# Legislative Council

Wednesday, 15 November 1995

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

## PETITION - URBAN DEVELOPMENTS, PROTECTION OF RESIDENTS REGULATIONS

Hon J.A. Scott presented the following petition bearing the signatures of 281 persons -

We the undersigned residents of Western Australia are concerned that no effective regulations are in place to protect the health, property and quality of life of residents from large scale urban developments.

Your petitioners therefore humbly pray that the Legislative Council will ensure that proper regulations and powers are put in place to ensure that residents are immunised from the costs of developments, and that the regulations should include:

i Staggered development of projects over 200 housing blocks;

ii Minimal clearing of natural vegetation cover, including road verges and reserves, and surveys and protection of fauna and flora;

iii Embargoes on surface disturbance during driest summer months, and regular dust monitoring at the developers expense during development phase;

iv Powers for Local Government authorities and the Environmental Protection Authority to stop development at any time when regulations are being breached;

v Greater levels of consultation with affected residents; and,

vi Simpler processes to assess damage and compensation.

[See paper No 844.]

## PETITION - PORT KENNEDY SCIENTIFIC PARK LEGISLATION

Hon J.A. Scott presented the following petition bearing the signature of one person -

I the undersigned resident of Western Australia respectfully showeth that the present Government prior to the Port Kennedy Legislation promised that a scientific park would be situated at Port Kennedy under its own Act of Parliament.

Your petitioner therefore humbly prays that the Legislative Council will do all in its power to establish the Scientific Park, as promised, under the Act.

[See paper No 845.]

## PETITION - REMNANT BUSHLAND, STOCK-SUDLOW ROADS NEAR COOLBELLUP, REHABILITATION

Hon J.A. Scott presented the following petition bearing the signatures of 302 persons -

We the undersigned residents of Western Australia oppose the use of remnant bushland on the corner of Stock and Sudlow Roads, near Coolbellup, for urban development because we believe it will deplete the quality of life of residents, devalue a valuable educational scientific resource, threaten valuable flora and fauna, remove a buffer zone for local residents, and damage an environmental and social asset which is an educational and recreational amenity for schools and the local community.

Your petitioners therefore humbly pray that the Legislative Council request the Government to consult the local community and council to plan and implement the rehabilitation of the bushland so that it remains a valuable community asset.

[See paper No 846.]

## MOTION - URGENCY

*Competitive Tendering and Contracting Out (CTC) Program*

**THE PRESIDENT** (Hon Clive Griffiths): I have received the following letter addressed to me, dated 15 November 1995 -

Dear Mr President,

At today's sitting, it is my intention to move under SO 72 that the House, at its rising adjourn until 9.00am on December 25 1995 for the purpose of discussing the cost and related factors in the context of the Government's Competitive Tendering/Contracting Out (CTC) program, with specific reference to the implementation of the program in the areas of public education and health.

Yours sincerely,

John Halden MLC.

In order for this matter to be discussed it will be necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

**HON JOHN HALDEN** (South Metropolitan - Leader of the Opposition) [2.37 pm]: I move -

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

Members will be aware that on a number of occasions previous to this I have raised the issue of school cleaners. In the time I have today I will go through that issue yet again. Members will be aware that in late 1993 the Government demanded of school cleaners that they improve their productivity by 30 per cent. The Minister stated that the Government had decided to offer voluntary redundancy to cleaners in order to allow the day labour work force to effect a 30 per cent saving by increased productivity. It is well known that cleaners achieved that 30 per cent target. It was thought at the time that they had secured their jobs for the future. However, it became obvious in May this year that that was not the intention of the Minister nor the Government.

Hon Kim Chance alleged that the Minister had given that commitment. However, the Minister denied having given a commitment to safeguard the jobs of the remaining cleaners - some 2 800 of them. It is important to look at *Hansard* of 2 November 1993, at page 5927, in which the Minister states -

I am simply saying to them that if they want to keep their jobs, they can, but they must improve their productivity to the same level achieved by the private sector.

If the voluntary redundancy package does not deliver the goods - that is, increased productivity - the ministry will have to look at other ways of achieving that productivity increase.

In an interchange between the Minister and me in an adjournment debate on 4 November 1993 I said -

The Minister should be responsible and at least tell those people where they stand. He should tell them what will happen with their jobs and with the redundancy scheme.

The Minister then interjected and said, "There will be no sackings." I asked, "When will the axe fall?" The Minister said, "Never." That is an interesting comment from someone who apparently did not make a commitment to these people and then proceeded early this year after commissioning the Arthur Andersen report to go down the path of privatising school cleaners.

We know that on 20 October, one day after the State School Teachers Union dispute was resolved, the Minister announced that cleaning for some 160 schools would be contracted out. For a considerable period he refused to make the commitment that this was exactly what would happen. We knew that the budget had been predicated on the basis that approximately 980 full time equivalents from the school cleaning service would be privatised. That is a considerable number. We are told that the Government is at stage 1 of the privatisation or at some other point in it - we are not sure where. We need to look at what Arthur Andersen said. Despite seeking freedom of information access to this information the Opposition has not been able to secure it. This Government refuses to allow community scrutiny of what it is doing. Fortunately, as luck would have it, a copy of it fell across my desk recently. It states in reference to impact analysis that there would be a large impact on the department due to the loss of day labour cleaners. It estimates that based on costing guidelines provided by Treasury the current cost of day labour cleaning is approximately $40m. The report states -

> As it is anticipated that total annual contract will be between $25m and $30m significant savings are expected.

On many occasions, in referring to savings, the Minister has used figures ranging from $6m to $8m. Of course, we were denied yesterday the actual costing of the budget for the cleaning services, in spite of giving appropriate notice of the question.

Hon N.F. Moore: Yes, about an hour, or something like that.

Hon JOHN HALDEN: The questions are provided at 12 o'clock.

Hon N.F. Moore interjected.

Hon JOHN HALDEN: The Minister has four questions to answer. He should look in the budget - it takes all of 30 seconds to get an answer.

Hon N.F. Moore: Why do you not do that yourself?

Hon JOHN HALDEN: It is in the Government's budget.

Hon N.F. Moore: Twit!

Hon JOHN HALDEN: That is not going to encourage me at all.

Hon N.F. Moore: You do not need any encouragement.

Hon JOHN HALDEN: Absolutely not! Having gained certain information from the department, it is not difficult to work out within reason what the cost of school cleaning is at the present time. We know how many full time equivalents there are, the salaries, the oncosts and the administrative costs and we can make a guess about supplementary support services. Basically the salaries and costs for the 896 FTEs amount to about $22m. We also know that administrative services cost about $600 000. We have guessed that to provide salaries and industrial relations support to these people we are looking at an overall cost of $23.6m, or thereabouts - it might be $25m or $22m. However, the realities are that the Arthur Andersen report shows that the best the Government will achieve as a result of contracting out is a cost of $25m and $30m - there is no saving. Why are we doing this? We also know that the Arthur Andersen report -

Several members interjected.

The PRESIDENT: Order! There is too much audible conversation. I ask members to cease their conversations so that I can listen to what the honourable member on his feet is saying.

Hon JOHN HALDEN: The Arthur Andersen report at point 1.1, under the heading "previous contract arrangements", states -

> However, they have indicated -

Meaning principals -

> that the level of the service -

Which is the contracted out cleaning service -

in some instances is below that of the day labour work force.

We know that the service is no better - in some instances it is worse - and we do not know whether there will be a saving. Why would one contract it out? Why would one place in jeopardy the jobs of 2 800 people - they are not all guaranteed re-employment under this proposal?

Hon P.R. Lightfoot: Why would anyone believe what you say, anyway?

Hon JOHN HALDEN: Yes, why would anyone? They should, because I have the facts - that is the difference.

Hon N.F. Moore: You have never let that worry you in the past.

Hon JOHN HALDEN: That is true. Despite the budget's being predicated on this issue, the Minister would not confirm that the fate of these people was that their jobs would be contracted out. Originally the firm of Arthur Andersen proposed to start that process on 6 May this year and have it completed on 11 November. The Minister had a bit of a problem at the time - an industrial dispute with the teachers' union. He could not possibly be fighting too many wars on too many fronts, so he waited until a day later.

Interestingly, in this process and the recommendations for how it would be carried out, while the Minister is refusing to confirm that these people will lose their jobs in the Education Department -

Hon Kim Chance: He actually denies it.

Hon N.F. Moore: That is true. Well done - go to the top of the class.

Hon JOHN HALDEN: At this time solicitors, Parker and Parker, were drawing up the contract. With whom were they drawing up that contract? Was it with some independent body? No, it was with the Master Cleaners Guild. How outrageous! The Government was drawing up a contract that would go to the Master Cleaners Guild and the guild was involved in the construction of the contract.

Hon Kim Chance: Vested interests would have nothing to do with it.

Hon JOHN HALDEN: Absolutely! Was there any consultation with the workers in this process? No, there was not. Workers were left with no information. They are fearful of losing their jobs, their union is denied access to information and it is an absolute sham.

The Arthur Andersen report provides some wonderful information. One would have thought that the Government would be a little more forward in offering voluntary redundancy - making a payout to people so they can leave. However, the Master Cleaners Guild had a problem with that. Part of the payout offer states that recipients cannot work in the industry for two years. The guild said that if that condition were applied there would be no skilled workers. These people will therefore not be offered voluntary redundancy in order to please the Master Cleaners Guild.

Hon N.F. Moore: Have you looked at the transfer payment they will get?

Hon JOHN HALDEN: Yes, indeed I have. It involves an offer of four to 12 weeks.

The PRESIDENT: Order! I will not tolerate persistent interjections from either side of the House during the course of these debates. I do not know whether members wander around this building after 2.00 pm on sitting days and hear what happens in other sections of this place, but I can absolutely guarantee them that it will not happen here.

Hon Tom Stephens interjected.

The PRESIDENT: Order! Hon Tom Stephens does nothing to enhance his status in this place by making smart comments when I am seriously trying to bring to order the members who, for one reason or another, are endeavouring to interrupt the person who is properly addressing the Chair. Members do not have to like what other members say, but the member on his feet is entitled to speak and while I am sitting in this Chair, that entitlement will be upheld.

Hon JOHN HALDEN: I understand that members opposite do not like these statements,

but they are contained in the report. The report also refers to the difficulty of offering voluntary severance schemes and states that given an average of two hours to calculate a voluntary severance package, for a 40 hour a week and 2 800 employees, it is estimated that using the current system it would take 140 weeks or 2.7 years to calculate it. Given the current VS unit's experience on 800 severance packages over 12 months, it would take approximately 3.5 years to complete the process.

People will not be offered a redundancy scheme - of course, they have the option of working in the wonderful private enterprise system - because it might upset the Master Cleaners Guild, and because the department cannot possibly handle the system in less than 3.5 years. The report contains many other points, but my final point is that it is now time the Minister made an open and frank statement about the future of another group of employees in the Education Department. The Minister for Education has played games with the Opposition since November 1993 about cleaning staff. He has made commitments to them, breached those commitments, predicated a budget on getting rid of them, and has not confirmed his decision. He has played games with these people all along the line. The Arthur Andersen report makes a couple of interesting comments when referring to the Nollamara training centre: Assuming all cleaning services for all Western Australian schools are contracted out to private operators, will the Government contract gardening services? Will the Minister place the 1 100 school gardeners in the same position in which he placed the 980 school cleaners?

Hon N.F. Moore: I have already told you.

Hon JOHN HALDEN: The Minister has not. In any case, from our experience of dealing with him in the past, nobody believes him. The Minister knows what he wants to do and reports have been made time and time again, but he has refused to allow average people, who earn less than $400 a week, to make the most fundamental and rudimentary decisions about their lives and the future of their families. Is the Minister intending to contract out the gardening service?

Hon N.F. Moore: No.

Hon JOHN HALDEN: Will the Minister wait until after the next election to do it? That is the sort of trick we expect from him. He waits for the opportune moment to do these things. Arthur Andersen makes the assumption that the Minister will take that action and recommends that the Government sell the Nollamara training centre, which is specifically used to train gardeners and cleaners, on the basis that it intends to privatise both services.

Hon N.F. Moore: Why would I not do it now, if that were the case?

Hon JOHN HALDEN: Because the department is not capable of carrying out that function at the moment. I asked in November 1993 when the axe would fall on the cleaners, and the Minister replied that it would never fall on them if they achieved their 30 per cent productivity increase. It is now time for the Minister and the Government to tell the gardeners what future they have planned for them.

The figures I produced for the gardening service are fairly accurate. The figure supplied by the Minister's office for the 1994-95 and the 1995-96 budgets indicate an increase of $7m in cleaning and gardening services. They indicate a significant increase in redundancy payments from $3m to $5.7m. If these amounts are removed from the budget figures, the increase in the cost of the cleaning and gardening service is shown to be $3.88m.

**HON GEORGE CASH** (North Metropolitan - Leader of the House) [2.55 pm]: I have read with interest the motion moved by Hon John Halden and, although he concentrates in particular on education but also touches on other areas, it is important to consider Australia as a whole when considering competition policy. It seems from the comments of the Leader of the Opposition that he is not aware of the actions taken by the Australian Labor Government in Canberra, the Carr Labor Government in Sydney or the Goss Labor Government in Queensland. Time seems to be passing the Opposition by. Competition policy has been a fact of life in Australia for a number of years.

Hon John Halden: You would only contract out if you were going to get it cheaper.

The PRESIDENT: Order! I have spent a lot of time trying to stop people interjecting on the Leader of the Opposition -

Hon John Halden: It is a question.

The PRESIDENT: A question is still an interjection.

Hon GEORGE CASH: There is nothing wrong with subjecting services provided by government to open competition, so long as it is done in a fair and reasonable manner, and where it can be shown that the service - normally a non-core service - can be provided at a significantly reduced price and does not result in duplication.

Hon John Halden: And the quality remains the same.

Hon GEORGE CASH: Absolutely. That is a very important point, and delivery of those services by private enterprise must be of the same quality. There is nothing wrong with making savings on behalf of taxpayers. Many people argue that any savings made in education and health should be returned to the Education Department or the Health Department, so that they can deliver a better quality of service to the community as a whole. I know the Leader of the Opposition does not argue with that, because he knows as well as I do that the Australian Government privatised Qantas Airways Limited. It thought it would get a better deal if private operators were running it.

Hon Kim Chance: It sold Qantas.

Hon GEORGE CASH: That is right. It was sold to the private sector because the Federal Government believed that it should not be involved in that type of business. The Federal Government also intends to privatise the airports. We know that Perth Airport will be privatised because the Federal Government thinks that management function should be taken over by the private sector.

Hon J.A. Cowdell: And Eric wants to buy it.

Hon GEORGE CASH: Exactly, because this Government believes if ownership of the airport is to be transferred, at the very least the State should have some input into what the Commonwealth Government is doing. The private sector may eventually run the airport, but this Government believes it has a contribution to make as the Federal Government works down its privatisation commitments. I also remind members opposite - members of the Australian Labor Party - that the Federal Government in Canberra partly privatised the Commonwealth Bank and is now seeking to sell the rest. I did not hear members opposite jumping up and down saying that is a bad and crazy thing to do.

Hon Kim Chance: We are not that keen on it.

Hon GEORGE CASH: Members opposite may not be keen on it, but it is a fact of life which we must all face. The Australian Labor Party in the Federal Government, the Carr Government in New South Wales and the Goss Government in Queensland have become specialists in competition policy. In New South Wales they do not call it competition policy -

Hon J.A. Scott interjected.

Hon GEORGE CASH: That might be the case but at least we are up-front and are prepared to admit that where we can buy a service cheaper we should do so, so long as the same quality service is delivered to the community.

Hon Tom Stephens: Did you tell the House the Federal Government is selling an airport which the State Government will buy?

Hon GEORGE CASH: Hon John Cowdell suggested the State intended to buy it. I suggested that, as the Federal Government moves to sell Perth Airport, this State can make a contribution to the way it could be managed in future because the airport is important to Western Australia. I am happy to debate that in the adjournment debate tonight, but I am running out of time now.

To show the hypocrisy of the line run by the Opposition in its argument against

competitive tendering contracting, in his Memorandum 95-36 dated 4 September 1995, Bob Carr, the Premier of New South Wales, referred to service competition policy. He said in the introduction -

> You will recall that the service competition policy was announced in the June 1995 Financial Statement by the Treasurer, the Honourable Michael Egan. The Government is committed to pursuing the policy in order to deliver better value for money and better services.

I would be quite proud to see that opening paragraph on any of our government documents because we happen to think the same in that area.

Hon John Halden: It does not equate in the circumstances.

Hon GEORGE CASH: Deputy Prime Minister Kim Beazley told an organisation recently that as Defence Minister he helped privatise the facilities at Williamstown dockyards. He said that as a result, the Defence Department saved up to 70 per cent of the costs of some of the operations. He was quite proud that he had done that and said he was committed to seeing that the Defence Department continued to work along those lines.

The Council of Australian Governments meeting in Canberra in May 1995 was a milestone. A national agreement was signed by Bob Carr of New South Wales, Wayne Goss from Queensland and, again, Paul Keating, Prime Minister. That follows the Hilmer report which all Governments in Australia, including all Labor Governments, have clearly embraced. Why, therefore, do members opposite say in this House that the Government's commitment to following a competition policy, the same as Labor Governments in the Eastern States, is somewhat different from their Labor colleagues in the Eastern States?

Hon A.J.G. MacTiernan: The process is different -

Hon GEORGE CASH: There is no need for Hon Alannah MacTiernan to shriek at me; I can hear her as long as she speaks in her ordinary tone. When she shrieks we recoil and do not hear the words she utters.

What about the Industry Commission report about Western Australia that came down recently? It was glowing in its commentary on what this Government has done in Western Australia. It said that when CTC is done well it can lead to significant improvements in accountability, quality and cost effectiveness. A CTC survey was recently carried out by the University of Sydney on what Western Australia has done. It found that average savings of 24.1 per cent were made.

Hon John Halden: Unsubstantiated.

Hon GEORGE CASH: What does Mr Halden mean?

Hon John Halden: I have seen the report.

Hon GEORGE CASH: Professor Domberger came over here recently and addressed a government committee. We suggested that Professor Domberger should not only tell us but also ask the Opposition if it wants to hear what he has to say, because we want the Opposition to know the facts. What happened? One person in the Opposition turned up - Geoff Gallop. I understand he was impressed with the findings of the University of Sydney.

Hon John Halden: I do not think so. Since then I have gone through it.

Hon GEORGE CASH: Members opposite are not aware of some of the figures achieved as a result of CTC policies across Australia. I refer to the CTC research from the graduate school of business at the University of Sydney. In 1995 the survey found that in Western Australia those areas that had been contracted out saved about 20 per cent.

Hon John Halden: Mr Cash -

Hon GEORGE CASH: I must be quick to make my comments before my time expires. In 1995 savings averaged 24.1 per cent. In New South Wales in 1993 and 1994, 20 per

cent savings were made in each year. In Victoria in 1995 a 37 per cent saving was made and in 1995 the Commonwealth is said to have saved 18.1 per cent by way of contracting out.

Hon John Halden: To show how invalid is that report, of the 89 000 cases contracted out in Western Australia, the biggest number of 80 000 was legal referrals to lawyers.

The PRESIDENT: Order!

Hon GEORGE CASH: We should be reasonable when we raise matters in this House.

Hon John Halden: I thought I was.

Hon GEORGE CASH: We should say honestly that we both support competitive tendering, because we do. The Federal Labor Government and its colleague Governments in New South Wales and Queensland do it. As parties across Australia we have all signed similar agreements. We should not be hypocritical.

**HON KIM CHANCE** (Agricultural) [3.07 pm]: The Leader of the House put to us that members on this side of the House support the principles of competitive tendering.

Hon George Cash: I hope you do.

Hon KIM CHANCE: I can say unequivocally that I do not. However, I and many members on this side of the House believe in public sector efficiency. If competitive tendering is a component of public sector efficiency, we are prepared to examine it. A range of options exist, including best practice mechanisms and contestability which was the Government's byword in the first two years of its term of office. All of a sudden contestability is off the record and replaced by the CTC program.

When the Australian Labor Party examines public sector efficiency it prefers to consider the full range. We are not ideologically bound to a particular position. The decisions made by the Commonwealth Government on its privatisation agenda, which is rather different from a competitive policy agenda, would probably not find support with some members on this side of the House. We do not have a vote in the federal Caucus. It is a little unfair to impose the decisions made by the federal Caucus on members of the state Caucus.

Hon George Cash: What about Mr Carr in Sydney and Mr Goss in Queensland?

Hon KIM CHANCE: Mr Carr in Sydney has a great deal of work on his hands in unstitching the mess made by the former Minister of Health in New South Wales. For example, the costs of running the Port Macquarie Hospital are now 30 per cent higher than the mean for publicly operated hospitals in New South Wales. The New South Wales taxpayers are locked into an abominable situation for 20 years because of a bizarre arrangement made by the previous Government with the operators of the Port Macquarie Hospital. I give the Government a little warning. As it progresses through its CTC program in the public health and public education areas, it should make darn sure that when it signs contracts with those contractors, it does not commit the Western Australian Government to contracts which extend beyond the term of its office in 1997. If contracts like that are left in place and we must cancel them, severe repercussions will be felt. The Government should be sure that it writes only term-of-government contracts.

Hon George Cash: That statement is likely to cause instability. If we took the same view we would have cancelled half the contracts that existed after we came to office.

Hon KIM CHANCE: I am suggesting that the Government make very sure that the contracts it signs are term-of-government contracts.

Hon Peter Foss: You recruited a whole lot of your people as permanent public servants just before the election. It was disgraceful.

The PRESIDENT: Order!

Hon KIM CHANCE: The Government should take contracts very seriously. Logically it is not possible to employ a contractor where people perform the same task on the same wages, allow for a component of profit by the contractor, and expect him to deliver the

same quality of service at the same or lower price. Somewhere along the line compromises must be made on quality and wages. That was clearly identified, not necessarily in that Arthur Andersen report, but in the report completed on the health service. One reason competitive tendering and contracting has failed to deliver its promise is because it is difficult to cut people's wages. That is one of the prime components. Cost savings cannot be achieved without making some form of compromise. It is not unlike the laws of physics - some things are inevitable.

Hon John Halden: Don't forget the cost of redundancies.

Hon KIM CHANCE: That is a separate issue.

Hon Murray Montgomery: What about the competitive policy Professor Hilmer talked about?

Hon KIM CHANCE: Competitive policy is another matter and it is about bringing the best out of the market by competition. It is a different process from what we are talking about; that is, the internal provision of public sector services by the private sector. It is a very narrow spectrum of the privatisation argument. The motion shows exactly what we are talking about. The only legitimate way compromises can be achieved without affecting quality is by an increase in capital investment. That means that the number of paid person hours becomes more productive because of the use of better equipment. I have no difficulty with that at all; it is sound business logic. The difficulty is that the impetus of privatisation is not needed to do that. The public sector can invest in capital in exactly the same way as the private sector can.

Hon George Cash: Then why do Mr Goss, Mr Carr or Mr Keating not follow that line?

Hon KIM CHANCE: I am not an apologist for the Carr, Goss and Keating Governments. They run their own policies.

Hon George Cash: Don't you support Hilmer?

Hon KIM CHANCE: Not all of it.

Hon E.J. Charlton: Why did Mr Keating force the department to put up heavy vehicle charges in Australia to comply with national uniformity?

Hon KIM CHANCE: To answer the question put very quietly by the Leader of the House, soon to be the Leader of the Opposition, about whether I support the Hilmer proposals, I support them as much as the Minister for Transport supports them, and he can sort that one out for himself. In fact, we have very similar views on this area.

I am deeply concerned that the Government is launching into contractual commitments without understanding what it is doing. I do not mean to be insulting when I say this; however, neither government members nor, to a great extent, departmental administrators have an understanding of what happens in the commercial world. They do not understand the process of contracting in the main. There are exceptions, but government members should read carefully the Arthur Andersen report of 7 July this year concerning hospital privatisation. That report was very good. It outlined a number of disadvantages which members opposite must consider very carefully. I am not asking them to read something that was generated by us. The Government paid for this report and members opposite should look at it.

Hon John Halden: The Minister for Finance does not think much about Arthur Andersen.

Hon KIM CHANCE: No. Members opposite should look at this report very carefully to get some feeling for the problems that are, or may be, around the corner.

Hon George Cash: Do you know what the Governor-General, William Hayden, said recently? He said that CTC is not a matter of ideology but it is best management practice adopted by Governments on both sides of politics.

Hon KIM CHANCE: I believe he is using the broader definition of CTC in that statement.

Hon George Cash: He was talking to his mates in the Australian Stock Exchange!

Hon KIM CHANCE: If competitive tendering and contracting is based on awarding contracts where services can be delivered better and cheaper than they are presently, it is absolutely essential that before it is done two things occur: First, we must know and codify precisely the present level of service, and that is very important; second, we must know the exact cost of the provision of that service. In other words, the two fundamental building blocks of benchmarking must be known. Benchmarking is important to any measure of public sector efficiency. We must have accurate benchmarking to implement best practice procedure, contestability or contracting out. It is equally important to all three because we must know what we have and what we are prepared to pay for that service.

Without benchmarking it is possible to have no fiscal discipline whatsoever because organisations cannot understand where they are, let alone where they want to get to. Further, there can be no basis for a comparison on an apples with apples basis. On Tuesday of last week at the Country Hospital Boards Council seminar I was disturbed to learn that in the Health Department there is not only a lack of understanding of benchmarking but also not even the beginnings of the process or a standardised methodology for determining the cost of the services. These country hospital board members will be asked to issue contracts on a comparative basis which they do not have.

**HON N.F. MOORE** (Mining and Pastoral - Minister for Education) [3.15 pm]: I desperately hope the media does not report the comments of Hon Kim Chance. He said that if those opposite win the next election anybody who has a contract with this Government that goes beyond the next election will have the contract repudiated.

Hon Kim Chance: I did not say that. I said that you should be very careful not to let contracts beyond that time.

Hon N.F. MOORE: Perhaps a better word is terminated. If the media reports Mr Chance as saying that, I hope his leader will come out and repudiate him.

Hon Kim Chance: If I said that, I hope he will.

Hon N.F. MOORE: He knows it is absolutely outrageous to say that any contract that goes beyond the next election will be terminated. If the comments of Mr Chance are reported, that message will go out to the community.

Hon Kim Chance: I will have to read the *Hansard* before I agree with you.

Hon N.F. MOORE: I hope Mr McGinty - we are not sure of Mr Halden's credibility - will repudiate the comment made by Hon Kim Chance so that the shudder that I expect to go through the private sector will not occur. It is not good enough. I could not believe my ears when Hon Kim Chance said that. I sought to interject on Mr Halden and ask him whether he would repudiate the statement. In that way we could get things straight in this House.

Hon Kim Chance: I hope it will prevent people from losing a lot of money when it occurs.

Hon N.F. MOORE: Mr Chance is now saying that, because his Government - if ever it gets elected again - would repudiate any contracts, people might lose money and he hopes they understand that. Is that what he is saying?

Hon Kim Chance: If it were to occur, people could lose a lot of money.

Hon N.F. MOORE: Does that mean that people could lose a lot of money if those opposite get elected?

Hon Kim Chance: No.

Hon N.F. MOORE: That is what Hon Kim Chance means.

The PRESIDENT: Order! Let us get on with this motion.

Hon N.F. MOORE: A very important point has just been made. We are going down the path of contracting out unashamedly, as Hon George Cash said, like every other Government in Australia. Hon Kim Chance has said that anybody who enters into a

contract that goes beyond the next election may stand to lose a lot of money if the Opposition wins that election. What does he mean by that? That is a nice message for the private sector to get from him.

I think most people in Western Australia thought the mad left of the Labor Party had gone away, but perhaps those people are residing in the Legislative Council of Western Australia. I hope the Labor leadership has the sense to repudiate the comments of Hon Kim Chance if that is necessary.

I will very quickly comment on the matters raised by Hon John Halden. He selectively referred to some comments from the Arthur Andersen report. It is not a secret document. A number of people have a copy of the summary of recommendations.

Hon John Halden: Will you give me a copy of the report?

Hon N.F. MOORE: The member can have a copy of the summary of the recommendations any time he likes.

Hon John Halden: What about the report?

Hon N.F. MOORE: I will not give him a copy of the report because this is a working document. He says that he has a copy anyway, so I do not know what he is going on about.

Hon John Halden: I have the April draft.

Hon N.F. MOORE: That means it did not come out of the Education Department. That is very interesting because if it came from Arthur Andersen, I suspect it will not get any more contracts. That report recommended that we should go beyond the current system of cleaning our schools -

Hon John Halden: Max will not let them do his tax again!

Hon N.F. MOORE: If it cannot be kept in confidence, one must wonder whether we would get Arthur Andersen to do any further work. As I was saying, that report recommended that the cleaning in all of the schools should be contracted out, and there would be significant savings to the Western Australian taxpayer from doing that.

Hon John Halden: Based on the fact that cleaning was costing $40m; it was not.

Hon N.F. MOORE: I have made a decision about what will happen to cleaning and gardening and that decision has been outlined recently. We will contract out the cleaning of 160 of the 772 schools.

Hon John Halden: And assess them.

Hon N.F. MOORE: Two systems will run side by side. We will say to the Federated Miscellaneous Workers Union of Australia - I suspect its members are on Hon John Halden's select committee and that is why we have this motion today - that we would like it to sit down and negotiate an enterprise agreement for those who remain within the day labour work force. I acted in response to Helen Creed's request to me. I said to her about three months ago, "If you can come up with a better way of doing things, just tell me." I have had no word. I and the department are happy to negotiate enterprise agreements for those remaining 600 schools which will involve a day labour work force. The savings by contracting out the jobs of about 160 school cleaners will be approximately $1.5m per annum on a recurrent basis once we go past the initial stage of any payments that need to be made by virtue of transfer or voluntary redundancy.

Hon John Halden said that I am waiting until after the next election to announce that we will privatise gardening. If I wanted to contract out or privatise gardening I would do it now, because I have just done that with 160 school cleaners. If there were to be any political downside why would I not do it at the same time as I dealt with the cleaners? Why would I leave it to some other time to be criticised by Mr Halden? We decided that gardening would not be contracted out other than some of the work which is presently done by gardeners such as lawn mowing. Gardeners will remain on the day labour work force. We will progressively install reticulation at our schools to reduce the need for

gardeners to spend so much time shifting hoses, water sprinklers and so on. As the requirement for gardeners in schools lessens, it will be compensated by natural attrition as people retire. There will be fewer gardeners in the future but nobody will lose his job. The same applies to cleaners; nobody is getting sacked.

Hon John Halden: I did not say that.

Hon N.F. MOORE: Hon John Halden did say that.

Hon John Halden: You said they would lose their jobs.

Hon Kim Chance: There is a difference?

Hon N.F. MOORE: Under the Government's contracting out policy the first offer made to cleaners is to work with the private sector. A quite lucrative transfer payment is attached to that for those who have been around for some time. A person was complaining to the newspaper the other day about being sacked. Without referring to the person in detail, the transfer payment was quite substantial and a nice bonus to take into a job where the person will be in similar circumstances.

Several members interjected.

The PRESIDENT: Order!

Hon N.F. MOORE: If workers do not wish to go to the private sector they will be offered redeployment or retraining in the government sector. Nobody gets the sack. In the event that that does not succeed and people want to leave their jobs, they will have a voluntary means - a choice - of voluntary redundancies. A significant voluntary redundancy package is available to those people who choose to take that option. The whole exercise has been to ensure that our schools are cleaned to a satisfactory level and at least as good as the present cleaning standards. If they are not cleaned to the level they are now I will go to some other system. It is absolutely fundamental that the quality be there.

Hon John Halden: How can you do it with six staff to supervise them?

Hon N.F. MOORE: The same way as it is done now. The contractors who get the work will be required to maintain the standards. Obviously cleaning schools is a very important part of the exercise. Mr Halden has a serious problem.

Several members interjected.

The PRESIDENT: Order!

Hon N.F. MOORE: He acknowledged a minute ago that the cleaners in the government school system improved their productivity by 30 per cent. Mr Chance said it could not be done without cutting people's salaries. They are contradicting each other. Productivity can be improved by a whole range of things, such as better equipment, different working conditions, different hours and different ways of putting together the way in which the business is run. It will be cheaper, provide a profit and, as Arthur Andersen says, save between $6m and $13 a year on the cleaning system. We have an obligation to make sure that the dollars we spend on education are spent on the core business of educating children. If we can clean our schools in Western Australia and save $6m, which will go back into education -

Hon John Halden: It will cost $6m more.

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

Hon John Halden: Tell me the figures.

Hon N.F. MOORE: Mr Halden would not know them. There are significant savings. Our bottom line is that the money must go back into the education system and the Education Department's core business so that the children will benefit and not Mr Halden's miscellaneous workers union.

**HON A.J.G. MacTIERNAN** (East Metropolitan) [3.26 pm]: One of the Opposition's big concerns about the Government's privatisation agenda is that it is not driven by a

desire to provide more money to spend on core services, but is predicated on a desire to pump out as many jobs as it can to the Government's mates.

Hon E.J. Charlton: Is that what it is?

Hon A.J.G. MacTIERNAN: Exactly.

Hon E.J. Charlton: Goodness gracious! What about your mates?

The PRESIDENT: Order!

Hon A.J.G. MacTIERNAN: It cannot be justified on any logic of competitive tendering. The Opposition introduced into the other place a privatisation Bill which would have given the Government an opportunity to prove its bona fides in this regard. The Bill set up processes for proper benchmarking and transparency by which we could determine the true costs of running a government enterprise and the true costs of that enterprise when contracted out. Of course, the Government declined to take up that opportunity because it fundamentally does not want a great deal of scrutiny of its privatisation practice. We believe it will be established at the end of the day that there has been in many instances no cost savings and indeed in many instances greater costs, and there has been a very severe compromise on quality. Unfortunately all of us were not able to go to Simon Domberger's address, but that is not to say that we have not turned our minds to it and looked at a number of the assumptions he made. When we go into the detail we do not see a very pretty picture. His methodology is highly questionable.

Hon E.J. Charlton: Have you talked to Professor Domberger?

Hon A.J.G. MacTIERNAN: We will in due course, but he is not in this place.

Hon E.J. Charlton: He is not in this place but you are.

Hon A.J.G. MacTIERNAN: I have been elected to this place to represent the people of Western Australia, and I will do it, mate, whether you like it or not.

Several members interjected.

The PRESIDENT: Order!

Hon A.J.G. MacTIERNAN: I will quickly go over some of the problems with Professor Domberger's methodology. First, he simply surveyed chief executive officers. No independent analysis was conducted of the financial results attained in that survey. Secondly, he compared actual costs prior to privatisation with contract prices rather than the actual prices that were paid after the contract process. We did not have a proper comparison of figures. More substantial problems exist with the survey. He seems to have ignored transaction costs, managerial costs and in particular redundancy costs, which have been a very big factor. He claims that some 89 000 outsourcing contracts have been entered into by the State Government over the period of his survey. However, from what we can see he analysed in detail only 64 of those contracts and then sought to extrapolate the results from those 64 contracts over the alleged 89 000 contracts. Also, as Hon John Halden said, we have great concern that a very sizeable proportion of those 89 000 contracts were the standard contracts given to private solicitors to undertake legal aid work - a situation that has not changed with the change of Administration.

[Motion lapsed, pursuant to Standing Order No 72.]

## ORDERS OF THE DAY - POSTPONED

On motion by Hon George Cash (Leader of the House), resolved -

That Orders of the Day Nos 1 and 2 be postponed to the next sitting of the House.

## ACTS AMENDMENT AND REPEAL (NATIVE TITLE) BILL

*Referral to Standing Committee on Legislation*

Resumed from 18 October.

**HON TOM STEPHENS** (Mining and Pastoral) [3.31 pm]: I seek leave of the House to withdraw the motion currently before the House. Previously, I asked the Minister for a range of briefings and information to be made available to me as the Opposition spokesperson on this matter in the upper House. The Minister has provided me with all the information that now enables me to seek leave of the House to withdraw the motion for referral.

Leave granted.

Motion withdrawn.

*Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon George Cash (Minister for Lands) in charge of the Bill.

**Clause 1: Short title -**

Hon TOM STEPHENS: Members will be aware that I have withdrawn the motion that the Bill be sent to the Legislation Committee. I thank the Minister for having made available to me the information that I requested in the second reading debate and in the discussion that surrounded the moving of the referral motion. The information included a briefing from the relevant Ministers of the State Government, and that included the officer now at the Table, John Clark, who was assisted by another officer for the purposes of that briefing. I thank the Minister and those officers for that briefing.

In addition, at the briefing I obtained a copy of a response from the Commonwealth that dealt with commentary on the Bill. I have had an opportunity at the briefing and subsequently to study the commonwealth commentary on the legislation. It led me, immediately upon sighting the response of the Commonwealth, to ask for copies of additional documents relating to the legislation. Specifically, I was keen to obtain the letter that the Commonwealth was responding to in reference to this legislation. Two items of correspondence were subsequently made available to me which had been written by state government officers to the Commonwealth that had been the covering notes sent to the Commonwealth that encouraged the Commonwealth to comment on the legislation.

It is worth while noting what those covering notes said. Specifically, the covering notes indicated that the State Government was after commentary from the Commonwealth as to how the legislation complied with the federal native title legislation. The Commonwealth's commentary came back in full detail on the early draft of the legislation. Interestingly enough, the State Government did not seek nor was it given the commonwealth commentary on the compliance of this legislation with the racial discrimination legislation. In addition, I sought from the officers a copy of the clause notes relating to the legislation. The officers sought the Minister's approval for my being provided with those clause notes, and they have now been forthcoming.

I have taken the documents on the basis that they are confidential. They are documents of the State Government seeking commonwealth commentary that was provided by the Commonwealth in confidence to the State Government. I have not made those documents available to anyone. Although I was not asked to treat them in that way, I have worked on the basis that that is how I should treat those documents. I have looked at them and at the commentary of others on this legislation, and now we consider the Bill.

I have indicated to the Minister that I have some apprehensions about the legislation. The apprehension is that this legislation will find itself very quickly the subject of further litigation from people acting on behalf of Aboriginal groups whose interests are placed at potential risk by the operation of this Act. I am unsure whether the Bill as it is written successfully avoids breaches of the Racial Discrimination Act. I note that the Commonwealth has not made any commentary on that point. I also note that the Commonwealth specifically advises the State to seek its own counsel in regard to that question. In a response to the Commonwealth dated 6 July, the State Government pointed out that officers have advised it that they do not see any of the clauses of this Bill being in breach of that Act. That advice may be right, but I suspect that it is not.

However, in the end my view and, I fear, the view of others may not count for a lot in the process of concluding the deliberations on this Bill in this House. It may well be that the State Government's legislation, when it is enacted, by itself is not in breach of the Racial Discrimination Act. However, if that is the case, what is perhaps of greater concern is the fact that this legislation, when it is enacted, could be used in such a way that it would be in breach. It may not be that the legislation will be the basis for a challenge but rather the way in which the Government utilises the legislation - it could then fall foul of the Racial Discrimination Act. If that is the case we will see all those questions played out in the courts of the State and, in turn, eventually back in the High Court again.

I have highlighted in my earlier comments on this Bill precisely what areas of concern people have identified. One specific area is section 9R, which runs the risk of being in breach of the Racial Discrimination Act. Interestingly, much of the commonwealth commentary has not been accepted by the State Government and its recommendations have not been included in the legislation. That is the right of the State Government, but the commentary made specific recommendations that the State Government has chosen not to adopt. It adopted one minor recommendation and chose to ignore others.

I have nothing more to say other than that this legislation now goes through this brief formality in the Legislative Council. It will be passed by virtue of the fact that the Government has the numbers in this House. It goes through with an expression of concern that it will be the subject of further litigation, if not as a result of the way it is drafted then as a result of the way in which it will be used by this State Government.

Hon GEORGE CASH: I appreciate the comments made by Hon Tom Stephens, who acknowledged that during the second reading stage he raised a number of questions, and I said that it was important that we provide him with answers. The honourable member then suggested that the Bill be referred to the Standing Committee on Legislation. Before that was done I suggested that it might be convenient for me to arrange a briefing and to provide whatever documentation I reasonably could so that he could understand the position from which the State Government is coming with this matter. Following a briefing by senior officers of the Premier's department, various documents were provided to the member so that he could have a clear record of what had transpired between the State and the Commonwealth. The document sent to him was in fact a letter directed to the office of the Premier from the Department of Prime Minister and Cabinet dated 26 October, wherein the Commonwealth advised its view of the Bill before the House.

*Sitting suspended from 3.45 to 4.00 pm*

Hon GEORGE CASH: As I said earlier, I provided Hon Tom Stephens with various Committee notes and letters so that he could satisfy himself regarding the reasons for the various clauses. He has indicated to me not only in this place but outside during discussions that he believes that the Bill in its present form may be the subject of litigation in future. My advice is that the Bill in all forms satisfies the requirements of the Native Title Act, and will be a compulsory acquisition Act under the Native Title Act, but I accept his view that if someone wants to do so he will be able to challenge any of the provisions of the Bill. I advised Hon Tom Stephens that if that were the case I hoped it would happen sooner rather than later, because we want to get on with the job. The Bill has been drawn up in good faith. A requirement is for the State to have a compulsory acquisition Act that complies with the requirements of the Native Title Act, and by amending the Public Works Act the State Government believes it will have such a compulsory acquisition Act. That is confirmed in the letter from Mr Westbury, dated 26 October 1995. As Hon Tom Stephens stated, Mr Westbury does not offer any legal comment on the Bill. In that regard, it will always be open to challenge.

It is important that this Bill pass through this place as soon as possible. Hon Tom Helm will be interested to hear that there is every possibility that the State Government will be acquiring Waterbank station in a reasonably short time. The station has been under review for a long time, and I am pleased to say that the lessees of the station have agreed to sell it to the State. I have already advised Hon Tom Stephens of that, in general terms. The only question to be determined is the price. That is the subject of arbitration, so it

will be what the arbitrator determines. I believe that will occur in the next couple of weeks. As both Hon Tom Stephens and Hon Tom Helm know, it is an important acquisition from the State's perspective because the Shire of Broome has its view on how various areas within Waterbank station should be developed in future. The various Aboriginal communities in the area also have an interest in the future development of the station because they believe that certain areas should be set aside for their use. That is a matter that we will work on over the months, so some progress is being made on that front. It is important that the Bill be passed because various developments are being delayed. I do not suggest that is the fault of anyone. However, the State needs a compulsory acquisition Act under the Native Title Act so that we can get on with the various developments.

**Clause put and passed.**

**Clauses 2 to 47 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 George Cash (Minister for Lands), and passed.

## SENTENCING BILL
## SENTENCING (CONSEQUENTIAL PROVISIONS) BILL
## SENTENCE ADMINISTRATION BILL

*Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for the Environment) in charge of the Bill.

**Sentencing Bill**

**Clause 1: Short title -**

Hon N.D. GRIFFITHS: The Sentencing Bill originated in another place, and the Minister responsible for the Bill in the other place was the Attorney General. Therefore, the Minister for the Environment, who is handling the Bill in this place, is handling it in a representative capacity. Given the significance that many people say attaches to the office of Attorney General, and given the significance of this measure as claimed by members opposite, it is important to note that the Supplementary Notice Paper indicates that the Minister for the Environment proposes to amend a number of clauses of the Bill. It does not follow that those amendments will be moved; it is merely an indication to the Chamber that they may be moved. I also have placed a number of amendments on the Supplementary Notice Paper, which I may or may not move, depending upon my view at the time, and that will be determined to a considerable degree by the arguments that are put. The Sentencing Bill is essentially a bipartisan measure. Members on this side of the House voted for it at the second reading stage, and I think *Hansard* will record that every member on this side of the House who spoke on the matter gave the Bill great support.

Supplementary Notice Paper 10-3 indicates that the Minister for the Environment proposes to move amendments to clauses 8, 14, 19, 51, 55, 56, 58, 62, 78, 81, 119, 122, 128, 130, 132, 134, 135, 136 and 137, and to schedule 1. I find that surprising. I do not say that as a criticism of the Minister for the Environment, but I ask the Chamber in considering this point to reflect upon the competence of the Government in its handling of this matter in the other place. The amendments which I have placed on the Supplementary Notice Paper are to clauses 35, 39, 41, 42, 43, 48, 49, 52, 59, 66, 67, 73, 74, 76, 78, 79, 80, 108, 119, 125, 127, 129, and 131. I will comment also on other clauses. In that context, I refer to a motion which I moved on 7 September 1995, which was agreed to by the Chamber -

That the Sentencing Bill 1995 be referred to the Legislation Committee for consideration of clauses 3(3)(a), 3(3)(b), 14(3), 15, 16(2), 16(3), 22(5), 23(4), 27, 28, 29, 30, 38, 51, 58, 59, 87, 98, 99, 100, 101, 113, 122 and 144 and report not later than 12 October, but that consideration of the second reading debate by this House continue notwithstanding such referral.

The Legislation Committee has provided us with its report No 36, which was tabled in this House on 26 October. In the course of the Legislation Committee's deliberations, it asked me to attend before it to explain my concern about the clauses which were the subject of the motion, and the committee notes in its report that I appeared before it on 21 and 28 September. I trust I made it clear when I appeared before the committee that I was not in each case adopting a particular stance on matters before the committee; however, I was concerned that the committee give due consideration to particular clauses. In making that point, I put forward a number of propositions on a number of the clauses and I argued particular points of view. However, my primary purpose in bringing the matters before the Legislation Committee was for the committee to give these matters appropriate consideration, so that this Chamber could have the benefit of its collective wisdom having taken into account my points of view and those submissions that it considered appropriate.

I note in the report that the committee makes a number of observations and recommends changes to some clauses of the Bill, and no change to other clauses. In some instances I put forward what I believed to be the correct viewpoint, in others I was raising the issues. Where I am of the view that I was putting to the Legislation Committee the correct view, I will not resile, and I propose when those clauses are dealt with to point out to the Committee in short form, not to the degree necessarily that I did before the Legislation Committee, what my view was and is and the rationale behind it. In those instances I will be disagreeing with what the report of the Legislation Committee says. However, in doing so I wish to make it clear that that is as far as I will go in my disagreement with the Legislation Committee. I will point out where we have a different point of view and I will point out the appropriate intellectual basis for the difference; however, I will not vote against the recommendations of the Legislation Committee, nor will my colleagues in the Australian Labor Party. Where the Legislation Committee recommends change, even though that change does not go as far as I would wish it to go, I will support that change, as will my colleagues in the Australian Labor Party. Where the Government takes on board that change to the appropriate degree we will vote with the Government. However, where the Government fails to adopt the provisions as recommended by the Legislation Committee the Opposition will vote against the stance of the Government and where appropriate, in addition to those amendments I have caused to be placed on the Notice Paper, I propose to cause further amendments to be placed, if not on the Notice Paper, I trust in an efficient manner so as not to inconvenience the operations of this Chamber. At the end of the day that will be a matter for the Clerk, and I am fairly relaxed about doing what the Minister has done, so we do not cut down another forest. I propose to draw appropriate amendments to put into effect what the Legislation Committee is recommending. Where the Legislation Committee deals with recommendation 7, which pertains to mediation, at this stage I am not proposing to draw up amendments. Arguably, to some extent the reason for that is mirrored in the Government's response to the Legislation Committee's report - namely, it is a relatively novel area and it is a matter of considerable complexity and not one for which I have the appropriate resources at this stage in the legislative year and noting the Bills on the notice paper to follow, and having regard to the fact that this is a bipartisan measure.

I made reference to the Legislation Committee's report. I wish to draw the attention of the Chamber to paper No 847 tabled in this Chamber this afternoon. That document is entitled "The Government's Response to the 37th Report of the Legislation Committee of the Legislative Council in relation to the Sentencing Bill 1995". The author of that document is the Attorney General. I had the opportunity of perusing her response. The conclusion I draw from the wording of the response is that the Government, through its primary Minister, the Attorney General, is not treating the Legislation Committee of the

Legislative Council with appropriate respect. In fact, the Government's response is substantially contemptuous.

Hon Peter Foss interjected.

Hon N.D. GRIFFITHS: That is a ridiculous interjection.

Hon Peter Foss: It is correct, isn't it?

Hon N.D. GRIFFITHS: In a moment Mr Foss can get up and argue his case; that is a matter for the Minister.

Hon Peter Foss: You grant yourself the right to criticise, but not me.

Hon N.D. GRIFFITHS: When one considers the appropriate response to the report of the Legislation Committee, it is worthy of note that on behalf of the Opposition I have set out how we propose to respond where we differ from the Legislation Committee. However, in his normal manner, Hon Peter Foss says, "Well, we have gone along with most of the recommendations." The test is not a quantitative exercise, it is a qualitative exercise. Where the Government's stance differs from that of the Legislation Committee, how do we treat it? Do we treat it in the contemptuous manner with which the Attorney General or her spokesperson Hon Peter Foss treats it, or do we treat it in a proper and respectful manner as I did when I outlined the position on behalf of the Opposition?

The difficulty with the Minister is that he treats the Legislation Committee as a joke. He has done that in the past and he is flagging his intent to do it again in future.

Hon Peter Foss: Nonsense.

Hon N.D. GRIFFITHS: I do not propose to be distracted by the inane interjections from the Minister.

Hon Peter Foss: Why not deal with the Bill then?

Hon N.D. GRIFFITHS: Why don't you just shut-up for a moment?

The CHAIRMAN (Mr House): Order! Let us get on with the debate.

Hon N.D. GRIFFITHS: I note that Hon Peter Foss and his strong supporters are having trouble smacking their lips.

Hon Peter Foss: We are horrified.

The CHAIRMAN: Order! It will help if the member with the call addresses the short title of the Bill and I am sure that the Minister will then not be tempted to interject.

Hon N.D. GRIFFITHS: I do not think we should put temptation in the Minister's way.

The Legislation Committee made a general observation about judicial discretion. It stated -

> A number of the clauses which the Committee was asked to consider involve judicial discretion and some of the concerns raised by Mr Griffiths relate to the exercise of such discretion.

That is so. It continued -

> The Committee considers that it would be undesirable to restrict judicial discretion where discretion is required to better serve the interests of justice.

I agree with that observation. It went on to say -

> If it is found that changing circumstances and community values render the necessity for judicial discretion nugatory or undesirable or if discretions are being exercised improperly or in such a way as not to best serve the interests of justice, it would be open to the Parliament to restrict, modify or abolish those discretions at the relevant time.

Of course I agree with that observation. It went on to observe -

> However, judicial discretions should not be so restricted, modified or abolished unless there is a clearly perceived need to do so.

Again, I agree with that.

Hon Derrick Tomlinson: The committee was actually quoting Hon Nick Griffiths.

Hon N.D. GRIFFITHS: I am pleased that it was quoting me. I recognise the eloquence of the interjection made by Hon Derrick Tomlinson and I thank him for it.

The Legislation Committee went on to say that -

> The justice administration system requires appropriate flexibility if it is adequately to deal with the myriad of circumstances with which it is presented.

Again, I am in full accord with that observation.

I wish to comment on one aspect of the committee's approach to the legislation. The committee sought submissions from the Chief Justice, the Chief Judge of the District Court and the Chief Stipendiary Magistrate. I understand that that is done from time to time. However, it causes me concern. The gentlemen who hold that office, their predecessors and successors, and other judicial officers provide the primary function of interpreting the words that we include in Statutes. It is inappropriate for them to play a significant role in the formulation of the words which they are going to interpret.

In saying that, I do not wish it to be interpreted that I am having a go at the judiciary or the magistracy - if one wants to divide it between the greater or lesser judiciary. The role of the judiciary in our society should be separate from the role of the Legislature. It is inappropriate for the judiciary to intrude into the making of legislation, as it was invited to do by the Legislation Committee, because at that point the judiciary is playing a political role. No-one has ever voted for one of them in that capacity. There is a distinction between an independent judiciary and a judiciary operating separately from the Legislature. It is a very unhealthy practice and one I trust the Legislation Committee will desist from.

Hon DERRICK TOMLINSON: As Chairman of the Legislation Committee, I would like to respond to the points made by Hon Nick Griffiths. He has made a rather interesting point. The separation of the judiciary and the Legislature should be preserved within our community. I am confident that when Hon Nick Griffiths made the point that the judiciary, in commenting on the legislation, was invited to partake in a political act, he did not intend that in the sense of a partisan political act in that there was a bias. He meant it in the broader sense of political formulation of policy.

Hon N.D. Griffiths: You are correct so far.

Hon DERRICK TOMLINSON: Thank you very much. One of the distinctions made by Hon Nick Griffiths between the Legislature and the judiciary was that the Legislature is responsible for enacting the law while the judiciary is responsible for interpreting and applying the law. That is a healthy separation and an acceptable description of the difference between the two.

However, I do not believe that it is inappropriate for those who are responsible for forming, shaping or enacting the law not to consult those who are responsible for the interpretation or application of the law. The advice given to the committee by the Acting Chief Justice and the Chief Judge, but not the Chief Stipendiary Magistrate because he did not respond to our invitation to comment, related to the practice of the judicature and the application of the law. They pointed out to the committee the difficulties or advantages they saw in their role as judges from various aspects of the law. That is quite proper. It would be quite proper, for example, if we were to enact a physiotherapists' Bill in this place that we give physiotherapists the opportunity to comment on that Bill. It would be appropriate if we were to enact laws relating to accountants that we give the non-parliamentary colleagues of Hon Max Evans the opportunity to comment thereupon. When we reach the stage that this Legislature takes unto itself all the expertise and refuses to acknowledge the expertise of people much better qualified than we are in professions or in the pursuit of professions, our arrogance would exceed that which is so often attributed to us. Not only is it a proper function of the Legislation Committee to confer with people who have acknowledged expertise but it should also be the practice of

any member of the Legislation Committee in the future to seek the advice of those whose expertise is greater than that of the individuals on the committee.

Hon PETER FOSS: I can only echo the words of the Chairman of the Legislation Committee. It is an extraordinary proposition to suggest that the Legislature, in trying to find out the practical problems and to ascertain what should and should not be done, should be prohibited by some artificial rule from speaking to the very people who are best able to provide the answers. I can assure the Chamber that, in formulating the legislation, that is exactly what the Government did and it has continued to do that in the course of this legislation passing through the Parliament, especially in the light of the remarks that have been made. Any remark is obviously referred back to determine whether it is valid. How else can we test the point? If members in the other place make statements about the effect of the measure, it is entirely appropriate that advice be sought from various levels of the judiciary, and the Government is certainly doing that.

However, that does not mean that the Government confers an executive role on those judges and magistrates. It does not mean that when the Legislation Committee confers with judges it is conferring a legislative role on them. It is purely fact finding and opinion seeking. As Hon Derrick Tomlinson has pointed out, how can we possibly decide to refuse to consider the views of those people best able to give advice? It typifies some of the extraordinary court rules in times gone by. One of the really good examples is that defendants in criminal trials were not allowed to give evidence. It certainly sounds as though this is where Hon Nick Griffiths got his idea. In fact, as a result of that old rule we still have the ability for the defendant to make an unsworn statement from the dock, because the defendant was not a qualified witness and therefore not able to speak at all. The member's logic sounds like something from legal history and the strange logic that used to apply to who could and not give evidence.

I will deal with the fine hair splitting that Hon Nick Griffiths has undertaken with what he is allowed to say by way of report on the Legislation Committee and what I am allowed to say. The member reserves to himself the capacity to disagree with the Legislation Committee. I agree: The honourable member is as entitled as any member to say that he does not agree with the Legislation Committee.

Several members interjected.

Hon PETER FOSS: The whole point of the committee is to have an airing of the issues and to try to distil what they are. Perhaps I should have arranged for officers of the Ministry of Justice also to appear before the Legislation Committee. Unfortunately, although the committee has had the opportunity to consider the pearls of wisdom and the delightful eloquence of Hon Nick Griffiths, I did not arrange for the Ministry of Justice to respond to him. Therefore, in some ways, we are keeping to the member's premise that we should not hear from the people most able to give advice.

However, I have asked for the Government to respond to the views of the Legislation Committee. I hope that in a most respectful manner we have approached the committee not only on those occasions where we accept its views but also on those occasions where the Government finds itself unable to accept the committee's views, or accepts the view that suggests an alternative approach. Recommendation 7 is accepted and an alternative approach is recommended. I am sure that members of the Legislation Committee will be the last people in the world to suggest that their approach to a problem is the only possible response. We outline the difficulty and put forward a solution, and we always hope that that is the best solution. During my time on the committee we frequently identified the problem but we were not always able to identify the solution. It is much easier to identify the problems than the solutions. Recommendation 9 is accepted and an alternative approach is recommended. Recommendation 10 is not accepted and members will see that the Ministry of Justice has taken the matter seriously, consulted with people and come back with comments from the chief judge.

That is an important point and it should be understood by this Chamber. I am sure that members will pay attention to what is reported by the Ministry of Justice as the response from other people. It is entirely up to the Chamber to decide what it then does. Hon

Nick Griffiths indicated that he was waiting to hear my response to a number of his suggestions. I hope that I have taken a very non-partisan view about this. I accepted his recommendation that it be referred to the Legislation Committee and what clauses should be referred. I have been very happy to try to deal with this on the basis that we look for a solution.

If the Government generally believes that the response of the Legislation Committee has not taken into account an important matter that other people believe is important, of course it must put forward that view. I hope that the Chamber will listen to that view and will make an appropriate decision on it. I am sure the Legislation Committee does not claim to be infallible. The committee tries to get the right solution and I am sure that even -

Hon J.A. Cowdell interjected.

Hon PETER FOSS: Of course, we have a closet papist. Hon John Cowdell would like the regalia probably more than anything else.

Several members interjected.

Hon PETER FOSS: Well, perhaps I should not accuse a Fabian person of wanting the trappings of power. Every now and then I get the impression that Hon John Cowdell is interested in it.

The CHAIRMAN: I have checked the title of the Bill. It is the Sentencing Bill and we are debating the long title!

Hon PETER FOSS: I am merely replying to what was said earlier. In the same way as Hon Nick Griffiths has reserved the right to listen to what transpires in this Committee to decide whether he will move his amendments and whether he maintains his disagreement with the Committee in certain matters, so does the Government. I apologise that I was able to table the Government's response to the Delegated Legislation Committee's report only today. I would have preferred to make it available to members earlier, but it is important that the Government's response be in writing and available to members in advance. I tried to make it available as early as I possibly could. I hope that Hon Nick Griffiths will consider this to be a serious matter. It is not merely a matter of saying that because it has been recommended, that is it. It is a serious matter and it is a matter of the Government not only having a view, but also seeking the views of others before giving its view. That is one of the reasons it has taken some time for the response to come forward. It was not a matter of the Government sitting in a closet and thinking about it; it was a matter of getting some views of what should be the case.

Like Hon Nick Griffiths, I will listen to the arguments put in this Chamber. One of the wonderful things about this legislation having gone to the Legislation Committee and our having bipartisan support is that regardless of whatever comes out at the end of the process anyone who resorts to the debate on this Bill in *Hansard* in the future - unlike the many *Hansard* debates in which we do not have the faintest idea why a certain provision was enacted - will be in no doubt about what the Parliament intended and why the Government formed the opinion it did. I sincerely trust that the debate we are about to have will be fruitful and positive and will continue to be bipartisan, and that members will work to achieve the best result for the people of Western Australia.

Hon J.A. COWDELL: On behalf of the Legislation Committee I must establish the claims of committee infallibility as opposed to ministerial infallibility. It is appropriate I do so at this stage of the Committee debate on the Sentencing Bill.

Hon N.D. Griffiths: I can think of no better person to claim infallibility.

Hon J.A. COWDELL: Only on behalf of the chairman of the committee, of course.

Hon Derrick Tomlinson: I will deputise my infallibility to you.

Hon J.A. COWDELL: Thank you. I must alert members to what is coming up in the Committee stage of this Bill. They need to be diligent.

I commend to members the thirty-sixth report of the Legislation Committee pertaining to

the Sentencing Bill. I realise that most members will have consulted this report at length and have considered in detail the arguments contained therein. A need exists for someone to commend the recommendations of the Legislation Committee. Certainly the Government does not do that if one looks at its amendments on the Supplementary Notice Paper. Once again the recommendations of the Legislation Committee were unanimous. A great deal of consideration went into them. The committee benefited from the four hours of testimony from Hon Nick Griffiths.

Hon Peter Foss: Unfortunately you did not hear from the Minister for Justice. I should have made sure that the committee did that. Some of the debates in this Committee should have been held by the Legislation Committee.

Hon N.D. Griffiths: It would have been better if I had been there at the same time as the Minister for Justice.

Hon Peter Foss: I agree. We failed to use the committee to its best capacity.

Hon J.A. COWDELL: The amendments proposed by the Legislation Committee provide for an appreciable improvement of this Bill. Only today members received the formal governmental response to the Legislation Committee's thirty-sixth report, and the Minister drew that to the attention of members. Of course, members need to be alert to the Government's response as well as to the thirty-sixth report as they embark on the Committee stage of this Bill. The Minister, in his usual expansive fashion, indicated how receptive the Government had been to the Legislation Committee's recommendations. In fact, if members care to scrutinise the Government's response they will find that with respect to 17 unanimous recommendations of the Legislation Committee the Government has agreed in whole with eight, disagreed in whole with six and agreed in part with three.

Hon Peter Foss: The Government was not heard by the Legislation Committee and that is a problem. It would have been much better to have had this response before the committee rather than afterwards.

Hon J.A. COWDELL: Indeed, it is very regrettable that members received the Government's response only a few minutes before this Committee stage.

Hon Peter Foss: The response should have been before the committee, otherwise you hear one side of the argument and not the other.

Hon J.A. COWDELL: We will no doubt hear both sides now. The clauses the Government agreed to are those recommendations of the committee's in which it was proposed there be no change whatsoever. When it came down to the actual recommendations that proposed any amendment, the Government overwhelmingly rejected them.

Hon Peter Foss: Do you accept that it would have been more acceptable if you had heard from the Government?

Hon J.A. COWDELL: Yes I do.

Hon Peter Foss: It is difficult to criticise the Government for not coming forward with its objections if you did not hear from it.

Hon N.D. Griffiths: Why didn't the Government appear before it?

Hon Peter Foss: It was not asked.

Hon J.A. COWDELL: I am objecting to the content of the Government's response.

Hon Peter Foss: You cannot object to it if you did not give the Government the opportunity to appear before the committee.

Hon J.A. COWDELL: Indeed, we can. Members should be aware that the sorts of concerns of the committee that have been dismissed out of hand should be of concern to government members. I trust that not everyone on the backbench is dozing. Hon Bruce Donaldson is paying attention.

**[Questions without notice taken.]**

Hon J.A. COWDELL: I was appraising members, particularly government members, that the formal government response to the Legislation Committee report opposes all the key unanimous recommendations of the Legislation Committee. It traverses a range of issues; about regulation rather than legislation as a preferred option, to endorsing ideas about which the committee was very concerned. These included imprisonment before being given an opportunity to pay a fine and indefinite sentencing in respect of which the committee was concerned that there should be an annual review rather than a review every three years. In response to that the Government said, "You wouldn't want to have an annual review as that would just excite the prisoners. They would get upset if they were knocked back annually so that is why we will do it only once every three years."

The Legislation Committee raised legitimate concerns which have been wiped in the Government's report. The Government now expects members to endorse its view.

Hon PETER FOSS: We seem to be spending more time on this point than on the Bill. Honourable members should stop taking cheap shots. It would have been more helpful if the issues had been canvassed in the Legislation Committee. With regard to Bills which I am handling as the Minister responsible in this House, when issues such as this arise, I will ask that officers from the department be given an opportunity to appear before the committee. I will ensure that they do that.

We did not have the benefit of four hours of testimony as did Hon Nick Griffiths. We should get on with the Bill. The issues are still open. I believe that the issues need to be discussed, but we cannot close out the Government from having a point of view which has to be expressed.

Standing Order No 365 gives the Government four months to reply to a recommendation of the committee. We replied in 20 days. We have tried our best to cooperate and to ensure that this is dealt with in a bipartisan fashion. If Opposition members want to take cheap shots at us, by all means they can do that. However, they have had their shots, so can we now deal with the substance instead of spending so much time on a point which I believe has its arguments? The Government must be given an opportunity to have its own view. It was not expressed before the committee, so it has to be expressed in this Chamber. That perhaps shows that we should ensure that that does occur -

Hon Cheryl Davenport: That is arrogance.

Hon PETER FOSS: No, it is not. The problem is that the Government was not even asked to reply to those matters before the committee. With all due respect, it is appropriate to hear whether the Government has a view. If we had been asked, we would have given that view. As it happens, we were not asked.

I have done my darnedest on this. I have cooperated at every stage. I agreed to the matter going to the Legislation Committee. If we had been asked, government officers would have appeared to give their views, but we were not asked. There is a basic rule of natural justice which is called audi alteram partem. In other words, both sides are heard. So far, the Government's view has not been heard. The Opposition should start to listen to it now. It is not a question of arrogance, it is a question of natural justice. If the Opposition does not believe that the Government should be heard on this matter, I am afraid these cheap shots are getting silly. Let us get on with the legislation. There are some very important points to be discussed and I am very interested to hear the views of Hon Nick Griffiths I will consider them seriously and I hope that he will consider the Government's point of view seriously. I hope that he will talk about the Bill and not make cheap shots.

Hon N.D. GRIFFITHS: Before we move on to the other clauses, I should make some observations about the short title. These will not be in the nature of cheap shots, unlike that attempt at an intervention a few moments ago. The Committee should note that I have taken on board what Hon Derrick Tomlinson and Hon Peter Foss have said about the role of the judiciary and its being consulted by the Legislation Committee. I do not want my remarks to be interpreted as a reflection on the integrity of the Legislation Committee or on the integrity of those with whom the committee consulted. However, I want to reiterate that the independence of the judiciary is enhanced by its performing a

separate function to that of the Legislature. I believe that it is unhealthy for the judiciary to be playing such a significant role.

Hon Peter Foss: It should not be excessively deferred to. The views should be sought, but they should not necessarily be deferred to.

Hon N.D. GRIFFITHS: My difficulty relates to when its view is sought in a public manner. When a senior judicial officer says that this is the position as he sees it, that view is given great credence by the public, and so it should be. However, when that occurs it undermines the proper role of the true creators of Statutes, namely those in this place and the other place. That is not a matter of arrogance; it is the role that the people of Western Australia have given us.

Hon Peter Foss: I accept the fact that they should not be excessively deferred to, and at times I think they are.

Hon N.D. GRIFFITHS: We are putting the same argument. There is a distinction between the judiciary, accountants and physiotherapists.

I refer now to the provision of the Government's response to the thirty-sixth report. I have no difficulty whatsoever with the timing and I am not having a go at anyone in relation to it. In fact, I was very pleased to receive the report today and as far as I am concerned there is no problem. The content of the report is another matter and I will deal with that in due course. In respect of the proceedings before the committee, which has occupied the time of the Committee extensively this afternoon, it would seem that to do our job properly we need more legislation committees and greater resources. It is better for a substantial part of the Committee stage of Bills to be dealt with by a legislation committee than having so many members occupied in the Chamber. The matter could be dealt with efficiently if the Legislation Committee considered Bills clause by clause and then, if there were changes, those changes would be brought to the House. In saying that I am not suggesting that one would exclude the possibility of change by way of minority report, but this is something that should be considered.

Hon Peter Foss: The problem is lack of availability of parliamentary counsel. It is better to bring back a revised Bill. If one cannot get it drafted one is loath to do one's own drafting.

Hon N.D. GRIFFITHS: That is a proper interjection. No Government ever properly resources parliamentary counsel.

Hon Peter Foss: Finding parliamentary counsel is harder than finding hen's teeth.

Hon N.D. GRIFFITHS: I appreciate that. The demands placed on them by people such as ourselves -

Several members interjected.

Hon N.D. GRIFFITHS: It seems to me that if more resources were provided to that area it would be a more attractive occupation than it is currently.

Hon Peter Foss: More money has been suggested.

Hon Reg Davies: It would create more jobs for solicitors.

Hon N.D. GRIFFITHS: Hon Peter Foss and Hon Reg Davies are correct: More money will bring more legal practitioners into the area, and I am all for having more parliamentary draftspeople.

Hon Derrick Tomlinson interjected.

Hon N.D. GRIFFITHS: Hon Derrick Tomlinson queries literacy. If people are placed under pressure they are more likely to make errors.

Several members interjected.

The CHAIRMAN: Order! The issues being canvassed are getting more and more general. We should narrow the debate and move on.

Hon N.D. GRIFFITHS: It is appropriate that I deal very briefly with the matters that

others have raised. The Minister has expressed his wish for the Committee debate to be constructive. That is certainly my wish as well. These matters are fundamentally bipartisan; there is not one vote in it for the Labor Party, the Liberal Party or any other party. The issue is our professional integrity as members of this House. In that context, I would be very disappointed if constructive debate were inhibited by the fact that the Minister, in dealing with the Bill clause by clause, must defer to the Attorney General rather than take on board matters being put before the House.

Hon Peter Foss: I will undoubtedly take on board every relevant contribution.

Hon N.D. GRIFFITHS: And also give due consideration. It is appropriate at this stage to reiterate the issue of bipartisanship and point out that the Opposition agrees with the question before the Chair.

Hon J.A. COWDELL: Mention has been made of cheap shots. It is important and relevant at this stage to bring to the attention of the Committee the report of the Legislation Committee and the fact that many of the recommendations have some three or four pages of detailed supporting argument. The Government has produced a response to the report and I bring that to the attention of members as well, with particular emphasis on the fact that members need to compare very closely the recommendations and arguments in the Legislation Committee's report with the rejections contained in the Government's response. It is essential that members make that comparison. If they do, they will see that the committee's recommendations should prevail over those of the Attorney General.

**Clause put and passed.**

**Clause 2: Commencement -**

Hon N.D. GRIFFITHS: I note what is contained in the Bill in respect of other legislation that is yet to be passed and what is on the supplementary Notice Paper in relation to other legislation envisaged but yet to come before the House and therefore yet to be passed. It is certainly appropriate that this clause be worded in the manner that it is. However, it is also appropriate for the Government, through the Minister, to give an indication of the timetable. It may be staggered, noting the reference to what may happen to the Water Authority as set out in the proposed amendments to the first schedule and the question of timing of the Sentencing Administration Act. The House should have an indication of the Government's timetable. It is not something one could reasonably hold the Government to, but there are some changes in the Bill and in other legislation.

Hon PETER FOSS: As the member obviously realises, the timetable is dependent upon many factors. It is intended that the legislation come into effect on 1 February or 1 March and the principal determinant is the drafting of the regulations.

**Clause put and passed.**

**Clause 3: Application -**

Hon N.D. GRIFFITHS: Part of this clause was included in the matters considered by the Legislation Committee; namely, clause 3(3)(a) and (b). I refer the Committee to the Legislation Committee's report and note the recommendation that the clauses remain in the Bill unaltered. Essentially, the issue was that matters pertaining to contempt of court should not be subject to the general principles of sentencing as set out in the Bill. I put forward the proposition that they should be. I made a number of other observations. This is one of those clauses on which I do not resile from the point of view I expressed to the committee. I take some comfort from the statement that "The Committee does not consider it necessary to subject sentencing principles in such proceedings to statutory control at this time." I look forward to the time when such matters will be subject to statutory control.

**Clause put and passed.**

**Clause 4 put and passed.**

**Clause 5: Civil liability not affected -**

Hon N.D. GRIFFITHS: This clause is an unnecessary use of words. One of my major criticisms of the Bill as a whole is that it contains many words which are not necessary.

**Clause put and passed.**

**Clause 6: Principles of sentencing -**

Hon N.D. GRIFFITHS: The Minister arranged for the Leader of the Opposition to be provided with clause notes on this Bill and the other two Bills which are part of the package. Those notes were received on 24 October. It is a very welcome practice to receive such notes.

Hon Peter Foss: They are often no good whatsoever because they simply rephrase the Bill. I do not always find them useful.

Hon N.D. GRIFFITHS: I do not find them useful in all respects; however, in some respects they are useful.

The CHAIRMAN: Order! It is hard for *Hansard* to pick up the Minister's interjections, if he wants them recorded, when he directs them to the back of the Chamber.

Hon N.D. GRIFFITHS: The clause notes provided are useful in interpreting the wording of the legislation. It would be an appropriate legislative practice for clause notes to be provided in future to the Opposition and to any other interested members. Where those clause notes are considered by the Government to be an accurate interpretation of the Minister's views, they should be tabled or incorporated in *Hansard* so that they may enhance the interpretation of the relevant legislation. Where they do not reflect the Minister's view, that should be pointed out. That will involve the Minister handling the Bill in another task, and I do not want to increase the Minister's workload. However, it is important when an aid such as this is provided that there be some statement as to its accuracy and, if it is accurate, other people should have access to it so that the legislation can be properly interpreted in accordance with the views of the Committee and the Parliament as a whole.

Hon PETER FOSS: The suggestion made by Hon Nick Griffiths is a good one, which is followed in some Parliaments that have more resources for both the Opposition and the Government. This Parliament is underresourced in comparison with some others. Some clause notes do no more than paraphrase legislation and are not of much assistance. Clause notes vary enormously. Sometimes they explain the background, and sometimes they simply paraphrase the clause. If the practice referred to by Hon Nick Griffiths were adopted, it would be necessary to lift our standards and to specify the way in which clause notes will be presented. In an ideal world, we should move to that practice. Often we deal with legislation very quickly, and 20 years down the track it might be difficult for people to understand the reasons for some of the provisions.

**Clause put and passed.**

*Progress*

Progress reported and leave given to sit again, on motion by Hon Peter Foss (Minister for the Environment).

*Sitting suspended from 6.00 to 7.30 pm*

## GOVERNMENT EMPLOYEES SUPERANNUATION AMENDMENT BILL (No 2)

*Second Reading*

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [7.30 pm]: I move -

That the Bill be now read a second time.

The main purpose of this Bill is to close the State public sector contributory lump sum superannuation scheme to new members. This follows similar measures in other States. In conjunction with the closure, it is proposed to change the rules of both the contributory and non-contributory lump sum schemes to allow for additional employee contributions

and salary packaging arrangements. Also, there are a number of amendments made consequential to the closure of the scheme and the validation of the use of section 49 of the principal Act. Becaue of the complexity of superannuation, it is useful to review the current superannuation arrangements for state public sector employees. Superannuation for these employees is provided through the government employees superannuation fund established by the Government Employees Superannuation Act 1987.

The fund comprises three superannuation schemes. First, there is a voluntary contributory lump sum scheme requiring an employer contribution of 12 per cent of salary and an employee contribution of 5 per cent. At 30 June 1995 membership of the scheme was 31 000. Secondly, employees who do not join or are not eligible to join the contributory scheme automatically become members of the non-contributory lump sum scheme. This scheme provides for the Commonwealth's superannuation guarantee requirements, which involve employer only contributions - currently 6 per cent of salary rising to 9 per cent by 2002-03. Membership of the scheme at 30 June 1995 was 100 000.

Finally, there is the closed pension scheme with 1 450 members. This scheme was established by the Superannuation and Family Benefits Act. To be eligible for membership of the contributory lump sum scheme an employee must work at least 10 hours per week and have at least 12 months actual or prospective employment. Statutory authorities fully fund, on a concurrent basis, their employees' membership of the contributory and non-contributory lump sum schemes. In consolidated fund agencies, the benefits of the schemes are funded at the time they are paid to members - for example, on retirement; that is, the benefits of employees in consolidated fund agencies are unfunded.

The Bill provides for the closure of the contributory lump sum scheme to be by proclamation, and the Government intends the closure day to be Friday, 1 December 1995. I need to emphasise that the entitlements of existing members are not affected by this initiative. Their membership and benefits will continue unchanged, but with improved flexibility as a result of the other amendments, which I will expand on later. Only prospective new members will no longer have access to the contributory scheme. Instead they will have superannuation provided by automatic membership of the non-contributory scheme.

There are three sound reasons supporting the closure of the scheme: First, the State's unfunded superannuation liability is estimated to be $4.3b and increasing in real terms by about $70m per year over the next 10 years. The cost of membership of the contributory scheme is 12 per cent of salary per employee member. Currently about 3 000 employees join the scheme each year, including new employees and transfers from the non-contributory scheme. With the pension scheme closed to new members in 1986 and the non-contributory scheme now a requirement under commonwealth law, the only way to reduce the rate of increase in the State's liability is to close the contributory lump sum scheme.

Second, under the Commonwealth's superannuation guarantee arrangements, the cost to the Government of the non-contributory lump sum scheme will increase from 3 per cent of salary prior to 1 July 1992 to 9 per cent by the year 2002-03. The current cost is 6 per cent of salary per employee. Over the next 10 years the superannuation guarantee arrangements will cost the State an additional $700m.

Third, the design of the contributory scheme is not sufficiently flexible to meet the changing remuneration arrangements in the public sector. The scheme is a defined benefit scheme in which benefits are defined as a multiple of final salary. Such schemes cannot easily accommodate salary packaging arrangements in which the actual salary paid can fluctuate according to the package. The estimated savings from the closure of the scheme are long term. Over the next 10 years the cash savings are estimated to be about $100m, while the combined reduction in the State's cash outlays and liabilities over the next 30 years are estimated to be $1.3b. The circumstances leading to closure here in Western Australia are the same as have occurred in other States. The New South

Wales, Victorian and South Australian Governments have all closed schemes to new members.

Employee contributions and salary packaging: In conjunction with the closure of the contributory scheme, the Bill amends the non-contributory scheme to allow for voluntary employee contributions and contributions under salary packaging arrangements. Employees in both the contributory and non-contributory schemes who wish to raise their level of superannuation cover will be able to make additional contributions to the non-contributory scheme without any adverse impact on other superannuation entitlements. This particular amendment also makes provision in advance for the compulsory employee contributions which become a commonwealth requirement from 1 July 1997.

Consequential amendments and validation: During the passage of the Bill through the Assembly a number of consequential amendments were made to provide for -

> Employees being able to have employer contributions paid under salary packaging arrangements to a private sector superannuation scheme without affecting their eligibility to remain in the government fund.
>
> The outward portability of benefits for current members of the contributory scheme on redundancy or transfer to the private sector subject to the approval of the Treasurer.
>
> The Treasurer to have the authority to grant additional benefits in the 1993 scheme, similar to the existing authority under section 49 of the principal Act.
>
> The validation of the exercise of the Treasurer's discretionary authority to grant additional benefits in the contributory scheme under section 49 of the Act. The Solicitor General has advised that the wording of section 49 is deficient in the context in which it has been used.

In conclusion, the closure of the contributory lump sum superannuation scheme and proposed amendments to the non-contributory scheme constitute a major change to public sector superannuation arrangements. The change is responsible financial management, while at the same time offering employees more flexible superannuation arrangements. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

## MUTUAL RECOGNITION (WESTERN AUSTRALIA) BILL

*Second Reading*

Resumed from 14 November.

**HON KIM CHANCE** (Agricultural) [7.40 pm]: Before the debate on this Bill was interrupted yesterday by other business, I had made the point that there are two ways to proceed towards what I think all of us believe to be a desirable outcome; that is, a single national market. Those two ways are to institute a system of national uniformity of standards for goods and services via a national agreement or the establishment of national standards; or to establish the mutual recognition model, which is the essence of this Bill. I said also that the first model is not the preferred model because of the difficulty of not only framing single national standards, but also keeping those single national standards up to date and able to encompass the scope of goods and services which are available in this nation.

Yesterday, the Minister for Transport was engaged on affairs of state in another State, but as a result of a comment the Minister made today by way of interjection, I need to recognise the importance of transport within the scope of national regulations. The Minister referred to the new national standard for the licensing of heavy vehicles. I share the Minister for Transport's concern that one of the unfortunate outcomes of the adoption of that new national standard may be that it is much more expensive to license heavy vehicles in Western Australia.

Hon Peter Foss: It is a lot cheaper than in New South Wales.

Hon KIM CHANCE: Yes. I thank the Minister for the Environment for that comment, because it points to the fact that one of the difficulties of trying to implement a single national standard is that we inadvertently get into areas which States have traditionally handled very differently. If we phase in a national standard over 10 or 20 years, perhaps we can live with it, but when we try to impose it in the short term - if I can call it the short term, because the National Road Transport Committee first made proposals like this as early as 1990 - we are faced with a situation which I regard, and I am sure the Minister for Transport regards, as less than ideal.

There are clearly downsides in adopting national standards, but I am sure the Minister for Transport would agree with me that there are also upsides. One of the major problems that the transport industry has experienced in the past with interstate road transport in particular, but oddly also with interstate rail transport, is the different standards which exist. We have a situation where eventually, with the goodwill of the State Governments and the Australian Road Transport Association, we will begin to address those differences which have so crippled interstate trade simply because of the modes of transport which are permitted. I am not sure even to this day in which parts of Victoria road trains can be operated; if the Minister is available, he may be able to tell us that later. Many of the Eastern States live sheep shipments, not only from Victoria but also from western New South Wales and south western Queensland, were traditionally made out of the Victorian port of Portsea. That involved road trains coming down through Burke and across the Murrumbidgee at Robinvale. The road trains had to be broken up at that stage, and the last leg of the journey was travelled in single trailer configuration. While that is a difficult enough process with dry freight, it is incredibly difficult with live freight because it is necessary for animal welfare reasons for the second prime mover to be waiting at the break-up point so that the journey is not delayed unduly.

There is no essential difference with regard to the road structure in Victoria. That part of the journey is probably along some of the best of the roads, because the road which comes down to Cobar from Burke is most unsatisfactory. The Victorians had the good roads, but they would not allow the road trains to operate on them. My understanding was that their concerns revolved around bridging requirements, but my observations of the bridges were that provided a reasonable standard of axle loading was established on livestock road trains, that would not present any difficulties. I know that the road transport industry and the State Governments have been trying very hard to overcome these difficulties, and I hope that by now they have overcome those problems. The reason I mention it here is to point out the difficulties which are created by the establishment of different standards, and, conversely, the benefits which can flow from the adoption of national standards. Having said that, I do not deviate one inch from what I said initially; namely, that mutual recognition is at least now, and in the short and intermediate term, by far the preferable route to follow.

The second reading speech refers with great clarity to the aims of mutual recognition and states -

> Mutual recognition has two principal aims. The first is to remove needless artificial barriers to interstate trade in goods. The second is to remove barriers to the mobility of labour caused by regulatory differences among Australian States and Territories.

It cannot be put any more concisely but informatively than it has been put there. Mutual recognition will mean that goods and services which meet the regulations for the sale of goods in one State or Territory can be sold in another State. On a slightly different plane, each State or Territory jurisdiction will recognise each other's standards. What mutual recognition does not mean is similarly well defined in the second reading speech, which states -

> Laws that regulate the manner in which goods are sold, such as laws restricting the sale of certain goods to minors, or the manner in which sellers conduct their business are explicitly exempted from mutual recognition.

That is a serious point, and it raises the first of some questions which I have and which I

hope the Minister will address. Does the definition of "exempt goods" include those goods which can only be sold under licence in a particular State? I give the example of potatoes, which in Victoria are grown freely without a licence, but which in Western Australia are a prescribed good. Does that mean that Victorian potatoes which are transported into Western Australia are required to meet the Western Australian regulations?

Hon Peter Foss: Under section 92, potatoes can already be sold without meeting local regulations.

Hon KIM CHANCE: I see.

Hon Peter Foss: That is part of the problem.

Hon KIM CHANCE: That should have occurred to me. For the sake of the record, the Minister has said that as a result of section 92 those interstate goods can already be sold. Will the Minister explain what that second part of the sentence means, "or the manner in which sellers conduct their business are explicitly exempted from mutual recognition"? I take the Minister's point about section 92, and I referred to that section of the Australian Constitution yesterday. I referred also to the fact that States have established their own, for want of a better word, non-tariff barriers to prevent this kind of thing happening. I am interested in the question of section 92. I seem to recall some difficulties in selling lamb produced in the Eastern States while the powers of the Western Australian marketing board were effective. I need to contact Hon Murray Nixon about that.

Hon Peter Foss: I do not want to get into debate on section 92 if I can possibly avoid it, but I can certainly tell you what this means.

Hon KIM CHANCE: The agreement that was ultimately reached between the States and the understanding that mutual recognition legislation would ultimately cover all of Australia has already sparked other legislation. I am pleased that the Minister for the Environment, who was then the Minister for Health, is the Minister with carriage of this Bill, because he was also the Minister with carriage of the Medical Amendment Bill 1994, which was introduced in this place in September last year. The Medical Amendment Bill in a sense presupposed the meaning of the mutual recognition legislation.

Hon Peter Foss: It was a unilateral recognition Bill.

Hon KIM CHANCE: I understand it was. I did not go back and read the second reading speech, but my recollection of the Bill is that its introduction was needed partly because the registration standard for medical practitioners in Western Australia is somewhat different from that existing in other States and that had that legislation not been enacted prior to the passage of this Bill it might have created difficulties between the States. When I read the debate in the other place I found that Dr Kim Hames had a slightly different view. I am not saying that it was not accurate, but he regarded the real impetus of the Medical Amendment Bill as simply being the need to introduce some form of mutual recognition legislation into the registration of medical practitioners rather than wait for this legislation.

Hon Peter Foss: It did both; it gave unilateral recognition immediately and it made amendments so that when the legislation came along there would not be a problem.

Hon KIM CHANCE: Dr Kim Hames and I saw different purposes.

Hon Peter Foss: Both of which were there.

Hon KIM CHANCE: I am sure both interpretations of the Bill were entirely accurate, but we had different reasons for looking at it. The Medical Amendment Bill 1994 was an example of change which was brought about by the knowledge that this legislation was forthcoming, at least in part. In a more prosaic sense an intent was given in debate in the other place regarding two specific products. I think it would be valuable for members to hear those examples, because they illustrate the situation very clearly. The equivalent of this legislation has already been passed in New South Wales and Queensland. As a result of the mutual recognition legislation in those States, eggs which are produced in New

South Wales can now be marketed in Queensland despite the requirement that eggs sold in Queensland must be date stamped. There is no similar law in New South Wales. As a result of this type of legislation, eggs which are not date stamped can be sold in Queensland. All that is required is that information be printed on the package of the eggs indicating that they were packed in New South Wales and immediately that barrier is overcome. A similar prosaic example was given in the debate, which was that bakers in Queensland who habitually market bread in half loaves can market bread in New South Wales despite the fact that New South Wales has specifications for a minimum weight standard for bread which equates to a full loaf. Although that legislation in New South Wales stands and all bread manufactured and sold in New South Wales must meet the requirements of those regulations, Queensland bakers are able to send bread into New South Wales in half loaves, with the proviso that the packaging makes it clear that the bread was baked in Queensland.

Hon Peter Foss: Market forces have come to bear in that State.

Hon KIM CHANCE: Those are entirely sensible outcomes from mutual recognition. In part those two very simple examples illustrate why the Opposition is so keen to support this legislation. I felt it necessary to give those two simple examples, having referred to the effect of the Medical Amendment Bill, because I can remember that Bill, although it was simple in its structure and wording, being incredibly complex in the way in which people perceived its effect. I find myself still explaining to people the meaning of the outcome of that legislation. I can remember receiving a number of very concerned phone calls from some fairly widespread places, including - and I do not know why - a number of calls from Royal Flying Doctor bases. I suppose it is because they have a lot of English doctors.

Hon Peter Foss: One of the objectives was to remove the automatic entitlement of foreign doctors to registration.

Hon KIM CHANCE: That is right. That caused some difficulty in groups or regions with a lot of foreign doctors.

Hon Peter Foss: It was offset by the ability for areas of special need to allow them in anyway.

Hon KIM CHANCE: In the end I became quite an enthusiast for the Medical Amendment Bill. I could see the obvious ways in which the intent of the Bill could be misinterpreted. The most difficult of those was probably that we were offering regional health consumers second class doctors. It was fairly easy to argue that case. It was not true, but the argument became very sophisticated in the end about why it was not true. It is not a simple matter which could be explained away very easily and glibly. As soon as one starts going into the area of mutual recognition, given the longstanding differences that exist for standards across Australia, the impact is probably more far reaching that we might understand now. Some of the outcomes will probably be a little scary at times; I am not too sure.

One of the things that disturbed me a bit was the Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements. When the members of that committee were in Canberra, I think it was, they had an appointment with the New Zealand High Commissioner, who wanted to speak to them about the outcome of their discussions. He asked the question: Is mutual recognition something New Zealand should engage in? Although some of the committee members had thought that mutual recognition including New Zealand might be a way to open a new free trade agreement, they came away with the view that if that were to be done, they could see only one winner out of the process - New Zealand. It seems to be able to do most things much better than we can.

Hon Peter Foss: Self-interest.

Hon KIM CHANCE: Yes, it is amazing how self-interest can corrupt a principle quickly. I have mentioned already the effect mutual recognition can have on the interchangeability of professional qualifications, such as medical practitioners under the

Medical Amendment Bill, and the ongoing influence this legislation will have. Mutual recognition applies equally to professional and trade qualifications as it does to the sale of eggs or bread. People who hold registration in a specific occupation can register for the equivalent occupational status in another State or Territory. It is important to emphasize "equivalent". It is in that area that I think the administrative review tribunals will have some difficulty, because determining what is an equivalent qualification will cause some headaches. Fortunately we do not have to address that in the legislation because that is ultimately a justiciable matter. It would be virtually impossible to codify a means of interchangeability of qualification recognition in legislation.

Registration in another State must be preceded by an application to the other jurisdiction at least one month ahead of the date of the desired transfer of recognition. That seems to be little enough time to allow the authorities in that State to assess what qualifications are held by the applicant and how those qualifications might be accepted in the other State; in other words, making that judgment of equivalence. One of the matters that must be considered by the state authorities is whether the qualifications held by the applicant in the other jurisdiction are equivalent to the requirements for registration in this State. That will not be an easy task. However, it is hoped that in time professional qualifications themselves will become more standardised throughout Australia. That will make that administrative process rather easier. There is no reason for professional qualifications to vary to any great extent between States. All States have a similar culture and demography; in medical areas they have a similar epidemiology.

Hon Peter Foss: It is probably just the trade barrier.

Hon KIM CHANCE: Yes, it is. They are different in some instances simply because they grew up differently. It is rather like planting two seeds in identical soil and their growing differently. In many ways the professional requirements and trade registration requirements are different for no other reason than they are different. It is as simple as that.

We can turn to ample precedents in much more diverse jurisdictions than those in Australia where common standards have been achieved in relatively short time scales. The best example of this is in the European Union. Many commerce and professional qualification standards are now common throughout Europe. By contrast with Europe's diversity, Australia faces few challenges in seeking a unified national market. In Europe there are wide cultural differences and differences in languages, currencies, ways of life and stages of economic development. Yet those difference are, or are in the process of, being resolved in a manner which benefits all members of the European Union. Ultimately, decisions on the level of equivalence will be made by the Administrative Appeals Tribunals. I do not envy the tribunals because that will be a difficult task. Over the years - I do not think it will take long - that task will become simpler as the differences between registrational requirements narrows with experience.

The Opposition supports the view that is expressed in the second reading speech that eventually agreement will be sought between the States and the Territories rather than their persisting with mutual recognition based on commonwealth legislation. Even with the present structure of the legislation there is a high level of involvement by the provincial Governments - the State and Territory Governments. For example, any future amendments to the commonwealth Act must first go to the Western Australian Parliament for consideration. That is a component of the legislation with which the provincial Governments will feel extremely comfortable. Although the legislation included in the Bill before the House is in large part commonwealth legislation, it is at least legislation we have had time to look at. We know that should we ever have to consider amendments to the legislation, those amendments which initially would be passed in the Commonwealth Parliament cannot be passed there until they have had the approval of all State Parliaments.

Western Australia is the last jurisdiction to join the mutual recognition process. It has been two and a half years since the commonwealth legislation came into effect in March 1993; however, the history of the legislation is much longer than that. A Heads of

Government agreement was signed in 1991 which included a form of draft legislation. Without going over areas of debate that we had during consideration of the Medical Amendment Bill, I make some observation about the crucial nature of mutual recognition of professional qualifications in the medical and paramedical field. One of the areas in which we most notice a shortage of trained personnel is the medical field. When the Medical Amendment Bill was debated we considered at some length the critical shortage of doctors of all kinds - general practitioners and specialists - in country areas in Australia; it is not a problem confined to Western Australia.

Hon Peter Foss: Western Australia has had relatively few problems.

Hon KIM CHANCE: I knew that the Minister would remind me of that; that is why I had to make that note. The Minister is correct. By comparison with other States, Western Australia has had relatively few problems. Indeed, we are quite well served at this stage, I am pleased to say. Nonetheless, it is patently obvious that, viewed from the perspective of rural Australians, we have an absolute shortage of doctors in Australia.

Hon Peter Foss: Especially specialists.

Hon KIM CHANCE: Yes. I say that despite what might be fairly strident objections from the Australian Medical Association, in particular the more strident of the closed shop advocates within the AMA who argue that there are far too many doctors in Australia and that if there were half as many they would make twice as much money. In commercial terms, they are right. It is not only doctors whom we are short of in country Western Australia. Few members are unaware of the critical shortage of clinical psychologists and psychiatrists in our medical system.

Hon Peter Foss: And radiographers.

Hon KIM CHANCE: There are critical shortages in many allied fields. On Monday, I spoke to representatives of the management of Kalgoorlie Regional Hospital. One question I asked was whether they had any difficulty in retaining nurses on their staff. They said that they did not have a particular difficulty with enrolled nurses; there is a reasonable supply of enrolled nurses who live locally. However, they have real problems with registered nurses. I asked whether Kalgoorlie Regional Hospital offered registered nurses full time work - that is, the full 40 hour award rate employment - and I was informed -

Hon Peter Foss: I thought that the award was 38 hours.

Hon KIM CHANCE: We should not get into that argument; Mr President might rule me out of order. I might be technically incorrect to refer to the 40 hour week, but I refer to it as the 38 hour week which is actually worked on a 40 hour basis and includes rostered days off. I was informed that the award rate employment, if I may call it that, was offered at Kalgoorlie Regional Hospital. Management representatives added that if anything less than full award employment conditions were offered at Kalgoorlie, there would not be one applicant. That was their assessment. They said that if they offered any form of part time employment - I took that to mean 38 hour a week employment - they would not get an applicant. It is interesting that that hospital, which is a modern and well constructed facility -

Hon Peter Foss: And an attractive one.

Hon KIM CHANCE: It is an attractive facility with pleasant working conditions. Management representatives felt that if they offered working conditions which could be described as innovative arrangements facilitated by workplace agreements and individual contracts, they would not attract one applicant. If that is the case at Kalgoorlie, what are the chances of more remote or less pleasant places attracting the skilled staff whom they need? The hospital has a choice. It can offer the full award conditions or the innovative arrangements facilitated by the current legislation, but when workers have a choice they vote with their feet. That is the experience at Kalgoorlie Regional Hospital. It bodes ill for remote areas in terms of accessing medical services if that type of employment contract becomes widespread. That might sound somewhat outside the scope of the Bill -

Hon Peter Foss: I thought so.

Hon KIM CHANCE: I thought that the observation had to be made.

Hon Peter Foss: I do not think that I will reply to it, but I accept it.

Hon KIM CHANCE: One benefit that will flow from mutual recognition - it is why I defend my raising it here - will be that it will provide a solution to labour shortages that come about because of the lack of labour mobility as a result of the different regulations. We must be extremely careful that the arrangements that we offer remain attractive to the people whom we are targeting. The spirit of mutual recognition - I hope, anyway - will ensure that with a national market for skilled labour, regional shortages, to the extent that they are affected by the different professional training standards, should be better served than they presently are.

I conclude my remarks on the broader matter of mutual recognition and the alternative means of achieving a national market - that of centrally setting uniform standards. The two will eventually amount to the same. I have said that it might be a matter in which the end justifies the means, and I said that in defence of the deficiencies that the committee on which the member for Perth, Hon Phil Pendal, was a prominent member -

Hon Graham Edwards: Things must be slow in the other place.

Hon KIM CHANCE: Hon Phil Pendal might even have been the chairman.

Hon Graham Edwards: He has reached far greater heights since then.

Hon KIM CHANCE: The committee said that the framework of the legislation had a top-down flavour to it - it began from commonwealth legislation and filtered down to the States. It is reasonable that the Legislative Assembly standing committee made that criticism, but, provided that the outcome is ultimately achieved, no great harm is done. In the end, with experience of mutual recognition legislation, the two will amount to the same. In other words, the differences between legislation in each State will ultimately become so small that it will not matter much whether we set uniform standards centrally. Indeed, in the other place the member for Mitchell actually expressed a preference for central standard setting. I will not go that far, but I hope that it will not matter much in Australia, just as it does not matter all that much in Europe any more.

With experience, ultimately we will agree that provincial Governments' interests will be best served by setting the rules centrally with, if necessary, a form of sanction by State and Territory Governments. There is no need to rush towards that point. I do not see it as an end, desirable or otherwise. The process of setting regulations within the provincial and Commonwealth Governments will reach the point at which it just does not matter any more, but we should not drive towards that stage. It is important that State and Territory Governments feel comfortable with the process. If that means that the next stage of the process needs to be legislation arising from a truly interstate agreement rather than the adoption of commonwealth legislation, so be it. What matters is that we achieve a single national market because the benefits will override what has led to the need for this legislation; that is, the petty jealousies and the provincialism which remains rampant among jurisdictions in Australia.

I have already pointed out that I am interested in not so much the effect of trading between the States of the Commonwealth, but the impetus it can give for export trade. With a market as small as ours, unless an industry is able to access all of the Australian market and not part of it, it will not have the springboard by which it can launch itself into the export market.

I close my remarks with the comment I made when I began my speech: This legislation is not two and a half or four years late; it is over one hundred years late, but it is better late than never.

**HON GRAHAM EDWARDS** (North Metropolitan) [8.21 pm]: I did not intend to speak on this Bill but I have been invited to do so by the Leader of the House and Hon Kim Chance. Hon Kim Chance aptly and adequately put the Opposition's position. I certainly support his closing comment.

I guess the artificial barriers that we need to pull down come back to the stupidity that occurred when this nation was developed; for example, there were three or four different railway line gauges across this nation. I recall the standard gauge railway line being opened when I was a young bloke working for the railways in this State. People were bewildered about the need for that expensive change to be made when all the railway networks should have been of a standard gauge. It all comes down to the closing comments of Hon Kim Chance.

The main thrust of the legislation is, as the Minister said in his second reading speech, that mutual recognition has two principal aims: To remove artificial barriers to interstate trade in goods and to remove barriers to the mobility of labour caused by regulatory differences between the States and Territories. When this Bill refers to goods I understand it does not relate to produce such as cherries, which are quite cheap in Victoria but cost 10 or 15 times more in Western Australia.

Hon Peter Foss interjected.

Hon GRAHAM EDWARDS: It does away with quarantine.

Hon Peter Foss: Quarantine is different. We only allow cherries to be sold in four litre containers. If they are sold in 100 gram packs in Victoria they can be sold in 100 gram packs in Western Australia.

Hon GRAHAM EDWARDS: It does not override that situation. It is simply a commonsense approach and it is true that we have waited far too long for this legislation. If European countries can adopt a common approach to their Parliament, trade and even monetary matters, surely Australia as one nation can go some way towards achieving that which has been discussed in this debate tonight.

I am very pleased that we are looking at a trans-Tasman agreement. Ultimately it would be to this State's benefit if the mutual recognition agreement were extended to Western Australia.

I am concerned about the uniformity of qualifications. I guess one can speculate that if there were uniformity in qualifications ultimately there would be one Australian standard which would be overseen by a national Government rather than by various State Governments. It may well be that in the future people will not apply to State Governments to become registered in a particular profession, but will apply to the national Government.

I am concerned about the question of occupation. In his second reading speech the Minister said -

> The second principle is that, if a person is registered to carry out an occupation in one State or Territory, he or she should be able to be registered and carry on the equivalent occupation in any State or Territory. For example, a doctor who qualifies to practise in this State will also be entitled to gain acceptance to practise in every other State.

That makes good sense. Further on the Minister said -

> In relation to occupations, the mutual recognition principle means a registered practitioner wishing to practise in another State can notify the local registration authority of his or her intention to seek registration in an equivalent occupation there. The local registration authority will then have one month to process the application and to make a decision whether to grant registration. Once the notice is made and all necessary information provided, pending registration, the practitioner will be entitled to practise immediately, subject to the payment of fees and to compliance with various indemnity or insurance requirements in relation to that occupation.

Is it possible for a doctor, a nurse or a crowd control officer to become registered in more than one State at any one time? If it is possible and a person is struck off a register for whatever reason - for example, malpractice - in one State, what process will be put in place to ensure that person is struck off the registers in other States? A couple of years

ago truck drivers were able to obtain drivers' licences in more than one State. I am sorry Hon Eric Charlton is not in the House because he may be interested in what I have to say. If a truck driver who was licensed in New South Wales lost enough demerit points in that State to disqualify him from driving he could use a Western Australian or South Australian licence until police authorities woke up to what was happening. By mutual agreement it was decided that if a person lost all his demerit points in one State he would lose them in every State and Territory.

What is the situation in not so much the higher profile professions or occupations such as doctors or psychiatrists, but other areas such as crowd control officers or security officers who are required to be licensed? Given the mobility of people these days, what safeguards will exist to ensure that if a person is struck off for whatever reason in one State that person will be struck off in any other State where that person might be registered? Generally, this Bill is a very sensible move. Any person who wanted to see us develop properly in trade and professional mobility would want to see it come about. I support the Bill.

**HON PETER FOSS** (East Metropolitan - Minister for the Environment) [8.30 pm]: I thank both members opposite for their very thoughtful and helpful contributions. I will deal first with the issues raised at the beginning and end of Hon Kim Chance's speech about the difference between a nationally set standard and a nationally arrived at standard. The difference between the two is considerable and very significant for Western Australia. We will find the difference important in due course for our type of regulatory system. The problem with a nationally set system is that, first, it is more likely to be rigid. The beauty of standards nationally arrived at is that although we will move to a uniform system by market forces the changes will occur as a result of little changes happening in one place which will automatically be carried over to other places. In the end a more organic system of regulation will result in the system, one that really works. A centrally set system tends to become somewhat ossified.

Secondly, both Hon Kim Chance and I know that if we have a nationally set system it will be a Melbourne-Sydney-Canberra system, like it or not. We occasionally have better ideas than other places and occasionally we do it better than other people. The opportunities would be very small for us to influence outcomes if standards were dictated by Sydney, Melbourne or Canberra. Where we have a capacity to at least deregulate, if not to regulate, we have the capacity to set our own standards and for those standards to have a national impact. The Medical Amendment Bill 1994 is a classic example of that. Pressure was brought to bear on us in that case to do something about it because once mutual recognition came in its impact would flow throughout the nation. Those pressures are important.

In our nation it is important that we all contribute to the ultimate outcome, that we apply pressure and receive pressure and that changes take place because they are organically needed at any time. We have the capacity as local States and Territories to react more to local areas. The reason we exist is that we are more amenable to local responses. That is why I prefer an organic system whereby the changes occur as a result of market forces all around Australia, rather than as a result of a massive national approach to achieving things. Frankly, standards tend to be over-regulated, highly detailed and very bureaucratic if they come out of Canberra, which has a bureaucratic base, rather than from the States and Territories, which tend to be more pragmatic. I think there is a difference. We will always reach a national standard but one that is brought about by market forces rather than by bureaucrats.

Hon Kim Chance: Do you see conferences of Australian Ministers as a good way to facilitate that?

Hon PETER FOSS: Very much so, and that is already happening. Those conferences are provided for in the intergovernmental agreement in places where there are exceptions; for example, in health and the environment. In certain areas the Commonwealth has an important role to play. Western Australia has the responsibility for trade measurement even though under the Constitution in the beginning it was with the Commonwealth. The

Commonwealth has never really been very much involved in it and I think I know why. Every now and then it threatens to take it over, but it backs off when people like me seem very pleased to give it back. Obviously we must have one measure across Australia.

I like to talk about the biodiversity of ideas and management where something is trialled and in the end it is obvious what works. That also tends to lead to fewer artificial objections. Western Australia has been very good in this area. I think I mentioned during debate on the Medical Amendment Bill that for 15 or more years Western Australia has had a free admission policy. In other words, anyone who is qualified to practice anywhere else in Australia is able to come to Western Australia and be admitted instantly. However, going back the other way people are faced with considerable restrictions. Obstacles have been put up all over the place and they are still in place. It will take more than recognition to get rid of them. The Australian Competitors and Consumers Commission will get rid of some of those. Some very restrictive trade practices exist in Queensland, New South Wales and Victoria, which is probably one of the worst States. Those States will require intervention by the ACCC before changes take place. Western Australia has not taken that attitude.

Hon Kim Chance: We have not looked at the impact of this legislation on the legal profession.

Hon PETER FOSS: It has not been relevant to people wanting to practice in Western Australia because we have unilateral recognition. However, it will mean that people wanting to practice elsewhere will have a much easier capacity to be admitted elsewhere. I was admitted to the Bar in the ACT, New South Wales and Victoria because of my involvement in a national legal firm. However, it was a bit of a business to go through. All sorts of obstructions were put in place. I found it almost impossible to be admitted in Queensland. The objection was eventually struck down by the High Court as being unconstitutional. Even then it was still difficult to be accepted into Queensland.

Mutual recognition will have an important impact. It will create a national market. It will not only allow for people to move around the country but it will also set up a genuine national market. Similarly, the Medical Amendment Act of 1994 will allow for universal recognition in Western Australia. Without the introduction of mutual recognition anyone from anywhere in Australia could practice in Western Australia. Western Australia has always had far more free trade. It is part of our attitude and psyche, as a result of which we are happy to fight people on our own ground. We think we are better and we want to show people that we are better. There has been a far more fearful attitude in other States, where they feel a need to put up barriers to protect themselves from what is seen as dreadful competition by people from outside. We have not had that attitude, partly because we are further away. The attitude of Queensland and New South Wales is a hangover from the way Queensland was founded. Victoria and Queensland always felt the massive presence of New South Wales about to engulf them. We have not felt that here; we have always been willing to take in more people because we believed that the more people we have, the more that will be done and the more work that will be available for everybody. There has been a far different historical basis for our attitude. In Western Australia we will not find that negative attitude.

One might ask why have we been slower in engaging in mutual recognition. We were concerned about some of the other regulatory aspects.

Hon Kim Chance: It is not an easy thing to do.

Hon PETER FOSS: I was going to refer to the lowest common denominator, but in many ways it is probably the highest common factor. We go to whatever is the lowest standard in many ways. Some of those standards are not low or high; they are a matter of difference.

Hon Kim Chance gave some examples of whether we should sell bread in half loaves or loaves. Who can say which is higher or lower? It is simply a matter of difference and probably inconsequential and unnecessary.

Hon Kim Chance: Who cares?

Hon PETER FOSS: Yes. Why bother? The good thing about a Bill like this is that we start to ask why we regulated things in the first place. A lot of funny regulations are left over. Because we have grown up with them, people merely say that that is something they have read about. On many occasions when it is put a different way, people ask why something was done in a certain way. That fairly good point comes about from this legislation.

I like the idea of mutual recognition because it is more dynamic and organic. The regulation will be there, not because somebody has determined that it should be, but in the dynamic that will occur between the States. It will become obvious when there is a stupid regulation and when there is a good regulation. One State will not put up with another State having a stupid regulation. The States as a whole will not put up with one State not regulating something which really should be regulated. This is good neighbour government.

I have seen some amazing regulations come out of Canberra. I know which of the two methods of deriving laws I prefer. I will go for the organic, dynamic, good neighbour type any day over giving an issue to Canberra to get a few facts together and letting Canberra decide on the regulation. I reckon we could really get some crazy laws if this process were run from Canberra.

Hon Kim Chance: We agree on that.

Hon PETER FOSS: Hon Kim Chance wanted to know what is meant by the manner in which sellers can conduct their business. I will give some examples. Let us take door to door sales people. It does not regulate the goods; it merely says that they cannot turn up between certain hours at someone's door; they cannot bind people to a contract without an opportunity for the buyers to get out of it; and they must give buyers certain information. Their behaviour and ethical conduct is being regulated, not what they are selling. These people can sell any goods they like, but their ethical and moral conduct in selling the goods is covered.

Other examples include the Fair Trading Act, implied warranties and cooling off periods. Trading stamps is an interesting example. There is some contention about whether that regulation covers what is being sold or how it is being sold. I am not quite sure whether I have an answer, but that will be worked out in the courts rather than in Parliament. The principle is that if trading stamps are a regulation of behaviour, it will stand up; but if it is a regulation of a product, it will not. In the end it will be determined not by us as a Parliament, but by somebody sitting down and working through the principle. That is a proper way for it to happen.

I will give an example of the trade or occupation regulation. I will shortly introduce a piece of legislation relating to the registration of plumbers. That must deal with a rather curious anomaly concerning drainers that would come out of mutual recognition. We do have drainers here but we do not license them. We license plumbers. The drainers do work but the plumbers contract. The plumber signs for the job and takes a percentage. The plumber's total contribution is to take a percentage, although he does have some contractual responsibility.

Hon Kim Chance: I had that in my speech notes, but I must have missed a page to the eternal disappointment of your colleagues!

Hon PETER FOSS: The consequence of mutual recognition is that, if we did not bring in this amendment, people who live here with an Eastern States qualification, as many do, could be registered as drainers. However, Western Australians who have been working as drainers all their lives could not be registered, unless they went to the Eastern States, became qualified in drainage and come back. To put it mildly, that is ludicrous and we intend to address that fairly speedily.

Hon Kim Chance: So you can license drainers here?

Hon PETER FOSS: That is not the reason for bringing in the legislation, but it is catered for in the Bill.

Hon Cheryl Davenport: Is it to license them or to register them?

Hon PETER FOSS: That is an interesting point. They would be licensed. The Eastern States people would be registered. In the end everybody will be licensed.

Hon George Cash: If that does not make sense, we will repeat it.

Hon PETER FOSS: Hon Graham Edwards raised the question of quarantine. It does not relate to goods; it relates to protection from the spread of disease. Strictly speaking, one of the things that first came up was section 92 in the context of quarantine. At a very early stage the High Court of Australia upheld quarantine laws as not being laws in restraint of trade, but laws of protection from disease.

Hon Kim Chance: Even though they are a restraint on trade.

Hon PETER FOSS: Yes, that is right. From a practical point of view, for the protection of the whole nation it is necessary that those quarantine laws be observed. It has always been maintained that the law should be examined to ensure that it relates to quarantine and is not a mere subterfuge.

People might recall the problems countries have had in dealing with Japan. Japan has always reckoned that it has a very open policy to foreign goods being introduced, but countries could never get their goods into Japan. The French reaction - perhaps I should not mention this - was to agree with Japan that they had exactly the same attitude. The French arranged for Japanese video cassette recorders to be referred for inspection to one place in the middle of France where one inspector opened every VCR. The French were not imposing a restraint on trade, but the Japanese could sell only the number of VCRs in France that they could transport to the middle of France - that was very expensive because the place that was chosen was out of the way - and that this one person could manage to inspect during a very casual day. At that stage a certain number of French goods were introduced into Japan and some of those supposed non-barriers disappeared.

Hon Kim Chance: It would have been difficult when this person was on long service leave!

Hon PETER FOSS: Another matter that was raised relates to occupations. Some of the legislation relating to these things is being dealt with to pick up those points. The States must deal with that. For instance, if people in certain occupations are struck off in their State of origin, they can be struck off here because they have ceased to be eligible to practice there and therefore cannot practice here. Under the federal Act the mutual recognition principle relating to the entitlement to carry on the occupation states -

> ... subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:
>
> (a) to be registered in the second State for the equivalent occupation; and
>
> (b) pending such registration, to carry on the equivalent occupation in the second State.

The proviso states -

> ... However, the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State, so long as those laws:
>
> (a) apply equally to all persons in or seeking to carry on the occupation under the law of the second State; and
>
> (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

Section 20 of the Mutual Recognition Act relates to the entitlement to a continuance of registration. Again that is subject to the laws of the second State as long as they apply equally to all persons carrying on or seeking to carry on the occupation and are not based on the attainment or possession of some qualification or experience relating to fitness to

carry on the occupation. The Mutual Recognition Act states that the local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than would be imposed in similar circumstances having regard to relevant qualifications and experience if the registration were effected, unless they are conditions that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations. The scheme provides the capacity to include provisions in the legislation to require that type of striking off to take place. I know that some States are proceeding to do that.

No doubt if someone were registered, as opposed to merely practising under the provisions of the Act, there could be multiple registrations. In the particular example of the new national licence given by Hon Kim Chance the effect would be automatic everywhere. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

*Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for the Environment) in charge of the Bill.

**Clause 1: Short title -**

Hon GRAHAM EDWARDS: I thank the Minister for answering the queries I raised in the second reading debate. In an occupation where a person could seek to be registered in more than one State although only practicing in one, what happens when that person is struck off or deregistered? I assume that deregistration would be automatic everywhere and that some sort of notification would go out. A recent article in the Press referred to a doctor who had been struck off, and who was still practicing. That situation could lead to difficulties when we are looking at more than one occupation across Australia and perhaps trans-Tasman. I also understand that lawyers are moving towards national registration. Will the Minister update members on the proposed practices for the registration of lawyers?

Hon PETER FOSS: A person practicing in more than one State has two possibilities. He could use the rights conferred under the Act to exercise his right to practice. For instance, he could give notice and one month from the time of giving that notice he would be entitled to exercise those rights. Those rights are dependent upon his qualifications in the first State. If his only basis for practicing in the second State is the adopted federal Act, and he loses his right in the first State, it is automatic that he loses his right in the second State. On the other hand, if he goes from State to State and is registered in each, and he is struck off in one, the local legislation must include a provision that says that is a ground for being struck off in the other State. Many state Acts are making that a basis for being struck off in the second jurisdiction. That is permitted by the federal Act; however, the State Legislatures must do something about that to enable that to happen.

Hon Graham Edwards: Would there be a process of notification?

Hon PETER FOSS: Yes. Most States are starting to move towards that. The Australian Law Council has set down principles for national registration. It is still being debated. It is one of those things that seems awfully close; however, it could go on for years and I would not want to predict the date that it will occur. There is a lot of goodwill towards the idea. That would be a system whereby each of the States would enact legislation which would give credit to the national registration. It would be rather like the new Corporations Law so that registration in one State would automatically entitle someone to practice in any place, and striking off in one place would be automatic elsewhere. I will not be so rash as to predict when that will occur. The Australian Law Council is moving towards that and it seems to be close to agreement on most of the principles. One area of contention is a proposal put forward by the Australian Law Council for multidisciplinary firms. It is a different concept, and it is interesting that rivalries which have existed from State to State now will be from profession to profession. There have been a few attempts

at multidisciplinary firms in New South Wales; however there are problems there because they have different requirements. Lawyers are required to keep trust accounts, and accountants are not even regulated.

Hon A.J.G. MacTiernan interjected.

Hon PETER FOSS: I do not know about that. I have nothing to do with those firms. I have described what is probably the biggest stumbling block for the professional side. If they want to get a move on, they should try to become amalgamated on a national basis.

Hon Graham Edwards: Would that be national or centralised registration?

Hon PETER FOSS: It is already being handled quite well. For example, there are already national legal firms. I was a partner of one of those firms. We complied with the trust account rules of the State in which we were subject to jurisdiction. There were also interesting rules with regard to compulsory personal injury insurance. With one partnership operating in several places, each State had its own requirements for compulsory professional indemnity insurance. In the end, the firm did not have to be insured in Victoria provided it held insurance in accordance with the New South Wales regulations if that was the firm's principal place of business. The firm had to nominate the principal office and provided it complied with the PI insurance requirements of the principal office, and that insurance extended to the whole of Australia, the firm could comply with the rules of the local area.

It is actually quite simple if the goodwill is there. That is why I believe the organic and dynamic method of regulation is good. People pretty quickly come to an accommodation which works. Although there is no central registration, as I have said, I was registered in Western Australia, the Australian Capital Territory, New South Wales and Victoria. As a result, I held a practice certificate in each of those places, but I maintained only one trust account, which, in relation to the business carried out in Western Australia, was in Perth. I believe all our insurance came from Victoria.

Hon Kim Chance: That was for the convenience of the firm so that it could handle business generated by the firm in another State.

Hon PETER FOSS: We had partners in each of the States. Several firms amalgamated into one legal partnership. We carried on business in each of those States and in the ACT.

Hon A.J.G. MacTiernan: Even if the firm was not taking clients from that area, in effect there was a partnership.

Hon PETER FOSS: By law, the firm was carrying on business there. It became rather frightening. There were about 1 000 employees beavering away, but if one of the firms made a mistake, one's personal assets would be rendered liable to pay for that mistake. The process required a certain degree of faith. That is why I do not have too much problem with ministerial responsibilities.

Hon Graham Edwards: I thought that lawyers did not make mistakes, they are just badly briefed.

Hon PETER FOSS: That is why, as a Minister of the Crown, I do not have such a problem with the concept of ministerial responsibility. Lawyers are used to carrying the can financially for mistakes which their partners or employees make.

Hon Kim Chance: Now the Minister knows what the poor old country hospital board members feel like.

Hon PETER FOSS: The concept does not worry me; I am quite used to it.

Hon A.J.G. MacTiernan interjected.

Hon PETER FOSS: My assets were my own. Once the market incentive is included, the principle will work perfectly well on an interstate basis.

**Clause put and passed.**

**Clause 2 put and passed.**

**Clause 3: Interpretation -**

Hon KIM CHANCE: I want to make a general observation about the Bill. I thoroughly approve of the way in which the commonwealth legislation - the uniform component - has been included as a schedule to the Bill. I am referring to that part of clause 3 which deals with the original commonwealth Act. That amendment was passed in the Legislative Assembly so that the text of the Commonwealth Mutual Recognition Act 1992 could be appended to this Bill.

I concur with the member for Floreat, who congratulated the Government on doing that. I appreciate that it was done in the nick of time. We all remember and regret the way in which legislation went through late in 1992 in respect of the financial institutions duty. We were placed in a position where we had to vote on legislation which we had not even seen. In that case, it was legislation from the Queensland jurisdiction.

As we grow to live with uniform legislation, I hope that we are never placed in the position we faced in 1992 and the position that we very nearly faced in the Assembly with this Bill. In the way that this Chamber has seen the legislation, it is entirely supportable and I hope that that is what occurs in future as we learn a little more about the process.

**Clause put and passed.**

**Clause 4: Adoption of Commonwealth Act -**

Hon KIM CHANCE: This will be my final comment on the Bill, although Hon Alannah MacTiernan wishes to comment on this clause. An issue arose in debate in the Legislative Assembly which, while it received an answer in the other place, was probably not answered quite as well as I would have preferred.

The issue of recognition is easy enough to follow as a concept where the occupation is licensed or registered in each jurisdiction. I made a note about the drainers, to whom the Minister has already referred. However, as the Minister outlined, drainers are not licensed in Western Australia, but are required to work under the ticket of a licensed plumber. It has already been explained that if we simply put this legislation through as it is now without taking account of the difficulties which would be created for drainers in Western Australia, drainers from any other State in Australia could work in Western Australia as a result of the Mutual Recognition Act, but Western Australian drainers could not work in any other State without working on someone else's ticket.

We now understand how that case will be handled. Has the Minister come across a similar case? The drainers' case seems to arise fairly quickly in people's minds and that is probably because the drainers have been lobbying. Is the Minister aware of any similar cases where occupations which are licensed in one State are not licensed in others, which could result in an inequitable situation similar to that which the drainers faced?

Hon PETER FOSS: This is the really curly one. The Vocational, Educational, Employment, Training Advisory Committee has met to carry out a survey of all registered and licensed occupations. There is no problem when there are entirely unlicensed occupations, such as accountancy, or entirely licensed occupations, such as the law. The problem arises with a partially licensed occupation; that is, an occupation licensed in some places but not in others. It is not so bad in those places where a licence is over-encompassing. Drainers are a classic example. Although we do not license drainers, one cannot become a drainer without a licence. In some cases there is no licensing at all. In some places hairdressers are not licensed and that is also the case for boxers. Marine dealers are licensed in Western Australia but nowhere else.

The result of being in a partially licensed occupation is that one cannot take advantage of the Act. One has to be in an occupation that is licensed in order to practice here, where it is also licensed. One cannot practise without a licence at all. Whatever one is licensed to do in the other State, one can come here and do here, but if one is not licensed one cannot practise here.

Hon Kim Chance: Members of the Government Agencies Committee would be aware of

the case of hairdressers. Hairdressers in Victoria are unlicensed and they could not work in Western Australia, where licensing is required.

Hon PETER FOSS: Yes. One of the things that was meant to happen under the agreement was that the States would work towards a resolution that occupations either be licensed or delicensed. The idea was that all States would then move to one regime. There was a suggestion that valuers should cease to be licensed. That caused an absolute furore in Western Australia. Another suggestion was that real estate salesmen not be licensed. Generally speaking, the view is against licensing of real estate salesmen. Such salesmen are licensed in Western Australia. There is nothing to stop a requirement being imposed by real estate agents that their staff have a particular standard of education. That is not a legal matter; it is something they can do quite easily themselves. Chartered accountants are entirely untouched by this; they can continue to exclude people because they set their own rules; there is no licensing system at all.

Hon Kim Chance: You are suggesting the equivalent of REIWA in another State.

Hon PETER FOSS: They can agree as long as it is not a restrictive trade practice.

Hon A.J.G. MacTiernan interjected.

Hon PETER FOSS: The good thing is that it is capable of being examined by the ACCC.

Hon A.J.G. MacTiernan interjected.

Hon PETER FOSS: I will not deal with that because it is another issue. Western Australia is engaging in a relationship with the ACCC that will help this State in a way that the Trade Practices Commission was not able to do. We were seen as a rather remote part of the country and the amount of resources given to us was somewhat limited. One of the ways one can do it is by voluntary arrangements, and provided they are not restrictive trade practices they would be enforceable.

It is an aggravation that a number of professions and occupations are not licensed in the Northern Territory. The suggestion that they be totally licensed throughout Australia has met with some resistance because the size of the occupations in the Northern Territory would not make it very economical. There is a basic cost of setting up a registration board and, although some of the costs are variable - it would be dependent on the number of people registered - some are not. The unit cost for a very small occupation would be prohibitive. It is no alternative to say that the Government could pay because the cost would be borne by the people. That issue will cause some difficulty, but the net result at the moment is that if there is any form of licensing this will work effectively. If the occupation is totally unlicensed, anyone can go there and people can stay where they are, but they can only go to other places that do not have licensing.

Hon A.J.G. MacTIERNAN: I wish to refer to one occupation and how this might work. I am concerned that we may see some builders in the Eastern States licensed by virtue of this mutual recognition and they would therefore be able to work in Western Australia without the proper protections being in place. The Minister is probably aware from comments I have made previously in this place that the protections here, although they are fine on paper, seem to be very weak in practice. Nevertheless, we have a requirement of the Builders Registration Board that it examine the financial resources and supposedly assure itself that the builder has the resources to undertake building projects. As I understand it - and I am not totally sure - that provision is not in place in every jurisdiction in Australia. There will be jurisdictions where the financial resources of builders are not questioned; they have not addressed the question of financial capacity in deciding whether builders should be registered. That would mean that those builders who would not pass the test, or might not pass the test, in Western Australia nevertheless could get registration in another jurisdiction and on the basis of that registration get automatic registration in this State. That is just one example of the sort of problem we could have. I am sure these problems were canvassed in the second reading debate.

Hon PETER FOSS: There are two aspects. First, there is the qualification necessary to be registered. The member is quite right: If people were registered in another State and, notwithstanding that that would not be regarded as sufficient for this State, it would

nonetheless entitle them to registration. Secondly, there is the manner in which they carry out their business. Once they are registered they are subject to the same laws that a builder here is subject to. The member is right: We would not have the capacity to reject someone for registration simply because our qualifications are higher. I find it hard to believe they are higher.

Hon A.J.G. MacTiernan: They are in theory but they may not be in practice.

Hon PETER FOSS: That is one of the consequences. One of the issues canvassed earlier is that there will inevitably be pressure between the States when a problem arises. For instance, if a problem develops in Western Australia with people who come from the Eastern States who are shown not to be maintaining those standards, pressure would be applied on an interstate basis. The Government believes that eventually there will be national standards. The time will come when the States move towards the same standards in each jurisdiction simply because they are forced into that situation by a couple of factors: First, if a standard is unnecessary, it will be abandoned; and, second, if it is causing a problem from one State to another, pressure will be placed by one State on others. An example of that arose in the medical profession whereby Western Australia was requested not to allow automatic entitlement for certain overseas practitioners to be immediately registered in Western Australia, because under mutual recognition that would have the effect of automatically registering doctors who go into other States. That is a problem because a stream of doctors would become registered in Western Australia and then go elsewhere.

Hon A.J.G. MacTiernan: What is the problem with that, given the alleged shortage of doctors?

Hon PETER FOSS: It would be a problem if they did not stay once they were registered. Western Australia would do all the work of administering and running the registration process, but would gain no doctors from that process. This State could become the door into Australia.

Hon A.J.G. MacTiernan: Surely Western Australia is not that unattractive that none would stay?

Hon PETER FOSS: Mutual recognition makes no difference. That is another point. Two questions are involved: Why was WA asked by the other States to make a change? Why did WA respond? It responded because it recognised the concern of the other States. The other States made the request because they were concerned. Western Australia has preserved the situation by continuing to allow conditional registration for these people. We wanted them, and we can still preserve our situation. The important point is that pressures will be applied from State to State in these situations and eventually national standards will apply.

Hon A.J.G. MacTIERNAN: My concern is that the lowest common denominator will prevail across the country. It is not always a matter of logic. In certain States different power bases will be in ascendency, and perhaps the Government in one State will be particularly susceptible to pressure from a lobby group that will alter standards and have an effect throughout the country. I am not sure the moral pressure that could be applied by other States would be sufficient remedy for the problem because in many instances these decisions will be made for intrastate political reasons.

Hon Peter Foss: All these things are possible. I am not disagreeing with the member; it could go either way and I hope it will go the right way more often than it goes the wrong way.

Hon A.J.G. MacTIERNAN: I am particularly concerned, having visited and met various consumer groups in the Eastern States -

Hon Peter Foss: Are they saying nice things about Western Australian builders?

Hon A.J.G. MacTIERNAN: Some of their stories are even worse than ours.

Hon Peter Foss: Make a note. Under any circumstances it is worth having it said.

Hon A.J.G. MacTIERNAN: I want that noted and it is certainly something we should monitor.

**Clause put and passed.**

**Clauses 5 to 7 put and passed.**

**Schedule put and passed.**

**Preamble 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 (Minister for the Environment), and passed.

## CONSUMER CREDIT (WESTERN AUSTRALIA) BILL

*Committee*

Resumed from 14 November. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for Fair Trading) in charge of the Bill.

**Postponed clause 7: Conferral of judicial functions -**

Consideration resumed after the following amendment had been moved -

> Page 4, lines 4 to 8 - To delete the lines and substitute the following -
>
> 7. (1) The jurisdiction that is expressed to be exercisable by **"the Court"** under the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Regulations* is exercisable -
>
> (a) only by the Commercial Tribunal of Western Australia constituted under the *Commercial Tribunal Act 1984* (**"the Tribunal"**) -
>
> (i) in the case of any jurisdiction under section 34(5), 36(6) or (7), 44(4), 47(3), 68 to 72, 74, 77, 79, 82(b), 83(1), 88, 89, 91(1)(a), 92, 93, 98, 162(2) or Part 6 of the Code; or
>
> (ii) in the case of any jurisdiction prescribed for the purposes of this subparagraph by regulations made under section 10; or
>
> (b) in any other case, either by the Tribunal or a court.
>
> (2) The jurisdiction conferred on a court by subsection (1)(b) is subject to the court's general jurisdictional limits (so far as they relate to the amounts or the value of property with which the court may deal), but is not subject to the court's other jurisdictional limits.
>
> (3) Regulations may be made under section 10 making provision for or with respect to the transfer of proceedings between the Tribunal and a court or between courts.

Hon A.J.G. MacTIERNAN: This amendment introduces shared jurisdiction so that matters under the consumer credit legislation can be commenced not only in the Commercial Tribunal, as was the case in the original Bill introduced in this place, but also within the general court system. This clause was postponed last night because the Opposition was concerned that some consumers might be forced into a more expensive jurisdiction that is subject to longer delays. The Opposition has now had an opportunity to check those provisions in which the jurisdiction has been preserved exclusively for the tribunal, and it is now assured that the consumer is adequately protected. The Opposition thanks the Minister for giving it the opportunity to examine the amendment.

**Amendment put and passed.**

**Postponed clause, as amended, put and passed.**

**Postponed appendix clause 101: Application for order relating to key requirements -**

Hon PETER FOSS: I have changed my original amendment slightly. I move -

Page 92, after line 15 - To insert the following subsections -

(2) A debtor or guarantor may not make an application for an order under this Division in respect of a contravention under a contract if the contravention under that contract is or has been subject to an application for an order made by the credit provider or the Government Consumer Agency under this Code.

(3) Subsection (2) does not prevent an application from being made for an order for the payment of compensation under section 107.

Hon A.J.G. MacTIERNAN: In earlier discussion outside the Chamber we agreed that subclause (3) should stand as in the original amendment. I wonder if that is appropriate. The Minister may recall that subclause (3) was added because there would not be the capacity to take action in relation to a civil penalty, and by retaining subclause (3) we might be unintentionally writing down revised subclause (2). The Minister should consider the logic of why we inserted subclause (3) in the first instance.

Hon PETER FOSS: I believe it is necessary because clause 107 relates to compensation for actual loss, whereas clause 101 deals only with civil penalty. One should not be prevented from suing for loss simply because a civil penalty is proposed. I do not see how it writes it down.

Hon A.J.G. MacTIERNAN: With the original amendments the Minister was considering that we would go to jurisdiction one, and a decision would be made on the civil penalty in that jurisdiction. That order would be instated in Western Australia and would preclude one from making any further application for the imposition of civil penalty. In those circumstances it became relevant to make it clear that that prohibition related only to civil penalty. My concern now is that if we retain subclause (3) - I am not concerned about the right to damage - it might read down subclause (2). Therefore it is still interpreted to mean there is some sort of prohibition on making any further application in relation to civil penalty because they may ask why have we referred to the right to take the damages action under subclause (3) if it is not being interpreted as a prohibition against any other sort of action.

Hon PETER FOSS: It must be kept in because they are both orders under the same division. The government agency would not be applying for compensation under clause 107.

Hon A.J.G. MacTiernan: I understand that.

Hon PETER FOSS: The net result is if it does not remain in, they do not have any rights under clause 107 because it is an order under this division.

Hon A.J.G. MacTiernan: I understand that we are no longer stopping people taking further action even for civil penalty.

Hon PETER FOSS: It states that a debtor or guarantor may not make an application for an order under this division in respect of a contravention under a contract if the contravention under that contract is or has been subject to an application for an order made by the credit provider -

Hon A.J.G. MacTiernan: I understand.

**Amendment put and passed.**

Hon A.J.G. MacTIERNAN: We decided to support the modified amendment, and the clause as now presented. It is a middle course between the position which the consumer credit lobby wanted, which did not impose any capacity for judgments that were made in other jurisdictions to have standing here, and the position which was enacted in the

template legislation, which will ensure total portability of those orders and a total barring of other jurisdictions from taking action where an order for a civil penalty has been obtained in another jurisdiction. The real problem with the template legislation and the original amendment was that it provided credit providers with an opportunity to forum shop. There is no doubt that some jurisdictions are somewhat more friendly to credit providers than are other jurisdictions. There are also forums where it is not simply a question of the disposition of the court but the lack of presence of a strong consumer body within that jurisdiction that has the capacity to affect the outcome. The concern is that a credit provider could be tempted to take an application in, for example, Queensland, which is sometimes cited as a more friendly jurisdiction, get a relatively lenient treatment by way of civil penalty, and then have that decision registered in Western Australia, thereby blocking any further action being taken in Western Australia. That is unfair, and it may also have the undesirable effect that Western Australian borrowers are not made aware of their rights in regard to this matter because the simple process of registration does not require the credit provider to serve upon borrowers, either individually or by way of a public notice, any information in regard to their incorrect or flawed credit contracts. Therefore, it has great potential to seriously disadvantage people who are not in the State in which the original application was taken out.

I understand that the way it will now operate - perhaps the Minister can confirm this - is that if a credit provider takes an application in jurisdiction X and has a civil penalty imposed of $200 000, that order can be registered in Western Australia and additional actions can be taken by Western Australians in regard to the civil penalty, as well as to individual damages, up to an additional $300 000, provided that the total civil penalty does not exceed $500 000. That will ensure that when such an action is taken, there is the capacity for local borrowers to be advised. The practical consequence will be that Western Australia will be the jurisdiction to which the matter is taken.

Hon Peter Foss: That will be a very smart move.

Hon A.J.G. MacTIERNAN: Yes, certainly for our Commercial Tribunal. This is a good middle course, and in some ways it may even be better than to totally omit any of the provisions. The insertion of a provision like this may be an inducement to the other States to emulate us. I thank the Minister and his adviser, Mr Mark Bodycoat, for their cooperation. We have improved the Bill through the process of genuine dialogue. That does not happen very often in this Chamber, but it is pleasing when it does.

Hon PETER FOSS: I am very happy that we have achieved a good result. It proves the value of Western Australia's choosing not to adopt the template. Hon Alannah MacTiernan has picked up the fact that the Government was very concerned that we would be totally ignored in this business and there would be forum shopping. This is a good measure. The other States cannot ignore us, and they may well want to start with us. It could open up a new business for Western Australian lawyers, and that would be good. I am pleased that the Opposition and the Government have been able to work together in a positive way to achieve this good result, because this matter was troubling us. We had originally left it out, and we then put it back in in the way in which the rest of Australia had it, but we have now shown the real benefit of this Parliament's applying its mind to it, and I thank the Opposition for giving us what I hope will turn out to be a good result.

**Postponed clause, as amended, put and passed.**

**Postponed appendix clause 108: Recognition of civil penalty determined in other jurisdictions -**

Hon PETER FOSS: I do not intend to move the amendment.

**Postponed clause put and passed.**

**Title put and passed.**

*Report*

Bill reported, with amendments; and, by leave, the report adopted.

*Third Reading*

Bill read a third time, on motion by leave by Hon Peter Foss (Minister for Trading), and transmitted to the Assembly.

## ADJOURNMENT OF THE HOUSE - ORDINARY

**HON GEORGE CASH** (North Metropolitan - Leader of the House) [9.49 pm]: I move -

That the House do now adjourn.

*Adjournment Debate - Recreational Fishing, Cockburn Sound*

**HON GRAHAM EDWARDS** (North Metropolitan) [9.49 pm]: I want to draw to the attention of the Minister representing the Minister for Fisheries a situation that I encountered a couple of weeks ago when, due to an unforeseen adjournment of this House, I had the opportunity of going fishing at Cockburn Sound one Wednesday evening. It was a particularly windy and wet night, and the attraction of going out was to join many other fisher people on their boats and endeavour to catch one of the big snapper that were making a run through the sound. I was in a big boat of just over 20 feet. On our way to the fishing ground we encountered very rough seas and we noticed a dinghy that was in trouble. It was about 11 feet with a small outboard motor which had broken down. It had no auxiliary power. It too was on its way to the fishing ground. We had to tow it back in. To cut a long story short, we eventually went back out. At the fishing ground I was amazed to see 30 or 40 boats of various sizes, including at least one professional boat. Being the good fisherman that I am, I was one of the few people, I am told, who managed that night to catch one of the big snappers. It weighed about 12 kilos. I filleted the fish. I understood that the fisheries research people were interested in getting hold of the fish bone frame with the head on. I arranged for someone from the Fisheries Department to come and collect it. Someone from Waterman came, collected the fish and put it on ice. This afternoon I was fortunate to have the results of that research. I understand that the fish I caught was something like 19 years old and contained in the order of one million eggs. It is for that reason I raise this issue.

I am told that at that particular spot on good nights there are not 40 but sometimes 75 or 80 boats there for most nights of the week. I have also heard reports from people whom I consider to be reliable that some boats are taking between five and eight fish a night. Not all the fish are female, but a large number are. This should be of great concern to people with an interest in recreational fishing. Before the Minister would take any action to impose any limit, which I understand at present is eight fish per person, he would go through a process of consultation with recreational fishing bodies, and they might arrive at a decision. In this instance, however, I call on the Minister to have this matter investigated immediately and, if necessary, to delegate to his department the means of imposing a limit. I cannot see why anyone would want more than one fish or perhaps two at the outside. I am very concerned about the number of fish that are reportedly being caught. That concern was greatly increased by the results of the research on this fish which, as I say, carried something like one million eggs. I wonder how many fish are being caught there, what sort of damage is being done and, if there is damage being done, why the Minister cannot act quicker to impose a reasonable limit for the period that the fish run extends. I understand that the run of fish can last anywhere between four and eight weeks. I will be most appreciative if the Minister for Transport in a representative capacity could draw that to the attention of the Minister for Fisheries in order that he might take some action on this recreational fishery.

*Adjournment Debate - Questions Unanswered*

**HON JOHN HALDEN** (South Metropolitan - Leader of the Opposition) [9.54 pm]: I draw to the Government's attention the number of questions on notice which have not been answered. Still unanswered are some 44 questions which were put on the Notice Paper on the first day that Parliament sat this year. Although I do not have the figures

accurately to date, some 600 plus questions on notice are still unanswered. The parliamentary year is coming to an end and the Opposition is not looking to put any more questions on notice in any great number between now and the end of the year to complicate that matter. However, particularly in reference to questions asked by Hon Mark Nevill to the Minister in this place representing the Minister for Police, the rate of answers is extremely slow. As to Ministers in this House, I have questions on notice directed to the Minister for Education dating back to the first day's sitting of the House. I suggest that none of those questions could possibly be considered to be of any striking political advantage to me or the Opposition, but we are becoming somewhat annoyed at the continued and extensive delays in answering questions. Until now I have tried to adopt a very tolerant line and I am continuing to do that. I must admit that I did not speak to the Leader of the House about my intention of getting up tonight to address this matter, but I intend to speak to him about the matter.

The Opposition will not continue to be as tolerant as it has been. Before we take steps which should not be warranted and would disadvantage members opposite on nights when they might like a pair, we should attempt to avoid that situation at all costs. However, unless there is an improvement of a considerable nature, bearing in mind that some questions have now been eight months on the Notice Paper, we are left with only one conclusion as an Opposition: If we cannot do it nicely we will have to do it some other way. I would prefer to do it nicely, but the Government should be clearly aware that unless this situation improves within the next week I will be advising the House of the next step. Those members who have school visits and other social occasions which they might like to attend between now and Christmas should not be terribly committed to them, because that might not be what they will be doing. I do not want to go down that path, but this matter has been raised repeatedly. Basically, with one notable exception, members on the other side need to talk to their colleagues in the other place to resolve this matter. I do not expect questions on notice that have been there for a week to be answered. I am happy to be tolerant and so are my colleagues. At the end of the day however, eight months is ridiculous, and three or four months is equally ridiculous. I can only say to the Government that we can do it easy or we can do it hard. I prefer to do it easy, but it is appropriate to say that our tolerance has almost expired.

Question put and passed.

*House adjourned at 9.57 pm*

## QUESTIONS ON NOTICE

### COMMUNITY DEVELOPMENT, DEPARTMENT FOR - FTEs; TEMPORARY STAFF CONTRACTS

1657. Hon BOB THOMAS to the Minister for Transport representing the Minister for Family and Children's Services:

(1) How many full time equivalents were employed on 1 July 1994 in each of the following areas within the Department for Community Development -

(a) central office (please provide a corporate structure showing position titles and the branch and corporate directorate to which each employee is responsible);

(b) regional offices; and

(c) district offices?

(2) Were any temporary staff employed through contracts with temporary staff recruitment agencies during 1993-94?

(3) If yes, how many were employed and in which section, district or regional office were employed and for how long?

(4) Through which agency were they recruited?

(5) Was their salary paid from salaries, wages and related staff cost budget?

(6) If not, from which section of the department's budget were these costs met?

(7) How many of these temps were still employed at 1 July 1994?

**The answer was tabled.**

[See paper No 848.]

### DIRECTOR OF PUBLIC PROSECUTIONS - THOY, R.M., NO RESPONSE TO MEMO REASON

3630. Hon MARK NEVILL to the Minister for the Environment representing the Attorney General:

Further to question on notice 3253 of 29 June 1995, why did the Director of Public Prosecutions not respond to acting Inspector R.M. Thoy?

Hon PETER FOSS replied:

See answer (2) to question on notice 3253.

### HOMESWEST - BROOME TOWNSITE LOTS

3946. Hon MARK NEVILL to the Minister for Finance representing the Minister for Housing:

(1) In respect of the Broome townsite area, which lots within the townsite are owned by Homeswest?

(2) Which lots referred to in (1) above have dwellings on them?

(3) How many units of accommodation are in each lot?

(4) Which lots have dwellings constructed under -

(a) Aboriginal housing scheme; and

(b) Commonwealth/State housing scheme?

(5) On which lots does Homeswest propose to construct dwellings in 1995-96?

(6) How many units are proposed on each lot?

(7) Which lots in (5) above are designated for -

(a) Aboriginal housing; and

(b) commonwealth/state housing?

Hon MAX EVANS replied:

The Minister for Housing has provided the following reply -

(1) 534 lots.

(2) 508 lots with existing dwellings; six lots under construction

(3) 681 units with existing dwellings; 10 units under construction

(4) (a) 123 lots with existing dwellings; four lots under construction

(b) 385 lots with existing dwellings; two lots under construction.

Note: For questions (1) to (4) property details in support of answers are available if required; however, it will take some time to collate.

(5) Lot 1357 Guy Street, Broome
Lot 711 Owens Street, Broome
Lot 101 Roe Place, Broome
Lot 102 Roe Place, Broome
Lot 111 Roe Place, Broome
Lot 112 Roe Place, Broome
Lot 92 Woods Drive, Broome
Lot 94 Woods Drive, Broome
Lot 95 Woods Drive, Broome
Lot 97 Woods Drive, Broome
Lot 202 Aarons Drive, Broome
Lot 673 Guy Street, Broome.
Four single lots to be identified.

(6) All lots referred to in (5) are one unit/one lot developments with the following exceptions: Lot 1357 Guy Street, Broome - six units; Lot 673 Guy Street, Broome - three units.

(7) (a) The following lots are designated for Aboriginal housing: Lot 101 Roe Place, Broome - one unit; Lot 673 Guy Street, Broome - three units; two single lots to be identified - two units.

(b) The following lots are designated for commonwealth/state housing -

| | |
|---|---|
| Lot 1357 Guy Street, Broome | (6 units) |
| Lot 711 Owens Street, Broome | (1 unit) |
| Lot 102 Roe Place, Broome | " |
| Lot 111 Roe Place, Broome | " |
| Lot 112 Roe Place, Broome | " |
| Lot 92 Woods Drive, Broome | " |
| Lot 94 Woods Drive, Broome | " |
| Lot 95 Woods Drive, Broome | " |
| Lot 97 Woods Drive, Broome | " |
| Lot 202 Aarons Drive, Broome | " |
| Two single lots to be identified | (2 units) |

## STATESHIPS - WESTPAC VESSELS, SETTLEMENT

3961. Hon JOHN HALDEN to the Minister for Transport:

(1) Is it correct that the Government does have to make a payment to the Westpac Bank on the buy out of the three Stateships vessels following the sale of these vessels to overseas buyers at a price less than the contractually agreed sale price?

(2) If so, is the Government obliged to make good the shortfall between the contract price and the actual sale price?

Hon E.J. CHARLTON replied:

(1)-(2) It is assumed that the Leader of the Opposition's questions relate to the charter parties entered into by Stateships with Westpac when he refers to the "contractually agreed sale price". These charter parties were effectively finance leases which required Stateships to pay Westpac a total residual value for the vessels at the end of the charter of $US20.5m. In the event that either the market value or the actual sale price did not meet this residual, then Stateships would have been required to meet the cost of the shortfall.

This was an onerous arrangement entered into by the previous Labor Government as it was predicated on the quite unrealistic expectation that 10 year old ships would be valued at around 67 per cent of their original cost. This simply does not pass the common sense test. If the leases had gone their full term there can be no doubt that Stateships would have had to find substantial additional funding to meet the shortfall between the sale or market value and the required residual value set down in the charter parties. However, those were the terms under the original charter parties. This Government has negotiated a new agreement with Westpac to terminate these leases at a net cost of $A29.9m residual with respect to the original charter party and the actual sale or market price. This action will save the taxpayer around $A62m in lease and residual payments had the leases been allowed to go their full term.

## QUESTIONS WITHOUT NOTICE

### TAFE - JOONDALUP CAMPUS
*Open Learning Centre, Outcome*

921. Hon JOHN HALDEN to the Minister for Education:

(1) Is the Minister aware that the multimillion dollar Joondalup campus which operates as a full, open learning centre, has been unsuccessful in producing more than a handful of graduates?

(2) Is it not a waste of taxpayers' money?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) The Joondalup campus has pioneered a new form of student centred and self-paced learning in this State. The criteria which are used to measure success in other more traditional forms are not applicable at this college.

Hon John Halden: Like passing?

Hon N.F. MOORE: No. I am advised that enrolments have grown exponentially from 60 full time students to approximately 1 000. Furthermore, reports from employers suggest that students graduating from Joondalup are self-motivated, display initiative and mature attitudes towards work, are able to work without supervision and possess sound technical skills.

All this suggests that this innovation in learning, while in its early stages of development, is achieving success. The Joondalup College of TAFE was established not by me but by my predecessor, Hon Kay Hallahan, when she was the Minister for Employment and Training, as an open learning institution. It was established in an attempt to provide a flexible learning environment for people who have different requirements in training and learning. All the evidence I have is that it is working very well indeed.

It is a terrible pity that Hon John Halden is so conservative in his approach to these things that he cannot for one minute extend his mind to look at what a campus such as this may be able to deliver in training and learning requirements for individual Western Australians. His colleague Hon Kay Hallahan clearly had greater vision than he has.

Hon John Halden: When it does not work, it turns to blindness.

Hon N.F. MOORE: Mr Halden knows what turns things to blindness more than most. Hon Kay Hallahan was sensible enough to set up the Joondalup college as an open learning centre. That concept is not new; it has been operating in various forms in places around the world for many years. It caters to individual requirements. I have been to Joondalup campus on a number of occasions and I am impressed with what is happening there. It runs an innovative program.

Hon John Halden: The students and staff are not.

Hon N.F. MOORE: They are.

Hon John Halden: You should talk to them.

Hon N.F. MOORE: I have. Hon John Halden should understand that with any new way of doing things, over time modifications are made. Some modifications are taking place at the college. I said to the managing director of that college when I first went there that I did not think it would work well for school leavers. Most students leaving the cloistered environment of year 12 will find difficulty coping with the freedom at Joondalup. She said she was aware of that and was putting in place programs and strategies to deal with those sorts of issues.

On the other hand, for mature age students and those already in the workplace who want to improve their skills, the institution is magnificent. They can attend at any time they like and learn at whatever rate they like. They can enrol and graduate whenever they like and be assessed on demand. It provides an opportunity for people of Mr Halden's age to upskill. He could go along after Parliament, plug into a computer and teach himself something. That would be an excellent idea if he cared to put in the time. It gives people a flexibility that the traditional system he is seeking to support cannot provide. Any college which opens from 9.00 am to 3.30 or 5.00 pm from Monday to Friday simply does not deliver the needs of all students.

## TAFE - MT LAWLEY CAMPUS
### *Open Learning Trial*

922. Hon JOHN HALDEN to the Minister for Education:

(1) Is it true that a pilot course trialled at Mt Lawley campus in the open learning mode had an internal report shelved because it revealed serious deficiencies in its operation?

(2) Will the Minister confirm that, despite the advice and warnings of experienced teaching staff, management persists in its attempts to implement that mode?

(3) Is it true that the department has also ignored the facts about deficiencies of this method of learning from other colleges in Australia?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. It again reveals the true conservatism of Mr Halden.

(1) No. The report was considered by a subcommittee of the college's academic board which found that its conclusions were based on flawed data and inadequate statistical measurements. Therefore it was not acted on.

(2) Flexible learning as a mode of delivery has substantial support from

experienced teaching staff not only from the college but also state and nationwide. It enhances learning opportunities for those unable to access traditional face to face classes for a variety of reasons, including students who are sole parents working through class times.

(3) Not applicable.

BOODARIE HEAVY INDUSTRY SITE - ENVIRONMENTAL PROTECTION AUTHORITY ASSESSMENT

923. Hon J.A. SCOTT to the Minister representing the Minister for Resources Development:

I refer the Minister to question on notice 3613 of 5 September and the subsequent answer by the Minister.

(1) As the Boodarie heavy industry site is merely a proposal at this time and is not a defined project and therefore not being assessed by the Environmental Protection Authority on advice from the Crown Law Department, will the $2.5m the Government is providing for the development of the road referred to in question 3613 be provided to subsidise the Broken Hill Proprietary Co Ltd in the establishment of a hot briquette iron ore site?

(2) If no, can the Minister explain why a road has been established at a cost of $2.5m to a development that does not exist?

(3) If yes, can the Minister justify subsidising the BHP development with taxpayers' funds?

Hon GEORGE CASH replied:

I thank the member for some notice of this question.

(1)-(2) The Boodarie heavy industry estate will be assessed by the EPA. The assessment has been set at consultative environmental review level and a document is close to release for public comment. The road will service the estate and BHP's DRI project is at the northern edge of the estate.

(3) Not applicable.

HOSPITAL BOARDS - CONTRACTED SERVICE PROVIDERS FOUND NEGLIGENT, LEGAL LIABILITY

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

(1) Will hospital boards share a legal liability with the contracted service provider in the event of the service provider being found to have acted negligently?

(2) Are hospital boards in any way exposed to litigation as a result of actions taken by a contracted service provider?

(3) Does the hospital board have the ultimate responsibility for deciding whether to engage a contractor or contractors to carry out non-clinical or clinical functions of the board?

(4) Does the ultimate responsibility for this decision lie with the Minister?

Hon PETER FOSS replied:

Unfortunately I do not have an answer for this and three other questions directed to the Minister for Health. I have a number of other answers to questions about health.

The PRESIDENT: Order! The Minister does not need an answer until he has been asked a question.

Hon PETER FOSS: I suggest to the member that some of what he is asking is a legal opinion, and I certainly do not have that legal opinion. I suggest that the

members who are asking the three other questions may wish to ask them tomorrow, rather than have them put on notice, and I will try to have an answer then. I do not have answers for two questions to be asked by Hon Kim Chance, one by Hon John Cowdell and one by Hon Alannah MacTiernan.

## STRIKES - MARITIME UNION OF AUSTRALIA
### *Five Day National Waterfront Stoppage Proposal*

925. Hon M.J. CRIDDLE to the Minister for Transport:

In view of the proposed Maritime Union of Australia five day national waterfront stoppage, can the Minister give an indication of the impact this may have on Western Australian producers and business providers?

Hon A.J.G. MacTiernan interjected.

Hon E.J. CHARLTON replied:

This has nothing to do with the second wave of industrial legislation. It may wave goodbye to not only a number of exporters who want to get their product out of Western Australia but also the opportunities for people who must use the port to get their product out. As I understand it, currently the national ports will stop for five days unless some intervening action is taken by the Federal Government and other players in the dispute.

Hon Peter Foss: That is a long time.

Hon E.J. CHARLTON: Yes, it is a stoppage of five days over an issue that has nothing to do with the waterfront. It demonstrates what an irresponsible group of people who practise thuggery -

Hon John Halden: Here we go.

Hon E.J. CHARLTON: Does the member support it?

The PRESIDENT: Order! In the first place, this question is hypothetical, but the Minister has chosen to answer it. The standing order about questions says that the replies will be concise, relevant and free from argument or controversial matter. That seems to be pretty clear. Some of the comments being made are not free from argument or controversial matter. I suggest that in their endeavours to be over-exuberant to give answers, Ministers should confine them to conforming with this Standing Order.

Hon E.J. CHARLTON: The fact is that, unless there is some intervening action, there will be a five day stoppage at Fremantle. At this time it does not involve the regional ports. Industry has estimated a loss of $120m for Western Australia. If this five day strike goes ahead, it will bring the loss of export operations in Western Australia to 20 days in the past 13 months.

Hon Sam Piantadosi: Fifteen of which were caused by you.

Hon E.J. CHARLTON: The member interjects and says stupid things like that.

Hon Sam Piantadosi: You are the stupid person. You created that friction.

Hon E.J. CHARLTON: This five day strike has nothing to do with the Western Australian Government, any exporter or the waterfront. As far as I know, nobody else in Western Australia is going on strike; it is only the MUA. It demonstrates the irresponsible thuggery in which this group is involved.

## BUILDING DISPUTES COMMITTEE - RAYMOND, MR, SOLICITOR PRESIDING OVER DISPUTE HEARING, CONFLICT OF INTEREST

926. Hon A.J.G. MacTIERNAN to the Minister for Fair Trading:

On 13 November 1995, a solicitor, Mr Raymond, presided over a Building Disputes Committee meeting between builder John Kwee of Weyburn Nominees Pty Ltd, and home buyers Jean and Kim Baker and Valerie and Dave Gray,

notwithstanding that Mr Raymond had a conflict of interest in the matter as he was acting for Weyburn Nominees on another matter. I ask -

(1) When did Mr Raymond advise the Builders Registration Board of WA or the Building Disputes Committee that he had a conflict of interest?

(2) Was Mr Raymond paid by the board or the disputes committee for attending the meeting on 13 November 1995?

(3) What action is the board or committee proposing to take to compensate the Bakers and the Grays for costs thrown away at the part hearing of the matter on 8 September 1995?

(4) What procedures does the board or disputes committee have in place to stop these conflicts of interest occurring part way through the proceedings?

Hon PETER FOSS replied:

I thank the member for some notice of this question. I have an answer with me which I will give, but it leaves me with some matters that I would like to follow up.

(1) The possibility of a conflict was discovered on Friday, 3 November and the parties were notified on 9 November.

(2) Mr Raymond has not yet been paid.

(3) No costs were thrown away. The evidence presented will be used at a later hearing.

(4) Dispute committee clerks regularly check the client lists of all chairpersons. Lists of hearings are also supplied to chairpersons and committee members in advance.

I must say that this matter raises a few questions in my mind which I will follow up; however, I thought the member would like to know the answer provided to me. I will follow up some of the questions that have been raised.

EDUCATION DEPARTMENT - WORKPLACE AGREEMENTS
*Commissioner's Letter sent to School Administrators and Principals*

927. Hon A.J.G. MacTIERNAN to the Minister for Education:

On Monday of this week school administrators and secondary principals who had been, or may in the future be, offered a workplace agreement, received a letter from the Commissioner for Workplace Agreements which stated inter alia, "If you have not made contact within seven days of this letter, Mr Spurling will proceed to add you to the collective agreement because he will assume that you are satisfied with, and understand, the agreement." Does the Minister intend that the school administrators and secondary principals should find themselves added to this workplace agreement simply by the effluxion of time?

Hon N.F. MOORE replied:

I am not aware of the letter sent by Mr Spurling. He is the Commissioner of Workplace Agreements and he writes letters on his own account without referring them to me. I am of the view that workplace agreements are totally voluntary, and I understand this is the situation here. That is the basis on which I have been operating and will continue to operate. The vast majority of principals and administrators in the school system will voluntarily take the workplace agreement that is being offered. So that the member understands, this workplace agreement was put together on the basis of a request from administrators and principals that we enter into a workplace agreement, not the other way round.

Hon A.J.G. MacTiernan: This suggests they will be added to the workplace agreement if they do not advise.

Hon N.F. MOORE: The member has already asked the question and she should give me a chance to answer it. The workplace agreement to which the member referred was put together as a result of a request from principals and administrators for such an agreement. The agreement was negotiated between the Education Department and two other groups, the WA Secondary Principals Association and the WA Principals Federation, which represent all the other principals, deputy principals and heads of department. As a result of those negotiations, a workplace agreement was determined. My understanding is that it is being made available to any administrator who seeks to become a party to it. There is no intention that anybody is required to sign one of those agreements; in fact, nobody must do that. I will look at the letter to which the member refers. It is not my understanding that what she has read out is the intent; in other words, that people have no choice. However, the vast majority of principals and administrators will accept it.

EDUCATION DEPARTMENT - WORKPLACE AGREEMENTS
*Commissioner's Letter sent to School Administrators and Principals*

928. Hon A.J.G. MacTIERNAN to the Minister for Education:

The suggestion is not that it is a question of choice, although that is obviously part of it; rather this letter suggests that the mere failure to respond to this letter within a specified time will result in the individual school administrator or principal being added to the collective agreement - even in the absence of a signature.

Hon N.F. MOORE replied:

As I am not Mr Spurling I cannot account for his letter. I will look at his letter, but it is my understanding and my fundamental belief that these are voluntary agreements. If what Hon Alannah MacTiernan is suggesting is the case, it is clearly not voluntary. If the member gives me a copy of the letter I will follow it through with Mr Spurling.

ROAD FUNDING - LOCAL GOVERNMENT CONFERENCE

929. Hon MURRAY MONTGOMERY to the Minister for Transport:

Following the Minister's address to the Australian local government conference in Canberra is he able to indicate the condition of our roads, particularly local authority roads, and the increase in funding required?

Hon E.J. CHARLTON replied:

I attended the Australian local government conference in Canberra yesterday. I was invited to comment on road funding across the nation. Local government attends the meetings of the Australian Transport Council, which are held twice a year. The last meeting was held in Hobart recently. A report was presented to the local government conference on road funding issues affecting the nation. That report was instigated by local government at a conference held 12 months ago. Western Australia coordinated that review with the other States and the Commonwealth. That report shows a $2.2b shortfall in road funding across Australia. That includes national highways, state roads and local government roads. That $2b shortfall is on top of the $5b that is currently spent on roads across Australia. The shortfall in the funding requirements is about 40 per cent.

The conference accepted that report, and called on the States and the Commonwealth to respond to that situation. If the current situation continues, by the end of its term the Western Australian Government will have increased road funding by 70 per cent, which is an additional $130m - 25 per cent of which will go to local government. In the same period the Commonwealth will have increased the fuel excise by 40 per cent and reduced road funding by 7 per cent.

Hon Kim Chance: That is not true. The Minister for Transport has misled the House.

Hon E.J. CHARLTON: What, again? That is a joke and Hon Kim Chance knows it.

The PRESIDENT: Order! The Minister should ignore the interjections.

Hon E.J. Charlton interjected.

The PRESIDENT: Order! I want the Minister to come to order when I call order.

TAFE - CENTRAL METROPOLITAN COLLEGE
*Staff Numbers; Increases*

930. Hon JOHN HALDEN to the Minister for Education:

(1) What is the number of administrative, support and teaching staff currently employed at the Central Metropolitan College of TAFE?

(2) Will there be any increases in the staffing areas listed above in 1996; if so, in what areas, and what will be the likely increases?

Hon N.F. MOORE replied:

(1)-(2) This question arrived at the Department of Training some time today. I do not know exactly what time. The question refers to the number of people in certain categories of staff. They are not the categories that are used by the college. I have asked the department to provide me with a breakdown of the numbers in the categories that the college uses, and I will provide that to the member tomorrow. The information cannot be provided on the basis the member requested; however, if the member is satisfied I will provide the information on the categories the college uses.

TAFE - CENTRAL METROPOLITAN COLLEGE
*Computing Staff*

931. Hon JOHN HALDEN to the Minister for Education:

(1) In relation to the computing staff of the Central Metropolitan College of TAFE will the Minister confirm that a number of temporary and permanent staff will not be re-employed next year?

(2) If yes, how many temporary and permanent staff will be affected?

(3) What is the reason for this action?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) Ten staff, seven of whom are permanent, will be redeployed within the TAFE system or the broader public sector.

(3) The college has amalgamated two areas at Mt Lawley and Perth as part of its realignment strategy, which will result in reduced duplication of lecturers' time and equipment used and better utilisation of rooms. In addition, because of the ready availability of certain types of quality computing courses at competitive prices by other training providers, the college has chosen to shift its strategic focus to other study areas where potential students are less likely to be attracted by a lower cost training provider.

LANDCORP - JOONDALUP CINEMA COMPLEX, LOCATION

932. Hon GRAHAM EDWARDS to the Minister for Lands:

(1) Why is LandCorp attempting to relocate the proposed Joondalup cinema complex when -

(a) the brochure titled "Lakeside Joondalup Shopping Centre" which was given to prospective tenants clearly states that future stages of the retail complex will include the development of department

stores, another discount department store and a cinema complex; and

(b) prospective tenants were taken and shown the proposed site at the shopping centre, which is immediately adjacent to the Joondalup railway station?

Hon GEORGE CASH replied:

I thank the member for some notice of this question.

LandCorp is not attempting to relocate the cinema complex. LandCorp is and has been for some time canvassing multiple alternatives for its location somewhere within the Joondalup city centre. The leasing agents for the shopping centre deny that prospective tenants were shown the proposed sites for cinemas at the shopping centre as the actual location of the cinemas has never been fixed.

LANDCORP - JOONDALUP CINEMA COMPLEX, LOCATION

933. Hon GRAHAM EDWARDS to the Minister for Lands:

(1) What consultation over the proposed relocation of the cinema complex site occurred between -

(a) LandCorp and part owners of the Lakeside Joondalup shopping city, Armstrong Jones;

(b) LandCorp and Lakeside Joondalup shopping city tenants; and

(c) Lakeside Joondalup shopping city managers, Knight Frank Hooker (WA)?

(2) If no consultation occurred, why not?

(3) If consultation did occur, when did it occur, and who represented the various parties?

Hon GEORGE CASH replied:

I thank the member for some notice of this question.

(1) (a) Extensive consultation with Armstrong Jones has taken place regarding the location of the cinema complex.

(b)-(c) It is not LandCorp's role to consult with shopping centre tenants or Knight Frank Hooker. That role falls upon Armstrong Jones and the managing agents respectively.

(2) See (1) above.

(3) Consultation with Armstrong Jones has occurred through monthly joint venture committee meetings attended by senior representatives of LandCorp and Armstrong Jones.

LANDCORP - JOONDALUP CINEMA COMPLEX, LOCATION

934. Hon GRAHAM EDWARDS to the Minister for Lands:

If LandCorp is successful in a bid to relocate the Lakeside Joondalup shopping city cinema complex will LandCorp take initiatives to ensure a downward review of rents currently being paid by the tenants to compensate those shopkeepers detrimentally affected by the relocation?

Hon GEORGE CASH replied:

I thank the member for some notice of this question.

The cinema complex will benefit Joondalup city as a whole. No evidence suggests that tenants will be detrimentally affected if cinemas are not located at the shopping centre. When I received these questions yesterday, I gave the member a commitment that I would raise these matters generally with the chairman and the chief executive officer of the WA land authority today and I did

that. There seems to be some confusion with the tenants about LandCorp's role within the management of the shopping centre.

LandCorp owns 50 per cent of the shopping centre with Armstrong Jones through one of its property trusts. The management is handed across, by agreement, to Armstrong Jones. As the office of Hon Graham Edwards is just across the road from LandCorp's office, I suggested to the CEO that he contact Hon Graham Edwards tomorrow or the day after and arrange for a time when they can sit down and discuss matters generally in respect of Joondalup. He is very keen to tell Hon Graham Edwards what is happening in Joondalup as a whole. If honourable members on either side of the House are interested in LandCorp developments throughout the State, they can approach LandCorp. LandCorp has developments at Albany, Bunbury and Carnarvon, and in the northern suburbs in particular and also in the southern suburbs. The organisation is happy to show local members around and, more than that, to give them a briefing on where we are. LandCorp would be happy to talk to Hon Graham Edwards.

Hon Graham Edwards: I appreciate that.