



WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Wednesday, 26 March 1997

Legislative Council

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THE PRESIDENT (Hon Clive Griffiths) took the Chair at 2.30 pm, and read prayers.

PETITION - REGIONAL PARK

Moore River

Hon J.A. Scott presented the following petition bearing the signatures of 79 persons -

To the Honourable the President and members of the Legislative Council in Parliament assembled.

We the undersigned respectfully request that the Government establish a Regional Park immediately to the south of Guilderton in order to protect the mouth and lower reaches of the Moore River and the significant dunes and coastal heathland south of the mouth of the Moore River.

We request that the Government take urgent action to acquire this land before it is further rezoned or developed,

and your petitioners, as in duty bound, will ever pray.

A similar petition was presented by Hon Graham Edwards (60 signatures).

[See papers Nos 361 and 362.]

PETITION - HEALTH

Disabled Persons - Brain Injured

Hon B.M. Scott presented the following petition bearing the signatures of 579 persons -

To the Honourable the President and members of the Legislative Council in Parliament assembled.

We, the undersigned citizens of Western Australia:

Wish to petition against the current lack and decreasing number of appropriate care and accommodation available to people with an acquired brain injury. We believe that people are being denied the intensive rehabilitation required. We also wish to petition against the placement of young people with an acquired brain injury into inappropriate beds in nursing homes as the level of care is inadequate and their needs are not being met due to the lack of appropriate funding.

Your Petitioners therefore humbly pray that you will give this matter earnest consideration and your Petitioners, as in duty bound, will ever pray.

[See paper No 363.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION - APPOINTMENT

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

That a Delegated Legislation Committee be reconstituted with the same order of reference as that under which a committee of the same name was constituted in the Thirty-fourth Parliament and that the Legislative Assembly be invited to pass a similar resolution.

COMMITTEES FOR THE SESSION

Assembly Personnel

Message from the Assembly received and read notifying the Council of the personnel of its sessional committees.

MOTION - GOLD ROYALTY*Amendment to Motion*

Resumed from 20 March.

HON GRAHAM EDWARDS (North Metropolitan) [2.36 pm]: When debate on this issue was adjourned on 20 March, I was telling the House how I was born in Kalgoorlie, how my father had been a prospector and had worked in some of those remote areas, and how I spent some time there. I believe I have a fair understanding of the gold industry, particularly the exploration or prospecting side of the industry and I have a fair understanding of the people who have been the backbone of that industry over a long period.

I was developing an argument to illustrate a major concern I have about a gold royalty; that is, the impact it will have on exploration. Exploration is, of course, an incredibly important part of the goldmining industry. Indeed, many a wise prospector will say that there is more gold in the ground than has ever been discovered in the goldfields. I do not know whether that is true, but it has been a great incentive for many people to keep looking; I am not sure it is now. If the lifeblood and the future of the industry are dependent upon exploration, why would the Government introduce a gold royalty which would impact on that exploration? Why would the Government introduce a gold royalty if there was a chance that it would lead to many people in the industry asking, "What is the point of doing it; why do we not mine what we have now and give it away because who knows what the future of the industry will be?" That is not only my view. I refer to an article that appeared in *The West Australian* on 21 March this year under the subheading "Gold royalty will hit exploration - Eshuys". It states -

The State Government's decision to introduce a gold royalty had created uncertainty similar to that caused by the Indonesian Government's handling of the Busang gold dispute, the resource director of Great Central Mines said yesterday.

Ed Eshuys, whose companies plan to spend about \$75 million on gold exploration in Australia this year, said the introduction of a royalty would have a big impact on the level of exploration, which eventually would hit production.

The State Government said on Tuesday it planned to phase in a 1.25 percent royalty from January 1 rising to 2.5 percent by July 1999, for miners producing more than 1000 ounces a year.

Mr Eshuys said by introducing a gold royalty, the State Government was changing the rules to suit itself. Foreign companies in particular would look to areas that offered more certainty.

"You're introducing a gold royalty tax that wasn't there before and changes the rules. That will make them think, what next?" Mr Eshuys said.

"Australia will start getting compared with Indonesia, where the Government reduced Bre-X from 95 percent to 45 percent.

"That is the comparison that foreigners will draw."

Anyone who has followed the issue of Bre-X Minerals at Busang will be left bewildered. It is an unfortunate situation that some people in the industry are drawing a comparison between what is happening in Western Australia and what has happened in Indonesia. As Mr Eshuys said, that is the comparison that foreigners will draw. The article continues -

Canadian junior Bre-X Minerals discovered the 71 million ounce Busang gold deposit in Indonesia in 1993, but ownership of the project has been the subject of government intervention.

Mr Eshuys said it was possible that Australian companies would also move their exploration offshore.

"We may as well go and explore in Tanzania or South America - we know what the rules are there," he said.

Mr Eshuys said the uncertainty, added to that already caused by native title and the possibility of changes to the diesel fuel rebate, would make it more difficult for Australian companies to raise money for exploration.

Australian companies spend about \$500 million a year on exploration, and that would have to be the minimum for Australia to add to its current resource base and increase production levels, he said.

Mr Eshuys said that at current gold prices and costs of production, a gold royalty of 2.5 per cent would cut cash flow 12.5 per cent, and could eventually backfire on the Government as investment dwindled.

Australia already compared poorly with the other main gold producing countries in terms of ability to raise equity for gold companies.

"\$70 million is something you may well need, as the Premier pointed out, but it may be an expensive \$70 million," Mr Eshuys said.

I hope that the coalition, particularly the Premier, will take note of Mr Eshuys' remarks, and the condemnation and concern being expressed in the goldfields. It worries me that the arrogance of this Government will cause it to turn a deaf and uncaring ear to the people who are making their concern public. Yesterday, the Leader of the House responded in the most extraordinary way to the Address-in-Reply debate. He made some play of the fact that the Opposition dragged its feet in places such as Kalgoorlie and Ningaloo. However, he did not say that in the lead up to the last election the coalition ambushed the electors, or that it camouflaged its intentions prior to winning the election. Coalition members cannot cynically and in an uninformed fashion explain away the very strong commitment made by the Deputy Premier before the election. That is not acceptable. It is no good the coalition saying that it has changed its mind because of the actions of the Grants Commission and so on. We have all known for years where we stand with the Grants Commission, and we will not let the Deputy Premier off the hook.

Kalgoorlie is currently and has been for some time experiencing a period of strong growth. However, I recall that not too long ago Kalgoorlie was battling and people were pessimistic. They could see no future for Kalgoorlie. I think it was around the mid-1970s when many people were battling. They had no faith in the future of the gold industry or in Kalgoorlie itself. However, those people stayed in Kalgoorlie during the bad times, and they worked and prospered. Because we do not have control over situations in America or anywhere else, who is to say that those bad times will not be revisited?

It appears to be rather stupid to cut our own throats. We should be doing everything to protect and enhance the industry to ensure that its strength will continue. One way to do that is by ensuring there is always very strong exploration activity. I hope that the Government will give serious consideration to the concern being expressed in Kalgoorlie regarding the gold industry and the impact of a royalty on it.

It is incredible that the Government would in a cynical and politically motivated way introduce a gold tax without due consideration. The least any Government would want to do is to hold some sort of inquiry or to consider seriously the impact such a royalty would have on the industry. One would hope that the Government would consider the flow on effect of a gold royalty in towns such as Kalgoorlie which rely on the gold industry. The Government should want to know for certain that such steps will not cause those towns and the people who live in them to suffer as a result of the imposition of a royalty. The Government does not seem to care. It is so arrogant and flippant in its treatment of the industry that as suddenly as pulling a rabbit out of the hat it has decided to impose a gold royalty. That is not good enough. I hope that other members in this House also think that it is not good enough. My colleagues on this side, led by Hon Mark Nevill, will do all they can to fight this gold royalty. We will do all we can to fight the Government's actions to implement such a royalty.

Amendment on the Amendment

Hon GRAHAM EDWARDS: I move -

That the words "conduct a full inquiry" in line 2 of clause (8) of the amendment of Hon Tom Stephens to the motion of Hon Mark Nevill be deleted and the words "establish a select committee" be inserted.

Paragraph (8) will then read -

Calls on the Government before implementing a gold royalty or doing anything in respect of implementing any tax changes, to establish a Select Committee into the impact of any gold royalty or tax changes on the mining industry and their effect on business and employment opportunities within Western Australian regional mining communities.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.52 pm]: Yesterday I raised a difficulty some people have with these motions. We now have an amendment to the amendment to the motion. Mr President, can I speak about some of the broader issues attached to this matter, or am I constrained to speak about changing an investigation from an inquiry to a select committee?

The PRESIDENT: Order! The Leader of the House is at liberty to speak on the matter generally. The practice in this House is that once a member has spoken to the main question, that member can speak on any amendment. If that member has not spoken and wants to speak on an amendment, the member can speak on the motion and the amendment, or in this case amendments.

Hon N.F. MOORE: The management of this motion, where we now have an amendment to the amendment, is a little like the way the Opposition managed Western Australia during its time in government. Surely those opposite could have got the motion right the first time, if not the second, but now they are having a third bite of the cherry. We now know they still cannot get their act together; they cannot put together a motion about a gold royalty.

Hon Kim Chance: We are flexible and innovative.

Hon N.F. MOORE: That is beside the point.

Hon Mark Nevill: That is correct; it is beside the point.

Hon N.F. MOORE: I will deal with a couple of issues that have been raised and will make one thing very clear: No decision has been made by this Government to have a gold royalty. As all members know, it is being considered in the context of the Budget to be brought down in due course. That is a proper way to go about looking at the State's financial situation. It is proper that every possible area of revenue raising and savings in expenditure should be considered and investigated. However, that does not mean that at the end of the day everything we look at for revenue raising or expenditure cutting will be implemented in the Budget. That is the position we are in now.

The Government, quite rightly, is putting to the mining industry a proposal for a potential gold royalty. The Premier has been quite up front and said, "Here is a scenario we would like you to consider." The scenario is that a gold royalty be phased in starting at 1.25 per cent and increasing to 2.5 per cent after 12 months. That is the common level of royalties in Western Australia for minerals, and it has been put forward by the Premier as a potential way in which this Government might go about introducing a gold royalty. However, he has also said to the industry, "We are looking at what this might mean; we are consulting with you; we want your opinion on it; we want you to tell us what it might mean were it to be introduced in this way." That is a proper way to go about looking at any potential increase in revenue that might affect a particular section of an industry. That is where we are at, no more and no less.

Having listened to speakers opposite, one would assume a decision had already been made; that the Government should resign; that the Minister for Mines should resign - that proposition was put forward by the Leader of the Opposition in this House -

Hon Tom Helm: I second that!

Hon N.F. MOORE: I find it rather extraordinary that some people can still sit in this House after a royal commission described them in very unflattering terms, including Ministers in the last Labor Government responsible for WA Inc, and an opposition member in the other House who was a Minister. Because this Government says that it will investigate a gold royalty, the Leader of the Opposition in this House says that the Government should resign, the Minister should resign and the Ningaloo exploration area is being stolen. What absolute rubbish; what sheer unadulterated hypocrisy!

Members opposite told us what a gold royalty would do to Western Australia and how terrible it would be. Let us look at the record of the Labor Government so that we can get things in balance. At the federal level the Labor Government - I am prepared to admit that it was not members opposite - brought in a gold tax.

Hon Kim Chance: No it did not. That is wrong.

Hon N.F. MOORE: I ask Hon Kim Chance to let me finish. He can deny what I am saying later.

Hon Kim Chance: It removed their income tax exemption. That is a different matter.

Hon N.F. MOORE: The same argument can be used about a gold royalty. We can say that we are removing the gold industry's exemption from paying a royalty, if the member wants to go down that pedantic path. The bottom line is simply this: There has never been a tax on the profits of gold mining, as far as I know. The Government has been told by the industry that there should be no tax on the profits of gold mining because it would send the industry broke. We argued against it, but the Federal Labor Government brought it in.

Hon Tom Stephens: We argued against it.

Hon N.F. MOORE: To give him his due, Mr Graeme Campbell crossed the floor. The State Labor Party, like us, opposed it. However, as I say, it was brought in by the Federal Labor Government, the same Government which brought in the fringe benefits tax. The other day we heard bleatings from the Opposition about the effect of a gold royalty on the small gold mining towns in Western Australia. The biggest impact on them in the past 10 years has been the fringe benefits tax, which was also brought in by the federal Labor Party. That has had a detrimental effect of monumental proportions on those small towns in Western Australia -

Hon Tom Stephens: It was sustained by the Howard Government.

Hon N.F. MOORE: - and the not so small towns in the iron ore areas. The crocodile tears shed by members opposite are unbelievable. Their federal colleagues have done more damage to regional Western Australia than any gold royalty would ever do.

Hon Tom Stephens interjected

Hon N.F. MOORE: I listened to Hon Tom Stephenson in silence; he should listen to me. In addition, members opposite know that the native title legislation brought in by the Keating Government in response to the High Court judgment is having a dramatic effect on exploration and mining in Western Australia. Those three elements - the fringe benefits tax, a gold tax and the native title legislation - lodge a total assault on regional Western Australia, including the goldmining industry. It is extraordinary that members opposite should complain about this Government's at least investigating something when its party's track record is, as I have just described, appalling.

Hon Bob Thomas: You totally denied it before the election.

Hon N.F. MOORE: Members opposite have come into this House with a motion which they have amended twice to get across a message that this Government is bringing in a gold royalty. They belong to the same party which brought in the gold tax, native title legislation and fringe benefits tax, all of which have had a significantly negative effect on regional Western Australia. They are the same people who claim to in some way or other represent the interests of regional Western Australia. They do not, and the comments I made yesterday on the election result demonstrated that the people in the community do not believe them.

I do not have a problem with the House accepting the amendment and the amendment to the amendment because they make no difference to the end result; they are additions to the original motion. Once we have accepted that I suggest we debate the motion as a whole and the House can then make its views known. We must get one thing straight: The fundamental reason for this motion is flawed. A decision has not been made; any suggestion that one has been made is wrong. To allay any doubt about my position, I have always made it clear where I stand on this matter. I have always been opposed to a gold royalty. I will argue the case as strongly as I can in a proper way.

Hon N.D. Griffiths: Will you resign?

Hon N.F. MOORE: Of course I will not resign. What a silly thing to say. People do not resign just because they do not get their own way all the time.

Hon E.J. Charlton: If we did, there would be no-one left over there.

Hon N.F. MOORE: I told members opposite that they should have all resigned by now. WA Inc should have meant that there is nobody on the opposition benches, rather than the few people there now. If the Government decides to introduce a gold royalty - I hope it does not - I will wear the decision. However, I would like to hear an absolute undertaking by the Leader of the Labor Party that in the event a gold royalty is introduced it will be removed by a future Labor Government as the first thing it does.

Hon Tom Stephens: I will answer your questions if you answer mine. Are your Cabinet decisions by consensus only or are they taken by votes?

Hon N.F. MOORE: Our Cabinet decisions have always been by consensus.

Hon Tom Stephens: If you oppose a gold royalty will that mean it will not occur?

Hon N.F. MOORE: A consensus does not mean 100 percent in favour of an issue on every occasion. It is agreement arrived at by consensus - the numbers being usually somewhere in the middle. I am asking the Opposition if it will make a statement that in the event it is ever returned to office it will get rid of a gold royalty.

Hon Mark Nevill: There will never be one.

Hon N.F. MOORE: Assuming there is a gold royalty will Hon Mark Nevill do that?

Hon Mark Nevill: There will not be one.

Hon N.F. MOORE: Members opposite stand condemned by their inability to make that commitment. They have already suggested in this debate that we should have an inquiry into this issue. Why do they want an inquiry if they are so opposed to a gold royalty? They want an inquiry in case it finds that there should be a royalty. It would give them a way out. Members opposite would love to spend the money if they ever gained office again. That is why they refuse to state categorically now that in the event a royalty is brought in they will get rid of it. I wait half a second in the hope that somebody might respond to that.

The PRESIDENT: Order! The Leader of the House should not have a discussion with people. He is speaking on the whole question including the two amendments.

Hon N.F. MOORE: I have already indicated we will accept the amendments because they are addendums.

Hon Mark Nevill interjected.

Hon N.F. MOORE: Are you going to speak on the amendment?

The PRESIDENT: Order! He will speak if I give him the call; I will not give him the call while the Leader of the House is on his feet.

Hon N.F. MOORE: As I said, the Government does not have a problem adding the amendments moved by Hon Mark Nevill. I am interested in knowing, in the event that a gold royalty is ever brought in, whether the Labor Party is prepared to announce now or some time in the near future without any equivocation, that it will remove it when the Labor Party becomes the Government.

Hon Mark Nevill: So you are going to bring it in?

Hon N.F. MOORE: I did not say that; I said "In the event a gold royalty is introduced". It is a hypothetical question. The Labor Party has moved a motion saying that under no circumstances should a gold royalty be introduced in Western Australia. Members opposite have told us all the reasons we should not have a gold royalty. We have heard them speak in this House, and I am saying they should tell us once and for all -

Hon Mark Nevill: I would cross the floor and vote against it.

Hon N.F. MOORE: I am sure Hon Mark Nevill will. However, I am speaking more to the Leader of the Opposition than to Hon Mark Nevill because the Leader is making the announcements about the Labor Party's position. Members opposite will not make an unequivocal commitment to remove a gold tax should it be introduced. They stand condemned by their lack of dedication and commitment to this issue. This motion is a political exercise by the Opposition to try to embarrass the Government when opposition members are not prepared to make a commitment that they will change any decision that may be made to bring in a gold royalty. They have demonstrated for all to see that is where they stand.

The Opposition would be happy if this Government brought in a gold royalty because it could spend it when it got to power in the next millennium. The Labor Party is good at spending money. Its members showed us how to do that when they were in office. I would be interested if they could persuade Dr Gallop to make an unequivocal statement that in the event the Government introduced a gold royalty a Labor Government would abolish it.

Hon Tom Stephens: Don't bring it in; that will solve everything.

Hon N.F. MOORE: The Government is happy with the additions to the motion, but will debate the motion on its merits in due course.

Ruling - By the President

The PRESIDENT: So that I can unravel some confusion that may be in the minds of some members, the direction I gave when the Leader of the Government commenced was that members who have not spoken to the main question will be speaking to the main question and the two amendments when they speak. Those members who have spoken to the main question will be speaking to the two amendments.

The point I am making is that I will put the question on the second amendment, then on the first amendment, then on the original question. It becomes a bit contradictory if members did not speak on the main question as did the Leader of the House and I tell him he must speak to the whole box of tricks. He cannot expect that someone else who follows him, who has already spoken on the main question, can have two shots at the amendment.

Debate adjourned, on motion by Hon E.J. Charlton (Minister for Transport).

MOTION - NATIVE TITLE

Appointment of Select Committee

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.10 pm]: I move -

That -

- (1) A select committee of five members, any three of whom shall constitute a quorum, shall be appointed.

- (2) The mover be the chairperson of the committee.
- (3) The committee be appointed to inquire into and report on -
 - (a) the impact and effect of native title rights and interests within Western Australia;
 - (b) how non-Aboriginal and Aboriginal interests can be maintained and enjoyed consistent with the observance and respect for the rights of Aboriginal people and the wider needs of all of the people of Western Australia;
 - (c) the efficacy of current processes by which conflicts or disputes over access or use of land are resolved or determined; and
 - (d) alternative and improved methods by which these conflicts or disputes can be resolved, with particular reference to the relevance of the regional and local agreement model as a method for the resolution of conflict.
- (4) The committee have the power to send for persons, papers and records and to move from place to place.
- (5) The committee report to the House not later than 28 August 1997, and if the House do then stand adjourned the committee do deliver its report to the President who shall cause the same to be printed by authority of this order.

I introduce this motion without wanting to play politics with this vital issue for the future of Western Australia. No question before the Western Australian community, the Western Australian Parliament or the Western Australian Government is as fundamental as the issue of native title. The native title issue is relevant to the future of all Western Australians, and the resolution of that issue is of enormous importance. Members know the history of this matter. A decision of the High Court produced a result by which the common law rights of native title holders are recognised at law, and that decision required a legislative response. Consideration is being given to how the federal legislation can be amended to ensure that it works.

Nobody disputes the analysis of that legislation that sees it as defective. It is not working adequately to meet the needs of any section of the Australian community - Aboriginal or non-Aboriginal, industry generally, the mining or pastoral industry, or the community at large. In view of those circumstances there is a universal demand that the legislation be further amended in the national Parliament. The State Government kindly gave to the Opposition today a briefing on these matters.

I express to the Government my appreciation for that briefing. Senior officers of the Ministry of the Premier and Cabinet who deal with native title gave an outline of where they see the issue unfolding in the near future. They summarised clearly for us many of the issues. Some of those issues are before us in the media. They include a recognition of the responsibilities the Prime Minister has on his plate as he flies off to China. He must tease through various arguments that have been put before him on possible amendments to the native title legislation.

Australian Labor Party members know that the acid is on them as well in the national Parliament. Whenever the Federal Government makes a decision on this issue, the federal ALP will be in a critical position in the Senate in deciding how to deal with those amendments. There is a real determination by our federal leadership to stay abreast of the issues that have emerged around native title and to see what must be done to make the legislation work on the national stage. Similarly, at the state level we are under no illusion that as a result of whatever changes are necessary on the national stage, inevitably a need will arise for changes to the Statutes of Western Australia. Those legislative changes will come well after 22 May when the Government will no longer have control in its own right on the floor of this House. That is one of the reasons I am passionately convinced that government and opposition members must ensure they are equipped with all the facts on how to unravel the complexities that are before us.

Members opposite and members on my side of the House are accustomed to my moving confrontationist motions. I believe in the theatre of politics. I believe in being confrontationist when I need to be. That is how I see my role when I am in the Parliament wanting to express vigorously in theatrical terms the divergent viewpoints in the community. This is not one of those occasions. This is an occasion on which I will deliberately turn away from that approach and address government members, who have the opportunity to make a decision on this issue.

The native title issue will come before this Parliament in the future. In that context we as a House must know all the elements essential to the consideration of the legislation that comes before this place. The resolution of these questions must be achieved expeditiously. The native title issue cannot be put off forever. Consultation must be undertaken with industry and the community - with the Aboriginal community especially, but also with other sections of the Western Australian community that are intimately affected by the resolution of the native title issue. I am

conscious that industry, and some sections of the community generally and the Aboriginal community have an enormously deep knowledge of what is going on in the day to day deliberations aimed at the resolution of the native title issue.

Parliamentarians on both the government and opposition benches have a chance to stay abreast of some of the detail of the issue. Ministers with specific responsibility have the opportunity to stay abreast of much more of the detail. In those circumstances, it is important that all of us in this Chamber have the opportunity to be on top of this matter.

What do I have in mind? I have moved to establish a select committee to inquire into the native title issue facing Western Australia. I propose a five member committee. I have in mind a select committee with a government majority; that is, three government members. I hope the opportunity will be available for a couple of non-government members to contribute to the work of that committee. I propose to offer my services to chair the committee. It is unusual for a Leader of the Opposition to make that offer. However, it is done in recognition of two things: Firstly, by function of my background which has, for many years, been associated with these questions; and, secondly, it is a statement of how important the Opposition believes this issue to be. The resolution of this issue deserves the attention of a Leader of the Opposition. Further down the track the Opposition will have to deal with legislation changing the regime which operates in Western Australia to accommodate the changes which will occur at a federal level.

I had in mind that the House establish a select committee on which there would be a government majority. I was hoping that the government majority would comprise members who would be available to study thoroughly the issues presented to the committee on the native title question. It will be necessary to call for submissions from the wider community and industry. Members of the committee will have the opportunity to visit parts of Western Australia to see some of the good things which this Government is doing in its attempt to resolve some of these questions.

It is unusual for me to give out bouquets to this Government, but I acknowledge that some good things are happening in the field of conflict resolution.

Hon N.F. Moore: Are you saying nice things because you want an extension extend beyond 3.30 pm?

Hon TOM STEPHENS: It will not take me that long to say all the nice things that can be said.

Some good things are happening in relation to Forrest River, which involves the Oobulgurri Aboriginal Association, in an attempt to resolve the issues. I am watching the developments quite closely. I understand that good things are happening with the spinifex agreement - I hope I have the terminology right - which involves an area in the Western Desert. In addition, good things are happening around Broome, with the tacit approval of the State Government. Government members should be exposed to the reality of what is happening. It does not entirely deserve the negative picture I regularly present about its track record. This Government does have a significant negative track record in many areas, but I am outlining some of the positive things it is doing which need to be built upon.

The Government is faced with some intractable problems. The Ord River area presents substantial difficulties for any Government. There are clashes of personalities and competing interests in a particular valley which make it difficult for this Government to resolve the issues. However, there must be resolution for the sake of all Western Australians, including the Miriung and Gajerrong peoples of that area. Those issues are important to the future of the people of the north east Kimberley.

I have in mind a select committee on which there would be three government members and a couple of opposition members. I am conscious that there is an opportunity for the proposed committee to draw on some experience that the Aboriginal community continually states is of fundamental importance to members as they try to resolve these issues.

The Aboriginal people talk about the experience of British Columbia, where, they say, there has been a great breakthrough in the resolution of the native title issues facing that province. Members know that the Federation of Canada has been confronted with a similar experience to Australia. I think it was in 1967 when the Supreme Court of Canada, when Trudeau was Prime Minister, brought down a native title judgment similar to the Mabo judgment, and it had the effect of imposing a recognition of the native title regime across the provinces which are part of that federal system.

It is interesting that it was Premier W.A.C. Bennett, a conservative Premier of British Columbia, who bitterly fought the judgment of the Supreme Court and said it would be disastrous for his resource-rich State. He questioned how the High Court, which was based on the east coast, would know how to resolve these questions. Nearly 30 years later his son became Premier of British Columbia, the son at first also espoused the same rhetoric as his father in vilifying the High Court on the east coast. As the litigation proceeded he gave up in desperation and said that British Columbia could not continue forever with cases in the courts. For nearly 20 years his Government had been fighting

native title issues and he said some arrangements must be made that would work for all British Columbians. The result was that arrangements are now being struck which are to the benefit of that resource-rich province.

Hon B.K. Donaldson: It has taken 15 years to reach that stage.

Hon TOM STEPHENS: In Western Australia we must turn it around much faster. The regular statements made by the Leader of the House and his colleagues about the difficulties with which this State is faced are not empty rhetoric. Members on both sides of the House have an obligation to join with the community - Aboriginal leadership, industry leadership and commerce - to find a way through. Much of the work is being done in Canberra in a fairly substantial and reasonable way. The critical question is: What will the Prime Minister do with the legislation? When a decision is made, many of this State's Statutes will have to be amended. In that circumstance, this Government will be faced with deciding whether it will re-appropriate the native tribunal process to make it a state regime, thus taking it away from the control of the Federal Government, or bringing the system, established under the federal legislation, under a state regime to accommodate the fact that land administration is primarily a state responsibility as are mining and other issues.

It will be necessary to have a regime which will result in the smooth running of this process for all landholders, including native titleholders and holders of mineral tenements and pastoral leases. These people's interests will be better served by a move to a state process. It is something new for me to be making these statements; it is different from the position I have previously adopted. I am not the font of all wisdom on this question and I am one of the people who wants to participate in a select committee process with government members to ensure we all learn from it.

We must find a way to be ready for the resolution of these questions. The Government will need to introduce legislation. Let us not be caught flatfooted. I do not want to be part of an Opposition which merely obstructs that legislation. I want to be ready and I also want the government members to be ready to embrace the necessary changes which are heading our way. To do this, I beg favourable consideration of my proposal. I acknowledge that my motion will now be seconded and the debate will be adjourned. I would love the opportunity to speak with any government member about my proposal before it is considered in the Government's party room. I urge members to give me that opportunity because I am genuine and serious about this process. I want the Government to have control of the issue by having the majority on the committee. I want all members to be involved in a learning experience before it is necessary to debate legislation to tackle this question. If members believe in that, we will be able to deal properly with this issue.

Debate adjourned, on motion by Hon Muriel Patterson.

METROPOLITAN (PERTH) PASSENGER TRANSPORT TRUST AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon E.J. Charlton (Minister for Transport), and read a first time.

Second Reading

HON E.J. CHARLTON (Agricultural - Minister for Transport) [3.30 pm]: I move -

That the Bill be now read a second time.

The purpose of this Bill is to provide for greater flexibility in the appointment of members to the Board of the Metropolitan (Perth) Passenger Transport Trust, which is now more commonly known by the commercial name of MetroBus. The amendment continues the implementation of the Government's transport policy to improve MetroBus's efficiency by removing unnecessary restrictions on the appointment of trust members and to ensure MetroBus can meet all necessary demands in a competitive transport operation.

The composition of the trust, as determined under the current Act, served a time when the sole provider of public transport was a bureaucratic organisation in a relatively unchanging environment. Perth now has a number of providers of public transport operating in a competitive and ever changing environment. Given these circumstances, the provisions of section 7(4) of the Act are unnecessarily restrictive, and in the case of section 7(4)(b) irrelevant.

It is also important that trust members be sufficiently independent in their judgment, have objectivity, skills and experience and the desire to improve the trust's effectiveness and not be constrained or limited due to other conflicting interests. This policy has been consistently applied to all boards across the Transport portfolio.

The amendments contained in the Bill are necessary to provide the flexibility for the trust to comprise members who have the necessary skills, knowledge and ability to support MetroBus's continuing efforts to operate in the competitive, commercial environment. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

LAND ADMINISTRATION BILL

Introduction and First Reading

Bill introduced, on motion by Hon Max Evans (Minister for Finance), and read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [3.35 pm]: I move -

That the Bill be now read a second time.

It gives me great pleasure to introduce the Land Administration Bill. This Bill modernises the administration and management of crown land in Western Australia. Crown land is a valuable community asset - it comprises approximately 92 per cent of the land mass in this State.

Crown land has been administered under the Land Act which was enacted in 1933. More than 60 years have elapsed since its passage. The principles set up in the Land Act are now out of step with land concepts and processes understood by the public. Dealings in crown land have been updated and regularised to reflect many of the processes used in relation to freehold land. The Land Act has been repealed but most of the provisions have been brought across and incorporated in the Bill.

In this Bill, all processes relating to the survey of boundaries for crown land, reserving crown land in the public interest for a specific purpose, and the disposal of interests in crown land, including the sale into the freehold, have been codified under the administration of the Minister for Lands.

The administration of crown land presently set out in a number of Acts, has been consolidated in this Bill. The provision of road tenure has been brought across from the Local Government (Miscellaneous Provisions) Act. The compulsory acquisition of land and its compensation provisions, currently contained in the Land Acquisition and Public Works Act, have been removed from that Act and placed in the Bill, with little change to established principles.

A comprehensive consultation process for a review of crown land administration commenced in 1988. Proposals identified from this process were drafted in a Land Administration Bill in 1995. The 1995 Bill was first introduced into the House by Hon George Cash on 6 December 1995 to provide the public with an opportunity to familiarise themselves with the new proposals and to comment on them over the parliamentary recess period.

During the public consultation period, written submissions were received from a wide range of government agencies, interest groups and other people. Briefings were also provided at the request of some agencies, local authorities and departments. Following the public consultation period, the 1995 Bill lapsed. Many of the comments received following the introduction of the 1995 Bill were incorporated in a new Bill introduced into the Legislative Assembly by Hon Graham Kierath on 26 June 1996. This Bill received its second reading on 27 June 1996. This Bill redrafted the 1995 Bill to improve its structure and to make it easier to read. Due to insufficient time to deal with this Bill before Parliament was prorogued last year, the 1996 Bill lapsed.

I must emphasise that the overall proposals and policies in the Bill currently before the House have not changed markedly from its 1995 and 1996 versions. In fact, this Bill is, subject to a few very minor amendments, identical to the 1996 Bill.

The consolidation of crown land administration in the Bill brought across many existing principles from the Land Act and other property related legislation. The proposals for crown land administration in the Bill have previously been detailed at the time earlier versions of this Bill were introduced into Parliament. I do not intend to repeat these proposals in any detail. Details of these proposals are set out in the second reading speech for the 1996 Bill.

Today, I intend to identify some of the significant proposals in the Bill that differ from administration of crown land under the Land Act and other state Acts and bring these changes to the attention of the members in the House.

Crown land registration: The Bill provides a register for crown land under the Torrens system set out in the Transfer of Land Act permitting similar conveyancing procedures currently used for freehold land to apply to crown land. Under this system, all transactions affecting crown land must be registered to be effective. This single registration system will provide for the registration of interests in freehold land and crown land administered by the Minister for

Lands under the Land Act. It does not provide for the registration of mining tenements and petroleum rights and interests under the Transfer of Land Act. The Department of Minerals and Energy maintains a separate register for such rights and interests under the Mining Act.

There are certain Acts that take crown land outside the operation of the Land Act. Dealings in crown land that are presently outside the operation of the Land Act cannot be registered under the registration system proposed in the Bill. The purpose of this Bill is to set up the registration system for all crown land under the Land Act. Later, it is intended to extend the single registration system proposed in this Bill to cover other crown land administered by other state legislation. A new Bill, currently being considered for introduction following the passage of this Bill, will ensure that crown land currently taken outside the operation of the Land Act will also be made subject to the registration system proposed in the Bill. The benefits of having one central register for all crown land in a computer-based system maintained by the Department of Land Administration will be considerable. In this Bill, there will be two main types of titles for crown land -

- (a) Certificates of crown land title: These are titles for crown land showing interests that are indefeasible and guaranteed under the Transfer of Land Act.
- (b) Qualified certificates of crown land title: These titles will be issued where all the interests on that title are not yet known or need to be reviewed before the interests can be guaranteed.

Both types of crown land titles can be created for parcels of crown land, and will be issued in the name of the State of Western Australia. There will be no crown land titles created for roads and unallocated crown land. Unlike the freehold system, no duplicate titles for crown land will be issued. Land, the subject of a crown land title or a qualified crown land title, is owned by the Crown, and duplicate titles are not required. All rights, interests and encumbrances affecting each parcel of crown land will be endorsed on a CLT or QCLT, and photocopies of these titles showing all dealings affecting a parcel of crown land will be readily available through the normal searching facilities at DOLA. There will be a transitional period to collate all pre-existing documentation of crown land interests and endorse that information onto separate CLTs maintained on a land register administered by the Registrar of Titles.

Crown land conveyancing: The devolution of responsibility for administrative functions concerning the crown estate from the Governor in Executive Council to the Minister for Lands is a major change proposed in the Bill. This permits the introduction of more efficient and effective practices and enables more timely decisions to be made by the Minister without relying on the Executive Council and gazette publication procedures. The present process of issuing a crown grant on the sale of crown land into the freehold has been replaced in the Bill by a normal transfer of land document. The purchaser will receive a certificate of title for the land against which encumbrances can be immediately registered. Instead of gazetting ministerial decisions, the Bill proposes that orders made by the Minister for Lands will be registered on a certificate of crown land title. The order of the Minister is not subsidiary legislation within the meaning of the Interpretation Act, and the terms of that order will take effect upon registration. Once registered, these orders can be searched by any member of the public on DOLA's land information system. There are powers to lodge positive and restrictive covenants and memorials - which constitute a charge registerable against land - including warnings of hazards or other factors affecting land, against certificates of title for crown land and freehold land - where prior agreement has been reached with the registered proprietor of that freehold land as to the use of that land. An important requirement of this conveyancing process is the prior approval in writing of the Minister for Lands before any person assigns, sells, transfers, mortgages or otherwise deals with an interest in crown land.

Crown land disposition: The Bill provides greater flexibility enabling the Minister for Lands to dispose of crown land with accountability through public advertising and competition when crown land is released. Public access to crown land information will be available and will be similar to freehold land information. Disposition of crown land under the Bill will continue to be subject to statutory and administrative approvals and clearances under other legislation. For example, relevant approvals under the Mining Act and Town Planning and Development Act will still be required and regard will still be had to other issues including conservation, environmental, Aboriginal and heritage issues. Also, the Minister must consult with local governments before exercising powers in relation to crown land under the Bill. The Bill is also subject to the Commonwealth Native Title Act where any claim to native title may exist. In addition, the general powers of the Minister to deal with land can be delegated to officers within DOLA and to other prescribed persons under the Bill.

Definition of "crown land": This Bill has widened the definition of "crown land" currently set out in the Land Act. Crown land in the Bill is defined to mean all land other than freehold land. It will now specifically include land within the limits of the State that form the airspace, seabed and subsoil of the coastal waters of the State as defined by the Commonwealth Coastal Waters (State Powers) Act. Also, the common law view of accretion, reclamation

and erosion of land has been clarified. In a canal development in tidal waters, any freehold land that becomes inundated remains as freehold land unless it is given up to the Crown as a condition of the subdivision.

Subdivision and development: The Minister's ability to subdivide and develop crown land intended for sale into the freehold will, under the Bill, be subject to the normal processes under the Town Planning and Development Act as is the case for a private developer of freehold land. This is consistent with national competition policies.

Reserves: Crown land reserved for a designated purpose is currently vested in local governments and other incorporated bodies and departments under the Land Act. All crown land reserved under the Bill will be placed, by a management order, under the care, control and management of management bodies. The Bill now uses the term "management orders" to replace the term "vesting orders" used in the Land Act. There is no difference in meaning between a vesting order under the Land Act and a management order in the Bill. For example, a management order, like a vesting order under the Land Act, is not an interest in land. A management order is a statutory right to manage and control crown land in accordance with the management order, the Bill and other legislation. The land the subject of that management order cannot be sold or transferred into the freehold without the consent of the Minister for Lands. This change in terminology will not in any way affect the management powers available to local governments, state authorities and other management bodies that currently hold reserve land.

The revocation of a management order removes the control and management of crown land from that management body in exactly the same way as the cancellation of a vesting order under the Land Act. Despite that revocation, any interest created under that management order, such as a lease or licence, will continue to operate with the Crown and may be otherwise varied with the consent of that lessee or licensee. Management orders in the Bill can be revoked in three instances: Firstly, by surrender of that management order by the management body; secondly, where the land the subject of a management order has not been appropriately managed; and thirdly, where the management order may be revoked in the public interest. No compensation is payable for the revocation of a management order in the first two instances. Where a management order is revoked in the public interest, compensation may be claimed by a management body only for improvements lawfully made on a reserve and not for the land or the loss of any earning capacity from the land.

Sitting suspended from 3.45 to 4.00 pm

Hon MAX EVANS: Under the Land Act, there are three classifications of reserves: Class A, class B and class C reserves. The classification of reserves has been simplified. Reserves created after the commencement of the Bill will have only one classification: Class A reserves. All other reserves will be known simply as reserved land.

Only 46 class B reserves remain. This classification has not been used recently and is no longer meaningful. In the transition from the Land Act to the Land Administration Act, existing class B reserves created under the Land Act will be saved and retained. These reserves can be cancelled or amended only under the provisions of the repealed Land Act. Class C reserves under the Land Act are reserves that are neither class A or B reserves. Class C reserves will be known simply as reserved land and no classification is necessary.

Provision has now been made for all amendments to class A reserves, national parks, conservation parks and class A nature reserves to be advertised in a newspaper circulating throughout the State to ensure that all interested bodies are made aware of the proposed amendments to such reserves. This provision to advertise will be in addition to any detailed consultation process that will already have been undertaken with the management body and the relevant local government body. These bodies will have prior knowledge of any proposed amendments.

Land required for public utility purposes up to 1 hectare or 5 per cent of the reserved land, whichever is the lesser, will be able to be excised from a class A reserve by order of the Minister. Other minor amendments already authorised under the Land Act and carried forward in the Bill are the dedication of roads and the adjustment of boundaries on class A reserves that may result in either an increase or decrease in the area of the class A reserve. The adjustment of boundaries occurs mainly in relation to plans that have been drawn up by calculation. Such plans are subject to survey and when a survey is then undertaken, particularly in remote areas, it is usually necessary to adjust boundaries and areas to accord with the survey plan.

All these amendments will be administratively referred to as minor amendments. Every other amendment is a major amendment. In the case of minor amendments to class A nature reserves, conservation parks and national parks, the consent of the Minister for the Environment is required in the first instance.

The Government recognises the importance of class A nature reserves. Major amendments to these reserves will be undertaken only by an Act of Parliament. Conservation parks and national parks vested in and administered by the Department of Conservation and Land Management will continue to be amended by an Act of Parliament. Major amendments to class A reserves will be effected by tabling a proposal in Parliament. If no disallowance motion is

lodged within 14 sitting days of tabling, the proposal may proceed. If a disallowance motion is lodged and that disallowance motion is not dealt with within 30 sitting days, the proposal will lapse.

Roads: The administration of road tenure has been brought across from division 1 of part XII of the Local Government (Miscellaneous Provisions) Act with little change in its principles and consolidated in one Act.

Mall reserves: A new form of land tenure has been created. The Bill now empowers the Minister to create and cancel mall reserves over crown land, with associated management responsibilities and leasing powers. These provisions are new and the outcome of extensive discussions with relevant parties, particularly with regard to the Hay and Murray Street malls. Mall reserves will ensure continued legal access to adjacent properties, and accessibility to providers of public utility services. On the cancellation of a mall reserve, the land the subject of that reserve will automatically become a public road to allow for continued public access.

Public access routes: There has been public demand for access across crown land in remote areas, usually affecting pastoral leases. There is now provision for the Minister to declare public access routes over crown land for access to remote tourism and recreation spots. Where a public access route crosses crown land held by an interest holder, the consent of that interest holder will be required and a public consultation process must be followed. During the consultation process, with the management of the tourist, recreation or other area to be accessed by a proposed public access route will be discussed. The Crown, the holder of that interest in crown land over which the access route crosses, and the local government managing that crown land, will be exempted from liability for any loss, injury or damage suffered by members of the public resulting from the use of these access routes.

Public access routes will likely be existing tracks that will be suitably signposted to give directions as well as informing members of the public of their liability when using the routes. There will be no requirement to develop and maintain these routes.

Sales, leases and licences of, and profits à prendre for crown land: The powers of the Minister to deal with crown land have been expanded and will now be more flexible. The Minister's powers have been updated to include normal commercial alternatives to the powers to sell or lease crown land under the Land Act. These powers will be subject to accountability through public advertising and competition.

Sales: The Minister will be able to sell crown land by auction, public tender or private treaty, arrange ballots, call for expressions of interest, sell crown land through agents, subdivide and sell crown land and enter into joint venture developments. The granting of freehold land under the Land Act for either no consideration or at a reduced purchase price to community groups for a particular purpose - more commonly known at present as a crown grant in trust - has been updated and will be a form of conditional tenure land. This process of transferring the fee simple interest in crown land subject to positive or restrictive covenants registered against the title will be more efficient and consistent with current freehold conveyancing processes. This process will replace the present provision under the Land Act for granting crown land subject to conditions.

Where such conditional tenure land is sold by a mortgagee, the Bill provides for the distribution of the mortgagee's proceeds of sale. To ensure that land transferred from the Crown in such circumstances is protected where a mortgagee's power of sale has been exercised, the Bill provides that the proceeds of such sale are applied, firstly, in reimbursement of the Crown's equity in the current market value of the land before the payment of any secured mortgagees and other costs and expenses associated with that sale.

Leasing: The Minister will be able to lease crown land by auction, public tender or private treaty, lease with option to purchase, renew, extend and vary leases and lease for progressive land development. The Bill provides for a more commonly accepted tenure known as a conditional purchase lease. This is a lease of crown land for a fixed term subject to rental payments that will be taken as instalments in part payment of the purchase price. The lessee acquires freehold title to the leased land on completion of certain development conditions set out in the lease payment of the purchase price.

This tenure is quite different from existing conditional purchase leases under the Land Act that are limited to leases for agricultural purposes only. Existing conditional purchase leases will be saved and transitioned into the Bill on the repeal of the Land Act.

Other sales and leasing provisions: The Minister's ability to grant leases and transfer crown land into the freehold for the purpose of advancing the interests of Aboriginal persons under section 9 of the Land Act has been retained and carried forward into part 6 of the Bill. The Bill clearly provides that leases and easements over crown land may co-exist with mining tenements, where the approval of the Minister for Mines has been obtained.

Provision for small parcels of crown land that are unsuitable for retention as a separate crown lot or location to be amalgamated with adjoining land has been brought across from the Land Act.

The Minister has now been empowered to approve licences and profits à prendre. This replaces the present informal arrangement of implementing certain rights to crown land by way of correspondence.

Pastoral leases: Pastoral land tenure reform has been drafted into the Bill to conform with the requirements of the Commonwealth Native Title Act 1993. Contrary to earlier proposals for the reform of pastoral lease tenure, the Bill cannot provide for perpetual tenure. Legally, a grant of perpetual leases to replace existing leases, which all expire in 2015, may be an impermissible future act under the Native Title Act.

Following the High Court decision of *Wik Peoples and Thayorre People v State of Queensland* which was handed down in December 1996, any proposal for the grant of perpetual leases in the future will need to take into consideration proposed action by both the State and Commonwealth Governments.

The Pastoral Board under the Land Act has been renamed the Pastoral Lands Board and has an increased membership structure comprising a chairperson, three pastoral industry members, the Director General of Agriculture, the Chief Executive of the Department of Land Administration and a government employee with expertise in flora, fauna or land conservation management.

New pastoral leases will be limited to a maximum term of 50 years and renewed pastoral leases may be extended to a term no greater than that granted under the existing pastoral lease. This restriction was created by the provisions of the Native Title Act and will result in extensions of leases for terms varying between 21 and 49 years.

The powers and functions of the board have been expanded to enable the board to develop policies for the prevention of rangeland degradation.

Rent and review of rent for pastoral leases will be a ground rent determined by the Valuer General. In making this determination, the first of which will occur on 1 July 1999, and thereafter at five yearly intervals, the Valuer General will be required to consult the Pastoral Lands Board on the economic state of the pastoral industry. Any rental determination by the Valuer General may be appealed by the pastoralist under the appeal provisions contained in the Valuation of Land Act. Increases in rent for pastoral leases may be phased in at the discretion of the Minister. This can be done only by regulation. The Minister will have the power to delay, reduce or waive pastoral lease rent in the circumstances of a natural disaster, and where the pastoralist is facing economic hardship due to economic circumstances outside his control. This provision will not permit the delay, reduction or waiver of rent if the pastoralist is suffering economic hardship due to the pastoralist's own mismanagement.

Permits to use pastoral lease land for non-pastoral purposes may be granted by the Pastoral Lands Board to permit diversity of use over pastoral lease land which is both improved and enclosed. In addition, the non-pastoral lease activity must comply with all the requirements of environmental and conservation legislation. Permits for non-pastoral activities will not be granted where the non-pastoral activity is greater than the pastoral activity on the land. Where major non-pastoral projects are proposed on pastoral lease land, that portion of the pastoral lease land affected by that project will be excised from the pastoral lease. A new lease for that non-pastoral project will be granted, subject to native title and other considerations. Permits will also be granted for non-pastoral activities such as in the case of pastoral-based tourist activities where the Pastoral Lands Board is satisfied that those activities are purely supplementary to the pastoral activities on the land.

A fee will be charged for the issue and renewal of the permit. In addition, rental will be charged for the land occupied for the purposes of the permitted non-pastoral activity. That rental may be at a higher rate than the rental for the pastoral use of the land, especially if the non-pastoral activity is a higher and better use of the land. No further fees will be charged for the granting of a permit.

Pastoralists will not be required to include in their annual returns their gross and net incomes in relation to areas affected by a permit as originally proposed in the 1995 Bill. However, pastoralists will be required to provide annual returns in respect of stock numbers.

Where an existing pastoral lease granted under the Land Act is not renewed on expiry, a pastoral lessee is entitled to be compensated for any lawful improvements constructed on the pastoral lease. The Bill now provides that the Valuer General will determine the value of those improvements. The Valuer General's determination may be appealed by the pastoralist under the Valuation of Land Act. This right to compensation will not apply to new leases granted under the Bill.

The Minister will be empowered to approve the grant of a new pastoral lease or approve the transfer of an existing pastoral lease, or part of it, where the area affected is more than 500 000 hectares, if he is satisfied that the grant or transfer will not result in a concentration of control of pastoral land that is contrary to the public interest.

Compulsory acquisition of land and compensation: The provisions of the Land Acquisition and Public Works Act dealing with the compulsory acquisition of land and compensation have been consolidated, with minor changes, into

the Bill. These provisions provide for a more detailed explanation of the taking process and rights of the affected landowner to now be given to the affected landowner at the first point of contact. More information must now also be provided in the notice of intention to take. The terms "set apart, compulsorily take or resume" used in the Land Acquisition and Public Works Act will be known in the Bill as the "taking" of land.

Under the Land Acquisition and Public Works Act, land was set apart, taken or resumed only on gazettal of a proclamation by the Governor through Executive Council. Land or interests in land in the Bill will now be "taken" on the registration of a taking order made by the Minister and lodged with the Registrar of Titles. The land or such interests in land specified in the taking order will then be converted into a claim for compensation.

Following public consultation requests and also to bring the time frames in line with the requirements of the Native Title Act, the period for objection to notices of intention to take land and the period to claim compensation in relation to the taking following the annulment or amendment of a taking order, has been extended from 30 days to 60 days, which can be further extended at the discretion of the Minister.

General provisions: The power in the Land Act enabling the Minister to order the removal of unauthorised structures over crown land, and control unlawful entry on and use of, crown land has been brought across into the Bill and the trespass provisions have been tightened to cover a number of deficiencies in the Land Act that have been identified in practice.

The Bill now provides that claims for prescriptive rights cannot be made against crown lands under the Prescription Act.

There is now provision in the Bill limiting the liability of the Crown and authorities on unallocated crown land or unimproved reserves of crown land to damage, injury or loss suffered by any person.

The Bill also provides for warnings of hazards that are likely to affect the amenity or otherwise of crown land, to be notified on titles to that land. The Crown is not liable if the holder of an interest in the land suffers a loss as a consequence of the matter notified. General protection is given to the Minister, his delegate or a public officer in DOLA from any act done in good faith in performance of any powers under the Bill.

The private road closure process has been brought across from section 297A of the Local Government (Miscellaneous Provisions) Act. These roads, defined as private roads, can now be closed and dedicated as public roads under part 5 of the Bill, or disposed to adjoining owners. No compensation is payable for the land already designated in the planning process. Freehold reserves held in private ownership created in the planning process prior to 1962 and freehold land in redundant townsites will also be able to be dealt with in the same process as closing private roads, except that compensation may be claimed in these cases.

Appeals to the Governor: The original policy proposals contemplated the implementation of a separate appeal system to consider appeals against decisions made by the Minister in the exercise of his powers. Since then, the Government has commissioned a report reviewing the need for a single administrative law tribunal to reconsider administrative decisions for the whole of government. Commissioner Gotjamanos was appointed to draft that report. I understand that this report has been finalised and is being considered by the Attorney General. The Commission on Government has also reviewed this issue and has recommended that an administrative appeals tribunal should be set up in Western Australia to provide access to administrative review on the merits across the public sector. Bearing in mind the direction of government, it was considered inopportune to set up a separate appeal system for crown land related matters at this stage.

As an interim measure, the right of appeal to the Governor from a decision of the Minister in section 27 of the Land Act has been carried forward into the Bill. There is now a more structured right of appeal to the Governor against a decision of the Minister. This right of appeal will be available in five cases:

- forfeiture provisions;
- abandonment of a pastoral lease;
- cancellation of easements;
- setting of purchase price on surplus acquired land being disposed of; and
- removal of squatters.

In conclusion, I am pleased to say that this Bill provides a comprehensive revision of several major land related Statutes and lays down significant innovations in a modern, streamlined framework for a more efficient administration and management of crown land in Western Australia. It signifies a major step forward in a complex, difficult and, at best, little understood and antiquated area of land law. As stated earlier, the compulsory acquisition and compensation provisions in the Land Acquisition and Public Works Act have been consolidated in the Bill with minimal changes. A further review of these provisions based on public comments will be carried out in due course.

The Parks and Reserves Act, originally proposed to be consolidated in the Bill, was not considered appropriate following moves to set up a parks and botanic gardens authority to manage Kings Park and Bold Park. This new move is being closely monitored. Once the Parks and Botanic Gardens Authority Bill amending the Parks and Reserves Act has been finalised, it is proposed that the remaining provisions in the latter Act will then be integrated into the Bill.

The preparation of updated legislation affecting crown land administration has been an ambitious task. This Bill is a tribute to all persons administering crown land and will advance the future development of all land in this State.

I compliment those officers in DOLA who worked so hard on the Bill; other government agencies and the staff in the Parliamentary Counsel's office for their invaluable assistance in drafting this Bill currently before the House. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ACTS AMENDMENT (MARINE RESERVES) BILL

Introduction and First Reading

Bill introduced, on motion by Hon Max Evans (Minister for Finance), and read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [4.10 pm]: I move -

That the Bill be now read a second time.

Western Australia's 12 500 kilometre coastline is blessed with an abundant and diverse marine life. It plays a significant part in the quality of Western Australian life through being the focal point for many varied uses from recreation and tourism to conservation and industry. It cannot be overstated that our marine environment is deserving of a comprehensive and effective marine conservation reserve system, and this Bill will enable such a system to be established.

The measure represents an unprecedented strengthening in the protection of Western Australia's marine environment while providing certainty to users. This Bill will provide security for multiple use for future generations while safeguarding conservation, scientific and environmental values. It will set in place a comprehensive framework for the Government's strategy for enhancement, expansion and management of the State's marine conservation reserve system. The principles of this strategy were announced in July 1994 and published in November 1994 in the document titled "New Horizons in Marine Management".

As indicated in the "New Horizons in Marine Management" strategy, it is a matter of principle that the wise use of our resources must be balanced and must complement Western Australia's high environmental protection and management standards. This will be achieved by providing clear access guidelines for petroleum exploration and production, mining and other industries such as commercial fisheries, aquaculture and pearling and for recreational users of marine reserves. It is also necessary to remove uncertainty for those interests associated with existing and future investment in commercial ventures in marine reserves, and to minimise the potential for conflict between conservation and resource management and development.

Multiple use of our marine environment both inside and outside of reserves and the commitment to conservation of important and representative marine habitats in marine conservation reserves is consistent with the concept of ecologically sustainable development.

To establish the improved legislative framework necessary to put these principles into practice, the Acts Amendment (Marine Reserves) Bill will amend six Acts; namely, the Conservation and Land Management Act 1984, the Mining Act 1978, the Petroleum Act 1967, the Petroleum (Submerged Lands) Act 1982, the Fish Resources Management Act 1994 and the Pearling Act 1990. The operation of the Petroleum Act and the Petroleum (Submerged Lands) Act in marine conservation reserves will also be subject to amendments made to the Conservation and Land Management Act.

The Government provided an advanced draft of the Bill for comment to key peak interest and industry groups on a confidential basis. Careful consideration has been given to the comments and submissions received and, where possible, the Bill has been amended accordingly.

Conservation and Land Management Act: I now turn to the amendments to the Conservation and Land Management Act as provided in part 2 of the Bill.

Marine Parks and Reserves Authority: It is the Government's view that marine conservation reserves are deserving of, and should receive, more specialised management. This warrants a separate vesting authority for these reserves with members having skills particularly applicable to marine management and conservation. Response to the "New Horizons in Marine Management" strategy indicates that this view has broad community support.

A new vesting and ministerial advisory body for marine conservation reserves to be known as the Marine Parks and Reserves Authority will be established which will not only provide a focal point for community interest in the management and protection of marine conservation reserves and the marine organisms and habitats that they contain, but also provide the necessary oversight of the management of the multiple uses and benefits which we all expect to be available to us in the marine environment. It will be a function of this authority to have vested in it all marine nature reserves, marine parks and marine management areas.

The additional multiple-use marine reserve category foreshadowed in "New Horizons in Marine Management" is the marine management area. The existing category of marine park also provides for multiple uses in that recreational and commercial activities may occur provided that they are consistent with the conservation and protection objectives assigned to marine parks. The Marine Parks and Reserves Authority will have a role in marine reserve policy development, and will be responsible for management plans and overseeing their implementation by the Department of Conservation and Land Management and will provide advice to the Minister. The policy functions of the Marine Parks and Reserves Authority will not extend to the development of policies which review or otherwise seek to affect fisheries management.

The Marine Parks and Reserves Authority will have the power to develop policies to preserve the natural marine and estuarine environments of the State, outside of marine reserves; however, where these policies may impact on fisheries, aquaculture or pearling, they will be referred to the Minister for Fisheries for his consideration and appropriate action.

The Marine Parks and Reserves Authority will comprise seven members who will be appointed by the Governor on the nomination of the Minister. As a result of the significance of the State's aquaculture, fishing and pearling interests and their wide distribution in state waters, the Minister for Fisheries will be provided with the opportunity to recommend two persons for nomination as members of the authority as a matter of policy. Similarly, other portfolios with a significant interest in the marine environment, such as Minerals and Energy, will also be given the opportunity to make such recommendation.

This authority's membership will not be representative of sectoral interests or particular portfolios within government. Rather, its members will be appointed on the basis of their knowledge and experience or particular function or vocational interest relevant to the functions assigned to the Marine Parks and Reserves Authority. In considering appointments to the marine authority, every endeavour will be made to cater for all interests.

Public sector employees will not be eligible for appointment as members of the new authority. Although the Chief Executive Officer of the Department of Conservation and Land Management will be able to attend and participate in authority meetings, this will not provide ex officio standing or an entitlement to vote on any matter before the authority. The chief executive officers of other relevant departments, such as Fisheries and Minerals and Energy, will also be able to attend marine authority meetings on the same basis.

If the Marine Parks and Reserves Authority requires independent advice on a matter relevant to particular community interests or sectoral interests in the marine or estuarine environment, it is empowered to form temporary advisory committees of non-members to achieve this end. The schedule to the Conservation and Land Management Act is to be amended to provide this capability to the marine authority.

A key function of the Marine Parks and Reserves Authority will be to provide advice to the Minister and although the marine authority will have a significant measure of independence subject to the general direction of the Minister, the Minister will be able to act independently of the advice provided. However, where the Minister takes action contrary to that recommended by the authority, to ensure that the Minister's actions are fully accountable the Minister will be required to table a copy of the advice provided by the Marine Parks and Reserves Authority and his or her decision in respect of that advice in each House of Parliament within 14 sitting days of the decision.

Similarly, where the Minister has given directions in writing regarding the exercise or performance of the marine authority's function, the marine authority will be required to include the text of those directions in its annual report which must be tabled in each House of Parliament by the Minister.

A review clause will apply to the new authority; that is, the need for continuation of the Marine Parks and Reserves Authority will be reviewed by the Minister five years after the amendment Act becomes operational, and a report on that review must be tabled in each House of Parliament.

Marine Parks and Reserves Scientific Advisory Committee: A Marine Parks and Reserves Scientific Advisory Committee will be established which will have the responsibility of providing both the Minister and the Marine Parks and Reserves Authority with scientific advice on marine matters. This scientific advisory committee will have up to seven members appointed by the Minister.

Three government departments will each provide a senior scientific officer for membership of the scientific advisory committee; namely, the Department of Conservation and Land Management, the Fisheries Department, and the Western Australian Museum. Of the other members, one will be from a tertiary education institution or research institution in the State, one will be a scientist from outside government, and one or two members will be other scientists of abilities relevant to the marine committee's functions.

Notice of intent to reserve: Before establishing any new marine reserves, the Government is committed to assessing biological and other natural resources such as petroleum and minerals in candidate areas and implementing a rigorous process of assessing the impacts of establishing a new reserve before the notice of intent to reserve is published.

To enable possible impacts of marine conservation reserve proposals on those interests managed under the Fisheries and Mining portfolios to be properly considered, those relevant Ministers will be provided with a reservation proposal for their consideration and concurrence before a notice of intent to reserve is published.

Safeguards, concurrence and compensation: The matter of compensation has been raised in respect of the continued operation and entitlements of those authorised to operate under the fisheries and pearling legislation and the possible effects the passage of this Bill may have on those operations and entitlements.

I have already mentioned that the Minister for Fisheries' concurrence will be required before a notice of intent to establish a marine reserve is published. In so far as the Conservation and Land Management Act is to be amended, this will be the first point at which the Minister for Fisheries will have the opportunity to consider the possible impacts of reservation on fishing, aquaculture and pearling interests and, where applicable, the matter of compensation.

Other safeguards will be provided to the fishing, aquaculture and pearling interests in the Bill through similar powers of concurrence afforded the Minister for Fisheries which, in effect, amount to powers of veto. I can assure the House that every opportunity will be given for due consideration of the possible impacts of marine conservation reserves on fishing, aquaculture and pearling interests to be made.

Amendments will add the marine management area to those reserves for which land may be compulsorily acquired under the Land Acquisition and Public Works Act. I assure the House that the Government will give full consideration to all of the implications of establishing a marine reserve before reservation is progressed, as compulsory acquisition of land subject to an existing entitlement is seen as an action of last resort. However, if the acquisition powers are used to resume any pearling or aquaculture land lease, the due process provided in the Land Acquisition and Public Works Act enables compensation to be paid to those disadvantaged by such an acquisition.

I also advise that the Government has agreed that the matter of compensation generally will be addressed in respect of existing rights to renewal of authorisation and leases granted under fisheries and pearling legislation. To this end, the Minister for Fisheries will develop a procedure for dealing with potential adverse effects on the commercial value of such rights through the establishment of a marine nature reserve or an exclusion zone in a marine park. Further legislative amendments will be brought before the Parliament to provide for compensation measures applicable to the commercial value of existing rights under fisheries and pearling legislation that may be affected by passage of this Bill and its operation.

Information available with notice of intent: To provide for a more comprehensive and meaningful public consultation process prior to the establishment of a marine conservation reserve, amendments also provide that more information is to be available at the time notification of a proposal to establish a marine reserve is published. This will enable those whose interests may be affected by a reservation proposal to be better informed about the proposal at the outset of the reservation process.

This additional information must include an indicative management plan, a marine reserve's proposed management zones and whether it is intended that the reserve be made class A. Because of the statutory effect of management zones in marine parks, immediately after a marine park is created the management zones will be formally established as classified areas. The Marine Parks and Reserves Authority will have a significant role in the establishment of new marine conservation reserves, with the marine authority being required to advise the Minister before a notice of intent is published and also after the public submission period on proposals has closed but before reservation proceeds. The Bill will extend the minimum period of public consultation on marine reservation proposals from two months to three months. Reservation cannot proceed without the concurrence of both the Minister for Fisheries and the

Minister for Mines. This will ensure that any possible adverse effects of reservation on commercial interests will be given full consideration by government.

Access and permissible activities: An important change to be brought about through these amendments is the certainty that will be given to all interests in marine conservation reserves about the activities that may or may not be carried out in those reserves.

Marine reserves will be limited to a depth below the seabed of 200 metres. While simplifying access for directional drilling, any activity below the 200m limit will not create any impacts on the sea floor and the integrity of the marine reserves will be preserved.

Marine nature reserves: In the case of marine nature reserves it will be clearly stated for the first time that neither exploratory drilling nor production of petroleum can occur in these reserves where no previous rights to carry out these activities exist. Similarly, aquaculture, commercial and recreational fishing and pearling and hatchery activities will not be permitted to occur in marine nature reserves. The management of marine organisms in marine nature reserves is subject to the Conservation and Land Management Act.

Marine parks and marine management areas: With regard to marine parks where compatible commercial activities occur, there has been significant concern expressed that such undertakings are not adequately reflected in the purpose of a marine park as presently described in the Conservation and Land Management Act. This situation will be remedied and, in addition, a management zoning scheme providing for exclusion and permissible zones will be established for marine parks in respect of exploratory drilling for and production of petroleum, aquaculture, commercial fishing, recreational fishing and pearling and hatchery activity.

This management zoning scheme clarifies the extent of access to marine parks for important commercial and recreational interests while at the same time providing a management framework complementary to the conservation purposes of these reserves. There will be four management zones prescribed that may be applied in a marine park; namely, sanctuary, recreation, special purpose and general use zones.

In marine park sanctuary zones, recreation zones and certain special purpose zones, drilling for exploration and production of petroleum, commercial fishing, aquaculture and pearling and hatchery activities will not be permitted whereas in general use zones and other special purpose zones they may occur subject to the Acts under which these activities are administered. The special purpose zones where these activities will not be permitted are those where it has been declared by notice that the activity is not compatible with the zones' conservation purpose.

In marine parks recreational fishing will only be precluded by zoning from sanctuary zones, such special purpose zones where it has been declared by notice that this activity is not compatible with the zones' conservation purpose and where recreational fishing and another recreational activity are determined to be incompatible.

The operation of the petroleum legislation will prevail outside of the exclusion zones in marine parks that will be established by this Bill in the event that a conflict or inconsistency arises between the operation of that legislation in a permissible zone and the purpose of a marine park. This is consistent with existing provisions in the principal Act. This does not affect the operation of the Environmental Protection Act.

It is important to provide security to existing petroleum rights. Specific provision for the continuation of those rights and the expectation that they may, subject to environmental impact assessment requirements, proceed through to the production stage is included in the Bill.

Insofar as the activities of aquaculture and commercial and recreational fishing are concerned the Fish Resources Management Act will prevail as will the Pearling Act in respect of pearling and hatchery activities outside of marine park exclusion zones.

In a marine management area, if a conflict or inconsistency between the activities of aquaculture or commercial or recreational fishing under the Fish Resources Management Act or pearling under the Pearling Act and the purpose of a marine management area arises then those Acts will prevail.

These provisions for Acts to prevail under certain circumstances constitute significant protective measures afforded aquaculture, fishing and pearling interests in marine parks and marine management areas.

These amendments to the Conservation and Land Management Act will provide standing to aquaculture under the Fish Resources Management Act 1994 and pearling and hatchery activities under the Pearling Act for the first time.

However, I hasten to add that the event of a conflict or inconsistency with a marine reserve purpose will rarely occur, if ever, as I am confident that the significant safeguards provided to enable the Minister for Fisheries and the Minister for Mines to ensure that the interests of their portfolios are not compromised will prevent such situations from arising.

These safeguards relate to the establishment of new reserves and management zones and the approval of indicative management plans and management plans in respect of marine parks and marine management areas which require submissions of those Ministers to be given effect in order to proceed.

Marine reserves of the new multiple use reserve category of marine management area will be established for the purpose of protecting the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes. The management zoning scheme for marine parks will not apply in marine management areas but some management zoning may be used to separate conflicting activities and to protect areas of special importance. This will occur only after full consultation with stakeholders in marine management areas and through the management planning process provided for under the Act.

Operation of Environmental Protection Act not affected: It is important to note that these changes will not limit the operation of the Environmental Protection Act and that this is expressly stated in the Bill. This means, for example, that despite a proposal being put forward to carry out exploratory drilling for petroleum in a management zone of a marine park where this may be permissible, the full force of the Environmental Protection Act is not diminished and therefore the environmental impact assessment processes provided in the Environmental Protection Act will apply to such a proposal.

Management responsibilities: Marine organisms that are not subject to the activities of aquaculture and commercial and recreational fishing under the Fish Resources Management Act or to pearling and hatchery activities under the Pearling Act are subject to management under the Conservation and Land Management Act in marine parks and marine management areas. However, responsibility for fish stocks that are the subject of a fishery remains with the Fisheries portfolio irrespective of whether a particular fishery is for the time being operating in a marine park of a marine management area.

The Fish Resources Management Act and the Pearling Act prevail in all aspects of the management of recreational fishing, commercial fishing, pearling and aquaculture where those activities are permitted in marine parks. This is confirmed in the Bill. The marine park zoning arrangements have effect despite anything in the Fish Resources Management Act but in the event of any other conflict or inconsistency with marine park purpose and a provision of or activity authorised by the Pearling Act or the Fish Resources Management Act that relate to pearling, or to aquaculture, or to commercial or recreational fishing the latter shall prevail.

For the purposes of the Bill the expressions "and a provision of" or "an activity authorised by" include access to marine reserves for the purposes of fishing and aquaculture, fisheries research, the development of marine and fish related technology, and the management of fishing and aquaculture to address the impacts of fishing and aquaculture on the aquatic environment.

Management of nature-based tourism and recreation in marine reserves is the responsibility of the Department of Conservation and Land Management. Management of recreational fishing is the responsibility of the Fisheries Department.

Establishing management zones: Management zones are formally established as classified areas under the Conservation and Land Management Act. These provisions will be amended to provide for the zoning scheme applicable to marine parks. Because establishment of management zones in marine parks can have the effect of precluding activities which are subject to the administration of other legislation, the concurrence of the Minister for Fisheries and the Minister for Mines will be required before a management zone can be formally established as a classified area under the Act. Their concurrence is also required for zone amendment or cancellation. It is also important to note that proposed changes to management zones where the changes are not addressed in a management plan must be publicised and an opportunity given for public comment to be made on the proposal.

Approval of management plans: Under the present management planning provisions of the Act the National Parks and Nature Conservation Authority is required to submit a proposed management plan for a marine park to the Minister for Fisheries. This will change and be expanded so that the new Marine Parks and Reserves Authority will be required to submit proposed management plans for marine parks and marine management areas to the Minister for Fisheries and the Minister for Mines.

At the moment the Minister administering the Conservation and Land Management Act must be satisfied that a submission of the Minister for Fisheries on taking fish in a marine park has been given effect to in a management plan before providing approval to the plan. This provision will be amended so that before approving a plan, the Minister administering the Conservation and Land Management Act must be satisfied that effect has been given to the Minister for Fisheries' submission on commercial and recreational fishing, aquaculture and pearling and hatchery activities in respect of both marine parks and marine management areas and that consideration has been given to other matters in the submission relating to the administration of the Fish Resources Management Act and the Pearling Act.

Similarly, but for the first time, before approving a management plan the Minister administering the Conservation and Land Management Act will have to be satisfied that submissions on proposed plans for marine parks and marine management areas by the Minister for Mines have been given effect to in the plan where those submissions relate to mining and petroleum related activities and the administration of the Mining Act, the Petroleum Act and the Petroleum (Submerged Lands) Act.

These management plans are the final management plans and not those of an indicative nature released at the time a notice of intent to reserve Western Australian waters is published and made subject to public submissions prior to reservation. Therefore, in effect, all those with an interest in the management of marine parks and marine management areas will have a second opportunity to make their views known on management prescriptions, including zoning, for these important marine conservation reserves.

Continuation of the policy of full consultation with relevant portfolios will apply to the development of draft management plans before they are released for public comment and before approval of the final management plan and its publication occurs. In particular, the fisheries and mining and energy portfolios will be fully consulted about these plans.

Regulations: There is presently a qualification on the regulation-making headpower which prevents regulations being made under the Conservation and Land Management Act to restrict the taking of fish in a marine park. This qualification will be updated to prevent regulations being made under the Conservation and Land Management Act which would regulate taking relative to aquaculture or commercial or recreational fishing under the Fish Resources Management Act and similarly with respect to pearl oyster under the Pearling Act in both marine parks and marine management areas. The regulation headpower of the Conservation and Land Management Act will not be applied to provide for de facto control of fishing activities; for example, by way of regulating trawling where non-target species may be unavoidably taken as by-catch during trawling operations.

Licences and leases: Improvements will be made to the general procedures for granting and renewing licences and leases which facilitate the entry and use of land and waters subject to the Conservation and Land Management Act. These licensing and leasing provisions cannot apply to the activities of fishing, aquaculture and pearling which are subject to the jurisdiction of the Fish Resources Management Act or the Pearling Act. It will now be possible for broader approvals to be given so that certain kinds and numbers of licences or leases can be granted and, similarly, for renewals, transfers, cancellations, suspensions and variations of licence conditions to be granted and for renewal of leases to be approved where they are equivalent or similar in nature to changes already approved. This will remedy the present situation which requires that each and every one of these matters must be approved for each and every licence or lease even if they are exactly the same as those subject to previous approvals or constitute the most innocuous or minor amendment.

Taking of marine flora and fauna: Amendments applicable to the taking of flora or fauna without lawful authority in a marine reserve have been made to take into account the operation of the Fish Resources Management Act and the Pearling Act as they relate to the marine reserve purposes provided in the Bill and the operation of the Wildlife Conservation Act, which protects flora and fauna throughout the State. The opportunity has also been taken to increase the maximum penalty for the unlawful taking of flora or fauna in a marine reserve from the present \$1 000 to \$10 000.

Mining Act 1978: I now turn to the amendments made to the Mining Act provided in part 3 of the Bill. At the moment the Mining Act does not make express provision for dealing with the granting of mining tenements in marine conservation reserves but deals with mining in coastal waters in a general manner. For the first time recognition of the marine conservation reserves established under the Conservation and Land Management Act will be made through the amendments provided in the Bill.

For those in the community who are particularly concerned about mining in the marine environment it is important that it be recognised that these amendments are introducing constraints directly applicable to mining in marine reserves which do not exist at the moment.

With respect to the operation of the mining industry in the marine environment, the amendments will provide certainty in relation to the availability of access and permissible activities under mining tenements in marine reserves.

In respect of mining nature reserves and marine parks, the Minister for Mines will not be able to grant a tenement in these marine conservation reserves unless that Minister has the concurrence of the Minister responsible for the administration of the Conservation and Land Management Act to do so. Similarly, the Minister for Mines must also consult with and obtain the recommendations of the Minister for Fisheries and the Minister for Transport on mining proposals in marine nature reserves and marine parks. On the matter of granting leases for mining or general purposes under the Mining Act in marine nature reserves or marine parks, the amendments will prevent the Minister

for Mines from granting such leases unless both Houses of Parliament have passed a resolution giving their consent to the leases being granted. If resolutions giving consent are passed then the granting of a lease will also be subject to such terms and conditions as may be specified in the resolution giving consent.

In respect of the granting of a tenement in a marine management area, the Minister for Mines will be required to consult and obtain the recommendations of the Ministers administering the Conservation and Land Management Act, the Fish Resources Management Act and the Marine and Harbours Act before granting a tenement in these reserves.

It will also be provided that mining tenements and their associated entitlements which existed before a restricted area such as a marine nature reserve or an exclusion zone in a marine park is established will be preserved. Importantly, in restricted areas, any new tenement granted will not enable the seabed, land or subsoil to be disturbed. None of these amendments detracts from the operation of the environmental impact assessment processes under the Environmental Protection Act.

Petroleum Act: Part 4 the Bill provides for amendment to the Petroleum Act. A new requirement will be added to the Petroleum Act to provide that the Minister administering the Conservation and Land Management Act must be notified before any petroleum related concession is given for an area in a marine nature reserve, marine park or marine management area. This will ensure that these concessions cannot be granted without the Minister's knowledge.

Petroleum (Submerged Lands) Act: Similarly part 5 of the Bill will amend the Petroleum (Submerged Lands) Act to provide the Minister administering the Conservation and Land Management Act with a similar right to notification about petroleum concessions proposed to be granted under the Petroleum (Submerged Lands) Act in any marine reserve.

Fish Resources Management Act: Part 6 of the Bill provides for amendment of the Fish Resources Management Act. That Act has a number of provisions which are qualified in respect of marine nature reserves and marine parks, including those addressing designated fishing zones, fish habitat protection areas and exclusive licences. The qualifications placed on the operation of those provisions will now similarly apply to the new marine reserve category of marine management area.

With the introduction of prescribed exclusion and permissible zones in marine parks and formal recognition of aquaculture as a commercial use of similar standing to commercial fishing in the Conservation and Land Management Act, amendments are provided for the Fish Resources Management Act which will prevent authorisations being granted for those areas where aquaculture and commercial and recreational fishing are excluded under the amendments provided for the Conservation and Land Management Act in part 2 of the Bill.

The validity of an authorisation issued before an authorised activity is precluded by, for example, the establishment of a sanctuary zone in a marine park, will be maintained and an authorisation runs until its designated expiry date.

Complementary to the zoning scheme provided in the amendments to the Conservation and Land Management Act are provisions for the Minister for Fisheries to consult with and consider recommendations from the Minister administering the Conservation and Land Management Act with respect to the renewal of aquaculture licences. This consultation must take place when there is no management plan for a marine park or marine management area in operation when renewal is being considered. The decisions of both Ministers in this instance will take into account indicative management plans developed and approved as a result of the new notice of intent to reserve procedures and management plans developed and approved at a later date under the Conservation and Land Management Act.

In marine management areas and those zones of marine parks where it is permissible, the sites where aquaculture may be carried out may be subject to an aquaculture lease issued under the Fish Resources Management Act. This is a beneficial change to the policy which presently applies to the administration of this Act. This policy was described in the second reading speech presented to this House after introduction of the Fish Resources Management Bill. Now, instead of aquaculture leases being issued under the Conservation and Land Management Act in marine parks, both the lease and the aquaculture licence required to operate in the lease area will be granted under the Fish Resources Management Act. Within these arrangements, pearlers and aquaculturalists will now need to deal with only one agency, the Fisheries Department, for the issue of licence or lease instruments.

Granting of new aquaculture leases in these marine reserves cannot occur without the approval of the Minister administering the Conservation and Land Management Act. Renewal of existing leases may occur in accordance with the reserve management plan or, if no plan is in place, after consultation with the Minister administering the Conservation and Land Management Act. An aquaculture licence attached to a lease may be renewed for the life of the lease.

Licensees who have an aquaculture operation in a site within a permissible zone in a marine park or in a marine management area may be granted a lease over the same site - that is, granted a conversion of their existing entitlement to a lease - provided this action is consistent with the relevant management plan or, if there is no management plan in place, the grant of the lease can be made after the Minister administering the Conservation and Land Management Act has been consulted and that Minister's recommendations taken into account. All existing aquaculture licensees in marine parks are operating in a general use zone consistent with an approved management plan or a proposed plan and will therefore be able to seek the conversion of their licence to a lease with minimal impediment.

Some management costs will be incurred by the Department of Conservation and Land Management in respect of the presence of aquaculture and pearling and hatchery activities in marine parks and marine management areas impacting on other users of marine reserves. An amendment is provided in respect of the administration of the fisheries research and development fund which will provide the Minister for Fisheries with the discretion to apply the fund to defray such costs.

I have mentioned earlier with regard to existing provisions and the amendments being made to the Conservation and Land Management Act under part 2 of the Bill, that significant protection is provided to fishing, aquaculture and pearling interests in respect of their operation and the establishment, zoning and management of marine conservation reserves through powers of concurrence afforded the Minister for Fisheries.

Pearling Act: The final part of the Bill is part 7, which provides amendment to the Pearling Act. That Act applies to all Western Australian waters but does not make any provision for dealing with pearling and hatchery activities in marine conservation reserves. Similarly, the Pearling Act is not presently afforded recognition in the marine conservation reserve provisions of the Conservation and Land Management Act.

I have already mentioned that the Bill will amend the Conservation and Land Management Act to give standing to the Pearling Act in the marine conservation reserve provisions and will include pearling and hatchery activities in the exclusion and permissible zone scheme being introduced for the management of marine parks. The provisions for amendment to the Pearling Act are complementary to the standing of marine nature reserves, the management zoning scheme that will apply in marine parks and the standing of marine management areas.

Because of the nature of pearling concessions, the approval of the Minister administering the Conservation and Land Management Act will be required before authorisation is granted for new pearling and hatchery activities under pearl farm leases, licences or permits in those zones of marine parks where this may be permissible. Similarly, that Minister's approval will be required before such concessions are granted in a marine management area.

Renewal of pearling concessions in marine reserves will be subject to the same process as that applying to aquaculture renewals.

Licensees or permit holders under the Pearling Act operating in an allocated site within a permissible zone in a marine park or in a management area may be granted a pearl farm lease over the same site - that is, granted a conversion of their existing entitlement to a lease - provided this action is consistent with the relevant management plan or, if there is no plan in place, the grant of the lease may be made after the Minister administering the Conservation and Land Management Act has been consulted and that Minister's recommendation taken into account.

The safeguards provided in the Conservation and Land Management Act to fishing and aquaculture interests under the Fish Resources Management Act through powers of concurrence afforded the Minister for Fisheries similarly apply to pearling and hatchery activities under the Pearling Act.

The Government's commitment to conservation of the environment and the ecologically sustainable development of our natural resources is reflected in this Bill. The Bill will markedly improve the legislation applying to the protection and management of marine conservation reserves. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ACTS AMENDMENT (LAND ADMINISTRATION) BILL

Introduction and First Reading

Bill introduced, on motion by Hon Max Evans (Minister for Finance), and read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [4.53 pm]: I move -

That the Bill be now read a second time.

It gives me great pleasure to introduce this Bill. As members will appreciate, the proposals to modernise crown land administration have led to a substantial redraft of existing law. This has led to consequential amendments to many other Acts.

This Bill replaces the Acts Amendment (Land Administration) Bill 1996 introduced into the Legislative Assembly by Hon Graham Kierath on 27 June 1996. Due to insufficient time within which to deal with the Land Administration Bill and this Bill, this Bill lapsed following prorogation of Parliament last year. Any differences between this Bill and its 1996 counterpart have resulted from other legislation that was passed and proclaimed last year.

The Bill mainly sets out consequential provisions to other legislation following the significant proposals advanced in the Land Administration Bill which has been introduced in the House.

- (1) It establishes a registration system for crown land under the Torrens system of land registration by substantially amending the Transfer of Land Act.
- (2) It consequentially amends other Acts to reflect the proposals in the Land Administration Bill following the repeal of the Land Act.
- (3) It removes the compulsory acquisition, resumption and compensation provisions from the Land Acquisition and Public Works Act.
- (4) It amends other Acts that refer to the compulsory acquisition, resumption and compensation provisions in the Land Acquisition and Public Works Act to refer to parts 9 and 10 of the Land Administration Bill where these provisions have been drafted.
- (5) It removes the creation and dedication of roads, streets and ways from division 1 of part XII of the Local Government (Miscellaneous Provisions) Act 1960.
- (6) It amends other Acts that deal with the creation and dedication of roads, streets and ways under division 1 of part XII of the Local Government (Miscellaneous Provisions) Act 1960 to provide that the creation and dedication of roads will come under part 5 of the Land Administration Bill.
- (7) It provides for savings and transitional provisions for existing actions currently being dealt with.

This Bill provides advantages to support the proposals in the Land Administration Bill enabling one consolidated Act to codify all actions affecting crown land in this State. The Attorney General commends the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

RESTRAINING ORDERS BILL

Second Reading

Resumed from 12 March.

HON N.D. GRIFFITHS (East Metropolitan) [4.55 pm]: This Bill has the warm support of the Australian Labor Party in this House. The Bill has been anticipated for a considerable time. It brings before the House a number of positive measures which should greatly enhance our community. In fact, when the acid test of the Bill's merit is applied, it passes it easily. Of course, the acid test is whether the Bill is for the benefit of the people of Western Australia, and I have no doubt that taken as a whole and in substance, it is. There are some matters of detail in which I believe the Bill could be improved. I will deal with those in Committee. Those matters of detail do not detract from my support of the Bill, nor the support of my colleagues.

As its title suggests, the Bill deals with restraining orders. They have had a chequered history not only in Western Australia but in the other Australian jurisdictions, and they have not produced the goods. This Bill will give the use of restraining orders a greater chance of producing the goods. Restraining orders are only part of the area of policy which this Bill seeks to address, and I will deal with some aspects of that shortly.

In commenting on this Bill, I first wish to deal with what is arguably its most significant aspect. The Bill introduces a long awaited and welcome distinction between violent behaviour and nuisance behaviour with respect to the application of restraining orders. Currently, restraining orders are dealt with under part VII of the Justices Act. The operation of part VII of that Act has many problems, enumerated in many discussions and in many reports both to government and from government. Its deficiencies have been progressively recognised and have been the subject of many recommendations. That process has developed over a considerable period. In fact, it has been in the nature of a building block exercise that those who have come before us have added to our knowledge of this state of affairs.

[Questions without notice taken.]

Hon N.D. GRIFFITHS: Prior to question time I was referring to a significant part of the Bill; namely, the distinction between misconduct restraining orders and violence restraining orders. Currently, the behaviour sought to be restrained by misconduct restraining and violence restraining orders is dealt with in the same part of the Justices Act and there is no distinction between the two to the extent that this Bill seeks to make that distinction. That distinction is very important because of the effect of its failure in respect of the overall administration of restraining orders. I will take a little time to spell out that distinction because it is a fundamental aspect of this Bill.

The most significant area insofar as the general public is concerned - and I suggest insofar as we should be concerned - is the question of obtaining what will become a violence restraining order. That will revolve around whether there is a likelihood that the person sought to be restrained will commit a violent personal offence or there is a reasonable fear that such may occur.

A violent personal offence is ascertained by reference to the Criminal Code; in particular, part V of the code. I will refer to the relevant chapter headings in the code so that we have an overall picture of the type of conduct that is governed by the violence restraining order regime.

Part V of the Criminal Code is headed "Offences against the person" and it relates to marriage and parental rights and duties, and the reputation of individuals. Not all of that part of the code will be covered by this regime, but much of it will be; namely, that part which deals with assaults and violence to the person generally, matters relating to the preservation of human life, homicide, suicide, concealment of birth, offences endangering life or health, sexual offences, offences against liberty, threats and intimidation. Stalking is under the general heading of "Intimidation".

The difference between a misconduct restraining order and a violence restraining order is behaviour of a lesser kind; that is, behaviour characterised in the Bill as something which could reasonably be expected to be intimidating or offensive to the person applying for a restraining order and which would intimidate or offend, cause damage to property, or behaviour that is likely to lead to a breach of the peace. Many of those categories are dealt with in the wording of the relevant part of the Justices Act that currently prevails in respect of restraining orders.

However, there is a clear distinction between violence restraining orders and misconduct restraining orders in this Bill, and that is a very crucial aspect of it. It is important because, if the distinction is not made, it is to the detriment of those who wish to obtain what will be violence restraining orders in that it waters down the impact of seeking to obtain such an order in terms of both general public perception and the administration of justice. It lessens the impact of our mechanisms to protect those in need of violence restraining orders. However, at the same time, it makes more sinister than need be those who are the subject of misconduct restraining orders. Therefore, it is a very important distinction and arguably the most significant aspect of this Bill, although there are many other significant aspects.

Several matters flowed from this distinction. Violence restraining orders are envisaged to have a greater duration than misconduct restraining orders, one being for two years and the other for one year. Violence restraining orders, as one would expect, can lead to a greater penalty than a misconduct restraining orders. Violence restraining orders have in appropriate circumstances a provision for application for them to be made by telephone. That is not the case with misconduct restraining orders.

I wish to refer briefly to the overall scheme of the Bill. From that the House will see the significance of the distinction that I have pointed out. After dealing with the usual matters of preliminaries and matters of definition, the Bill goes on to deal with violence restraining orders, the grounds for a violence restraining order, matters to be considered by the court, and restraints on the person against whom the order is sought. It deals with firearms orders, the question of seizure of firearms, and duration. Consideration is given to telephone applications for violence restraining orders. The Bill spells out who may make applications and otherwise how they are to be made. In that context it is important to note that applications can be made by somebody other than the applicant. This has great relevance to the operation of violence restraining orders: In particular application can be made by a police officer. Questions of procedures when interim orders are made are dealt with.

The Bill goes on to deal with misconduct restraining orders and procedural matters such as mention hearings and final order hearings. It deals with the variation or cancellation of orders and restraining orders against children - a very important area of service that has given rise to many difficulties in the operation of the Justices Act with respect to restraining orders. It deals with breaches of restraining orders and matters relating to interstate restraining orders, which is the subject of legislation passed in the last Parliament. It then deals with relevant consequential amendments and transitional arrangements.

Violence restraining orders will be the subject of comments I propose to make in the rest of my observations on the Bill. Violence restraining orders deal in practice, largely, but not exclusively, with matters relating to domestic violence. Neighbourhood disputes can involve violence restraining orders, but mostly they deal with domestic violence. In that context, if people think that this Bill when passed - and it is a good measure - will resolve the issue

of domestic violence, they have got it wrong. This is fundamentally a law and order measure. It provides mechanisms which can lead to greater protection, but it does not and cannot address the causes of domestic violence or realistically the causes of the very high incidence of domestic violence. Nothing we do as agents of society, which I suppose we are in one sense, can affect the essence of human nature. We are concerned to minimise bad behaviour and encourage good behaviour. To put that in context I wish to mention some of the matters which have increased the incidence of domestic violence in our society. I hope that other measures will be forthcoming which will add to the good policy of this Bill because those matters would relate to the policy of the Bill.

First and foremost, the undermining of the family unit as the basis of our society is a primary cause. The most graphic illustration of that is the lost generation, or perhaps lost generations, of Aboriginal children who were taken away from their parents as a result of state policy and the effect it had and continues to have on their families. This is reflected in the incidence of domestic violence and other forms of antisocial behaviour. We as a society have to recognise that and, when we recognise it, we can deal with it. This Bill goes some way towards ameliorating the effects by putting in place certain mechanisms.

Some of my points will not necessarily be agreed to by all in this House or by everyone else. However, I should put forward my views on this subject, albeit briefly because I do not want to go too far away from the essence of the Bill. The increase in working hours and the fact that families spend less time together is not helpful. The fact that many parents are working longer, and often for less money, is to the ultimate cost of children and society. This is a matter of perception. There is a prevailing view in our society that it is all right to be predominantly selfish. It is the "I'm all right, Jack" approach. One view is that people are things to cost and merely part of some market mechanism. There is a very materialistic view of the world, which is related to the breakdown of family life. We are part of Australia and not isolated from the rest of the world. Western Australia has grown dramatically, particularly in the last two generations. The associations of community groups, whether sporting, cultural, religious or service oriented of any kind, have not kept up with the growth in our society. Therefore, those basic non-government supports are not what they were. That is part of the changing nature of our society. When societies grow very rapidly, it is not uncommon for there to be a general community dysfunction, as it were, which it seems is evidenced by a very high level of domestic violence. The curse of poverty is invariably the prime cause of misery. The primary cause of poverty is unemployment, which is instrumental in causing unnecessary dysfunction. It could be argued that it is also due to a failure to improve our laws. Not all families are Marriage Act families. We still do not have property laws for de facto relationships, where unnecessary incidents are often caused when things are not quite right.

Notwithstanding that, the Australian Labor Party warmly welcomes this Bill because of the enhanced protection that it offers. I regret that some of our political opponents used the Bill during its gestation to play unnecessary politics. This should not be a party political matter, but I will make some critical comments about my political opponents because they deserve to receive them. In the recent election, a number of coalition candidates carried on as though this Bill was the law and sought to make political capital out of this Bill. That was disgraceful. They misled the Western Australian people. I suppose they were allowed to get away with that because the media is fairly uncritical. I will not mention those political candidates who did that and those who endorsed the documents because I think they know who they are. That was very wrong.

I am also disappointed that the Attorney General's second reading speech gives the impression that a piece of legislation was passed in 1982, along came the Court Government in 1993, and nothing of substance occurred in this important area of policy during the period of the Burke, Dowding and Lawrence Governments. That is a wrong impression, and it is unbecoming of this Government. Its record is not as good as it should be with respect to this and associated matters, despite the firm foundation with which it was provided. For example, stalking is mentioned in the Attorney General's second reading speech. We still do not have before us the amendments to the stalking legislation that were proposed and trumpeted a year ago.

The Office of the Director of Public Prosecutions Western Australia Annual Report 1995/96 states at page 45, under the heading "Stalking", that -

The DPP has provided comment of proposed amendments to the stalking provision in the *Criminal Code*. The proposals seek to extend the operation of the legislation in order to cover the behaviour of non-malicious stalkers in circumstances where there is no direct evidence that the accused person intended to cause harm or fear to the complainant.

We have not seen that legislation yet. It was a live issue a year ago, and the DPP was asked to examine it. His annual report was, if I recall correctly, tabled in this House in October. In any event, it had to be presented to the Attorney on or before 30 September last year, and presumably he was provided well before that time with the advice to which the Director of Public Prosecutions refers. That issue has not been dealt with.

I have said in another context that the domestic violence unit of the Legal Aid Commission is not functioning as well as it could and that its operation is under threat. I do not need to go into that matter in detail. I note also an answer that was given to a question asked by my colleague Hon Cheryl Davenport yesterday about a significant program. That answer is evidence of the Government's failure to provide adequate support to those volunteer groups in our community which are involved in minimising the incidence of domestic violence. I accept that that matter is not in the Attorney General's portfolio, so I am not having a go at him personally. I am looking at the record of his Government and saying that when we try to make political points, we should not throw stones if we live in glass houses.

The Restraining Orders Bill, which we welcome, is a significant measure and we warmly support it. We note that it is due to the work of many people, irrespective of their political persuasion. It should not be seen or treated as a party political issue. People from this side of the House, in particular Dr Judyth Watson, have played a significant role in the development of policy to minimise domestic violence, raise the level of community concern, and get the Government to do something about the matter. In 1995, when the former Attorney General talked about amendments to the Justices Act, Dr Judyth Watson advocated that domestic violence issues should come under the one Act. The Government has gone a considerable way towards meeting that view.

This Bill adopts many measures that were proposed to government by people from a number of occupations and interests. It also adopts a number of the proposals that were advanced in the report of the Chief Justice's Taskforce on Gender Bias, dated 30 June 1994. However, it does not deal with all matters relevant to restraining orders, in particular violence restraining orders, as dealt with in that report. I will highlight some of those matters in order to encourage the current Government to continue to look at this area of policy with a view to improving the very good legislative regime which it has brought before the House. I will also refer to a number of aspects of that report which have clearly been adopted in this Bill.

It is a matter not just of legislation but of those people who will be dealing with the legislation at the coalface behaving in an appropriate manner. Those people will be police officers, magistrates and clerks of courts.

Sitting suspended from 6.00 to 7.30 pm

The PRESIDENT: I remind honourable members of a very important standing order. Once the bells are ringing no member who is in the Chamber can leave until a quorum is formed. I understand that a couple of members who were in this place when the bells rang have left the Chamber. That is highly disorderly. The consequence of this House seeking a quorum and not being able to get one would have been quite disastrous tonight.

Hon Bob Thomas: We would sit tomorrow.

The PRESIDENT: That is exactly right. I remind members that when the bells are ringing no member can leave the Chamber until a quorum is established.

Hon N.D. GRIFFITHS: One of the delights of being in this place is having one's speech interrupted by question time and then the dinner adjournment, particularly when one is not too far from concluding one's comments. I welcome it!

I mentioned that I proposed to refer to two aspects of the report of the Chief Justice's Taskforce on Gender Bias of 30 June 1994. First, I will demonstrate that some matters have not been taken up by the Bill and, perhaps, could not be taken up by it; and second, that this Bill owes much to the work of people involved in that task force, to people who carried out activities over many years prior to the task force and those people involved in activities after the task force.

The report of the subcommittee of that task force formed to examine restraining orders refers to a number of matters under the heading "Alternative legal remedies: civil versus criminal process". I will mention a few in passing, so the House has a taste for what is contained in this document. The obvious point is that a restraining order is easier to obtain than a conviction in a criminal process, and a reference is made to the standard of proof being the balance of probabilities. The Attorney General made the point in his second reading speech that the 1982 legislation was designed, among other things, to provide a mechanism which would afford protection to women. Members must bear in mind this is a report on gender bias, and in most cases women are the primary victims of domestic violence.

The 1982 legislation was designed to provide a mechanism which would afford women interim protection from violence or the threat of violence from their husbands or partners. It makes the point that the legislation was not intended to introduce an alternative, more lenient response to domestic violence, but that is how matters developed. This particular subcommittee had the view that criminal assault proceedings, not restraining orders, were the proper and preferred response to domestic violence and sexual assault - the other major area of violence against women. That part of the Criminal Code which goes into the definition of the conduct that will lead to a violence restraining

order being made is, of course, sexual assault. The subcommittee made the point, which is taken up by the Bill, that restraining orders were found to be over-used, too numerous and a source of frustration to police whose job it was to serve them. Lapses between an order being issued and served were a problem. Restraining orders in themselves were often ineffective in changing behaviour and there were problems in pursuing breaches.

At page 170 the subcommittee makes the point, among other observations, that although its recommendations are to do with making restraining orders more effective in protecting women from violence, the application of these civil remedies to a criminal offence is inherently flawed. I have a lot of sympathy for that point of view. Having said that, restraining orders have a place, and this Bill should make them more effective. In that, it has my support.

A very pertinent recommendation was that the response by the police in matters involving violence against women should be the same as that involving any other violence in our society. Again, the primary operation of the criminal law should be taking place when domestic violence incidents occur, because to do otherwise is to not afford people the protection of the law to which they are entitled.

The subcommittee made many recommendations which were adopted in the main body of the report and were taken up in due course by the Government in the Bill. Among those matters was the proposition that domestic violence should be differentiated from those incidents not related to violence. I have dealt with that in some detail earlier in my comments.

A significant attempt is made in this Bill to address the difficulty of women being unable to go to a court and apply for a restraining order. This difficulty applies particularly to women who live in isolated conditions, such as on remote farms or in small country towns, where getting to the court can involve considerable trouble and the not uncommon difficulty of organising child care, work and other family responsibilities. There is also the sad fact that many victims feel ashamed that they have been bashed and do not want to disclose their visible injuries to the world at large. The attempt to address this problem relates to the proposition that telephone applications can be made. That is a considerable change for the better. The proposition that police officers should be involved in the process is also taken up in the Bill, and each and every one of the people concerned in that change should be commended.

One of the recommendations which must be ongoing - it cannot be dealt with in the Bill but without it the Bill is useless - is the bench culture. I refer to the proposition that must be taken up for magistrates and justices to be aware of the real nature of domestic violence.

Hon Peter Foss: That is happening. You are absolutely right.

Hon N.D. GRIFFITHS: It is, but it needs to be a continuous process. It is recognised by the judiciary, particularly those who head it, as a major difficulty.

At page 176 of the report of the Chief Justice's Taskforce on Gender Bias reference is made to one of the examples of family breakdown, to which I referred earlier, under the heading "Recommendations Specific to the Protection of Aboriginal Women from Violence". I quote from the report under the subheading "Issue" because it is very pertinent to allow some people to get this difficult issue into context -

The Committee recognises that the social and economic position of some Aboriginal women leaves them too worn down, too exhausted with just surviving, to struggle with securing their own protection from violence. Their plight is made worse when their homes are on remote communities far removed from the normal supports offered to the wider community. For their safety and well-being and that of their children and other dependent family members, special consideration to their needs should be given by the Police and Courts and protection agencies.

One of the strengths of this Bill is that it provides a mechanism so that if the agencies do what is sought of them to accommodate that issue, the Bill will protect these women far more than they have come to expect for some time. In concluding, I can do no better than make reference to the conclusion of this subcommittee of the Chief Justice's Taskforce on Gender Bias.

Its conclusion puts the primary targeted area of this Bill into focus in the following terms -

... examining and improving the capacity of restraining orders to achieve protection for women from domestic violence is a necessary short-term strategy.

... The long-term solution to the problem of violence against women lies in both community education, including the elimination of gender bias, and the proper application of the criminal code to crimes of violence, assault and battery, wherever and whoever by, they are committed.

I endorse those comments, but do so in the context of my earlier observation regarding the primary causes of dysfunction in our society which have given rise to what is perceived to be a very high and unnecessary incidence of violence. I reiterate my support for the Bill.

HON CHERYL DAVENPORT (South Metropolitan) [7.52 pm]: I intend to deal with several matters. First, I will refer to some recommendations of the Chief Justice's Taskforce on Gender Bias; second, I will deal with some questions raised with me by the Women's Legal Service; and third, I will concentrate on some queries I have about the second reading speech of this Bill.

As Hon Nick Griffiths said, the Opposition supports this legislation. I also note that it culminates from the drawing together of many reports commissioned in this area, going back as far as the late 1980s and early 1990s. The research of Dr Alan Ralph in the behaviour research centre at Curtin University has had a bearing on the work of the Taskforce on Gender Bias, and the Ministry of Justice report relied significantly on Dr Ralph's report.

As Hon Nick Griffiths indicated, our former colleague Dr Judyth Watson put a lot of effort into bringing this issue to the fore. She first mooted the idea that this be stand alone legislation, and I am pleased that the Government has chosen to move that way.

Also, although we can put legislative reform in place, a whole range of cultural changes are necessary in the judiciary, the magistracy, the court staff processes and the police.

Hon Peter Foss: The police are absolutely vital.

Hon CHERYL DAVENPORT: They are crucial to this area and they must be far more proactive not only in relation to restraining orders, but also in charging perpetrators with criminal assaults, particularly in relation to violence restraining orders. It is important that the police see this activity as a criminal offence rather than just something requiring a restraining order.

One of the matters I raised with the Attorney's adviser this morning was that all through the available reports the term "restraining order" is referred to as a protection order, not a violence order. I asked why the term "protection order" was not chosen for the legislation. I understand the difference between a misconduct order and a violence order, but it would be a more positive step to call the violence order a protection order. After all, it seeks to protect.

I refer now to the Chief Justice's Taskforce on Gender Bias. I refer the House to paragraph 16 of the report, which dealt with the data compiled by Dr Ralph from Curtin University, which showed that 41 per cent of women who had obtained a restraining order against a violent partner said that their involvement with the legal system did not help at all. Many respondents to Dr Ralph's questionnaire - 50 per cent of such women - felt that the process placed them in danger of worse violence from the defendant. Also, 50 per cent of women murdered by their spouses had a current restraining order in force against their spouses. Therefore, we need to be mindful that restraining orders do not always work.

Further research showed that 88 per cent of women interviewed described the violence to which they were subjected as serious, very serious or critical. This result becomes extremely disturbing. Paragraph 18, on page 169 the report, states -

There is force to the argument that the Police should have lay assault charges, and apply for restraining orders on behalf of the women (as section 172 empowers them to do) -

I suspect that that recommendation referred to is the Police Act. It continues -

- for the women's interim protection, and support the women themselves to apply for this protection.

Interestingly, only 10 per cent of the women interviewed by Dr Ralph in the early 1990s said that they had been advised by police to seek a restraining order, and all the women who were so advised were all in the metropolitan area. We certainly have a long way to go in that area, although some changes have occurred in police culture, particularly in the metropolitan area. Nevertheless, only a small percentage of people are advised to take such action. The report continues -

Assault charges are infrequently laid by the Police as a result of domestic violence, yet as noted earlier, in 88% of cases, restraining orders were sought after serious violence had occurred. That is, assault charges could and should have been laid. The subcommittee on restraining orders agreed that restraining orders have become a replacement for assault charges rather than the useful, protective supplement to criminal charges that they were intended to be.

We should be mindful of that fact. Recommendation 2 of the report deals with police involvement, and the task force recommended as follows -

That where a person has suffered an assault Police should be required to investigate with a view to determining what sort of charge should be laid against the assailant.

Recommendation 2(2) reads -

Where the woman has a fear for her safety, the alleged offender should be arrested and bailed upon the condition that he not return to the property, or held overnight pending his appearance in court. Otherwise, rather than the alleged offender, the woman is forced to find alternative accommodation, often with children, to protect.

That is an important factor. As I go through the report further, I will highlight some of my concerns about the legislation, which does not implement these recommendations as clearly as it should. Recommendation 2(3) reads -

As with other charges, the police should ensure that where charges have been laid, bail conditions should be imposed which ensure that the alleged offender does not:

- (a) endanger the safety of the woman;
- (b) interfere with her as a witness, or other witnesses;
- (c) commit a further offence against her;
- (d) in appropriate cases, prevent the alleged offender from having any contact with the woman, or returning to her place of residence (even when he owns it).

The fourth part of that recommendation states -

Police should take responsibility for applying restraining orders, in conjunction with laying criminal charges, when that also appears to be appropriate or where there is insufficient evidence to charge the assailant.

It should not be left only to the victim, usually a woman, to take out the restraining order because, in most cases if the police are involved, she will have been through a very violent time with violence to herself and/or her children. Obviously she is not always in command of the situation and needs assistance from the police and they should be more proactive.

Paragraph (3) of recommendation 25 states that there should be a presumption in favour of the applicant in restraining order proceedings. That is something with which the police do not always agree and neither do magistrates.

Hon Peter Foss: The problem is that sometimes there are cross-applications. You are assuming that in each case the applicant will be the wife. Sometimes the husband makes an application.

Hon CHERYL DAVENPORT: I take the Attorney General's point. However, more often than not it will be the wife.

Recommendation 25(4) refers to the police standing orders. It is recommended that they should be amended "to express a clear direction that responsibility for obtaining restraining orders lies primarily with the police". I am not sure that the legislation does that. I guess there is a necessity, in conjunction with this legislation, for the police to reflect on their current areas of responsibility. I hope there will be discussions between the ministry and the police to ensure that that occurs. That will be a major factor in changing police culture.

Paragraph 6 of recommendation 25 states -

Where a restraining order is made in circumstances concerning personal violence or threats there be Automatic revocation of the defendant's Firearms Licence and confiscation of any firearms.

That is incredibly positive. It is something that arose when we were debating the firearms control legislation last year. It is also something for which Dr Watson fought very hard. In many murder cases involving spouses, the cause has been the ready access to firearms in the home.

Recommendations 28 and 29 deal with the induction of and training for clerks of courts, which includes "support to women victims to assist them to make successful and speedy applications". Recommendation 29 states -

A special area in the court area be set aside and furnished to meet the needs of women making applications or waiting for a hearing.

That would be a very useful process. Many women balk at continuing the process because they are fearful of what they might encounter once they go into the court situation. This improvement is a must. I hope that the ministry will

provide that kind of safe place and also provide the resources to train clerks of courts and court staff to deal with the culture that may not be quite right within that process.

Recommendation 51 of the task force report deals with affidavits. This was raised with me by the Women's Legal Service. Applications for the use of affidavits are part of the initial hearing. However, it is not clear in clauses 26 and 28 of the legislation whether an affidavit would be admissible at the second hearing for a violence restraining order. One issue raised with me was that the admission of an affidavit does not rule out the ability of the respondent's counsel to cross-examine. However, it does mean that the person applying does not have to be put under stress time and again. That might be a good thing to consider. Quite often a defended hearing is an intimidating process and it would relieve the stress for the person having to go through what happened time and again. I wonder whether some consideration could be given to that.

Paragraph 64 of the report refers to the Armadale Police Station's domestic violence pilot training program which was initiated in 1993. That has been a very successful program. I placed a question on notice yesterday to find out what resources were being channelled towards that program subsequent to 1993 when it was in the pilot stage. I did not get a very clear answer. However, I was told that it is being resourced on a voluntary basis by organisations and agencies involved. I think that for something that has been so beneficial to the community, certainly from a police perspective, it would be worthwhile to increase the financial and human resources for that program. I know that program has now been extended to several areas across the metropolitan area and they are very successful. The one thing we face with voluntary organisations and the police being involved is that these are very stressful areas in which to work. We should ensure that the people who contribute to these programs do not suffer burnout too early. We all agree that this is a very stressful area in which to work and we should value the people who are prepared to work in those organisations to try to make the community in which we live a better place.

The other area I want to touch on briefly is cultural appropriateness, in particular for Aboriginal people. An article appeared in *The Age* newspaper on 10 March entitled "Australia static in human rights". The final paragraph of this article refers to Aboriginal women not wanting to report crimes of a violent nature to a predominantly white male Police Service. I thought that was very telling, and I imagine that is why not as many Aboriginal women are prepared to take out restraining orders.

Hon Peter Foss: I do not think many women want to report to a predominantly male Police Service.

Hon CHERYL DAVENPORT: I agree, but there are cultural differences within the Aboriginal community -

Hon Peter Foss interjected.

Hon CHERYL DAVENPORT: That situation is very violent and very frightening. We need to be very mindful of that. At paragraph 78, the report states -

... under Co-ordination of Police Response, Police called to situations of domestic violence in Aboriginal families and communities be aware that charges for assault should be laid as a first option, and a Restraining Order be initiated by Police for the woman's interim safety.

Paragraph 79 deals with Aboriginal women in particular, and states that courts and police must together ensure the swift service and enforcement of a restraining order or interim order as soon as it is issued. Some Aboriginal women have left court believing themselves to be protected by an order, and the order has not been served on the perpetrator until a month later. This situation needs to be changed.

I turn now to the questions raised by the Women's Legal Service. People have been very concerned about the need to educate the community and the police about the new access laws applying to restraining orders. They were also very mindful that the police in Western Australia do not place enough emphasis on taking out restraining orders, and that in the Eastern States there is a higher percentage of assault charges, followed by the police making sure the restraining order is taken out and enforcement occurs. I was told also that domestic violence is being treated primarily as an assault in other States but it still has a long way to go in Western Australia. People spoke to me about a specific case in the Armadale area. A woman was hospitalised with cracked ribs and bruising, but the police did not proceed to press charges of assault or apply for a restraining order. The woman had to make an application through the courts.

People also raised the question of the hours that courts operate, which are roughly 9.00 am to 4.00 pm. This legislation will provide for telephone restraining orders, and that will be useful. I guess this example highlights the cultural matter relating to the police which needs to change, even though a very successful program is operating in that area.

Hon Peter Foss: What was the question?

Hon CHERYL DAVENPORT: That was a concern. They did ask who would be the authorised person to obtain a restraining order, apart from the police. I have searched through the Bill and the second reading speech, and I do not see anyone defined other than the police. That is critical because -

Hon Peter Foss: It is up to us to prescribe.

Hon CHERYL DAVENPORT: Yes, I imagine that will be done by regulation. However the obvious person might be the coordinator of a women's refuge, for example, or a lawyer.

Perhaps a criticism is that the framework to ensure that the changes can be made is contingent on the police standing orders. People asked how can we ensure that such a change would be made.

Hon Peter Foss: We will go to the legislation first, then do the administrative things. Without the framework of the Act we cannot do the administrative work.

Hon CHERYL DAVENPORT: Concern was expressed about bail conditions when assault charges are laid. I guess an ability exists now, but it might be appropriate for an amendment to be made to the Bail Act which would stipulate the necessity for a violence restraining order to be taken out. I do not know if that is possible, but the concern relates particularly to when children are involved. It was emphasised that the most dangerous time is during the 24 to 48 hours after the violent incident; so that should be a condition of bail. Perhaps if it is such a violent incident bail would not be available. The protection of the violence restraining order should be in place before bail conditions are considered.

Hon Peter Foss: They would serve the order before allowing bail.

Hon CHERYL DAVENPORT: Yes.

I probably touched on the next issue when speaking to the task force report. Because a restraining order is a civil action, and is not a criminal proceeding, it is essential to ensure a user friendly procedure as much as possible to ensure security for people making an application for a restraining order.

I have two examples of experiences of women lawyers. One occurred when a lawyer was in a police station staffed by a young constable and a sergeant. A woman telephoned in to say that her ex-husband had arrived, even though a restraining order on him was current. The constable asked the sergeant whether he should send someone to the house, but the sergeant said not to bother, someone would go later. The woman lawyer spoke loudly to her companion, and said that she was listening to the constable. The senior officer then said to the constable to send someone around immediately. It appears that the young constable was aware that it was important to send someone immediately. The sergeant managing the police station had a dozen other things on his mind and he therefore did not give the matter its proper priority. It is all too easy for busy police officers to trivialise what can be a dangerous situation.

In the second case, a woman telephoned the police and said that the respondent had arrived at the home, that he could not get in, but he was on the roof and was removing tiles. She fled and went to a women's refuge; however, it took the police two hours to get there. That is the sort of thing people are up against in trying to ensure the enforcement of restraining orders. That situation probably will not change. These people were also critical of the mateship response from the police to the respondent. It almost implies an endorsement of the violent behaviour of the spouse or partner. A very longstanding culture must be reformed.

Hon Peter Foss: Most of those things relate to police culture.

Hon CHERYL DAVENPORT: We all know that, but I guess we must start somewhere. If these things are not put on the record, no-one will know about them. I have another concern relating to a woman who is in a violent situation where children are involved. Must separate orders be granted for each child who is involved in that situation? I have also picked up that the whole question about responsible adults is referred to in relation to children. The notes that the Attorney General kindly allowed us to have indicate that this matter will follow the same procedure provided in the Young Offenders Act. The second reading speech gives an overview of the legislation.

The Women's Legal Services Inc (WA) asked me about the crossover this legislation has with the Family Law Act, and where there is a conflict and a restraining order has been allowed by a magistrate. What will happen about access if a Family Court order exists? There is no provision under this Act to go to the Family Court. I know from what I have been told that there has been a change to the commonwealth Family Law Act with that matter, but the state legislation would also need to be amended.

Hon Peter Foss: The big point is that you cannot overrule the commonwealth order. We have made a special provision where you advise the court. Some state courts can revise those orders, but some cannot. We have tried to give as broad a jurisdiction to state courts as we can, but we cannot overrule the commonwealth Act.

Hon CHERYL DAVENPORT: Would it not make a difference if an amendment were made to the state Act?

Hon Peter Foss: We have given as much power as we can. I have talked about that. The Constitution limits that power.

Hon CHERYL DAVENPORT: If orders are required in the middle of the night, is there an ability for people to seek to obtain them through telephone applications?

Hon Peter Foss: There are limitations on it because only certain magistrates can provide them.

Hon CHERYL DAVENPORT: How will that affect people in regional and remote areas?

Hon Peter Foss: It will; it can be done in that way. We certainly do not want unauthorised magistrates issuing them.

Hon CHERYL DAVENPORT: A paragraph in the second reading speech relating to restraints on the respondent says that a respondent may be restrained from communicating or attempting to communicate with the applicant. It would probably be very hard to do anything about this, but often children are used in that circumstance. They come home and say, "Daddy has told me that he will kill you or he will make sure you are put in gaol." I know it is pretty hard to deal with that, but it happens, unfortunately.

Hon Peter Foss: Yes.

Hon CHERYL DAVENPORT: In relation to the service of the restraining order the second reading states -

Where the court is satisfied that a person is deliberately avoiding being served with a document, the person serving the document may take such steps as the court directs to bring the document to the attention of the person being served.

I guess that relates to a person getting to the front door -

Hon Peter Foss interjected.

Hon CHERYL DAVENPORT: I take it that as little as that would be deemed to be sufficient to satisfy the requirements for service of the document.

Hon Peter Foss: Substituted service is a well-known concept. If people are avoiding service, they take it on themselves.

Hon CHERYL DAVENPORT: I will give an example of conduct which could be classed as coming under a misconduct restraining order. This example was given to me by a constituent who owned her own unit and was the caretaker of the block of 24 units in which her unit was located. She had been doing this job for two to three years. A fellow moved into one of the units and she was subjected to ugly abuse. This fellow smashed pot plants and pulled out plants, and those sorts of things. She went to the police and took out a restraining order. This fellow turned very nasty and assaulted her, but as it was only her word against his, the police were not prepared to charge him. It has meant that this woman, who is almost 60 years old, has had to move out of her unit and rent separately to get away from this harassment. I do not know how we can deal with that. Interestingly, she said that there was a change in the police personnel and the new policeman had come from the country. It highlighted for her the difference in the culture between this policeman from the bush and those from the metropolitan area. It was a downplaying of what she was going through. I note that a breach of a misconduct restraining order carries a penalty of only \$1 000. For this woman, who has been forced to leave her home, it is not a great commendation of either the police or the proposed penalty.

I notice there is no review clause in this legislation and that on page x of the report of the Ministry of Justice the summary of recommendations states -

There should be a detailed review, based on comprehensive data, of the proposed new restraining order procedures in around three years from their introduction.

I imagine that is not necessarily a legislative review; however, this legislation might warrant a review clause, given that the last major review of restraining orders was carried out in 1982. We know a major cultural shift must happen and the legislation will assist with that, but it would also be useful to have a five year review clause in this legislation to see how it is working. That review process will highlight whether the cultural change has gone any way towards

making it easier for people to gain justice, particularly in the violent restraining order category. Although I am not going to the wall on it, it is a way of not leaving legislation for a great length of time before it is revisited.

Hon Peter Foss: It will be kept under review, but it is not the legislation that must be reviewed.

Hon CHERYL DAVENPORT: Without having a legislative review I do not know how the changes can be monitored. We receive anecdotal information, but a review clause may show us that the legislation is working really well and that we have done a great job. However, as I said at the beginning, it necessarily needs a major cultural change. I am pleased that the legislation has been introduced and that it is positive. I support it wholeheartedly.

HON PETER FOSS (East Metropolitan - Attorney General)[8.03 pm]: I thank members for their support of this Bill, particularly Hon Cheryl Davenport, because she highlighted the practical side of this area. Domestic violence is undoubtedly the principal area in which this Bill will operate. Domestic violence is probably one of the most pernicious ills in our society at the moment. I do not believe that the cases that come before the court, either by way of charges for assault or by way of restraining orders, are any sign of the degree to which domestic violence occurs. As Hon Cheryl Davenport pointed out, there are a number of reasons for this.

First, many women are unwilling to either report an assault or seek a legal remedy partly because they feel a tremendous amount of humiliation. It is no great joy to show their injuries or tell the police of the abuse they have suffered. Often women who have been violently dealt with want to hide themselves so that not even the neighbours know what is the result. That is a big obstacle to dealing with this problem.

The second reason is that notwithstanding the treatment they receive, many are unwilling to take action against their spouse. That is human nature. Those who are not involved in this area wonder why on earth people are so reluctant to take action. The reality is that they are. The third reason is that they have little faith in the legal system. By the legal system I include both the police and the courts. After all, what does a restraining order do? It does not stop a person from assaulting someone; it just makes it an offence to assault someone. That is cold comfort to someone who is being assaulted because of the restraining order. We must keep in mind that these women often spend their whole life trying to avoid certain situations which they know will set off their spouse. Therefore, they spend all their time avoiding those situations. Often nothing would be more provoking to a spouse than the other spouse applying for a restraining order or going to the police. It is a Pavlov's dog reaction.

Hon Cheryl Davenport: It is a case of it getting so bad that they go to the police.

Hon PETER FOSS: That is right. One of the really sad things is that most women affected by domestic violence would prefer the police to lay a charge. They do not want to be seen to be the one making the charge. When the situation gets so bad that it is brought to their attention, that is when the police must act. The women will not act because they know that will be seen by their spouse as provocative. That is why the police must act when domestic violence is brought to their attention. Those women left to their own devices often will not take any action.

Even if the police do get a restraining order, something must be done about the violent spouse because of the examples Hon Cheryl Davenport gave. Even if someone rang the police and they came immediately that would not mean that person might not be killed or seriously injured in the meantime. Even a rapid response by the police may not be sufficient to protect someone. If there is not a rapid response it makes a mockery of the whole process.

This Bill is important because the process now in place makes that all the more likely, without the capacity for telephone orders. Where there is the capacity the police must hold the respondent during the hearing of a telephone application. That is fairly important because presently it is too easy for a further serious assault to take place during the legal process leading to a restraining order.

I could not agree more with Hon Cheryl Davenport that, wherever possible if there is evidence of assault, the first reaction is to charge someone. The restraining order is merely the capacity to set bounds so that the violent persons can be dealt with before they get close enough to do more violence. The first thing is to punish for the assault, which it is. Again it is only the tip of the iceberg. When the police become aware of domestic assault it is very unlikely it is the first assault. They should be in a better position to restrain the offender. Often assaults have as a prelude to them some form of argument, possibly over the telephone. All too often the spouses stir themselves into a frenzy before making the assault. The restraining order can allow intervention prior to the assault taking place so that some bounds can be set for peace and quiet.

Assault is only part of the scenario. It often involves harassment and verbal abuse and, as Hon Cheryl Davenport suggested, children. We are talking about people who are familiar with each other and therefore have the capacity to know what will hurt the other person. As I said, we are dealing with a particularly pernicious and vicious area of criminal law. It is difficult. I hope that these amendments will provide abused spouses with considerably more confidence in the legal process.

As Hon Cheryl Davenport said, it would be better if the police were to initiate action. That is not made mandatory, because we cannot cut out the capacity of a person to take action if the police will not. However, it is permitted by this, and of course it is permitted for us to prescribe other authorised people to bring application on behalf of a complainant. As far as we can go, the legal framework is in place.

As Hon Cheryl Davenport mentioned, it is now up to cultural change. That is occurring. One of the things we have been most concerned about at the Justice Coordinating Council is the question of changing the attitude of courts, and particularly of police, to domestic violence. Kits and courses have been prepared by the Police Service for policemen.

Hon Cheryl Davenport may recall that when we were in New Zealand talking about dealing with children, the young policemen who grew up with the system did not have a problem with it. They knew what to do and they did not question it as being unreasonable. The older policemen saw it as totally unreasonable and as the Parliament and the courts interfering with their proper dispatch of matters. There is no doubt that many people think of a domestic dispute as something to be settled between the spouses. That is wrong. One of the things I hope this Bill does is set the tone for that change in culture. Until that change occurs with the police, there will not be a change in the way it is dealt with, nor a real capacity for us to deal with the far too many people who unfortunately suffer daily and nightly abuse of one sort or another, 24 hours a day, seven days a week, 365 days a year. It is possible to charge people with assault; however, too often we underestimate the trauma of the other abuse that takes place. One of the useful aspects of a restraining order is that it can deal with those other forms of abuse, which probably end up as stalking. If an order states that a person is not to do something, it is much easier to prove if the order is breached.

I was a little disappointed Hon Cheryl Davenport said that it was only the woman's word against the man's. Of course it is, but that does not mean that the case cannot be taken to court and that she is not capable of being believed. Once a restraining order is in place and a person alleges a breach of it, it is important that it go to court. It may be one person's word against another, but there are many cases like that and there is no reason the court cannot listen to that person and decide. Perhaps we should consider the court's attitudes to these matters as well.

Restraining orders are a way of getting rid of that problem of proof. It may be a question merely of who will be believed and whether somebody has been assaulted. However, when it is said that people may not go within a certain distance, it is obvious if they are or are not within that distance. If the order is that they do not telephone, it can be established whether they have telephoned. If they have, they are in breach of the restraining order and are liable for a penalty. Those matters are of simpler proof than harassment, stalking or assault. That is the main advantage of the restraining order.

As this legislation provides, restraining orders must be capable of being obtained without there having been an assault. If evidence exists to sustain a charge of assault, a charge should be made. When a restraining order is made at that time it should deal with all the aspects of how those assaults take place; in other words, to try to prevent those occasions occurring when the assault takes place. I hope the judiciary takes the opportunity to think this through to see how it deals with it. The idea of authorised magistrates handling telephone applications is good. The Government obviously hopes to educate all the magistracy in this. However, it would be a good idea to have some who are particularly experienced in the area and who know how to deal with it.

The protection order is a restraining order. I have a slight difficulty with its description as a protection order because it does not protect. Its intent is to protect. It acts on the respondents to restrain them, but it does not always work. A person obtains protection from it. However, I would hate to encourage the feeling that a restraining order is the solution; it is not. Restraining orders do not have the effect of protecting a person and I would not want anyone to get the impression that they do. It is a matter of terminology. They could be called protection orders; the term "the person to be protected" is used throughout them.

Hon Cheryl Davenport says that unless the offender is held in custody, the woman must find alternative accommodation. Unfortunately, that is too often the case. The courts must look at how long people should be restrained when they are charged and whether they should be bailed immediately or in that 24 hour period. I would like to talk to some people who have ideas on this. Perhaps the Government could get them together to work through some of the issues to see how the matter could be handled and to let the judiciary know about some of the practical problems. It may be possible to handle it through the law as it stands.

Clause 22 on the detention of the respondent during a hearing allows the police to take the prime responsibility. This is an important provision to deal with protection during the period when the person is at the greatest risk. It is important that the violence orders can be made ex parte. If people must go through the process of serving them, they would know well in advance and would avoid the process as much as they could until they had an opportunity to get at their spouse. The Government could look at affidavit evidence on final hearing. I do not think cross-examination can be avoided.

Hon Cheryl Davenport: I am not saying that it should be, but that the affidavit be given to set out the case.

Hon PETER FOSS: So the person does not need to give evidence-in-chief? That is a good idea. In other words, the information is brought forward without the person having to give that evidence, but it still must be subject to cross-examination. I am considering a procedure in this area to see whether statements and affidavits as evidence-in-chief could be used more frequently. I will follow that up.

Hon N.D. Griffiths: It is not an unknown practice in many areas.

Hon PETER FOSS: Many courts will do that and in some places it is specifically provided for. I take Hon Cheryl Davenport's point about the cultural treatment of Aboriginal women. Her point is correct; however, the problem is broader than that. Many women have a problem reporting these matters to police. It is extremely difficult for many women to do so. The examples given by Hon Cheryl Davenport indicate the need for the police attitude to change. I cannot see a clearer reason for prosecuting than if a woman has been hospitalised with cracked ribs. If the police do not do so, that is incorrect.

Who is an authorised person is a matter for regulation. Obviously the Government does not want to restrict that area unnecessarily. How do we ensure changes occur? This legislation provides the framework for all the changes the member has suggested. This is a bit of a chicken and egg situation. Within the Police Service there is a move for a change. Obviously that varies enormously from policeman to policeman, but the hierarchy of the Police Service would like to see a change. This legislation will give them the opportunity to make those changes with people who are prepared to carry them out. Once that commences, a cultural change is possible. The Government must provide the legislative framework for it to be done. If those who are keen to put it forward adopt it and press for it, that cultural change will occur. It is difficult to get that change without proper legislation, as we have before the House. Now that the legislation has been formulated, it is back to the other part of the formula; namely, ensuring that police attitudes change. The reaction and response of the police and the judiciary will be important in these matters.

The people to whom Hon Cheryl Davenport spoke might like to put together some suggestions about what the Government may implement. For example, not allowing people out on bail until an order has been served would not be too difficult to process. Generally the Government aims for a user friendly procedure; however, it does not always come up at a user friendly time or in a user friendly place. Certainly I take the member's point. Generally speaking, the trend is for new courthouses to be designed in such a way that the victims and the perpetrators are separated. The design of many existing courthouses does not allow that to occur. The Government has a 10 year program for building new courts.

Hon Cheryl Davenport referred to the police response to restraining order breaches. Restraining orders should be seen as a high priority by police and they should try to attend a complaint of this nature as quickly as possible. There is no point in having these orders unless the response is a high pressured one. The example of the woman in her home having the roof tiles removed is horrifying. If the police did not attend urgently, it would be quite frightening for the person concerned. Why does Parliament pass these laws if the police do not respond quickly? The member referred also to the mateship response of police. Any policeman who responds in that way is one policeman too many. Again, it is a matter of education and a change in culture. Clause 68 states -

- (1) When making a restraining order a court may extend the order to operate for the benefit of a person named in the order in addition to the person protected by the order.
- (2) If an order is so extended the provisions of this Act apply to the named person as if that person were the person protected by the order.

I come now to the Family Court. A constitutional problem arises in this area. I was given a number of options in relation to this issue. One was that in the case of a Family Court order this legislation should be put to one side and the issue referred back to the Family Court. The option I chose was to give state courts the maximum power to operate. We do not want an order of one court conflicting with an order of another court. If it involves a court which can simultaneously exercise family law jurisdiction, it can be exercised. Some Magistrate's Courts which hold a Family Court commission can vary that order and deal with it. If they do not, all that we can request is that it must not conflict with the order.

Hon Cheryl Davenport quite rightly raised the question of custody orders. It is a constitutional problem which I cannot solve, but I have given the maximum power to magistrates to do what they can to restrict the person. The answer is to get this order out and then go before a Family Court magistrate as quickly as possible so that someone with the capacity is dealing with it. The use of magistrates in Western Australia is greater than in the Eastern States and that gives magistrates in this State a greater opportunity to handle these issues.

Hon Cheryl Davenport: What would be the situation in remote areas if the example I gave occurred?

Hon PETER FOSS: I do not know how many Family Court magistrates are in remote areas, but I will find out. Sufficient orders can be made to deal with the possibility of violence. The orders in the Bill are only for certain instances; they are not exclusive. One is obliged to tell the court so that the court knows what the order is and it then has the capacity to frame around it an order which is not in direct contradiction to it, but hopefully does the job of keeping the person at bay. It comes down to testing the ingenuity of the person making the order to see whether he can get the right result without the order being in direct conflict with, for example, a custody order. The Government has tried not to circumscribe or limit the capacity to make a restraining order except in the obvious circumstance where an order is in direct conflict with the Family Court order.

I should mention the following in the context of legal aid: I made the decision to try to provide the broadest possible capacity to deal with domestic violence in a Family Court matter. I believe that all domestic violence restraining orders must be family matters; they are not state matters. A state jurisdiction may be used to deal with certain elements of what is essentially a federal jurisdiction. What I find particularly galling is that, after trying to take a national point of view towards this legislation by saying that where there is a Family Court order the Act does not apply, the federal Attorney-General said it could not be done because in 90 per cent of cases it would be abandoning the people concerned. The State must provide the maximum support within the framework of the federal jurisdiction. I argued with the federal Attorney-General that it cannot be a state matter in cases where the State provides back-up legal support to what is essentially a matrimonial dispute. The State is quite happy to provide the tools to a magistrate who becomes aware of a problem within the context of a matrimonial dispute, but it is providing tools to support the federal jurisdiction. The federal Attorney-General said it was a state matter, not a Family Court matter. I will fight that issue because his is a non-national point of view. What happens if a person applies for legal aid? Will the Legal Aid Commission say that it will get that person custody, property and a restraining order, which happens to be obtained through the state court? It would have to be carefully defined and carved into sections to determine what will be a commonwealth or state matter. It indicates the ludicrousness of the whole proposition.

The member referred to people communicating or attempting to communicate while being subject to a restraining order. It is a factual issue which must be dealt with by the court. The court must determine whether using a child to communicate is a matter which breaches the order. I would not like to be the magistrate who has to make that decision.

Obviously, with substituted service, the court will try to use something that will hopefully bring it to the attention of the respondent. However, there is no limit to the way that can be done. The misconduct restraining order example the member gave is a sad example. Again, it is an indication of whether there is a need for a change in culture.

In respect of the review, I intend to keep an eye on this legislation when it is put in place. The biggest single problem is the unforeseen issues. It is very difficult to know what those issues will be. I hope this Bill will lead to a greater use and effectiveness of these orders. We must keep an eye on the effectiveness of this legislation. The most important thing to review is the police culture.

Hon Cheryl Davenport: I agree with that. I wonder how you draw to the attention of the public that it is not working. One way to do that is to have a review in five years.

Hon PETER FOSS: I hope we would do that much sooner than five years. We really must deal with police culture. The commissioner and deputy commissioner take domestic violence very seriously.

Hon Cheryl Davenport: They are not the people I am worried about.

Hon PETER FOSS: I realise that, but if they do not take it seriously we do not have a chance. However, they are doing that and they have programs in place.

The Justice Coordinating Council has a research and evaluation committee which comprises a group of criminologists and epidemiologists who try to apply the sorts of techniques which are used in health matters to determine whether measures that are being taken are effective. Although the committee was established within the Ministry of Justice to look at its programs, the Police Service has submitted a number of programs to establish whether it has a scientific basis for determining the effectiveness of the measures it is implementing. I will ask the commissioner whether he has anything to submit to the research and evaluation committee to determine whether the processes implemented to change the attitude of police officers to these issues are effective and to establish a rigorous scientific evaluation. I will inform the member of any response. This area needs to change, and obviously there will be changes in legislation. I would rather do that.

I take the member's point: There is no excuse once this legislation is passed, although the Police Service has said that it is not very effective. The Police Service will have the power, the tools and the capacity. This approach is not perfect because, as we know, a restraining order does not stop a person dead in his tracks; it simply makes it easier to prove he is doing the wrong thing. When the person concerned is violent, a restraining order will not have much

effect. We are not dealing with the effect of the restraining order but the capacity to prosecute when the person does something short of committing an act of violence.

I greatly value the support given to this legislation and, in particular, the fact that Hon Cheryl Davenport has put the human face on it. It is all too easy in much of this legislation to see it as a legal process. In fact, we are dealing with one of the most common forms of human trauma in our society. It is measured not only in bruises but also in emotional damage, which is often worse than physical damage. The bruises are an outward sign of problems but are nothing when compared with the emotional traumas the victim suffers.

Hon Cheryl Davenport: It is not only the person requesting the order; children are also involved.

Hon PETER FOSS: That is true. Bruises are an opportunity to prove what is happening, but they are not the real damage. The member is quite right. One of the most frightening issues is that young boys in a family who see their mother abused have the perpetrator as their role model. There is quite clear evidence that abuse is generational. If we are to break that pattern we need a very radical change in our society and its attitude to domestic violence. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Derrick Tomlinson) 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: Once again, this clause contains the words "this Act comes into operation on such day as is fixed by proclamation". This is a bipartisan measure; it has the Opposition's wholehearted support. The Government cruelly uses its numbers in the other place and guillotines legislation whenever it sees fit. This legislation will pass through this House rapidly. Why does it not come into operation on the day it receives royal assent?

Hon PETER FOSS: It is true of much legislation - this is probably one of the clearest cases - that once it is passed it is very important that those who are associated with it be appropriately briefed and prepared in order to give effect to it. Not only do members of the public need to understand it, but officers of both the Police Service and the courts need to know the date on which the new provisions come into effect and they should be ready to deal with them.

Hon N.D. GRIFFITHS: That is absolute rubbish. The Government has been telling the people of Western Australian that it passed this legislation months ago. It has been misleading the public. This legislation contains transitional provisions and the Police Service and the judiciary should be aware that it is on the agenda. The Attorney's explanation does not hold any water; it is slack administration.

Clause put and passed.

Clause 3: Interpretation -

Hon N.D. GRIFFITHS: I refer to the definition of "authorised person". I note the Attorney General's response to contributions from members of the Opposition during the second reading debate. In particular, I note his response to observations made by Hon Cheryl Davenport in respect of an authorised person. An authorised person should be defined in the legislation and not be subject to regulation. Why is it not? I heard the rather general explanation to the effect that we do not want to restrict matters, but the role of an authorised person is very significant.

Hon PETER FOSS: I have given an explanation already.

Hon CHERYL DAVENPORT: How long will it be before the regulations are ready?

Hon PETER FOSS: Unfortunately I cannot specify that, which is another reason we need to be able to proclaim the legislation. Obviously, the Government regards it as an important matter and it will be drafting the regulations as quickly as possible.

Hon N.D. GRIFFITHS: Did I hear the Attorney say that the regulations have not been substantially drafted and that this Bill will not be proclaimed until such time as the regulations are ready?

Clause put and passed.

Clause 4: Making a restraining order-

Hon N.D. GRIFFITHS: There has been some discussion about the role of the Family Court. This clause lists those who may make restraining orders and it then goes on to refer to other clauses. I will not refer to those other clauses except to say that, when one looks at this clause and other relevant clauses, one sees that the role of the Family Court of Western Australia is not given the position it should be given.

Clause 4 sets out who may make a restraining order. I do not want to go into those other clauses at this stage. Presumably the court, acting under proposed section 63, would be the Court of Petty Sessions at 1 St Georges Terrace, which operates out of the Family Court. I am concerned that those specialist magistrates in family matters are not given pride of place in this legislation, which is a weakness. Some consideration should be given, and if it has been given, further consideration should be given, to amending this clause in order to make it explicit that those specialist magistrates who operate within the Family Court have some pride of place. A task force on families in Western Australia, chaired by Hon Muriel Patterson, produced the WA Families report. At page 169 of that report, in the midst of a discussion on restraining orders, the task force observes when dealing with the issue of policy that key elements would include improving the system of restraining orders and the development of a separate classification of restraining orders for situations of spouse abuse dealt with by the Family Court. The important words are "dealt with by the Family Court". I am concerned that the legislation does not give the Family Court the pride of place it should be given.

Hon PETER FOSS: The principal means by which the Family Court makes these orders is that the magistrates hold their magistracy by virtue of being appointed magistrates to Courts of Petty Sessions. This is referred to in paragraph (a) and is the normal means by which that is done. They have the capacity on that basis to vary a family order because of their magistracy, which allows that blend of the federal and state jurisdictions. We must have a procedure which is usable across all jurisdictions because this is not exclusively for family matters. Nothing in the Bill actually says it is for domestic violence, although we know that 99 per cent of the instances will be in that area.

Hon N.D. Griffiths: Could there be a duality of role with the Chief Stipendiary Magistrate and perhaps the Chief Judge or Registrar of the Family Court?

Hon PETER FOSS: The member knows how these things happen. The recommendations come forward and one needs a legal trigger. The legal trigger in this case is the Chief Stipendiary Magistrate who is responsible for all magistrates. Strictly speaking, the Chief Judge of the Family Court does not have responsibility in that area.

Hon N.D. Griffiths: I know how it operates.

Hon PETER FOSS: Of course the member does.

Clause put and passed.**Clause 5: Meaning of "family order" -**

Hon N.D. GRIFFITHS: I note clause 5(1)(a) and (b), the latter relating to the Family Court Act 1975 and the words "custody or guardianship of a child or access", and the first to "a residence order or a contact order". When will the Family Court Act be brought up to date so that it uses the same terminology when dealing with children as the Family Law Act?

Hon PETER FOSS: There will be a replacement Act. It has been under serious and quite heavy consideration by the judges and practitioners of the Family Court. I understand it is practically ready. I intend to bring it in simultaneously with the amendments to deal with the retrospective legislation. At the same time as we fix up the problems of the past, we want to deal with the problems of the future.

Hon N.D. Griffiths: When will that be?

Hon PETER FOSS: It is pretty well ready. The legislation for matrimonial disputes has to be commonwealth legislation and the state legislation will deal with de facto disputes.

Hon N.D. Griffiths: When will it be?

Hon PETER FOSS: It is imminent. I am awaiting the final tick from the Commonwealth.

Hon N.D. Griffiths: So Mr Williams is holding us up?

Hon PETER FOSS: No. It is being done through Solicitors General and parliamentary counsel.

Hon N.D. Griffiths: He is responsible.

Hon PETER FOSS: Yes. We need to know when the Commonwealth will introduce its legislation. The legislation has to be in similar terms. We have agreed on the form of legislation. The three pieces of legislation need to come together. Our legislation is the Family Court Act, so that in future we invest the registrars with the appropriate power and provide for the review. The Commonwealth's legislation deals with retrospectivity. Our legislation ties into that and deals with the ex-nuptial children both as to procedure and to substantive law.

Hon N.D. Griffiths: They are all desirable. I would hate to see the third holding up the others.

Hon PETER FOSS: It will not. We could go ahead without the procedural change because for the time being we are dealing with it by using magistrates. I would not hold it up. On the other hand, processes are still taking place with the other legislation and I am hurrying along the Family Law Act. It would be nice to have the two in at the same time.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Fixing a hearing -

Hon N.D. GRIFFITHS: First, I express my thanks to the Attorney General for providing the clause notes. It is unusual that clause notes are provided by Ministers.

Hon Peter Foss: I will make a practice of always doing it in future.

Hon N.D. GRIFFITHS: The Attorney General has provided notes on a number of occasions, as a result of which the Committee stage of the relevant Bills was expedited because it was not necessary for other members to inquire what particular clauses meant.

I am concerned about the resources to be allocated. The role of the clerk or the registrar of the court is to serve summonses. What FTE provision will be made for that bailiff service? What extra resources will be put in place? I note in that context that some matters which have been promised in the Minister's portfolio have not been fulfilled because of budgetary considerations.

Hon PETER FOSS: I understand that currently summonses are served by the police, and that will continue to be the case.

Clause put and passed.

Clauses 10 and 11 put and passed.

Clause 12: Matters to be considered by court -

Hon CHERYL DAVENPORT: I am pleased that paragraphs (a) to (c) of subclause (1) will be the primary requirements in this area, but why is paragraph (e), which states that the court is to have regard to hardship that may be caused to the respondent if the order is made, regarded as a priority? Paragraph (g) states that the court is to have regard to other current legal proceedings involving the respondent or the applicant. This happens in practice, but it is not always used appropriately. The Women's Legal Service has told me that it has heard sound thinking judges use this type of reasoning to judge an applicant's credibility.

Hon PETER FOSS: The reason for paragraph (e) is that it would be unjust to not consider the effect on both sides of an order that might be made, although we might not want to place undue emphasis on it, and that is why paragraphs (a), (b) and (c) are regarded as being of primary importance. It is a balancing act. It is not a matter of saying, "We will not do it because it will cause hardship". Obviously in those cases some element of discommoding will be involved. This clause outlines the totality of the things that must be considered. If we did not consider both sides of the case, it would be quite peculiar, and it would be brought in anyway through some other form of natural justice. In saying that paragraphs (a), (b) and (c) are of primary importance, it is clear that paragraph (e) is more likely to have an effect on the way the order is phrased than on the making of the order. What is the member's concern about paragraph (g)? Does she have an example?

Hon CHERYL DAVENPORT: I will do my best. This matter does come up in the Family Court from time to time, and there is concern that paragraph (g) may be used by the defendant as a way of destroying the credibility of the applicant. The example that was given to me was that these lawyers from the Women's Legal Service had heard judges for whom they had a great deal of respect question the credibility of the applicant for an order by referring to other current legal proceedings.

Hon PETER FOSS: This clause allows the court to take into account things which it would not normally be allowed to. The most significant of those things are outlined in paragraphs (g), (h) and (i), which are all contrary to the

normal rules of evidence that apply in a court. If a person has been charged with murder, the last thing that can be mentioned in the court is that that person has had a previous conviction for murder. Some juries that have heard a defendant tell a sorry tale and have let him off or found him guilty of a lesser charge have then found out about that person's record and thought, "We have been done!", because although the law says that the fact that a person has committed an offence previously has nothing to do with whether he has committed an offence this time, the ordinary human reaction is that it does. Paragraphs (g), (h) and (i) give the court the capacity to look at any previous similar behaviour of the respondent, whether involving the person to be protected or otherwise, any criminal record of the respondent, and any other current legal proceedings involving the respondent or the applicant. It can look at that only to the extent that it helps to prove the offence. I suppose those paragraphs could be misused as well as used.

Hon Cheryl Davenport: If the magistrate was reasonable, that should not occur.

Hon PETER FOSS: Many times when people criticise the law, some other aspect exists - perhaps the magistrate has funny ideas about things, or the police have not put up the evidence properly. I have had cases involving railway derailments where they said, "If the track is torn up, look at the rolling stock, because that is probably what caused it; if the rolling stock is damaged, look at the track, because that is probably what caused it". All too often when people get bad results in a case they blame something other than the real cause. We will get peculiarities on the part of the judiciary because they are human beings and nothing special happens to them when they are made judges or magistrates, and we will occasionally get people who know that the evidence as it came out is not correct and who know what the facts are, but that is not the way it was accepted by the court or presented by the police. That sometimes leads to results which the person thinks are unjust and probably are unjust, but it is because we are human beings operating in a human system. On the whole, previous behaviour is more likely to be for the benefit of the person proving the case than the other way around.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Firearms order -

Hon N.D. GRIFFITHS: Is paragraph (a) of subclause (5) necessary having regard to paragraphs (b) and (c)?

Hon PETER FOSS: Paragraph (a) makes it stricter.

Hon N.D. Griffiths: I do not know whether it needs to be that much stricter, noting the constraints of paragraphs (b) and (c).

Hon PETER FOSS: We did not want to get to the stage with extraordinary licences where it almost becomes the norm to find that the conditions have been satisfied. Unless we include this gateway that they are granted only to carry out a person's usual occupation the argument may become, "Well, why shouldn't I keep it?" We intend that the norm should be subclause (1). A subclause (5)(a) order would require an extraordinary set of affairs.

Hon N.D. Griffiths: We had the firearms debate recently. What about a member of a gun club who uses the firearm on the premises of the gun club? While he is using the gun, he has possession of it.

Hon PETER FOSS: The member is right. It is a privilege, and it is intended that people who abuse others lose that privilege. Those people who defended firearms in the recent firearms debate argued that we should not punish people who pose no threat to the community and should deal only with the people who pose the threat. A person who justifies a violence order poses a threat, and he should have that access to a firearm removed. It is intended to be strict. We do not want the member's argument to be available, except in a particular hardship like the loss of employment. People should not be allowed their recreation if it gives them the opportunity to carry out a violent act and they have been found likely to do so.

Hon N.D. Griffiths: They will not have that opportunity in the circumstances I outlined.

Hon PETER FOSS: They could. For example, a person went into Midland with replica gun. He used that replica.

Hon N.D. Griffiths: We are talking about a breach of a restraining order, not a situation like that. The person who sought to be protected under the restraining order would be involved in the arrangement.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! We are resorting to dialogue. We should follow the usual procedures.

Hon PETER FOSS: I know of a person who is not satisfied that a firearms order will be sufficient. The spouse has access to high powered firearms. Even with a firearms order the capacity still exists for that person to obtain illicit access to firearms. The concern is that some people have the capacity, even with a firearms order, to gain access to

weapons. I see no reason that a person who uses firearms for recreation purposes should be given that opportunity to have access to firearms. The member does not believe they will be able to remove those firearms from a gun club. However, if they do not have access to the gun club they could not take them away. I do not believe anyone has a right to firearms; it is a privilege. That privilege is lost in the circumstances of a person engaging in the sort of behaviour that leads to the making of a violence restraining order.

Hon CHERYL DAVENPORT: What is the prescribed period for surrendering possession of any firearms that subclause (6) may shorten? Is it for the duration of the restraining order? Section 11(3)(a) of the Firearms Act relates to the grounds that the commissioner has for forming an opinion that someone is not a fit and proper person to hold a licence, and states that the commissioner must be satisfied that within five years before the person applied for a permit a violence restraining order had not been made against the person.

Hon PETER FOSS: Subclause (6) does not say for how long; it is "within which". An order for a person to deliver up his firearms must include a time within which he must give them up. That will be prescribed. Although the regulations may provide that the firearms must be surrendered within 24 hours, because of certain exigencies the court can say they must be surrendered within one hour. The firearms order has effect during the duration of the violence restraining order, which can be up to two years, and during that time the police can use their Act to surrender the licence.

Clause put and passed.

Clauses 15 to 24 put and passed.

Clause 25: Application -

Hon CHERYL DAVENPORT: This is an area in which we can start to change the police culture. Subclause (1)(d) mentions for the first time that the police can apply for a restraining order on behalf of a person. Would it be appropriate to move subclause (1)(d) up the list to indicate a higher priority of police involvement?

Hon PETER FOSS: Although I understand the member's reasons for suggesting that, it is not appropriate. It must be essentially a personal right, and should not be dependent upon the police. We must confer the personal right first and then the secondary right. I would not want it thought that one could apply for it only if the police said it was okay. I believe that is a problem we have now. It must be seen as the right of an individual to obtain that restraining order, and to have police assist to do that is another right.

Clause put and passed.

Clauses 26 to 32 put and passed.

Clause 33: If respondent objects to final order being made -

Hon CHERYL DAVENPORT: Subclause (2) states that the date fixed for the final order will be "as soon as practicable" after the respondent returns his endorsement copy of the interim order. The final paragraph of clause 33 states that the clerk is to ensure that a date is fixed for the final order hearing as soon as practicable. How soon is that? It does not take long for a gun to be fired or an assault to be committed.

Hon PETER FOSS: It does not mean that the order is to be made as soon as practicable. The order is made at the beginning but if a person wants to argue the case the hearing must be as soon as practicable after the copy has been returned.

Clause put and passed.

Clauses 34 and 35 put and passed.

Clause 36: Restraints on respondent -

Hon CHERYL DAVENPORT: I refer to subclause (5) which states that a misconduct restraining order may restrain the respondent from entering or remaining in a place or restrict the respondent's access to a place. Could a respondent be forced to vacate his place of residence and how would that be enforced?

Hon PETER FOSS: Yes. The clause states that a court may restrain the respondent from being on or near specified premises or in a specified locality or place. Obviously, that is when the hardship to the person must be taken into account.

Hon Cheryl Davenport: Would this apply in relation to misconduct?

Hon PETER FOSS: Yes, under this provision a person can be ordered out. That person may continue to pay the rent but will not be allowed to go to the home.

Clause put and passed.

Clause 37: Duration of a misconduct restraining order -

Hon CHERYL DAVENPORT: I refer to subclause (2) which states that a misconduct restraining order remains in force for the period specified or for one year. Can that be renewed if the problem still exists?

Hon PETER FOSS: Yes it can be. That is dealt with either by varying the order or by making a fresh order under the provisions of clause 49.

Clause put and passed.

Clauses 38 to 54 put and passed.

Clause 55: Service of restraining order -

Hon N.D. GRIFFITHS: I am concerned about the authorisation of oral service. I do not see why it cannot be in writing.

Hon PETER FOSS: Although I understand that, there is ample precedent in injunctions.

Hon N.D. Griffiths: True, but this is a modern era. It is 1997.

Hon PETER FOSS: True, but in this day and age judges can change their processes when they want to. It is a civil process until the person breaches it. Given the difficulties that have arisen in getting these enforcements, I think it is justified. It should not be regarded as a departure.

Clause put and passed.

Clauses 56 to 60 put and passed.

Clause 61: Breach of a restraining order -

Hon CHERYL DAVENPORT: I refer to the penalties set out in paragraphs (a) and (b). Surely an order imposed for a period of 72 hours or less is likely to involve more violence than an order imposed for a longer period. Why is the penalty for breach of the order for 72 hours or less lower than the penalty for longer periods?

Hon PETER FOSS: The reason is the process that leads to the order. A 72 hour order is usually a telephone order and is ex parte. Because the matter has not been fully heard and the person has not had an opportunity to object to it, it is in effect an interim order.

Hon CHERYL DAVENPORT: Is the penalty set out in paragraph (b) of \$6 000 or imprisonment for 18 months imposed for breaches after a full court hearing where the respondent has had the opportunity to debate the issue rather than for breaches of the order for 72 hours which is imposed without the person having an opportunity to defend himself?

Hon PETER FOSS: The request for the order came from Aboriginal women who wanted a process of removing their husbands from the house during the period of their drunkenness rather than of applying a prolonged violence restraining order that would keep them at a distance forever.

Clause put and passed.

Clause 62 put and passed.

Clause 63: Making restraining orders during other proceedings -

Hon N.D. GRIFFITHS: The part of clause 63 which causes me concern is that which says a restraining order may be made on the initiative of the court, as outlined in subclause (3), and such an order will be made under subclause (2), and may be considered to be final under subclause (5), with two years' duration.

Hon Peter Foss: Up to two years.

Hon N.D. GRIFFITHS: That is unless otherwise specified. I note that the person is to be given an opportunity to be heard on the matter, but let us look at what might happen in practice in a Court of Petty Sessions. The legislation will give the court the capacity to make an order on its initiative, rather than somebody applying for it, and this is very much open to abuse. A person accused of an offence and who has difficulty with bail, whether legally represented or otherwise, will be at a great disadvantage.

Hon PETER FOSS: Yes, that is correct. However, the provision addresses one of the points made by Hon Cheryl Davenport, as the court includes a judicial officer when considering a case for bail. That is an instance in which the ability to make a restraining order, and to serve it there and then when considering whether a person should be admitted to bail, deals with a concern of Hon Cheryl Davenport.

I accept Hon Nick Griffiths' point. We always have the capacity for abuse. However, keep in mind that the officer may also not admit a person to bail, or may gaol that person in a manner which is improper. In the case outlined in the provision, he only restrains that person and no penal consequence applies unless that person breaches the restraining order. I accept that it may mean that the person under the order may not go home.

Hon N.D. Griffiths: It is a final order. If it were an interim order, I would not have spoken.

Hon PETER FOSS: It is a final order because it has the capacity to be heard. It is important that that person be restrained. The member should keep in mind the right of appeal.

Hon N.D. Griffiths: It is an empty one.

Hon PETER FOSS: The person may also apply for a variation, including cancellation.

Hon N.D. Griffiths: That is a better answer than an appeal.

Clause put and passed.

Clauses 64 to 70 put and passed.

Clause 71: Notification when firearms order made -

Hon CHERYL DAVENPORT: I query the penalties under proposed section 71(3) and 71(4). I wonder about the rationale for the higher penalty for the employer, which is fairly steep at \$4 000, as opposed to the \$2 000 or six months' imprisonment for respondents.

Hon PETER FOSS: The central difference between the two is that one of the penalties has no gaol sentence. It is normally seen that a more substantial financial penalty is necessary for an employer because of the financial benefit in continuing to use that person.

Clause put and passed.

Clauses 72 to 76 put and passed.

Clause 77: Effect of registration -

Hon N.D. GRIFFITHS: I raise a concern with respect to the wording "registered order operates in this State as though it were a violence restraining order which is a final order". A registered order need not be of the kind which would give rise to a violent restraining order if the conduct which gave rise to the restraining order occurred in Western Australia. I also note the questions of penalty and duration.

Hon PETER FOSS: I think this arises because, at the moment, most of the other States do not have a distinction between violence and misconduct orders. Therefore, we do not have the capacity to make that distinction. In time, when all States adopt this scheme, we will be able to distinguish between orders emanating from other States. We took the higher penalty because there is not a higher and lower penalty which applies in most other States.

Hon N.D. Griffiths: That concerns me.

Hon PETER FOSS: Alternatively, one could have some form of hearing to determine whether it should be a violence or a misconduct order. One would not want less than a violence order in a case of violence.

Hon N.D. Griffiths: You're doing it by regulation; frame it accordingly, taking into account the relevant chapter of the Criminal Code on violence.

Hon PETER FOSS: We would have an order from another State without that distinction; that would be the difficulty.

Hon N.D. Griffiths: You would need to find the conduct to invoke the order in other States.

Hon PETER FOSS: In that case, it would be not just a registration but a judicial hearing.

Hon N.D. Griffiths: It is a cause for concern.

Hon PETER FOSS: It still operates as an order and operates under the terms of the order. One fundamental difference between the two is the period of time in which it operates. If it has no time fixed, it goes for two years,

otherwise it operates only as the order states. It does not make a huge difference. Restraining orders can operate only according to their tenor, and I do not think the tenor will be changed to have a violence rather than a misconduct order. The sting in the tail is the tenor of the order rather than the provisions which follow from it.

Clause put and passed.

Clauses 78 to 84 put and passed.

Clause 85: Existing Part VII orders -

Hon N.D. GRIFFITHS: I find the wording of clause 85 curious. A person who breaches a part VII order, which is taken to be a misconduct restraining order, commits an offence which has a penalty of \$6 000 or imprisonment for 18 months. I suggest that is inconsistent with the treatment of that sort of behaviour that the Committee has already decided is appropriate when dealing with earlier clauses. Why that range of penalty with respect to what has been characterised as a misconduct restraining order?

Hon Peter Foss: Could you be a little more specific? I cannot follow your point.

Hon N.D. GRIFFITHS: When dealing with clause 61 we talked about violence restraining orders. There are two penalties for violence restraining orders: The minor one to which the Minister referred after a query from Hon Cheryl Davenport and the other, which is one of general application for violence restraining orders and has a penalty of \$6 000 or imprisonment for 18 months. Subclause (2) refers to a penalty of \$1 000. In the transitional provisions, a person who breaches a part VII order, which is taken to be a misconduct restraining order, commits an offence and is liable to a penalty of \$6 000 or imprisonment for 18 months.

One clause provides for a misconduct restraining order a penalty of \$1 000 and the other a penalty of \$6 000 or imprisonment for 18 months for breaching a violence restraining order. In this clause we are talking about a penalty for breaching a violence restraining order applying to misconduct restraining orders. I think that is inconsistent and not right and it is the Attorney's job to rectify it, not mine.

Hon PETER FOSS: The practical effect of it all is that it is treated as a misconduct order. Therefore, the period is one year rather than two. The penalty is more. The problem we have is exactly the same as the ones we had with the Eastern States orders; that is, those circumstances may have led to a violence restraining order. If the full gamut of penalties were available, presumably in imposing a penalty the court would take into account the nature of the conduct complained of and would adjust the penalty accordingly. If we made it a violence restraining order it would go to two years and have this penalty. This makes it one year. It will then be reviewed and extended as either a violence or a misconduct order. However, the full range of penalties are available.

Hon N.D. GRIFFITHS: If somebody is to be dealt with for breaching a restraining order, there must be a judicial determination in any event. Therefore there should be no difficulty in the judicial officer making a determination on whether the form of conduct was something that formed within those matters of the Criminal Code to which I referred in the second reading debate.

This legislation should be a little more precise in distinguishing the sorts of conduct that give rise to the range of penalty. It is rather sloppy to have that range of penalty for something which is described as a misconduct restraining order in one clause and have another range of penalty for something that is described as a misconduct restraining order in another clause. I note what the Attorney said. I do not think it is good enough.

Hon PETER FOSS: I beg to differ. I think it would be an unnecessary hypothetical issue to be tried. I do not think we need to have the issue tried. It is sufficient to look at what is the conduct. Secondly, it would be a strange attitude because one would have to determine through the hypothetical trying of an issue what would have been the order that would have been made. I think it is easier to allow a wider discretion of penalty for the person imposing it.

Clause put and passed.

Clauses 86 to 89 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.

GENDER REASSIGNMENT BILL*Second Reading*

Resumed from 13 March.

HON N.D. GRIFFITHS (East Metropolitan) [10.07 pm]: The Australian Labor Party supports the Bill. It advances the welfare of the people affected by this Bill considerably. The important provisions are those relating to the amendments to the Equal Opportunity Act rather than other aspects on which I will touch shortly. My colleagues and I support the Bill because it brings the treatment of this issue closer to what is the policy of the Australian Labor Party. I will read the relevant part of that policy. It is a policy we have had for some years and one that we have been keen to put into operation. Unfortunately, we do not hold the Treasury benches and that is the way the world is. Under the heading "Gender dysphoria" the policy states -

Labor will -

Consult with people living with gender dysphoria to develop and implement policy to recognise the rights pertaining to their reassigned gender status and to address their special needs.

Ensure that the provisions of the Equal Opportunity Act encompass discrimination against people living with gender dysphoria on the grounds of their assumed gender identification.

Ensure that relevant legislation is amended in order to allow the alteration of sex description for those persons who are post operative gender dysphoric.

This measure goes some way towards those policy objectives of the Australian Labor Party, but not all the way.

I make some reference to the Bill. The starting point is the question of gender reassignment, which involves procedures - medical or surgical or a combination of both - to alter the genitals and other gender characteristics of a person, identified by a birth certificate as a male or female, so that the person will be identified as a person of the opposite sex, and includes, with respect to a child, such procedure or procedures to correct or eliminate ambiguities in the child's gender characteristics.

The Bill seeks to set up a Gender Reassignment Board. The role of the board is to receive and determine applications for recognition certificates, and to issue recognition certificates in appropriate cases. The recognition certificate is one that identifies a person who has undergone a reassignment procedure as being of a sex to which the person has been reassigned. The Bill sets out the general criteria to be met for the issue of recognition certificates. Those matters were referred to in the Minister's second reading speech, and I do not propose to repeat them. However, it is important to note the effects of the certificate; namely, it is conclusive evidence that a reassignment procedure has been undergone and the person concerned is of the sex stated in the certificate. What flows from that is the issue of a new birth certificate and, most importantly, the operation of the Equal Opportunity Act, where a number of very appropriate grounds to make discrimination unlawful are proposed to be put in place.

This Bill deals with sexual identity, not sexual behaviour. I understand from the Minister's second reading speech that it does not involve a large number of people, but no doubt it is very important to those whom it does involve. It may be more appropriate if the world were a kinder and more gentle place - certainly if the world were closer to the policy of my party - to have the provisions of unlawful discrimination take effect when the reassignment procedure has taken place rather than the issue of the recognition certificate. That is a view that I advocate should be adopted by the Parliament as soon as members can give it mature consideration. However, in expressing that view I do not wish to hold up the legislation, which I have no difficulty in endorsing.

HON MURIEL PATTERSON (South West) [10.13 pm]: I would like to take a few minutes to support the Bill. I am sure no-one can articulate the reason for this Bill as well as the Attorney General did in his summing up. During the Thirty-fourth Parliament I was chairman of the justice parliamentary committee, and this Bill was well scrutinised as the committee endeavoured to understand the full implications of the congenital condition, including interviews with a person so afflicted. Persons who may qualify for a recognition certificate include gender reassigned persons, children born with ambiguous genitalia, and intersex persons with a combination of both male and female genitals and/or reproductive organs and have undergone extensive counselling and a range of hormonal and surgical interventions to reassign the persons' gender characteristics so that they correspond to that of their reassigned gender status.

I will not talk about the disharmony that this can cause to parents or the tragic loss of self-esteem in such a person. I want to emphasise that this is a congenital condition. Not one person in this House would not support a Bill to give quality of life to any child suffering from blindness, deafness, deformed limbs or any other congenital distortion or

malformation. This Bill is all about giving people who are suffering from gender dysphoria and who have undergone medical procedures to alleviate their condition, legal recognition and reassigned gender.

As for any concerns regarding birth certificates, I think a precedent has already been set in this field through adoption when there is a change of name. This Bill is humane, and I congratulate the Attorney General for bringing this matter to a legal resolution. I support the Bill.

HON J.A. SCOTT (South Metropolitan) [10.15 pm]: I support the Bill. As Hon Muriel Patterson has pointed out, this Bill will enhance the dignity of people who have been previously forced to live a twilight life because of genital differences. I congratulate the Attorney General for progressing the Bill and bringing it to this House in good time.

HON PETER FOSS (East Metropolitan - Attorney General) [10.16 pm]: I thank members for their support of the Bill and the excellent way in which they have addressed it. It is an important and humanitarian Bill which will make an enormous difference to the lives of the people affected by it. It is pleasing that in one evening we have been able to deal with two measures which are very important for society - one which affects a large number of people and another which affects a small number of people, but in each case it is an important social measure for us to take. I thank members for their support.

Question put and passed.

Bill read a second time.

ADJOURNMENT OF THE HOUSE - SPECIAL

On motion without notice by Hon E.J. Charlton (Minister for Transport), resolved -

That the House at its rising adjourn until Tuesday, 8 April 1997.

House adjourned at 10.18 pm

QUESTIONS ON NOTICE**WATER CORPORATION - CONSOLIDATED FUND***Revenue*

30. Hon JOHN HALDEN to the Minister for Finance representing the Minister for Water Resources:

The 1996/97 Consolidated Fund Estimates at page 17 reveal that dividends surplus from the Water Corporation will increase from \$15.182m in 1995/96 to \$169.506m in 1996/97 (estimate) -

- (1) What is the reason for this increase in revenue?
- (2) Is it likely that this level of revenue (1996/97 level) will continue to be raised from the Water Corporation in subsequent years?

Hon MAX EVANS replied:

- (1)
 - (a) The Water Corporation was established on 1 January 1996, following a major restructure of the Western Australian Water Industry. As part of the restructure arrangements, there was a major change to the financial framework that existed up to that time. As a consequence, there are major changes to the payments to, and received from, the Water Corporation. These changes included the introduction of dividend payments.
 - (b) The major factors which explain the increase in the level of dividends between 1995-96 and 1996-97 are as follows -
 - (i) The dividends for 1995-96 relate only to a six month period of operation. The dividends for 1996-97 relate to a full financial years.
 - (ii) Earlier in the 1995-96 financial year an amount of \$27.794m had been paid to the consolidated fund as the Water Authority's statutory contribution for 1995-96. This payment will not occur in 1996-97.
 - (iii) The level of surplus to be achieved by the Water Corporation in 1996-97 will reflect a receipt of CSO payments from the consolidated fund, estimated to be \$191.172m. No CSO fund was received by the Water Corporation during 1995-96.
 - (iv) During 1996-97 the Water Corporation is expected to pay \$91.327m to the consolidated fund as taxation equivalents. No payment was made during 1995-96.
- (2) Yes.

HOMESWEST - SALARIES AND WAGES*Reduction*

86. Hon JOHN HALDEN to the Minister for Finance representing the Minister for Housing:

In 1994/95 salaries and wages on-costs were reported in Homeswest's Annual Report as \$7.071m. This decreased in 1995/96 to \$4.738m. What was the reason for this reduction in expenditure in this line item?

Hon MAX EVANS replied:

The figure for 1994-95 included a charge to meet Homeswest's liability to the Superannuation Board - pension scheme - of approximately \$2.3m. In 1995-96 a change in the accounting procedures resulted in contributions being met from the provision. An actuarial study on Homeswest's liability as at June 1996 indicated a real reduction in its superannuation liability. Due to the reduction in the superannuation liability it was not necessary to charge the 1995-96 operating statement as the reduced provision was adequate.

FAMILY AND CHILDREN'S SERVICES - COUNSELLING SERVICES*Bunbury Region*

102. Hon BOB THOMAS to the Minister for Transport representing the Minister for Family and Children's Services:

- (1) How many hours of counselling did -

- (a) South West Counselling Inc;
- (b) Centacare, Bunbury; and
- (c) Relationships Australia (Western Australia) Inc., Bunbury,

provide in 1994/95 and 1995/96?

- (2) How many clients were seen by -

- (a) South West Counselling Inc;
- (b) Centacare, Bunbury; and
- (c) Relationships Australia (Western Australia) Inc., Bunbury,

in 1994/95 and 1995/96?

- (3) What was the average number of sessions provided, per client, by each organisation listed in (2)?

- (4) What is the proportion of the shire's population accessed for each of the services listed in (1)?

- (5) What was the average cost, per client, for each of the services listed in (1)?

- (6) How many clients are on waiting lists for each of the services listed above?

Hon E.J. CHARLTON replied:

- (1) (a) South West Counselling Inc:
 1994-95 6 562 hours
 1995-96 7 802 hours
- (b) Centacare, Bunbury:
 1994 1 419 hours
 1995 1 306 hours
 1996 1 671 hours
- (c) Relationships Australia (WA) Inc in Bunbury is not funded by the State Government. The member should approach Relationships Australia directly if he requires this information.
- (2) (a) South West Counselling Inc:
 1994-95 1 073 clients
 1995-96 1 016 clients
- (b) Centacare, Bunbury:
 1994 1 719 clients
 1995 1 554 clients
 1996 1 918 clients
- (c) Relationships Australia (WA) Inc, Bunbury:
 See (1)(c).
- (3) (a) South West Counselling Inc:
 1994-95 4 sessions/client
 1995-96 4 sessions/client
- (b) Centacare, Bunbury:
 1994 3-4 sessions/client
 1995 3-4 sessions/client
 1996 3-4 sessions/client
- (c) Relationships Australia (WA) Inc, Bunbury:
 See (1)(c).
- (4) (a) South West Counselling Inc:
 1995-96 1994-95
 Collie 1% Approximately same
 Busselton 1.2% as 1995-96
 Manjimup 2.2%
 Margaret River 1.4%
 Bridgetown-Greenbushes 3.5%
 Nannup 3.4%
 Donnybrook/Balingup 0.8%
 Harvey 0.8%
- Approximately 10 per cent of population over 10 years
- (b) Centacare Bunbury:
 Not able to be ascertained.

- (c) Relationships Australia (WA) Inc, Bunbury:
See (1)(c).
- (5) (a) South West Counselling Inc:
1994-95 \$47
1995-96 \$54
- (b) Centacare, Bunbury:
1994 \$74
1995 \$83
1996 \$82
- (c) Relationships Australia (WA) Inc, Bunbury:
See (1)(c).
- (6) (a) South West Counselling Inc:
25 - that is, those who have to wait longer than two weeks.
- (b) Centacare, Bunbury:
None.
- (c) Relationships Australia (WA) Inc, Bunbury:
See (1)(c)

JETTIES - CARNARVON ONE MILE

Grant

140. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Fisheries:
- (1) Has the Carnarvon Jetty Restoration Committee applied for a grant towards the One Mile Jetty restoration under the recreational fishing program?
 - (2) Does the application fit the guidelines for grants under this program?
 - (3) If so, when will a decision regarding this application be made?
 - (4) What level of funding per application applies to this program?
 - (5) What total funding is available under this program in the current financial year?
 - (6) What funds have been sought in this Carnarvon Jetty Restoration application?

Hon E.J. CHARLTON replied:

The Minister for Fisheries has provided the following reply -

- (1)-(6) The recreational fishing program provides a range of grants to community groups - the total program funding for this financial year is \$284 000. The Carnarvon Jetty Restoration Committee has applied for a grant of \$70 000. All applicants will be notified of outcomes shortly.

WESTERN AUSTRALIAN ESTUARINE RESEARCH FOUNDATION - SWAN RIVER TRUST

Payments

153. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Water Resources:
- (1) How much of the promised \$2m (over three years) has been paid by the Swan River Trust to the Western Australian Estuarine Research Foundation?
 - (2) If more than one payment has been made, when were payments made?
 - (3) When were the terms and conditions of the financial assistance from the trust to the foundation finalised?
 - (4) Will the Minister for Water Resources provide a copy of those terms and conditions?

Hon MAX EVANS replied:

The Minister for Water Resources has provided the following reply -

- (1) The full amount has been paid.
- (2) 1994-95, 1995-96, 1996-97.

- (3) The Western Australian Estuarine Research Foundation signed the agreement (undated) on about 21 November 1995 and the Swan River Trust signed the agreement on 20 February 1996.
- (4) Yes. [See paper No 364.]

ELECTORAL - ROLL

Removal of Names

212. Hon J.A. COWDELL to the Leader of the House representing the Minister for Parliamentary and Electoral Affairs:

- (1) How many electors were removed from the Western Australian electoral roll as a consequence of their failure to enrol to vote and failure to respond to the official correspondence, following the 1996 federal election?
- (2) On what date were those names removed from the roll?
- (3) Were the names of these electors cross-checked with the attendance roll at the State election on 14 December 1996, prior to any removal?
- (4) If not, why not?

Hon N.F. MOORE replied:

The Minister for Parliamentary and Electoral Affairs has provided the following reply -

- (1)-(2) Some 10 111 electors were removed from the commonwealth electoral roll by the Australian Electoral Commission during the week commencing 14 October 1996 as a result of non-voter action stemming from 2 March 1996 federal election. Given the proximity to the state general election, these electors were not removed from the Western Australian electoral roll until after the production of the roll to be used at the state general election held on 14 December 1996. During the week commencing 2 December 1996, 9 378 electors who had not subsequently submitted a new Electoral Enrolment Form were removed from the state roll.
- (3) No.
- (4) There was no need to undertake such a cross-check, as electors who had been objected to by the AEC were still on the printed roll used at the 14 December 1996 election.

RESERVES - CROWN

Sale

213. Hon JOHN HALDEN to the Minister for Finance representing the Minister for Lands:

- (1) How many crown reserves were sold in 1995/96 and what was the revenue received by the Government from the sale of these reserves?
- (2) How many crown reserves were earmarked for sale in this period and what was their estimated value?
- (3) Were all crown reserves sold in the above period the subject of consultation with the relevant local government authority, the local community, offered back to the original owners in the cases of previous resumption orders and/or considered for possible amalgamation with actual dedicated parks or recreation reserves?

Hon MAX EVANS replied:

The Minister for Lands has provided the following reply -

- (1) I have been advised that 20 reserves were sold in 1995-96 for an amount of \$3 939 834.
- (2) I have been advised an additional 38 reserves which were identified as surplus to government requirements were referred to the Department of Land Administration for possible sale. The Department of Land Administration undertakes a further assessment of each reserve before any decision is finalised. A preliminary examination resulted in 12 reserves removed from sale with seven of them likely to be vested to local government for recreation purposes.

The remaining 26 will be assessed for possible sale or similar vesting. The estimated value of 13 of the remaining 26 reserves is \$5 679 950. Included in this is a reserve comprised of eight individual lots which are now being offered back to the former owners for a total of \$1 205 450.

- (3) Yes. The Department of Land Administration, as a matter of routine, consults with local government who include community input as appropriate, other Government departments and Government servicing authorities, and any other bodies which may be appropriate before final decisions are made about the disposal of Crown land.

ABORIGINES - YOUTH SERVICES PROGRAM

Funding

223. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Aboriginal Affairs:

- (1) Is the Minister for Aboriginal Affairs aware that ATSIC funding to the Community and Youth Services program has been terminated?
- (2) What State Government funding is to be made available for Aboriginal Youth Services programs in 1997?

Hon E.J. CHARLTON replied:

The Minister for Aboriginal Affairs has provided the following reply -

- (1) Yes. The Community Youth Support program is to be abolished with project funding under that program to cease from the end of March 1997. The Aboriginal Affairs Department has commissioned an analysis of the effect of commonwealth budget cuts in Western Australia. A report entitled, "Impact of The Commonwealth Budget 1996-97 on Aboriginal people in Western Australia" was completed in November 1996.
- (2) The Aboriginal Affairs Department does not have a funding program specifically directed to the needs of youth. It is suggested that the member direct this question to the Minister for Youth Affairs.

ELECTORAL - PROVISIONAL VOTES

Applicants

240. Hon TOM STEPHENS to the Leader of the House representing the Minister for Parliamentary and Electoral Affairs:

With reference to question without notice 18 of 11 March 1997, can the Minister for Parliamentary and Electoral Affairs advise the House -

- (1) How many provisional vote applicants have received letters and electoral enrolment forms from the Electoral Commission since the state election?
- (2) Over what period have those letters been sent?
- (3) How many replies to those letters have been received?

Hon N.F. MOORE replied:

The Minister for Parliamentary and Electoral Affairs has provided the following reply -

- (1)-(2) From 20 February 1997 to 4 March 1997, letters and electoral enrolment forms were sent to 2 084 provisional declaration vote applicants (and 3 274 absent vote applicants) who were not on the state electoral roll as at 14 December 1996 for the state general election. From 18 to 21 March 1997, 2 147 letters and enrolment forms were posted to provisional vote applicants who were enrolled for a different address from that for which they applied for a vote (and who have not subsequently submitted a new enrolment form).
- (3) A reply paid envelope addressed to the Australian Electoral Commission was included with each electoral enrolment form in keeping with joint roll arrangement procedures. Thus, while some electors have written or telephoned this commission seeking further information, it is unknown how many enrolment forms have been returned as a result of this exercise.

GOVERNMENT PRINTING - PRIVATISATION

Overseas Contractors

244. Hon TOM HELM to the Minister for Finance representing the Minister for Works:

Since the privatisation of State Print in 1994 -

- (1) How much Government printing work is being contracted to the private sector in Western Australia?
- (2) How much Government printing is being contracted off-shore, for instance to the South East Asian market?
- (3) Is it correct that the Education Department is having the majority of its printing work printed in Hong Kong, particularly Western Australian Government Curriculum?
- (4) Following the sale of State Print to the Coventry Group and subsequent sale of Allwest Print to the Thacker Group, what commitment has the State Government obtained from the Thacker Group to keep printing in Western Australia?

Hon MAX EVANS replied:

The Minister for Works has provided the following reply -

- (1)-(2) This data is currently not maintained centrally and the resources are not available to undertake the research required across the whole of government. If the member has a query about a particular contract I will endeavour to provide the information requested.
- (3) This information should be sought from the Minister for Education.
- (4) The State Government sold the state printing works to the Coventry Group in January 1995. The Government is not in a position to set conditions on the subsequent sale of a private company.

QUESTIONS WITHOUT NOTICE

TOURISM - COMMISSION

Auditor General's Investigation - Result

127. Hon TOM STEPHENS to the Minister for Tourism:

I refer to the Auditor General's investigation of the Western Australian Tourism Commission under section 80 of the Financial Administration and Audit Act conducted in May 1996.

- (1) Did that investigation identify areas in the operations of the Western Australian Tourism Commission where controls, financial management and event management were deficient?
- (2) Did that investigation include an examination of the circumstances in which, Mr Carton, the Chairman of the WATC, signed an agreement with Global Dance Foundation when it was not incorporated?
- (3) If not, will the Minister now ask the Auditor General to fully examine all the circumstances surrounding the WATC- Global Dance agreement to determine whether the Chairman of the WATC or any of its commissioners have failed to discharge their duty to act with due care and diligence and to comply with the requirements of the FAA Act?
- (4) Does Mr Carton's term as commissioner of the WATC expire in April?
- (5) Will the Minister assure the House that Mr Carton will not be reappointed commissioner or chairman of the commission until the full circumstances of the Global Dance deal are scrutinised by the Auditor General?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) This part of the question was asked yesterday and I asked that it be placed on notice.

- (2) I request that this part of the question be referred to the Minister responsible for the Office of the Auditor General.
- (3) The Auditor General in his report of 18 June 1996 stated that there was no impropriety by the chairman.
- (4) Yes.
- (5) Mr Carton has been approached to take a further appointment as Chairman of the WATC. He has overseen significant change within the commission to improve its focus, efficiency and processes. Some of these include -
- (a) review of the Financial Administration and Audit Act, division and processes - an improved financial reporting system, training programs for all staff in State Supply Commission requirements, formal performance appraisal systems;
 - (b) the development of an annual business plan strategy and implementation, which did not previously exist;
 - (c) improved commission board meeting procedures and records - in response to previously identified weaknesses in this area;
 - (d) improved resource efficiencies;
 - (e) improved partnerships with Western Australian industry with the introduction of five advisory boards to the commission structure;
 - (f) the development of a risk management strategy which did not previously exist;
 - (g) the introduction of clear strategies for tourism in Western Australia in consultation with the industry;
 - (h) the development of a very strong and effective partnership with the Tourism Council of Australia, which is the industry body of tourism;
 - (i) the introduction of a joint industry-government quality assurance program - a first for Western Australia; and
 - (j) the development of Western Australia's first image consumer television campaign for many years.

It is important that these new directions be carried through under consistent chairmanship to their final conclusions. Much of their progress has just begun.

Hon Tom Stephens: Why will you not answer part (1) of the question?

Hon N.F. MOORE: I have every confidence in the work Mr Carton has done to date and look forward to his completing the tasks he began. Mr Carton is an excellent chairman. The implications contained in the question are offensive and must be very offensive to him.

Hon Tom Stephens: Why won't you answer that question?

Hon N.F. MOORE: I explained yesterday why the question should be placed on notice. However, having been told to place it on notice the member has asked it again today. He will get an answer on notice when the answer is ready to be given.

The PRESIDENT: Order! Members are aware of the rule that applies regarding questions without notice when a Minister asks for the question to be put on notice. There is a precise, well-used procedure. Unless members take the steps available to them - the member may have - the question should be automatically on notice. It is not a matter of picking and choosing; there are some rules associated with it.

CRIMINAL INJURY COMPENSATION - APPLICATIONS

Number and Delay

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

Does the Attorney General now have answers to my question without notice 113 of yesterday? It was -

- (1) Since July 1996, how many criminal injury compensation applications have been
- (a) made;

- (b) approved; and
- (c) refused?
- (2) How many applications are still to be processed?
- (3) What is the current delay in processing criminal injury applications?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1) Criminal injuries statistical data is kept by the calendar year. Data is therefore provided for the period 1 January 1996 to 25 March 1997.
 - (a) 1226;
 - (b) 741; and
 - (c) 295.
- (2) 2 689 as at 25 March 1997.
- (3) Approximately 20 months.

NUCLEAR REACTOR - CHAPMAN VALLEY SHIRE

Cordell Report

129. Hon J.A. SCOTT to the Leader of the House representing the Minister for Resources Development:

- (1) Did the Cordell report of 1992 propose the early construction of a nuclear reactor in the Chapman Valley Shire at Coronation Beach, Oakajee?
- (2) Was the proposed developer and project manager of this project the Industrial Lands Development Authority in joint venture with the Department of Resources Development?
- (3) Is this project still under consideration by any government department?
- (4) If not, is consideration being given to building a nuclear reactor anywhere in Western Australia?
- (5) If a nuclear reactor is being considered, what locations are being examined and what is the time frame for its construction?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) The Department of Resources Development does not have a reference to this report.
- (2)-(3) No.
- (4) I am not aware of any consideration being given to such a proposal.
- (5) Not applicable.

TOURISM - ELLE RACING

Compliance Procedures

130. Hon JOHN HALDEN to the Minister for Tourism

Is the Minister satisfied that all proper compliance procedures are and were in place with respect to the Elle contract?

Hon N.F. MOORE replied:

Yes.

GLOBAL DANCE FOUNDATION - MINISTER FOR THE ARTS

Correspondence with Other Ministers and Officials

131. Hon TOM STEPHENS to the Minister for the Arts:

- (1) Further to my question yesterday about the Global Dance Foundation in reply to which the Minister indicated that he had had no dealings with Global Dance other than his writing to it, did he personally write

to Ministers of culture and arts and other senior government officials within Australia and overseas urging their participation in the World Dance Congress to be held in August 1997 sponsored by Global Dance, for which sponsorship Global Dance has received \$430 000?

- (2) Did the Minister approve the use of his name and title on publicity material disseminated by Global Dance, both in writing and on the Internet, which was still being disseminated only a week ago?
- (3) Has the Minister written to all 110 countries, State, regional and provincial Governments, which Global Dance claims he personally invited to support the congress, to advise them that the congress will not take place?
- (4) If not, who has? If no-one has, why not?

Hon PETER FOSS replied:

- (1)-(4) As I indicated yesterday, I am pleased to give support to anyone who has the initiative to cause something to happen in Western Australia. As does this Government, I frequently give support to those people who set up programs that will bring conferences, sporting or other events to Western Australia.

Hon Mark Nevill interjected.

Hon PETER FOSS: Unlike his leader, who seems to be obsessed with contracts with unincorporated companies which are subsequently incorporated, Hon Mark Nevill should know that it is a valid path to take.

POLICE - SPECIAL BRANCH

Personal Files

132. Hon CHERYL DAVENPORT to the Attorney General representing the Minister for Police:

Noting the decision of the New South Wales Government to disband its police special branch and the decision of other States to disband their special branches some years ago -

- (1) How many personal files on individuals were maintained by the WA special branch?
- (2) How many of those were destroyed?
- (3) How many are archived by the department?
- (4) How many personal files are maintained by the special police intelligence unit?
- (5) Are files maintained on conservation activists, Aboriginal activists and trade unionists?
- (6) What is the justification for the maintenance of personal files on social and political activists who have not committed any crimes when the public perception is that such activity ceased with the disbanding of the WA special branch?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1)-(2) The special branch was disbanded in 1983 by the Western Australian Government. No records exist on how many files may have existed.
- (3)-(4) None.
- (5) No.
- (6) Not applicable.

SCHOOLS - STAFF

Easter Tuesday

133. Hon TOM STEPHENS to the Leader of the House representing the Minister for Education:

- (1) Will support staff be asked to keep schools open on Easter Tuesday?
- (2) Is the Minister aware of section 19 of the Occupational Safety and Health Act, which places an obligation on the department to maintain a safe workplace for its workers? If so -
- (3) Is the Minister aware that many support staff will be left alone in schools on Easter Tuesday?

- (4) Does a vacant school with one or few employees in it constitute a safe workplace?
- (5) Will these schools remain open when staff have lunch or ablution breaks?

The PRESIDENT: Rules are also attached to all questions, such as asking for opinions. The member should lift his game.

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) Yes; however, some schools may not open if it is agreed at local level that services provided to the public by support staff can be maintained by the relevant district office.
- (2)-(4) Yes.
- (5) Not if the school premises would be left unattended at these times.

ENVIRONMENT - PHOTOCHEMICAL SMOG

Kwinana Power Stations

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

- (1) Given the high proportion of nitrous oxide emissions contributing to Perth's growing and significant photochemical smog pollution problem, will the Minister make the Kwinana A and C power stations either implement the latest technology scrubbers or convert to cleaner burning gas fuel?
- (2) If not, for what reason, and why does the Minister consider that the pollution caused by these agencies should continue to contribute so significantly to Perth's escalating air pollution problems?
- (3) What other action will the Minister implement in government agencies under his department to address the issue of unacceptable pollution levels?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) No.
- (2) The recent Perth photochemical smog study indicated that power stations did not contribute a very high proportion of the metropolitan area nitrous oxide emissions. Industry as a whole contributed less than motor vehicles.
- (3) The coalition Government has committed to the establishment of a select committee to develop an air quality management plan for Perth. Agencies reporting to the Minister will be involved.

WORKSAFE WA - TAXIS

Camera Surveillance Units

135. Hon E.R.J. DERMER to the Minister for Transport:

- (1) Has the Minister consulted the WorkSafe Western Australia Commission as to whether a taxi fitted with a camera surveillance unit, but not fitted with a protective screen, constitutes a safe workplace?
- (2) If not, why not?
- (3) If so, what is the opinion of WorkSafe WA on this matter?
- (4) Is the contribution of \$1 000 towards the cost of the supply and installation of camera surveillance units in each taxi to be made from government revenue or from the taxi industry fund?
- (5) By what date does the Minister anticipate that the installation of camera surveillance units in all taxis will be completed?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1)-(3) WorkSafe WA has been consulted on the issues of a safe workplace in relation to taxis. WorkSafe said that it would not prescribe what constitutes a safe workplace. It requires the taxi industry to determine this, based on industry specific knowledge and the principles of safe work places.

I have a little problem with that. One of the great impediments in the current legislation is that it does not provide any clarity for the taxi industry or any other organisation. They are left in a no win situation. As a result, legal action has been taken by people who have not seen in themselves the ability, and who have not been given any direction, to make changes. As I mentioned yesterday, the taxi safety summit was held last year, which officers from WorkSafe attended. It was agreed that the installation of cameras would deal with the issue.

- (4) The \$1 000 contribution is to be made from the taxi industry development fund. The money is raised by the industry for its benefit.
- (5) The tender for the supply and installation of camera surveillance units has closed and an industry evaluation panel has chosen a short-listed tenderer. A trial of the tendered system is expected to be completed by the end of next week. As soon as the formal approval process is finalised, the successful tenderer will be able to produce and fit the units. If a partition was installed in a cab and somebody attacked the driver and the partition was the cause of an injury, it could be construed by WorkSafe that it did not constitute a safe workplace. Because a person takes an initiative in the belief he is operating out of a safe workplace, it does not mean that it is.

GAS - GOLDFIELDS GAS PIPELINE AGREEMENT ACT

Tariff Schedule

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

- (1) Has the Minister approved any changes to the indicative tariff schedule under schedule 1 of the Goldfields Gas Pipeline Agreement Act?
- (2) If yes, when and what changes were made?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I do not have a response to the question and I ask the member to place it on notice.

GAS - GOLDFIELDS GAS PIPELINE AGREEMENT ACT

Tariff Schedule

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

- (1) Has the Minister received comprehensive information of the cost of financing the goldfields gas pipeline since it was completed last year?
- (2) If not, why not?
- (3) If yes, when will a reviewed indicative tariff schedule be available, based on information in (1)?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I do not have a response to the question and I ask the member to place it on notice.

HOSPITALS - NARROGIN DISTRICT HOSPITAL

Budget Deficit

138. Hon KIM CHANCE to the Minister representing the Minister for Health:

- (1) Is the Minister aware that the Great Southern Health Service Board members have been informed that under current projections the deficit of the Narrogin District Hospital for the 1996-97 financial year will be greater than \$900 000?

- (2) If this is correct, it represents a deficit more than three times greater than the deficit for 1995-96 which required special assistance from the Budget in the bail out of hospitals last year. Can the Minister given an assurance that the Narrogin District Hospital will be similarly assisted in 1996-97?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I ask that it be put on notice.

GOVERNMENT EMPLOYEES SUPERANNUATION BOARD - COST

139. Hon JOHN HALDEN to the Minister for Finance:

- (1) Is the Government Employees Superannuation Board a trustee board or a management board?
- (2) If both, is there a conflict?
- (3) Who bears the cost of the operation of the GESB - the members or the taxpayer?

Hon MAX EVANS replied:

- (1)-(3) The GESB is a trustee and management board with both government and employee representatives on it. The board pays out lump sums and pensions and the Government reimburses it. Any cost of running the GESB does not affect the benefits paid to employees.

Hon John Halden: Is it paid by the taxpayer?

Hon MAX EVANS: Yes.

ENVIRONMENT - PHOTOCHEMICAL SMOG

Petroleum Industry

140. Hon J.A. SCOTT to the Minister representing the Minister for the Environment

Some notice of this question has been given.

- (1) Given the severe impact of petroleum refining and storage on Perth's photochemical smog problem, as identified by the Perth photochemical smog study, what action and policy initiatives is the Government taking to significantly reduce the pollution caused by the industries?
- (2) How are such measures projected to decrease pollution, and by what amounts yearly?
- (3) Will measures taken actually decrease air pollution in Western Australia?

Hon MAX EVANS replied:

- (1) As the Perth photochemical smog study makes clear, the major contribution to Perth's photochemical smog problem actually comes from motor vehicles which is, therefore, the area for which the Government is planning the necessary action and policy initiatives. The contribution from petroleum refining and storage activities is being tackled through -

regulations enacted in 1995 requiring vapour control, recovery and disposal systems to be progressively provided for fuel storage and transfer facilities;

regulations enacted in 1996 requiring the registration and control through regulations of large hydrocarbon storage facilities - storing more than 1 000 cubic metres; and

a new industrial pollution licensing system which has introduced a licence fee structure based on the actual amount of pollution emitted by industry thus providing an economic incentive mechanism for pollution reduction. This new licensing system will also be providing further incentives for excellence in industrial pollution reduction performance through the issue of best practice licences.

- (2) These measures will decrease pollution principally by the reduction of reactive organic compounds and nitrogen oxides emissions. Since the measures depend to some extent on industry's response to the new licensing initiative as well as to the timing of replacement facilities, the actual reductions are not able to be fully quantified at this stage.

- (3) Yes, these measures will help to contribute to the reduction of air pollutant emissions, but a reduction in air pollution levels will be achieved only if a comprehensive motor vehicle emission control strategy is also successfully implemented.

PUBLIC SERVICE - WOMEN

*Level 7 and Above***141. Hon CHERYL DAVENPORT to the Minister representing the Minister for Public Sector Management:**

- (1) Is it true that Western Australia has the second lowest number of women in senior public service positions?
- (2) How many women, by comparison with men, are employed in level 7 and higher public service positions?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) As at June 1993 Western Australia did have the second lowest number of women in senior public service positions. More recent data is not available for all States. However, in Western Australia the number of women in these positions has increased from 4 per cent in 1993 to 13 per cent in 1996.

Senior executive services across Australia - June 1993 -

	Women %	Men %
Victoria	17.1 *	82.9 *
Commonwealth	14.9	85.1
Australian Capital Territory	14.9	85.1
New South Wales	13.8	86.2
Queensland	13.0	87.0
South Australia	10.0	90.0
Western Australia	9.0 **	91.0
Tasmania	5.8	94.2

* Incorporates appointees with departmental head status.

** The 1996 figure for Western Australia is 13 per cent for women in senior public service positions.

Source: State and Commonwealth EEO annual reports.

- (2) For 1996, women represented 20 per cent of all public service employees employed at salary range 7 - above \$50 477. However, only 3 per cent of all women in the Public Service reach salary range 7 or above.

Proportion of women and men at salary range 7 and above -

	30 June 1996	
	Women	Men
Percentage in salary range 7 - above \$50 477 - and above as compared to total number for that sex	3% (1 712)	16% (7 059)
Percentage sex in salary range 7 - above \$50 477 - and above as compared to total number in salary range level 7 and above	20% (1 712/8 771)	80% (7 059/8 771)

Source: Director of Equal Opportunity in Public Employment.

HEALTH - PEEL HEALTH CAMPUS

*Dispensary***142. Hon J.A. COWDELL to the Minister representing the Minister for Health:**

Further to my question of 20 March with respect to a dispensary on the Peel Health Campus site and noting the Minister's statements that "The establishment of a dispensary is a decision for the proposed private operator" and "The viability of a dispensary is a matter for the proposed private operator - Health Solutions WA Pty Ltd", on what basis has the Peel Health Service appealed against an applicant for Mandurah City Council planning approval for

a private dispensary, when the Minister has indicated that the Government has no interest in precluding a private dispensary in the vicinity of the hospital?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

The development of the Peel Health Campus has always included provision for the development of a private pharmacy service onsite and to this end, retail facilities are currently being constructed. This has been included on the basis that visitors to the campus have access to as many services as possible on the one site reducing the need for additional travel. It is planned that the establishment of retail outlets will be the responsibility of the private operator. However, at this stage, the Peel Health Service continues to have a direct interest in advancing provisions in the development until such time as the issue of the appointment of a private operator is resolved. The development of a pharmacy in close proximity to the Peel Health Campus development may well preclude the prospect of achieving a retail outlet inside the new facility under current commonwealth provisions.

It should be noted that the City of Mandurah approached the Peel Health Service to comment on a proposed medical and pharmacy development and did so on the basis of provisions made for the new campus development. The Peel Health Service is happy to discuss the issue of the proposed medical pharmacy, which is planned to be adjacent to the campus, with a view to determining whether the proposed service will be sufficient to fulfil the planned needs of the campus development. To date, the City of Mandurah has not approached Peel Health Services for comment.

FISH RESOURCES MANAGEMENT ACT

Amendment

143. Hon JOHN HALDEN to the Minister representing the Minister for Fisheries:

- (1) Has the Minister sought advice on whether the Fish Resources Management Act requires amendment as a result of the Commonwealth's Native Title Act or the decisions of the High Court on Mabo and Wik?
- (2) If so, what was that advice?
- (3) If not, why not?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1)-(3) Advice has been provided by the Fisheries Department that it is likely that amendments will be necessary to the Fish Resources Management Act as a result of the provisions of the Commonwealth's Native Title Act, once these provisions are finalised.

WORK-RELATED INJURIES - WOMEN

Figures

144. Hon CHERYL DAVENPORT to the Attorney General representing the Minister for Labour Relations:

Some notice of this question has been given. In the Government's "2 Year Plan for Women", on page 4, I note that the Government intends to reduce the incidence of work related injuries and disease by 20 per cent by 1997.

- (1) Has this result been achieved?
- (2) How are such statistics being collected?
- (3) What is the reduction comparison between men and women?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1) This information is not available as the objective for the reduction in the incidence of work related injuries and disease to women contained in the Government's "2 Year Plan for Women" relates to the period 1994-95 to 1996-97. Data on the incidence of injury and disease in 1996-97 should be available in December 1997. There was a 24 per cent reduction in the incidence of work related injury and disease to women over the most recent two year period - 1993-94 and 1995-96.

- (2) Occupational safety and health statistics are published by WorkSafe Western Australia in its "State of the Work Environment" series of publications and are based on data collected through the workers' compensation system. Details of the data collection and analysis methodology are contained in the information paper "Occupational Health and Safety Statistics in Western Australia", which is available from WorkSafe Western Australia or on the SafetyLine information service on the Internet.
 - (3) Not applicable.
-