



# **Parliamentary Debates**

**(HANSARD)**

THIRTY-FIFTH PARLIAMENT  
THIRD SESSION  
2000

LEGISLATIVE COUNCIL

Thursday, 11 May 2000

# Legislative Council

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**THE PRESIDENT** (Hon George Cash) took the Chair at 11.00 am, and read prayers.

## **RESIDENTIAL TENANCIES ACT, SECTION 64**

### *Petition*

Hon B.M. Scott presented the following petition bearing the signatures of 108 persons -

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

We the undersigned permanent residents of caravan parks in Western Australia are subject to the *Residential Tenancies Act 1987-128*. We are concerned that section 64 of this act provides landlords with excessive power over their permanent tenants.

Your petitioners therefore respectfully request the Legislative Council recommends that the Government review Section 64 of the *Residential Tenancies Act 1987*, with a view to amending the act, thereby protecting the security of permanent residents of caravan parks in Western Australia.

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

[See paper No 948.]

## **FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA - APPOINTMENT OF SELECT COMMITTEE**

### *Amendment to Motion*

Resumed from 10 May on the following motion moved by Hon Ken Travers -

That -

- (1) A select committee of three members shall be appointed.
- (2) The committee be appointed to inquire into and report on reasons for losses associated with the finance broking industry in Western Australia, including but not limited to:
  - (a) the statutory responsibilities relating to the finance broking industry;
  - (b) avenues for legal redress for investors;
  - (c) consideration of the adequacy of existing legislation to prevent a recurrence of the events which led to the loss by investors who relied on finance brokers.
- (3) The committee have power to send for persons, papers and records and to move from place to place.
- (4) The committee report to the House not later than 31 October 2000, and if the House do then stand adjourned the committee do deliver its report to the President who shall cause the same to be printed by authority of this order.

to which the following amendment was moved by Hon Dexter Davies -

To delete all words after "That" and insert -

the House notes the appointment and operation of the Gunning Committee of Inquiry into Fair Trading Boards and Committees and resolves to allow that committee to conclude its inquiries before giving further consideration to the appointment of a select committee to inquire into matters related to the finance broking industry.

**HON DERRICK TOMLINSON** (East Metropolitan) [11.06 am]: Before the adjournment of this debate yesterday I was discussing the similarities between the terms of reference of the proposed select committee and the terms of reference of the Gunning Committee of Inquiry into Fair Trading Boards and Committees. I indicated that I wished to turn to the question of why the two inquiries should not proceed concurrently. One of the matters first to be considered is the terms of reference of the proposed select committee and the standing orders of the Legislative Council. Paragraph (3) of the motion moved by Hon Ken Travers reads -

The committee have power to send for persons, papers and records and to move from place to place.

That is a legitimate term of reference according to the standing orders. Standing Order No 355 reads -

Whenever it may be necessary, the Council may give a committee power to send for persons, papers, and records.

This is a power to compel. The point was made eloquently by Hon Greg Smith that if the Legislative Council select committee were to compel the delivery of papers to the select committee and the Gunning inquiry also was seeking those papers, there would be a competing demand. The question arises: Who would have the higher authority? That is an interesting question. If a person who is compelled to deliver papers and records did not do so, the select committee would have an obligation to report that refusal to the House.

Hon Ken Travers: If they are in his possession.

Hon DERRICK TOMLINSON: Yes, and if the person can demonstrate that they are not in his possession - whatever that might mean, because that is subject to debate - they cannot be delivered. If, however, the person is in possession of the papers and refuses to deliver them on the command of the Legislative Council's select committee, the select committee would be bound by custom to act. The custom of the Legislative Council is that there will be a report to the House. The House can then decide to compel the delivery of the papers. Once the House has made that decision, there is no argument for or against; that decision is absolute. The select committee is to have the power, through the authority of this Parliament, to send for papers, and hence deny those papers to the Gunning inquiry if those two inquiries are running concurrently. The effect of that would be to frustrate the Gunning inquiry, and I am sure that is not the intention of Hon Ken Travers.

A person who is compelled to attend a select committee and is asked questions is required to answer those questions. Under the standing orders of a standing committee, a person may decline to answer questions. However, the standing orders of a select committee are silent on that matter. If a select committee wanted to protect witnesses or give witnesses certain rights, it would be necessary for that select committee to adopt the standing orders of a standing committee; but as it stands, a person who appears before a select committee is compelled to answer questions.

It is important to understand that a select committee operates under the Privileges Act and that any person who appears before a select committee also has the protection of privilege. Information given involuntarily to a select committee is privileged information and cannot be used in a prosecution in a court of law. I draw members' attention to a case which I believe should be compulsory reading for every select committee of this House - *Regina v Wainwright*, 1899 1 WAR 77 - which held that the answers to questions given by a person whose conduct being investigated before a parliamentary select committee was not admissible against that person on a subsequent criminal charge.

Hon Ken Travers: What does the Public Sector Management Act say with regard to evidence given at the Gunning inquiry?

Hon DERRICK TOMLINSON: Evidence given at the Gunning inquiry likewise has compulsion, because witnesses are compelled. Therefore, that danger also exists in the Gunning inquiry, and that matter must be dealt with very delicately by the three inquisitors. Evidence gathered at that inquiry cannot be used in a prosecution. However, if evidence to support evidence given to the inquiry is gathered from another source, that evidence can be used in a criminal prosecution. Therefore, it is important that 26 police investigators are working on the Gunning inquiry. That is six more than the number of investigators that the ACC has at its disposal and is comparable in size to the Macro task force. That is the significance that the Western Australia Police Service is giving to this investigation. Those 26 investigators may produce evidence of criminal misconduct, and charges may be laid, but Hon Ken Travers is correct in saying that the inquiry is constrained in what it may do with the evidence if the evidence is gained under compulsion.

The point I am making is that if evidence is gained under compulsion by a select committee, it too cannot be used. Therefore, the select committee will need to be cautious in the way it proceeds. I would prefer that the select committee not proceed until such time as the Gunning inquiry is out of the way, because this difference between the select committee's and the Gunning inquiry's terms of reference is very important indeed. The Gunning inquiry is instructed under its terms of reference that should any allegation of criminal, corrupt or improper conduct be received during the course of the inquiry which the members of the inquiry consider may warrant further investigation, they are to refer those allegations to the appropriate investigative or prosecuting authorities. Note the words "the members of the inquiry consider may warrant further investigation". The reason for those words is the very reason that the member has just highlighted through his interjection: Evidence which is gathered by the inquiry under compulsion cannot be used in subsequent criminal prosecution. If, however, evidence is brought to the inquiry that the inquiry believes warrants further investigation, and if that further investigation by an appropriate authority produces evidence of criminal misconduct, corruption or improper conduct, action can be taken by an appropriate authority, whether that be criminal prosecution or action of another kind. That is not available in the terms of reference of the select committee. Again, I caution against a select committee proceeding concurrently with the Gunning inquiry when the Gunning inquiry may very well lead to criminal prosecutions of persons who by other investigation are shown to be demonstrably engaged in criminal or improper conduct.

I wanted to illustrate a problem that select committees have by mentioning my experience of a select committee. However, if the experience of a select committee is not reported to the House, it does not exist. Therefore, I will give members a hypothetical situation. Let us suppose a select committee was pursuing a line of inquiry, and it came to the attention of the Crown Prosecutor, the Director of Public Prosecutions or the Crown Solicitor that the select committee was pursuing that line of inquiry. Let us assume that it came to the attention of the DPP. If the DPP was pursuing a prosecution or had a case pending which related to the matter under investigation by the select committee, and if the DPP was concerned that a report by the select committee might prejudice the trial, the DPP might approach the select committee and say, "It is beyond my capacity to instruct you, because you are a body of the Parliament, but I would rather that you did not report at this stage." He might then give cogent reasons why a report of the select committee might prejudice that trial. For example, a particular witness might be mentioned adversely in the committee report, or it might be that the committee report could be deemed

to prejudice a jury in a trial and the trial is aborted because of that prejudice. If the DPP were to produce such an argument, what would the select committee do? The DPP cannot direct the committee. The committee is under the authority of the Parliament. If it accedes to the request of the DPP and does not pursue a line of inquiry or delays a report, what then of that select committee? What if the select committee were to report, contrary to the advice of the DPP? What then?

Hon Ken Travers: It would probably have good reasons for doing that.

Hon DERRICK TOMLINSON: I have never been on a select committee which has not had good reasons for doing anything. In this place, I have great confidence in the integrity of the members serving on committees. From time to time in this Chamber we engage in theatre; that is the nature of this Chamber. However, in many years of service on parliamentary committees - standing committees and select committees - invariably I have been impressed by the integrity of the members of those committees. They put partisan politics aside; they put the theatre aside; and they pursue their obligations honestly and vigorously, even though at times they might find themselves at odds with their own party policy or the philosophy of their party. They put those matters aside in pursuit of the best available information - the pursuit of that thing which some people like to call the truth. I say to Hon Ken Travers that I have never seen a select committee which does not proceed with the best of intentions.

Let me predict what such a select committee would do. It would do one of two things: Either it would choose to desist from that line of inquiry or it would not report. How long would it withhold its report? It could not withhold its report once the chairman had signed it, because once the chairman has signed it he is obliged to present it to the Legislative Council at the first opportunity. There was a celebrated censure motion in this House against a chairman who failed to do so. I remember it well - I still bear the scars. The committee would defer the completion of its report. Until what stage? Until it was confident that its report would not prejudice those matters which had been brought to its attention by the DPP.

Following the same argument of integrity of a select committee, I suggest that this select committee should not proceed to report until after the Gunning inquiry has reported. Why not wait, therefore, until the Gunning inquiry has reported and then pursue the matters which are pertinent to be investigated but which have not been satisfactorily dealt with by the Gunning inquiry? That would make sense. To run a concurrent inquiry, with all the dangers of running concurrently, and to then defer the report until such time as one was confident that the report would not prejudice anything in the Gunning inquiry report, or the Gunning inquiry itself, does not make sense.

One further matter needs to be considered, and for the life of me I cannot remember what it is.

Hon Ken Travers: You have done a good job.

Hon DERRICK TOMLINSON: No, I have another eight minutes to fill.

Hon J.A. Scott: Why don't you stop filibustering?

Hon Ken Travers: Do you want us to interject to keep you going?

Hon DERRICK TOMLINSON: A question has been asked about filibuster. I will not pursue that.

Hon Simon O'Brien: There is not time.

Hon DERRICK TOMLINSON: There is not time to filibuster, because this debate is far too important.

I have dealt with the matter of the committee sending for persons, papers and records and the dangers that might present for the Gunning inquiry. Rather than filibuster and try to fill my six and a half minutes, I will reserve the opportunity to speak again when the opportunity arises.

Hon G.T. Giffard: You might remember that other point by then.

Hon DERRICK TOMLINSON: I will remember it as soon as I sit down. Has the member not ever experienced that?

Several members interjected.

Hon DERRICK TOMLINSON: Members should not interject, because it gives me an opportunity to continue.

I recommend strongly to the House that it support the amendment of Hon Dexter Davies. By all means consider a select committee, but consider it when the House knows what the Gunning inquiry has found. Consider a select committee when the actions of this Parliament will not prejudice the Gunning inquiry. Consider a select committee when the House is confident that the actions of a select committee will not prejudice a prosecution which might arise from investigations attendant upon the Gunning inquiry. That is the appropriate time for this House to act, not now.

**HON B.K. DONALDSON** (Agricultural) [11.28 am]: I strongly support the amendment moved by Hon Dexter Davies to the motion of Hon Ken Travers because it introduces some commonsense into this debate. I say that because members would be well aware that I am a strong supporter of the committee system of this House.

Hon Greg Smith interjected.

Hon B.K. DONALDSON: I will just ignore those unnecessary interjections. I will have to speak to Hon Greg Smith later.

Several members interjected.

Hon B.K. DONALDSON: I do not need help, thanks.

I am a strong supporter of the committee system. In principle, nothing is wrong with what Hon Ken Travers set out to do. I feel sure that he had the most honourable intentions when he moved this motion. It has been well documented by other speakers and spelt out loud and clear that at this stage a select committee inquiry would prejudice the Gunning inquiry. I draw an analogy: One could talk about a high-profile case at the moment - I will not go into it because it is before the courts - involving a person who has been charged with a rather horrendous crime against another person. It has whipped up a huge debate already. That person has been judged and will be sentenced by the people. Some of the sentencing possibilities suggested on air are quite draconian. This House could set up a committee to look at this matter and at the type of penalties that should be applied to the perpetrator of these horrific crimes. That, however, would prejudice the present court arrangements which that person will face in the near future.

I am sure that none of us condones the actions of a few people who have brought the whole finance broking industry into disrepute. About 95 per cent of the people in the industry are honest and have great credibility, and they will remain that way forever. The industry has been around for a long time. Unfortunately, there are a few who, at times, see a milch cow by way of commissions and then have the audacity to say that it is the lender's responsibility. When a person collects money from somebody else and that person is drawing a commission, lending it is the broker's responsibility.

We must also remember that we cannot legislate for honesty, and we have all learnt that during our lives. Penalties can be provided but people will always test the system. We can look at cases that have been to court over the years in which people have been made accountable for some of their dealings, be they police officers, lawyers, accountants, people who have been in charge of charitable organisations - a case has been reported in the newspaper lately -

Hon Barry House: Politicians.

Hon B.K. DONALDSON: Yes, and politicians; I was going to include them. No-one is immune from someone in our society trying to bleed the system or use the system to his own end. We can have as many committee inquiries as we like; however, at the end of the day it still gets back to the individual.

We can provide much heavier penalties, and I hope that a lot of those will be spelt out loud and clear when the Gunning inquiry concludes. For example, some people in the building industry have fallen over, their businesses have failed, yet 12 months later they pop up under another company name and start trading again. If those people breach the rules, the decency, the credibility and the honesty which should apply in their profession, they should not be allowed back into the system for a minimum of 10 years. None of us condones the actions of those few. It is their actions that we are trying to sort out. I do not have any problem with the principle of appointing a select committee of this House following receipt of the findings of the Gunning inquiry. After studying the report of that inquiry, it may be beneficial for this House to establish a committee to ensure that what the report recommends as changes to the legislation does occur. That is probably a role of this Parliament. No doubt legislation will flow from an inquiry.

People - not necessarily finance brokers - have advertised in *The West Australian* under the section dealing with mortgages when they had money available.

Hon Ray Halligan: Solicitors in particular.

Hon B.K. DONALDSON: Yes, and I will refer to a case.

Hon Murray Montgomery: On the finance pages.

Hon B.K. DONALDSON: Yes, on the finance pages. That has been going on for as long as I can remember. I was involved with my brother in managing a trust. We used a leading firm of solicitors in Perth to look after our parents' estate and our business, and it lent money through that trust for the family. We never had a problem, because the title was held in our name - we had the first mortgage. The solicitor who operated on our behalf ensured loans never exceeded 70 per cent of the total. He used a pool of valuers who do work on a constant basis, and I will return to that valuation in a moment. That went on for a number of years, and we have never had a problem. We have tried to access a better interest rate than that which the banks offered by way of debentures or other forms, and that has been a very happy arrangement. There is a question of honesty within a system; that is, it must work.

I know that a couple of people have been charged under the Land Valuers Licensing Act, so I will not go into that. However, if we consider the major banking institutions - the prime lenders of finance for residential and commercial buildings - we find that they do not make many mistakes when they lend money. I know two valuers who are not mixed up with this inquiry and are never likely to be. They operate as a pool of valuers for the banks and some of the other finance institutions. They do not get a continual work program from one particular bank; the program works on a rotational basis. They may prepare a valuation for Westpac today, one for the Commonwealth Bank tomorrow and another for the ANZ Bank or BankWest next week. There is no consistency in a relationship between a bank and those valuers. I have spoken to those two people about what has happened. I had a feeling about what had happened. If there is a collusion - I am not saying there is, but it is my belief - between a valuer and a finance broker, who is usually on a good commission for accessing finance for the borrower, some very shonky deals can take place. If there are rising inflationary pressures in the marketplace and in society, that is usually their comfort zone, because they do not think anything will happen. When there is a downward spiral of inflation, people get caught. Also, if a false valuation is put on a house or a commercial premise, it will show up eventually if someone's business falls over.

Two or three years ago, I was looking at some residential properties. I employed a valuer to price some of them to get an idea of how much I should pay. He said, "This is the value and this is what they are asking. It is not worth that amount of money. Do not take it on board if you want to use it as an investment opportunity because it has an alleyway alongside it." I said "Why?" He said, "An alleyway provides easy access for burglars to drop over the fence." People have great difficulty selling houses adjoining a laneway. That is why a number of people want them closed. In the older suburbs such as Doubleview, a number of laneways run alongside properties. A number of laneways have been closed and people are actually buying them. It is a sad fact of life but that is happening. The role of a valuer is vital. Forget the crooked finance broker, take a look at the valuer. I would bet that 40 per cent of the problems that exist in the finance broking industry at the moment could be homed straight back to the valuer.

A constituent came to me with a file. He has been investing in the finance broking industry for a number of years. He has got most of his money back. He is involved with a pool of people who lent money to a couple of the more notable finance brokers that have been mentioned in the newspapers recently. He may get back 50 or 60 per cent of his money. He considers himself to be very lucky. I suggested to him that he provide that information to the Gunning inquiry.

I have read some of the correspondence from certain mortgage brokers and also reports from a couple of valuers - one who is well known - and I was horrified. I said to that person, "You have been a very successful business person all your life. You would have noted some of the actions that have been taken in the industry and in your own business life you would not have acted that way." Some people were relying on a future promise. That constituent has been lucky. He also admitted to me - let us face it, we all do - he chased higher interest rates. It is inherent in all of us to attempt to make as much money as we can; and why not? That is how people become risk takers. But the higher the return, the higher the risk. He admitted that that was the case. By the same token, however, it does not condone those brokers who have used investors' money - even if it is at a higher risk - putting it at greater risk because of their dishonesty. That is what it boils down to. Those people have ruined an industry that has been beneficial to development in Western Australia over many years. It disappoints me that the actions of a few have caused this outcome.

There is an old saying that money is the root of all evil. I am sure that is very true. It has been around probably for hundreds of years. Money is usually the fundamental base for a lot of things that happen in our society. It is a matter we should think very carefully about before establishing a committee at this stage. The inquiry is underway and a number of people have already been charged; some of them are valuers. I hope the book will be thrown at those people who knowingly operate in a manner which breaks every rule of decency and honesty. Any valuer who has given false valuations or has been party to manipulation of funds should not only never operate again in the finance broking industry, but also should finish up inside prison. A clear message from the Gunning inquiry should be that all valuers need to understand clearly their role and responsibilities.

I turn to the finance brokers who have manipulated the system. I was astounded and outraged to hear, as I said earlier, that it was not their responsibility - it was the lender's. For goodness' sake, if that is the case, I would like to see them give back to the lender all the commissions they have received. If a finance broker sets up a business and says to people, "Invest through me, because I will get you a good return," but does not tell them, "It is not our responsibility. While you are lending the money to us, we will take a nice old commission, but I want you to know that there is no responsibility thrown back on us; no correspondence will be entered into." They did not say that to anyone. For someone to stand up in a public inquiry and come out with that diatribe made me think that some people in that industry had forgotten the fundamental rules of what a finance broker does. This is where the breakdown has occurred. It is not across the board, only a handful of people have done this. We find this across all fields in society. We will never get rid of all the bad apples. It is well known that in the Police Force, with 5 000 or 6 000 police officers - I am not saying that is the only organisation that has a problem; any organisation which has between 5 000 and 7 000 people in positions of power - invariably some among that group will seize the opportunity to benefit themselves.

Hon N.D. Griffiths: You know the Cabinet better than I do.

Hon B.K. DONALDSON: I said 5 000 to 7 000 people. We often hear that nobody knows what a person will turn out to be after they put on a uniform and strap a six gun to their hip.

Hon N.D. Griffiths: Where are they strapping the six guns? To their hip or their head?

Hon B.K. DONALDSON: Their hip.

Hon N.D. Griffiths: I am sorry, I thought you said the head.

Hon B.K. DONALDSON: I remember a senior police officer in Geraldton who told me an older group is coming through the ranks, which is good because they have experienced life. It does not matter what sort of process is conducted to analyse people to find out whether they are suitable, one never knows until the person gets out on the street. Fortunately, 99.5 per cent are great people who fill their obligations and responsibilities in an efficient and creditable manner. However, there will always be a handful of people in any organisation who will lower the esteem of that organisation in the eyes of the public. Politicians are a good example. It only takes one or two to do something stupid and the mud sticks to all of us. The City of Canning was sacked by the previous Government - which I supported.

Hon Derrick Tomlinson: Did you support the previous Government?

Hon B.K. DONALDSON: Yes, on that issue. I tried to save them over the course of a weekend, but they were damned irresponsible. I know Hon Simon O'Brien is in the Chamber, he was one of the better members of that council. I was very

sorry it had to happen. Unfortunately, there were a few on that council who needed to go. We have a wonderful City of Canning led by a great mayor, council and staff who have been given the opportunity and have seized it. It has made quite a difference.

At the time, mud stuck to the 1 200 councillors and staff involved in local government across Western Australia. Everyone was tarred with the same brush. The feeling was that all councillors were out to benefit themselves and were not running the local communities in the best manner. Despite what the Gunning inquiry or a select committee if it is subsequently set up - which I strongly support - finds and recommends, it is important to remember that we will never eliminate corruption. Someone will always pop their head over the hedge and do something stupid. It is imperative that all Governments - because this crosses party lines - ensure that as much protection as possible is put into the system so that lenders are not disadvantaged by the actions of a few corrupt people. Corruption will never be eliminated, but the opportunity for it to occur can be minimised. A stringent code of practice is needed. Even today, certain people in the industry need their role explained to them. How many investors who lost money heard that person give evidence recently to the Gunning inquiry? No doubt their hearts were gladdened to hear him say it was not the board's problem, but the investors'. I will not say too much more. That evidence disappointed me.

Hon N.D. Griffiths: I thought you were going to speak for another 21 minutes.

Hon B.K. DONALDSON: I am not about to sit down, I just do not want to go into that matter because it is part of the inquiry. It would be wrong of me to discuss that person's testimony, even though it is public knowledge.

A different situation has developed over the past few years in which a sound economic climate has been established by the Federal Government and by State Governments, especially in Western Australia. This has resulted in lower interest rates. Consequently, the traditional lenders - the banks and credit societies - have been able to offer attractive loan packages to the general public. The ability of people to own their own home has risen significantly. A building boom is occurring, not only through the effect of the goods and services tax but also because interest rates have provided young couples with the opportunity to own their own home. It is fantastic. The business of traditional lenders has been booming. Of course, the downside is for the investors who want to lend money to traditional lenders. The interest rate for deposits of under \$2 000 is 0.01 per cent. It is not attractive. Eighteen months ago, the interest rate for top term deposits was about 4 per cent. Therefore, people looked for alternative investments with far better returns. Low interest rates had a twofold effect: While people were borrowing from traditional lenders at a furious rate, people were not investing with them. They were looking elsewhere. The finance broking industry grew because it attracted money from new lenders. Its horizons became broader and brokers started to look at the more risky developments. They were risky unless one knew every individual borrower and his or her reason for using a finance broker at a time when prime lenders were offering lower interest rates. People looked into all sorts of developments. It should be asked why the banks did not lend to those borrowers. Why did the developer use a finance broker, who imposed a greater interest rate? There is a greater element of risk in lending to finance brokers. The banks clamoured to lend money for good developments. BankWest advertised business loans. It wanted people to borrow large sums of money because money in the bank does not help the shareholders. It needs to earn interest in the community. Unless the investor knew every person borrowing under those arrangements and their reasons for wanting the money, the system was open to abuse. Potential developers who are unable to borrow money from a traditional lender - the bank - but get it from a finance broker at a higher interest rate tend to be more flamboyant about the development, especially if an accommodating valuer supports their argument. The risk starts on the first day the borrower walks into a finance broker's office. The finance brokers' responsibility starts then.

I hope that the few genuine developers who use the system honestly and with credibility come forward in the Gunning inquiry and say how the system should operate. We should not look at all the negatives. I would like those people - the ones with nothing to lose - to outline how they want the industry to develop. The industry assists many people. We had a mortgage with a particular group for a dental practice. I do not know why they accessed the funds at a higher interest rate from our trust; that is their business. I do not know why they did not go to a bank. I do not know their circumstances but they came forward, paid on the due dates and if they had rolled over, we would have had a dental practice. They did not go through a finance broker; they were clients of the solicitors.

Debate adjourned, pursuant to standing orders.

## COMMITTEE REPORTS - CONSIDERATION

### *Committee*

The Chairman of Committees (Hon J.A. Cowdell) in the Chair.

### *Standing Committee on Ecologically Sustainable Development - Management of and Planning for the Use of State Forests in WA - The Sustainability of Current Logging Practices*

Resumed from 4 May on the following motion moved by Hon Christine Sharp -

That the report be noted.

Hon GREG SMITH: When debate concluded last week I had been touching on the use of the precautionary principles and some of the tactics used during the production of the report when taking evidence from people in the conservation groups. It became clear from the submissions and evidence from witnesses that on the environmental side of the argument the forests are more of a political issue than an environmental issue. We were told we must consult, but the classic example

occurred when people from the Wilderness Society appeared and I asked them to put circles on a map indicating which areas should be preserved. They said they could not do it. I said there must be a list of priorities indicating which blocks are the most important and which can be the subject of negotiation. However, for the Wilderness Society there was no point of negotiation, and it was clear that its ambition was to lock up all the land. It is very frustrating for people from the timber industry side of the debate because they have been prepared to compromise, and accept the decisions made by the Government on which land will be available for forest production and which will be preserved. They accept the decisions and continue with that part of the forest devoted to timber production. The environmental people treat any preservation of land as a launching pad for the next bit of forest they want. It became clear from the beginning of the inquiry that it would be almost impossible to satisfy the people trying to protect the forest, because they used it as a political platform.

Hon Giz Watson: Do you accept that there is only 10 per cent left?

Hon GREG SMITH: Ten per cent of what?

Hon Giz Watson: What was originally there.

Hon GREG SMITH: We have not seen the Greens (WA) in the wheatbelt, and that is straying from the debate. The forest is more of a political debate than an environmental debate for the conservation movement.

Hon MARK NEVILL: I have spent considerable time going through this fairly large report. I do not believe it has a very strong empirical basis; it has much information and many findings that I do not think clearly flow from the evidence gathered. In that sense, much of it can be dismissed as a particular view. The report is propaganda to back up a particular view of the timber industry and native forest.

I will focus on five or six issues, the first of which is the nature of the committee's deliberations and some of the bizarre accusations in the report that need to be aired. In my view the committee system of this Chamber is a method of assessing the performance of the Government and government agencies. It should not function as a court of inquisition, nor as a forum in which members pursue or run personal agendas.

Hon J.A. Scott: Do you mean like the Rindos inquiry?

Hon MARK NEVILL: I took a personal interest in that, but I approached it from an objective point of view. The report was made by a diverse group of people on the committee and they supported the view I expressed. Nothing has been done to address the complaints of the archaeology students at the University of Western Australia. In any event, we are not debating the Rindos report. As three members of the Greens (WA) were in the Chamber a couple of minutes ago, I thought that reflected their religious fervour when it came to the forests and that they would be interested in concentrating on that matter rather than the Rindos matter.

Hon J.A. Scott: You were talking about committees being used for members' particular interests.

Hon MARK NEVILL: I did not inquire into the Rindos matter. I was not a member of the committee and I deliberately excluded myself from it. I put the matter to the House, and the House agreed to hold the inquiry. I made no public statement during the two years over which the inquiry was held. The member should not accuse me of interfering. I put the proposition to the House and played no part in the inquiry.

Hon Derrick Tomlinson: Hon Jim Scott should not deal with the truth in this place because he does not understand it.

Hon J.A. Scott: I understand it too well, and that is the problem.

Hon Derrick Tomlinson: The member has no understanding of the Rindos case.

Hon MARK NEVILL: Hon Jim Scott obviously does not understand it.

I will illustrate how the Standing Committee on Ecologically Sustainable Development operated. In his minority report Hon Greg Smith described the actions of the chairperson, Hon Christine Sharp, in her interrogation of Dr Syd Shea as -

no more than a witch hunt instigated by the Chairman of the Committee using information obtained during her membership of the EPA at that time and an attempt to incriminate the Executive Director of CALM, Dr Syd Shea.

I will develop my argument and reinforce what Hon Greg Smith said, by revealing what happened prior to and during the interrogation of Dr Shea. The day before the questioning of Dr Shea commenced, witnesses from Bunnings who were to attend that day were advised by letter that Bunnings may be subject to criminal allegations regarding its harvesting operations in the south west forests when they appeared before the committee the next day. No such warning was given to the officers of the Department of Conservation and Land Management, who were to appear immediately prior to those witnesses of Bunnings, even though CALM and not Bunnings had the responsibility for ensuring that harvesting operations complied with ministerial conditions. If the witnesses from Bunnings were subject to criminal allegations and had been warned that criminal allegations had been made, surely the committee had the responsibility to advise the officers of CALM that they would be subject to those allegations.

I am also told that some of the members of the committee, including the chairperson, attended a meeting prior to the committee's interrogation of the CALM officers.

Hon Norm Kelly: What interrogation?



Hon MARK NEVILL: I will develop the argument. They had hatched a little plan to trap the former executive director of CALM into admitting some criminal offences. Those sorts of tactics are a bit beyond the pale and quite improper.

Hon J.A. Scott: What meeting are you referring to?

Hon MARK NEVILL: This is the one -

Hon Christine Sharp: You should clarify it.

Hon MARK NEVILL: I will clarify it. It was the one held the day prior to the committee meeting.

I will read from some notes that have been provided to me which were distributed to the members of that committee who attended the meeting. On the front page of the note that was distributed is this handwritten note -

Questions in Cross-Examination should be asked in statement form, with a view to the witness agreeing to them. At some stage (at least the end) the witness should be "penned" with the "gates shut" so he either agrees he was in the wrong, or has to deny his earlier statements. These questions are in that statement form.

Attached to this are the questions that were presented.

*Point of Order*

Hon NORM KELLY: Will the member identify the document?

The CHAIRMAN: Will the member do so?

Hon MARK NEVILL: I seek leave to table the document.

Leave granted. [See paper No 949.]

*Debate Resumed*

Hon MARK NEVILL: Members should note the use of the word "penned" in this document. In other words, committee members were being asked, perhaps urged, to trap a senior public servant who had no prior advice that he would be subject to serious allegations of a criminal nature, and for that person to be trapped with the gates shut. That is a highly improper approach for a committee of this Council. Attached to this handwritten note is a series of questions that were to be directed to the former executive director of CALM. I ask members to get a copy of the papers I have tabled because they will see the thrust of the questions. If they read them, many members will, like me, consider them inappropriate. They are clearly not aimed at finding out more information but are designed to entrap the former executive director of CALM.

The Press had been alerted to attend the meeting of the committee the following day. To the great credit of Hon Ljiljana Ravlich and Hon Greg Smith, they dissuaded the committee from adopting that despicable strategy of entrapping the former executive director of CALM in front of the Press.

Hon DEXTER DAVIES: Having spent some time going through this report and developing a very thorough understanding of its contents, I will make a few remarks on the final outcome. As Hon Greg Smith has said, events tended to pass us by a bit by the time the report came out.

In defence of the very thorough work that was done on the report, I point out that as a consequence of that work most of the recommendations have been acted upon positively. That gives some satisfaction to the people involved in that committee process. As a result, the Government, the minister and the Parliament are currently in the process of carrying out quite a few, if not most, of the recommendations. This demonstrates the real value of committee work overall. As Hon Derrick Tomlinson said in an earlier speech today, obviously on some aspects committee members have differing views which they must get past. At the end of the day, as it was a very difficult and emotional time, it is a credit to the members of the committee that it was a unanimous report.

Hon Mark Nevill: I thought it was a minority report.

Hon DEXTER DAVIES: Hon Greg Smith did have a minority report.

Hon Mark Nevill: You cannot have a unanimous report and a minority report.

Hon DEXTER DAVIES: I retract that.

Recommendations have been acted upon, a policy formed and a direction taken in the whole forest debate. The report has played a considerable and constructive part in achieving that. As is reflected across society, there are obviously some very diverse views on the subject. It was an emotive issue at the time. The views of the committee members did not disappear but were reflected on the committee. However, they got over those views. As I have said, I gained a great understanding of the issue. I do not profess that every conclusion the committee came to will solve the problems completely, but I hope that they contribute towards a better understanding of the subject, which is what the committee process is designed to do. I would therefore be reluctant to say that the comments of Hon Mark Nevill are a true reflection of the committee as a whole.

Hon Mark Nevill: I had only just started.

Hon DEXTER DAVIES: That is fine. I am in the middle of what I am saying and will finish shortly. There is a wide range

of views on how things should be done. The outcomes were achieved through consultation with the whole committee. As to the comment Hon Mark Nevill made about the Press being notified, the committee agreed that it was not an appropriate action and so it did not happen for that reason. I like to think that those sorts of issues played a minor part in the outcomes of the report and that good research played a significant part in enabling us to recommend actions in the interests of the forest industry, which is what the inquiry was all about in the first place.

It was a difficult process because of the emotiveness, the nature of the problem we were dealing with and the personalities of the witnesses involved. Members of the committee should not take those matters into consideration but, rather, try to get as much information as possible from witnesses and try to be as objective as possible about what they are doing. As was correctly said, the committee agreed that it was inappropriate for the Press to be present at the hearings of the committee. The decision to exclude the Press was made for a valid reason, as committee members had to ask questions to establish in their own minds the determination of the committee as to which questions should not be aired in the Press. Quite rightly, therefore, the Press was excluded. Later suggestions were made that the decision was wrong; however, committee members believed it was the right thing to do, and that was what happened.

The committee process was long and demanding; took a great deal of members' time. Members can imagine the enormous amount of material we had to examine to try to come to a logical conclusion. However, it gave me a greater understanding of the subject. Action that has been taken by the Government since the inception of the committee, and the reflection of those actions compared with the contents of the report, are a credit to the committee process.

Hon MARK NEVILL: I will continue my remarks about the interrogation of the former executive director of the Department of Conservation and Land Management. If members care to read the committee transcript of Dr Shea's evidence, they will see clearly that the chairperson of the committee, with the occasional assistance of Hon Norm Kelly, attempted to follow the instructions in the questions that were provided in the document I have tabled.

Hon Norm Kelly: Are you sure that is the document from which we were asking questions?

Hon MARK NEVILL: I am sure this is the document that was presented to the committee on the day before the hearing. If it is not, Hon Norm Kelly can tell me if the questions were substantially changed.

Hon Norm Kelly: I think you might find it is a different series of questions.

Hon MARK NEVILL: Despite the best endeavours of the chairperson and Hon Norm Kelly, they could not pen the witness and the gates were not shut. I draw members' attention to point 4 of these questions which relates to the precautionary principle and the style of questioning adopted. The transcript clearly demonstrates the chairman's attempt to pen the witness. For example, after a series of questions to Dr Shea on the issue of the precautionary principle, Dr Shea repeatedly stated that he endorsed that principle. However, like every other person, he had to implement the principle and had difficulty with its practical application. The chairperson asked the "pen" question -

Do you agree that condition No 3 -

That is condition 3 of the ministerial conditions. The question continues -

- required you to use a precautionary approach - yes or no?

Dr Shea replied -

I am sorry, Madam Chair. This is not a yes or no answer. It requires a clear understanding of what is the precautionary approach.

Further down the page of this transcript the chairperson faithfully repeats her yes-no demands to the witness several times following the questions under point 4 of the tabled document. Further down the page, in frustration, reading between the lines, she said to Dr Shea -

You are saying that you cannot say yes or no to the question of whether ministerial condition No 3 required CALM to adopt a precautionary approach?

Dr Shea replied -

No, I am not saying that at all. I am saying that we can implement the precautionary approach but with the caveat that we need a better definition of it and an understanding of what it legally and in real life means. According to Justice Wheeler's definition -

That is a justice of the Supreme Court. The answer continues -

- we can and have implemented the precautionary approach.

On page 180 of the report we read that Dr Shea refused to answer the question. He is then accused of failing to measure up to the general requirements of public officials to provide information to committees as set out by a federal parliamentary committee chaired by Hon Bruce Scott, MHR. My reading of that exchange in the transcript leads me to the conclusion that Dr Shea answered those questions in a reasonable way. They were questions which he could not deal with in a yes or no answer. To then accuse him of failing to measure up to the general requirements of public officials is pompous nonsense.

Until the law rules against them, the chairperson and others appear to be very enthusiastic to ensure that public servants and ministers observe the letter of the law. She was very upset when Justice Templeman ruled on the precautionary principle in a court case brought by some green activists in Bridgetown. He stated that it was up to the minister and CALM to interpret the precautionary principle.

On page 105 of the report the committee stated that it was surprised to find the Supreme Court was of the view that conditions are to be given weight at the discretion of CALM and the minister. Later in the report, on page 111, it is reluctantly acknowledged by the committee that the Western Australian Supreme Court ruling will not give any life to the requirement of a precautionary approach.

That is the outcome of the matters to which Hon Greg Smith was referring earlier and the approach that the committee took to the precautionary principle. Some people interpret the precautionary principle as "if something is possible". Others interpret it as "if something is probable". I put it to members that just about everything is possible. In reality we must consider what is probable and what is an acceptable risk. To interpret the precautionary principle as "if something adverse could possibly happen" is absolute nonsense. I put in a submission to get that bit of drivel taken out of the Australian Labor Party's environmental policy, although I do not know whether I was successful. It is a fairly obtuse principle.

Hon J.A. Scott interjected.

Hon MARK NEVILL: It should not be dealt with by a yes or no answer.

Hon J.A. Scott interjected.

Hon MARK NEVILL: I look forward to debating the forest industries issue with him over the next few weeks. I am sure each of us will have much to say.

Hon J.A. Scott: Will you mention the meeting you had down in the south west recently when you got up and said -

The CHAIRMAN: Order! We are departing from the motion before the Chair.

Hon MARK NEVILL: It was a public meeting attended by 350 people with four or five tape recorders rolling and all sorts of things.

Hon J.A. Scott: What did you say?

Hon MARK NEVILL: I suggest Hon Jim Scott go to Hon Paul Omodei; he probably has a tape of it.

Hon J.A. Scott: He wasn't happy that you were there.

Hon MARK NEVILL: That is his bad luck. His account of my speech in the advertisement published in the paper does not seem to resemble my actual speech. We both must have been dreaming.

Hon Bob Thomas: He has not let the facts get in the way of a good story.

Hon MARK NEVILL: Hon Jim Scott does not seem to want me to talk about forests. I thought that was his favourite theology.

Hon J.A. SCOTT: The remarks of Hon Mark Nevill are interesting, especially following the remarks he made down south to a meeting of the Forest Protection Society.

#### *Point of Order*

Hon MARK NEVILL: We could sit here all day debating the remarks I made down south. I am happy to discuss them but the Rindos affair and the speech I made have marginal relevance to the report before the House.

The CHAIRMAN: The point of order is upheld. The member can refer to that matter only insofar as it is relevant to the motion before the Chair in the consideration of this report.

#### *Debate Resumed*

Hon J.A. SCOTT: Thank you, Mr Chairman. The precautionary principle is not as Hon Mark Nevill described. It is well documented, and has worldwide acceptance. It is not a piece of nonsense.

Hon Mark Nevill: Tell us what it is rather than what it is not.

Hon J.A. SCOTT: I will do even better than that; I will give him a written copy of it.

Hon Mark Nevill: Otherwise I will assume you don't know.

Hon J.A. SCOTT: I do know. However, I wanted to point out that Hon Mark Nevill cast quite a number of aspersions on the work of the committee.

Hon Mark Nevill: Absolutely.

Hon J.A. SCOTT: In the context of that were the statements he made that he had the chairman of that committee running scared. I believe his remarks were scurrilous.

Hon Mark Nevill: You have hardly debated the forest industry since I have been an Independent. I am looking forward to the next couple of weeks. It has been a one-sided debate.

Hon J.A. SCOTT: I am waiting for that debate to continue. So far we have heard an attack on the committee and a reflection on the way it did business based on what appears to be an internal document.

Hon Mark Nevill: Is that embarrassing?

Hon J.A. SCOTT: No; it is not. I understood those internal documents were not supposed to be handed out willy nilly. I wonder how the member got hold of it. I thought rules prevented documents being handed out like that.

Hon Mark Nevill interjected.

Hon J.A. SCOTT: I know that documents pertaining to matters debated in some committees that are not public hearings should not be handed out by members of those committees to anyone.

Hon Mark Nevill: That is an assumption.

Hon J.A. SCOTT: It is. I would like an answer from Hon Mark Nevill about whether the assumption is correct.

Hon Mark Nevill: I do not know how the document was obtained. It was delivered to me, but I do not know from what source.

Hon Norm Kelly: Was it anonymously delivered to you?

Hon Mark Nevill: Yes.

Hon J.A. SCOTT: There may be some problems on the committee but it may be that people do not have a legitimate concern for providing the very best report for the Parliament. Regarding the attempts to "interrogate", as Hon Mark Nevill put it, the former chief executive officer of the Department of Conservation and Land Management, Dr Syd Shea, as have others in this House, I have attended the Estimates Committees and sought answers from Dr Shea, but that has always been a difficult task. He talks about what he wants to talk about rather than answer questions.

Hon Mark Nevill: That is a reflection on you.

Hon Norm Kelly: It has been proved that he has misled the Parliament before.

Hon Mark Nevill interjected.

Hon J.A. SCOTT: It is very difficult to tell whether someone has deliberately misled Parliament, but it can be shown on some occasions. Dr Shea is an experienced and political operator.

Hon M.J. Criddle: Your performance in voting on those issues is not all that reliable.

Hon J.A. SCOTT: On what issues?

Hon M.J. Criddle: On people deliberately misleading the House.

Hon J.A. SCOTT: Such as?

The CHAIRMAN: Order! Hon Jim Scott should be speaking on the motion before the Chair.

Hon J.A. SCOTT: These reports are critical. The reality is that not only are the very best of our remaining state forests in disarray and being quickly demolished but also the industry itself is under threat, not because of people wanting to conserve areas of forest, but simply because of the rate of extraction for woodchipping.

The problems facing the industry through a decline in the number of people working in that industry are caused by change in the industry. Well over 80 per cent of logs cut in the forest used to become sawn timber, whether it was furniture grade or less high grade timber. One year, according to the 1993 annual report, 84 per cent of the total timber cut was used for woodchips. During that period a vast number of people lost their jobs because of the mechanisation of the woodchip industry and, of course, the loss of jobs occurred in the woodchip industry, as opposed to the sawn timber industry. It is ironic that the people trying to keep the woodchip industry as a premier part of native forest harvesting are cutting themselves out of jobs. The old and large trees, as opposed to the plantation trees or new trees, provide the best furniture grade timber. Quite clearly, members will be aware that the extra sap in the new trees means it is very difficult to properly cure them.

Hon Greg Smith: Are you a professional sawmiller now?

Hon J.A. SCOTT: No, but I have certainly talked to sawmillers. I did a tour of the area and talked to people on both sides of the argument, unlike the member opposite. Sawmillers have talked to me about the huge waste, and small sawmillers had to pull back from a position in which a huge number of high grade logs were going through woodchip mills. An inquiry was conducted on this a long time ago by this place. One of the main instigators of that inquiry went to the Diamond chip mill, took away the chip logs and turned them into furniture grade timber. It was then sold on the open market, and he proved the point he was making.

Hon NORM KELLY: I find it interesting that Hon Mark Nevill has a problem with the Standing Committee on

Ecologically Sustainable Development questioning the executive director of the Department of Conservation and Land Management about compliance with the ministerial conditions in the forest management plan. The ESD committee received a number of allegations about CALM's noncompliance with the ministerial conditions attached to the forest management plan. Condition 3.1, listed at page 222 of the report, states -

The proponent shall manage karri and karri-marri forest in accordance with a Precautionary Approach. This approach requires that where there is a significant risk that a particular forest management measure could lead to an irreversible consequence appropriate monitoring and subsequent adjustments to management within an acceptable timeframe be carried out.

That gives the definition of "precautionary approach" in the forest management plan. There is a difference between precautionary principle and precautionary approach, and it is usually agreed that a precautionary approach is a less stringent application than a precautionary principle. Clause 3.2 of the ministerial conditions states -

The proponent shall manage the jarrah forest in accordance with the following general principles:

(1) a Precautionary Approach; . . .

Those ministerial conditions were attached to the forest management plan in 1992, in the infamous signing on Christmas eve by the Minister for the Environment.

Hon Greg Smith: Who was that?

Hon NORM KELLY: The current member for Fremantle, Jim McGinty. The ESD committee in carrying out this inquiry wanted to investigate whether CALM had been complying with these ministerial conditions, and whether there had been any criminality or illegal acts in relation to the forest management plan. It is proper to receive advice on the questions that should be asked of witnesses. That is common to all committees, and that is why committees have skilled staff to assist members to conduct those hearings.

Hon Mark Nevill is also wrong in his suggestion that two members of the committee were able to persuade the others not to allow the media to attend the hearings. The committee was very much aware of the sensitivity of the hearing and seriousness of the allegations, as well as the damage such allegations could do if not proved. As Hon Dexter Davies said early today, the committee as a whole - I cannot remember how many were at the meeting but I believe five members were present - discussed whether the media should be allowed to attend the hearing and decided it was better that they not be.

Hon Derrick Tomlinson: Are you referring to a formal meeting of the committee?

Hon NORM KELLY: The one on the previous day.

Hon Derrick Tomlinson: Two meetings have been talked about - the meeting the previous day and then a formal meeting. Was the meeting the previous day a formal meeting?

Hon NORM KELLY: Prior to the hearing, the committee was in a formal meeting and it was then determined that the media would not be present.

Hon Derrick Tomlinson: Is that when these questions were discussed?

Hon NORM KELLY: I do not have all my material from this inquiry with me, but I recall that there was another set of questions.

Hon Derrick Tomlinson: Will you table them?

Hon NORM KELLY: If I can locate them in my office, and if it is not a breach of committee procedures, I am happy to table them. They are likely to be similar to those tabled by Hon Mark Nevill. The extent of the papers with which Hon Mark Nevill has been supplied is interesting. Although he said he received them from an anonymous person, he seems to have great confidence in the validity of those papers, how they were used and when.

Hon Mark Nevill: Are you saying they are not the papers the committee considered?

Hon NORM KELLY: Hon Mark Nevill seems to be hiding under the cloak of anonymity with regard to the receipt of these papers, but he seems to have a good understanding of how the papers were used and in what context.

Hon Derrick Tomlinson: Are they the papers of the committee?

Hon NORM KELLY: I cannot confirm that until I have checked my records. Concern has been expressed by members of the committee that during the course of the inquiry information was being leaked to people outside the committee.

Hon Derrick Tomlinson: Did you report that as a breach of privilege?

Hon NORM KELLY: No, because in my view there is not sufficient substance to report a breach of privilege.

Hon Derrick Tomlinson: You only believe there were leaks?

Hon NORM KELLY: I would not go even that far; I would say that I had suspicions.

Those were the difficulties that the Standing Committee on Ecologically Sustainable Development had in undertaking such

an inquiry. It was a huge task to take on board. In as much as we knew how political the issue was and how the committee could be perceived in the public arena as being political, I think that worked to ensure that we presented as unbiased, as balanced and as factual a report as possible. That is why I believe many of the recommendations have been taken up to various degrees. Because of the length of the inquiry, time overtook some of the recommendations. We knew when we were tabling the report that some of the recommendations had been adopted. However, it was a case of deciding whether to continually redraft the report, put it back a few weeks and then find it was out of date. We thought it was important to get the report out as soon as possible. The committee has done a good job in that regard.

Last week the Government made a response to this report, which also makes very interesting reading. It shows that although there has been some acceptance of recommendations by the Government, there are still large areas of disagreement. I will not go through all the recommendations, but recommendation 1 reads -

*That future proposals for Forest Management Plans be prepared by a body independent from the operator of forestry, with input -*

I stress "input" -

*- from the operator of forestry and other groups as appropriate.*

The minister's response was -

Legislation separating forest management functions between a Conservation Commission and a Forest Products Commission is currently before Parliament. Under this Bill, the Conservation Commission would prepare Management Plans, with input from the Forest Products Commission.

In saying that, the minister neglected to point out the huge degree of control that the Minister for Forest Products would have in the formulation of forest management plans. I am sure that will be one of the major sticking points when we come to debate that Bill. Recommendation 5 reads -

*That the allocation system improve access for small scale users of forest products.*

This was a question of equity. We found that contracts were being tied up by major operators, such as Bunnings. We now see that there has not been a significant shift back to small-scale users, who have been shown to be far greater employers in proportion to wood production and far less wasteful with the forest resource.

Hon MARK NEVILL: The next matter that I wanted to go on to was a chapter in the committee's report which is devoted to logging in salt-risk zones in the forest between 1988 and 1992. I draw members' attention to the questions in section 9 of the document that has been tabled. They are a series of questions that the chairperson was to ask on this issue. If members look at those many questions, there is no doubt in my mind that they are inquisitorial and designed to trap the witness. The intent of the chairperson's questions, the theme of which is followed in the transcript, was to prove that CALM had breached ministerial conditions and therefore carried out an illegal act by failing to carry out forest management treatments according to an Environmental Protection Authority directive. In essence, what is alleged is that CALM had logged more intently than was required under the EPA conditions set when the woodchip licence was issued in 1988. If members read the committee's interrogation of Dr Shea, they will see from the evidence that the logging prescriptions followed between 1988 and 1992 were exactly the same as those in place at the time ministerial conditions were set in 1988. What is more telling is that these same silvicultural prescriptions have applied from 1992 until today. During that period the EPA on at least two separate occasions has comprehensively reviewed forest management practices and not made any adverse comment in its report on those practices. Page 145 of the report reads -

The Committee is pleased to comment that by 1998 when these Conditions were reviewed through a progress report into compliance with the FMP, the EPA Advisory Committee stated CALM had substantially complied with these Conditions.

So after endless hours of committee deliberations, as Hon Greg Smith correctly pointed out in his minority report, we have here an attempt to incriminate the executive director of CALM, and again that failed dismally. The committee seems to reject the evidence that was placed before it, in keeping with its pre-ordained agenda, and it makes adverse findings against CALM even though the evidence is to the contrary.

Hon GREG SMITH: Before I ran out of time, I mentioned the precautionary principle. Hon Mark Nevill has covered that point to some extent. One of the frustrating things about the precautionary principle and ecologically sustainable forest management is that they are almost abstract concepts because there is no real interpretation of what they mean. The executive director of CALM had difficulty in the interpretation of the precautionary principle term.

Hon Norm Kelly: He agreed to the use of the term.

Hon GREG SMITH: Yes, he agreed to the use of it, but the interpretation of what is a precautionary principle is very different depending on how people want to look at it. The way the environmental movement has used it would be the equivalent of the Police Service's setting Multanova cameras at 61 kilometres an hour. Technically speaking, if a driver is doing 61 kilometres an hour in a 60 kilometre an hour zone, he is over the speed limit. It means that if something could possibly happen and that someone suggests it might happen, that person does not need any scientific evidence for the basis of the suggestion, but the proponents or whoever might carry out something must prove factually and scientifically that it will not happen. Therefore, on one side of the debate, with the precautionary principle people need only suggest that

something might happen with no scientific basis or evidence to prove that it will, but for the other side of the debate to address the precautionary principle, it is required to come up with scientific evidence and factual information to prove that it will not happen.

Hon Norm Kelly: That is when the precautionary approach is used and not the principle. That was not in the ministerial condition.

Hon GREG SMITH: Yes, but the problem with the precautionary approach is how it is interpreted. That is the whole crux of the argument.

Debate adjourned, pursuant to standing orders.

*Sitting suspended from 1.00 to 2.00 pm*

## **ESTIMATES OF REVENUE AND EXPENDITURE**

### *Tabling of Budget Papers*

Hon Peter Foss (Attorney General) tabled the budget papers.

[See paper No 950.]

### *Consideration of Tabled Paper*

**HON PETER FOSS** (East Metropolitan - Attorney General) [2.01 pm]: I move -

That pursuant to Standing Order No 49(c), the Council take note of tabled paper No 950 (Consolidated Fund Estimates 2000-01), laid upon the Table of the House on 11 May 2000.

This motion enables the Legislative Council to examine and debate the budget papers associated with the appropriations Bills which are now before the Legislative Assembly. The Treasurer's budget speech accompanying the budget papers provides the economic and financial framework of the 2000-01 budget. I do not propose to cover that ground in detail again.

Western Australia's first budget of the twenty-first century can best be summarised in two words - stability and growth. It is a responsible plan, not for the next six months, but for the next four years. It is a plan that ensures increased service delivery in key social areas with an ongoing priority to education, health, disability services and law and order. At the same time, we provide the climate and unrivalled infrastructure development for continuing strong economic growth. There are no increases in state taxes in this budget.

Using the Australian Bureau of Statistics uniform national measures, there is an operating surplus for the general government sector of \$42m and for the total public sector of \$304m. There is \$8.3b funded by way of appropriations. The total public sector capital works expenditure will be a record \$3.3b.

In framing the 2000-01 budget, 10 fundamental principles were considered -

- (1) strong economic growth;
- (2) strong employment growth;
- (3) the delivery of quality health, education and other social services;
- (4) a safer Western Australia;
- (5) the Government operating in surplus;
- (6) infrastructure development for future growth;
- (7) an online strategy to keep Western Australia at the forefront of the technology revolution;
- (8) early intervention strategies to tackle community issues;
- (9) protection of the natural environment; and
- (10) strong regional development.

Health: The coalition Government has spent more per capita on health than any other Australian State. The allocation of \$1.9b this year is approximately a quarter of the entire budget and \$86m more than last year. In 2000-01, the coalition Government will allocate recurrent funding of \$584m more than the last Labor Health budget. That is an increase of 48 per cent. We are taking treatment to the patient rather than the patient having to travel long distances to centralised facilities. That is why, under this Government, three new hospitals have been built, with a fourth under construction. Our health infrastructure will be further enhanced in 2000-01 with expenditure of \$94m for capital works. In this budget, \$25m has been provided to complete that fourth new hospital, the 190-bed Armadale-Kelmscott Memorial Hospital. This will become operational next year at a total cost of \$48m and joins Joondalup, Peel and Bunbury as the most modern hospitals in Australia. A major success story is the Central Wait List Bureau which has reduced its elective surgery lists to their lowest levels in nearly five years, and by 3 260 in the last year.

In this budget, we will -

provide \$7.6m to expand the oral health program so that publicly-subsidised dentistry will be available to those holding health care cards. Visiting dental services will also be expanded for people in aged care facilities with rural and remote areas to also benefit from the program. The Government has allocated \$19m to join with the University of Western Australia in constructing a purpose-built oral health centre, adjacent to the QE II site, with \$10m provided in this budget;

spend \$10m on major imaging and diagnostic equipment;

expand the statewide renal dialysis program, which currently operates in Bunbury, Armadale, Albany, Joondalup, Peel, Geraldton and Kalgoorlie, to Midland, Melville, Port Hedland and Broome; and

provide \$2m to support the Western Australian Institute of Medical Research, which specialises in research into adult diseases.

Education: The \$1.47b allocation for 2000-01 is \$54m more than the estimated out-turn this year. Recurrent expenditure increases by 5.8 per cent. A separate total of \$157.5m will go to non-government schools. Early childhood education and technology are priority areas. From 1995 to 2002, this Government has and will continue to allocate \$251m for new and refurbished facilities for early childhood education and for almost 800 additional teachers and assistants. In this budget, another \$39.8m goes into this vital area. In 2001, the kindergarten program will expand from two to four half-day sessions a week. To assist teachers to implement a new modern curriculum, \$2.5m has been provided for professional development. Capital works expenditure in 2000-01 will be \$131m. Of this -

\$17.7m will be used to complete five new primary schools in Bunbury, East Eaton, Florida, North Quinns and Swanbourne and the replacement of the Kimberley School of the Air;

almost \$31m goes to complete a substantial enhancement and reorganisation of secondary schooling in the Perth metropolitan and Peel areas. The key elements include -

\$10.1m to Shenton College; \$8.9m to the Sevenoaks Senior College and Middle School Campus at Cannington; \$4.8m for the Halls Head Community College; \$4.3m to Ballajura Community College; and

Mandurah Senior College, collocated with the South Metropolitan College of TAFE, will receive \$7m.

All of these new state-of-the-art schools will open in 2001.

The first Aboriginal school: A highlight of this year's allocation is funding for Perth's first Aboriginal government school - the Community College for Aboriginal Education in Midland. The school will open next year for students from kindergarten to Year 3.

Police: A total of \$440.4m has been allocated to the Police Service. The information technology component will make \$14.3m available for the next phase of the Delta communications and technology plan. In addition, \$33m has been provided for the new state-of-the-art Police Academy at Joondalup. A further \$2.2m provided in 2001-02 will complete the complex. There has been \$10.5m provided for initial construction of the new \$42m operational support facility at the old Midland railway workshops.

Justice: Recurrent funding for the Ministry of Justice has been increased to \$359m. This is 10.6 per cent higher than the estimated out-turn for this year. In this budget -

\$21.4m will be allocated to complete the Acacia Prison at Wooroloo in 2000-01. This will be the State's first privately-operated prison with an additional 750 medium-security beds;

a \$14.8m upgrade of the Bandyup Women's Prison will continue;

the provision of \$8.8m over four years will enable the expansion of mobile work camps;

there is \$14.6m for criminal injury compensation payments and \$1.7m for increased costs to successful defendants;

funding of \$2.2m over the next four years will result in a 15 per cent increase in sitting times for criminal hearings in the District Court; and

the independent office of a statutory Inspector of Custodial Services will be established which will report to Parliament on any custodial-related matter that is in the public interest.

There will be more funding for the young Aboriginal mentor program and the Aboriginal cyclic offending project which address the causes of crime.

Disability services: An additional \$34.5m will be spent over the next five years for the Making A Difference program. Another 6 700 people with disabilities and their carers will be assisted.

A commitment to infrastructure: In this budget, \$61.3m will facilitate substantial progress on the \$159m extension of the Kwinana Freeway to Safety Bay and the link into Mandurah Road. This work will include fly-overs to replace five existing controlled intersections on the freeway. Work will begin on the Lake Clifton section of the Perth to Bunbury Highway and



the Busselton by-pass road will be near completion after an injection of \$7m. In the regions, there is the \$85m construction of the Mt Magnet-Sandstone-Agnew Road, the \$19m outback highway from Laverton to Docker River and substantial upgrades of major arterial routes in rural areas such as the Albany and South Western Highways.

Western Power will spend \$276m on its capital program in 2000-01, including more than \$150m for expansion and improvements to the State's transmission system and services outside the south west grid. Westrail's capital expenditure of \$184m includes \$87m dedicated to track improvements and \$36.8m for locomotives and rolling stock. Our public transport infrastructure will be boosted this year by the acquisition of 123 new buses at a cost of \$35m. We will buy 800 new buses over 10 years.

In this budget, \$203m has been provided to support metropolitan rail and bus services. The south west metropolitan railway to Rockingham and Mandurah and the expansion of the northern suburban rail system is a government priority. There is \$9.3m allocated for planning and preliminary works.

The Water Corporation's capital program in 2000-01 amounts to \$473m. When the new \$275m Stirling-Harvey water scheme is commissioned next year and the Neerabup and Lexia ground water projects are in full production, our water supplies will increase by 25 per cent.

The story on housing is quite remarkable. In seven years we have boosted the State's housing assets by almost \$4b. New Living is one of the biggest urban renewal programs in Australian history and has converted old, run-down areas into rejuvenated, award-winning housing precincts. The Government's annual loan programs, managed through Keystart, have more than doubled since 1993. Demand is expected to increase rapidly when the new \$7 000 first home owners scheme becomes operational on 1 July. It is expected that there will be 16 000 grants in the first year.

Online strategy: We are now in the middle of a revolution in information technology; the Internet, online and the web are everyday terms. It is sometimes known as "surfin in the schools" or the "computer curriculum", "techno tots" or "electronic chalk and talk". In medicine, it is "downloading the doctor" or "dial-up diagnosis". Within five years the Government wants all Western Australians to be able to participate in this revolution if they so desire, regardless of their financial position or geographic location. Throughout this budget, across every portfolio, there is a common thread - implementing information technology for agencies, businesses and homes to go online. The Office of Information and Communications will soon launch the Single Doorway site. It will be a one-stop seamless service so that everyone, no matter where they are in the State, can access the Government, even to pay their bills.

The Ministry of Housing, through joint ventures, is already developing what we call smart towns. The Ellenbrook development is a pilot scheme with intranet facilities. Each household can receive an electronic service including a community notebook for schools to send messages to parents. Clarkson and Butler in the metropolitan area, and Seacrest in south Geraldton, will have the same facilities. The additional \$100m program for school computers continues to be implemented with a further \$25m provided in this budget. Another initiative is the allocation of an additional \$1.5m over four years to equip 250 teachers in rural areas with laptop computers and for a two-year training program.

In the rural and remote regions we are spending more than \$6m over four years to build new telecentres and to enhance existing ones. People of all ages can access the new technology at the 76 telecentres from Kununurra to Hopetoun to Onslow. In the next 12 months the network will be expanded to 90 centres. In addition, this budget provides for -

the extension of the statewide telecommunications enhancement program to enable schools to have better access to online and other services;

satellite services to be extended to regional areas with 35 new installations. The Department of Commerce and Trade is developing new online services such as videoconferencing for telehealth, telejustice and telelearning. The department will assist regional community groups to develop and manage web sites;

the new tourism network will open up our destinations to the world. This marketing platform means potential travellers can tap into any of our locations, whether it be Northcliffe in the south or Broome in the north;

Agriculture Western Australia is developing a customer-focused online system for the worldwide promotion of our primary products;

digital technology in the resources industry, including a 1:500 000 scale geological map of Western Australia in digital format and the use of electronic mapping and title information on mining tenements;

new online land titling services and other land administration initiatives, including access to satellite imagery for all areas of the State and high-resolution aerial photographs of the metropolitan area;

a new automated system in the Library and Information Service of Western Australia, including worldwide web access;

in the courts, we will spend \$4m to continue a sophisticated case management system called "Genysis";

in the wheatbelt we are giving people a hands-on opportunity to learn cutting edge technology with the mobile facility called "Experience IT"; and,

ethnic communities will benefit through an online service set up with the help of the Office of Citizenship and Multicultural Interests.

Early intervention strategies to tackle community issues: A major new community issues program is Building Blocks, which focuses on child development in the first two years of life. Every mother in the State with a newborn baby will be offered an initial home visit and families requiring additional visits and support will receive it. A child's early years are critical in the formation of intelligence, personality and social behaviour. The effects of early neglect can be cumulative. Research shows that significant social and economic benefits can flow from investment in antenatal, early childhood development and family support programs. The Government has allocated \$9m over the next four years to make Building Blocks operational and effective.

Family and Children's Services will receive \$145.3m in this budget to continue its care and family support programs. Additional funding of \$2.5m in 2000-01 and \$3m in each of the forward estimates will meet the department's increased obligations to look after children placed in care and for family support. Another \$3.9m will be spent next year on the construction of long day care centres.

This budget includes \$5.5m over the next four years to establish a drug court. This special jurisdiction will direct more offenders into treatment and result in a safer community. The sale of solvents by retailers to children who they suspect of engaging in sniffing will be outlawed. New laws could result in the shopkeeper being jailed or fined. The Drug Abuse Strategy Office will continue with its series of other programs aimed at combating this grave social problem.

As an intervention strategy, the Cadet Corps has been a great success with 150 units and 7 000 cadets. Ten more units with 500 cadets will be commissioned before the end of this financial year, and in this budget period we expect another 20 new units and 1 600 new cadets.

Last week, the Minister for Family and Children's Services told the Assembly that we will find shelter for homeless children. We are also keen to win a share of the \$15m the Commonwealth has dedicated to assisting homeless children. Our primary aim in this intervention strategy is to get the children back into the family unit.

We are spending an additional \$1.8m over four years to employ more specialists to work in our language development centres. Another 100 children with speech and language difficulties will benefit from this funding.

Aboriginal affairs: An essential part of the Aboriginal reconciliation process is to ensure the effectiveness of a wide range of programs with education, health and employment being important components. This budget includes -

- an additional \$20.5m over four years for the Ministry of Housing to provide essential services;
- funding to complete the expansion of the Aboriginal regional office network and community patrols initiative;
- \$2.6m for the regional office expansion program to enable closer contact with, and resolution of, issues facing Aboriginal people;
- continued funding for the Aboriginal Justice Council and the Commission of Elders;
- \$200 000 for urgent Aboriginal heritage site protection and \$100 000 for anthropological services; and,
- funding for the Aboriginal communities wardens' scheme has been doubled to \$500 000.

Protection of the natural environment: Agriculture Western Australia, the Department of Conservation and Land Management and other agencies are combining in the war against salinity, which is the greatest environmental issue this State needs to address. This year, \$43.6m has been spent on the cross-agency program. Science and the best skills available in soil technology are being harnessed in the salinity campaign. Through the Land Monitor program, maps predicting salinity are being developed and distributed to landowners in danger areas. Advice and management options are also provided.

Tree planting, both for plantation timber and salinity control, is vital in reversing the erosion. The planting of 41 million seedlings by CALM this winter equates to a tree being planted every second of every hour this year. The Government is focusing to an increasing extent on the need to preserve all of our natural resources and, in particular, those supplying industry.

Some \$97m has been allocated over the next four years to address a number of conservation issues, including the addition of 15 new national parks and three conservation parks. In this budget we have allocated \$1.4m, increasing to \$2.05m a year from 2002-03 onwards, to expand our marine parks, conserve important wetlands in the south west and maintain pastoral leases under the Gascoyne Murchison strategy. The preparation and development of the Perth air quality management plan will be completed in 2000-01. Additional funding of \$3.5m has been allocated over the forward estimates. The Government has committed a total of \$7.4m to protect Bunbury's back beach from erosion and \$1m of state-commonwealth funding to continue the Coastwest-Coastcare grants scheme.

Over the next four years, \$4.15m has been allocated for implementation of the Green Power Policy. This is a mix of initiatives: Customers can pay extra for green power supplies; there is support for private sector development of renewable energy; and an energy-efficient campaign.

Strong regional development: The Government recognises that vibrant regional economies are crucial to Western Australia's continued development. Our efforts in enhancing the economic potential of the regions include \$4.8m this year for the development of stage 2 of the Ord irrigation scheme. This is expected to bring major economic and social benefits to the east Kimberley, including 550 additional new permanent jobs. We will expand the Kemerton Industrial Park at

Bunbury to meet the needs of industry in the south west region for the next half-century. It is a program which will create jobs and other significant flow-on effects. In this budget, \$2m will be allocated for the acquisition of the necessary land at Kemerton; and \$2.8m will support the State's network of 37 business enterprise centres, 27 of which are in the regions. In addition to the online projects I have already mentioned, \$500 000 has been allocated in this budget for satellite phone handsets to assist people living outside the coverage of normal land-based mobile services.

Agriculture Western Australia will be funded to the tune of \$102.2m in 2000-01, an increase of \$7.9m, or 8.3 per cent more than in 1999-2000. This budget reflects the Government's continued support for the dairy industry. It includes the first payments of the proposed \$27m state dairy assistance package to assist the industry in adjusting to a deregulated market.

Minerals and energy: Government recognises the importance of the geological survey program in attracting exploration to Western Australia. Total funding of \$14.9m will be provided in 2000-01, including \$3.5m for petroleum exploration initiatives. Mining companies will be waiting with some hope for greater clarity of native title. The Government has committed \$1.6m this financial year and will commit \$4.8m in the following years for the new State Native Title Commission.

Tourism: Tourism continues its exciting growth pattern and now employs more than 8 per cent of the State's work force, or between 72 000 and 76 000 people. The preferred provider for the Perth Convention and Exhibition Centre will be announced in the near future. It is estimated that in its first 10 years, the centre will generate between \$1.5b and \$2b of economic benefit to the State, including the regional areas. As part of the convention centre tender, the Government has made mandatory the inclusion of a multipurpose stadium for soccer and rugby. The centre will provide 2 000 jobs during construction and 600 when it is operational.

Marine industry: Other examples of diversifying our economy are the marine industry technology park and the Jervoise Bay infrastructure enhancement project. In this budget \$47.6m has been earmarked to progress the \$159m Jervoise Bay development and \$20.3m for the technology park at Henderson. Our high-speed lightweight ferry industry is a brilliant success and the Government supports it.

Forest products: The Forest Products Commission, the Conservation Commission and the Department of Conservation will be formed to provide the basis for sustainable forest management. They will assist the industry to produce higher value-added products from greatly reduced native forest logging levels. To assist with this transition -

more than \$5m in support is provided over 10 years for the re-opening of the Whittakers sawmill at Greenbushes which will eventually create 113 jobs;

there will be \$1.58m in redundancy and termination payments to timber industry staff;

the \$5.8m expansion of a maritime pine nursery will be completed;

in Manjimup, \$1.145m is provided in financial assistance over two years to re-establish a wholesale export fruit and vegetable facility and \$400 000 to re-establish a light engineering workshop following the closure of the Bunnings engineering works;

special funding will identify the best locations in the south west and/or the great southern region for new wood processing industries; and

\$1m is provided to create a scenic forest drive linking several major tourism attractions in the Pemberton area.

Conclusion: This budget achieves the right balance between providing quality services today at the same time as building infrastructure for future growth. It simultaneously positions the State to take advantage of economic upswings and insulates it against more difficult times.

Debate adjourned, on motion by Hon Bob Thomas.

## **STANDING ORDERS COMMITTEE**

### *Report on Standing Orders Nos 134 and 155*

**THE PRESIDENT** (Hon George Cash): I table a report of the Standing Orders Committee on Standing Order No 155, a procedure for raising matters of privilege, and Standing Order No 134, providing for a right of reply.

[See paper No 951.]

## **PARLIAMENTARY SUPERANNUATION LEGISLATION AMENDMENT BILL 1999**

### *Ruling by President*

**THE PRESIDENT** (Hon George Cash): Last Tuesday I declined to put the question for the first reading of the Parliamentary Superannuation Legislation Amendment Bill 1999 to give me an opportunity to consider whether the Bill's provisions were mutually relevant or at least not internally inconsistent with each other. The reason for my caution is Standing Order No 222 which reads -

Such matters as have no proper relation to each other shall not be included in one and the same Bill.

The title of the Bill received from the Assembly states an intention to amend three Acts of Parliament and make other

related amendments. With one exception, every clause in the Bill makes changes or facilitates the introduction of those changes to the regime creating and governing a superannuation and pension scheme for members of this Parliament.

The exception is clause 20, which is included in part 3 of the Bill headed "Salaries and Allowances Act 1975 amended." It is true that clause 20 amends the 1975 Act, but not as the remainder of part 3 provisions do, in consequence of the changes made by other provisions of the Bill to the existing parliamentary superannuation scheme.

Clause 20 amends section 6(1)(b) of the parent 1975 Act by extending the tribunal's powers to make determinations as to the various types of remuneration that might be paid to members at any parliamentary committee and not, as is presently the case, at select committees only. I cannot see any nexus between clause 20 and the other provisions of the Bill. The former deals with the power to determine matters that have nothing whatsoever to do with members' superannuation entitlements, whether actual or prospective.

Strictly speaking, I should order that the Bill be withdrawn. However, there is a precedent in the House of Commons where the Speaker has permitted a Bill to proceed on the clear understanding that the offending clause will be struck out during the committee stage. I am prepared to adopt that course of action here if the minister will give me an undertaking that clause 20 will be struck out in committee.

Hon PETER FOSS: I give you the undertaking, Mr President, to move to strike out that clause during committee.

*Receipt and First Reading*

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

**PROSTITUTION BILL 1999**

*Assembly's Message*

Message from the Assembly notifying that it had agreed to amendments Nos 1, 2, 9, 12, 22, 26 and 29; had disagreed to amendments Nos 3, 4, 7, 8, 11, 15, 17 to 21, 24, 25 and 27; and had disagreed to and substituted new amendments for amendments Nos 10, 13, 16 and 23, as set forth in the schedule annexed, and agreed to amendments Nos 5, 6, 14, 28 and 30 with further amendments as set forth in the schedule annexed, now further considered.

*Committee*

Resumed from 10 May. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Progress was reported after Hon Peter Foss had moved the following -

That amendments Nos 15 and 17 to 21 made by the Council be not insisted on.

Hon NORM KELLY: I want to raise a number of points with regard to the proposed police powers. The Democrats have a major concern that with the acknowledgment by the Government and the Police Service that the containment policy has failed, and with the acknowledgment by the Commissioner of Police that there is an element of corruption in the Police Service, minor as it may be, it is dangerous to increase police powers, particularly with regard to the nature of the offences we are considering. We believe that while offences such as procuring children to work in the prostitution industry are serious, these offences and problems can best be addressed by proper regulation of the industry. That will provide a better framework and make the policing of such a framework far more efficient than the messy and untidy way in which the Government is attempting to deal with the matter in this Bill.

We are being asked not to insist on amendment No 17, which was to delete clause 29. Subclause (2) of clause 29 states -

A warrant under subsection (1) authorizes any police officer at any time, with such assistance as a police officer thinks necessary and with such force as is reasonably necessary -

- (a) to enter the place at any time;
- (b) to search the place . . .

It is poor drafting to include the words "at any time" in both places, and it seems to be tautology. The inclusion of this clause will mean that a justice will have no discretion to stipulate a limited number of hours in which a warrant may be effected, and that is of major concern to the Democrats.

Hon PETER FOSS: We are discussing a message to the Legislative Assembly. That message states that we do not insist on an amendment to a clause that we have already discussed. We are not debating the Bill again. We are not having the second reading or committee stage again. We are dealing with whether we should insist on an amendment. I do not intend to go through a committee stage discussion of clauses which have been dealt with previously, but I am happy to discuss the intent of any new clauses. These matters were dealt with when the Bill first went through this place. We should now be dealing with why we should or should not insist on an amendment. I do not intend to engage in discussion on this clause, because I believe the member is trying to rehash the whole Bill.

Hon NORM KELLY: I am absolutely not trying to do that. This Bill was debated in one day late last year.

Hon N.D. Griffiths: Not in this House. This Bill took a week.

Hon NORM KELLY: In the committee stage, clause 6 and the remaining clauses of the Bill were debated in one day. I want to clarify these issues, because some members obviously do not understand what these police powers mean. The Attorney General may not know, but I would like to be informed whether this clause means that there will be no discretion for a justice to restrict the times for which a warrant may be executed.

Hon Peter Foss: I repeat: I will not go through the committee stage again. We are dealing with whether to insist or not insist on an amendment. If Norm Kelly wants to talk about this at great length, that is fine, but I will not.

Hon NORM KELLY: That highlights the problem we have with this Bill. Because of this cosy deal that the Government has done with the ALP -

Hon Peter Foss: It is a matter of your wanting to have the second reading and committee stage again.

Hon NORM KELLY: No. I am limiting the debate to these points of contention. I am raising issues that have been raised with me since the committee debate last year, because people who are involved in the industry are concerned about how these police powers will be used. If a warrant is issued by a justice, discretion is usually allowed as to when that warrant can be exercised. I am asking a simple question.

Hon Peter Foss: And I will not answer it. Read the Bill.

Hon NORM KELLY: I have read the Bill - probably a lot more than the Attorney has.

Hon Peter Foss: I just will not deal with it.

Hon NORM KELLY: Another problem that we have with clause 29 is that the warrant will be valid for 30 days and will allow the police to enter premises at any time of the day or night, with no limitations. It is a big imposition on civil liberties to give the police those powers and at the same time to not give a justice discretion as to how those powers can be used if a warrant is granted. The police are engaged in combatting criminal activities, and most of the time they do that in the best interests of the State, but at times they do it in a corrupt way.

Amendment No 19 is to delete clause 31, which deals with searching a person. Subclause (3) of clause 31 relates to a search of the body cavities of a person. In what circumstances does the Attorney believe it will be necessary to conduct such a search in light of the offences that are contained in this Bill?

Hon PETER FOSS: I repeat: We are not dealing with the committee stage; we are deciding whether we should insist on our amendment. I do not intend to answer any questions of that nature.

Hon NORM KELLY: The other night I referred to the Australian Labor Party being struck dumb, but it seems that today we have dumb and dumber here.

Hon Peter Foss: What you are saying is irrelevant.

Hon NORM KELLY: It is not irrelevant. The Attorney General is willing to put through this legislation, which is abhorrent to the majority of people who -

Hon Peter Foss: These questions should have been asked during the committee stage.

Hon NORM KELLY: I am seeking further clarification. Similar questions were asked during the committee stage.

Hon Peter Foss: You are having a second go.

Hon NORM KELLY: After those questions were asked in committee stage, this Chamber determined to delete that clause. We are now being asked to do a 180-degree turn and to put this clause back into the Bill. Previously when similar questions were asked, all the Government said was that the reason for doing a body cavity search would possibly be to find drugs. The ability of the police to conduct such searches to find drugs is already covered under the Misuse of Drugs Act; those powers to conduct searches for those purposes are already in place. It is a simple question of why there is a need to have a provision for body cavity searches in this legislation.

Hon MARK NEVILL: It is pretty poor form for the Attorney General to sit there with a stony face. He should either put up or shut up. It seems he has nothing to put up so he has decided to shut up. What Hon Norm Kelly said is correct about this power to cavity-search prostitutes. Why would we want to include that? There is a power to cavity-search people under the Misuse of Drugs Act, as Hon Norm Kelly suggested. How does one cavity-search women at Bandyup Women's Prison? We do not need this sort of legislation to do that; the power already exists. It is an absolute over-use of that power in this situation, and it is offensive that it should be in a Bill such as this; the power already exists somewhere else. Why pick on streetwalkers who, in the scale of criminality, are on the bottom rung? We have these sorts of draconian powers in this Bill, yet we already have powers to search under the Misuse of Drugs Act if someone is suspected of carrying drugs in a body cavity. It seems to be a wanton attempt, I suppose, by the police to have the maximum power at their disposal at every opportunity. This Government is like the genie in the bottle and is prepared to grant them whatever wish they want. This is a wish-list which the Government has granted in full, and unfortunately the Labor Opposition is doing the same. These powers are not necessary and the amendments should be insisted upon. The minister should make even a rudimentary attempt to answer the question asked by Hon Norm Kelly; otherwise it is just an indication that he is in a pretty indefensible position, and the less he talks about this, the less he is embarrassed by the fact that he has "QC" after his name.

Hon PETER FOSS: I will engage in some repetition. The reason I am not saying anything is that notwithstanding that both

Hon Mark Nevill and Hon Norm Kelly seem determined that this debate should go on forever, the fact is that the questions they raise were legitimately able to be raised, and should have been raised, during the committee stage, and are not relevant to what we are dealing with now. I do not intend to engage in the same irrelevancy as them. I have now said it three times. If the message has not got through, that is too bad. I am afraid that I will now be even more rude because I will not even stand up to tell them why I am not answering.

Hon GIZ WATSON: The Greens (WA) also do not support this motion. As has been pointed out by Hon Norm Kelly, this Chamber debated these clauses and voted to delete them. Our position has not changed. We consider that the motion to re-insert these police powers is unnecessary. We concur that the police have existing powers that they can adequately use. Therefore, we will not support these amendments.

Hon NORM KELLY: At least the Government is being consistent in saying that it wishes to have this clause included in the Bill. Of course, the Australian Labor Party originally decided that this clause should be in the Bill when the Bill was first in the other place. Then it saw the error of its ways and supported the deletion of the clause. Therefore, it may be better for me to address my comments to Hon Nick Griffiths, who is representing the ALP on this Bill, about why the ALP has now decided to do a 180-degree turn and revert to the original position of demanding that the clause be included, because I think the arguments put by the Labor Party previously for the deletion of the clause were valid.

Hon N.D. Griffiths: I hope you are addressing your comments to the Chair and not to me.

Hon Peter Foss: That is what you should do.

Hon NORM KELLY: That is right.

That would give this House a better understanding of why the ALP has turned turkey on this and is now demanding the re-insertion of this clause. Clause 31(6) states -

A police officer may use any force that is reasonably necessary, and may call on any assistance necessary, in order to perform a function under this section.

The situation could be that a couple of workers are at a nightclub and the police could ask some of the security personnel at that nightclub to give them assistance to restrain somebody so that a body search could be conducted. That is an abominable power to place in the hands of the police for these types of offences. It is a pity that neither the Government nor the ALP can come up with a justifiable defence or reason for supporting the inclusion of those powers. I would like a response from either the ALP or the Government on that matter.

Hon MARK NEVILL: The powers in clause 29, "Search and seizure with warrant" - to which one of the amendments upon which we are insisting relates - allow a police officer to enter premises with such force as is reasonably necessary to search that place, to stop, detain and search persons, and to seize anything that the officer suspects will afford evidence of the commission of an offence. Clause 10, "promoting employment in prostitution industry", is still in the Bill. By insisting that clause 29 remain in the Bill, does it follow that if anyone advertises in any way or form, or publishes anything seeking employment as, or to act as, a prostitute, or in any other capacity in any business involving prostitution, that power will be enforced rigorously? I presume publishing covers newspapers and electronic means, even on the Internet, and I want the minister to outline his understanding of that matter and whether it is covered by the Interpretation Act

Hon PETER FOSS: The question is not one for interpretation; it is intended that the offence be enforced.

Hon MARK NEVILL: Therefore, surely the Police Service should have raided *The West Australian* the day after this -

Hon Peter Foss: I expect it to stop publishing such advertisements.

Hon MARK NEVILL: The Attorney should let me finish. I expect the Police Service to raid *The West Australian* the day after it publishes any advertisements breaching section 10, which relates to people offering employment to others as, or to act as, prostitutes and the various combinations and permutations of that. It should also apply to anyone advertising on web sites.

Hon Peter Foss: Web sites would be more difficult to raid.

Hon MARK NEVILL: This is the Government's legislation. It is unworkable and the abuse of it will become unmanageable. Anyone advertising, even on a private web site, material that could be seen to offend section 10, will be raided. Police officers will be able to enter a property, search it and stop and detain anyone in -

Hon Peter Foss: It is a bizarre connection. The legislation does not say that a raid must take place. If it is needed, it can happen.

Hon MARK NEVILL: If these powers are on the statute books, we must anticipate that they may be enforced to their fullest capacity. We have a range of police officers from wowsers to the broad minded. Some will apply this law to the fullest and some will not.

Hon Peter Foss: I hope this is enforced.

Hon MARK NEVILL: We must expect that the law will be enforced to its full effect.

Hon Peter Foss: Why not?

Hon NORM KELLY: Amendment 20 relates to our earlier deletion of clause 32 of the Bill. I have a concern about this clause being reinserted. It relates to retaining something seized but not forfeited. Once again, clause 32(2) provides that police officers may retain anything to which this clause applies if it is required for the investigation of an offence or the prosecution of someone for an offence. Even though no charges have been laid, police officers have the ability to retain property for further investigation and to see whether a charge is laid. Is that the case? Can that property be retained only if a charge is laid?

The CHAIRMAN: The question is that the motion be agreed to.

Hon NORM KELLY: I was hoping that now the Attorney General has some advisers with him we would get some smart answers.

*Point of Order*

Hon PETER FOSS: I do not think it is appropriate for such remarks to be made. They are out of order. If the member wishes to address remarks to the Chair, he can do so. He should not address remarks to me and, more particularly, to the advisers.

The CHAIRMAN: Hon Norm Kelly will address the Chair.

*Debate Resumed*

Hon NORM KELLY: I am asking as a point of clarification whether police officers are able to retain property in cases in which it has been seized but when no charge has been laid. It is a perfectly legitimate question. I hope we have in this Chamber the expertise to answer that question. If not, my concerns are even greater.

Hon PETER FOSS: Despite having said I will not respond, I do know the answer. I have known the answer to every question the member has asked. The problem is that it is not now the appropriate time for the member to ask them. I will not be answering questions that would have been more appropriately asked at the time this Bill passed through the committee stage. We are dealing with a simple question: Are we to insist on the amendment? I do not intend to do a rerun of the committee stage.

Hon NORM KELLY: When this Bill went through the committee stage, it was appropriate to ask questions and receive answers to the point at which the Committee deemed it was time to put the question. That was done and the Committee decided to remove this clause from the Bill. Now that we are considering the reinsertion of the clause, it is appropriate to investigate further what is in it. That is why I again ask a simple but entirely relevant question. My concern is that police officers can seize and retain goods without laying a charge. That is what I want clarified.

The CHAIRMAN: The question is that the motion be agreed to.

Hon NORM KELLY: I do not know whether we are getting to dumb, dumber and dumbest at this stage.

Hon N.D. Griffiths: You are the master of self-description.

Hon NORM KELLY: It is disappointing that, given the legal expertise in the Chamber - I do not have it - we cannot get a straight answer to such a simple question.

Hon Peter Foss: It is a very simple question.

Hon Derrick Tomlinson: Learn something about the relationship between prostitution and organised crime and you will answer your own question, my son.

Hon NORM KELLY: We are organising a crime with the passing of this Bill.

Hon Derrick Tomlinson: You do not have to do that; just do some work outside this place.

The CHAIRMAN: There will not be an interchange between the speaker and the interjector.

Hon NORM KELLY: I refer to amendment 21, which relates to the Police Commissioner's being able to delegate a function. To what level can such a function be delegated? This relates to the work of undercover officers. It is a simple question.

Hon PETER FOSS: It is interesting that the member keeps impugning my motives and being rude about my behaviour. I will now do the same thing to him. I have made my attitude perfectly clear. I must conclude that his persistence is not because he has any real interest in the legislation but purely because he wishes to delay the process. I am sick of his impugning my motives when he is clearly filibustering.

Hon MARK NEVILL: I make no apology for delaying this legislation. To suggest that members opposed to it have no interest in it is nonsense. I do not know how the Attorney can suggest that. I assure him that people who are opposed to this Bill are opposed to the unnecessary police powers that it still contains. We have removed many of the health measures. I congratulate the Government for doing that; they are properly matters dealt with in the Health Act. However, the members opposing this Bill and properly trying to delay it or to defeat it do not agree that police officers should have the power to search streetwalkers, to stop cars and search them without a warrant or to cavity-search streetwalkers. This Bill contains many draconian powers that in many cases are not available to be used against the worst criminals in the land. Why put

them in a Bill to address streetwalking? We can address this problem without bringing imprisonment into the equation simply by using detention in custody and diverting these people to drug rehabilitation programs. They are on the streets and not in bawdy houses or brothels because they cannot hold down jobs in those facilities. They cannot hold down jobs because they have chronic drug problems. This Bill does nothing to address their chronic drug problems. It provides terms of imprisonment for all sorts of offences which will add to the State's ridiculous imprisonment rate. The people opposing this Bill have an interest in it; and it is not reasonable for the Attorney General to suggest they have not. It is a fair charge to say they are delaying the Bill.

Hon PETER FOSS: That is what I said. I understand Hon Mark Nevill's point of view, but we are getting to the stage where it is becoming tedious and repetitive. Hon Norm Kelly has a similar interest in that he wishes to defeat or delay the Bill. Both Hon Mark Nevill and Hon Norm Kelly are seeking to do that. Hon Norm Kelly is determined to rerun arguments that should have been run during the second reading stage. As I have said to him, I do not intend to join him in that irrelevant escapade. I know what he is doing; he is filibustering. He is not doing what Hon Mark Nevill is doing, which is repeating his objections. If Hon Norm Kelly repeated his objections he would be pulled up by the Chairman. Hon Norm Kelly is trying not to say the same thing again and again.

Hon Mark Nevill: I was responding to your inane accusations.

Hon PETER FOSS: Hon Mark Nevill did not listen to my accusations. The member has proved my accusations to be correct. His principal interest is to delay or to defeat the Bill. Hon Norm Kelly has the same interest in delaying and defeating the Bill. I do not believe that he is engaging in anything other than delaying tactics.

Hon NORM KELLY: I am not here to delay the Bill. I realise the numbers in this place, and the deal has already been done between the ALP and the Government and this Bill will pass. It is imperative I ask legitimate questions about the powers that are now being reinserted into the Bill. It is the Attorney General's stupid and nonsensical non-answers that are delaying the progress of this Bill. If he gave a straight answer to the questions I have been asking we would deal with the Assembly's message a lot faster. I recommend the Attorney General give his advisers the rest of the afternoon off, because it is a waste to have them here if he is not making use of those resources. I will put on the record again that I want an indication about the delegation functions of the Commissioner of Police. At the moment the commissioner can delegate these functions to any member of the Police Force. That is not satisfactory. There should be a better process of checks and balances, rather than giving these powers to any member of the Police Force. Apparently the ALP and the Government are keen for any police officer to undertake the functions contained in the powers of undercover officers in clause 37.

Hon MARK NEVILL: Clause 38 gives the power for the commissioner to delegate a function. I can understand the commissioner delegating the function of writing a report for the minister. What other functions are there in general terms in this Bill that the Attorney General would want to delegate? Normally functions of police officers are listed in a separate section; for example, functions of investigating officers. However, those functions are not clear in this Bill. If the Attorney General enlightens the Chamber as to what functions may be delegated I will probably leave my questions at that.

Hon PETER FOSS: It is obvious that in a large Police Force various functions are handled at the assistant and deputy commissioner levels. The authorising of undercover operatives is likely to be done at the assistant commissioner level. It would be neither good management nor practical if everything were handled by the commissioner personally. The commissioner should be able to delegate functions on a non-legislatively specified basis. He should be able to decide who does it at any time and to authorise arrangements. We do not want 10 pages of prescriptive nonsense as to when and how he can do it, which is the way the Australian Democrats usually want it done. They like to write the regulation book into the Act. The main function that would be delegated would be the appointment of undercover agents, which would go to an assistant commissioner.

Hon Mark Nevill: I understand there is no capacity to delegate under the Misuse of Drugs Act. This case is likely to involve a lot of drugs, so why have it here?

Hon PETER FOSS: At the moment if prisoners in this State want to go to a funeral I can let out an awful lot of them. However, people who are in strict security, have been sentenced to over 15 years' imprisonment or are imprisoned at the Governor's pleasure can go to a funeral only if we have a special meeting of the Executive Council to let them out.

Hon Mark Nevill: I have raised this matter with you over the Broome case.

Hon PETER FOSS: We are trying to get these things through. The other Chamber recently knocked out one of the requirements for things to go to the Governor. If the deputy clerk of the local court wants a holiday his replacement must be appointed by the Governor. That is how nonsensical some of these things are when we do not delegate them down the line. We are working our way through a number of Acts so that appropriate people can make decisions. We want to confer the power on a senior person to allow him to delegate, but he will still retain responsibility. The essence of the clause is not to confer the power on somebody down the line but to confer it on a senior person and allow him to delegate it. Somewhere along the line we must assume that these people are responsible. The Australian Democrats believe ministers and chief executive officers cannot be trusted to do anything. That is the basic premise upon which some members opposite seem to work. They can think that; however, while they think that, they are more likely to get that as a result. Anybody who has held any managerial position in life knows that if one wants people to be responsible one must give them responsibility.

Hon Mark Nevill: You have my support to amend that part of the Prisons Act; the sooner the better.



Hon PETER FOSS: I am trying to do that. Unfortunately, getting legislative provisions before the Chamber takes time, but I am trying to do that. Recently I was trying to get things out of the hands of the Governor so they could be done by the minister and somebody else. However, Mr Speaker in another place decided that was somehow an appropriation. I am not sure how he worked that out, but sometimes that is the way people think. That is digressing. The point is that the main function to be delegated will be the appointment of undercover agents, and it will be to an assistant commissioner

Question put and a division taken with the following result -

Ayes (24)

Hon Kim Chance	Hon Max Evans	Hon Murray Montgomery	Hon W.N. Stretch
Hon J.A. Cowdell	Hon Peter Foss	Hon N.F. Moore	Hon Bob Thomas
Hon M.J. Criddle	Hon G.T. Giffard	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon N.D. Griffiths	Hon Simon O'Brien	Hon Ken Travers
Hon Dexter Davies	Hon Ray Halligan	Hon Ljiljana Ravlich	Hon Muriel Patterson
Hon E.R.J. Dermer	Hon Barry House	Hon B.M. Scott	(Teller)
Hon B.K. Donaldson			

Noes (6)

Hon Helen Hodgson	Hon Mark Nevill	Hon Giz Watson	Hon J.A. Scott (Teller)
Hon Norm Kelly	Hon Christine Sharp		

**Question thus passed.**

Hon PETER FOSS: I move -

That the Council does not insist on amendment No 24 but proposes, in substitution, the following amendment -

Clause 57, page 38, line 5 - To insert after the word "under" the following words -

sections 10 and 23 (b) of

Hon NORM KELLY: The reinsertion of this clause puts back the reversal of the burden of proof. I know there is a technical difference as to how it is referred to but that is basically what it is.

Hon Peter Foss: It is not.

Hon NORM KELLY: The Attorney General can correct me. I do not have the legal background to explain the detail but I am happy for the Attorney General to do so. I refer to the media release of Michelle Roberts of 4 April which states that -

Labor will vote to pass a Bill subject -

Hon N.D. Griffiths: I remind the honourable member to refer to the member from the other place by the area she represents.

Hon NORM KELLY: The member for Midland said -

Labor will vote to pass a Bill subject to the Government agreeing to three conditions . . .

The deletion of clause 57 reverses the onus of proof. It seems the Australian Labor Party has also backed down on the bottom-line position it had one month ago. As much as the Australian Democrats disagree with it, we also ask why we are now specifically referring to clauses 10 and 23(b) of the proposed Act?

Hon PETER FOSS: The use of the term "reversing the onus of proof" is an unfortunate one because averments are often used. I know many occasions where they are used without any suggestion that they are reversing the onus of proof. A classic example would be prosecutions where companies are involved. One of the extraordinary things one finds when prosecuting a company is the need to prove that it exists. If one prosecutes a person, one assumes that they exist. They do not have to bring their birth certificate and prove that someone was there at the time they were born. In the case of companies there has to be a certificate of incorporation to show their existence. That leads to the most extraordinary situations where one has to go through this rather technical matter. I will be bringing forward legislation to say that in a prosecution an averment that a corporation is a corporation is sufficient until the contrary is proved. That means that if there genuinely is a dispute as to whether a company exists, the issue can be raised and it can then be dealt with. Even in a prosecution where one avers that a company exists in the same way that a person exists, one then does not find that the onus of proof has changed. It is taking one element of one evidential point and saying that the averment is sufficient there. The onus of proof in the case as a whole, to prove the crime or other offences committed, remains as it always has been - on the prosecution. With these particular offences being referred to, the onus of proof is still there: To prove the elements that are an essential part of the whole case. All that has been picked up is one particular element and that is an averment that the person was carrying on business involving the provision of prostitution. The important part, taking clause 23(b), is -

A person who allows a child to enter or remain at a place at which the person knows or could be reasonably be expected to know -

(b) a business involving the provision of prostitution is being carried on,

The essential thing there is that there is a child there. That still has to be proved as it is the essential part of the offence.

I understand how people say, as a shorthand, that it is a reversal of the onus of proof, but as far as the case overall is concerned the onus of proof remains the same. It is just on one evidential point that it is proved until such time as evidence is given to the contrary. One can look at all these matters and see where it is appropriate that a thing can be proved by averment and there may be elements which it is not appropriate to prove by averment. A number of matters were brought in by the previous Government relating to traffic where there were averments. I remember one was brought in by Hon Graham Edwards which had some very poor drafting as it said that the person was presumed to be guilty. I thought that was going a bit far.

Hon N.D. Griffiths: Only a little too far for you.

Hon PETER FOSS: It was badly drafted. I am sure it did not go anywhere near Western Australian parliamentary counsel. I do not know where it came from but it was rather extraordinary. We fixed that up so there was an appropriate presumption of certain facts without presuming that the person was guilty. This is a matter of deciding, whether in the circumstances, the averment is appropriate. Under this amendment the averment is restricted to two sets of offences, not to all offences under the Act generally. That is perfectly consistent with the attitude that has been expressed by various people - by Labor in government where it saw there were appropriate times for averments and other times when it was not appropriate to aver. With this amendment, both sides of the House agree that this is an appropriate time for averment.

Hon MARK NEVILL: This averment clause applies to proposed section 10. If the police thought a web site was advertising for the purposes of prostitution in Western Australia, who would be regarded as the publisher for the purpose of disproving it?

Hon PETER FOSS: In the case of a web site, the prosecution would have to prove, under the provisions of clause 10, that a person has either published, or caused to be published, a statement. It would also have to prove the statement was intended, either by delving into the person's mental situation through extraneous evidence or by objectively showing that the statement was likely to induce a person to "seek employment in any other capacity in any business involving prostitution". The prosecution must prove all those elements.

Hon Mark Nevill: The brothel might not necessarily be the publisher.

Hon PETER FOSS: Hon Mark Nevill is quite right. A number of people can be involved in a publication. Much of the publishing law has been developed through defamation cases.

Hon N.D. Griffiths: I have an example of a defamatory statement from the Minister for Police. Kevin Prince has accused me personally of getting rid of the move-on power when the Bill went through the Legislative Council. I am sure Mr Prince did not write this, and I would like him to tell me who did so that I can sue him or her.

Hon PETER FOSS: I am sure that Hon Nick Griffiths could not sue that person because of the Theophanous case.

Hon N.D. Griffiths: That is a great pity. Perhaps the police could prosecute the person for criminal defamation.

Hon PETER FOSS: It does not sound very defamatory to me.

Hon N.D. Griffiths: The person who acts for Mr Prince is a liar.

Hon PETER FOSS: That is certainly not defamatory, because Hon Nick Griffiths said it in this place.

Hon N.D. Griffiths: Mr Prince's advisers are liars.

Hon PETER FOSS: The law of defamation is useful for understanding some of the definitions of words like "published". Something published in a newspaper is published by the writer, proprietor, editor and the printer. All four are jointly guilty of publishing that particular document.

Hon Mark Nevill: I was sued for defaming *The West Australian*. I defamed the newspaper.

Hon PETER FOSS: How does one defame a newspaper?

Hon Mark Nevill: Ask Bill Groves or Paul Murray. I said in a press release that Michael Day, the journalist, lived next door to Professor Sandra Bowdler of the Rindos case. He wrote stories supporting her case.

The CHAIRMAN: Order! I think we are straying from the question before the Chair.

Hon Mark Nevill: I defamed the journalist, the editor and *The West Australian*. I defamed the newspaper!

Hon PETER FOSS: I thought *The West Australian* was incapable of being defamed. Although they do say, the less one's reputation, the more jealously one must guard it.

Any of those people could be prosecuted for this type of offence. I do not know of any cases involving a web site which have yet been determined. Some interesting cases to be determined involve whether an Internet service provider publishes or causes to be published things that are put onto a web site by subscribers. Some have suggested that they are not responsible because they rarely have the capacity to deal with the content. The subscribers, who have the right to put information onto the web site, do not generally need to have it approved by the Internet service provider. I suspect the Internet service provider would not be regarded as a publisher, but I do not think that has yet been determined by any court. One of the difficulties with the Internet is the inability of Internet service providers to monitor and censor the information

on sites. The person who owns the site and puts the information on it would certainly be a publisher. He could be prosecuted under the provisions of this legislation. However, some practical difficulties arise because, for Western Australian criminal law to apply, the publisher must live in Western Australia. A site in the United States could be voluntarily accessed by someone in Western Australia. Has something been published if it has not been accessed? Is publication the act of someone who accesses the site or of the person who puts the information on the site in the United States? If a person in Western Australia put the advertisement on the site, he would be caught by the criminal law. However, if someone put the advertisement on the site elsewhere to be accessed by people in Western Australia, there would be a practical difficulty because that person would not be within the grasp of the Western Australian jurisdiction. Even if something published in the United States for viewing in Western Australia infringed Western Australian law, there is no practical way in which proceedings could be commenced against that person. The prosecutor would have a hard time arguing before the United States courts that the action contravened a criminal law in Western Australia. That is one of the problems of the Internet: Any attempt to try to control behaviour encounters the practical difficulties of the criminal law not extending to people outside a particular jurisdiction. The basic means of recording criminal offences is to serve and to seize those people within the prosecution's jurisdiction. From a practical point of view, the Internet has provided all sorts of problems, not only in this area, but also in any area where people seek to control it. It is a real wild-card for law enforcement.

Hon NORM KELLY: Clauses 10 and 23(b) are the only two in the legislation that refer to businesses involving the provision of prostitution. Is the reason for the amendment to clarify the legislation?

Hon PETER FOSS: It was argued that those clauses were the only ones to which clause 57 applied. However, we are proposing to insert them to make certain people know it applies to those clauses. Whether the amendment limits the legislation is another question; however, the application of clause 57 is beyond doubt.

Question put and a division taken with the following result -

Ayes (24)

Hon Kim Chance	Hon Max Evans	Hon Murray Montgomery	Hon W.N. Stretch
Hon J.A. Cowdell	Hon Peter Foss	Hon N.F. Moore	Hon Bob Thomas
Hon M.J. Criddle	Hon G.T. Giffard	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon N.D. Griffiths	Hon Simon O'Brien	Hon Ken Travers
Hon Dexter Davies	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Muriel Patterson
Hon E.R.J. Dermer	Hon Barry House	Hon B.M. Scott	(Teller)
Hon B.K. Donaldson			

Noes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon J. Scott (Teller)
Hon Norm Kelly			

**Question thus passed.**

Hon PETER FOSS: I move -

That the Council insists on its amendments Nos 3, 4, 7, 8, 11, 23, 25 and 27 and further proposes as consequential amendments -

Schedule 2, clause 1, page 46, line 9 - To delete the numbers "9" and "17".

Schedule 2, clause 1, page 47 - To delete the item referring to section 17 of the Prostitution Act 1999.

Schedule 2, clause 4, page 48 - To delete the item referring to section 17 of the Prostitution Act 1999.

Hon N.D. GRIFFITHS: I want to make some brief observations about the amendments upon which the Legislative Council has insisted. Amendments 3, 4, 7, 8, 11, 23 and 27 related to the regulatory powers, the so-called health provisions. Amendment 25 dealt with the contradiction to the Police (Immunity from Civil Liability) Bill 1998. I was interested initially to see if the Government would place that provision in the Bill and it has taken it some time to remove it. I am pleased it has finally done so as it was ridiculous to persist with it in the way it has.

Some people have criticised the actions of the Australian Labor Party in respect of amendments 3, 4, 7, 8, 11, 23 and 27. However, these are very important matters and are recognised as such. It is important that I put on the record the observations of some members of the community who are thankful for what the ALP has achieved. Members will recall I handled the Bill on behalf of the ALP in 1999. I refer to a letter addressed to me dated 28 February 2000 from the Chief Executive Officer of Family Planning WA, the Executive Director of the WA Aids Council, the President of Family Planning WA, the Chair of the WA Chapter of the Australasian College of Sexual Health Physicians, the Manager of Phoenix Family Planning WA, the Chair of the WA Committee of the Australasian Faculty of Public Health Medicine, the Executive Dean of the School of Health Science of Curtin University and the President of the WA Branch of the Public Health Association. I propose to quote part of the letter. If any member wishes to see the letter I will be happy to hand it over or to table it. The letter, in part, reads -

We the undersigned write to thank you as a member of the Legislative Council for your support in making amendments to the Prostitution Bill 1999.

The letter makes brief observations and refers to the Bill being a punitive rather than preventive response to the community's concerns about prostitution and associated health issues. It further states -

It is our considered opinion that the proposed legislation, as it currently stands, is unworkable. It directly contravenes a number of national and international guidelines regarding the maintenance of sexual health and the prevention of sexually transmissible infections.

It makes this observation -

If having a sexually transmissible infection becomes a criminal offence there is likely to be an *increase* in the transmission of infections because punitive measures discourage testing and treatment. Furthermore, the clauses dealing with sexually transmissible infections do not take into account the adequate powers already available to health authorities under the Health Act.

The letter then makes a number of other observations. It is important to place those observations on the record as they are a recognition of the important work of the ALP in this Chamber in the past year and work that is ongoing on this Bill. That is part and parcel of our joining the Government in this Chamber in insisting on these amendments which are part of this aspect of the motion. In that context, it is worthy of note that the rapidly fading Court-Cowan Government has sought, but been prevented from, progressing the issue of comprehensive prostitution law. Recently the Government had discussions with the Western Australian Municipal Association and agreed that the issue of prostitution would be dealt with by a Bill to be brought into the Parliament by the Minister for Health; that is, prostitution will be regulated by Health in partnership with local government and not in this funny little manner by the police.

This part of the overall motion deals in substance with the health powers as an aside to the embarrassment of the Government in relation to its contradiction of the recently passed Police (Immunity from Civil Liability) Bill. It is an important matter for the Chamber to insist on. It is very pleasing that the Government is coming to the party on it, albeit reluctantly and in contradiction with what ministers Omodei and Day have said to members of local government over a considerable period. That is the way the Court Government goes on: It consults, threatens and engages in media stunts. However, I am pleased that the Government has come to the party on this issue, and the minors in this game are simply that.

Hon PETER FOSS: It is interesting to see what came out of the Labor Government in 10 years of rule. It had about three inquiries and the net result of that was nothing. Opposition members may think that this legislation is inadequate. It is strange that they should talk about wider legislation, yet then remove important parts of it to make it narrower.

The only real argument which was raised was that it should be in the Health Act, not in this legislation. If people accept it should be there, it sounds like a very fatuous reason for not including it in this legislation. It is true that we reluctantly removed this. If we had our way, we would not be removing it. However, getting things through this Chamber can often be extremely difficult. We take what we can get. We are removing it under duress; we accept that. We think it should be in there and despite opposition members saying that there should be broader legislation, the Opposition's making it narrower seems bizarre. We know how much difficulty it had with prostitution legislation. The only thing it could do was hold inquiries, and nothing came out of it. This is the first legislation since the beginning of the last century. Obviously, it has defeated a number of Governments.

There may be a small error in this motion as I moved it. Unless I have lost track of the message and it has already been removed, there is a reference to section 9 of the Prostitution Act in clause 4 of schedule 2. We are currently taking out the reference to section 17, but I think there is still a reference to section 9. I quickly went through the message and I do not think we removed it. I checked it with the Clerk, because we may have taken it out at some other time, and referring to the Bill does not help. I move -

To delete the word "item" and insert the word "items" and to delete the word "section" and insert the words "sections 9 and"

That amendment now reflects the remainder of the original amendment.

#### **Motion, by leave, amended.**

Hon NORM KELLY: It is heartening to hear the ALP finally find voice on this debate, even if its recollection of recent history is somewhat skewed in relation to these public health provisions. The Australian Democrats will be supporting this part of the Attorney General's motion, because it ensures that those clauses relating to public health are removed from the Bill. Of course, they should never have been in the Bill in the first place. The penalties calling for 20 years' imprisonment, such as that in clause 17, are inconsistent with proved public health strategies, including embracing the sex industry workers and their being tested voluntarily. Under those forms of protocols, we are seeing a reduction in sexually transmitted diseases in the industry. The information I have received indicates that sex industry workers in Western Australia have one of the lowest rates of STDs in Australia. It is more appropriate for these provisions to be in the Health Act and they should apply to people generally, rather than prostitutes. If people want to intentionally spread diseases, there are aspects of the Criminal Code and Health Act which adequately deal with that. For those reasons, we do not believe they should be contained in this Bill.

I now refer to a letter dated 27 April from the Minister for Police to the member for Midland, in which the minister stated that he had agreed reluctantly to the health provisions clauses of the Bill being removed, and he attached a list of the clauses affected. The Democrats had discussions with the minister previously and he had already stated his intention that he would

reluctantly drop those clauses from the Bill. That is a pity, and it is a reflection of the fact that this is very much a police-driven Bill in that those public health bodies and authorities were not properly consulted prior to the introduction of this Bill.

*Sitting suspended from 3.46 to 4.00 pm*

**[Questions without notice taken.]**

Hon NORM KELLY: I want to correct some inaccurate statements that were made by Hon Nick Griffiths prior to the break in this debate regarding the chronology of events in deleting the public health clauses from the Bill. Members will recall that the Australian Labor Party was fully supportive of those public health clauses being included in the Bill when it passed the other place last year. Subsequent to that, the Australian Democrats said that those types of public health clauses were not acceptable. I refer to *The Australian* of 7 December 1999 in which I am quoted on the number of changes we intended to make. The article states -

"We have concentrated on removing excessive police powers, removing clauses relating to the transfer of sexually transmissible diseases and amending the definition of a 'public place'," . . .

We appreciate that the Australian Labor Party has adhered to the line it adopted when the legislation reached this place for the first time and that those public health initiatives will be removed. For that reason, we will support this part of the Attorney General's motion.

Hon GIZ WATSON: The Greens (WA) will support this part of the Attorney General's motion. We vigorously argued for these clauses to be deleted in the initial debate on this Bill. Obviously, we continue to support the removal of these provisions of the Bill which are of grave concern to best health practices in this State.

**Question (as amended) put and passed.**

Hon PETER FOSS: I move -

That the Council agrees to the amendments substituted as new amendments for Council amendments Nos 10, 13 and 16.

Hon N.D. GRIFFITHS: Although the Australian Labor Party will support the Attorney General's motion, it would be inappropriate for me to let this aspect go without comment. The minister in the other place, although I will not say he was ranting and raving, gave the appearance of doing so with respect to clause 14. Amendment No 10 refers to clause 14, which is headed "Failure to comply with certain police requirements" and which deals with the requirements to answer questions and produce documents. The Minister for Police had the community of Western Australia, in a very deceitful way, believe that the other place had reinstated that which was originally in the Bill when it came before this Chamber; that is, he did not own up to the fact, when the matter came before the Legislative Assembly in December on a message from the Legislative Council, that he had caused the alteration of much of the contents of clause 14. It is regretful that the Minister for Police must engage in deceit to get across a political message. It is one thing to have a different point of view; it is another thing to lie about it.

Hon NORM KELLY: In relation to amendment 16, which deals with clause 28 of the Bill and which is headed "Entry of, and seizure at, place of business without warrant", the Australian Democrats continue to oppose this clause remaining in the Bill, even in this form as amended in the other place. It is a broad-ranging power with no requirement for a warrant. New subclause (2) states -

Subsection (1) does not apply unless the police officer has reason to believe that an offence under section 7 or any offence involving a child has been, is being or may be committed.

As much as we appreciate the narrowing of this power to those clauses of the Bill, the words "may be committed" are open to a very broad interpretation without provision for accountability such as would normally be required when police officers obtain a warrant.

**Question put and passed.**

Hon PETER FOSS: I move -

That the Council agrees to amendments Nos 5, 6, 14, 28 and 30 as further amended by the Assembly.

**Question put and passed.**

*Report*

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

**PARLIAMENTARY SUPERANNUATION LEGISLATION AMENDMENT BILL 1999**

*Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [4.41 pm]: I move -

That the Bill be now read a second time.

This Bill introduces a number of changes to the superannuation arrangements for state parliamentarians; namely, closing

the existing scheme to future members of Parliament; allowing certain current members to withdraw from the existing scheme and transfer to the new arrangements; transferring responsibility for changes to the rules of the existing scheme to an independent statutory authority, the Salaries and Allowances Tribunal; and empowering this independent tribunal to determine the level of superannuation for future members of Parliament and for any current members who choose to withdraw from the existing scheme.

Closing the existing scheme to future members of Parliament fulfils a commitment the Government made to the public of Western Australia last year that it would introduce a Bill to close the scheme prior to the next general election. Closing the scheme will also put an end to criticism about the scheme's level of benefits, and the accessibility of those benefits, which are not subject to the same preservation standards that apply to the general community.

Transferring responsibility to this independent tribunal for all matters relating to the level of benefits and scheme rules will also address any concerns that members of Parliament are able to determine their own superannuation benefits. This Bill removes the basis for any perception of a conflict of interest by members of Parliament in this regard.

The only constraints on the tribunal's powers will be that it may not reduce a member's accrued entitlements and that it must comply with any applicable commonwealth legislation. Further, the tribunal will not be able to alter the fundamental nature of the scheme from being a defined benefit, pension scheme.

The tribunal already has significant powers to change the level of benefits in the scheme. In addition to determining basic salary and higher office allowances, which are determinants of a member's final benefit, it also currently sets the minimum and maximum pension rates, the pension accrual rate, commutation factors and member contribution rates. The tribunal will retain these powers but will now also be responsible for considering any proposals for changes to the scheme rules that may be received from members or former members. For example, currently spouses of deceased members or former members who are entitled to a reversionary pension have the ability to commute up to 50 per cent of their pension entitlement to a lump sum. It has been suggested that they be allowed to commute up to 100 per cent of their pension entitlement to a lump sum and the tribunal will now have the power to make this change if it chooses.

Another example in which the tribunal's power will be expanded relates to death and disability benefits. In respect of death benefits, the current rules are that if a member dies in office without dependants, his or her estate is entitled to a payment equal to the member's contributions plus interest. This is clearly inequitable when compared with the benefit payable to a surviving spouse of a deceased member and the tribunal will be able to address this matter.

In respect of disability benefits, the current rules are that members with fewer than seven years' service who retire due to illness or a disability are entitled to a lump sum benefit equal to twice their contributions plus interest. However, for members with seven years' service or more who retire due to the same condition, the benefit payable is their accrued pension entitlement. The difference in the amount of these two benefits is significant and the tribunal will be able to determine for members a standard disability benefit that is not related to their length of service. It is important to note that the current level of benefits and existing scheme rules will continue to apply until otherwise determined by the tribunal.

Other changes contained in the Bill provide the capacity for the tribunal to introduce preservation standards in the existing scheme and to determine redundancy benefits for members when they cease to hold office. The fact that members can access their superannuation benefits immediately on ceasing to hold office, rather than having to wait until they reach the normal preservation age of at least 55 years, is a point of difference between the rules applicable to parliamentarians and those applicable to the general community. However, many current members have made financial commitments and business decisions on the basis that they can receive their benefits when they cease to hold office. Restricting access to superannuation benefits would result in financial hardship for some of these members who cease to hold office prior to the normal preservation age.

This Bill addresses this potential for hardship by making it a condition that if the tribunal decides to impose preservation standards in the existing scheme, it must at the same time determine a redundancy benefit for affected members. Redundancy benefits are a feature of the remuneration of parliamentarians in the United Kingdom. These are not superannuation benefits but payments to assist former members in making the transition from holding public office to re-establishing a private career. The tribunal will have the discretion to make any redundancy benefits payable only to certain classes of members, for example, those under a specified age on retirement from Parliament, or to determine that these benefits should reduce on a sliding scale depending on a member's age at retirement.

The Bill also amends the existing provisions dealing with minimum benefits to ensure that the existing scheme complies with the requirements of the Commonwealth's superannuation guarantee legislation.

Closing the existing scheme to future members of Parliament will require the introduction of new superannuation arrangements for such members and for any current members who choose to withdraw from the existing scheme. Only those current members who were elected at or following the 1996 general election will be eligible to withdraw from the existing scheme.

This Bill makes the tribunal responsible for determining the amount of contributions payable by the State in respect of members under these new arrangements and ensures that these contributions are fully funded through a permanent appropriation from the consolidated fund.

The responsible minister will determine the appropriate administrative framework to support this new arrangement, including to what scheme or schemes the contributions may be paid.

In conclusion, the Bill honours a commitment the Government made to the people of Western Australia on the closure of the existing parliamentary superannuation scheme. Importantly, the Bill resolves potential conflict of interest issues by transferring the responsibility for making changes to the existing scheme from the Parliament to the Salaries and Allowances Tribunal. I commend the Bill to the House and, for the information of members, table an explanatory memorandum for the Bill.

[See paper No 955.]

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

## **STATE SUPERANNUATION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 1999**

### *Receipt and First Reading*

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

### *Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [4.46 pm]: I move -

That the Bill be now read a second time.

As a consequence of proposals contained within the State Superannuation Bill 1999, this Bill -

allows for the transition of the Government Employees Superannuation Board and the government employees' superannuation fund from the existing legislative framework contained in the Government Employees Superannuation Act 1987 and the Superannuation and Family Benefits Act 1938, to the new legislative framework proposed in the State Superannuation Bill 1999;

amends various other Acts to replace references to the Government Employees Superannuation Act 1987 and the Superannuation and Family Benefits Act 1938 with the new references required as a result of the State Superannuation Bill 1999; and

deletes references in the enabling legislation of various statutory authorities and statutory office holders that recognise those authorities and office holders for superannuation purposes, so that these provisions can be incorporated within the regulations of the new legislative framework.

The transitional arrangements within this Bill are necessary to give effect to the new Act proposed by the State Superannuation Bill 1999. For example, the transitional provisions provide for the continuation of board members, staff, board policies and strategies. Transitional provisions relating to the fund have also been incorporated and examples include continuation arrangements for actuarial investigations and reviews of investments. The Bill also provides for transitional regulations to be made where it is necessary or convenient to effect transition to the new legislative framework.

The consequential provisions in this Bill amend various Acts by either updating the reference to superannuation legislation or deleting any reference to the two existing superannuation Acts. This change is simply to enable the transfer to the new legislative framework proposed by the State Superannuation Bill 1999 and will not alter the benefit entitlements of these members. Rather, it will allow these entitlements to be incorporated into the regulations that will be developed as a result of the State Superannuation Bill 1999.

The commencement of this Bill, when passed by Parliament, will coincide with both the commencement of the State Superannuation Bill 1999 and its regulations. I commend the Bill to the House, and for the information of members, table an explanatory memorandum for the Bill.

[See paper No 953.]

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

## **STATE SUPERANNUATION BILL 1999**

### *Receipt and First Reading*

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

### *Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [4.50 pm]: I move -

That the Bill be now read a second time.

This Bill repeals the legislation governing the State's public sector superannuation schemes and establishes a new framework to provide better superannuation for public sector employees. At a broad level, the proposed changes will provide more flexibility for members and access to industry standard superannuation and new products and services; remove unintended anomalies and inequities; ensure timely compliance with relevant commonwealth legislation; and support more efficient administration, which has the potential to deliver lower costs to members and savings to government.

The superannuation industry generally is developing in an environment which is comprised of choice, change and increasing member expectations. Amendment to the legislation governing the State's schemes is essential to maintain pace with this changing environment.

Superannuation for state public sector employees is provided through the government employees superannuation fund, which is the State's biggest fund and comprises three separate superannuation schemes established through two Acts. First, there is a closed pension scheme established through the Superannuation and Family Benefits Act 1938 with around 900 contributors and 12 000 pensioners. Under the Government Employees Superannuation Act 1987 there are two lump-sum schemes: A closed defined-benefits scheme with around 41 000 members, and an accumulation scheme, which is open to new members and has around 187 000 members. This scheme provides for the State to meet the Commonwealth's superannuation guarantee requirements, presently 7 per cent of salary and rising to 9 per cent in 2002-03.

The Bill provides for the repeal of the Superannuation and Family Benefits Act 1938 and the Government Employees Superannuation Act 1987, and for their replacement with one new Act. This new Act will contain the rules regarding establishment and administration of the Government Employees Superannuation Board and the fund, and the regulations to the Act will contain the specific arrangements for each scheme, including the benefit design and scheme rules.

The existing pension and lump-sum schemes will continue. However, this restructuring of the legislation is necessary to enable greater flexibility to respond to member needs, ensure timely compliance with relevant commonwealth legislation and support efficient administration. It is important to note that the Bill does not change the basic legislative framework that establishes the board and the fund. Furthermore, the proposed restructuring of the legislation will not interfere with the right of Parliament to determine the scope and operations of the board and the prudential controls over the fund.

The functions and powers of the board have been updated and are now consistent with the modern drafting provisions applying to other statutory corporations generally. Similarly, the provisions in the Bill relating to the investment powers of the board have also been updated and are now very broad to ensure that the board can access new and emerging opportunities in the market. Importantly, however, all forms of investment will continue to be subject to the Treasurer's approval.

Public sector employees who are members of the board's largest scheme feel trapped in outdated and inflexible superannuation arrangements when compared with members of private schemes. The proposed regulations will provide an opportunity to consider more modern member investment arrangements, as well as new products and services.

Examples of the types of new products and services that could be offered by the board include: A roll-over facility where members who retire can leave retirement benefit with the fund; or an allocated pension, which offers retired members the flexibility of a regular pension and a lump-sum draw-down facility. These products have been very well received by members of interstate public sector funds, where similar products have been offered.

Importantly, the Treasurer will be required to approve new products and services offered by the board, and when exercising this discretion the Treasurer will take into account the public benefit and competition policy principles prevailing at the time. In addition, a range of improvements to the scheme rules to meet members' needs is planned to be incorporated into the regulations. Some of these include flexible insurance coverage, increased portability of benefits, contributions to spouse accounts, payments to retirement savings accounts and recognition of purchased leave.

A number of anomalies and inequities in the scheme rules will also be addressed within the new legislative framework. For example, although lawful, the closed pension scheme contains some gender-discriminatory provisions relating to reversionary pension entitlements for widowers. The proposed regulations will allow the qualifying conditions for these pensions to be the same for both widows and widowers. This change corrects a significant inequity for female members. Another inequity that exists within the current legislation relates to salary packaging where, unlike other schemes which have access to this feature, pension scheme members cannot package their contributions.

As a first step to stem the growth of the State's unfunded superannuation liability, this Government made a commitment to fund all future contributions to the open lump-sum scheme from 1 July 1998. A standing appropriation to support this decision will be incorporated into the Act to ensure that this commitment is maintained by successive Governments.

The Bill also expands the board's borrowing powers, again subject to the Treasurer's approval. This change will enable all possible funding options for the outstanding superannuation liability to be examined, demonstrating a responsible approach to financial management of the State and consistency with the Government's general policy of empowering statutory authorities with borrowing facilities within their enabling legislation.

Ongoing compliance with commonwealth legislation governing superannuation also drives the need for changes to the structure of the legislation as proposed in the Bill, otherwise the State will continue to fall behind. At present the state legislation does not comply with the commonwealth preservation standards, and specific changes are required to ensure that the legislation is consistent. As many of the commonwealth compliance requirements will form part of the regulations, this means that compliance issues can be more easily addressed.

The board is currently reshaping its business to ensure it provides customer responsive superannuation services to its members. The existing legislation contains many prescriptive rules that restrict the board's ability to change its business processes to meet the needs of its customers. For example, under the current provisions relating to member statements, a member may receive information about the board's schemes at different times of the year. It is proposed to improve member statements so that the board can incorporate all the information that is relevant to the member on a single member



statement. Similarly, the current legislation does not allow the board to pass on to members the benefits of new technology. Examples of potential improvements through electronic commerce include providing members with access to their superannuation using interactive Internet web site facilities. Again, by having all prescriptive rules in the regulations, the board can more readily adapt to these changing circumstances.

Efficiencies and savings will also be gained from the introduction of the Commonwealth's \$450 rule and the flexibility to roll over small accounts to an eligible rollover fund. The \$450 rule introduces a minimum monthly salary limit of \$450, which must apply before persons become entitled to a compulsory employer contribution in the current lump sum scheme. Following concerns raised in briefings on the Bill, the Government is prepared to review its plans to implement the \$450 rule across all members. I hope to be in a position to provide more detail on a revised approach when this House deals with the Bill. Providing the board with the flexibility to transfer small, inactive accounts to eligible rollover funds will increase administrative efficiency, which can result in lower fees for members. These funds are specifically designed for small, inactive accounts and must comply with the same commonwealth prudential rules as other superannuation funds.

In conclusion, the proposed amendments to the structure of the legislation will enable the board and its schemes to be responsive to members and readily comply with commonwealth legislation. Together with the efficiency gains realised from improvements in administration, these changes will deliver industry standard superannuation arrangements for members as well as savings to government. Of overall importance, the changes proposed in the Bill will provide the framework for the delivery of customer driven superannuation services for public sector employees. I commend the Bill to the House and, for the information of members, table an explanatory memorandum for the Bill.

[See paper No 954.]

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

### **PROTECTIVE CUSTODY BILL 2000**

#### *Receipt and First Reading*

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

#### *Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [4.57 pm]: I move -

That the Bill be now read a second time.

Prior to 1989 in this State, people found drunk in a public place committed an offence and could be arrested by police and placed before a magistrate to be dealt with at law. This was the only mechanism available to police to take these people from the streets and provide some level of care.

In 1989 drunkenness was decriminalised and the Police Act 1892 amended by inserting part VA which allowed for the apprehension and detention of people intoxicated by alcohol. This was done to ensure they were of no danger to themselves or others and has been found to be an effective way of dealing with people affected by alcohol. Since then it has become increasingly apparent that this amendment does not go far enough, as it focuses solely on alcohol abuse. People abusing both licit substances such as petrol, paint, glue and solvents, and illicit substances, such as heroin and amphetamines, were not subject to these provisions. There are currently no powers to do anything to provide immediate care for these people when they are found in public places. Police, health and welfare agencies have found themselves powerless to assist until the situation becomes extreme and lives are placed at risk.

This Bill therefore retains the proven and effective provisions of part VA of the Police Act 1892 dealing with the apprehension of intoxicated persons, the management of their care, issues relating to the length of detention, their release and review. The Bill goes further by enhancing these existing provisions to provide an ability to take direct action to ensure the care and protection of intoxicated persons, whatever the cause of the intoxication.

In the case of young people, the Bill will allow authorised officers to intervene at the earliest stages of abuse to prevent young people from becoming intoxicated. Authorised officers will be able to take appropriate action, such as the seizure and disposal of any intoxicating substances to prevent continuation of their use. To illustrate this, should an officer see someone's son or daughter placing glue from a tube into a plastic bag, in preparation to use it to get a high, that officer will be able to stop that son or daughter and take away the glue before that young person can become affected.

Members will note there are no offence provisions in the Bill. This reflects its primary aim: To allow authorised officers to remove these people to a safe, secure place to recover from or receive treatment for the effects of alcohol, glue, petrol and the like. In keeping with this concept, these provisions have been separated from the Police Act, which contains offence provisions relating to other matters, to create a stand-alone Act. The legislation will enhance the safety and wellbeing of individuals, as well as the safety and wellbeing of the community.

During this speech I have used the term "authorised officers". Currently throughout the State, Aboriginal community groups have led the way in dealing with alcohol abuse. Volunteer patrols have been set up, working in partnership with their local police, to collect members of their community who are affected by alcohol and take them to a place where they can be cared for. Examples of these patrols are the Kullarri patrol in Broome and the Numbud patrol in Derby. The Bill will, for the first time, recognise this role and enable the local police to authorise these people to officially carry out this

community service on a needs basis. I wish to make it clear that the purpose of this is to recognise those who provide a volunteer service, without payment or reward. They will work with their local police to assist in solving problems relating to all substance abuse in their community.

The Bill is also structured to reduce the number of people detained in police lockups. Under part 5 police will be required to consider all options available before a lockup is used to detain any person. The Bill is structured to maximise the use of family and community support and then the use of sobering-up facilities. A police lockup will be used only as a last resort. The Government has made great progress in providing facilities throughout the State that divert people from lockups. As more of these facilities become available, the number of persons being detained in lockups will reduce. The Bill is structured to allow for this gradual move towards non-custodial care. I commend the Bill to the House.

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

### **BILLS - RETURNED**

1. Prisoners (International Transfer) Bill 1999.
2. Crimes at Sea Bill 1999.
3. Acts Amendment (Fines Enforcement) Bill 1999.

Bills returned from the Assembly without amendment.

### **JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

#### *Assembly's Resolution*

Message from the Assembly received and read acquainting the Council that it had agreed to the following resolution -

That the member for Carine be appointed as a member of the Joint Standing Committee on Delegated Legislation to fill the vacancy caused by the resignation of the member for Wanneroo.

### **ADJOURNMENT OF THE HOUSE**

#### *Special*

**HON N.F. MOORE** (Mining and Pastoral - Leader of the House) [5.03 pm]: I move -

That the House at its rising adjourn until Tuesday, 23 May 2000.

Question put and passed.

#### *Ordinary*

**HON N.F. MOORE** (Mining and Pastoral - Leader of the House) [5.03 pm]: I move -

That the House do now adjourn.

#### *Cheeditha Aboriginal Community - Adjournment Debate*

**HON TOM HELM** (Mining and Pastoral) [5.04 pm]: I apologise to the House and I promise I will not keep it long. Yesterday I asked a question without notice of the Minister for Transport representing the Minister for Water Resources and for Aboriginal Affairs. The question was in two parts -

- (1) Can the minister advise when the upgrade at Cheeditha will begin?
- (2) When will the upgrade be completed?

In large part the minister's answer was, "Do not ask me, ask the Aboriginal and Torres Strait Islander Commission."

For the past two years the Cheeditha Aboriginal Community just outside of Roebourne has been looking for an upgrade of its water supply and sewerage facilities, and various other facilities. For two years the Government has been aware of the major health problems in this community arising from its water and sewage. The community was advised that \$400 000 was set aside to fix the problem. The question I asked on behalf of the Cheeditha community was when will upgrade begin and when will it be completed. I am not being particularly critical, but in this place I expect questions to elicit a response that may not fully answer the question asked. However, the answer given displayed a great deal of disrespect for this House. The minister should not advise members of Parliament that the answer lies somewhere other than with the minister, particularly when it is a matter to do with the Water Corporation, which is the minister's responsibility. Not only was the answer disrespectful, but the question related to a major health problem. People in this community are concerned that if these things are not fixed there will be nobody left in the community. They will not be able to live there because it will be too dangerous. There are strains of Ross River virus and other dangerous diseases related to the inadequate sewage treatment and water facilities at that community.

We might have been entitled to an answer, such as the upgrade will be completed as soon as possible or that the minister is aware of the problems to do with not only the Aboriginal Affairs portfolio but also the Water portfolio that he carries. I assume that the Water Corporation's responsibility is to ensure that the water supply to the community is adequate and

safe and that people can be assured that they will not be exposed to exotic diseases that are carried in unsafe water supplies. I make that assumption because Hon Kim Hames, the Minister for Water Resources, is someone who takes his responsibility seriously. I hope that this answer has been supplied to him by one of his public servants and that he has not adequately checked it, because it is unlike Hon Kim Hames to give an answer such as that.

Sometimes the questions that we ask in this place are of a political nature, but one could not read politics into this sort of question. One can appreciate the frustration felt by people in that community when they have asked that question of the Aboriginal and Torres Strait Islander Commission, of ministers, of contractors and anybody who might provide an answer. They are not asking why the work has not been done to date but they are asking for an estimate of when it might be completed. It is not adequate for a minister representing the Minister for Water Resources in the other place to tell us to look elsewhere for the answer when the Minister for Water Resources is ultimately responsible for the supply of water to that community.

This community has gone all around the houses trying to get some sort of answer, knowing that \$400 000 is available. The community is afraid that money could be eaten up as a result of a series of reports that have been commissioned. The answer may be that there are some things this Government cannot do and that it is not humanly possible to do. However, a reply telling this Chamber and as a result those people that the answer is not within the minister's grasp and that we should go somewhere else is unsatisfactory. I wanted to get that on the record so that the people in Cheeditha will know that at least the Labor Party is trying to do something about their plight.

Question put and passed.

*House adjourned at 5.07 pm*

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### QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

#### YARDIE GORGE, BOAT TOURS

1053. Hon TOM STEPHENS to the Attorney General representing the Minister for the Environment:

- (1) Was an environmental impact study carried out on the impact of boat tours in Yardie Gorge in 1993?
- (2) If yes, how many boat trips per day were there at that time?
- (3) Did that study indicate there was a problem with the level of boating activity at that time?
- (4) What recommendations did the study make on the number of boat tours per day in the gorge?

Hon PETER FOSS replied:

- (1) Yes.
- (2) One boat trip per day for each of the two safari tour operators and unrestricted trips for the boat tour operator.
- (3) The study indicated that there were matters to be taken into consideration in managing the creek.
- (4) As part of its preliminary observations, the report recommended no more than eight trips per day. As part of the current licensing arrangements further research is to be undertaken monitoring impacts of boating on wildlife.

#### LOCAL GOVERNMENT, AREA IN RESERVES

1309. Hon CHRISTINE SHARP to the Leader of the House representing the Minister for Lands:

Reserves vested with Local Government in 1995/1996 consisted of 5 237 square kilometres of land.

- (1) How much land exists in this tenure type as of December 1999?
- (2) How much land has been sold, leased or transferred by local governments in a yearly breakdown since 1993?
- (3) Can the Minister for Local Government provide the total area in hectares for this?
- (4) Can the Minister provide a list of the individual parcels and the size in hectares for each?
- (5) Was any of this land pristine bushland, remnant bushland, public open space, catchment land etc?
- (6) Which local governments have sold, leased or transferred the most land?

Hon N.F. MOORE replied:

- (1) 5,109 sq. km of Crown land was under the management of (vested with) local governments at the year ending June 1999. Figures for December 1999 are not available. Figures for June 2000 will be published in the forthcoming Annual Report.
- (2)-(6) This information is not available to DOLA, as each local government has full property powers and its own asset portfolio, and does not report to DOLA.

#### EMPLOYMENT AND TRAINING, GOVERNMENT PROJECTS

1392. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

Further to question on notice 132 dated September 16 1999 in which the Minister for Employment and Training advised that the new convention centre, belltower, Fremantle Maritime Museum and motorsport complex projects had not been referred to the Department of Employment and Training and the State Training Board, I now ask -

- (1) Why was the Department of Training and Employment and the State Training Board not involved?
- (2) On what basis is the Department of Training and Employment and the State Training Board involved in decisions relating to major Government sponsored projects which have significant training and employment implications?
- (3) How credible are the Department of Training and Employment and the State Training Board initiatives and programs, if they are not routinely included in Government deliberations which have significant training and employment implications?

Hon N.F. MOORE replied:

- (1)-(3) The issue that underpins each of the questions is the level of involvement of the Department of Training and Employment in major Government-sponsored projects that have the potential to impact on training and employment. The Government has been proactive in addressing this issue by introducing the Priority Access

Policy. This major initiative has been introduced as a pilot program in February 2000 in building and construction contracts with Contract and Management Services (CAMS). The second stage of the pilot commences in June 2000 and will be expanded to include all State Government building and construction contracts (excluding housing contracts) valued at \$150,000 or more, with the policy finally being extended to all State Government goods and services contracts valued at \$500,000 or more.

The Priority Access Policy enables the Department to have a significant involvement in decision-making processes across all State Government-sponsored projects and contracts as the utilisation of State Government contracting and procurement policy will increase training and employment opportunities for Western Australian job seekers.

A register of Priority Access Employers has been compiled and serves to acknowledge businesses that demonstrate an active commitment to training and employment through participating in a range of employment and training activities. These include the employment of apprentices and trainees, graduates of the vocational education and training sector, participation in work-related training and support for structured work experience programs. The Priority Access Policy will be a pre-requisite for organisations wanting to tender for most large State Government contracts.

The first stage of implementation has been highly successful with the response from the building and construction industry being extremely positive. In excess of 500 employers have now registered their businesses as Priority Access Employers, which serves to highlight industry's commitment to training and employment.

The policy has been promoted to industry, Government Departments, agencies and the general public under the banner of *Access All Areas*, the State's youth employment strategy.

The impacts of the Priority Access Policy are envisaged to be great with positive flow-on effects in terms of facilitating the State Government to strengthen the labour market, enabling Western Australian industry to benefit from the strong training culture fostered by this policy. Employers who have an active commitment to employment and training are rewarded by 'priority access' to Government contracts.

The State Training Board's functions relating to industry liaison, and the fact that members are appointed for their expertise and experience in education and training, industry or community affairs, ensures the Board is well informed about the skill requirements of various employment sectors, thus allowing proper assessment of the State's employment and training requirements, including those created through project developments.

#### GOVERNMENT VEHICLES, GAS POWERED

1655. Hon KEN TRAVERS to the Attorney General representing the Minister for the Environment:

- (1) Is the Minister for the Environment's Government supplied vehicle gas-powered?
- (2) If not, why not?
- (3) When was the last time that the Minister's Government provided vehicle was replaced?
- (4) Is the Minister aware that gas powered vehicles are generally considered more environmentally friendly than petrol only vehicles?

Hon PETER FOSS replied:

- (1) No.
- (2) Advice from the Government fleet manager is that under existing arrangements, provision or conversion to a liquid petroleum gas vehicle imposes a greater financial cost than a standard petrol vehicle.
- (3) 1 October 1999.
- (4) Yes.

#### FERGUSON COMMITTEE, REPORT

1704. Hon MARK NEVILL to the Attorney General representing the Minister for the Environment:

- (1) What members of the Ferguson Committee had expertise and practical experience of fire management and wildfire control in west sclerophyll eucalypt forests?
- (2) Has the Minister for the Environment received any reports on the impact of the implementation of the Ferguson Committee report on fire control and wildfire hazard in the southern jarrah/karri forests?
- (3) Will the Minister table any correspondence or any report that has been made on the impact of the Ferguson Committee recommendations on logging in the southern karri/jarrah forests on fire management and threat from wildfire?

Hon PETER FOSS replied:

- (1) It is assumed that the member means "wet sclerophyll forests", not "west sclerophyll eucalypt forests".

Professor Ferguson started his career in forestry with the Forests Department at Manjimup in wet sclerophyll karri forest. He was based in Manjimup from 1958 to 1961, and was involved in fire control activities in these forests and also the 1961 Dwellingup fires among others. He was then based at the Department's research headquarters at Como from 1963 to 1968. He subsequently supervised and carried out research on fire behaviour, fire risk to houses in bushland setting, and fire protection strategies.

None of the members of the Ministerial Advisory Group on karri and tingle (Ferguson Committee) would claim to have recent or direct expertise in, or experience of, fire management and wildfire control in wet sclerophyll eucalypt forests, notwithstanding their awareness of and interest in these matters. That expertise and experience was ably supplied to the Ministerial Advisory Group by Mr Rick Sneeuwjagt, Manager, CALMfire, and Mr Peter Keppel, Regional Manager, CALM Southern Region and other CALM staff who accompanied the Group on their field visits and subsequently answered further questions and provided resource material at various meetings.

(2) Yes.

(3) [See paper No 952.] One is a set of preliminary comments on the fire protection implications of the Ferguson Committee recommendations forwarded to the Minister for the Environment on 8 November 1999, the other is a "Summary of logging plans and strategies for community involvement", based on the Ferguson report, prepared by CALM in December 1999. Many of the issues raised in the reports have since been addressed by the government, including the provision of additional funding to CALM in the next budget for extra fire protection resources.

#### GOVERNMENT DEPARTMENTS AND AGENCIES, TELECOMMUNICATIONS EXPENDITURE

1747. Hon E.R.J. DERMER to the Attorney General representing the Minister for Labour Relations:

For each of the Government agencies for which the Minister for Labour Relations has Ministerial responsibility -

- (1) What was the total recurrent expenditure on telecommunications in the 1998/99 financial year?
- (2) What was the total capital expenditure on telecommunications in the 1998/99 financial year?
- (3) What is the total estimated recurrent expenditure on telecommunications in the 1999/2000 financial year?
- (4) What is the total estimated capital expenditure on telecommunications in the 1999/2000 financial year?
- (5) What was the total recurrent expenditure on information technology in the 1998/99 financial year?
- (6) What was the total capital expenditure on information technology in the 1998/99 financial year?
- (7) What is the total estimated recurrent expenditure on information technology in the 1999/2000 financial year?
- (8) What is the total estimated capital expenditure on information technology in the 1999/2000 financial year?

Hon PETER FOSS replied:

WorkCover WA:

- (1) \$130 265
- (2) Nil
- (3) \$141 163
- (4) Nil
- (5) \$92 829
- (6) \$338 107
- (7) \$69 592
- (8) \$154 221

The Department of the Registrar Western Australian Industrial Relations Commission:

- (1) \$131 039
- (2) Nil
- (3) \$120 000
- (4) \$8 770
- (5) \$407 000
- (6) \$115 000
- (7) \$370 000
- (8) \$130 000

WorkSafe Western Australia:

- (1) \$188 508
- (2) Nil
- (3) \$195 661
- (4) Nil
- (5) \$368 087
- (6) \$106 000
- (7) \$279 602
- (8) \$122 000

Department of Productivity and Labour Relations:

- (1) \$165 840
- (2) All recurrent

- (3) \$150 000
- (4) All recurrent
- (5) \$235 075
- (6) \$170 000
- (7) \$280 278
- (8) \$330 000

Commissioner for Workplace Agreements:

- (1) \$19 400
- (2) Nil
- (3) \$45 000
- (4) \$50 000
- (5) \$22 717
- (6) \$198 784
- (7) \$9 400
- (8) \$62 000

#### LANDCORP, LAND ACQUISITION IN BUNBURY

1846. Hon KEN TRAVERS to the Leader of the House representing the Minister for Lands:

- (1) Has LandCorp advertised for licensed real estate agents to acquire land for the Government in the Bunbury area?
- (2) If yes -
  - (a) for what purpose is the land being acquired;
  - (b) in what area is the land to be acquired;
  - (c) why are private estate agents being used instead of LandCorp officers; and
  - (d) on what basis will the real estate agents be paid for acquiring the land for the Government?

Hon N.F. MOORE replied:

- (1) LandCorp has called for expressions of interest from licensed Real Estate Agents for real estate services for a land acquisition program.
- (2)
  - (a) Expansion of the Kemerton Industrial Park.
  - (b) Shire of Harvey.
  - (c) The agent would provide a professional service to liaise with landowners at a local level. LandCorp officers will be directing and managing the land acquisition process.
  - (d) This would be determined through a tender process subsequent to the expression of interest.

#### VOCATIONAL EDUCATION AND TRAINING, DATA COLLECTION

1850. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

What steps have been taken by WA Department of Training and Employment to develop data collection for VET in schools which is AVETMISS compliant and which is aimed towards measuring both student participation in VET in schools and assessing the outcomes of the effort?

Hon N.F. MOORE replied:

In April 1997, the three Western Australian peak schools organisations entered into a four year agreement regarding ANTA VET in Schools funding based on the *Principles and Guidelines for Improving the Outcomes for Vocational Education in Schools* that were endorsed by State and Commonwealth Ministers in 1997. The funding provided by ANTA under the *Principles and Guidelines* is disbursed to the three peak schools organisations in Western Australia through the Western Australian Department of Training and Employment.

The ANTA *Principles and Guidelines* attaching to the funds do not require reporting to AVETMISS by the schools or their peak organisations. The peak schools organisations issue a report to ANTA as specified in the *Principles and Guidelines*.

Outside of this arrangement, a small amount of VET in Schools delivery is additionally funded by the Western Australian Department of Training and Employment through the Department's college profiling system. The student participation and outcomes for this effort is collected in the AVETMISS returns from providers.

#### COLLEGES OF TAFE, FUNDING

1851. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

- (1) Can the Minister for Employment and Training advise how much the WA Department of Training receives from the Commonwealth per student hour for TAFE students?
- (2) How much is paid to TAFE Colleges per student hour for actual delivery?
- (3) Can the Minister provide a breakdown of how the remainder of the funding is spent?

Hon N.F. MOORE replied:

- (1) The Department of Training and Employment received \$65.11 million in Commonwealth General Purpose Recurrent funding in 1999. This represented around 23 percent of the recurrent funds received by the Department

for vocational education and training. These funds are not allocated on a 'per student hour for TAFE students' basis. Commonwealth funds are rolled together with State funds and are not differentiated in subsequent budget allocations.

- (2) While TAFE Colleges receive public funding through a variety of mechanisms, the majority of funding is provided for delivery of the approved college profile. Funding for the college profile is determined using a resource allocation model. While the rate per student curriculum hour funded by this model varies depending on the nature of the courses and the delivery location, the average rate per student curriculum hour in 1999 was \$8.31.
- (3) As the Commonwealth funding forms part of the overall budget, it is not possible to determine a 'remainder'.

#### EASTERN PILBARA COLLEGE OF TAFE, EMPLOYEES

1853. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

- (1) Can the Minister for Employment and Training advise the number of FTE employees at the Eastern Pilbara College of TAFE for each of the following years -
  - (a) 1997/98;
  - (b) 1998/99; and
  - (c) 1999/2000?
- (2) How many employees have resigned in each of the following years -
  - (a) 1997/98;
  - (b) 1998/99; and
  - (c) 1999/2000?
- (3) How many days have been lost as a result of sick leave due to work related stress in each of the following years -
  - (a) 1997/98;
  - (b) 1998/99; and
  - (c) 1999/2000?

Hon N.F. MOORE replied:

- (1)
  - (a) 123 as at 30 June 1998.
  - (b) 106 as at 30 June 1999.
  - (c) 103 as at 24 April 2000.

Staff levels have reduced due to an amalgamation of the corporate services divisions of Hedland College and Pundulumurra Community College.

- (2)
  - (a) Not available due to systems being changed as a result of the College amalgamation.
  - (b) 39.
  - (c) 41.

Turnover in the region tends to be relatively high due to the less stable nature of the mining related workforce.

- (3)
  - (a)-(b) None.
  - (c) 14 days (due to one person).

#### DOLA, NATIVE TITLE CLAIMS

1863. Hon TOM STEPHENS to the Leader of the House representing the Minister for Lands:

I refer to various statements made by the Premier and other Ministers concerning the resolution of Native Title claims and ask -

- (1) What is the involvement and role of the Department of Lands Administration in native title processes and with parties to a claim?
- (2) Does DOLA have written procedures or policies governing its involvement in native title claims?
- (3) If so, will the Minister for Lands table them?
- (4) If no written DOLA procedures or policies exist, under what guidelines do DOLA officers operate?
- (5) Have departmental officers been instructed to hold discussions with all sides to a native title claim and to work with all interest groups to try and bring about a resolution of the claim?
- (6) If so, in what circumstances?
- (7) If not, why not?

Hon N.F. MOORE replied:

- (1) DOLA maintains a spatial and textual database of native title claims in Western Australia and provides tenure and other information relating to claims to the National Native Title Tribunal, native title claimants, State and Commonwealth agencies, local government and the private sector. This role includes assisting representative



bodies and Aboriginal people with native title claim applications by the preparation of plans and descriptions of claim boundaries. The Department undertakes land tenure and use research required in relation to Federal Court and other court or arbitral processes. The various future act processes of the Native Title Act apply to the dealing in Crown land under the Land Administration Act.

- (2) The Department's role in maintaining spatial and textual information on native title claims which supports the processing of claims through the various stages of the Native Title Act is subject of a service agreement with the National Native Title Tribunal. The provision of land tenure and use research as part of the processing of claims is dealt with on a case by case basis.
- (3),(4),(6) Refer to (1) and (2).
- (5) The role of mediating on native title claims is the responsibility of the Ministry of the Premier and Cabinet. However, DOLA officers become party to discussions and mediations when issues arise that are within the Department's role in the administration of the Land Administration Act.
- (7) Not applicable.

### QUESTIONS WITHOUT NOTICE

#### ROADS, DECREASE IN EXPENDITURE

**1104. Hon N.D. GRIFFITHS to the Minister for Transport:**

Can the minister explain why the budget papers show that expenditure on local government roads in the current financial year will decrease by \$24m?

**Hon M.J. CRIDDLE replied:**

Currently we are in the middle of negotiations with the Western Australian Municipal Association. I have written to that organisation and signed the letter this morning with regard to the agreement with Main Roads. I will be able to answer those sorts of questions - I am sure they will be asked - in the estimates committee. When I finalise those arrangements, we shall know what the situation is.

#### ROADS, FUNDING AGREEMENT

**1105. Hon N.D. GRIFFITHS to the Minister for Transport:**

Is the Liberal Party candidate for Greenough, Jamie Edwards, correct with reference to the state and local government road funding agreement, when he says that the State Government appears to be trying to avoid its obligations to local communities, after reneging on funding arrangements without any notice to them? He said that either the Premier will lead the Government to honour the commitment he has given local government or he will be run over by the bureaucrats. If he is not correct, where is he wrong?

**Hon M.J. CRIDDLE replied:**

I will not speak for the Liberal Party candidate for Greenough but, in his capacity as president of WAMA, I have been in touch with him quite a bit lately. As I said previously, I signed a letter to him this morning and when we make the final arrangements we shall see what comments he makes as a result of those negotiations.

#### WHOLE MILK QUOTAS, CAPITAL GAINS TAX STATUS

**1106. Hon KIM CHANCE to the minister representing the Minister for Primary Industry:**

- (1) What investigation has the Minister for Primary Industry, or agencies within his portfolio, undertaken in relation to the capital gains tax status of the value of whole milk quotas which would be abolished in the event that the industry is deregulated?
- (2) Specifically, will farmers be able to carry forward the lost value of their quota as a capital loss, even though it seems that a CGT event has not occurred?
- (3) If it is apparent that these losses cannot be treated as a capital loss for CGT purposes, has the Minister for Primary Industry considered alternative mechanisms for the distribution of the restructuring grants that could alter the CGT status of the lost quota value?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question.

- (1)-(3) Any individual farmer who has a capital gains tax issue should raise the matter directly with the Australian Taxation Office.

## JARRAH SAWN TIMBER, RECREATION SITES

**1107. Hon CHRISTINE SHARP to the Attorney General representing the Minister for the Environment:**

In the year 1998-99, how many cubic metres of first grade jarrah sawn timber were purchased by Department of Conservation and Land Management districts for use at recreation sites?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question. If the member requires information about sawn timber purchased from timber suppliers, a detailed investigation of the records will be required and the question should be placed on notice. If, however, the member wishes to know how many first grade jarrah sawlogs were provided to CALM districts for departmental projects, the answer is 278 cubic metres for the financial year 1998-99.

## DAIRY INDUSTRY DEREGULATION, BALLOT

**1108. Hon HELEN HODGSON to the minister representing the Minister for Primary Industry:**

- (1) Is the minister satisfied that the voting processes used in the ballot conducted by the Western Australian Farmers Federation to gauge industry support for the deregulation of the dairy industry in Western Australia produced an accurate reflection of the views of affected dairy farmers?
- (2) Does the minister endorse the inclusion in the ballot of non-quota holders who are not affected by the loss of milk quotas through the deregulation of the dairy industry?
- (3) Is the minister aware that a number of quota holders have instructed legal representatives to challenge the validity of the ballot?
- (4) In light of a potential legal challenge to the ballot, will the minister still proceed with legislation to deregulate the dairy industry?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question.

- (1)-(4) The Western Australian Farmers Federation commissioned the Australian Electoral Commission to conduct the ballot on behalf of the WA dairy industry. The Dairy Industry Authority provided a list of licensed producers to the Electoral Commission at the request of the WAFF. The target of the ballot is a matter for the industry.

## HEROIN USERS, ESPERANCE REGION

**1109. Hon MURIEL PATTERSON to the Attorney General representing the Minister for Police:**

Can the minister confirm that, according to police records, there are up to 300 regular heroin users in Esperance and the surrounding region?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question. It is not possible to confirm the figures from police records. During the period March 1999 to March 2000, the Police Service reports that there were 149 drug offences or incidents in the Esperance area. These may not relate only to heroin and one person may have been charged on several occasions. The estimate of 300 regular heroin users is anecdotal, and it is not supported by services such as the community drug service team based in Esperance.

## CLARKSON RAILWAY STATION

**1110. Hon KEN TRAVERS to the minister representing the Minister for Housing:**

I refer to the Ministry of Housing Landstart joint venture Clarkson information pack, which states that the Clarkson railway station is planned to be completed in October 2001 and opened in December 2001. On what basis is this representation made to prospective joint venturers?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question. Landstart has been working on a proposed joint venture for its Clarkson holding for some time. For the past 18 months discussions have been held with the Department of Transport, the Ministry for Planning and the City of Wanneroo with regard to the creation of an integrated residential railway precinct. An indicative time frame for the railway station was proposed mainly for the purpose of enabling suitable road linkages to be planned.

The information included in the pack was the latest available when the material was compiled, and was included to enable interested parties to complete their own due diligence on the project. The information pack advises that consultation should be undertaken with both Landstart and the Department of Transport when formulating any concept plans, to gain a comprehensive understanding of the issues at play.

## TIDAL POWER GENERATION, KIMBERLEY

**1111. Hon J.A. COWDELL to the Leader of the House representing the Premier:**

I ask this question on behalf of Hon Tom Stephens.

- (1) Has the Premier yet responded to the Prime Minister's latest letter to the State Government seeking a jointly funded study into tidal power, for which commonwealth funds have been made available?
- (2) If yes, will the Premier table the letter; and if not, why not?
- (3) Will full Cabinet be included in making the final decision on whether to move to gas or tidal power generation for the purchase of power for Western Power in the west Kimberley; and if not, why not?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2) It is not normal practice to table correspondence with the Prime Minister.
- (3) A final recommendation will be taken to Cabinet by the Minister for Energy, as is the correct process.

## PRISONER TRANSPORT

**1112. Hon TOM HELM to the Minister for Justice:**

I refer to the Government's decision to contract out prisoner transport to a private company that will result in a number of long-term Ministry of Justice employees being potentially redeployed, and ask -

- (1) Is the minister aware that there are around four prison officer drivers who, with 20 years or more service in the ministry, will find it difficult to cope with duties different from those they currently perform?
- (2) Will the Government give favourable consideration to allowing those employees to take voluntary redundancy if that is their wish; and if not, why not?
- (3) Does the Government place any value on the long service of its employees; and if so, will it ensure that such employees are given the option of taking voluntary redundancy?
- (4) If not, why not?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) All officers currently involved in prisoner transport have been spoken to by the Ministry of Justice so that they can be placed into existing prison officer positions which are currently vacant. Most officers have identified areas within the prison system where they would prefer to work. Should any training be required, the Ministry of Justice will provide this to those staff to assist them in their transition to different duties.
- (2) The Ministry of Justice will transfer the officers into existing prison officer positions that are currently vacant. Should any staff feel that they are not in a position to cope with the transfer, the ministry will endeavour to place them into a position within its own department or another government department. This process would have to occur before any consideration could be given to voluntary redundancy.
- (3) The Government, and indeed the Ministry of Justice, places an immense value on its employees and, as such, the ministry has and will continue to consult with those staff involved in the transport of prisoners so that their concerns are addressed. The Ministry of Justice is confident that the concerns of the affected officers are being addressed and these staff will continue to make a significant contribution.
- (4) Not applicable.

## GREENHOUSE GAS LIMITS

**1113. Hon J.A. SCOTT to the Leader of the House representing the Minister for Resources Development:**

- (1) Is the minister aware that the federal Minister for the Environment has stated that projects which release big amounts of greenhouse gases, 500 000 tonnes of CO<sub>2</sub> per annum, would need new federal approval under a model released on 5 May 2000?
- (2) How will this affect the development of new resource projects in Western Australia and what effect will this have on the WA economy?
- (3) What strategies has the Western Australia Government put in place to minimise the economic impact of imposed greenhouse gas limits?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2) This is uncertain because firstly, the Commonwealth's Environment Protection and Biodiversity Conservation Act, under which the proposed Federal Government's model would fit, does not enter into force until 16 July 2000. Secondly, the proposed model has not been finalised for approval.
- (3) The State has established the Western Australian Greenhouse Council, involving government, industry and conservation groups which has prepared and released for public comment technical papers relating to greenhouse effects, which will contribute to the overall State greenhouse strategy. The State will consider the impact of these new proposals in consultation with the council and respond appropriately.

## RETIREMENT VILLAGES ACT, REVIEW

**1114. Hon CHERYL DAVENPORT to the Leader of the House representing the Minister for Fair Trading:**

I refer to the review of Retirement Villages Act 1992 held in 1999.

- (1) What was the closing date for public submissions?
- (2) When will a copy of the report be available?
- (3) Will the minister table a copy of that report; and, if not, why not?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1) 9 August 1999.
- (2)-(3) The Ministry of Fair Trading plans to finalise the report by 30 June. Decisions regarding tabling and public availability will be made once the Government has had the opportunity to consider the report.

## CANNING RIVER REGIONAL PARK, FUNDING

**1115. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for the Environment:**

I refer to the Canning River Regional Park and ask -

- (1) What funding was made available to the Canning River Regional Park in the 1997-98 and 1998-99 financial years?
- (2) What funding was made available to the Canning River Regional Park in the 1999-2000 financial year?
- (3) For the 1997-98 and 1998-99 financial years, were all of those funds made available to the Canning River Regional Park spent within the park?
- (4) If not, why not?
- (5) For the 1999-2000 financial year, were all of those funds made available to the Canning River Regional Park spent within the park?
- (6) If not, why not?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) The funding made available for the Canning River Regional Park in 1997-98 was \$207 500. The funding made available for the Canning River Regional Park in 1998-99 was \$415 350.
- (2) \$348 607.
- (3) For 1997-98, yes; total expenditure for the Canning River Regional Park was \$235 113. For 1998-99, no; \$3 493 was unspent.
- (4) For 1997-98, not applicable. For 1998-99, a surplus of \$3 493, or 0.08 per cent, is considered an acceptable variation over the financial year.
- (5) It is estimated the total budget available in the Canning River Regional Park in 1999-2000 will be expended within the park.
- (6) Not applicable.

## ROCKINGHAM-MANDURAH RAIL PASSENGER SERVICE

**1116. Hon E.R.J. DERMER to the Minister for Transport:**

I refer to the Premier's advice to the media this afternoon that the Government was considering privatising the operation of the Rockingham-Mandurah rail passenger service.

- (1) Why is the Government considering this privatisation?
- (2) Is this privatisation being considered because the proceeds of the AlintaGas sale would not be sufficient to fully fund the construction and operation of this service?

**Hon M.J. CRIDDLE replied:**

- (1)-(2) In the not too distant future the Government will be seeking expressions of interest for the various ways of funding the operation to the south from Rockingham to Mandurah. When we get the results of that, we will be making decisions on the funding arrangements to be put in place. Those points will be taken into consideration at that time.

#### EDUCATION, BUNBURY LOCAL AREA PLANNING COMMITTEE

**1117. Hon BOB THOMAS to the parliamentary secretary representing the Minister for Education:**

In relation to the consultation process being carried out by the local area education planning committee on future options for education in Bunbury -

- (1) What assurances will the minister give the House that the views of parents will be acceded to in deciding the final model?
- (2) What mechanisms are in place to ensure that these views are objectively collected and collated?
- (3) Will the minister guarantee that the parents will be given the final say on the establishment of the senior campus in Bunbury?

**Hon BARRY HOUSE replied:**

- (1) In making the final decision, the Minister for Education will consider all the options developed by the consultative committee, and all the community responses following the consultation process.
- (2) The consultative committee, comprising parents, school staff and community representatives, will assist the district director in compiling the consultation report. This committee has the responsibility of ensuring the consultation report contains and accurately reflects all the community responses to the options paper.
- (3) Following a wide community consultation process and taking into account the community responses to the options paper, the Minister for Education will make the final decision on the structure of secondary education for the Bunbury area.

#### COURT SECURITY OFFICERS, TRAINING

**1118. Hon G.T. GIFFARD to the Attorney General:**

I refer to the Attorney General's previous advice to the House on Tuesday 26 October 1999 - *Hansard* page 2527 - regarding court security officers in which he advised that contracted officers' training will consist of "a six-week preliminary course . . . followed by two weeks of shadowing".

- (1) Has the training of these contracted officers gone from three months to six months?
- (2) If so, what is the reason for the doubling of the training period?
- (3) Will there be only 90 full-time positions offered to the 200 trainees at the end of the training period?
- (4) If not, how many full-time positions will be offered?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) No.
- (2) Not applicable.
- (3) No.
- (4) 112.

#### PRISON SITE, EDEN HILL

**1119. Hon N.D. GRIFFITHS to the Minister for Justice:**

I refer to the Government's plans to establish a prison on the Pyrton site in Eden Hill.

- (1) Has an assessment been done on the nature of work that needs to be done to convert the existing buildings and areas into a prison?
- (2) What is the nature of the work that must be done?

- (3) What is the estimated cost of the work?
- (4) Will tenders be called for the work; and, if so, when?
- (5) If tenders will not be called, why not?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2) Upgrade of existing building services to meet code requirements, minor alterations and fit out, furniture and equipment.
- (3) The Ministry of Justice has developed detailed estimates only for the refurbishment of the existing accommodation building of \$1.5m to \$1.7m. The previously decommissioned kitchen building, together with the existing Myora Hostel - the hospital building - are intended to be refurbished progressively as a prison project following occupation. Detailed estimates have not been prepared for the cost of this work.
- (4) It is intended that recommissioning of existing site services will be undertaken by the existing maintenance contractor and that the balance of the building works will be tendered. It is intended to call tenders for that work as soon as practical after the necessary approvals are in place and the necessary tender documents are prepared.
- (5) Not applicable.

#### BROOME REGIONAL PRISON

**1120. Hon KIM CHANCE to the Minister for Justice:**

- (1) Does the minister accept the view of the Ministry of Justice expressed following the fourth escape for this year that there needs to be a replacement regional prison in Broome?
- (2) What progress has been made with plans for the relocation of Broome Regional Prison?
- (3) What funds have been allocated to upgrade security in the current financial year at Broome Regional Prison?

**Hon PETER FOSS replied:**

- (1)-(3) One of the things that the Ministry of Justice has done is to prepare a program for all its prisons. Unfortunately, prisons have always been a bit neglected and work has been done on an ad hoc basis after the need has been identified. Broome Regional Prison is only one of a number of prisons that need to have work done on them, and it certainly is in the ministry's plans. We do not currently have money in the budget to do that work, so it is a little difficult to say exactly when that will occur. Bandyup Prison is probably in more urgent need at the moment, and I am pleased to say that a \$14m upgrade is planned at Bandyup, and the cost of this year's works is covered in the budget.

I do not know that it is necessarily the case that the security problems at Broome Regional Prison have to do with the quality of the prison. Broome Regional Prison has prisoners in two categories. The minimum security prisoners are not confined; therefore, the capacity for them to leave is, generally speaking, not a matter of whether the building is adequate but a matter of whether they decide to come back. There has been an escape from the maximum security area. The maximum security areas in Broome and Eastern Goldfields Regional Prisons are totally unacceptable to house prisoners, and I am not surprised that people want to escape from them. Obviously Broome Regional Prison is not intended principally to be a maximum security prison; the maximum security area is just a small area within that prison. The principal problem is not only the risk of people escaping but also the fact that it is not an acceptable way of accommodating people.

#### PEEL DEVIATION AND KWINANA FREEWAY EXTENSION, FUNDING

**1121. Hon J.A. COWDELL to the Minister for Transport:**

Are any funds provided in the budget forward estimates for either the Peel deviation or the Kwinana Freeway extension from Safety Bay Road to Pinjarra Road?

**Hon M.J. CRIDDLE replied:**

The budget forward estimates contain no contingencies for those extensions. The cost of the extension of the freeway south from Safety Bay Road to Paganoni Road and further south is in the vicinity of \$260m, which is a large amount of money. We will be developing the opportunity for those extensions to come into the four-year budget papers. There will need to be some indication of the requirement for that, and a couple of surveys are being done. The question I would like to ask the Labor Party on all these issues to do with rail and road is just how will it fund these initiatives.

Hon N.D. Griffiths: When we win the election, you can ask us.

Hon M.J. CRIDDLE: The Labor Party had better start to tell the people of Western Australia, because this is a vital issue. We are about to go into an election campaign, and the Labor party is continually asking the Government how it will fund

these initiatives. We have been putting funding strategies forward. Yesterday, we completed the debate on Westrail in this House, and questions were asked about the funding of the rail system from Esperance to Kalgoorlie on the Jaurdie-Bonnie Vale line, which will cost about \$88m, and it came to light that there was some suggestion that the Labor Party might take the funding from that line and put it onto the south west rail. Is that what the Labor Party will do? Will it take funding out of country areas?

Hon Kim Chance: It was not the Labor Party that made that suggestion.

Hon M.J. CRIDDLE: There was a suggestion that the Labor Party might do that. We would like some indication of how members opposite will fund some of these initiatives in the future. When we got into government, the budget for roads was \$320m. This financial year, the budget for roads is in the vicinity of \$806m.

Hon Bob Thomas: Who will pay for it?

Hon M.J. CRIDDLE: The people of Western Australia will pay for it. Question: Will you maintain your road funding into the future? Answer: Hon Bob Thomas would not know!

#### CONSUMER CREDIT LEGAL SERVICE (WA) INC, FUNDING

##### **1122. Hon J.A. SCOTT to the Attorney General:**

- (1) What funding has the Government provided to the Consumer Credit Legal Service (WA) Inc in the past three years?
- (2) Has the Government made any commitment to provide stable funding to the CCLS in the future? If so, what is that commitment? If not, why not?
- (3) Is the minister aware that the CCLS will have to discontinue its service if adequate funding is not found?

##### **Hon PETER FOSS replied:**

- (1) Agencies within my portfolio responsibilities have not provided any funding to the Consumer Credit Legal Service in the past three years, as it does not fall within the portfolio responsibilities of the Attorney General or the Minister for Justice.
- (2) Although I have not made any such commitments, I have requested that the Ministry of Justice explore several options for contributing to the funding of community legal centres, generally. That work is continuing.
- (3) I have been so informed.

#### BUSES, NEW

##### **1123. Hon N.D. GRIFFITHS to the Minister for Transport:**

How many of the 130 new buses that the Government promised in last year's budget for the current financial year have been delivered?

##### **Hon M.J. CRIDDLE replied:**

It is not so long ago that 100 buses were on the road. Once again, this is one of the wonderful initiatives of this Government. We have in place a transport system that -

Hon Kim Chance: Your bus fleet is older now than when you took it over, and you know it.

Hon M.J. CRIDDLE: The Labor Government ran the bus fleet down to that point. Was it 16 years old?

Several members interjected.

The PRESIDENT: Order! I am interested in the answer. Perhaps members would do me the courtesy of allowing me to hear it.

Hon M.J. CRIDDLE: The Government has in place a project to replace the bus fleet over the next 10 years, which will bring the average life back to six years. It has been put in place. By the end of next year we will be looking at having 275 buses on the road and that will be the best bus fleet we could possibly imagine. We are moving towards that. What will members opposite do when they get into government?

#### SCARBOROUGH SENIOR HIGH SCHOOL SITE

##### **1124. Hon E.R.J. DERMER to the Parliamentary Secretary representing the Minister for Education:**

- (1) Is the Minister for Education aware of the problem of the theft of reusable materials from the Scarborough Senior High School site?
- (2) Is the minister aware of the abuse of this site by people using trail bikes and four-wheel drive vehicles?
- (3) Is the minister aware of disruption to local residents that arises from this abuse?
- (4) What action does the minister intend to take to stop the abuse, theft and degradation of this site for which he remains responsible?

(5) When will the minister take this action?

**Hon BARRY HOUSE replied:**

I thank the member for some notice of this question.

- (1) Yes; reports have been received of slabs and bricks being removed from the site.
- (2) No; there have been no reports of people on trail bikes and in vehicles abusing the site.
- (3)-(5) Security patrols are continuing on a regular basis and in response to calls from local residents. Consideration may be given to fencing the site should there be some delay in disposing of it.

#### GRAHAM FARMER FREEWAY, TRAFFIC CONGESTION

**1125. Hon KIM CHANCE to the Minister for Transport:**

Has Main Roads proposed to the minister any possible resolution to the traffic congestion problems on the Graham Farmer Freeway's westbound intersection with Loftus Street?

**Hon M.J. CRIDDLE replied:**

I travel through this intersection most mornings. Over 100 000 cars a day travel through the tunnel, which is an endorsement of it.

Hon Kim Chance: The tunnel works well. It is the bits around it that are the problem.

Hon M.J. CRIDDLE: I will get to that. We have already adjusted the eastern end at East Parade. We want the traffic on one of the best pieces of infrastructure that will ever be seen around the Perth area to settle down. We must ascertain what the flow of traffic will be.

Hon Ken Travers interjected.

Hon M.J. CRIDDLE: What would Hon Ken Travers know about it? We must let the flow of traffic settle down.

Hon Kim Chance: I asked a reasonable question.

Hon M.J. CRIDDLE: I want the chance to answer it.

The PRESIDENT: Order! If members do not want to hear the answer, the minister is better off sitting down so we can get on with other business.

Hon M.J. CRIDDLE: The people of Perth have chosen to use this infrastructure because it is an outstanding construction. Over the next three or four weeks we will let the flow of traffic settle down so that we can make a reasoned decision on the way the lights at the intersections should be managed. It is no good changing the situation until the traffic flow settles down. This infrastructure has been endorsed by the people of Western Australia as the best bit of engineering work in this State and in Australia for many years.

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