between statutes which create or modify or abolish the substantial right to liabilities on the one hand and statutes which deal with the pursuit of remedies on the other hand.

This is not a declaratory Act. It is more a procedural Act. On that basis the retrospectivity issue is one I am quite happy to accept in this case.

Hon PETER FOSS: In my view it is a declaratory Act because it can go beyond dealing with other Statutes. It can deal with the common law. To give an example of a procedural Act we dealt with recently which has a retrospective effect, we passed the Wills Amendment Bill. This Bill says that the proof of a will which was informal would be determined on the basis of the civil standard of proof. Having passed that, it does not restrict the procedure being applied thereafter. It did not matter when the will was executed, when the person died or whether the action was commenced. It applied thereafter. It dealt purely with a matter of process. It did not deal with the substantive law, but the process of proof of that matter. That is as valid a procedure as we can get. Wills relating to evidence are another classic example of that.

It is possible to have a declaratory law that declares the law. This has not been phrased as a declaratory law. As an example of a declaratory law of that nature I refer members to the Statutory Corporations (Liability of Directors) Act which commences with the words, "It is declared that...". The effect of an Act in that form relates to whether it is retrospective and it is not seen to be a change to the law; it is seen to declare the law. If it were interpreted by the courts it would have two effects. Firstly, it applies to any case coming before the court thereafter. It does not have effect retrospectively. If one has not already brought the case before the court, it will apply to any case brought thereafter. Any case currently before the court will not be affected. It does not require specific words to do that. This Bill goes further than that and I believe it is declaratory, but it has not been framed in that form. It has been framed as an amendment to the Interpretation Act. The same effect is gained by subclause (2), which gives it retrospective effect.

Rather than amending the Interpretation Act, another way to arrive at that conclusion is to have a clause which says, "It is declared that a person has power to act judicially, including taking a verdict, or serving any document or court process or executing any warrant on any day of the year." If it commenced with the words, "It is declared that", it would be a declaratory law and would have the same effect as amending the Interpretation Act. This clause is amending the statutory law because it amends, by way of this process, every Statute we have. It goes even further - it amends all written and other law by writing that into it as a statutory amendment. It is slightly different.

It sounds like a declaratory law from the way it is phrased. It could have been phrased differently as a declaratory law. However, it is a statutory amendment to the Interpretation Act. Whatever way it is done, the net effect is the same. The result is that we are affecting the conclusions that a court will reach by changing the process that applies to it.

Amendment put and negatived.

Clause put and passed.

Clause 5 put and passed.

Schedule 1 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Peter Foss (Attorney General), and transmitted to the Assembly.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Report on Labour Relations Legislation Amendment Bill (No 2) - Extension of Time

Hon Kim Chance presented a report of the Standing Committee on Public Administration requesting that the time in which it had to report on the Labour Relations Legislation Amendment Bill (No 2) 1997 be extended from 27 November 1997 to 19 May 1998, and on his motion it was resolved -

That the report do lie upon the Table and be adopted and agreed to.

[See paper No 1074.]

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Report on Hairdressers Registration Repeal Bill - Extension of Time

Hon Kim Chance presented a report of the Standing Committee on Public Administration requesting that the time in which it had to report on the Hairdressers Registration Repeal Bill 1997 be extended from 20 November 1997 to 31 December 1997, and on his motion it was resolved -

That the report do lie upon the Table and be adopted and agreed to.

[See paper No 1075.]

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

FISHING AND RELATED INDUSTRIES COMPENSATION (MARINE RESERVES) BILL

Assembly's Message

Message from the Assembly received and read notifying that it had agreed to amendments Nos 1 to 4 and 6 to 11, and had disagreed to amendment No 5.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon E.J. Charlton (Minister for Transport) in charge of the Bill.

Amendment No 5 made by the Council, to which amendment the Assembly had disagreed, was as follows -

Clause 7, page 7, after line 18 - To insert the following new subclause -

(3) The Minister must provide any person who is considered to be entitled to compensation under this Act, with an outline of the steps which must be followed in negotiating the compensation payment. The outline must specify the applicants entitlements to representation and review of the Minister's decision.

Hon E.J. CHARLTON: I move -

That the Council not insist on amendment No 5.

I do so for the reasons set forth in the schedule. Basically there is no need for this amendment to be included in the Bill as this matter will be adequately covered in regulations. I understand the Minister has made it clear the reasons that the amendments, which were passed in this place, were rejected by the Legislative Assembly. I encourage members not to insist on this amendment.

Hon NORM KELLY: The reason for the original amendment was to ensure that those who felt they had a claim had adequate knowledge of the procedures and their rights. In a letter dated 11 September from the Minister for Primary Industry and Fisheries to me, he states -

... the application form, when prescribed, will provide information about the processes that will follow if the Minister considers the person eligible for compensation and the person's right to be represented before the Tribunal in accordance with S14U of the *Fisheries Adjustment Schemes Act 1987*.

Information will also be provided as to the person's right to make application to the Tribunal to determine if the person is eligible for compensation in cases where the Minister advises that the person is not considered eligible for compensation, or if the person has not heard from the Minister within 30 days of the Minister receiving the application.

I am quite happy with the Minister's assurance on this matter. It is quite adequately covered in regulations. I informed the Minister on the following day of my agreement. I support the message.

Question put and passed.

Report

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

INTERPRETATION AMENDMENT BILL

Second Reading

Resumed from 11 November.

HON N.D. GRIFFITHS (East Metropolitan) [4.40 pm]: The members of the Australian Labor Party in this House agree that this Bill should be second read. I note that the Bill is the result of the actions of the Joint Standing Committee on Delegated Legislation in this Parliament and the previous Parliament. The Attorney General's second reading speech is very misleading. If people who are not familiar with what has taken place were to note what is said in the second reading speech they would be of the view that the Delegated Legislation Committee had got it wrong, the legal advice received by the Minister for Transport was spot on and there was something wrong with the conclusions reached by the committee.

There are two points of view. The point of view espoused by the Department of Transport is arguable, but not strongly arguable, and I refer to the comments in *Hansard* when the two disallowance motions which eventually caused this legislation to be brought into the Parliament were moved. I will not go over those comments, but I will refer members to aspects of the second reading speech and reports provided by the Delegated Legislation Committee so they can be in no doubt that what is said in the Attorney General's second reading speech is not a true reflection of what has occurred.

The speech accurately points out that the Bill will amend the Interpretation Act by clarifying what has generally been understood to be the law pertaining to licence fees in this State. There is a disagreement on that law. On the one hand there is the view of certain bureaucrats and on the other hand there is the view of the Delegated Legislation Committee, which has been outlined in a number of its reports.

It is wrong to say that the law is generally understood to be that which the Minister for Transport put to this House in the debate on the disallowance motion that was successfully disposed of. It is a serious dispute and to dismiss the concerns of the Delegated legislation Committee as wrong by saying we are simply tidying up the legislation is inaccurate. The development of the law on the interpretation of the capacity of Governments to raise fees is unfortunate. The law has become narrower in its interpretation. I regret that, because I see how it inhibits proper functions of government. It is for that reason I support the legislation. To say that and then to say, "That view of the law is wrong" is entirely a different matter.

The fact that the courts have developed a narrow interpretation means that to put matters properly beyond doubt the Government is putting this piece of legislation through the Parliament with the encouragement and support of the Australian Labor Party. The law is now being expanded so that the proper functions of government can be adequately dealt with. It is not the same as saying the Delegated Legislation Committee is wrong in its view of the law. It raises an argument.

The crown counsel's opinion provided to the Delegated Legislation Committee when it considered the question of disallowance of regulations 3(a) and (d) of the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) and regulation 3(a) of the Road Traffic (Licensing) Amendment Regulations was deficient. I accept that these are matters of opinion of people who interpret the law, and they always will be, but this opinion was deficient because it inaccurately applied to the case that was quoted. I refer to the comments I made in *Hansard* and I will not repeat them. I am not having a go at the counsel who provided the opinion. I believe counsel got it wrong, but it is not good enough for a Minister to say, "Crown counsel provided the opinion and that is the answer." It is also not good enough to say in addition, "Crown counsel's opinion was backed up by a Queen's Counsel, therefore the opinion must be correct."

I do not share some people's view that sometimes counsel provide opinions that are self-serving. I am aware that some of my colleagues find it rather curious that some counsel engaged by the Government come up with answers that favour the Government. Counsel should look at the facts and state what, in their opinion, is the law. In this case the former was bad advice and the latter was good advice.

Hon Peter Foss: There is often room to move and people look at the most favourable view of the person instructing them while still maintaining that their view is correct.

Hon N.D. GRIFFITHS: It is arguable, but it is not correct to say that the contrary point of view is not sustainable. I do not dismiss out of hand the point of view espoused by the Government. However, the contrary point of view is a preferred point of view, but these are not absolutes; these are matters of opinion. To put forward, as the second reading speech suggests, that these questions of opinion amount to such certainty that they become matters of fact is not appropriate. That is the tenor of the speech. This House recently considered three reports of the Delegated Legislation Committee dealing with the issue which gave rise to this Bill. I refer to the twenty-third report to the fourth session of the thirty-fourth Parliament. I note what is said at pages 8 to 12 of that report. It sets out the history of the Delegated Legislation Committee of the previous Parliament, bringing to the attention of the House a view strongly held as to what the law is with respect to these matters. It is wrong to say it is settled.

I note also the twenty-fifth report, which was tabled in the House, and subsequent to that the two regulations to which I referred a few moments ago were disallowed. At pages 4 and 5 of that report the Delegated Legislation Committee set out its view of the legal position. These matters have been raised on several occasions over the last couple of months and it is not necessary for me to do it again, but if there is any doubt I will do so. What concerns me are the following words of the Attorney General's second reading speech -

This view of the committee was not supported by the advice of crown counsel or of a leading Queen's Counsel not previously involved in the matter who advised that the approach taken by the committee suggested that an inappropriately narrow view had been taken of the ambit of the power to fix fees under the relevant sections of the Road Traffic Act.

I accept that the view taken was narrow; it was taken upon receipt of appropriate legal advice. I regret that there is a very strong case that that narrow view is correct. We are seeking to resolve that so that what government needs to do in an appropriate way can be done. That is the way I have always approached this question. I want government to behave lawfully and to be seen to be behaving lawfully.

I refer to the twenty-sixth report of the Joint Standing Committee on Delegated Legislation. At pages 3 and 4 reference is made to the committee's addressing its concerns with the department. That involves a regulation that is subsequent upon that which was disallowed. The department was called before the committee to give evidence. It was given the opportunity to take legal advice on the issues raised by the committee. The department consulted D.R. Jackson, QC and a copy of his advice was provided to the committee. The report reads -

At the completion of these investigations and after the Committee took its own independent legal advice from a barrister specialising in constitutional law, Dr J T Schoombee, it remains the Committee's opinion that regulation 7(e) is beyond the power delegated to the Governor in Executive Council by the *Road Traffic Act 1974*.

The important point, as the committee puts it, is -

The legal advice that Dr Schoombee provided to the Committee took into account the legal advice provided to the department.

I make those observations to point out that the matters raised in the second reading speech about the strength of the Government's legal opinion, as it is put in the terms of the second reading speech, go too far. I could take up the time of the House and reiterate what I said in August and deal with the recent High Court cases; however, it is not necessary. The point is, the Government is seeking to remedy in an appropriate way a matter which is the subject of doubt. It has been brought before the Parliament in a very prompt manner and I will not hold up the passage of this legislation because I welcome it very much.

HON J.A. SCOTT (South Metropolitan) [4.52 pm]: I do not support this Bill. It was introduced in response to the disallowance of regulations 3(c) and (d) of the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) 1997, and regulation 3(a) of the Road Traffic (Licensing) Amendment Regulations (No 2) 1997. The disallowance motion came from the Standing Committee on Delegated Legislation because it was felt that the power for those increases in fees was not allowed under the Act. Considerable dialogue occurred with the Department of Transport on this matter - not just on the two disallowance motions. The department appeared to have difficulties coming to terms with the limitations imposed by the Act agreed to by the Houses of Parliament. It was clear that the increase in fees was intended for a perfectly proper purpose by the department.

However, the most significant problem was that the fees would not provide benefits to the people paying them for sometimes up to five years hence. In other words, some people paying the fees might never benefit from them. Therefore, as it reported, the Delegated Legislation Committee felt that the fees were outside the ambit allowed under the Act. In its twenty-fifth report the committee wrote -

Due to the requirement that the Committee comply with certain time limits, the Committee has not had the opportunity to address all of the complex legal issues that this matter has raised in this brief report. The Committee also wishes to advise the House that it has not simply approached this matter from the purely legalistic view that the above report might indicate. The Committee has been examining solutions to the very real practical problems that are raised for the operation of executive government departments dependent upon fees and charges for their continued operation. The Committee therefore advises the House that it intends to more fully report on this matter shortly as its investigations are near completion. In its next report the Committee intends to address the broader issues that this matter raises and how the executive government can address the problems that are identified.

Scrutiny can still occur. A significant effort was made to look at the problems that struck the Department of Transport. However, when this amendment to the Interpretation Act came forward, unfortunately no real dialogue occurred between the Attorney General and the Chairman of the Delegated Legislation Committee to examine solutions. I thought that the solution to this problem would have been an amendment to the Road Traffic Act.

Hon N.D. Griffiths: That was foreshadowed.

Hon E.J. Charlton: It was agreed we would do that, but it goes beyond that.

Hon J.A. SCOTT: Rather than that, we are debating a solution which is all-encompassing. It goes beyond the scope of this Parliament.

Hon E.J. Charlton: Otherwise you would have to amend every Bill with this sort of problem.

Hon J.A. SCOTT: I certainly understand that. However, I am saying that we are now bringing in a solution that will affect not only all the regulations that come via government departments but also those from local government. The powers of the Interpretation Act have been so broadened as to take away from this House, via the normal processes and its committees, the ability to scrutinise matters properly.

Hon Peter Foss: You can still scrutinise.

Hon J.A. SCOTT: Yes, scrutiny can still occur.

Debate adjourned, pursuant to standing orders.

INDUSTRY AND TECHNOLOGY DEVELOPMENT BILL*Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon N.F. Moore (Leader of the House), read a first time.

Second Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.00 pm]: I move -

That the Bill be now read a second time.

The Industry and Technology Development Bill provides a more effective and accountable framework within which the Government can encourage, promote, facilitate and assist the development of industry, trade, science, technology and research activities in the State. The Bill also provides for the continuation of the Western Australian Technology and Industry Advisory Council.

Western Australia must be able to respond positively to the rapidly changing trends, markets and issues that are transforming the global economy if it is to achieve its own economic growth and maintain an internationally competitive industry base. This response must be led by industry, but government also has a critical role to play in creating an environment which facilitates industry activity.

The existing Technology and Industry Development Act was reviewed by an independent steering committee in August 1994. The final report of this steering committee was tabled in the Legislative Assembly in March 1995. The recommendations of that review with regard to legislative changes were to consolidate the legislation governing assistance and support to industry into one Act, to address a number of drafting and technical legal issues in the original Acts, and to broaden the focus of, and make more flexible, the enabling legislation. When the final report of the review was tabled in the Legislative Assembly, the Minister for Commerce and Trade undertook to seek public comment on the proposals contained in the report. The comments received through this consulting process have been considered and in some instances included in the drafting of this Bill.

This Bill repeals three existing Acts which govern this State's support to industry. These Acts are the Technology and Industry Development Act 1983, the Industry (Advances) Act 1947, and the Inventions Act 1975.

As recommended by the review, the Bill provides greater flexibility while incorporating greater accountability. This flexibility recognises that government has a significant role to play in providing assistance and support for industry development but that this role can change over time. The Bill is designed so that the type, level and style of government support can be determined through policy and delivered through this enabling legislation.

This broad focus can be seen first in the five objects of the Bill, which are to promote the growth and development of industry, trade, science, technology and research in the State; to improve industry efficiency; to encourage the establishment of new industry; to encourage the broadening of the industrial base; and to promote a supportive environment for industry development.

This broad focus is also reflected by a deliberately wide interpretation of "industry" to include not only trade, commerce and manufacturing but also commercially focused research, development and innovation; and an interpretation of "technology" which includes the "application of scientific knowledge and practical experience to economic activity, to humanity, and to the environment". This widely based approach is quite deliberate and is based on the recommendations of the review steering committee which this Government has endorsed.

A specific recommendation of the steering committee report was that the Minister be provided with broad functions and powers, including preserving corporate status. This has been reflected in the Bill while incorporating new accountability provisions as balancing mechanisms.

The legislation to be repealed has some significant technical problems due primarily to the particularity of the original legislation and to poorly developed amendments to the original Acts. The technical difficulties primarily hinged around the allocation of powers and functions between the body corporate - the Minister - and the department, giving unwarranted complexity to entering into and administering contracts. To add to this complexity the Industry (Advances) Act specifies the particular type and form of assistance that may be provided thus preventing any varied response to the changing needs of both clients and stakeholders.

The review recommended that the status of both the Minister and the department be clearly identified in the replacement legislation and that formal powers of delegation should be included to ensure the technical difficulties encountered in the original legislation are not repeated.

This Bill establishes the Minister as a body corporate with clearly designated powers and functions, but it does not establish the department as such. The department exists, as do other public sector agencies, by virtue of the Public Sector Management Act. The Bill includes a clause through which the Minister can delegate to the department the functions or powers assigned to the Minister.

Clause 6 outlines the functions of the Minister. An area of government responsibility of increasing importance to the State's economic development is the timely availability of the infrastructure necessary to secure projects for the State. This function, as outlined in clause 6(c) and the related one of establishing and managing technology parks - clause 6(e) - are critical to the creation of an environment which supports the emergence in the State of internationally competitive industries.

The Government is focusing on providing infrastructure that can build industry capabilities. It may be that the Government's role is facilitative - that of identifying the infrastructure requirements and ensuring these are delivered through the private sector. However, when infrastructure has a high common use component the Government's role in providing it is more proactive. This Bill allows either of these two approaches to be adopted when and as necessary.

The report of the review committee identified concern about the legislative base for the operation of overseas offices. This is an extremely important activity which provides Western Australian industry with advice and support to assist its access and entry into overseas markets. The State also maintains sister state relationships in areas where government to government contact is a necessary precursor to industry entry into the marketplace. This Bill - through Clause 6(f) - provides a clear mandate to promote state industry overseas through various mechanisms, which include establishing offices in selected countries.

In line with the whole of government thrust to commercialise its intellectual property and to profit from the sale of services, where appropriate, functions and powers are included in the Bill to ensure that this approach is introduced throughout the public sector. Once again this is in line with the review recommendations. Clause 6(k) specifically allows for financial support to further the objects of the Act.

Financial support is specifically addressed in part 3 which sets out the type of support which can be provided, requires the Minister to develop guidelines for the provision of the support, and sets out clear levels of approval by the Minister or by the Treasurer for each style.

The steering committee considered in great detail the need for an ability to undertake investment. This has also been a question of considerable debate during the drafting of the Bill. The overriding premise that the legislation should provide for flexibility to meet the different needs of industry and government over time dictated that this power be retained in the Bill. However, as recommended by the steering committee, this power can only be used with the approval of the Treasurer. I would not expect this power to be called upon frequently.

When meeting the infrastructure needs of industry, the power to acquire and dispose of property such as land is critical. The inclusion of this power in the Bill has been the subject of extended discussion and debate both as part of the review and during the drafting of the legislation. The steering committee recommended this power be retained but had some reservations about the possibility of conflict with other land dealing entities such as LandCorp. The power has been retained but will be further reviewed along with similar powers contained in a number of other existing Acts when amendments to the Western Australian Land Authority Act are considered during 1998.

One of the more significant recommendations of the review found the existing arrangements for provision of financial support wanting in a number of respects. The deficiencies identified were to do both with the types of support which could be given, which were found to be limited and inflexible, and with the unpredictability and lack of transparency of the decision making about the support.

The Bill before this House allows, on the one hand, for any type or form of financial support to be provided - thus meeting the need for flexibility within which the policy of the government can be set - while on the other hand ensuring transparency and clarifying decision making roles to ensure full accountability is achieved.

Part 3 of the Bill stipulates that the provision of financial support is to be provided in accordance with publicly available guidelines. If the assistance is outside a particular guideline or an applicable guideline does not exist, the Treasurer's approval is required on a case by case basis.

Clause 11(2) allows for the provision of financial support where there are no relevant guidelines, provided the value of support in each case does not exceed the maximum prescribed regulations. The Minister for Commerce and Trade is proposing that the maximum amount will be \$10 000. After the regulations have been prescribed, it would be his intention to delegate this particular provision to the chief executive officer of the department assisting the Minister in the administration of this Act.

It is proposed to continue the accountability and reporting mechanisms that the Minister for Commerce and Trade has introduced into the area of financial support to industry since he became Minister for Commerce and Trade. This will be achieved by the provisions of part 3 of the Bill.

Guidelines will be published to set out the arrangements for tabling in Parliament information about financial assistance provided to companies, industry associations and organisations. The reporting arrangements will be assistance of \$200 000 or less will be tabled annually as soon as possible after the end of the financial year; and assistance greater than \$200 000 will be tabled in Parliament as soon as possible after the agreement is reached with the recipient.

This brings me to the establishment of the Western Australian industry and technology development account, an account to which the moneys appropriated by Parliament are credited and to which all expenditure is charged. This is an important element of the Bill and provides an essential flexibility without which it would not be possible to complement the often unpredictable timing required for the delivery of financial support to industry.

Industry often has difficulty accurately predicting expenditure on major long term projects. Government support, usually a relatively small, though critical, portion of the overall project expenditure, is triggered at milestone events in the overall life of the project. Therefore, it is essential that the funds are readily available when called on. The Western Australian industry and technology development account will enable allocations agreed by Government for particular projects in one year to be carried forward between financial years, rather than be automatically returned to the consolidated fund.

Part 6 of the Bill continues the existence of the Western Australian Technology and Industry Advisory Council. The review report recommended that the independence of this council be clarified in the new legislation, particularly the council's ability to initiate recommendations to the Minister - not just respond to requests from the Minister - and to make its findings or reports publicly available.

This recommendation is fully endorsed and has been reflected in the Bill now before this House. This formal avenue for providing, not only the Minister administering the Act, but also the public, with independent views and advice on issues relating to the objects of the Act is a critical component which will ensure that government policies for delivering services under this Bill are, and continue to be, both relevant and effective.

The steering committee recommendation that a separate appropriation be made for the Technology and Industry Advisory Council has not been incorporated into the legislation, although the principle that the council should be independent in deciding how to spend its allocation is fully endorsed. The Department of Commerce and Trade will provide a "bureau service" to the Technology and Industry Advisory Council for its financial administration needs, thus relieving the council's small support staff of a range of necessary, but administratively onerous, accountability procedures. The council has been fully consulted throughout the drafting process and is in accord with these outcomes.

A great deal has been said by a large number of people about transparency, openness and accountability processes for the provision of financial assistance to industry by government. I have already addressed the mechanisms I am proposing to establish, through guidelines based on this Bill to ensure that these processes are as open and as transparent as possible. However, of equal importance is the principle that information of commercial value or trade secrets belonging, not to government but to the private sector, which happens to be on government record because the owner is dealing with government, should be protected. To this end this Bill incorporates an exemption for such information from access under the Freedom of Information Act. This provision will not protect information about government financial assistance to industry. That is neither its aim nor its result.

Clause 29 of the Bill - confidentiality - is concerned with the need for persons subject to the Act to treat information provided to them in the course of duties pertaining to the Act as confidential. However, clause 29(3) specifically refers to information which is of commercial value or a trade secret. Clause 34(c) then amends the Freedom of Information Act so that information provided which is of the type described in 29(3) is exempt matter for freedom of information purposes. It does not, as I have said, exempt any matter except that which should legitimately be protected, nor can it be used to hide government dealings with industry which should legitimately be in the public arena.

I now focus briefly on technology parks. Bentley Technology Park currently accommodates 70 companies employing more than 1 400 people with a combined turnover of \$170m per year. International evidence indicates that technology parks are catalysts for development and economic growth in both metropolitan and regional areas. A study titled "Technology Precincts Concept Study: A Role for the State Government" was released in November 1995. This report recommends increasing the use of technology parks as economic development mechanisms in Western Australia.

I have already mentioned the important function included in the Bill: To establish and manage technology parks. I have also mentioned related powers to allow this function to be carried through - primarily the power to deal in real and personal property. Clause 27 of the Bill further provides for the necessary designations of areas as technology parks and the uses to which the areas can be put. In this context I emphasise the growing role and success of commercially focused innovation and research activities to the economy of the State. Members will notice, and I have mentioned earlier, that the definition of industry has been expanded to ensure that this important aspect of industry development can be supported through activities undertaken as part of this enabling legislation.

Clause 31 sets out the provision for making regulations. Clause 31(2) specifically refers to the regulations which may be made in relation to a technology park.

The existing legislation, enacted in 1983, included a clause requiring its review within five years of enactment. This review was carried out at the instruction of the Minister for Commerce and Trade in August 1994. This Bill contains a requirement for the Minister administering the Act to review the Act and its effectiveness every five years. The report of this review is to be laid before each House of Parliament. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ACTS AMENDMENT (FRANCHISE FEES) BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon E.J. Charlton (Minister for Transport), read a first time.

Second Reading

HON E.J. CHARLTON (Agricultural - Minister for Transport) [5.16 pm]: I move -

That the Bill be now read a second time.

This Bill is the second of the two Bills necessary to complete the legislative requirements arising in Western Australia from the High Court of Australia decision on state franchise fees. The Bill includes amendments to the Liquor Licensing Act, Business Franchise (Tobacco) Act, Transport Co-ordination Act and a number of other Acts where the High Court decision has had flow-on consequences. As the responsible Minister indicated in his introduction to the Fuel Suppliers Licensing and Diesel Subsidies Bill, an increase in the federal sales tax on liquor has replaced the state franchise fees on liquor. Revenue replacement grants equivalent to the additional sales tax revenues raised by the Federal Government are being shared between the States.

The increase in the federal sales tax on liquor is 15 percentage points, which is equivalent to a franchise fee rate of about 12 per cent. This is significantly higher than the previous state franchise fee rate on low alcohol products of 7 per cent, and slightly higher than the previous franchise fee rate of 11 per cent on full strength liquor. Furthermore, the sales tax increase applies to cellar door wine sales which were previously exempt from state franchise fees. Accordingly, the Government is paying a subsidy to liquor merchants on low alcohol products, equivalent to the difference between the sales tax increase and the concessional state franchise fee rate. It is also paying wine producers a subsidy equivalent to the full amount of the sales tax increase.

At this point I emphasise that the Government recognises concerns expressed by the wine industry about the use of the term "subsidy" to describe the payments to wine producers. Again, this merely reflects the advice of the parliamentary draftsman; it does not imply any lack of commitment by the Government to ensuring that the benefit provided to wine producers, or to other subsidy recipients, continues. As in the case of diesel fuel, subsidy payments have already commenced under the interim authority of the Appropriation (Consolidated Fund) Act (No 4), and individual contracts between the Government and recipients. The appropriation Act provided sufficient funding for about six months.

The proposed amendments to the Liquor Licensing Act in this Bill make provision for the permanent subsidy arrangements for both low alcohol liquor and cellar door wine, including standing appropriations. The passage of the proposed amendments will remove the need for individual contracts with subsidy recipients and thereby reduce administration and compliance costs. However, members will note that much of the detail of the liquor subsidy schemes, including the conditions that apply to the cellar door wine subsidy, are to be specified in the regulations to the Liquor Licensing Act, rather than in the Act itself. This will give the Government maximum flexibility to make any policy adjustments over time to the subsidy schemes, including those as a consequence of any changes arising from commonwealth-state reviews of the overall safety net arrangements. In this regard, a difference between the liquor subsidies and the diesel fuel subsidies is that there is no prior experience with any similar arrangements. In the case of diesel fuel, the subsidy arrangements largely mirror a longstanding exemption certificate arrangement that applied under the fuel franchise fee system.

It is intended that the regulations will also be tabled before the end of 1997. For the information of members, the cellar door wine subsidy will apply to traditional cellar door sales, tastings, on-site restaurant sales, mail order sales, promotional wine and donations. This should ensure that the regional tourism and employment objectives of the original exemption scheme continue to be met. Nevertheless, a few conditions will apply to balance the legitimate concerns of liquor retailers about potentially unfair competition. In particular, the Government proposes to restrict the subsidy to wine produced by the producer in Western Australia, and sold from the producer's licensed premises. In effect, mail order sales solicited off the producer's licensed premises to the general public will be excluded, as these sales compete most directly with liquor retailers.

Also proposed is a 45 litre volume limit on individual cellar door sales, and a requirement that no charge is made by the producer for any tastings or promotional stock, if a subsidy is to be claimed. Both of these conditions apply also in New South Wales. The cost of the liquor subsidy schemes is estimated to be \$8m per annum in the case of low alcohol liquor, and \$3m per annum in the case of cellar door wine. Up to 300 merchants and wine producers will benefit. As in the case of fuel, these costs and the loss of the liquor franchise fee are expected to be fully offset by the revenue replacement grants received from the Federal Government. The small amount of surplus revenue from the net tax increase on high alcohol products, together with the additional full year revenues from what amounts to a net tax increase on tobacco, will be applied to the revenue shortfall from petrol and other costs of the safety net arrangements. Overall, apart from some one-off transitional losses in 1997-98, the safety net arrangements are expected to be revenue neutral.

The amendments to the Liquor Licensing Act also provide for a prescribed fee to replace the ad valorem franchise fees on liquor retailers. The proposed fee is \$105 per annum, which will be a contribution towards the cost of administration of the liquor industry by the licensing authority. The amendments to the Business Franchise (Tobacco) Act maintain the existing tobacco licensing arrangements, such that a person who wholesales or retails tobacco in this State is required to hold a licence unless the tobacco that person sells has been purchased previously from a person who holds a licence. However, the previous monthly licensing arrangement has been replaced with an annual licensing regime. A flat annual fee is payable, which equates to \$100 a month for a wholesale licence and \$50 a month for a retail licence. These fees are set at an amount which is sufficient to cover the administrative costs involved in the licensing arrangements.

Provision has also been made to allow the commissioner to request details of tobacco sales by the issue of a notice. It is intended that relevant details of tobacco sales will be requested on a monthly basis, which will assist in monitoring the safety net arrangements. Failure to provide the information will be an offence and could result in the cancellation of a person's licence. The existing arrangements have also been simplified by the removal of the group tobacco licence category. This is no longer required in the absence of an ad valorem licence fee.

The other amendments in this Bill are of a relatively minor nature, providing for the removal of redundant provisions, and making changes of a tidying-up nature. In this regard, I refer members to the explanatory memorandum, which explains the effect of each of the amendments. However, I draw the attention of members particularly to some of the amendments to the Transport Co-ordination Act and the Tobacco Control Act.

The amendments to the Transport Co-ordination Act provide for continued appropriations to the transport trust fund for road related purposes. Accordingly, no reduction in road funding in future years is expected as a result of the High Court decision. The safety net arrangements are designed to raise sufficient revenue to allow the appropriation of \$244.6m in 1998-99, \$250.3m in 1999-2000 and \$256.2m in 2000-01. Similarly, the amendments to the Tobacco Control Act provide for the continued appropriation of certain funds, previously paid out of tobacco franchise fees, to the health promotion fund. Again, no reduction in funding in future years is expected as a result of the High Court decision. I commend the Bill to the House and table an associated explanatory memorandum.

[See paper No 1077.]

Debate adjourned, on motion by Hon E.R.J. Dermer.

SMALL BUSINESS DEVELOPMENT CORPORATION AMENDMENT BILL

Assembly's Message

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

House adjourned at 5.24 pm

QUESTIONS ON NOTICE

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

SCHOOLS - FEES

Bad Credit References

666. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Education:

An article appearing in *The West Australian* on Wednesday, May 28 claimed that some schools are listing bad credit references on parents' personal credit files for non-payment of school fees -

- (1) Can the Minister for Education confirm whether this claim is accurate?
- (2) When did the Minister first become aware of this practice?

Hon N.F. MOORE replied:

- (1) No. This process has not been utilised for the non-payment of voluntary school fees, as reported in the article to which the member refers. I am aware that some schools have written to parents of secondary school students, advising them that their names will be forwarded to the Credit Reference Association of Australia (CRAA) as a last resort for non-payment of secondary school charges. These charges, unlike the school fees to which the question refers, are an enforceable debt. The Education Department has investigated this practice, obtained information from the Crown Solicitor's Office, communicated with the CRAA, and informed schools that this practice is inappropriate.
- (2) Not applicable.

FUEL AND ENERGY - RENEWABLE ENERGY

Expenditure

935. Hon J.A. SCOTT to the Leader of the House representing the Minister for Energy:

- (1) How much money was spent on renewable energy by the Government last financial year?
- (2) How many new projects were funded by the Alternative Energy Department Board last financial year?
- (3) Does the Government have a policy for the development of renewable energy?
- (4) If yes, what is it called and when was it published?
- (5) Does Western Power Corporation have a Renewable Energy Board?
- (6) If yes, how many staff does it contain?
- (7) If not, why not?

Hon N.F. MOORE replied:

- (1) Last financial year \$1,741,000 was spent by the Office of Energy on renewable energy and energy efficiency. It is not possible to separate spending on renewable energy from energy efficiency.
- (2) Thirteen.
- (3) Yes.
- (4) Energy - Western Australian Coalition Policies Leading into the 21st Century published 10 December 1996. Some strategies for carrying out these policies are outlined in the Office of Energy Corporate Plan published in 1997.
- (5) No.
- (6) Not applicable.
- (7) Western Power has a Branch dealing with renewable energy matters.

FUEL AND ENERGY - GAS

Goldfields Gas Pipelines Agreement Act - Third Party Gas Transmission Contracts

1074. Hon MARK NEVILL to the Leader of the House representing the Minister for Resources Development:

- (1) Has the Minister for Resources Development requested from the Joint Venturers the information about all or any gas transmission contracts entered into by the Joint Venturers under clause 22(7) of schedule 1 of the Goldfields Gas Pipeline Agreement Act 1994?
- (2) Is the Minister aware of any gas transmission contracts entered into with third parties under this Act?
- (3) If yes, which third parties have entered into contracts for the transmission of gas?

Hon N.F. MOORE replied:

- (1) No.
- (2) Yes.
- (3) Plutonic Resources, Wiluna Mines, Great Central Mines.

ROADS - FREMANTLE-ROCKINGHAM CONTROLLED ACCESS HIGHWAY

Deviation - Port Catherine Residential Area

1111. Hon J.A. SCOTT to the Minister for Transport:

- (1) On what basis has the Main Roads Department ("MRD") decided to re-route the Cockburn-Rockingham Controlled Access Highway ("CAH") around a non-existent proposed development at Port Catherine, thereby increasing the development area and encroaching into the Beeliar Regional Park?
- (2) How is this consistent with its refusal to realign the Western Suburbs Highway route which runs through White Gum Valley and Beaconsfield to preserve an already existing community?
- (3) What is the additional cost to deviate the CAH around the proposed Port Catherine Marina residential area?
- (4) Has funding been allocated for the construction of the Fremantle Eastern Bypass ("FEB") and the CAH, and from where will this funding come?
- (5) Has the MRD estimated the cost of traffic calming Hampton Road and has funding been allocated for this project?
- (6) If not, why not?
- (7) What is the total value of land which will be road reserved for the Fremantle Eastern Bypass?

Hon E.J. CHARLTON replied:

- (1) The proposed development at Port Catherine and its impact on Cockburn Road is part of a project agreement which is being administered by the Western Australian Planning Commission. The terms of the agreement include the option to realign the existing Controlled Access Highway reservation approximately 190 metres eastwards subject to the necessary statutory approvals.
- (2) All available routes have been looked at and the planned alignment for the Fremantle Eastern Bypass is the best available option.
- (3) Detailed planning for the new road alignment is currently in progress and this includes the development of cost estimates which are not yet available. However, as the alignment change is relatively small it is not envisaged that there will be any significant differences in costs between the two alignments.
- (4) Yes. The Fremantle Eastern Bypass is being funded from the Main Roads Program and the Fremantle/Rockingham Controlled Access Highway has yet to be funded.
- (5)-(6) The Fremantle Traffic Calming and Port Access Study indicated that the cost of traffic calming roads in the Fremantle area, including Hampton Road, would be about \$8.3 million (1991 dollar value). Main Roads is currently reviewing its costs but funds have not been allocated.
- (7) Some properties are still to be acquired but the estimated total cost is \$10.2million.

TRAFFIC - DERBY AND WYNDHAM

Management Plan

1113. Hon TOM STEPHENS to the Minister for Transport:

- (1) Is there a traffic management plan for -
 - (a) Derby; and
 - (b) Wyndham?
- (2) If yes to (1) (a), does the plan take into account the transport of zinc and lead concentrates through the town?

Hon E.J. CHARLTON replied:

- (1) (a)-(b) Yes, Western Metals prepared a transport plan.
- (2) Yes.

RAILWAYS - DERAILMENT

West of Kimberley - Details

1116. Hon BOB THOMAS to the Minister for Transport:

With regard to the derailment 140 kilometres west of Kalgoorlie on Thursday, October 23, 1997 -

- (1) How many kilometres of track were damaged?
- (2) To whom did the train which caused the damage belong?
- (3) For how long was the line closed?
- (4) What was the cost of repairing the line and who will pay for it?
- (5) What was the cause of the accident?

Hon E.J. CHARLTON replied:

- (1) 52 kilometres.
- (2) Westrail.
- (3) Westrail stopped operating trains over the affected track at 03.00am on October 23, 1997 and recommended operating trains at reduced speed over the affected track at 10.45pm on October 24, 1997. From October 25, 1997, to November 5, 1997, the damaged section of line was generally closed during daylight hours for repairs, and reopened at night for trains to operate at reduced speed.
- (4)(5) The costs of repairing the damaged section of track have not yet been determined. Responsibility for payment of those costs will be determined following the outcome of investigations currently being undertaken to ascertain the cause of the derailment.

MINING - CADJEBUT MINESITE

Transport of Concentrate through Derby

1142. Hon TOM STEPHENS to the Minister for Mines:

In relation to the transport by road trains of zinc and lead sulphide concentrates from the Cadjebut mine-site to Derby -

- (1) Is the Minister aware of concerns that have been raised by residents of Derby that road trains have been seen driving through Derby township without tarps covering their loads of concentrates?
- (2) If so, what action is being taken in regards to this matter?

Hon N.F. MOORE replied:

The Minister for Transport has provided the following response -

- (1) I understand from Main Roads that all loads on trucks carting lead/zinc concentrate have been covered with tarpaulins.
- (2) Not applicable.

TRAFFIC - DERBY

Management Plan

1143. Hon TOM STEPHENS to the Minister for Transport:

- (1) Does Derby have a Traffic Management Plan in place?
- (2) If not, why not?
- (3) If yes, does this plan take into account the transport of lead and zinc sulphide concentrates through the town?

Hon E.J. CHARLTON replied:

I refer the member to my response to Parliamentary Question on Notice 1113.

TRAFFIC - DERBY

Management Plan

1144. Hon TOM STEPHENS to the Minister for Transport:

- (1) Does Wyndham have a Traffic Management Plan in place?
- (2) If not, why not?
- (3) If yes, does this plan take into account the transport of lead and zinc sulphide concentrates through the town?

Hon E.J. CHARLTON replied:

I refer the member to my response to Parliamentary Question On Notice 1113.

QUESTIONS WITHOUT NOTICE

LAW REFORM COMMISSION OF WA - REPORT ON THREE STRIKES LEGISLATION

Attorney General's Comments

1084. Hon N.D. GRIFFITHS to the Attorney General:

- (1) Is the Attorney reported correctly in today's *The West Australian* as saying about the Australian Law Reform Commission's report on the three strikes legislation that "the report was wrong"?
- (2) If so, when did the Attorney make that comment?
- (3) When did the Attorney receive a copy of the report?
- (4) When did the Attorney read it?

Hon PETER FOSS replied:

- (1)-(4) I was asked to comment on the report by *The West Australian*, which had a copy of the report and was able to quote to me various parts of it. I have not seen it, but I do know the areas in which it is wrong, because I have been briefed on it. The particular area in which it is wrong is that the commission appears to believe that our current legislation is similar to the serious and repeat offender legislation that was passed by this Parliament. Some concerns were expressed at the time by the Legislation Committee and other members of the Parliament that that legislation did breach the Convention on the Rights of the Child, particularly with regard to the mandatory special order, which is now called the special order. The Australian Law Reform Commission, for some reason that I find incomprehensible, seems to think that that special order remains mandatory and that there is no capacity for review. That is wrong. It is a matter of some concern that the Australian Law Reform Commission has done its job so shoddily that it has not picked up that point. In a

number of other aspects of the report, the commission has either not understood, or not properly stated, the situation.

Hon N.D. Griffiths: Have you seen a copy of the report?

Hon PETER FOSS: No. The copies were embargoed until recently, but *The West Australian* had one, and it gave me some information about it. I believe the Justice Department had an embargoed copy as well. I have not yet received a copy, but I have received briefing notes on it, and on those points I can inform people that it is wrong. The commission should have known that this Parliament would not do things like that. I am confident that what we have done is in accordance with that convention, and I will sure that will be proved to be the case. It is unfortunate that the commission paid so little attention to what is happening here and got it wrong.

COLLEGES OF TAFE - HEDLAND AND PUNDULMURRA

Amalgamation - Letter from Minister

1085. Hon CHRISTINE SHARP to the Leader of the House representing the Minister for Employment and Training:

- (1) Has the Minister informed in writing the governing council of Pundulmurra College, South Hedland, how, in the Minister's opinion, the college has failed to operate efficiently?
- (2) If so, on what date?
- (3) Can the Minister please table that letter?
- (4) What opportunity has the Minister given the college to remedy any apparent failures?
- (5) What specified time has the college been given to rectify its operation?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) No. This was not the basis on which the decision to amalgamate Hedland and Pundulmurra Colleges was made. Following implementation of the Vocational Education and Training Act on 1 January 1997, the Government has reviewed the structure of the publicly funded state training system to ensure it is well placed to meet the challenges of an increasingly open and competitive training market.

The decision to amalgamate Hedland and Pundulmurra recognised that the two colleges share a common industry base and a need to provide programs and services for Aboriginal communities and enterprises. The location of the two colleges in South Hedland has involved a duplication of corporate infrastructure and substantial difficulty in recruiting suitably qualified staff. The amalgamation will both address administrative efficiencies and provide students with access to a broader range of programs under a single college administration.

To ensure the vocational education and training needs of Aboriginal people are appropriately addressed, a separate Aboriginal advisory board will be established to provide practical and strategic advice to the college governing council and managing director. Pundulmurra will retain its specific focus on meeting the needs of Aboriginal students and will be encouraged to develop as a centre of excellence in this area. The Department of Training is providing assistance to both colleges to facilitate the amalgamation process.

- (2)-(5) Not applicable.

DEPARTMENT OF MINERALS AND ENERGY - NATIVE TITLE UNIT

Case Managers - Applications for Exploration Licences and Mining Leases

1086. Hon TOM STEPHENS to the Minister for Mines:

- (1) How many case managers are employed in the Department of Minerals and Energy's native title unit to deal with applications for exploration licences and mining leases in this State?
- (2) How many people were employed in this capacity in -
 - (a) 1993-94;
 - (b) 1994-95;
 - (c) 1995-96; and
 - (d) 1996-97?

- (3) How many applications can this unit deal with at any one time?

Hon N.F. MOORE replied:

- (1) Five case managers are employed to conduct negotiations under the Native Title Act right to negotiate procedures. These are in addition to seven staff who are involved in submitting tenements into the Native Title Act process, and clerical and cartographic support for the department's native title response.
- (2) (a) Nil.
(b) Nil. However, negotiations were conducted by land access unit staff.
(c) 4.
(d) 5.
- (3) As these figures are not readily available, I ask that this question be put on notice.

TOURISM - EVENTSCORP

Fraud Squad Inquiry - Use of Instant Marquee Systems' Letterhead

1087. Hon J.A. SCOTT to the Minister for Tourism:

- (1) Has EventsCorp been subject to an inquiry by the fraud squad regarding the fraudulent use of the company letterhead of Instant Marquee Systems?
- (2) Did Mr Phil Harshaw allege that his company's letterhead had been used by EventsCorp officers to give the false impression that proper tendering processes had been followed?
- (3) Was a search carried out for the alleged fraudulent document at the EventsCorp's Subiaco office?
- (4) Did EventsCorp staff claim that such a document did not exist and that Mr Harshaw's statement was fabricated; if so, who said the document did not exist?
- (5) Was a second search undertaken at the insistence of Mr Harshaw?
- (6) Is the Minister aware that the tender document uncovered in the second search was a quotation for a tendered job with EventsCorp which Mr Harshaw claims is fraudulent?
- (7) Can the Minister explain how this document was in the possession of EventsCorp?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) I have been made aware that in 1993, the police investigated a claim by Mr Harshaw about a tender for some EventsCorp business with regard to an event which occurred in 1992.
- (2) I am not aware of Mr Harshaw's allegations, and I suggest that this question be directed to the Minister for Police, whose officers investigated this issue. For the member's information, no charges have ever been laid against any EventsCorp staff.
- (3) A search was carried out at EventsCorp, and the police removed numerous files. Among the files was a document, on the face of which was a tender submitted by Instant Marquee Systems.
- (4) I am not aware of the EventsCorp staff's claim and again suggest the question be directed to the police.
- (5) I understand that only one search was conducted, but, again, the police will be able to answer this.
- (6) Not applicable.
- (7) The document was a tender submitted to EventsCorp. I reiterate that no charge has ever been laid against any EventsCorp staff with regard to this matter.

PRISONS - DEATHS IN CUSTODY

Aboriginal and Non-Aboriginal - Comparative Figures

1088. Hon MURIEL PATTERSON to the Minister for Justice:

Can the Minister please provide comparative figures of Aboriginal and non-Aboriginal deaths in prison custody for the past three financial years?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

Deaths in WA prison custody were as follows -

Aboriginal	1994-95	0
	1995-96	2
	1996-97	2
Non-Aboriginal	1994-95	6
	1995-96	4
	1996-97	7

Deaths in custody seems to be more a function of custodial contact, with non-Aboriginal prisoners seeming somewhat more vulnerable than Aboriginal prisoners. As the above figures show, between 1994-95 and 1996-97, there were 17 non-Aboriginal deaths in custody compared with four Aboriginal deaths. The Aboriginal death rate as a percentage of the daily average muster was 0.18, while the non-Aboriginal rate was 0.39. This shows that the death in custody of non-Aboriginal prisoners was just over two times the rate of Aboriginal deaths in custody. It should also be noted that death rates in the community of both Aboriginals and non-Aboriginals are higher than the rates of death in prison custody.

HOSPITALS - BOARDS

*Contracts - Indemnity for Board Members***1089. Hon KIM CHANCE to the Attorney General:**

- (1) Are contracts which are drawn up between the Commissioner of Health and hospital district and MPS boards regarded as commercial contracts for the provision of services?
- (2) Are such contracts enforceable at law?
- (3) Does the limited indemnity provided for board members in the Health Act extend to indemnity from action for breach of contract?
- (4) Could a successful action for breach of contract against a board or an individual member of a board result in a financial penalty for the board or a member of a board?

Hon PETER FOSS replied:

(1)-(4) These questions are inadmissible as they seek the expressions of opinions on questions of law.

The PRESIDENT: I agree entirely.

POLICE - EAST PERTH LOCKUP

*Night Shift - Number of Officers on Duty***1090. Hon TOM STEPHENS to the Attorney General representing the Minister for Police:**

- (1) On what dates were -
 - (a) the least; and
 - (b) the second least number of sworn police officers on night shift duty at East Perth lockup during October 1997?
- (2) How many of those officers were on duty on each of those dates?
- (3) On how many occasions this year has there been no ground floor security on night shift at police headquarters?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1)-(2) There are always nine officers on duty in the East Perth lockup during afternoon relief, 1500-2300 hours, and night relief, 2300-0700 hours.

- (3) At all times there is security because the police operations centre at police headquarters monitors the building and perimeter security via television cameras placed in and around the premises. However there were no persons on the ground floor on 24 April, 15-18 August, 1-17 September and 2 November.

ABORIGINES - PLANNING STRATEGY

Coordination

1091. Hon RAY HALLIGAN to the Minister representing the Minister for Aboriginal Affairs:

- (1) Can the Minister outline how the new planning strategy for Western Australian Aboriginal communities will be coordinated between the Departments of Aboriginal Affairs, Local Government and Planning?
- (2) What role, if any, is envisioned will be played by the Aboriginal and Torres Strait Islander Commission in the actual planning process?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) A document entitled "Planning for Aboriginal Communities" has been released as a draft policy of the Western Australian Planning Commission for information and public comment. Submissions on the draft policy will be received by the Ministry for Planning until 27 February 1998. The Western Australian Planning Commission will then consider any submissions on the draft policy and resolve whether to formally adopt it as a planning policy.

The document has been prepared by the Aboriginal Affairs Department and the Ministry for Planning with some input from the Department of Land Administration, the Western Australian Municipal Association and the Aboriginal and Torres Strait Islander Commission.

The document details a framework for the planning of large, permanent Aboriginal communities and sets out the role of the Aboriginal Affairs Department, the Aboriginal and Torres Strait Islander Commission, local government authorities and the Ministry for Planning in the process. In summary, the Aboriginal Affairs Department and the Aboriginal and Torres Strait Islander Commission will fund the development of town layout plans in selected communities. The plans will then be submitted to the relevant local government authority for endorsement and then forwarded to the Ministry for Planning for approval and registration.

- (2) The Aboriginal and Torres Strait Islander Commission and the Aboriginal Affairs Department will continue to jointly fund the preparation of town layout plans in selected communities.

FUEL AND ENERGY - SOLAR HOT WATER SYSTEMS

Government's Policy

1092. Hon NORM KELLY to the Leader of the House representing the Minister for Energy:

- (1) Is the Minister aware that in Holland, all new homes must have installed a solar water heater, and that similar requirements exist in Israel and Greece?
- (2) Is the Minister aware that in Greece, as a result of the economics of scale created by government installation policies, a solar hot water system costs approximately half of what the same unit would cost in Western Australia?
- (3) Is the Minister planning to introduce similar conditions or policies in Western Australia?
- (4) Can the Minister confirm that only about 3 per cent of new homes in Western Australia have solar hot water systems installed, despite Western Australia being one of the world's best solar energy locations?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) The Minister is aware that a number of countries with limited indigenous supplies of fossil fuels have instituted policies requiring installation of solar water heaters. The Minister is not aware of the exact requirements in Holland, Israel or Greece.

- (2) The Minister is not aware of the cost of solar hot water systems in Greece, but is aware that a significant proportion of the cost of solar hot water systems in Australia is attributed to marketing costs.
- (3) No.
- (4) The percentage of new home owners in Western Australia who have chosen to instal a solar hot water system is around 3 per cent. The Minister is not able to confirm the exact figure.

FLAGS - WESTERN AUSTRALIAN

Criteria for Choosing Successful Tender

1093. Hon TOM HELM to the Minister representing the Minister for Works:

With reference to the question asked yesterday regarding a recent tender for flags, I ask -

- (1) Given the price difference between other tenders and the winning tender of more than \$10 000, how was "best value for money" determined in this case?
- (2) What criteria were used to determine that the winning tender was a superior product?
- (3) What company manufactured the woven bunting base cloth?
- (4) Were testing samples carried out by a recognised testing laboratory?
- (5) Is the successful tenderer printing these flags?
- (6) Is the successful tenderer finishing these flags; that is, the sewing, packaging etc?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1)-(2) "Best value" was determined by an assessment of the tenders against all the selection criteria. The key differentiating factor in favour of the successful tenderer was the clearly superior colour definition and clarity of the product offered, based on the samples obtained. Visual appearance was an important consideration as the flags are to be presented personally by members of Parliament.
- (3) Bradmill Textiles.
- (4) Testing was not deemed necessary.
- (5)-(6) Yes.

STATE SUPPLY COMMISSION - CONTRACTS

Number and Details

1094. Hon LJILJANNA RAVLICH to the Minister representing the Minister for Works:

The State Supply Commission annual report for 1996, page 24, shows that in 1994-96, preliminary results indicate that public authorities purchased goods and supply services worth an estimated \$2.360b.

- (1) Can the Minister advise how many contracts were involved and their average length of time?
- (2) Can the Minister advise what percentage of contracts were awarded to Western Australian businesses?
- (3) Can the Minister advise what percentage of contracts went to Western Australian small businesses?
- (4) Can the Minister advise what percentage of contracts were awarded to regional businesses?

Hon MAX EVANS replied:

I thank the member for some notice of this question. Unfortunately, the detailed information sought is not readily available. However, I have been provided with a copy of the annual supply report 1996 which contains much of the statistical data used to develop the figures quoted in the State Supply Commission annual report for 1996 and I now seek leave to table this report.

Leave granted. [See paper No 1076.]

SHIPPING - EMERGENCY POSITION INDICATING RADIO BEACONS

Review of Regulations

1095. Hon J.A. COWDELL to the Minister for Transport:

- (1) Is it anomalous that new regulations require all vessels to carry emergency position indicating radio beacons if they venture more than two nautical miles offshore, while a marine band radio is required only if a vessel proceeds more than five nautical miles offshore?
- (2) Is a marine band radio more useful in pinpointing a vessel in the two to five mile range?
- (3) Will the Government consider altering the boundaries for the compulsory carrying of EPIRBs to five nautical miles in Mandurah, in line with other metropolitan exclusion zones?
- (4) Will any review of EPIRB regulations take place prior to the "one year of operation" review?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) No, because EPIRBs and marine band radio provide different but complementary marine safety communication systems.
- (2) No, an EPIRB generally provides a more accurate means of positioning a vessel in distress.
- (3) No. In areas of high activity, such as those around Rottnest and Garden Island and in Cockburn Sound, there is not the need for the same sort of special requirements for distance; however, off Mandurah there is a need.
- (4) Yes.

DISABILITY SERVICES - ACCOMMODATION

Outsourcing - Guarantees of Quality

1096. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Disability Services:

- (1) What guarantees of quality standard accommodation will the Minister give to people affected by the Disability Services Commission's reduced role as a provider of accommodation and respite services?
- (2) Who guarantees those standards and how?
- (3) How many current DSC employees will cease to be employed by the DSC?
- (4) What provision has the Minister made to ensure new private sector service providers offer DSC staff pay and conditions not inferior to their current pay and conditions?
- (5) What will happen to DSC staff who refuse to accept employment with new providers offering inferior pay and conditions?

Hon E.J. CHARLTON replied:

- (1) The following are mechanisms which have been, and will continue to be, put in place as the Disability Services Commission outsources accommodation and respite services -
 - (a) agencies selected to provide services undergo a rigorous selection process which includes, but is not limited to, the capacity of the agency to meet consumer needs, to meet nationally agreed disability service standards, and to provide the service at an equal or higher quality at an equal or reduced cost;
 - (b) where a tendering process is used, tenders are evaluated on the basis of quality of service and price - that is, value for money;
 - (c) the outsourcing process occurs in partnership with the new agency or agencies and with agreed transition periods to allow DSC staff to work alongside the agency to facilitate a gradual transfer of services;

- (d) consumers and their families are consulted to ensure that options developed are appropriate to meet individual needs;
 - (e) performance agreements are required with all funded non-government agencies, which clearly specify the quality and quantity of service required and require adherence to the principles and objectives of the Disability Services Act; and
 - (f) accommodation services are required to comply with DSC policy on the charging of client fees.
- (2) DSC staff regularly visit agencies to monitor compliance with the performance agreement. In addition, agencies are required to report to the DSC on service outcomes achieved for consumers.
- All funded services are required to meet nationally agreed disability services standards. Self-assessments against these standards occur annually. Standards monitoring teams, which include people external to the DSC, visit periodically to assess the quality of care and support provided in accordance with these standards. Action plans as a result of the monitoring visits will be built into performance agreements to address any identified shortfalls.
- (3) Up to approximately 200 positions could be affected by the proposed outsourcing of accommodation support services over the next three years. The DSC has given a guarantee that no permanent staff or staff on long term contracts will be involuntarily retrenched as a result of these changes. Some staff are exploring the option of establishing a new non-government agency themselves to take over the provision of identified service. To date, all staff affected by outsourcing who have elected not to go to the alternative providers have been able to be redeployed to compatible positions within the DSC.
- (4) Neither the Minister for Disability Services nor the DSC has any authority over the pay and conditions of independently incorporated providers. However, it is in both the purchaser's and the provider's interests to ensure that conditions are attractive to suitably qualified people, including current DSC staff, and this is a consideration in budget negotiations. Many non-government organisations have public benevolent institution status, which, through the non-taxable benefits available, can result in more attractive packages being developed for staff.
- (5) Any permanent DSC staff and staff on long term contracts who do not elect to transfer to a new provider will be offered compatible positions within the DSC or the wider public sector. No staff will be involuntarily retrenched as a result of these changes.

MINING - ALCOA OF AUSTRALIA LTD

Class 8 Corrosive Liquids - Transport in Open-tipper Vehicles

1097. Hon GIZ WATSON to the Minister for Mines:

In relation to the observance that Ford Louisville open-tipper trucks displaying class 8 corrosive liquids plates 17602R enter and leave the Alcoa Australia Kwinana site via public roads, I ask -

- (1) What is the purpose of the class 8 corrosive liquids plates displayed on those vehicles?
- (2) What are the goods containment specifications required under the Dangerous Goods Regulations for vehicles transporting class 8 corrosive liquids?
- (3) Given the answer to (2), is it permissible for such open-tipper vehicles to transport material designated as class 8 corrosive liquids -
 - (a) on public roads;
 - (b) on private roads?
- (4) What penalties exist under the Dangerous Goods Act or any other Act or regulation for falsely displaying class 8 corrosive material signs when no such goods are being carried?
- (5) What penalties exist under the Dangerous Goods Act or any other Act or regulation for failing to transport class 8 corrosive materials in a contained manner?

Hon N.F. MOORE replied:

- (1) The purpose of the class 8 corrosive liquids plates displayed on Alcoa's vehicles is -
 - (a) to inform other road users that the vehicles are transporting dangerous goods, in this case a muddy solid which contains a small amount of liquid; and

- (b) to inform emergency responders that they are dealing with dangerous goods and to advise them what is the appropriate initial emergency response and where they should go to get more detailed emergency response information.
- (2) The specifications for the transport of corrosive liquids are contained in Australian Standard 2809, Road Tank Vehicles for Dangerous Goods. However, the material transported by Alcoa is not of the form appropriate to be transported in a road tank vehicle because it is essentially a solid.
- (3) In the circumstances which obtain at Alcoa's Kwinana operation, yes, it is permissible for such open-tipper vehicles to transport materials designated as class 8 corrosive liquids on public roads and on private roads. The placarding is a compromise to effectively warn other road users and emergency responders.
- (4) A person who commits an offence against the Explosives and Dangerous Goods Act is liable on conviction to a penalty not exceeding \$50 000 for a single offence or \$5 000 per day for a continuing offence.
- (5) See (4).

MAIN ROADS WESTERN AUSTRALIA - CONTRACTING OUT POLICY

Effect on Small Businesses in Gascoyne Region

1098. Hon TOM STEPHENS to the Minister for Transport:

- (1) Is the Minister aware of the strong public criticism that has been expressed by the member for Ningaloo over the Minister's planned overhaul of Main Roads Western Australia in which he says that this operation of contracting out will signal the death knell for a lot of little subbies and suppliers in the Gascoyne region?
- (2) Will the Minister now heed the community sentiment previously expressed to this House by the Opposition, which has now been joined in the expressions of opposition to this policy by the Minister's coalition Liberal colleague?
- (3) Will the Minister now finally take heed and desist from these disastrous policies that are causing devastation to the regions of Western Australia?

Hon E.J. CHARLTON replied:

- (1)-(3) Far from desisting, I am enthusiastically proceeding until it is determined otherwise. This is about providing an increased service to country Western Australia.

Hon Bob Thomas: Ask any shire council in this State and it will tell you it is frightened of this.

Hon E.J. CHARLTON: All country shire councils, country communities and the current employees of Main Roads Western Australia will acknowledge that there has been almost a doubling, and in some cases more, of the amount of money allocated to local government right across country Western Australia since this Government has been in office. I will be very happy to table the figures comparing the allocations in 1997 with those in 1996.

To get back to the question: Whether it be the Main Roads office in Carnarvon, Derby, Geraldton, Kalgoorlie or any one of the nine areas, instead of having some projects being done by the private sector in an area, they will be carried out by local people. For example, in the Carnarvon Main Roads district, sometimes the outside employees of Main Roads are doing work in the Kimberley area or even travelling as far as the south west to do the work they are capable of and have the equipment to carry out. Rather than have those people travelling all over Western Australia with their equipment to carry out that work, they will join private enterprise that is already doing work, in this example in the Carnarvon area, and have long term employment operations.

Hon Tom Stephens: They are not joining the private sector; they are joining the dole queues.

Hon E.J. CHARLTON: Mr President, obviously you will not allow this debate to deteriorate, and quite rightly. However, in response to the Leader of the Opposition I say that these people will not be joining the dole queues.

Hon Tom Stephens: Your policies are a disaster.

Hon E.J. CHARLTON: That is a decision which I respect and people within this place and outside it can make a judgment for themselves.

We are doing two things. First, let us consider North River Road, which will require \$750 000 to carry out the work that the Carnarvon Shire Council is seeking to have done. We want to ensure we can provide that additional funding so that that work can be carried out by people living and working in Carnarvon, rather than calling in a separate contractor because the shire or Main Roads does not have the capacity to do it. In those circumstances, the local

people are missing out. This game plan is about ensuring that people are employed locally. Again, there will be no requirement on local people to join a private operator. No incentive will be taken away from these people to participate in what they are already doing. I invite the Leader of the Opposition to go through, step by step, what is being considered by Main Roads for the whole of his area throughout the north of the State.

Hon Tom Stephens: I know how bad it is.

The PRESIDENT: Order! I just raise the question of argumentativeness.

Hon E.J. CHARLTON: I am very happy to have the people make the judgment. I am sorry that I received an apology from Hon Tom Helm for his non-attendance at the opening of the Karijini road last week. The Leader of the Opposition will be receiving an invitation to the completion of the sealing of Burkett Road in Exmouth. All these works are being done in the electorate of the Leader of the Opposition. Sadly, the poor old Leader of the Opposition has -

Hon Tom Stephens: I secured that funding.

Hon E.J. CHARLTON: Now he is fantasising and is way out of control!

LIBERAL PARTY - DONATION

Stanton Partners and Keith Lingard

1099. Hon LJILJANNA RAVLICH to the Leader of the House representing the Premier:

- (1) Does the Premier have any reason to believe that Stanton Partners or Keith Lingard has made any financial donation to the Liberal Party?
- (2) If so, when and how much money has been received?

The PRESIDENT: Order! That is not within the Premier's portfolio. I do not know how the Leader of the House has interpreted the question.

Hon N.F. MOORE replied:

- (1)-(2) I can provide some advice. Political donations disclosure requires all donations in excess of \$1 500 to be disclosed to the Electoral Commissioner as per the amendments made to the Electoral Act in 1996. I am sure the member can find the information there, if there is any to be had.
-