



WESTERN AUSTRALIA

# **Parliamentary Debates**

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LEGISLATIVE COUNCIL

Thursday, 10 December 1998

# Legislative Council

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

## **SELECT COMMITTEE ON NATIVE TITLE LEGISLATION**

### *Point of Order*

Hon TOM STEPHENS: I am sorry to raise this issue without prior warning. I seek your advice, Mr President, about the report of the Select Committee on Native Title Legislation that is due by 10 December. If that report is presented before the House rises tonight, will the committee have complied with the requirements of the motion? When is the latest that the select committee can present that report to comply with the requirements of that order?

The PRESIDENT: The committee is required to report on 10 December, which, for the purposes of the House, is during today's proceedings of the House; that is, prior to the adjournment debate being moved. Because it is Thursday and we have agreed that we will finish at six o'clock, that is at some time prior to six o'clock this evening.

## **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

### *Direction to Inquire into Privatisation and Contracting Out Public Services - Motion*

Resumed from 9 December on the following motion -

That the House direct the Standing Committee on Public Administration to inquire into the processes and outcomes of privatisation and the outcome of contracting out public services in the following terms -

- (1) The extent to which state government enterprises have been privatised since February 1993.
- (2) The economic and social impact of transferring state owned enterprises to the private sector.
- (3) The cost and quality outcomes of privatisation in terms of the level of savings or additional costs that have resulted from the provision of services by private contractors instead of by government.
- (4) The extent to which state government contracts or tenders have since February 1993 been awarded to -
  - (a) Western Australian companies or businesses;
  - (b) other Australian companies or businesses;
  - (c) foreign owned or controlled companies or businesses; and
  - (d) regionally based businesses.
- (5) The extent to which risk is transferred from the public sector to the private sector and to which government companies or businesses are given government guarantees before agreeing to invest in large scale public sector projects.
- (6) The extent to which policies have been introduced to guarantee the Western Australian public against financial default by private contractors.
- (7) The extent to which "contracting out" of state public services has resulted in greater competition.
- (8) The extent to which initiatives have been introduced to prohibit the practice of private companies acting as cartels, rather than competitors, and thereby combining resources to tackle large scale projects.
- (9) The extent to which current tendering practices ensure that -
  - (a) the process is open and fair;
  - (b) proper procedures are being followed; and
  - (c) mechanisms are in place to check the qualifications, credentials and financial backgrounds of those seeking contracts.
- (10) The extent to which appropriate checking mechanisms are in place to allow regular monitoring of the performance of contractors and that the Government has in place a set of procedures to deal with breaches of contracts.
- (11) A set of criteria or conditions which would allow the Parliament to make judgment on what constitutes "confidentiality" when referring to government contracts.

- (12) The extent to which the competitive nature of contracting out has led to employees of contractors being paid below usual rates of pay and conditions.
- (13) The extent to which government departments and agencies are prejudiced in the contracting arrangements when private contractors are able to legally pay their employees lower wages and conditions.
- (14) The extent to which the Government should specify certain minimum requirements of contracting, including the requirement to -
  - (a) pay to employees a wage not less than that of an employee of the Government doing comparable work might be paid;
  - (b) subject the work under contract to the same level of public and parliamentary scrutiny as applies in the public sector; and
  - (c) the same level or nature of good corporate citizenship as that expected of government departments or agencies.
- (15) Any other matters relating to privatisation and contracting out of government services as the committee deems necessary.

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [11.05 am]: Yesterday I spoke on the motion, and in trying to speed up my speech I did not mention the biggest non-privatisation of the Government's term in office. When we came into government we continued with the \$165m sale of the State Government Insurance Office which was put into train by the previous Government. That was a good deal. However, the Government immediately picked up some of the losses in the State Government Insurance Commission. The balance sheet of the SGIC showed a loss of \$330m - in other words, its liabilities exceeded its assets by \$330m. These losses were created by some WA Inc deals. I received approaches from the insurance industry to privatise the SGIC, which is the compulsory third party fund, as Nick Greiner had done in New South Wales three years previously. The insurance industry argued strongly for the privatisation of the compulsory third party fund. As a result of that, Tony Carter, a representative on the Insurance Council of Australia Ltd, Roy Caldwell of RAC Insurance Pty Ltd, and Ian Brown of the SGIO, tried to convince me that the private sector could do a better job in the compulsory third party fund than the Government. Their argument was not very convincing, but they told me about the wonderful things they would do. They did not realise that I had found out that New South Wales had given \$1b-plus worth of fees to the insurance industry for nothing. The insurance companies capitalised that on their balance sheets, which made them look very wealthy; that is, until the claims started to come in. The insurance industry wanted the Government to give away a major asset that was being run very well. The losses were no fault of the management of the SGIC.

The industry suggested that the Government should give the insurance companies \$250m worth of premiums for nothing. If the Government went through an insurance broker at least it would get 20 per cent commission, but the industry wanted the Government to give it the premiums. It said this would make good fellows of the Government, and would make the industry wealthy. I said I would not do that. I asked how the SGIC would carry on its business and pay the huge claims which had a tail of seven or eight years. It said it would let the SGIC retain 17.5 per cent of its own business to keep it going. I said that would be a bit silly, and I should keep the whole lot. I told the industry that the Government would not do a deal with it. They were not content with that and a few months later several members of the board of the Insurance Council of Australia - John Studdy of MMI Insurance and about four or five other people - flew over especially to persuade me that the Government should sell off the compulsory third party fund. Once again they were looking after their own interests. I will take some credit on behalf of the Government for not selling the SGIC. It was Liberal Party policy in 1993 to sell off the compulsory third party fund, but I told people that I would not sell it. I was the wrong minister if the Government wanted to sell off the SGIC. The insurance industry wanted me to give it a lot of money, and I would not promise that before or after the election. The Government did not sell the SGIC because it could run it just as well as the private sector. New South Wales now regrets selling its compulsory third party fund. The insurance companies made a huge profit out of the extra premiums and no claims. They started to discount premiums when they did not have a track record in dealing with claims. The Transport Accident Commission, which is the third party fund in Victoria, has built up huge reserves over some years. That should be the case in this State also. The Victorian Government decided not to sell that fund to the private sector, and it is still in government ownership.

To return to the situation in this State, the former Government ended up running a business that had losses of \$330m. The State Government Insurance Commission was formed on about 31 January 1987. It had capital reserves of about \$29m, most of which came from the motor vehicle insurance trust fund, as I said yesterday, and not from the State Government Insurance Office, which was run on a cash receipts and payments basis. By June 1987, the SGIC had about \$60m-worth of net equity; that is, assets exceeding liabilities. The stock market crash occurred on 20 October, and on 10-11 November 1987, the SGIC was instructed by Premier Brian Burke, without the approval of the board, to bail out Robert Holmes a Court and buy BHP shares worth \$285m and properties worth \$206m, including the Parmelia Hotel site and Westralia Square. Holmes a Court was paid in cash. The former Government was able to buy those shares and properties only by getting the other state banks

throughout Australia to give it cash immediately to enable it to do that deal. The shares were sold within about 12 months, and the former Government made a profit of about \$12m, which would not even have covered the interest payments on that money. By mid-April 1988, pressure was placed on Len Brush, the then chairman of the board of the SGIC, to buy the Bell convertible notes and Bell shares. Members may remember that Alan Bond was involved in that deal.

Hon Kim Chance: That is a good argument against privatisation!

Hon MAX EVANS: Yes. I am saying that we learnt from members opposite. We are doing it the right way; members opposite did it the wrong way.

The SGIC, under instruction from the former Government, paid out \$300m on 25 April when the final deal was done; they worked on Anzac Day. I want the House to realise that we have been very responsible in all the deals we have done.

Hon Ljiljana Ravlich: Then you would not mind an inquiry.

Hon Kim Chance: You should welcome it.

Hon MAX EVANS: I said yesterday - I wish members opposite had listened - that they will congratulate us when they have held the inquiry and will say, "Three cheers! You have done a good job!" That is what I said yesterday and that is what I mean. Members opposite should be very pleased that we have done such a good job.

A total of \$791m had been put into the SGIC. In today's terms, that is \$1.75b. I asked the Reserve Bank two days ago to check that figure; it may be slightly different now. We could have built three Newcastle Street tunnels with that money, and we could have done many other things. The SGIC lost over \$400m of that \$791m. The total investment fund of the SGIC at 30 June 1987 was \$791m. By 25 April 1988, it had invested its total funds with its friend Holmes a Court. He did not even give the Labor Party a decent donation! All he ever gave was \$50 000! The Labor Party had a lot of benefactors in the Curtin Foundation who were a lot more generous than Holmes a Court. All the Labor Party got from that \$791m investment, of which it lost about \$400m, was a donation of \$50 000! These are the sorts of deals that we had to learn from. I made a decision that even though we were financially strapped with that company, it would not be of any benefit to the taxpayers and vehicle owners of Western Australia to do this deal.

We then come back to Westralia Square. We have been careful to ensure that all of our property deals have been for the benefit of the people of this State. The creation of LandCorp in January 1988 added a new dimension to the corporation's asset management, but up until that time, and even after that time, the asset management task force sold about \$250m-worth of land over three years. All of that money went towards paying wages. It was just lost in the system. The old Perth technical college site was part of that sale to Bond and Connell, who each had a 50 per cent interest in that site in those days.

In relation to asset management, we used to hear at that time from John Horgan and all the Liberal voters on the Western Australian Development Corporation board who used to say that there was no register of all the assets and profits of this State. They kept asking for 10 years why the previous Government had not set up a register. I came in and said, "Let's have a look at the register and see what assets we have." A register had never been kept, either by the Department of Land Administration or any other department. An amount of \$200 000 was given to the Government Property Office to start one and in 18 months the Valuer General and I created that register. We thought there were 60 000 blocks of land. In fact, there were 180 000 blocks of land, and we have sold off many of them. A former minister in this place discovered from the register that there was land worth \$91m in Westrail that was not even on his books; that was the Kewdale yards. Also people in the country realise that with privatisation, or selling off, we have been able to sell off many blocks of land which were strips of farms where the Government was going to put a railway many years ago but never did so. The Government has been able to sell that land back to farmers at a nominal price. It has at least cleared up farm land and the book debt. We have sold off a great deal of land which has gone to repaying debt or buying new assets and not into paying wages.

Hon Kim Chance: There are a lot of road reserves and land of that nature also.

Hon MAX EVANS: Yes. Out of the 180 blocks of land, 22 000 were actually Westrail's. Many of those are kerbs and strips and there was an odd strip at Fremantle.

Hon Kim Chance: I said there were a lot of road reserves.

Hon MAX EVANS: There are curves on the roads, yes.

Hon Kim Chance: No, survey roads which have never been used. There are thousands of acres of them.

Hon MAX EVANS: There might be those also, yes. We are slowly working through those and valuing them. There are two aspects to this. The money involved is not much but it puts the land back to better use by other people even though it was reserved for a good use many years ago. That was the reason for the asset management task force. As mentioned the other day, LandCorp has done a good job there. It had the big advantage of having \$26m in cash in the Joondalup Development Corporation which went to East Perth because East Perth did not have cash and had to pay top dollars for the properties it had which assisted with that development.

Part of this asset management involved Alan Bond and Laurie Connell, who owned half each of the Perth technical college site. Bond also still had a big share of the land across the road. The Government was not game to deal with Alan Bond; therefore, it decided to get the site warehoused by Warren Anderson. That was all going on about the same time as Warren Anderson made a deal with, and paid about \$45m to, Alan Bond which he borrowed from the R & I Bank. That was set up by the Government on the basis that some time later, the Government would buy it from him, which is what it did. St Georges Terrace was a very interesting place in those days with big money going around. However, this Government has steered clear of these big business deals and done well keeping out of them even though a few small ones have been a problem. It sold the Perth technical college site and another site for \$270m, with \$90m down and \$180m virtually interest free for about six years until the money was recouped. Bringing history up to date, by the time the deal was done in 1988 \$50m was requested to bail out Rothwells and keep it going.

Hon N.D. Griffiths: Isn't this a matter before the courts in some way?

Hon MAX EVANS: Yes, I will leave it at that. A sum of \$50m was paid. It is all before the courts and will be decided. What is not before the courts now is that later, Warren Anderson wanted to get his money back, so that the Government, just before the election on 31 December 1988, loaned Warren Anderson \$55m. That was an interest free mortgage loan. We searched the titles and knew what it was for: It was being used to buy back 25 per cent of the Westralia Square site. The deal was then consummated about two months later after the 1989 election. The deal involved Warren Anderson putting up the building on the Westralia site for \$184m and he would receive all the fees, probably 1.5 per cent to 2 per cent; no-one knows the exact amount that he was paid. At that stage it was the highest rental ever paid in Perth at \$200 a square metre. Hon Peter Foss would say, "Mind you, it is still bleeding to death now." The Government stopped that and tries always to put tenants in there, but we put our own people in there mainly. Taxpayers' money was used. At that stage, the building was owned 70 per cent by the State Government Insurance Commission and 30 per cent by the Government Employees Superannuation Board. It is now owned 100 per cent by the State Government Insurance Commission. One privatising deal catches up with many more further along the line. In addition, the Government had a rental guarantee of \$64m with the owners of the building, the SGIC and the GESB.

During that time there were problems with the Swan Building Society and the Teachers Credit Society. I do not know whether you, Mr President, were a member of this place when the Government had to bail out Teachers Credit because it had not kept adequate supervision over its financial position, and that cost the Government \$125m. Hon Joe Berinson said that the then Government would put \$85m out of the budget into it. I asked how he would do that and he said, "By underspending." I said, "That's good; you mean you have saved \$85m so you are going to put it into Teachers Credit to pick up that loss from underspending?" He said, "Well no, not quite like that; we will spend it not this year but next year." He virtually robbed Peter to pay Paul.

Hon Kim Chance: That is defrayed expenditure; you do that all the time.

Hon MAX EVANS: But I do not try to spend the money twice. The Labor Government spent it twice. It did not spend it one year and it put it into Teachers Credit the next year. We would not do that.

Hon Kim Chance: You present savings as defrayed capital works.

Hon MAX EVANS: That is a different matter. We do not spend it on something else, which is what Labor Government members did - they were rogues. Even Hon Joe Berinson had a guilty conscience when he gave that answer that day.

Hon N.D. Griffiths: We will talk about the Dampier pipeline.

Hon MAX EVANS: Good; I hope that we debate the Dampier pipeline and prove what the previous Government tried to do.

The SGIC was not at arm's length from the Government. The Government loaned \$56m in the form of commercial bills to Rothwells during that time, and that figure increased to \$93m by October 1988. That was four days before the company went into liquidation, on 4 November 1988. SGIC lent another \$30.5m to invest in Spedleys, an eastern States company which Brian Yuill used to try to keep Rothwells going. Brian Yuill was not brought across to do that; the Government used Tony Lloyd, who was on the board of the Western Australian Development Corporation. Those moneys were wasted by some of the main assets in the State. We have been careful to get a good deal on the State Government Insurance Office, BankWest, State Print, the State Hospital Laundry and Linen Service, 6PR, Fairplay Print and the pipeline. We have learnt from the past.

The Perth Mint was a marvellous operation. What happened was not the fault of the previous Government. The Perth Mint showed a loss every year because the Treasurer took half its profits. It is hard to believe it but gold was worth \$500 an ounce back in 1987-88. The Perth Mint would buy gold and bring it back into the books at 30 June at \$50 an ounce, which represented a paper loss. It would say, "We have made a loss; we cannot pay money to the Treasury", so it would sell the gold on 1 July and retain its liquidity. John Horgan said to the boss, "I am doing a great job at WADC. You pay me \$1m a year and I must earn it. WADC should take over the Perth Mint and set up GoldCorp." The first year was marvellous;

in fact, it raised \$260m for the State. That was more than the total stamp duty collected by the State at the time. However, in reality, GoldCorp sold gold overseas for \$260m, but there was no money because the trading figures included a figure of \$1.4b in brackets. Of course, that means a loss. When he took over GoldCorp, John Horgan had a large supply of gold valued at \$50 an ounce. It was revalued the next year at \$500 an ounce, and he achieved \$1.5m in profit. He said, "What good boys we are; we have done all this." The corporation then found that if it scraped down the walls it could pick up gold filings from the floorboards. It raised another \$1m by doing that.

WADC then sold all the state batteries, which was a tragedy for the Historical Society. It was a sad saga. GoldCorp went very well; it is not its fault that the gold price has fallen. Some years ago it tried to set up an operation in Thailand and other projects that resulted in losses. The low gold price makes it very hard. GoldCorp has done a good job; in fact, it will cast all the 2000 Olympic medals. The other trading enterprises have left a lot to be desired.

Paragraph (5) of the motion states -

The extent to which risk is transferred from the public sector to the private sector and to which government companies or businesses are given government guarantees before agreeing to invest in large scale public sector projects.

In the other States a guarantee was provided to the State Government Insurance Commission of South Australia and a rental guarantee of \$64m was provided for the Australia Square site, which ensured a return of 8 per cent. Laurie Brereton gave a guarantee to those who invested in the Sydney tunnel, but that deal had to be unscrambled. Doing a deal with the private sector and then providing a guarantee to enhance the price at which the project will be sold is asking for trouble. Those involved will pay a high price only because of the guarantee. Those constructing the new freeways into Melbourne were given a guarantee in respect of the tolls collected to encourage them to proceed. If a Government is required to provide such a guarantee it would be far better to do the project itself. It can borrow money more cheaply and if it can run the project free of union and management problems, it can do better.

This Government provided a guarantee in respect of the State Government Insurance Office and the taxes involved, but it was very minor in scope. It also removed about \$50m worth of properties from the BankWest structure rather than guarantee their sale price. LandCorp took those properties and has since sold them. As a result, the valuation of the balance sheet and the due diligence process could be undertaken on a proper basis. The Government could promise only that State Print would still make losses, which Mercury found out. Guarantees are very dangerous, because they will come back and bite the Government.

Hon Nick Griffiths referred to the guarantee in respect of the pipeline. A guarantee is in place involving a take-or-pay arrangement for gas. The system has about \$300m of prepaid gas because the Government has been able to buy cheaper gas further down the line. If the Government had not put that much money into circulation, the State would not have had a gas pipeline and the North West Shelf would not have been developed. I was out on a rig in October 1972. It was just a hole in the ground then. Those involved found the gas many years before they started to export it, which was about seven years ago. I believe that Woodside Petroleum paid its first dividend only about two years ago, although it was established in 1936. That guarantee was provided by the previous Government, and I do not believe any further guarantees were given. In fact, the Cabinet has tightened up how guarantees can be provided.

Paragraph (6) refers to the extent to which policy had been introduced to guarantee the Western Australian public against financial default by private contractors: We received our cash up-front on BankWest. The Premier will confirm that, at midnight our time, a cheque was received for \$900m-odd and officers went down to the Reserve Bank to deposit it around midnight. We received cash on that sale, as we did on the sale of the pipeline for \$2.4b. We received about \$4.5m cash for 6PR. Not much money was coming from the Health Care and Hospital Laundry and Linen Services. We received cash for State Print; it was less than a million dollars for the plant and equipment.

The same paragraph mentions financial default by private contractors. Yesterday someone was talking about the infill sewerage program and how some of the jobs were put out and the contractors might have defaulted or went into liquidation - it is always messy for an owner. If a contractor goes into liquidation, it costs a bit of money to sort it out. That is a normal business transaction and we have not guaranteed any others to my knowledge.

Paragraph (7) refers to the extent to which contracting out of state public services has resulted in greater competition. I said this the other day and I will mention it again as it comes under this. The infill sewerage has been a great thing and I had a large involvement in it. The Water Corporation decided a \$50 levy should be placed on every household in Western Australia to pay for infill sewerage. It seemed like a good idea at the time because the Greens (WA) and everyone else thought it was a good idea. However, they had not asked the people who could not afford to pay the \$50 levy. They did not think it was a good idea. I found out that if every household in Western Australia paid \$50, it would bring in only \$25m, which would not go very far when we wanted to spend \$80m every year. Even though we initially agreed to a levy, we carried on with the deal without it. We initially had big contracts and then went to smaller contracts; that made many people very successful businessmen, and I hope they made good profits out of it. We have a much better price; the price has come

down by 20 per cent. That will mean that on the spending of our cash flow of \$800m, it will bring the completion date of the whole job well ahead.

Hon Ljiljanna Ravlich interjected.

Hon MAX EVANS: I have yet to catch up with the member's three hours. She had actually written her speech here. She should have spoken on her motion for five minutes and let the House talk about it. She spoke for three hours on it and she was only introducing it.

Hon Ljiljanna Ravlich interjected.

Hon MAX EVANS: I am not halfway through it yet.

Hon Ljiljanna Ravlich: Then you are obviously filibustering.

Hon MAX EVANS: I am not.

Hon Ljiljanna Ravlich interjected.

Hon MAX EVANS: No, I am helping the member. If we allow the committee to be established, she will have all the information here; she will simply have to go back to my speech and say, "Here it all is. Congratulations, you have done a good job." That is all I am doing this for. I could have referred her to my speech in 1989, but I thought I would update it for her as some of the information might need changing.

Hon Ljiljanna Ravlich interjected.

The PRESIDENT: Order! Hon Ljiljanna Ravlich may have a view on what she would like the Minister for Finance to be talking about. Unfortunately her opinion does not count. The Minister for Finance, so as long as he addresses the motion before the House, is entitled to say what he wants to say. My problem is determining whether what is being said in this debate is relevant - and I am referring to all speakers, from the first speaker on. At times I must closely look at the motion to determine at what point we might be on the motion. The bad news for Hon Ljiljanna Ravlich is that the Minister for Finance is within reasonable parameters. I did not write the motion. It is so wide that one could speak forever and ever on it.

Hon MAX EVANS: Mr President, I am helping you. I am quoting number after number so that nobody will get lost in the debate and members will know where we are up to.

The PRESIDENT: I am not arguing with that.

Hon N.D. Griffiths: I do not think the President needs your help.

Hon Kim Chance: Have you got into the privatisation of the Dutch East India Company yet? That surely is relevant.

Hon MAX EVANS: Can I sidetrack onto that? No, I will not.

Hon Kim Chance: I will go away.

Hon MAX EVANS: I think you should. The Dutch East India Company has provided a big financial benefit to this State. We would not have built the *Duyfken* here had it not been for that company. We are now building a replica of one of the boats owned by the Dutch East India Company. That is putting about \$3m or \$4m into Western Australia. Vlamingh and the other people would not have found Western Australia had it not been for that company.

The PRESIDENT: Order! Let us return to the motion.

Hon MAX EVANS: I am sorry, Mr President. He sidetracked me on that matter. However, I had to respond to it.

I will deal with the extent to which initiatives have been introduced to prohibit the practice of private companies acting as cartels, rather than competitors, and thereby combining resources to tackle large-scale projects. I know where the private companies are coming from, and I understand that completely. On the matter of the pipeline, there was a monopoly. However, without it we could not have financed the expansion to the extent of probably another \$800m to double the flow of gas. In any event, I do not think we had all the international expertise to handle it. This House passed the first part of the gas Bill, which contains many good pricing controls. No system will be perfect. I remember in England a couple of years ago there was a lot of criticism of the group checking the price of gas.

As I have said before, all the power generation in England was sold off, and there is now a board, with a professor and a chairman, regulating the price of electricity. The Swire group of Hong Kong, which owned the Trafalgar group in England, bought one of the big power generators there. It agreed to pay £11 a share. The regulator said that too much was being paid for the power. Immediately the price of the shares fell down to £7.75 and the deal did not go through. The regulator must be very careful how he regulates things. Regulators are important to these monopolies. I think the pipeline will work well.

It is going through to Kalgoorlie, and it will be multi-use; it will be used by other parties. Yesterday Hon Mark Nevill made some interesting comments on the pipeline. It was not something that we built and privatised; we encouraged other people to build it for the benefit of Western Australia. I was talking to Ian Burston. He is still saying that because of all the mining companies up north, we are importing as much oil into Western Australia through Esperance as all the diesel oil used in the State of Victoria.

There is no concern about competition with BankWest. It actually has a lot more muscle and power. From memory, under the prudential standards set down by the Reserve Bank of Australia, a bank could only lend to one client a certain percentage of its equity. Previously, I think the R & I Bank was going to lend about \$30m. That was the largest amount it could lend. When the Bank of Scotland came in, that figure was increased to about \$200m on any one job. Therefore, one can get into much bigger ventures offshore. The selling of BankWest does not pose any problem with respect to competition. The benefit is that more deals in Western Australia can be sourced by a bank in Western Australia. Members would realise that over the years it has not always been easy to get funds into operations in this State. Most of the money of AMP and National Mutual has been in the eastern States.

Dealing with the competition involved with State Print, there was so much competition that the next person sold out to somebody else because not much money could be made out of it. These are tightly run businesses operated by Hon Barbara Scott's husband. He does an excellent job and makes it fairly tough around town. There is no way that anybody could be given a monopoly there to put up the prices.

Health care and linen services are competitive markets. Many other people are involved. When Radio 6PR lost the Totalisator Agency Board coverage, it lost its share of the market and it is losing out; however, it did not affect government as this resulted from competition in the market. Nothing the Government has done at this stage has involved a cost to the State through competition. We know that Hon Murray Criddle is looking at Westrail. As other railway operators are allowed to use the State's lines, we must look at the issue because the competition could kill the State's operation. Running a government business in competition with a free enterprise company is difficult. That is why the Minister for Transport is looking at whether he can sell at an optimal time. Plenty of competition will be evident in the rail cartage market if the Government sells. There will be no problems in making that sale. Is that right, minister?

Hon M.J. Criddle: Absolutely.

Hon MAX EVANS: That one has been ticked off, Mr President!

Regarding greater competition, I return to cleaning costs. Cleaners come and go and contractors provide better prices as a result of investment in plant and equipment. The Federal Government privatised, contracted out, sold off or whatever one likes to call it, Hollywood Hospital, and huge benefits accrued to Western Australia in selling it to Ramsay Health Care Australia Pty Ltd. I opened yesterday a new rehabilitation clinic, and much work is done on bone and tissue by that operator. Money and flexibility is available with the Ramsay system which would not be available under the Sir Charles Gairdner, Royal Perth or Fremantle Hospitals. I am pleased that the Federal Government privatised, contracted out or sold off Hollywood Hospital as it has resulted in great benefits for the State. It contracts many of the operations at a certain price to doctors at that place. It has been a benefit to import more competition into that business.

Paragraph (8) of the motion reads -

The extent to which initiatives have been introduced to prohibit the practice of private companies acting as cartels, rather than competitors and thereby combining resources to tackle large scale projects.

I will be interested to know who wrote this motion because, with my knowledge of her background, I know it was not written by Hon Ljiljanna Ravlich. It poses an interesting and good commercially orientated question. Private companies cannot operate as cartels on any service let by the Government at this stage. If one company had control of 10 different cleaning companies, and it told them all what price to charge, it would operate a cartel ring in respect of options. That cannot happen with the business the Government puts out to the private market. The biggest cartel at the moment is dealing with the Australian Medical Association and the sale of a health service to hospitals on a fee-for-service basis or a sessional fee. There is definitely a negotiable cartel involved in prices set, which is costing us a lot of money. That has been the position for a long time.

I see no problem in this part of the motion as it relates to government activity. It will be hard to police without searching the companies to see whether competitors are involved with those companies. Hon Mark Nevill made the good comment that the pipeline is available for other parties to transfer gas across. I gather that the pipeline down south will be available to other operators. This makes a big difference. One person with a pipeline is not a cartel. He cannot charge any price he likes. People can buy gas from another site and bring it down the pipeline.

BankWest probably wished it was a cartel, but it is in a tough line of competition with other bodies. The motion refers to ". . . thereby combining resources to tackle large scale projects". The only example of which I can think, which the Government has cut out, was the \$20m infill sewerage arrangement, which was broken up into \$5m lots. An operator can



put up the price on a \$20m contract. As Hon Murray Criddle has explained, Main Roads is trying to outsource, and this would be better with smaller contracts rather than huge ones. Main Roads would also benefit in the manner experienced by the Water Corporation in arranging those contracts in that way. If departments let out \$50m contracts, they really get locked into the big boys, and at \$50m they might fix the price. I believe that we are protecting ourselves from such problems or risks, because at the end of the day we want to maximise the benefits.

Paragraph (9) refers to the extent to which current tendering practices ensure that the process is open and fair, proper procedures are being followed, and a mechanism is in place to check qualifications, credentials and the financial background of those seeking contracts. From a private sector point of view, from which I come, I feel that we overdo the tendering practices a bit. It gets to the point where it is of not much benefit to us. Some years ago the State Energy Commission bought six Hitachi gas-fired generators. The commission got a very special price for them. It wanted another five but had to go out to tender. It ended up with some generators from France, which were made under General Electric Company patents. It originally wanted to buy more from Hitachi, but as Hitachi had a full order book, it was not willing to drop the price at that time. The chief executive officer of the State Energy Commission asked - this was before we got into Government - "Why can't we buy Hitachi generators? We would have the same manual, the same handbook, the same repairs and so on. We would not have those with the others." Although the General Electric Company licence-produced generators had similar specifications, the State Energy Commission could not do it. Members may remember that the generators that came from France caused a lot of problems because of vibration in the main turbines. Some had to be sent back. It cost the manufacturer and it set us back a long way by breaking the pattern of generation.

On many occasions we do this because the system says that we must. In the private sector, if businesses are on to a good thing, it might cost them a bit more but they tend to stick to a winner. When we tender for professional services we take the lowest. We get what we pay for in this world. We have made some mistakes there. Hon Nick Griffiths would know from his legal business and I know from my auditing business, that we only get what we pay for. A good professional firm has a certain standard that it wants to put into a job and it may not come down to a low price. The Labor Party put out all of the local government audits in 1983. I am trying to think who was the minister. Those audits went for private sector tendering. Only 11 of 144 audits were conducted by the private sector. We did two of the 11. I was president of the Chamber of Commerce and Industry of Western Australia before I came into Parliament. I started this moving. The local government audit department did not want to do those audits all around the State. Bill Rolston, the Auditor General, did not want to do those audits and have his staff all around the State in places like upper Gascoyne and Sandstone. The audits were put out to the private sector and tenders were called. After a while many local government authorities decided that they would not take the lowest tender because they wanted quality rather than a low price. One former auditor from the local government audit department, whose name I will not mention, used to audit in the back of his car. He was auditing on his own going from one area to another. His audit reports were fairly stereotyped; in fact, they could nearly have been run off on a duplicator.

After a couple of years the good local businessmen on those local government authorities said that they were at risk because they had not got a good auditor and if something went wrong they would be out. The audits were tendered out and the price went very well on them. That has been rolling over for many years. Every three years local governments tender out for the audits. The Government is now tendering out for internal audits, which has brought some improvements. It was trying to do it in-house before, and it was very difficult to employ fulltime internal auditors who had the experience to do it. Some of the contracts involved are large and some of them are not so large. I have seen many of them through recent tendering. The problem is that to prepare tenders for these audits is costing people a lot of money. Yesterday a \$100 000 payment was mentioned. That has some pluses. Medium-size businesses will have a go at tendering, but it is a huge amount of money down the drain if they do not get the tender. The Australian Taxation Office might allow it as a deduction or it might not. I can see reasons for and against it.

Hon Joe Berinson came to me one day and asked me what I thought about tendering out some of the work of the Auditor General. I said that it was a good idea. Some had already been given to McLaren and Stewart when it lost the SGIO and TAB audits. The Government gave it a couple of jobs. The Government gave out audits for the major hospitals, Westrail and the Fremantle Port Authority. Eight audits went out in the first year. One of the conditions of those audits was that the firms' auditors have one of the Auditor General's staff working with them for three years. As a result they learnt how accounting work was done in the general business community. The work of Andy Yukich, who has just left the Auditor General's office, improved much during that time. It worked out well for both the profession and the Government.

Hon Ljiljanna Ravlich: Are you going to privatise the Auditor General's office or contract out his work?

Hon MAX EVANS: No, I have not said that. A large amount of his work is contracted out now, although I do not know what percentage.

Hon Ljiljanna Ravlich: Who is it contracted out to?

Hon MAX EVANS: Some hillbillies around the place. It is contracted out to professional accounting firms in Perth whose entire staff are chartered accountants. Of the Auditor General's 120 staff, only six or seven are chartered accountants. I

could not run a practice that size with so few qualified chartered accountants, but the Auditor General does. He should know my views already, and if he does not, he can read them in *Hansard*. When I was on the national forward planning committee of the Institute of Chartered Accountants, I suggested that all the Auditors General throughout Australia should be chartered accountants because of their position. Andy Yukich came into a similar category and the same applied to others. Until recently the Auditor General employed only five chartered accountants. Andy has left and I think more will be employed.

The Auditor General calls tenders from the profession for the large auditing tasks based on prices, hours, etc, but it is not part of my job to know the details. They are put in plain envelopes with no names, no pack drills so to speak. The credibility of the firms selected must be assessed, and they are changed every three years.

Hon Ljiljanna Ravlich: Does he use the same firms all the time?

Hon MAX EVANS: No; every three years he calls for tenders. Sometimes the firms change and sometimes they do not. More often they change. Some of the big firms are hungry for work and are tendering ridiculous prices. I think that occurs also with some of the law firms in an effort to recover overheads and salaries.

Hon N.D. Griffiths: You must look after your overheads first.

Hon MAX EVANS: That is right. I do not believe the Government would contract out the role of the Auditor General per se. His role is covered by a statute of Parliament. The person in that role must be responsible to Parliament. When he has a private sector audit to undertake, irrespective of whether it is the Sir Charles Gairdner or Royal Perth Hospitals, his boys check them out. It is a bit like the parent auditor of Broken Hill Proprietary Co Ltd double-checking the audits of all the subsidiaries. The Auditor General's office does much the same thing. He does not spend too much time on performance indicators. Allen Smith, the previous Auditor General, and I said we would not undertake an audit report of performance indicators. They are more a tool for management.

At one stage it was reported that 20 per cent of the audit time was spent on performance indicators. The private sector does not use that technique. I understand the State Supply Commission puts out the tender for the internal audits for firms, and a committee within the agency, whether it be the Government Employees Housing Authority or Homeswest, then decides which firm will do the audit. They use a points schedule. I think the Auditor General also uses a points schedule. That system has been used for many years.

Tendering out for local government audits was introduced during a Labor-Liberal Government changeover and it has been beneficial over the years.

Hon Ljiljanna Ravlich: When did that commence?

Hon MAX EVANS: I had it approved when I was the President of the then Chamber of Commerce of Western Australia in 1985-86. It occurred about 1986-87 with the three-year rollover. Some firms tendered for the work of three or four shires in the one region. I am certain that members of local government recognised the great benefits that outside firms brought to their offices. They have been able to show local government staff new systems on information and reporting. The book on local government accounting standards was well out of touch and needed upgrading. The local shires introduced accrual accounting long before the Government did.

Private sector firms made a lot of that happen. The ones I have seen have mechanisms to check the qualifications, credentials and financial backgrounds mentioned in the motion and a checklist of experience in that size job, staff and track record. It is not a bad idea. The private companies go for the name firms; they know the firm and the quality of its work. It is not just the big five or six. They work on a price factor. One of the greatest tragedies of price factor relates to the WA Inc days. Price Waterhouse had been conducting the audit of the Bond Corporation for many years. We often wondered how it could sign the accounts every year as it did. Eventually the auditors did not like some of the deals the Bond Corporation was doing overseas and started refusing to sign the accounts. The Bond Corporation put its 30 June accounts out for tender. Arthur Andersen was awarded the tender to audit the Bond Corporation a month before the end of that year. By June the following year, the Bond Corporation had rolled over, and big legal claims are still being pursued against Arthur Andersen. Obviously its New York office thought it was a worldwide account and that with Bond's videos, magazines and outlets around the world, getting this account would make it a lot of money. No-one read between the lines and saw that it would not last very long. People will make mistakes but this is how the Government is doing it.

Paragraph (10) of the motion states -

The extent to which appropriate checking mechanisms are in place to allow regular monitoring of the performance of contractors and that the Government has in place a set of procedures to deal with breaches of contracts.

Hon Murray Criddle made a good point about this issue with the buses. The Government has set standards about buses being late, missing routes and not running. The fine is \$300. That is great. It cost \$200m a year to run Transperth under the previous Government. If it had fined Transperth for the all times the buses were late, \$10m would have been raised. Buses missing routes at \$300 a time would have resulted in \$10m going from one pocket to another. That is what the previous

Government did. We have stopped that. Hon Murray Criddle is looking after the buses. He is checking the quality of the buses, and members should not forget that the buses are the State's buses. I wish they were not but they are. The Government owns the buses that the companies are using and therefore it has responsibility for them. Just as one wants to make certain that a sharefarmer does not rip the place apart, take all the money and leave one with nothing, the Government must ensure the buses maintain a certain standard. Hon Murray Criddle is ensuring that the buses are maintained at the appropriate standard so they are good for years to come. It is not the Government's fault that the buses are 25 to 30 years old. Some other people in government did nothing about them.

Hon Ljiljanna Ravlich: Whose fault is it?

Hon MAX EVANS: Another Government was in place. This Government introduced the central area transit system in Perth; the previous Government did not put in anything. It had old derelict buses travelling around the city.

Several members interjected.

Hon MAX EVANS: This Government introduced the CAT buses and is proceeding to introduce other buses within the available finances. This Government inherited a lot of out-of-date buses and is now fixing the problem.

Several members interjected.

The PRESIDENT: Order! The House will not digress into another argument about whose buses they were and why they were not replaced. We are dealing with this motion.

Hon MAX EVANS: I am saying -

Hon Kim Chance: You have just misled the House.

Hon MAX EVANS: I do not think so.

Hon Kim Chance: You have. The average age of buses is now five years older than it was when you came into Government.

Hon MAX EVANS: Of course it is. This Government has been in office for six years.

Hon Kim Chance: You have not bought any new buses. Have a look at the Auditor General's report.

Hon MAX EVANS: We followed the procedure to decide what we needed, we broke them up and put them out elsewhere. We brought in the CAT system. Has Hon Kim Chance ever seen the CAT system around here?

Hon Kim Chance: Yes, I used it yesterday.

Hon MAX EVANS: Was that there before? Is it any good?

Hon Kim Chance: It is excellent.

Hon MAX EVANS: I ask Hansard to put that down.

The PRESIDENT: Order! Let us return to the motion.

Hon MAX EVANS: I have not left the motion, Mr President. The Government has a set of procedures in place to deal with breaches of contract. Some complaints have been made about the cleaning industry not living up to contracts. I hope where that has happened the cleaners have been sacked accordingly.

That is the position in which they will be put. The bus operators will work towards the contract and if they do not, they can be fined. That is a good way of putting in place a severe fine. There is no worry about auditing the outsourced jobs in local government for breach of contract.

Debate adjourned, pursuant to standing orders.

## **COMMITTEE REPORTS - CONSIDERATION**

### *Committee*

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

### *Select Committee of Privilege on a Failure to Produce Documents under Summons - Report*

Hon N.F. MOORE: I move -

That the report of the Select Committee of Privilege be taken after the report of the Standing Committee on Constitutional Affairs.

There is a small technical issue on the report of the Select Committee of Privilege about which I want to seek advice. It is my intention to deal with that on Tuesday. I propose that we now proceed with the report of the Standing Committee on Public Administration.

Question put and passed.

*Standing Committee on Public Administration - Government Domestic Air Travel and Associated Reservations  
Contract - Report No 8*

Resumed from 3 December on the following motion -

That Report No 8 of the Standing Committee on Public Administration be noted and that the committee's recommendations in 7.6, 7.7, 7.10 and 7.11 be adopted.

Hon TOM STEPHENS: In the discussion that was held previously about the consideration of the report of the Standing Committee on Ecologically Sustainable Development, the Leader of the House pointed out something that had come to my attention; that is, if we adopt the proposal of substantive motions arising out of committee reports, we run the risk of committee reports never being considered in the House within the first hour. I indicated to the Leader of the House that I would advise my party colleagues that we would not go down that path. I have not had the opportunity.

Hon Kim Chance: This motion was moved before that.

Hon TOM STEPHENS: Yes. I can see the difficulties that will flow into this part of the Notice Paper if we continue to deal with motions in this manner each week. At some early stage, the matter must go to the Standing Orders Committee to find a way to ensure that we deal with substantive motions in a way that will not logjam this section of the business of the House. I do not have the solution, but I can see the problem. As the Leader of the House can see, I did not foresee that we would find ourselves faced with this type of motion so quickly after our agreement about such motions.

Hon N.F. MOORE: I have not had a chance to look at the report to see what we are being asked to endorse. I spoke at some length during the previous debate on the previous report about adopting and endorsing committee reports. Having assumed there was an understanding that we would simply be noting reports, I have not read what it is that the committee wants the Chamber to adopt.

The CHAIRMAN: In which case it might be appropriate that the Leader of the House move to delete all words after "noted", which would then make it "That the report be noted".

Hon N.F. MOORE: I am happy to do that. It would be helpful in these debates if the motion appeared on the Notice Paper, and I am sure that will happen from now on. I move -

To delete all words after "noted".

Amendment put and passed.

Question, as amended, put and passed.

*Joint Standing Committee on Delegated Legislation - Thirty-fifth Report - Forest Management Amendment Regulation  
(No 2) 1998*

The CHAIRMAN: I would not be surprised if nothing was moved with respect to this item of consideration as the regulation has been dealt with by the Chamber in the ordinary course of its business.

Hon N.D. GRIFFITHS: It would be appropriate to move that it be noted on the basis of the Chamber being informed, so that it could then proceed to disallow the regulation the subject of the report. I move -

That the report be noted.

Hon N.F. MOORE: I wonder, if we do not deal with a report, whether it will stay on the Notice Paper, which would be a problem. We should sort out whether a motion must be passed and dealt with in order to remove it from the Notice Paper.

The CHAIRMAN: That is the correct course.

Question put and passed.

*Joint Standing Committee on the Anti-Corruption Commission - Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights Under the Anti-Corruption Commission Act 1988*

Hon DERRICK TOMLINSON: I move -

That the report be noted.

The Joint Standing Committee on the Anti-Corruption Commission has been considering for some 12 months the question of the protection of individual rights under the Anti-Corruption Commission Act. The committee has produced three papers in which the matters have been discussed. Our concern is that the extreme powers that are available to the commission - for example, in section 37 of the Act, whereby any person can be compelled to provide information - exceed the powers that are available to other investigators, mainly the Police Force. These powers are not peculiar to the Anti-Corruption Commission and are available to other agencies; nonetheless, they are powers that intrude upon civil liberties; for example, the right to remain silent, and the right not to incriminate oneself when questioned by a police investigator. Those powers are deemed to be necessary for an agency such as the ACC in the investigation of corruption. That is a statement about the nature of corruption. However, because those powers are available, it is always possible that the powers will be abused. The committee has seen no evidence whatsoever that the ACC has abused its powers; in fact the committee has several times responded to complaints and found that the ACC has been scrupulous in its regard for the rights of individuals who are brought before it.

However, given that consideration, and given the controversy which has arisen about the actions of the ACC in the past 12 months, the committee is concerned to ensure that the structure of that agency will protect the rights of the individual. The current structure of the ACC is such that it has an administrative accountability through the Joint Standing Committee on the Anti-Corruption Commission. However, it does not have an operational accountability other than through the commission itself. Therefore, the joint standing committee recommended in its report that an independent source of operational accountability be provided in the form of a parliamentary inspector, who would have the power to scrutinise the operations of the ACC, respond to individual complaints against the actions of the ACC, have full access to the files of the ACC, and, if necessary, invoke the powers of a royal commission to respond to concerns expressed by individuals about the operations of the Anti-Corruption Commission. The Boucher committee endorsed the recommendation of the joint standing committee that a parliamentary inspector be appointed, again in order to ensure that the excessive powers that are available to the ACC are not abused. The Premier indicated in his response to the Boucher report that while the Government was not enthusiastic about that recommendation, it would consider it, but it was not inclined to respond immediately to the committee's recommendation.

The recommendation contained in this report is merely an attempt to ensure that the civil liberties of Western Australians are protected, even though we acknowledge that the excessive powers, particularly the coercive powers, available to the ACC are necessary powers to enable it to do its work properly.

Question put and passed.

*Select Committee on Native Title Rights in Western Australia - Report*

Hon TOM STEPHENS: I move -

That the report be noted.

I am both pleased and surprised to be speaking to this report today. The Committee will know that the debate about the appointment of the Select Committee on Native Title Rights in Western Australia took place nearly 18 months ago, and that the committee was eventually appointed in September of last year. The committee has had a longer life than was originally envisaged, and it has produced a very solid report, which was presented to the Parliament on 10 November, just one month ago. Today, as members will know, a report will be presented by another select committee, the Select Committee on Native Title Legislation.

The Select Committee on Native Title Rights in Western Australia involved an enormous amount of hard and dedicated work by all the participants, not just the members who served on the committee, but also the committee officers, including former research officer Marcus Priest, who has now moved on to the role of a journalist at the *Sunday Times*, Mr Jason Agar, and Ms Kelly Campbell. In addition, it involved extraordinarily hard work on the part of the Hansard office. I have never seen people work as hard in committee consideration of submissions as did the staff who were made available to this committee from the Hansard office. They made themselves available for an extraordinary length of time in trying circumstances during the heat of the wet season at the beginning of this year in the Kimberley and subsequently in Kalgoorlie. One Hansard reporter was recording day in and day out the submissions that were presented to that committee.

It was an extraordinary committee for a range of reasons. I was the only Labor member on it. Hon Giz Watson also served on the committee. Hon Barry House and two government colleagues constituted the majority of the committee, and Hon Barry House took on the role of deputy chairman. Hon Murray Criddle from the National Party was also a member of the committee and stayed with it, even though he had been appointed a minister, right through to the very end of the committee's consideration of its report. Although that was unusual, it was not extraordinary. I had done the same myself with reference to a privilege committee that I had served on while I was a minister - my unexpected appointment to the ministry.

Hon B.K. Donaldson: Seventeen days?

Hon TOM STEPHENS: Something like that. I served for ten and a half weeks as minister but a shorter period on the recent select committee.

Hon Murray Criddle was not able to sign off on the report. I understand that and take nothing from it, other than that he felt no longer able to check the content and detail of every paragraph and recommendation contained within the final report to ensure that it was in accordance with the way the committee had flowed. However, what is extraordinary is that this report, by any standard, is a seminal document because it is supported in a multiparty way. There are great gems contained within it that were universally agreed to by the members of that committee.

Committee members underwent an education process. I was educated in a way that has surprised me. It opened for me the prospect of eventually being persuaded not so much by the Government's argument but by that of the Leader of the Labor Party in the other place, Dr Geoff Gallop, to be open to the proposition that there should be a state-based native title tribunal equivalent, for instance. Members might find that interesting. I guess I started off with policy objectives that I wanted to ram into the Chamber and convince members opposite that there were ways of doing things that would make them desist from strategies that they might otherwise unleash. Members agreed to establish the select committee, and we did enormous work which has exposed us to a range of arguments. One thing that it did was to open me to the argument that it was possible to have a state-based native title commission. In the end, the committee dealt with that argument not directly but obliquely.

Hon Derrick Tomlinson: And are you still open to it?

Hon TOM STEPHENS: Yes, and we want to give Parliament a damn good one. Eventually, when other matters are before Parliament, we want to make sure that we are not left with a mickey mouse show - an extension of the Premier's office. We will provide a native title tribunal equivalent that all of us would want to embrace as a fair, equitable and reasonable way of responding to the invitation of the 10-point plan on which the committee report has commented extensively.

I cannot speak on behalf of all other members of the committee, but the committee's report speaks on their behalf. Committee members agreed to my proposition that we should go to Canada, British Columbia and the Northwest Territories - at considerable taxpayers' expense. We were accompanied by Hon Helen Hodgson, not as a committee member but by virtue of the travel entitlements that she was able to put at her disposal for the trip. I was incapacitated with a broken leg and my wife accompanied me to help me to get through the exercise which would have been virtually impossible otherwise. It would have been absolutely impossible to do what we did. I could never have done it without the assistance of my wife. It was an extraordinary task. I do not say that in an embarrassed way; I am stating the fact. I was incapacitated to the point at which I would not have been able to carry bags, briefcases and the like. I would not be dependent on committee staff to do that. In Canada, I threw myself into the intensive program that I had constructed, which was an education for me.

I started the exercise by thinking that it would be possible simply to bring into the Western Australian jurisdiction from Canada, particularly British Columbia, some of the processes that had been established there and that it would start to advance towards an easy, speedy resolution of the native title issues that the State must face. I have discovered, as the committee discovered, that just as we do not have a system of native title that we particularly wanted to export to Canada, they do not have one that we wanted to import from them. That is, it was caught in the complexities - the problems of dealing with native title issues within British Columbia.

Some members might find it worth while to be reminded of part of this report that picks up a section of *Hansard* I used when I moved my motion on 26 March 1997. I told the House that British Columbia had a conservative Premier, W.A.C. Bennett - who was known as Wacky Bennett - from 1952 to 1972. When the Supreme Court brought down its decision on native title issues in that country towards the end of his term, Premier Wacky Bennett shook his fist at the wise men of the east in the lofty towers of the Supreme Court of Canada and said, "How dare you think you can bring down resolutions which will apply within the boundaries of this resource-rich western province and which will accommodate the needs of our population." He railed against the Federal Government of Pierre Trudeau, who was reluctantly brought to the table by the Supreme Court decision, but at least he got to the table.

Hon N.D. Griffiths: He was a conservative.

Hon TOM STEPHENS: Yes, Premier Bennett was a committed conservative and a member of the Social Credit Party. Wacky Bennett put his argument to the people of British Columbia to set the tenor of the debate. Interestingly, three years after his retirement his son, Wacky Bennett Jr, became Premier of the province, and occupied that position from 22 September 1975 to 1986. He took up the cudgels put on the table by his father.

Hon Simon O'Brien: I sense an analogy.

Hon TOM STEPHENS: Yes. He shook his fist at the Supreme Court and the wise men of the east and said, "How dare these men of the east think they can resolve these issues of native title in this way! We in British Columbia know that those wise men of the Supreme Court could not possibly know what is good for this province." He fought those decisions constantly. However, towards the end of his term, he suddenly realised that the economy of British Columbia was mired in injunction after injunction lodged by native title interests, in part, and in large part by other interested parties, such as environmentalists. The economy was doing a nosedive. That Premier, who was allegedly serving the interests of his

resource-rich western province, thought that by attacking the Supreme Court and its decisions on native title he was somehow serving the wider interests of the province.

Hon Simon O'Brien: The province's fortunes declined.

Hon TOM STEPHENS: They collapsed.

Hon Simon O'Brien: So your analogy fails.

Hon TOM STEPHENS: Towards the end of his term he suddenly realised that his Government, in its attempt to litigate, legislate and squirm its way out of native title issues, had put the province in a position such that a resolution could never be found. He suddenly realised the game was up - the people had caught up with him and realised that he had blown it. Premier Wacky Bennett Jr was destined for the dustbin of political history.

There are analogies to our resource-rich western State for which similar judgments have been handed down by our High Court - the wise men of the east - that have similarly found the existence of native title. What happened to Premier Wacky Bennett - his real name was William Richard Bennett? Just before he was to face the people of British Columbia in the looming elections, he suddenly realised he had to about-face. It was time to get the people of that province out of the courts, and out of these attempts to litigate and legislate the resolution of native title issues for that jurisdiction. He set up what effectively became the British Columbia Treaty Commission process, which had as its predecessor a committee of inquiry that started to find a new way to resolve these issues. This committee of inquiry brought down a report that led to the establishment of the treaties commission. However, before the report was handed down, but following its establishment by this conservative Premier of the western province of British Columbia, the people finally got their hands upon that Premier. As I recall, eventually the Premier's party was left with only one seat in the legislature. It moved from being in government to being represented by one social credit member of Parliament. In fact, we met the former minister representing native affairs, Jack Weisgerber, who managed to save his seat. He gave us some excellent evidence when we were in the capital of Victoria in British Columbia about the impact of this issue upon his party's fortunes in office; his own decisions as a minister in that Cabinet, and how he came to regret them; and how by the time his party had embraced the resolution to the future - the people had wised up - the economy was absolutely ruined by the court processes of litigation and dispute, so that there was no prospect of getting out of the mire. The people turned on that party and threw it out of office and put in place the Labor Party equivalent, which is called the New Democratic Party.

Hon Simon O'Brien: And they all lived happily ever after.

Hon TOM STEPHENS: It is not as easy as that, but it is that sort of story. There is no easy resolution to these issues as people have found. The Nisga'a people of British Columbia are the people of the Terrace area of British Columbia. "Terrace" does not have the same connotations as it has in this State, such as the 6009 club; that is, the people who live in the 6009 post code - the powerful people in town. "Terrace" in British Columbia means the people of a Fitzroy Crossing-type group in British Columbia; a little town in the far north west of British Columbia. The Nisga'a people had been pursuing for a hundred years the jurisdictions of the local provincial government, local government, and Federal Government to recognise their native title interests. They elected members to the legislature and Mr Calder - members should not forget his name, because Mr Calder and his people, I think it was his father and then his son, pursued the native title interest of his people through the courts and the famous Calder judgment was handed down upon which our High Court and Federal Courts are now relying in their deliberations and determinations over native title issues - took legal action that produced the Calder judgment, and the Nisga'a people pursued vigorously the resolution of their land titles for the northern part of British Columbia. While we were there, we faced the excitement of that province in watching the initialling of the agreement between the people of Canada, the people of British Columbia and the people of the Nisga'a. That was an extraordinary achievement which put behind years of dispute over the land title aspirations of those people. They had to move on from the old treaty process, find new ways of doing it, and strike agreements which were endorsed by Governments and subsequently ratified by the Nisga'a people and the Parliament of British Columbia before they came into effect.

That was to be the end of effectively 100 years of disputation and 23 years of argument over agreements that had been bogged down in the court processes. Finally, people had decided, "Enough; no more." The economic prospects for all of those people - the First Nation people, the other people of British Columbia and the people of Canada - could be advanced only by striking framework agreements which recognised the rights and interests of the native title holders of that area. They were not required to surrender their native title interests, as the old treaties had done; rather, they simply exchanged those rights for what became a framework agreement of native title interests in that area. It was not a complete codification, but an accommodation of their aspirations, and inclusion of those people in the economic development of their ancient tribal lands. The Nisga'a people are clearly extraordinary people, very strong and vibrant, rich in culture, who are finally moving towards the resolution of this issue.

That is not to say that the agreement was without contention. While we were in Victoria in the legislature of British Columbia, we saw the disputes being waged in the Parliament. Question time was alive with the issue. We met with the opposition spokesperson on aboriginal affairs, the Leader of the Government, the Minister for Aboriginal Affairs and the

Minister for Intergovernmental Affairs. We saw the politics being played out on the floor of the House and in the media. However, the matter was being brought towards resolution. We were able to remark that there were some signs of hope back home, because we knew that at least in two areas of Western Australia our Premier had already embarked upon framework agreements for the Spinifex people and the Balangarri people, which were an embryonic start to the process which had been given birth to and was blooming in British Columbia.

Reaching that agreement was clearly a resourceful, exhaustive process, with enormous efforts on the part of what was the old Department of Aboriginal Affairs in British Columbia, which had now effectively become the resource division for looking after these negotiations between the First Nations people and the Governments of British Columbia and Canada. It was an expensive process to negotiate these treaties.

We found that we used the same English language as the Canadians. However, they use words which give us a bit of a shock. When one talks about things like treaties, it creates a problem for us in this country. Up to this point, we have not exactly become excited about that concept in this jurisdiction. However, we got the idea that the treaty was just an agreement - nothing more special than that. It just happened to have a fancy name, and that is something which we have not embraced in our own nation. However, the idea was recognisable as a worthwhile way to go.

Studded within this report, which was unanimously agreed to by all the members of that committee, with the one exception that, understandably, we did not get the minister to sign it - certainly two Liberal members signed it - was the recognition that that is the way to go. Members will find in the report many recommendations which this Committee of the Whole House should note at this time. We will deal next week with some related issues about which we cannot speak too much at this stage as they are before another select committee. I want government members to read the report over the weekend; I have already persuaded my Labor colleagues in this regard. When members opposite read the recommendations of their government colleagues on the committee, they will not want to follow precisely the path which otherwise may have been considered. After reading the report, the conclusion will be that legislation to handle native title will solve nothing. We must not produce legislation which does not strike the balance, is unfair and does not apply goalposts to which all stakeholders are prepared to commit. I refer here to indigenous people, industry, government or the wider community. If we place the goalposts off the field away from stakeholders, we will be caught in the mire of litigation with injunction followed by injunction. All of us will suffer.

If we go down that path, I hope the first people to suffer will be those who most deserve to suffer, as was the case in British Columbia; namely, the conservative Government of the day. If this State Government and Parliament do not learn lessons from British Columbia, I hope that the people of this State will, and more quickly than did the people of British Columbia, turn on the government parties to drive them out of office. People must see that the strategy unleashed by coalition partners at the federal and now the state level will sow the seeds of destruction of the economy. I hope that at an earlier point, the destruction of the Government will occur and members opposite will be driven from the Treasury benches. They can then be replaced by people who can find a resolution to this issue with equity, justice, compassion, workability, certainty and all the principles to advance the interests of all Western Australians, as opposed to the pursuit of some narrow sectional interests through unnecessary legislation, extinguishment and litigation. An alternative strategy is needed now.

Hon N.F. Moore: Are you talking about your report, and what you think should happen to it?

Hon TOM STEPHENS: I refer to the unanimous report -

Hon N.F. Moore: I do not think it said that we should have a new Government.

Hon N.D. Griffiths: It's not a bad idea, though!

Hon TOM STEPHENS: It did not say that.

Hon N.F. Moore: That is what you are saying.

Hon TOM STEPHENS: The government colleagues of the Leader of the House did not extrapolate to that point. However, it is possible to extrapolate from the recommendations that a fair-minded person might arrive at one conclusion.

Hon N.F. Moore: You have this dreadful habit of putting your interpretation on everything and you forget the truth most of the time.

Hon TOM STEPHENS: Do not interrupt, because I am giving -

Hon N.F. Moore: I cannot stand listening to this nonsense. It has nothing to do with what the report is about.

Hon TOM STEPHENS: Has the Leader of the House read the report?

Hon N.F. Moore: No I have not, but I do know that it does not say "change the Government", which what you are trying to suggest.



Hon TOM STEPHENS: No it does not - not directly. The leader raises a good argument.

Several members interjected.

The CHAIRMAN: Order!

Hon TOM STEPHENS: I will make two comments to the Leader of the Opposition by way of response.

Hon N.F. Moore: Leader of the Government!

Hon TOM STEPHENS: He will be Leader of the Opposition soon if he does not listen to me, and if he does listen to me he will be in opposition in double-quick time anyway! Either way he should be damned. He must listen to me. I say two things to him through the Chair: First, if he extrapolated from the recommendations of this report, and if those recommendations were not embraced by the Government of the day - be it his Government or future Governments - such a Government would not be fit to hold office. That would be an extrapolation of a point.

Hon N.F. Moore: That would be your extrapolation, which is what you do with all issues.

Hon TOM STEPHENS: I am extrapolating. I do not know who next week will be handling the native title Bills on behalf of the Government. Is it the leader?

Hon N.F. Moore: Probably.

Hon TOM STEPHENS: If that is the case I say to him, secondly, that between now and Tuesday I want him to go home and put this report next to his pillow.

Hon N.F. Moore: What I want you to do between now and next Tuesday is to read the Miriuwung-Gajerrong decision, which has come out since this report.

Hon TOM STEPHENS: That is a very good point. This man makes some good points!

Hon N.F. Moore: You are talking about no litigation or whatever and completely ignoring the recent judgment.

Hon TOM STEPHENS: Has the leader finished? The leader has made a couple of good points, but before I concede his point to him entirely, I want him to concede one point to me; that is, that he will go home between now and Tuesday, put this report next to his pillow and read the words of Hon Barry House, Hon Murray Nixon, Hon Tom Stephens and the other members of this Chamber whose recommendations are contained in the report. He will then be better prepared for the debate that he must face next week.

Hon Barry House: He will get a much more accurate version of the report from reading it than listening to you.

Hon TOM STEPHENS: Mr Chairman -

Hon Barry House: This is lovely theatre but nothing to do with the report.

Hon TOM STEPHENS: It has a lot to do with the report. The Leader of the Government made a very important point. Has the leader read the Miriuwung-Gajerrong decision?

Hon N.F. Moore: I have read some advice in respect of it and some parts of it.

Hon TOM STEPHENS: I presume the advice was from the Crown -

Hon N.F. Moore: I have read that advice and received other advice as well.

Hon TOM STEPHENS: Okay. May I urge the Leader of the House in this place, Minister for Mines and minister soon to be handling the native title Bills, to read the Lee judgment from cover to cover over the weekend before he debates the Bills that are before this place? He needs to put this report in the historical context of that judgment. The difference between this report and debate on the Bills next week, is the decision of the Federal Court in the Miriuwung-Gajerrong case. When the Leader of the House reads this report in conjunction with that judgment, the Leader of the House will find a need to adopt all the recommendations in this report. This report is one of the most prophetic documents that this Chamber has ever had before it.

Hon N.F. Moore: Who is the author?

Hon TOM STEPHENS: I am speaking on behalf of the joint authors of this report. In this report we predicted the Miriuwung-Gajerrong decision.

Hon Barry House: We knew it was imminent.

Hon TOM STEPHENS: We predicted the judgment. How did we do that?

Hon Barry House: Where does it say that?

Hon TOM STEPHENS: I will show members how we did it. Hon Barry House might not have been aware of how he was capable of such extraordinary skills of prophetic wisdom, but he was doing it in this report.

Hon Barry House: Did Greg McIntyre write that section for you, too?

Hon TOM STEPHENS: Mr House! I wish I could afford to have all the skills of Mr McIntyre available to me. Hon Barry House is referring to the man who successfully briefed counsel on Mabo 1 and Mabo 2 before the High Court. It was not an argument that the High Court sniffed at; it upheld the decisions.

Hon N.F. Moore: They are entitled to make mistakes.

Hon TOM STEPHENS: High Courts by virtue of their decisions apparently do not make mistakes; they make decisions. That is the law.

Hon N.F. Moore: They often mistakes.

Hon TOM STEPHENS: No; they are the law. The minister is obliged to uphold the law.

Hon N.F. Moore: Nobody disagrees with that, but Parliaments also make decisions with which I do not agree.

Hon TOM STEPHENS: However, High Courts deliberate on the meaning of those laws and that is the law, full-stop.

Hon N.F. Moore: They can make a wrong law.

Hon Murray Montgomery: Do you agree with it every time?

Hon TOM STEPHENS: No; I have not agreed with it every time. I did not agree with some of the decisions of the Barwick court, but it was the law and I was bound by it as is Hon Murray Montgomery, but more especially so as is the Leader of the House. He is the Minister for Mines and he is bound by the law.

Hon N.F. Moore: The High Court is not appointed to make the law.

Hon TOM STEPHENS: No; it makes a determination as to the meaning of the law.

Hon N.F. Moore: Let us get that right; it likes the idea of making the law. That is what it is doing now.

Hon TOM STEPHENS: It brought down its consideration of what the law means and that effectively is the law.

Hon N.F. Moore: Until it is overturned, or the Parliament makes another decision.

Hon TOM STEPHENS: The Parliament cannot override the decisions of the High Court.

Hon N.F. Moore: If the High Court makes an assessment of the law and then the Parliament changes the law, what the Parliament does is what prevails.

Hon TOM STEPHENS: That would be a different law.

Hon N.F. Moore: Quite right.

Hon TOM STEPHENS: Once the High Court has made a decision about what the law means, that is the law. Then the Parliament can change the law and the High Court can make further consideration about the meaning of that law. I did not go to law school but I know that and the Minister for Mines should know that.

Hon N.F. Moore: I said that the Parliament can override the decisions of the High Court by making new law.

Hon TOM STEPHENS: It cannot override the decisions of the High Court.

Hon N.F. Moore: It can change the effect of it, if the High Court makes a decision.

Hon TOM STEPHENS: Mr Moore! We will have a bad week next week if that is his understanding of law.

Hon N.F. Moore: You are deliberately misunderstanding or not hearing what I am saying.

Hon TOM STEPHENS: I heard what the minister said.

Hon N.F. Moore: I am saying that if the High Court makes a decision and the Parliament does not agree with the decision, it can change the law.

Hon TOM STEPHENS: It can make new laws and then the High Court will make decisions about the meaning of that law.

Hon N.F. Moore: That is quite right. At the end of the day, the Parliament should be supreme and you know that. The High Court does not represent the views of any elected person.

Hon TOM STEPHENS: I will leave that point. This report is prophetic. Contained within it are great slabs of the decisions of the Canadian judges in Delgamuukw, Calder and Sparrow that were drawn on by the High Court in earlier decisions on

Mabo and have been now drawn on by Justice Lee in the Federal Court decision on the status of native title within the north east Kimberley region. At this point the decisions of Justice Lee regarding native title is again the law; that is, his determination on the finding of native title is law. Contained within the judgment is a very complex determination about how those native title rights can be docked with the other systems of law by virtue of the statutes of this Parliament and the Federal Parliament and with the interests and rights of other holders of title within the Miriuwung-Gajerrong determination area.

The determination contains some narrow areas such as what Justice Lee meant by "resources" which he referred to four times. There is every justification for a narrow, surgical attempt at litigation -

Hon Barry House: Why don't you save these comments until next week?

Hon TOM STEPHENS: I am commending to the House the work, artistry and prophecy of Hon Barry House.

Hon Barry House: I will not have a chance to say anything. We are running out of time.

Hon TOM STEPHENS: Hon Barry House can save his comments until next week. I will look forward to hearing his comments then. I will probably hear from him in five minutes.

Hon B.K. Donaldson: You are starting to snatch defeat from the jaws of victory.

Hon TOM STEPHENS: Never. I commend Hon Barry House and Hon Murray Nixon, the Liberal members of the committee, for including their recommendations. Time and again members will find recommendations in this report which are effectively at odds with the legislative approach the Government will pursue in the Parliament next week. I hope members will be persuaded by the value of the recommendations of this report. By reading the report before next week members will have the advantage of seeing the wisdom of Hon Barry House and Hon Murray Nixon. The report refers to stock routes, massive extinguishment and community purpose leases. The committee was of the view that it would not extinguish native title over community purpose leases and stock routes and that it would be careful in dealing with any titles validation and extinguishment Bills. The committee advised a cautious approach to those questions because of the risk to the taxpayers of Western Australian being presented with massive compensation bills if the Parliament is not careful.

Hon Barry House: How about conclusion No 8 -

The Committee notes public dissatisfaction with the NNTT which centre on its inability to date to achieve determinationsof native title.

Hon TOM STEPHENS: That is a good recommendation. I joined the member on it. For that reason I welcome the part of the 10-point plan which tackled this question with an improved threshold test. The new threshold test was an attempt to resolve what has been a Western Australian goldfields-driven need for amendment. The overlapping claims in the goldfields of this State have effectively driven the need for amendment of the threshold test. That test has now been improved by the part of the 10-point plan agreed to by all parties.

Debate adjourned, pursuant to sessional orders.

#### *Report*

Resolutions reported and the report adopted.

*Sitting suspended from 12.59 to 2.00 pm*

### **SELECT COMMITTEE ON NATIVE TITLE LEGISLATION**

*Leave to Sit*

**HON TOM STEPHENS** (Mining and Pastoral - Leader of the Opposition) [2.01 pm]: I move -

That leave be given to enable the Select Committee on Native Title Legislation to meet during this afternoon's sitting of the Legislative Council.

This will provide committee members with an opportunity to complete the consideration of the report so it can be presented to the House in conformity with the motion which originally sent the Bills to the committee.

Question put and passed.

### **COAL MINES LEGISLATION AMENDMENT AND REVIVAL BILL**

*Second Reading*

Resumed from 29 October.

**HON MARK NEVILL** (Mining and Pastoral) [2.03 pm]: The Opposition supports this Bill. The coal mines accident relief

fund is obsolete. This fund was one of a number of funds which were reviewed about 10 years ago by the Standing Committee on Government Agencies which I chaired. The committee reported fully on its purpose and operation. The fund was established to provide relief to injured mine workers and to assist the widows and children of mine workers who were killed or died as a result of their employment. The repeal of the Coal Mines Regulation Act in 1995 was intended to wind up this fund but that did not occur due to a lack of agreement. The parties, which include the unions, the coalmine owners, the various members of the Coal Miners' Welfare Board and the Coal Mines Accident Relief Fund Trust, now agree that it should be wound up. Payments under this fund have been superseded by workers' compensation, and are no longer required. The money in the relief fund that was collected in the form of a levy now goes to the coalminers' welfare fund. That fund is used to assist a number of groups in Collie, not just those associated with the coalmining industry but also sporting clubs, schools, homes for the aged, meals on wheels and groups like that. The legislation provides for the orderly termination of the fund, and for any residual funds to benefit the community as part of the coalminers' welfare fund.

**HON GIZ WATSON** (North Metropolitan) [2.06 pm]: The Coal Miners' Welfare Act is the type of initiative that should be established in all state agreement Acts to enable regional development and to assist in decentralisation. Coalmining companies pay a levy of 2¢ a tonne to assist in providing amenities for coalminers or to improve the welfare of coalminers. A board was established to administer the fund and to control any amenities provided for by the fund. The establishment of amenities or assistance in the development of the community in no way impinged on the local authority's ability to raise grants. This was a regional development issue, and is the sort of initiative that the Greens (WA) would like to see occurring right across the State to assist in the decentralisation of the population without financially burdening local government authorities.

The title of the Coal Miners' Welfare Act does not adequately reflect the regional benefit outcomes of the Act. Section 17 of the Act reads -

The Board may, for the purposes of carrying out the duties and functions imposed on it by this Act -

- (a) buy, or otherwise acquire, and hold any real or personal property of whatsoever kind or description;
- (b) sell, lease, exchange or otherwise dispose of any such property;
- (c) enter into any contract or agreement;
- (d) with the approval of the Minister, borrow money and mortgage or charge any of its property or the Fund as security for the repayment of any money borrowed and interest thereon;
- (e) construct, erect and maintain any premises, plant and equipment;
- (f) establish and maintain any scholarships or bursaries or make grants in aid of physical, technical, cultural or general education;
- (g) make grants to be expended in furtherance of any of the purposes of this Act to any local government, society, club, association or other body, whether incorporated or unincorporated . . .

The Greens see that sort of arrangement as a suitable way to assist extractive industries to put money back into the local communities.

Could the minister clarify a point about the redirection of funds from the coal mines accident relief fund which this Bill seeks to wind up: Do any workers still have claims outstanding for which compensation may be payable, and who may be affected by the closure of this fund, and in what manner will they be affected? The Greens (WA) support the Bill.

**HON J.A. COWDELL** (South West) [2.09 pm]: I am pleased that we can expedite the passage of the Bill. The Collie community has been looking forward to the passage of this Bill. The funds that will be released will be made available for many worthy community projects. The view of the unions, the owners and the trust is that this should take place. I am pleased to endorse the speedy passage of this legislation.

**HON N.F. MOORE** (Mining and Pastoral - Minister for Mines) [2.10 pm]: I thank members for their support of the Coal Mines Legislation Amendment and Revival Bill. In respect of the matters raised by Hon Giz Watson, as a general rule, these sorts of levies are not supported by the Government. This is an historical arrangement in Collie. The suggestion that mining companies should also pay a levy to local authorities is akin to their paying another royalty. The mining companies argue, quite rightly in my view, that they are already paying enough royalties to the State, and that to give local authorities the capacity to also impose a royalty will cause significant difficulties. In respect of compensation, I understand that when the coal mines accident relief fund is wound up, the money will be distributed to those people who are entitled to make a claim on that fund, and that once those claims have been met, any residual money will go into the new account.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and transmitted to the Assembly.

**GAS PIPELINES ACCESS (WESTERN AUSTRALIA) BILL***Report*

Report of Committee adopted.

*Third Reading*

Bill read a third time, on motion by Hon N.F. Moore (Leader of the House), and returned to the Assembly with amendments.

**LOCAL GOVERNMENT AMENDMENT BILL (No 2)***Report*

Report of Committee adopted.

*Third Reading*

Bill read a third time, on motion by Hon M.J. Criddle (Minister for Transport), and returned to the Assembly with amendments.

**HEALTH AMENDMENT BILL***Second Reading*

Resumed from 9 December.

**HON KIM CHANCE** (Agricultural) [2.14 pm]: I will round off the picture that I was developing last night when I was talking about smoke-free areas, in particular smoke-free nightclubs. I will not repeat the points I made, except to say that nightclubs are a particular area of concern. This was dealt with to some considerable extent in the other place by my colleague the member for Fremantle. His and our general concerns are that young people use nightclubs and are the people most likely to be adversely affected by heavy, passive smoke for extended periods. Although the legislation in its entirety should be about protecting people's health, we must be more concerned about the health of young people, in particular at nightclubs. I know also that this is one of the most contentious areas. Nightclub patrons have for a very long time been used to being able to smoke and it will take some adjustment.

On the information that I have seen, there may be a significant number of people who cannot attend nightclubs now as a direct result of the environmental smoke hazard that they encounter in those places; this includes people who may be asthmatics. Before time ran out last night, I was about to say that the incidence of asthma, which is only one of the common respiratory diseases that people have, is now so widespread among young people that I wonder if there is an increased incidence of that condition or doctors are more successful in diagnosing it. I recall only a few years ago when my son was playing football for a Merredin football team, the Nukarni Colts, that I was asked by the coach to take the puffers out at half time. As members will be aware, there are 18 players in an Australian rules football team. I took out 10 puffers at half time. It was a very good football team which won the premiership. I do not know whether it was a remarkable coincidence that 10 players under the age of 17 years required ventolin or a similar substance on a regular basis.

Hon Derrick Tomlinson: Was your team swabbed after the match? Tell me what the result was?

Hon KIM CHANCE: That does not happen in colts. That happens the following year. However, they were very muscular young men, if that is any indication!

Hon Max Evans: In the 1996 Olympics an Olympic swimmer lost a gold medal because of ventolin and that is how the Australian won the title.

Hon KIM CHANCE: Yes. I do not know whether this condition is being diagnosed more readily or asthma is becoming more prevalent.

Hon Derrick Tomlinson: The latter is indisputable.

Hon KIM CHANCE: I thank the member, I did not know that. Certainly epidemiological research would indicate the truth or the fallacy of that.

Hon Max Evans: You are saying we should ban all smoking in nightclubs. We have not been able to ban the shooting up of drugs and other substances that occurs. How are you going to deal with that?

Hon KIM CHANCE: The Minister for Finance has raised a point. I did refer obliquely early in my speech to the fact that these regulations deal only with tobacco smoke and in the definition of smoking the regulations deal only with tobacco smoke. Therefore, even with another commonly used and marginally illegal drug, which is used not only by young people but across the board, the regulations are not drafted to make the smoking of cannabis illegal as a result of this legislation.

Of course, other laws could apply. Without being sidetracked, Mr Deputy President - I can hear you sending me subliminal messages - I will proceed.

The DEPUTY PRESIDENT (Hon W.N. Stretch): They are being sent not just to Hon Kim Chance.

Hon KIM CHANCE: I will try not to be misled by unruly interjections from members opposite.

Sadly, the Government's legislation has not come from a position which was aimed at protecting the health of the community. I am sure that was the Government's intention when it set out with the legislation, but that good intention was lost along the way as a result of an attempt to satisfy commercial pressure, objections and agendas. That is a little sad, even though I recognise that every one of us is sensitive to those issues. The Opposition's amendment is an attempt to bring back the legislation to some degree at least to its original purpose - that is, protecting people's health. It is a proper role of Parliament to legislate to the extent that it can for the protection of public health. I, like my colleague in the other place, the member for Armadale, am unusually sensitive to what she likes to call the safety Nazis. That subject arose when we debated the road speed limit. Of course, the safety Nazis are the worst expression of the nanny state.

Good legislation on smoking can be drafted. I urge members to look back a decade when smoking was tolerated in places where we would find it unthinkable today. I ask members then to cast their minds forward five years to a point at which, as I have said, I believe that the legislation, either in its current form as proposed by the Government or as proposed to be amended by the Opposition, will be regarded as conservative and even unsupportable on the basis of that conservatism. In five to 10 years there will be pressure on smoking in that last bastion, the front bar. From my point of view, of course, that is not necessarily a great thing, but from the point of view of a legislator, it is desirable that people, in particular people who suffer a form of respiratory illness, should be able to go anywhere they want in public and not be troubled by cigarette smoke.

The Government and the Opposition have attempted to find an appropriate way in which to word the law. I have recognised that there are differences between us, albeit that they are not great. We could even come closer together, although that might not be possible in the context of this debate. However, the Bill as amended will need to go to the other place, and there is the possibility of amendment along the way. Certainly, we have already moved some distance in the past two days.

Hon Max Evans: Will you come back over Christmas and the new year?

Hon KIM CHANCE: I am always happy to do that. The Minister for Finance knows that. I thank members for their attention.

**HON CHERYL DAVENPORT** (South Metropolitan) [2.23 pm]: Like my colleague, Hon Kim Chance, I do not believe that the Bill goes far enough, but I support it. I shall make only a short contribution, and I do so in memory of my parents, who both died from smoking-related illnesses. To some extent my contribution might be construed as emotive, nevertheless it is important to talk about things which have affected one's life. My father died at the relatively early age of 55 years from what I now suspect was passive smoking. My mother died nine years ago yesterday from what we know was definitely a smoking-related illness. It took my mother months to die from that extremely painful illness. Therefore, I have first-hand knowledge of the matter which has caused me to support the prevention of smoking as a health issue. Three of her children are non-smokers, and emphatically so. My sister is a general practitioner and she tried for many years to deter my mother from smoking, but old habits die hard. She was a nurse and, as we know -

Hon Max Evans: Most nurses used to smoke.

Hon CHERYL DAVENPORT: Many still do. She picked up a habit that she could not kick. Had she been able to give it up, perhaps she would have lived longer, but we will never know that.

In the mid-1980s and 1990s, Western Australia was a world leader in the fight to lower the level of tobacco smoking, but it has slipped somewhat. I was a member of the 1990 Legislation Committee that considered the Tobacco Bill.

Hon Derrick Tomlinson: And you did not go to the Philip Morris concert.

Hon CHERYL DAVENPORT: Absolutely not! I have recently read the report of that committee and note that the members spent 35 hours working on a report that resulted in very workable laws. Many of the letters I and other members have received in the past couple of weeks have given me a sense of déjà vu - the same old arguments are being raised now as were raised then. When I looked at the report this morning, I was very interested to see that profit and economic factors were unfortunately presented as arguments against protecting the health of the community. Members of the committee agonised during the deliberations in an attempt to present workable legislation, and I think we largely succeeded.

It is interesting that many of the tobacco industry representatives who gave evidence to the committee put forward very strong economic arguments. I think I am right in my recollection that on many occasions committee members asked whether the representatives smoked, and most did not. That is very telling in the grand scheme of things.

Hon Derrick Tomlinson: They could not afford it.

Hon CHERYL DAVENPORT: They knew the arguments against smoking and how to couch the advertising to entice people into the market.

Hon Derrick Tomlinson: They were competing only for market share.

Hon CHERYL DAVENPORT: We know at whom that advertising was aimed: It was aimed not only at smokers but also at young people who might be enticed to smoke because of the glamorous images presented. I am sure the member remembers that as well as I do.

The deliberation on page 8 of the Legislation Committee's report in the section entitled "Is the fact that smoking is bad for you a good enough reason?" states -

- 8.2 We do not accept that because something is bad for you a sufficient reason exists for its banning. Infringements on personal freedom also are bad for the health and stability of society. It is accepted that if people want to do something that is not good for them, then in general their decision with its associated consequences is their own.

The report later states -

- 8.5 A further reason for interfering with personal freedom is where the conduct concerned impinges on the rights and well-being of others.

The amendments to this new legislation are an attempt to assist those people who work in the industry and, in particular, those young people who are the major patrons of nightclubs. Deliberation 8.6 states -

It is clear that many adult smokers took up smoking at an age at which either they did not fully appreciate the serious consequences of what they were doing or did not believe that it would ever affect them or other people. When at a later stage they have sought to give it up the addictive effect of nicotine has prevented them from doing so.

My mother came into that category. I hope the education campaign that we have been able to put into the community over the past decade or so has helped those people who may have taken up smoking to now think about their health and wellbeing.

Deliberation 9.1, which is our conclusion, states -

We have decided that, assuming the principle that tobacco advertising should be banned, the most appropriate of these reasons for supporting the limitation on tobacco advertising are as follows:

- (a) tobacco smoking is a serious health problem in our community which justifies the legislative intervention to reduce its incidence;
- (b) it is difficult to reduce the incidence of tobacco smoking because of the addictive effect on current users and the number of young persons taking up the habit; and
- (c) by projecting idealized lifestyles and values, cigarette advertising makes smoking attractive to susceptible adolescents and concern for the health and well-being of these young people justifies the legislative intervention.

When that report was tabled in November 1990, this House made bold legislation as did that committee. At that time, when my party was in government, the Legislation Committee was dominated by coalition members.

Hon Derrick Tomlinson: What did they recommend?

Hon CHERYL DAVENPORT: We had a report that everybody agreed with.

Hon Derrick Tomlinson: Those were the days when the committee system worked in this place!

Hon CHERYL DAVENPORT: Yes, but look at who is now in government. That legislation led to the restriction of the advertising of tobacco products, to the regulation of the supply of tobacco products and to the implementation of the Health Promotion Foundation.

Hon Max Evans: And the tobacco companies have made a fortune since then selling and making more cigarettes than before; they are laughing.

Hon CHERYL DAVENPORT: I do not think they are, because we took tobacco advertising out of the sporting arena in a big way. I do not think any member in this place would disagree with me that the Health Promotion Foundation is a wonderful organisation which has helped gain funding for those sporting codes. They thought they would no longer be able to run their businesses; however, they have not suffered, and life as we knew it has gone on.

Other than the ongoing annual Quit campaigns, which no longer receive as much revenue towards prevention as a decade ago, this Bill is the first legislative step to be taken for eight years. As a member of the committee to which I just referred that reviewed the Tobacco Bill, I remember thinking at the time that the tobacco smoking issue would need a legislative prod to move it along in the future. There is no doubt that that time has come. As I said earlier, while I support the Government's Bill, I do not believe it goes far enough. It seems to me that the lobby groups such as the Australian Hotels Association and others have managed to convince the Government that it is okay to sacrifice workers' health and that of consumers to passive smoking for the sake of the dollar. Ten days ago I had a telephone call from a publican who accused me of being one of those who wanted to shut down his business, or certainly lead to the laying off of staff members. I reminded him of the fact that I was indeed a hardliner, and if I had my way and thought it would work, I would ban smoking totally, but I am realistic enough to know that that would not work. It did not work for the prohibition of alcohol and it will not work in this instance.

Hon Max Evans: Ask Hon Kim Chance. It will not work.

Hon CHERYL DAVENPORT: I know it will not work. He knows and he will tell the minister that I nag him constantly about his smoking habit. I have a good reason for my attitude, and many of my colleagues know that I am one of those who will speak out against smoking because I have seen the results of it. I speak from the point of view not only of not wanting to be exposed to the tobacco smoke myself, but also of knowing what the consequences can be.

I am pleased that the Australian Labor Party has seen fit to prepare amendments which I hope will lead to the protection of both workers and consumers, particularly young workers and young consumers. I cited earlier the fact that most of the people who frequent nightclubs are young people. Many of the workers within this industry are young women and men who work as part-time waiters. Obviously, the bars are also attended by a number of young men and women who engage in part-time work to help them through their studies and so on. I do not think we are being wowsers. As legislators, we are trying to be responsible in giving the prevention of the environmental hazards of tobacco smoke, and the exposure of those young people to it, just a little push along. We want to make sure that this State takes a further step to regain its reputation as a leader, certainly in the western world, if not the rest of the world, in reducing the incidence of smoking.

As I said previously, all members have read plenty of literature on this subject. I have done my best to read most of the letters that have been sent to me. However, I want to mention a couple of areas. It was interesting that the Australian Hotels Association (WA Branch), the Cabaret Owners Association, the Licensed Clubs Association and the Restaurant and Catering Industry Association of Western Australia sent me a letter on various issues. However, the issue that caught my eye dealt with surveys which were carried out after the Californian smoking ban was introduced, which showed that in 50 per cent of bars surveyed there had been a decline in revenue of between 11 to 30 per cent. The letter glossed over that. However, attached to the letter were some emotive press releases. There was an article from *The Wall Street Journal* on the smoking bans in Toronto, and a press release from the New York Tavern and Restaurant Association. There are a couple of key words in the survey which was commissioned by the New York Tavern and Restaurant Association. That survey was conducted by a polling firm called Penn and Schoen Associates. The wording of the findings was interesting. It said that, overall, 63 per cent of the 707 restaurants surveyed felt that the onerous restrictions of the smoking ban were hurting their business. I do not think that observation is particularly scientifically based. Of course, there was the sensationalism surrounding the Toronto issue when a number of smokers were blatantly defying the law. That serves no good purpose at all. Nevertheless, it was felt that it was appropriate to bring that to our attention.

I compare that with the letter that I received from the Heart Foundation which says -

The Hotels Association has repeatedly asserted that smoke-free hospitality venues will suffer financially. This does not accord with the available published evidence, particularly from California where the information is based on sales tax receipt data, not the opinion of proprietors of what might be the likely impact.

Far more scientific-based surveys have been conducted than that of the New York Tavern and Restaurant Association, which had a vested interest. This letter pointed out that the recent task force on public health survey of hospitality venues confirmed that 50 per cent of them believed the hospitality industry would become smoke-free in the next five years. I look forward to that day, as it will happen. I do not frequent hotels, unless I desperately must as I find the environment abominable.

Hon Max Evans: It's funny, but some people enjoy them.

Hon CHERYL DAVENPORT: It is my choice not to go.

Hon Max Evans: We must provide for those who choose to go.

Hon CHERYL DAVENPORT: Yes, but other people may choose to attend these venues if they were smoke-free environments.

Another article which came to me was the Public Health Association's summary of many projects undertaken by medical students at the University of Western Australia this year. It is paper No 9 089 and is called "Effect of smoke-free policy on



the behaviours of social smokers". It was written by S.J. Philpot, F.A. Ryan, L.E. Torre and H.M. Wilcox. It contains the following very interesting description -

We conducted a cross-sectional study to test the hypothesis that proposed amendments to the Occupational Health and Safety Act prohibiting cigarette smoking in enclosed workplaces would result in a decrease in cigarette consumptions by patrons at nightclubs, pubs and restaurants without adversely affecting attendance. Patrons of several innercity pubs and nightclubs were interviewed whilst queuing for admission into these venues. They were asked about their current social and smoking habits and about how these might be affected by the proposed regulations. Social smokers were identified and we focused on the anticipated change to their behaviours. Half (50%) of the 374 patrons interviewed were male, 51% currently did not smoke at all, 34.3% smoked every day, and the remaining 15.7% smoked, but not every day. A clear majority (62.5%) of all 374 respondents anticipated no change to the frequency of their patronage whilst 19.3% (89% of whom were smokers) indicated that they would go out more often, and 18.2% (91.1% of whom were non-smokers) said that they would go out less often. Half (52%) of daily smokers anticipated no change to their cigarette consumption, while 44.5% of daily smokers anticipated a reduction in their cigarette consumption. A majority of social smokers (54%) predicted a reduction in their cigarette consumption, with 42% of these anticipating quitting.

That is an interesting outcome. To continue -

One in nine (11.5%) of smokers say that adoption of smoke-free policies would prompt them to quit smoking entirely. There can be few other initiatives as simple, cheap and popular that will achieve so much for public health. This study indicates that the proposed regulations would result in an overall decrease in cigarette consumption, particularly by those who smoke mainly in a social environment, without a significant decrease in attendance at pubs and nightclubs.

This reasonable research is based on the regulation changes announced by the former Minister for Labour Relations last year. If more such surveys and research work were carried out, we might find that the concerns of the hospitality industry may be allayed. Indeed, many of those who do not frequent those venues may start to attend smoke-free environments. It will take time for this process to work through the community, but we should not resile from the challenge.

My colleague the member for Maylands, who is a medical doctor with research experience, and is Labor spokesperson on the Environment, provided some interesting facts on this matter in the other place. She based her argument on a 1998 *Medical Journal of Australia* article published earlier this year which looked at smoking behaviour of Australian adults in 1995. Some of the findings were that 27 per cent of men and 23 per cent of women in Australia were smokers but more alarming was the fact that the levels were no longer declining; that is, the findings suggest that they have reached a plateau and that we may need to do something more to try to reduce the levels of smoking in the community. I see this Bill as being a step in that direction. The study also found that those with higher education working in skilled occupations are less likely to smoke than those who have had less education or are in a lower occupational group. That is another area which should cause us a good deal of concern. Other statistics provided by the member related to the area of passive smoking. She indicated that there are more than 3 800 chemicals in cigarette smoke, 50 of which are known to be carcinogenic; that is, they are known causes of cancer. Tobacco smoke also contains carbon monoxide, hydrogen, cyanide and can also contain pesticides and toxic metals. That is not a great environment in which to be a worker. It has also been estimated that over a period of 20 years, a non-smoker is 500 times more likely to contract lung cancer from working all day in a smoky room than from working in a building containing asbestos. A professional bar person is exposed on a daily basis to that kind of atmosphere. One Australian death occurs every 30 minutes from tobacco-related disease. As legislators we can no longer sit back. We need to provide a legislative prod and ensure that we pass this Bill. I will be very happy to support my party's amendments.

I will conclude by quoting from a letter from a constituent in Newman. I will not reveal the name.

Hon Max Evans: It is not from a chap with an electoral office up there, is it?

Hon CHERYL DAVENPORT: It is not from him. He was a smoker, let us not forget, and he wore the consequences. The letter reads -

As a non smoker, and non passive smoker my husband and I rarely go out, because we do not wish to smoke or passive smoke, we are unable to attend almost all social functions, with friends family or work mates. Most people we know, do not smoke, but are loathe to make it well known for fear of being thought of as 'strange', as we probably are. In the last year or so, even somewhere as remote as Newman, with a population of mining workers who are 'supposed' to be hard drinkers and smokers, the fact that most people do not like smoking while, or near where they eat is slowly catching on, with the formal restaurant at one hotel actually making the dining room 'smoke free', and the smokers that eat there are happy to leave that area, and smoke outside. This is slowly meaning that we can again join in with normal social activity, as long as it is held at this venue, which is great! We cannot however have a drink at a bar, or go to cabarets or night clubs, either in Newman or when we go to Perth on

holidays. How can you have 50% of floor space smoking or non smoking, it would be like trying to have a percentage of a swimming pool urine free, not possible!

I urge you to . . . make a strong case for smoking to be cut from as many places as possible, smoking relates to nearly 15,000 deaths in Australia each year, it kills more Australians than anything else, and is the biggest drain on the health budget.

We must never forget that. I support the Bill.

**HON MURIEL PATTERSON** (South West) [2.49 pm]: I am the wife and mother of a non-smoking family, and I strongly support the Government's intent to discourage smoking in the public arena. I do not like passive smoking, nor do I like someone coughing or sneezing over me. Each of those actions is potentially health threatening. However, I object to the way smoking in public places is being legislated.

People must face the fact that Australia has vastly changed in the past 20 years. Smoking without consideration for others was once an accepted way of life; not so now. I believe people are much more considerate than they used to be. Today as a result of education and medical reports, people are changing their old habits. They are either quitting smoking or smoking in open spaces. In other words, to their great credit people are self-regulating. It grieves me to see some of my friends smoking for I know the damage they could be inflicting on their bodies. However, we should think a little wider. Some of us drive too fast.

Hon Max Evans: Speak for yourself!

Hon MURIEL PATTERSON: Some of us eat or drink too much, self inflict stress or do not exercise. Those practices are all injurious to our health. Will we in time legislate to control these pastimes - for our own good of course? I imagine that members think I am being ridiculous. They are wrong.

Australia has welcomed many people from other countries to its shores. They came by the thousands. I was reading recently that one in four Australians were not born in Australia. They brought with them their various cultures, which in many cases have enriched our lifestyles. I have enjoyed immensely the many cuisine changes, home decors, attitudes and many other subtleties which have been so good for this young country. We should remember also how the Italian, Greek and other nationalities enjoy a cigarette with their coffee after their meal. Do we have a right to deny them this indulgence? At the majority of restaurants at which I dine I am given a choice about whether I sit in a smoking or non-smoking area - such a civilised way to do business or host a client. If I were not given this choice, I have no doubt I would go elsewhere, as would the majority of clients. In other words, market forces dictate or give directions to business. Surely this must be a better way to go. It is a matter of education which, in turn, causes self-regulation plus market forces in the commercial world.

It does not sit well with me that the Parliament inflicts these regulations on business proprietors. It is totally inconsistent to penalise businesses by forcing them into "thou shalt not", while Governments continue to receive large amounts of revenue through the tax derived from tobacco sales, and businesses pay the fines and the costs of conforming. That is totally inconsistent.

Can members enlighten me as to the difference between having a substantial meal at a counter or dining at a table? Each will have food served on a plate, a knife and fork, serviette, a surface on which to place the plate, condiments, sauces, bread and butter and a chair to sit on.

There is a difference. One client will be in a smoke-free zone and the other will not. One will have stipulated ventilation. Is there a suggestion that the dining room will be air-tight? That is another inconsistency. It will be a waste of money having these laws policed. Will the people doing the policing be paid penalty rates, bearing in mind that many people dine after 6.00 pm? It will not be conducive to people's comfort if others are checking on them. Just this week my office faxed me a copy of an article written in the *Albany Advertiser*. Under the heading "City fears officers will become 'smoke police'" it said in part -

City development services executive director Robert Fenn said plans to make local government health officers patrol pubs and clubs forcing smokers to butt out was a misuse of council resources.

A letter would be sent to Health Minister John Day outlining the City's concerns.

"We don't consider that it is their job to police smoking bans and as a duty of care, we would be worried that we would be putting our officers in a position where they will be out late at night trying to enforce these laws," he said.

"We don't want them to be put in a situation where they could be placed in danger."

Mr Fenn said acting as smoke police would give the City's five health officers less time to do the jobs they were employed for such as water sampling and food inspections.

We all want the same outcome but we see different ways of achieving this. People are too intelligent to require laws on this

matter. As in raising children, it is more effective to explain and reason than forbid. Once one says "do not" one is likely to be challenged or outwitted. On 5 November an article entitled "However did WA become the nanny State?" appeared in *The West Australian*. It contained a comment by Hon Bill Hassell who was once an esteemed member of this Parliament. He is a gentleman and I always felt the State would be safe under his guidance. I speak very highly of Hon Bill Hassell. The article states -

In 1993, Bill Hassell, as Liberal Party State president and custodian of conservative ideology, had no doubt about WA being the nanny State.

"Everywhere you turn some bastard is trying to do you good," he said.

"The bureaucracy is full of people whose sole occupation is telling others how to live their lives. I think people are fed up with it. If you are only free to do what someone else judges to be right then you aren't free."

Earlier this year I was fortunate enough to attend the State Legislatures Conference in Nevada. I was a guest at the international lunch and the President of the German Parliament sat next to me. In the course of the lunch he asked whether I would object to his smoking. As a guest to that country I said no. The President then lit up and a short time later a lady from an adjoining table came over, touched him on the shoulder and said his smoking offended her. He stopped without any sign of offence and we continued our discussion. I use this example to illustrate to the House that education and self-regulation is part of this world stage. I conclude as I began; I support the Government's effort to discourage smoking with commonsense. Use the money to educate the public, especially the children. The Quit campaign has been immensely successful, let people continue to self-regulate. Market force will take care of business and is the responsibility of businesspeople, not government. I enthusiastically support voluntary restraints and measures to minimise involuntary exposure to tobacco smoke through education, not legislation.

**HON NORM KELLY** (East Metropolitan) [3.00 pm]: The Australian Democrats will support the second reading of this Bill. We welcome the Government's introduction of legislation that has the potential - I stress it is only the potential at this stage - to restore Western Australia's position at the forefront of public health policy on smoking. We are disappointed that a Bill as important as this one has been given such a small amount of time in the public arena. It was introduced into the other place on 19 November - a mere three weeks ago. Three weeks, especially in the middle of such a long stretch of parliamentary sittings, is far too little time to allow genuine public debate and adequate consultation with the public, industry groups and interested groups in the health area. That is in stark contrast with the inordinate length of time this legislation has been stuck in Cabinet and the coalition's party room. If the Government had brought this debate into the public arena at an earlier stage, it would have been given a much clearer picture of the community support for or concerns about the antismoking legislation. With that knowledge, the Government would have been reassured in introducing legislation that is stronger than that which is now before us.

Firstly, I will refer to the effects of passive smoking or, to use the modern terminology, environmental tobacco smoke. Compared with directly inhaling from a cigarette, the impact of inhaling secondary smoke can be far more dangerous. Passive smoking is usually involuntary and is particularly dangerous because the smoke that drifts from the end of a lit cigarette contains chemical carcinogens and other toxic substances in greater concentrations than smoke which is directly inhaled by a smoker. The substances inhaled by people who encounter tobacco smoke include ammonia, benzene, carbon monoxide, nicotine, hydrogen cyanide - which is used in gas chambers - and toxic metals such as arsenic and nickel. Smoke particles which are inhaled through passive smoking are smaller than those inhaled through direct smoking and reach further into the lungs. Passive smoking is also known to increase the risk of lung cancer by 30 per cent and increase the risk of heart disease by 24 per cent. Using these figures, it would be easy to calculate the true costs of allowing intense levels of passive smoking to occur. It has been calculated that non smokers who are exposed to environmental tobacco smoke at work can inhale the equivalent of up to five or six cigarettes a day. In effect, a passive smoker is smoking more than someone who regards himself as a reasonable smoker. The effects of this are even more pronounced in the people who work in the hospitality industry, where the concentrations of smoke are often higher than in a general working environment. The risk to which bar workers are exposed is 4.4 times higher than that of the general population.

The minister stated in his second reading speech that currently more than 600 international peer-reviewed reports and research studies provide evidence on the effects of ETS on health, to show that it can cause illness and disease in non smokers. Many arguments and research reports will be pulled out arguing this way and that, but the evidence is overwhelming, as the minister has acknowledged, on the detrimental effects of ETS on people's health. The minister went on to say that the Government has a responsibility to protect all Western Australians from undue exposure to this public health hazard. We appreciate where the Government is coming from, but the Government is not going far enough in living up to that statement.

The Bill is simple in its design, which is to place in the Health Act the power to make regulations for smoking in enclosed public places. We appreciate that the minister has made available the most recent draft of the proposed regulations - draft No 5. It would be impossible to have a full and genuine debate without that degree of knowledge on how the Government intends to regulate the restrictions. Unfortunately, the Government's commitment in the draft regulations to this health issue

is based on comfort standards rather than health standards. When one reads the draft regulations it is easy to see that they have been weakened to accommodate the interests of industry groups. If the Government made regulations based on health standards, we would not see the glaring anomaly of having 50 per cent of certain areas smoke free, rather than the entire area. It is ludicrous to suggest that in their current state the regulations are workable.

The Australian Democrats also believe there is an undue emphasis on current-day business practices and concerns about business profitability. Although they are important factors, they should be subordinate to the greater concern of the long-term economic cost to the wider community, such as the massive health costs that arise from smoking-related illnesses.

It is possible to set up a taxing regime so that when the user purchases cigarettes the tax is roughly equivalent to the anticipated future health costs associated with smoking; for example, the cost of future cancer treatments and the like. However, it is far more difficult to apportion the cost of the effects of secondary smoke. Should we tax those establishments which allow smoking and expose employees and clientele to environmental tobacco smoke? One could put forward a good argument that they should be taxed or levied at a higher rate to pay for the damage they are inflicting on their employees and customers.

The Government's lack of commitment to good tobacco policy can also be seen in recent history. From about 1982 to the 1990s there was a drop in the number of people in our community who smoked. In 1983 the level of people who smoked was 33 per cent. With the introduction of Quit campaigns and the like, and restrictions on advertising, the rate dropped to 25 per cent in 1990. However, since 1990 that level has stagnated at 25 per cent. Whereas Western Australia was at the forefront of antismoking campaigns in Australia, it is now slowly slipping behind. I do not have the figures for the other Australian States. However, in California, which has stronger antismoking legislation, the percentage of smokers in the population is only 16 per cent. Californians benefit from lower associated health costs. Even more alarming is the sharp increase in the number of adolescents who are taking up smoking. In Western Australia the total number of smokers has stagnated at 25 per cent, while the number of young people in our community who are taking up smoking is increasing. That rate has increased from 22 per cent in 1993 to 27 per cent three years later. This was after a decade of steady decline, from the impact of Quit campaigns and better emphasis on advertising restrictions.

I will not go into great detail about the Government's implementation of the Tobacco Control Act, but in 1983, the funding for the Quit campaign was \$1.46 per person in this State. This year, that funding has been reduced to 43¢ per person. That massive drop in funding is, unfortunately, reflected in the increasing level of smoking in this State. This Bill and the minister's second reading speech do not guarantee the provision of adequate funding to implement these proposed regulations. This is of particular concern to local government, which will, once again, have to take responsibility for funding the implementation of these regulations. As I mentioned in the debate yesterday on the Local Government Amendment Bill (No 2), state initiatives are increasingly falling upon local government to fund and implement. I realise that local government already has environmental health officers, and this will be yet another task that they will be required to perform; and if they are to be effective in enforcing these regulations, that task will require them to work longer hours, the cost of which will be borne by local government authorities.

The minister referred in the second reading speech to a national competition policy review which has been carried out on this Bill and the regulations to ensure that they comply with the national competition policy. I would like the minister to table in his response the results of that review, because there is some concern that the draft regulations do not comply with the national competition policy. The different implementation dates appear to create an inequity between the various establishments. Why should hotels have an advantage over restaurants? Why should the Burswood Resort Casino have an advantage over hotels? Why should licensed dining areas have an advantage over non-licensed dining areas? The Australian Democrats believe that in order to avoid these inequities in the Government's proposed regulations, it would be better to have the same start-up date for all premises, and we will be seeking an assurance from the Government that it will amend the draft regulations in that way. The Australian Democrats propose that the start-up date for the regulations be 1 July 1999, with a six-month moratorium after that date, so that they will become truly effective on 1 January 2000. That will give businesses a full year between now and that date to prepare for the introduction of those regulations. It will also be a positive move to commence the new millennium by cracking down on smoking.

Hon Simon O'Brien: Tobacco is a legally obtainable product. Therefore, why do you want to crack down on tobacco smoking?

Hon NORM KELLY: Because, unfortunately, most smokers are addicted to tobacco, and one of the reasons that tobacco remains a legally obtainable product is that it is very difficult to wean people off that addiction. It would be far easier to outlaw tobacco if people were not addicted, because if we were to outlaw tobacco from tomorrow, we would have to deal with all of the people who had that addiction. It would be good to have some consistency from the Government in treating people with addictions.

One of the other concerns that the Australian Democrats have with exemptions is the proposal to allow 50 per cent of floor space for smoking in night clubs, cabarets and the casino. That is a compromise which is clearly based on lobbying from industry interests and not based on public health policy. Requirements such as allowing a percentage of floor space for

smoking has proved absolutely useless in other jurisdictions. As Hon Kim Chance mentioned yesterday, tobacco smoke spreads rapidly and easily. The gases contained in tobacco smoke are very hard to extract and it is impossible for a ventilation system to adequately separate one area of open space from another.

The Australian Democrats seek a guarantee from the Government that it will amend this regulation to require a physically separated area for smoking in these premises, with the remaining major area to be completely smoke free; or at the very least to ensure that no more than 25 per cent of the floor space is available in night clubs, cabarets and the casino. This is more realistic, especially in night clubs that generally have a younger clientele. We should be pushing a message to our youth that we are serious about the damage that smoking causes. Hon Simon O'Brien mentioned, by way of interjection, that tobacco is legally obtainable. So is alcohol, but that does not prevent us from ensuring that alcohol is consumed in a safe manner to avoid the damage done by its abuse or misuse. Unfortunately, it requires far less exposure to tobacco smoke for it to be damaging to a person's health.

Hon Simon O'Brien: The damage may manifest itself in totally different ways. We are talking about two practices. You are talking about banning something that people do in commercial premises thereby affecting their enjoyment of the premises.

Hon NORM KELLY: Hon Simon O'Brien is living in the past. As Hon Kim Chance said in his speech, in five years' time we may look at this debate and realise how unprogressive this Government was. However, I appreciate that Hon Simon O'Brien still has his opportunity to contribute to this debate and I hope that he does.

In the report of the Taylor Task Force on Passive Smoking in Public Places the problem of adequate ventilation was summed up clearly in the first recommendation of the executive summary. That recommendation from the chairman and the majority of the task force states -

As a means of addressing and reducing the health risks associated with ETS, dilution ventilation is not a viable solution. There is considerable doubt as to whether it is effective in any sense. If effective, it is at best very expensive, and probably prohibitively expensive.

Yet the Government is adopting a cop-out by saying that adequate ventilation is the way to go.

In the Government's draft regulations the definition of adequate ventilation is natural or mechanical ventilation, or both, that meets the ventilation performance requirements described in FP4.3, FP4.4 and FP4.5 of the Building Code of Australia 1996 issued by the Australian Building Codes Board as amended from time to time. Of course, "natural means" can simply mean that an open window is sufficient for such an exemption.

In the draft regulations one condition to allow smoking in covered areas is that one or more of the windows, doors or retractable coverings is open so that the covered area is not substantially enclosed. That is open to interpretation, and of course it falls on the environmental health officer to make the determination. The Australian building standards code, which is the basis of the standard for adequate ventilation, is based on general amenity - that is, a degree of comfort and freedom from odour - rather than on a health standard to protect against the health risks of ETS, and therefore is inappropriate. In the second reading speech, the minister mentioned the difficulty in adopting a suitable standard and said that the current requirement is only an interim measure and that a more suitable standard will be applied when available. The New South Wales Government will adopt a standard when it is available.

One of my main concerns is that when the standard falls in line with appropriate health safety standards there could be a compensation demand from powerful lobby groups such as the Australian Hotels Association. The claim could even be in the range of \$100m or more for its members who might suddenly find that the ventilation which they installed in the past couple of years is obsolete. That is why the Government should give a clear direction as to what will happen in future. The Democrats will move an amendment so that there is a set date when there is a total ban on smoking in enclosed spaces. It will become a commercial consideration for each business whether to install new ventilation and it must weigh the cost against potential economic benefits. Variations in standards which require different ventilation systems will confuse the issue. It would be far easier to work towards a total ban rather than just change standards along the way.

I must admit that when I attended the AHA's annual awards dinner I was amused to find that it presented an award for best clean-air policy. I cannot recall who the winner was, but I do recall that the award was sponsored by WD & HO Wills. It was interesting to see the AHA acknowledge its connection with the tobacco industry in that way and it was amusing to see it connected with clean-air awards. I wait to see whether I am invited back next year.

It is extremely important for the Government to give a clear message to Western Australians that the future goal is a totally smoke-free environment in enclosed public spaces. As I have said, the regulations will be enforced by local government environmental health officers. The Government has suggested that through the Health Department it will provide materials and assistance in educating and resourcing EHOs, but that seems to be the limit of such support. As I have said, once again it seems that local government will bear the major costs of the extra hours of work to implement and enforce the regulations.

Hon Max Evans: You want them to protect ratepayers.

Hon NORM KELLY: If it is a local government issue, then local laws should deal with this, not the State Government.

Hon Max Evans: Let us leave it in the Local Government Act.

Hon NORM KELLY: The State Government is introducing these regulations and it should be responsible for all aspects of their implementation.

Only one full-time employee in the Health Department works on the enforcement of the Tobacco Control Act. I understand why the department might not have the required resources.

Hon Max Evans: It is a real control Act; it covers advertising, sponsorship and so on.

Hon NORM KELLY: Yes.

Hon Max Evans: There is not a lot to be supervised.

Hon NORM KELLY: The number of young people taking up smoking has risen from 23 per cent to 27 per cent in the past three years. That could be in part due to the sale of cigarettes to minors. It could also be a good argument for increasing the funding to that area.

Hon Max Evans: Any minor can get an adult to buy cigarettes for him. The Tobacco Control Act contains regulations and the Quit campaign has helped many people to stop smoking.

Hon NORM KELLY: I am sure the minister heard what I said about the Quit campaign and the smoking rate in this State, so I will not repeat myself.

A certain degree of pressure will be put on environmental health offices when implementing these regulations not only to ensure that businesses and patrons comply with the Act but also to do their best to get a good degree of statewide uniformity in its interpretation. That will be a difficult task given there are 145 local government authorities in this State.

The draft regulations require EHOs to show identification when they enter premises. That is wrong. EHOs could be subjected to undue pressure and it could prevent their proper inspection of premises. It would be better for them to inspect premises and then make themselves known to the owners if there is a problem. I understand the Government might be willing to remove that regulation, and I look forward to receiving that assurance.

Hon Max Evans: Do you mean to remove the regulation?

Hon NORM KELLY: No, to remove the requirement in the draft regulations. I look forward to an assurance that that requirement will be removed.

Hon Max Evans: Do you mean that they will not have to show identification?

Hon NORM KELLY: That is correct.

Hon Max Evans: What is the reason for that?

Hon NORM KELLY: EHOs could be harassed when they enter premises. If a female EHO goes into the front bar of a hotel in which these laws are being flouted, she could come under undue pressure. Of course, there is no problem once a problem has been discovered. The EHO then goes to the person in charge and makes herself known.

The Democrats believe that the penalty provisions are reasonable; that is, a fine of \$500 for an individual and \$5 000 for a body corporate. Along with the six-month moratorium on prosecutions, that is a good penalty regime.

Understandably, the economic effects of this legislation have been an important concern to the hospitality industry. If these regulations are not introduced in a reasonable and responsible manner, those businesses could be affected unfairly. However, the tactics of the hospitality industry in making some of the outrageous threats through the media, such as its entirely baseless claim for \$100m class action, is totally counterproductive. It shows the manner of lobbying that it has been using on government members in the long period that this legislation has been in hibernation in the coalition and party room away from the public arena. It is interesting for members to see that this legislation is now in the public arena and the type of tactics that this group uses from time to time. Hopefully, when this legislation is finalised, commonsense will prevail and the implementation of the regulations will be done in a manner to ensure that all sides can come together and adopt an approach that will not only ensure the better health perspective, but also protect the business interest as well.

There has been much talk about various polling and research done to determine the effects of these regulations. The task force report makes note of a hierarchy in the quality of evidence that relates to the economic effects of smoke-free legislation, and that is why we must treat any survey results with scepticism and test for their reliability and accuracy. I will refer to some of these studies which I believe are genuine in their results and sampling methods.

The Glantz-Smith study concluded that smoke-free ordinances do not adversely affect restaurant sales. In that study, which was published in the October issue of the *American Journal of Public Health*, the researchers examined the economic effects of local laws requiring smoke-free restaurants and bars. They evaluated sales tax data, which is known to be more reliable and accurate than evidence based on self-reporting of changes, such as the New York data that Hon Cheryl Davenport referred to. The Glantz-Smith study evaluated the sales tax data for 15 cities with smoke-free restaurant ordinances and five cities and two counties with smoke-free bar ordinances. The conclusion was that smoke-free ordinances do not adversely affect either restaurant or bar sales. This was based on evaluated sales tax data.

California has recently introduced stronger regulations. It is reported in an information sheet entitled "Bar Patrons in California Support Smoke-free Bars" that -

. . . 85 per cent of bar patrons report that they will go to bars more often or not change their bar-going behaviour as a result of a new California law prohibiting smoking in bars.

It further states -

"Californians clearly understand the well-documented health risks and deadly consequences associated with secondhand smoke,"

It also found -

Seventy-five per cent of bar patrons who smoke reported that they are complying with the smoke-free bar law.

Evidence from the Australian Capital Territory which also introduced stronger legislation shows that 72 per cent of the survey group approved of that legislation. Of that 72 per cent, 62 per cent said it would have no effect on their attendance patterns at pubs and 38 per cent said it would encourage them to attend more often. This information comes from the Health Department. It is from the Government, so it must be right. It says that Canberra pubs and clubs could expect a 5 to 8 per cent gain in attendance.

In light of the time, I will not refer to some of these other reports. Basically they say the same thing. Although I understand that the hospitality industry is concerned, most of its concerns are only perceptions of what may happen. Until these laws are introduced, it will be impossible to see the actual effects. However, with correct implementation, I do not think these people have anything to fear.

Hon Max Evans: Can the member give a written guarantee of that?

Hon NORM KELLY: As I said, we cannot give a guarantee. It is our duty to research the impact that it will have as fully as possible. All of the research and evidence shows that it will not have a detrimental impact. History has shown that people tend to accommodate these changes in smoking legislation. Hon Kim Chance mentioned that the Totalisator Agency Board now has a non-smoking policy. That was expected to cause an uproar, but patrons of TABs have accommodated that.

Hon Max Evans: People go outside at the races.

Hon NORM KELLY: Exactly, and they do it quite happily. When the non-smoking policy was introduced for domestic air flights in the 1980s, similarly, there was a hue and cry about its implementation. However, that has been implemented in a satisfactory way. Returning to the issue of segregated spaces, I used to work in the desert at Newman. I would catch the domestic flight from Newman to Perth. I think the F28s were flying that route. They had two seats on one side, an aisle, and one seat on the other side. Smoking seats were located on one side of the aisle, and non-smoking seats were on the other side of the aisle. Sitting opposite, a man could be smoking with his arm extended across the aisle. Therefore, one would inhale that smoke. That is the absurdity of permitting smoking and non-smoking in one area.

It is important that we minimise the concerns of business. The regulations should be framed in a way that is easy to understand, not only for proprietors, but also for the public, so that there is no confusion about where and when people can and cannot smoke. The current drafting of the regulations will lead to confusion about the premises in which people can smoke. That is a good argument for the implementation of a common starting point.

Dealing with litigation, recent judicial history shows the dangers of not imposing stronger smoking legislation. In 1991, in the case of the Australian Federation of Consumer Organisations Inc. v The Tobacco Institute of Australia Limited, Justice Morling found that tobacco advertisements that disputed the harmful effects of passive smoking were deceptive and misleading. Justice Morling also found that exposure to ETS caused or exacerbated a number of diseases, including lung cancer, asthma, and childhood respiratory diseases. In 1992, in *Scholem v NSW Health Department*, it was held that exposure to ETS during work worsened the claimant's asthma. In that case Justice Reynolds stated that the occupiers of public places or work places who allowed smoking were risking common law actions based upon negligence.

Employers are particularly at risk where workers can demonstrate long exposure to tobacco smoke. It is also doubtful that ventilation improvements will withstand the legal scrutiny in passive smoking legislation. In fact, it could operate to the contrary - that is, that damage was foreseeable and ventilation could have been provided, but inadequate preventive steps were taken. This would counter the employer's duty of care to the employee.

Following the decision by the Justice Morling, the President of the Senate tabled advice from the Joint House Department that the onus falls on employers and managers of facilities to take a more proactive role to protect non-smokers. The argument today is whether the changes should be implemented voluntarily or involuntarily. A combination of the two is needed. Irrespective, the duty of care applies to both employees and to patrons. Hospitality workers are most in the firing line of the health impacts of ETS. For restaurant workers, the exposure is one and a half times the general rate, and for bar workers it is almost four and a half times that general rate.

The WorkSafe submission to the Taylor task force indicated that a smoke-free environment should be the objective of all in WA workplaces, and that only by eliminating tobacco smoke from the workplace can we be sure that employees' health will not be at risk. All the warning signs are there. Given the limitations of the current Bill, which we may improve by way of amendment in committee, it is imperative that the Government take a stronger stance on such legislation. It would be wrong to say that what is proposed so far is adequate. The Government should give the people of Western Australia a strong indication and directive about what is proposed in years to come; namely, that the Government intends to have totally smoke-free public enclosed places in this State.

The ALP has placed an amendment on the Supplementary Notice Paper to allow smoking in no more than one room in all premises. The Democrats can see some problems with that proposal, although we support its intent and principle. A genuine argument is mounted by establishments such as Burswood Casino that more than one room should be made available for smokers. A good argument is posed for an exemption in the international room at Burswood, and for an area for smokers in the general gaming floor. Until we reach the total ban on smoking in enclosed places, which would apply to all places -

Hon Max Evans: Including the casino.

Hon NORM KELLY: Yes.

Hon Max Evans: When?

Hon NORM KELLY: The Democrats proposal is that, by the beginning of 2005, a total ban should apply on smoking in enclosed places.

Hon Ljiljanna Ravlich: It is a good thing they will never be in government!

Hon NORM KELLY: The Democrats will support the second reading of the Bill. We hope to improve it so it is more in line with the demands and wishes of all Western Australians.

**HON GIZ WATSON** (North Metropolitan) [3.44 pm]: It is essential that we look closely at this important legislation. I now outline what the Greens consider to be the key matters to be addressed in the Health Amendment Bill. The key issues, as no doubt were raised by earlier speakers, are as follows: First, the protection of non-smoking patrons and employees; second, to ensure there is a time line within which all enclosed places will be made smoke free; and third, the health considerations of employees be adequately considered by their employers. It is really essential that we recognise that this is fundamentally an issue of health relating to occupational health and safety; indeed, the second reading speech acknowledges that is the intention of the Bill.

*Sitting suspended from 3.45 to 4.00 pm*

**[Questions without notice taken.]**

Hon GIZ WATSON: It is important that we assess whether this Bill goes far enough in the protection of non-smoking patrons and of employees who work in enclosed spaces, and whether employers will be required to exercise a duty of care in relation to smoke. I note in the second reading speech that the minister seeks to amend the Health Act 1911 and make regulations to control exposure to environmental tobacco smoke in enclosed public spaces. I note that he refers to controlling rather than eliminating exposure. Secondly, the second reading speech refers to the primary objective of promoting public health by decreasing exposure to environmental tobacco smoke; again, not eliminating it. It refers also to regulating or prohibiting smoking in public places. I note also that the Bill follows on from the Task Force on Passive Smoking in Public Places, which has been mentioned extensively already in this debate.

An important point to re-emphasise - I am sure other speakers have mentioned this in the debate - is that we must acknowledge the overwhelming evidence of the harm to public health caused by passive smoking. I note that there are more than 600 international peer-reviewed reports and research studies on environmental tobacco smoke which come to the conclusion that there is now evidence of the harmful long-term effects of exposure to environmental tobacco smoke. Again in the second reading speech, the Government acknowledged that it had -

... a responsibility to protect all Western Australians from undue exposure to this public health hazard.

The Bill falls short of that responsibility. It is a compromise Bill which does not go far enough. Given that environmental tobacco smoke is now understood to have long-term harmful effects, given that there are no known safe levels, and given



that methods such as improved ventilation are known not to reduce environmental tobacco smoke to a level which will cause no harm, we inevitably must choose what level of harm is acceptable. It is a vexed question. Panel beating shops, for instance, are required to prevent workers from being exposed to damaging chemicals. There are strong provisions to eliminate all air-borne chemicals which can cause long-term health problems, whether they be cancers or asthma, other breathing-related conditions and so on. I see no difference between the management of such chemicals and the management of tobacco smoke. It is obviously complicated by the fact that the noxious component has been generated by, say, a leisure activity; however if we are to be consistent about protecting workers' health, we must eliminate those chemicals from the air or admit that we cannot do so. That is the dilemma that the Parliament faces. Ultimately, members of Parliament must consider a finite time limit on when to introduce a total ban on smoking in public enclosed spaces. If we do not do so, in effect, we will say that service industry employees are second-best.

Hon Max Evans: What if they themselves smoke?

Hon GIZ WATSON: That is an interesting question.

Hon Max Evans: If we had a whole industry of smokers getting more jobs than others, the equal opportunity people would bring in an Act against it.

Hon GIZ WATSON: Yes, but we must consider cases in which people have won compensation for being exposed to environmental tobacco smoke.

Hon Max Evans: That is a risk that they will take.

Hon GIZ WATSON: Sixteen cases have been won in Australia.

Hon Max Evans: Where?

Hon GIZ WATSON: I will allude to that in a minute. The undertaking of certain activities in private does not detract from an employer's obligation to provide a safe environment in which to work. I am sure that it would be a mitigating factor if the matter were taken to court, but we cannot use that as a reason to abrogate an employer's responsibility to provide a safe workplace.

Hon Kim Chance: It would be hard to find a duty of care case against an employer if an employee were a regular smoker.

Hon GIZ WATSON: I understand, but it does not completely exonerate the employer. Again, the second reading speech acknowledges the -

. . . overwhelming public support for smoke-free enclosed public spaces in Western Australia.

That is certainly borne out in the material that I read when preparing for the debate. Ninety-six per cent of adults support no smoking in restaurants, and 66 per cent support a restriction in bars and hotels.

Hon Greg Smith interjected.

Hon GIZ WATSON: That is in the second reading speech - the Government's explanation of the Bill.

Hon Max Evans: It must be right.

Hon GIZ WATSON: That is why I quoted it; I took it as given.

It is also stated in the second reading speech that there is no practical mechanical ventilation standard that protects people from environmental tobacco smoke. The onus is on an occupier to ensure compliance and to prevent smoke penetration into non-smoking areas.

Are the provisions in this Bill adequate to meet members' concerns and those raised by various interested parties? I have received correspondence from members of the public expressing their support for the ongoing moves to smoke-free enclosed spaces. They have encouraged us, as decision makers, to withstand the lobbying from certain sectors of the service industry to allow exceptions in the provision of smoke-free areas.

The membership of the Western Australian Council on Smoking and Health includes 34 organisations from a wide range of health, education and child-focused groups. It represented a very broad spectrum of organisations in this State. I concur with the advice that the council has provided that the evidence on the adverse health effect of passive smoking is powerful. It encourages members to make a strong decision in favour of protecting the health of employees and non-smoking members of the public.

The Australian Hotels Association has expressed concerns about loss of business. In the past few days it has claimed that its members will suffer adversely as a result of these restrictions. It has quoted very selectively from the report of the Western Australian task force on passive smoking in public places, which presents a much different and more balanced view of the potential impact of restricting smoking.

Hon Max Evans: We will not know until it happens.

Hon GIZ WATSON: The task force report presented a range of studies.

Hon Max Evans: This is all conjecture. We should wait until it happens.

Hon GIZ WATSON: We have a fair indication. I want to balance some of the arguments put by the AHA. It is stated at page 16 of the task force report -

The task force noted that there is a hierarchy in the quality of evidence that relates to the economic effects of smoke-free legislation. The most reliable data are based on sales tax receipts.

It further states -

Glantz and Smith (1994) found that the presence of a 100% smoke-free restaurant ordinance had no significant effect upon total restaurant sales in the community; was associated with a small (1%) but statistically significant increase in the fraction of total retail sales that went to restaurants; and had no significant effect upon the ratio of restaurant sales in communities with no such restrictions.

Further, the report states on page 17 -

According to Lesmes and Donofrio (1992):

Using White and Froeb's one-fifth cost assumption, the cost burden of passive smoking can be calculated.

This is the counterargument to the perceived or feared increased costs or the loss of profit in the hotel industry and must be balanced in the broadest context with the costs to our community if we continue to allow the health effects of passive smoking to be unrestricted. The report continues -

The [United States] Office of Technology Assessment estimated that in 1985 smokers cost businesses \$43 billion in lost earnings. The productivity costs of passive smoking would then lie around \$8.6 billion.

Hon Greg Smith interjected.

Hon GIZ WATSON: It is the health costs to the total budget. To continue -

Adams estimated the annual cost in lost productivity per smoking employee at \$600-\$800; using the one-fifth estimate, that figure increased by \$120-\$160 for every remaining non-smoking employee who must work with smokers.

I will quote only one other statistic from this task force report regarding the impact of smoking -

Corsun, *et al* 1996 examined the impact of New York City's **Smoke-Free Air Act** which came into effect in April 1995 resulting in the vast majority of the city's restaurants becoming smoke-free. The authors surveyed restaurant patrons and showed that those who smoked were dining out less frequently. However, non-smokers were eating out more frequently and were more than making up for revenue lost from diners who smoke.

In Dane County, Wisconsin, at least 75% of restaurants are smoke-free. Recent information based upon sales figures supplied by the State Department of Revenue, showed that income from eating and drinking establishments in the County has risen 17.6% from 1992 to 1996.

I argue that significant studies indicate that business in hotels might improve. We must have more confidence in the general public moving to reduce smoking and indicating that they will attend smoke-free venues if they are available. One of the letters I received was from a couple who said that although they were smokers, they preferred to go to no-smoking venues and they would be more likely to go out if they knew the pubs or the nightclubs -

Hon Greg Smith interjected.

Hon GIZ WATSON: They did not put that in their letter. They said that even though they were smokers, they would prefer to go to a smoke-free venue.

Hon N.F. Moore interjected.

Hon GIZ WATSON: I would not go as far as that.

Hon Derrick Tomlinson interjected.

Hon GIZ WATSON: No, I do not know the author of the letter. We acknowledge that the hotel industry has been under some pressure and has had declining patronage over recent years. However, I would argue that that has been more as a result of random breath testing and is a reflection of changing lifestyles, with more people entertaining at home rather than going

out to drink. We acknowledge that that industry has suffered a decline in attendance. We also accept that there is a need for a reasonable transition period. Obviously, establishments need time to modify the structure of their buildings, the ventilation, and other requirements, when addressing the issue of environmental tobacco smoke.

The Greens (WA) do not support the proposition put forward by the hotel association, which was clearly stated in the task force report; that is, that the industry preferred a self-regulation model. Again I draw a parallel. These establishments are workplaces. The Government does not accept self-regulation in, say, the panel beating industry or other industries where there are contaminants in the air. If regulation is necessary for those types of industries, then the argument holds good for other places of employment.

Another matter which has been raised is the impact of reducing the number of places in which one can smoke in the casino. The Greens argue that there should not be an exception for the casino. I note that the task force report refers to a survey carried out of departing international tourists. I refer to page 20 of the report which states -

A recent study of 290 departing international tourists found that the majority of international tourists to WA would prefer to sleep in a smoke-free room, eat in a smoke-free restaurant and enjoy smoke-free leisure and entertainment. Sixty percent of tourists said that they would increase their use of accommodation, eating and leisure facilities if smoke-free policies became compulsory . . .

Hon Greg Smith: Was that a voluntary survey of people as they were coming through?

Hon GIZ WATSON: I cannot give the answer to that. There will be a reference to it in the report. It says "A recent study of 290 departing international tourists". I assume it was not a compulsory survey; I assume they probably just asked people as they were heading out of the -

Hon Greg Smith: It was not compulsory; it was just -

Hon GIZ WATSON: I would have thought it was a random survey.

The PRESIDENT: Order! Interjections are against the standing orders. However, if Hon Greg Smith wants to interject, I and Hansard would like to hear what is being said. We are getting the reply, but we are not hearing what is said. I never want to encourage members to be more voluble in their interjections, but we do not have a clue what the member is saying.

Hon Greg Smith: I will interject more loudly.

The PRESIDENT: Take a leaf out of Hon Derrick Tomlinson's book.

Hon GIZ WATSON: Do not encourage that either. Another matter which was covered thoroughly in the task force report dealt with ventilation being unable to eliminate environmental tobacco smoke. Page 33 of the report states -

As a means of addressing and reducing the health risks associated with ETS, dilution ventilation is not a viable solution. There is considerable doubt as to whether it is effective in any sense. If effective, it is at best very expensive, and probably prohibitively expensive.

I have some understanding of this matter, having been a builder. I am aware that providing adequate ventilation when dealing with gaseous materials is virtually impossible, unless a specially designed building is involved. Members will appreciate the costs involved in maintaining a building at a comfortable temperature, with airconditioning or heating, depending on outside weather conditions, and a requirement to exchange air to a certain standard. Clearly, it is stated in the report that mechanical means of extracting and filtering the air will never completely eliminate the ETS, which is known to have harmful effects.

Finally, I refer to litigation and threats of litigation from employees and patrons exposed to passive smoking. I quote page 34 of the Taylor task force report -

The growing threat of court actions by employees and patrons exposed to passive smoking provides a further incentive for employers and business proprietors to consider adoption of smoke-free policies.

Further -

There have been at least 16 cases in Australia where compensation has been awarded as a result of discomfort or disease associated with ETS in the workplace. Most cases have been settled out-of-court.

Again, we must balance the additional costs to the industries involved as a result of the proposed restrictions with the potential cost of future legal action if it can be shown that an employer was negligent in exposing an employee to tobacco smoke. I am particularly concerned that many employees in the service industry are young. They are often university students and perhaps young people in their first jobs. We have a responsibility to ensure that young people are not placed in compromising situations in which they cannot say that they do not wish to work in a smoky environment. I have listened to talkback radio on this subject, and a young woman rang in who works in a bar. She stated that it was very difficult to raise

her concerns about the hazards of working in the smoky bar because if she did, she would be sacked and the employer would simply get somebody else tomorrow to replace her. We should not add to the difficulties faced by such young employees.

In conclusion, the Greens (WA) support the Bill to some extent, but consider that it does not go far enough. We will look with interest at proposed amendments. We express our disappointment that the Government seems to have eroded its initially strong stance on the matter to move quickly to smoke-free workplaces, as it has bowed to industry pressure to reduce the effectiveness of the proposed regulations under this Bill.

The Greens (WA) argue that it is time to take a strong stance on smoking. The impact of smoking is a major preventable health cost in this country. We need to reduce its impact and put in place regulations and educational programs that encourage people to reduce or to stop smoking. One of the clearest ways to do that is to reduce exposure to smoke in enclosed places. Certainly the amendments that I have seen will improve the situation and are a reasonable compromise towards ultimately achieving smoke-free enclosed places in Western Australia.

**HON GREG SMITH** (Mining and Pastoral) [5.01 pm]: It disappoints me to see some of the amendments that have come before the House. I can see the Health Amendment Bill going down a similar track to the School Education Bill by starting off as good legislation and ending up as an unworkable piece of rubbish. At this stage that looks like happening.

There is no truth in what Hon Kim Chance said about the pressure applied by the Australian Hotels Association via the backbench. The pressure was applied by the demands of members' constituents. Coalition members have a lot of country seats - I think all of them except about four. Those people will be affected most by the regulations and the legislation. Some country towns have only one pub. Places like Wiluna have two different groups of people who choose to drink in different places.

Several members interjected.

The PRESIDENT: Order!

Hon GREG SMITH: The reason that members pursued changes to this legislation when it came to them in draft form is that they realised the importance of making workable legislation. Members knew that it was no good introducing a Bill for the Parliament to enact and then have to go back to the people they represent in the country, and even to city publicans and other people involved in the hospitality industry. We negotiated a very tough deal with the Minister for Health. I must congratulate him. He was prepared to accommodate most of the matters we asked him to put into the legislation. Members went through a fairly rigorous negotiating process to ensure that the Government came to this place with workable legislation for the people who had to live with it, because it is no good passing legislation that people cannot live with. Some publicans in the bush and country areas will not be able to enforce the regulations and legislation, if the Bill contains the amendments that have been tabled in Parliament. I can think of places like the Yalgoo Hotel, which has two bars which could be considered as one. Would it be called one bar or two bars? Would the area on the other side of the bar be part of the bar? Would it be the lounge, because they almost adjoin? The Government had to draft the legislation to accommodate the unusual situations in country hotels. No doubt unusual situations exist in metropolitan hotels. I doubt that many of the people who lobbied against smoking in places such as hotels have ever been in the front bar of a pub.

Hon Norm Kelly: Rubbish. What a stupid statement.

Hon GREG SMITH: It is not a stupid statement. Many people involved in the drafting of legislation like this do not frequent places such as the Federal Hotel in Kalgoorlie, which is a very good pub if one is a driller or a miner. I cannot see a senior government bureaucrat going in there for a beer.

Hon Kim Chance: Am I allowed to name those I have seen there?

Hon GREG SMITH: No. The Government has introduced good, workable legislation that is acceptable to the industry and most of the health people, who were prepared to accept the amendments. It was a give-and-take process but no doubt it will be decimated in committee. It will no doubt follow a similar path to that of the School Education Bill.

Many figures have been quoted from surveys that have asked people whether they want smoking on premises. However, the framing of the questions can influence the responses. People have been asked: "Do you think there should be no smoking?"; "Do you think there should be smoking?"; or "Do you think there should be a restriction on smoking with the provision of a place where people can smoke?" The results have shown that a majority of people agree that if people want to go to a hospitality venue, areas should be available in which they can smoke.

The changes to which Hon Kim Chance referred in the second reading debate have occurred over the past 10 years; for example, smoking behind the Chair in this Chamber is no longer permitted nor is smoking in shopping centres. Most people do not smoke in restaurants and patrons are asked whether they want to sit in a smoking or non-smoking area. I am a smoker but I usually ask for the non-smoking section because my wife is a non-smoker. I am happy to sit in a non-smoking area so that my wife is comfortable. Individuals who want to smoke can sit in an area in which they can smoke.

The implementation of these regulations will deny the opportunity for business people to cater to certain groups of people; for example, in some areas many ethnic populations, such as Yugoslavian people, spend a lot of time smoking and want to go somewhere where they can all smoke. We will deny them that pastime and the right of a business owner to offer a venue in which people can smoke. If someone wants to offer a non-smoking venue, smokers will still go there. The marketplace should have the ability and the right to cater to demand.

As Hon Kim Chance said, he uses Ansett because it has a Golden Wings lounge with a smoking area, based on a commercial decision made by Ansett. I see no reason that this Parliament should legislate so that people cannot make those commercial decisions. All the changes that have taken place have not required legislation, regulation, fines or penalties. They have occurred purely through social pressure and the will of smokers to respect the wishes of non-smokers.

Hon Kim Chance: With respect to airports there is.

Hon GREG SMITH: Where are the penalties? There is no penalty for lighting up a cigarette behind the Chair. The President would prefer it if we did not smoke in the Chamber or behind the Chair, but no penalty is attached to our doing so.

Hon Kim Chance: But you might never get to ask another question.

Hon GREG SMITH: Like Hon Kim Chance, I am a smoker. I remember once making a car trip with a chain-smoker. He wound the windows up and smoked the whole way and it made me sick. Smokers do not want to be surrounded by smoke all the time, and that person demonstrated a lack of manners. Public perception, education and people respecting each other is the way to deal with smoking. We do not need to introduce such prescriptive rules that we have "smoke police", whether they be from local authorities or the police. A member has foreshadowed an amendment to allow any person from a local authority health department to charge somebody without reference to the director general of health.

Hon Kim Chance: The Executive Director, Public Health.

Hon GREG SMITH: Yes, the Executive Director, Public Health. Therefore, an overzealous health inspector in a small country town who did not like the publican would not need evidence to lay a charge. Part of the amendment would remove the requirement for proof.

Hon Kim Chance: In order for a prosecution to be successful, he would still have to provide evidence in court.

Hon Norm Kelly interjected.

Hon GREG SMITH: Yes, but the hotel is not doing anything wrong if a patron is smoking; the patron is breaking the law. That is another problem with trying to regulate things. We should not fine people who run shops \$10 000 for selling cigarettes to minors; the minor should be fined for buying them. We are passing responsibility for someone else's actions to a shopkeeper. To some extent that is what these regulations will do. As the regulations were presented to the Parliament, the Government expected few problems with compliance; the regulations were drafted in a workable manner. I fear that they will be unworkable by the time the opposition parties have finished with them. Since smoking was banned in workplaces, it has been estimated that the equivalent of about 300 000 work days are lost by people going outside to smoke. People did not foresee that by-product of making smoking inside illegal. At the end of the day, if this legislation leaves this House and is returned to the other place in an unworkable and unacceptable form, the opposition parties must accept responsibility for that. The Government, through robust negotiations by the Minister for Health, did what it could to make this legislation workable in as many circumstances as possible.

A foreshadowed amendment will allow smoking in only one bar, but the Cable Beach Hotel in Broome, for instance, has bars everywhere. The Lord Macs restaurant has a bar which is semi-open, people can go outside and there is also another dining area with another bar. The Government took into account all the different situations which could arise and had the legislation drafted to make it work. I do not believe there is any concrete proof that passive smoking is dangerous. The World Health Organisation conducted a study to establish whether passive smoking was damaging to people's health. It buried the report because it could not establish that passive smoke was damaging to people's health. It almost went the opposite way to which the World Health Organisation hoped it would. This legislation is about increasing the comfort factor for non smokers in these venues. If people do not want to work in a smoky place, they should find a job somewhere else. If a person does not like the sight of blood, he will not become a butcher; if a person does not like being covered in grease and oil, he will not become a mechanic; if a person does not like going underground, he will not become an underground miner; if a person does not like children, he will not become a teacher; and if a person does not want to be exposed to smoking, he should not work in a bar.

Individuals should have the right to do what they like within certain boundaries. The Opposition's amendments to the legislation will remove the rights of one set of individuals for the benefit of another set of individuals. Smokers have rights too. People are saying that one group should have more rights than another group. People who do not want to be in an area in which people are smoking have as much right to leave as people have to smoke in that area. Who are members to judge

who should have the most rights? I will not say any more because hopefully we will get on with this Bill. I will be disappointed if this legislation is amended to make it unworkable. After what happened to the School Education Bill in this place, it would not surprise me.

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [5.17 pm]: This is one of those times when I do not know whether I should thank members of the opposition parties for their support. We start with those words and then the amendments are discussed. I remind the President and members that it is a simple Bill. It includes phrases such as "Smoking in enclosed public places", "Interpretation", "Regulations", "Consent required for prosecutions", "No right to smoke in enclosed public places", "Review" and "Section 360 amended". I will not enter into a debate for or against smoking; that is not part of this Bill.

The regulations proposed to be introduced will be flexible enough to cater for areas of licensed premises where the activity of the area may alter during the day. A number of hospitality venues will be provided with time-limited exemptions for specific areas within these venues. In hotels and taverns, smoking will be permitted in bar and lounge areas located in the same physical space as a dining area until 31 December 1999. After 1 January 2000, these will become non-smoking areas. Only those restaurants which hold extended trading permits issued under liquor licensing laws, allowing for the consumption of alcohol without the purchase of a meal, will be permitted to allow smoking in the areas set aside primarily for the consumption of alcohol. However, after 1 January 2000 a smoker will not be permitted in an enclosed area of a restaurant on the basis that the restaurant holds such an extended trading permit. Smoking will be permitted in all enclosed public areas in nightclubs and cabarets, other than corridors, stairways, toilets, lobbies and waiting areas. However, on 1 January 2000, 50 per cent of the previously exempt areas of nightclubs and cabarets will be required to be non-smoking. Similarly, the casino will be permitted to allow smoking in bar and lounge areas as well as the main gaming floor. However, from 1 January 2001, 50 per cent of the main gaming area, not including the international rooms, will be required to be non-smoking.

I will bring some points to the notice of members. I am dealing with this in two capacities. I am in charge of the passage of the Bill, yet the liquor industry and the casino industry, which are part of my portfolio area, will be affected. My job as Minister for Racing and Gaming is to protect those industries. I do that in many different ways, including amending and improving legislation.

Hon Kim Chance: And you can tax them as well.

Hon MAX EVANS: I hope the smokers in this House do not give up smoking.

Previous speakers mentioned sales tax - I love those words! When the Government came into office the tax on cigarettes was \$129m a year. It increased that to \$259m a year. This year it will be well over \$300m. The increased revenue we receive from sales tax must be the result of people smoking more cigarettes. The Government is grateful to the smokers, who help fill the coffers of the State, but it does not knock the non-smokers.

One of the proposed amendments is to limit smoking in public venues to only one room or bar after 2000. The Government is worried about the effect of that on the Burswood International Resort Casino. Most members would have been taken on a tour of the casino. It makes a worthwhile contribution to tourism and employment in this State. The casino has three VIP rooms upstairs, with two tables in the first two rooms, and a table and roulette wheel in the third room. The big punters go to the VIP rooms. I am not sure whether changes have been made because of the financial problems in the Asian region, but guests were required to have \$1m in chips before they could play on those tables. Up to three years ago the international players used the international room. However, they found that playing in a public open space was distracting. Often they would play baccarat for 20 or 30 hours non-stop and they wanted to be able to concentrate on the cards. The casino wanted to encourage these players to come back and lose more money - as they all do - so it has three separate rooms upstairs, the larger international room downstairs and the main gaming floor. We discussed restricting smoking to 25 per cent of a venue. If we allow smoking in only one area, where will that be - the No 1 VIP room, the No 2 VIP room, the No 3 VIP room, the international room downstairs, or the main gaming floor area? The main gaming floor has 120 tables and 1 120 slot machines. Already 30 or 40 per cent of that area is non-smoking.

I accept the argument about the effectiveness of ventilation. The task force that investigated the Crown Casino in Victoria accepted that ventilation will never be totally efficient. That takes us back to the situation in country hotels. If we ban smoking completely from 2005, some venues will have major problems. The ventilation requirements could force some venues to close down. If the money does not come into the bar, there will not be enough gross profit to run the dining room. If the dining room does not make enough profit, there will be no rooms available and the town will suffer. Those facilities and services are important in mining towns. I was at Cue's Club Hotel recently. It has a front bar, a bar around the side, and one in the next room. It comes down to practicalities. Buildings constructed 100 years ago cannot accommodate the structural changes necessary to install air conditioning and ventilation. It would be difficult to install air conditioning that would satisfy the ventilation requirements.

I want to highlight a few points about the Burswood casino, which will also apply to hotels. The Labor Government passed

an Act so that the casino would have exclusivity over gambling up to 2000; after that it expects competition. The casino has always been a place where people smoke. About 99 per cent of the high rollers smoke all the time. If one has \$1m at stake, one would probably be a bit nervous. If one is gambling \$250 000 a hand, one will get a bit nervous and will smoke. That is what they want to do. Smoking is widespread in most Asian countries. People say that the tobacco companies are putting pressure on the Government, but the portion of our population of 17 million who smoke is infinitesimal compared with the 200 million people in Indonesia and the 1.2 billion people in China and India who smoke. The same companies are supplying tobacco to those countries, and they would not notice any action that we took on the ground, because the majority of the people who smoke live in those countries.

I return to the Burswood International Resort Casino annual report for 1998. The Burswood Property Trust had invested a lot of money in buying the operating and management agreement and in bringing people to the casino from Kuala Lumpur, Singapore, Bangkok, Dubai, Hong Kong and India. The report states that local VIP and overseas players were treated to world-class concert events, such as Mariah Carey, U2, Natalie Cole and Placido Domingo, as well as to performances by talented Asian entertainers such as Roman Tan. Many of these big performances that are put on for the public of Western Australia are subsidised from the profits that are made on the Burswood gaming floor. These special events are a great drawcard to bring the VIP punters and high rollers to Perth, and that helps to fund the performances. If those people went elsewhere to gamble, those concerts would not take place. I am not a great concertgoer, so that probably would not worry me, but many people, particularly the younger generation, get a lot of fun out of those concerts. The car parks of the casino would not be full right around to McCallum Park if those concerts were not what people wanted. However, they are subsidised from the profits that are made by the casino.

The Burswood has held golfing events which have been very popular. It sponsors the Heinekin Classic to a certain degree and brings out the top VIP punters to play in the pro-ams. The ninth annual baccarat tournament was held in August, at which 120 players competed for a prize worth \$500 000. Those members who gamble regularly probably realise that not many Australians play baccarat. Baccarat is played mainly by Asians. At the Genting casino in Malaysia, very few Asians play the slot machines. Only the poor European tourists play the slot machines. The Asians prefer to play for the better odds that they get on the gaming tables.

All of these things are made possible because of the profits that are made by the casino. Burswood Park receives 1 per cent of the casino profits, which was about \$3.5m last year. That is a very important part of the Government's revenue. It has dropped from about \$4.6m a couple of years ago to \$3.5m, and it may drop away even further, which may affect Burswood Park, the gateway to Perth.

Some very big conferences will be held at the Burswood in the future which will be of great benefit to Western Australia, such as the Australia and New Zealand Society of Nuclear Medicine conference, the Lions convention, which will be held in 2000, and the eleventh local government engineering conference, which will be held in 2001. The famous LNG 12 conference for the liquid natural gas industry was recently held at the Burswood.

The Burswood auditorium has now been changed into a lyric theatre, and many members attended the opening night of that theatre.

I return to the finances. Members need to give serious consideration to what we may or may not do to Burswood in this regard. Most members who do not drink or gamble and do not go to the casino would say, "So what if the Burswood cannot carry on with its business? It will not affect me. Why should I worry?" Perth would be the loser if this State did not continue to get what it gets from Burswood, whether people like to gamble or not. That is why in the past three or four years I have encouraged members to go to Burswood to see that there is a lot more to it than the gaming floor. It has the golf links, the tennis courts and Burswood Park. That could all be lost. The revenue from the casino for the 12 months to December 1998 was about \$355m. A couple of years ago, it was up to \$464m. The Government gets 1 per cent of that money, or about \$54m. That profit goes back into subsidising the operations of the casino.

The accounts this year show \$13.5m profit from the hotel. The hotel, previously owned by Victoria Co (Australia) Pty Ltd, is now owned by the casino. It bought out the operating management agreement for \$93m, which the Government agreed to, and it put \$30m into the hotel. This is a company that 12 months ago had borrowings of about \$39m. It now has borrowings of about \$234m because it bought out the operating management agreement, the hotel and so on. The fact that it has borrowed a lot of money to do these things is a very serious matter. The company has plans, which have been mentioned in the Press, to build a convention and exhibition centre, and a big car park on the former Swan Cement site, which will enhance the whole property; it is looking at spending \$180m. If we are telling the operators of the casino that by 2005 there will be absolutely no smoking there, whereas before we said there would be smoking in one location - I am not certain that would be their choice - they will have a serious financial problem in having to meet their due-diligence payments. With about one-third of about \$360m coming from international gamblers, that is \$120m, one can guarantee that 99 per cent of the \$120m will come from smokers.

Members must remember that these gamblers come to Perth by choice because they are very well looked after, and have been since day one. About 70 per cent of the international gamblers in Australia come to Perth. They can go to Subic Bay in the

Philippines, Macau, and other places in Asia, except for Indonesia, obviously, being a Muslim country. They play only baccarat, which is a 52-card game. They could go anywhere else and play that same game as the odds are the same against the gambler and the banker. However, they come to Perth because they like it and they spend a lot of money when they are here.

We must be careful about what we do. It is all very well to say that we should cut out smoking entirely. I have said jokingly that maybe only people who smoke should work at the casino. The Equal Opportunity Commission would then take us to task and say that that was not fair, non-smokers should be allowed to work there. It would mean having to sack half the staff to get only smokers. I am not sure how to win this argument. We know that people can make claims later, and the casino is prepared to take that risk. However, the balance sheet shows that total shareholders' equity last year was \$525m and \$478m this year because of the increased borrowings for the Burswood operating management agreement. This has changed the whole viability and finances of the hotel. I think the casino would have still concluded that part of the deal even had it known about this Bill, because it wanted to buy out the operating management agreement. We, the Government, did not want it to sell that agreement to Metroplex Berhad. We wanted to stay with this company, which has been good for everybody. The casino's proposed borrowing last year was \$161m; it repaid \$27m. The borrowing for the operating management group was about \$90m. Members can read the books. However, I ask them to think very carefully about what we are doing and what may or may not affect the casino.

I speak on this matter as the Minister for Racing and Gaming. I understand the contribution the casino makes to Perth and trade. I know that many people want the convention centre to be in the centre of the city, and I will accept whatever decision is made on that. However, as I say, people go to the casino, which employs many people, to spend money there. The casino offers accommodation, although some people do not always sleep at the casino. If they have had a lucky night when they stay at the Hyatt Hotel, they keep going back to that same room at the Hyatt because they believe it is lucky. That is the way they go about it.

Hon Greg Smith talked about country hotels. It worries me that there will be no flexibility for country hotels. This is an unusual State, with only four or five regional towns. There are many small towns with only one hotel. They are lucky that they have even one hotel. As members know, we try to support those hotels through provisions in the Liquor Act which cut out Sunday trading for liquor stores and other things to keep those hotels going. They are a very important part of the social community in those small towns for functions, drinks, meals etc. I am not certain how we can put regulations in place to cater for all these hotels, because they are all so different and were built so long ago. The owners will probably not have the money to refurbish them; and, as I say, people probably would not even accept the installation of airconditioning. As I said jokingly the other day, I suppose one could smoke the full length of the Big Bell Hotel, which has the longest bar in Australia.

Nightclubs are a different matter. People do not drink much alcohol in nightclubs; most alcohol is sold by liquor stores. In nightclubs there are more problems with drug-pushing than with cigarettes. Perhaps cigarettes calm down nightclub patrons.

Hon Norm Kelly: That is a vote of confidence for the Minister for Police.

Hon MAX EVANS: It is very hard to determine what is going on. One firm which owns about seven nightclubs spent about \$7m doing up one nightclub, the name of which I cannot recall at the moment. I am not certain how one allocates one smoking room in a nightclub. Anyway, there will be good business for liquidators if such operations are wound up. I am not joking. Such places make their gross profit out of drink. The margin on drink in hotels is high - for example, it costs \$5 for a little bottle of water. Good profit margins keep businesses going. If we reduce the number of patrons, there could be a huge impact on those businesses.

As Hon Greg Smith mentioned, there is also a loss of productivity associated with smoking. There should be certain restrictions in government. People should not be allowed to go outside premises to smoke. The cost to productivity is huge. At London House, some people go outside to smoke five or six times a day. I wonder what they are paid for, but we let it go on. Hon Kim Chance said that the Totalisator Agency Board banned smoking on its premises. As for the casino slot machines and tables, when one is playing a table and one is on a lucky run, one does not want to go away. When one plays the horses or the dogs, one goes away and prays that one will win. The situation with slot machines is much the same. People usually tilt up their chairs so that they can go and get some more money, and they go back again because they know that the next time they pull the handle \$64 000 will come out. It never does, but that is the way they play the game, and that is completely different from what happens at the TAB.

Last night, you, Mr President, and I talked to the Auditor General and we said that the performance indicators for Parliament were not available. It is just as well because they would not be too good, either. You might lose your job on your performance indicators in the past few days, but that is by the bye.

The PRESIDENT: Order!



Hon MAX EVANS: We are not getting through much work, Mr President, but there you are; you are the leader.

Reference has been made to Californian restaurants and so on. I will be interested to see what happens. The greyhound people do not agree with my interpretation, but they received *The Australian Financial Review* bravery award for stopping smoking in the bookies' area and in the restaurant. On-course turnover is down \$1m - that is, from \$8m to \$7m or \$7m to \$6m. It is losing about \$170 000 gross profit, and that is a worry. The greyhound people say that they have checked and everyone is happy with no smoking. I wonder whether the smokers no longer go there so the company is not turning over the money. Part of it is that they have upgraded the place a little, and the thongs-and-shorts boys no longer go there - they probably smoked as well.

I ask Hon Greg Smith to consider the possible impact of some amendments on a simple Bill. In particular, I am worried about the single bar, the single room for smoking, and the casino. The impact on the casino could be huge in regard to the State of Western Australia and the city of Perth. The casino has made a big contribution; the money goes back to the State. If we impose a no-smoking law or limit smoking areas to one room, there will be a serious impact. I would feel sorry for the directors and shareholders if that affected the casino's gross profit. The hotels are just as important; they are local. As the member said, much of the pressure applied has been from country hotels. Be that on the member's head. The Government will make the situation clear to the public. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

#### *Committee*

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

#### **Clause 1: Short title -**

Hon NORM KELLY: The minister has not answered many of my questions. I expect that I can ask them again during the committee stage.

The Minister referred to the casino and its profitability. Has Treasury or some other government agency done costings in respect of the current benefits that accrue to the State from the casino, as against the long-term cost of the effects of environmental tobacco smoke? What is the true cost of smoking-related illnesses? The President of the Australian Medical Association has pointed out that the casino is the greatest contributor to smoking-related illnesses in this State. The casino might make a few million dollars for its owners, but at the same time a calculation could be done to establish the number of deaths caused by ETS in that environment. We should consider not only the health costs but also the lost income and so on. One of the main problems we face with smoking regulations is that people put too much emphasis on the profitability of certain companies or interests as against the long-term cost to taxpayers.

Hon MAX EVANS: I am not sure how to answer this. The Government does better than the shareholders. In 1997, about \$47m went to the shareholders and the State Government got \$54m or \$55m. The State has always done better than the shareholders.

The member referred to the effect on health of ETS. The very heavy smokers will not die here. The international gaming room people -

Hon Norm Kelly: They will go away to die. What about the people working in the international rooms?

Hon MAX EVANS: Between 40 and 50 overseas gamblers and smokers a week, or between 2 000 and 2 500 a year, come to Western Australia. Many of those people smoke. Of the 3 500 staff, many work in the restaurants, in the gardens and in the hotel rooms and they will be affected by it, as applies anywhere else. There is a cost difference involved and many factors come into consideration. The member understands the whole thing and he would be happy to see the whole place close down, so we will simply leave it at that.

Hon NORM KELLY: I missed that last comment about who would be happy to see the place close down. Will the minister clarify that?

Hon MAX EVANS: I was referring to the member's comments about the perils of smoking at the casino. The only way smoking can be stopped there is to close the operation down. It is a highly expensive operation. Perhaps the member would like to see that happen - I do not know - but that will be the end effect and it could also stop any further expansion. Those are the facts of life from a financial point of view.

Hon NORM KELLY: I make it clear that I am not keen to see the casino close down, simply to stop smoking occurring there. It is a bit beyond the argument we are having here. I asked the minister a reasonable question. Obviously, we do not know what the future impacts will be. The minister has proved my point that the Government is simply looking at the

day-to-day return from the casino into the coffers of this State, rather than giving consideration to the health of our community for the future.

Hon MAX EVANS: I make it clear that more than the Government's revenue is at stake. The Government's income from that area has dropped between \$10m and \$15m per annum over the past few years. Fewer overseas punters are visiting the casino, and the Government is paid only on what they lose, not on what they win or on the turnover. I said before that the 3 500-plus employees who work in this casino must be considered; it is talking about employing another 400 workers if it is extended. Also many shops in King Street are frequented by the big cast of the casino and they turn over a lot of money. Some people come in week after week. The statistics on tourism in this State for people from Asia and Indonesia, indicate that the number of people visiting from Indonesia has dropped off now. A large number of those were repeat gamblers. It is not a question of what the Government is receiving. All those concerts and shows at the dome are dependent on the casino. When Brian Burke proposed the casino, he was considering the revenue in the first place but it has brought far more to Western Australia than simply the revenue. That is an important factor.

Hon N.D. Griffiths: He was looking at employment as well. He saw it as a major investment for the State.

Hon MAX EVANS: It was, and it is a lovely hotel.

Hon NORM KELLY: I have only one other question at this stage relating to a question I asked in the second reading debate which was not responded to. The national competition policy review was carried out to ensure that this legislation complies with competition policy. Has the implementation of these regulations over various dates and time frames been in line with the national competition policy, and is it possible for the minister to provide details as to how it has been assessed that it is in line?

Hon MAX EVANS: I have just got my marching orders to seek leave to sit again at the next sitting of the House.

**Progress reported.**

[Resolved, that the House continue to sit beyond 6.00 pm.]

**STANDING COMMITTEE ON LEGISLATION**

*Report on Acts Amendment (Sexuality Discrimination) Bill 1997*

Hon B.K. Donaldson presented the forty-fifth report of the Standing Committee on Legislation on the Acts Amendment (Sexuality Discrimination) Bill 1997, and on his motion it was resolved -

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

[See paper No 587.]

**STANDING COMMITTEE ON LEGISLATION**

*Report on Forensic Procedures and DNA Profiling*

Hon B.K. Donaldson presented the forty-sixth report of the Standing Committee on Legislation on forensic procedures and DNA profiling, and on his motion it was resolved -

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

[See paper No 588.]

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

*Report on the Distribution Adjustment Assistance Scheme and the Committee's Third and Sixth Reports*

Hon Kim Chance presented the tenth report of the Standing Committee on Public Administration in relation to the distribution adjustment assistance scheme and the committee's third and sixth reports, and on his motion it was resolved -

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

[See paper No 589.]

The PRESIDENT: Members, we are waiting for a committee report to be delivered to the House. As the House has agreed to sit beyond 6.00 pm for the purpose of receiving reports, I will leave the Chair until the ringing of the bells.

*Sitting suspended from 5.52 to 5.56 pm*

**SELECT COMMITTEE ON NATIVE TITLE LEGISLATION***Report*

**HON TOM STEPHENS** (Mining and Pastoral - Leader of the Opposition) [5.56 pm]: I rise to present the report of the Select Committee on Native Title Legislation. I understand that standing orders provide for the reading of select committee reports; however, in deference to the House and the size of the report, I will instead move -

That the report do lie on the Table and be printed.

Question put and passed. [See paper No 590.]

*Complimentary Remarks to Staff*

**HON TOM STEPHENS** (Mining and Pastoral - Leader of the Opposition) [5.57 pm]: I thank the House for granting leave to enable me to make some deserved complimentary remarks to a number of people. Members will appreciate that the House gave the committee a 10-day task to present a report, which was achieved only by virtue of an enormous amount of hard work by not only members of the committee, but also some dedicated committee staff. A range of hearings was held enabling a variety of citizens of Western Australia to present their views on the native title legislation which will be before the House next week. Those hearings that were conducted last week at short notice, and with an extraordinary effort on the part of committee staff. They were aided, as the committee was aided, by amazing efforts on the part of the Hansard staff, who quickly turned around a transcript of the hearings for the committee's consideration and the bringing together of the report. The report that has now been tabled is a combination of reports, including dissenting reports. I commend the consideration of the report and its various parts to all members. It will ensure the opportunity for a more effective and efficient debate of the native title Bills next week.

*House adjourned at 6.00 pm*

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**QUESTIONS ON NOTICE**

Answers to questions are as supplied by the relevant Minister's office.
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**POLICE MANPOWER REVIEW**

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

- (1) When will the full manpower review within the Central Police Region be completed?
- (2) Will the Minister for Police table the review
- (3) If not, why not?
- (4) If yes, at what stage after the completion will the review be tabled?

Hon PETER FOSS replied:

- (1) January 1999.
- (2) No.
- (3) The manpower review is an internal working document which will be used by the Commander of the Central Police Region to manage and utilise his human resources within his region.
- (4) Not applicable.

**GOVERNMENT DEPARTMENTS AND AGENCIES - CREDIT CARD PURCHASES**

429. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Primary Industry:

- (1) Is the Minister for Primary Industry satisfied with the procedures the departments and agencies within his portfolios are following to ensure that Credit Card purchases are only being used for approved purposes?
- (2) Do the departments and agencies within the Minister's reconcile all credit card statements against supporting documentation?
- (3) Has there been evidence of supporting documentation not being provided during 1996/97 and 1997/98?
- (4) If yes, will the Minister provide details of transactions amounts in questions?

Hon M.J. CRIDDLE replied:

**AGRICULTURE WESTERN AUSTRALIA**

- (1)-(2) Yes.
- (3) I am advised that there is a non-compliance rate of less than 2% with respect to corporate card transactions, including the non provision of supporting documentation.
- (4) Not applicable.

**FISHERIES WESTERN AUSTRALIA**

- (1)-(2) Yes.
- (3) There is no material control weakness with respect to supporting documentation being available for Corporate Card transactions.
- (4) Not applicable.

**GOVERNMENT DEPARTMENTS AND AGENCIES - CREDIT CARD MONITORING**

439. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Primary Industry:

- (1) What monitoring is done by the Minister for Primary Industry's departments and agencies to identify any inappropriate use of corporate credit cards?
- (2) What policies have been implemented to address instances of inappropriate use?

- (3) Has there been any inappropriate use of corporate credit cards within the Minister's departments and agencies?
- (4) Will the Minister for Primary Industry provide details and advise what action was taken in these instances?

Hon M.J. CRIDDLE replied:

#### AGRICULTURE WESTERN AUSTRALIA

- (1) Corporate Card transactions are subjected to two independent checks within Agriculture Western Australia.
- (2) Inappropriate use attracts the application of the agency's disciplinary procedures.
- (3) I have been advised of one instance of alleged non-compliant corporate credit card use.
- (4) The appropriate penalty is applied where there is any inappropriate use, according to the agency's disciplinary procedures. In the above case, the matter will be referred to the Anti Corruption Commission, as a matter of course.

#### FISHERIES WESTERN AUSTRALIA

- (1) Corporate Card expenditures are reviewed by Finance officers as part of the payment process and by both internal and external audit.
- (2) Cardholders are provided with usage instructions when a card is issued. The Agency also maintains a policy manual which provides directions and guidance with respect to card usage. This manual is available to all staff on the Agency's internal computer network and on request is available to the public.
- (3) No.
- (4) Not applicable.

#### INSURANCE FRAUD - POLICE ASSISTANCE

523. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Police:

- (1) Has the Insurance Commission of WA asked the WA Police Service for assistance in tackling insurance fraud?
- (2) If yes, has the WA Police Service agreed to assist?
- (3) What type of assistance will the WA Police Service provide?

Hon PETER FOSS replied:

(1)-(2) Yes.

- (3) The Western Australia Police Service ("the Police Service") provides assistance to the Insurance Council of WA (ICWA) in a number of ways, some of which are listed below:

Major Fraud Squad: The Police Service continues to provide assistance in the investigation of suspected fraud matters reported by the ICWA.

Crime Information Unit: The Police Service in partnership with the ICWA is currently developing a concept to facilitate the electronic information exchange between police and ICWA. The matter is progressing.

Crime Stoppers: The Crime Stoppers Unit was recently approached by the ICWA who requested use of the Crime Stoppers "1800" number to enable members of the public to report insurance fraud, particularly fraudulent behaviour in relation to motor vehicle or worker's compensation claims. Crime Stoppers agreed to assist the ICWA.

Any information received by Crime Stoppers in relation to the above is forwarded to the ICWA for assessment. Of course should the ICWA consider the information received is sufficient to warrant investigation, the matter is then referred to the Police Service Major Fraud Squad for inquiry.

#### FISHERIES, AQUACULTURE LICENCE APPLICATION

621. Hon GIZ WATSON to the Minister for Transport representing the Minister for Fisheries:

In respect of the Minister for Fisheries' answer to question on notice 364 and the Statement of Decision - Application for an aquaculture licence; file number: 337/98; applicant - Cordil Holdings Pty Ltd; application date - 10 February 1998. On page 4 of the Statement of Decision it is stated that "Ministerial Policy Guidelines .... are currently being developed by the Agency." -

- (1) Have these Ministerial Policy Guidelines been developed?

- (2) If yes, will the Minister table these Guidelines?
- (3) If not, when will these Policy Guidelines be completed?

Hon M.J. CRIDDLE replied:

- (1) Ministerial Policy Guidelines for "*Determining a fit and proper person for aquaculture authorisations*" have not yet been finalised by Fisheries WA. A preliminary draft is currently undergoing legal scrutiny.
- (2) Not applicable.
- (3) It is proposed that Guidelines will be finalised by the end of March 1999.

#### POLICE OFFICERS AT REMOTE LOCATIONS, CRITERIA

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

Will the Minister for Police table the criteria set down by the WA Police Service in regard to the placement of a permanent officer at remote locations?

Hon PETER FOSS replied:

The Western Australia Police Service maintains no special or unique criteria for application in the selection of persons for service in country locations. Police officers are trained, required and ready to serve throughout Western Australia for terms in accord with the Agency's Tenure Policy which sets minimum and maximum periods. Country positions are filled through advertising and through the selection of the most appropriate applicant. Occasionally, management initiated transfers apply where there has been no volunteer. All Police country locations are within established towns, though patrols and visitations are undertaken in some centres to remote communities at regular intervals or as required.

#### GOVERNMENT CONTRACTS

678. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

- (1) Have any agencies or departments under the Minister for Lands' control awarded any contracts to the following companies since July 1, 1996 -
  - (a) Malavoca Pty Ltd; and
  - (b) Hanscom Holdings?
- (2) If yes, can the Minister provide the following details of those contracts -
  - (a) the name of the contractor;
  - (b) the contract number;
  - (c) the date it was awarded;
  - (d) the project the contract was awarded for;
  - (e) the cost of the contract;
  - (f) if the contract has been completed, the final cost of the contract; and
  - (g) the names of any other companies who tendered for the contract?

Hon MAX EVANS replied:

DOLA

- (1) (a)-(b) No.
- (2) Not applicable.

LANDCORP

- (1) (a) Yes.  
(b) No.
- (2) (a)-(g) [See paper No 585.]

#### GOVERNMENT CONTRACTS

679. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Disability Services:

- (1) Have any agencies or departments under the Minister for Disability Services' control awarded any contracts to the following companies since July 1, 1996 -
  - (a) Malavoca Pty Ltd; and
  - (b) Hanscom Holdings?

(2) If yes, can the Minister provide the following details of those contracts -

- (a) the name of the contractor;
- (b) the contract number;
- (c) the date it was awarded;
- (d) the project the contract was awarded for;
- (e) the cost of the contract;
- (f) if the contract has been completed, the final cost of the contract; and
- (g) the names of any other companies who tendered for the contract?

Hon MAX EVANS replied:

- (1) No.
- (2) Not applicable.

#### LANDCORP, LANDSDALE JOINT VENTURE

681. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's joint venture development at Landsdale with North Whitfords Estates ("NWE"), what proportion of the land was contributed by LandCorp and NWE respectively?

Hon MAX EVANS replied:

- |     |                         |      |
|-----|-------------------------|------|
| (1) | LandCorp                | 100% |
|     | North Whitfords Estates | 0%   |

#### LANDCORP, LANDSDALE JOINT VENTURE

682. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's joint venture development at Landsdale with North Whitfords Estates ("NWE"), what proportion of the land was contributed by LandCorp and NWE respectively?

Hon MAX EVANS replied:

- (1) Please refer to the response provided for question 681.

#### ATTORNEY GENERAL, DEFAMATION ACTION, INDEMNIFY

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

I refer to the Attorney General's answers provided to question without notice 265 and question on notice 504 in relation to the action of former Law Reform Commissioner, Moira Raynor, brought against you for defamation of her and ask -

- (1) On what date did you ask for a minute to Cabinet requesting indemnity?
- (2) Who quantified the amount of the indemnity and what is that amount?
- (3) How much is being sought with respect to the payment of private lawyers engaged to act for you?
- (4) Have you received an interim account(s) from those private lawyers?
- (5) If so, in what amount and on what date?
- (6) Have you received a final account?
- (7) If so, on what date and in what amount?

Hon PETER FOSS replied:

- (1)-(7) I refer you to my answer to Question on Notice 504. I am very happy to advise you that I have asked for a minute to be prepared and in due course, if I am granted indemnity, to provide full information. However, until such time as the State has made some engagement to pay, my financial liability is obviously not a matter that is within my ministerial responsibility.

#### POLICE, ASSISTANT COMMISSIONER JACK MACKAAY

724. Hon MARK NEVILL to the Attorney General representing the Minister for Police:

- (1) Will the Minister for Police advise in response to comments made by Assistant Commissioner Jack Mackaay of the Police Professional Standards Section, in his media statement on June 19, 1998 that all police officers are expected to set a high standard of integrity by the Commissioner of Police, is correct?

- (2) If this statement by Assistant Commissioner Mackaay is correct, will the Minister advise the circumstances during 1994 or thereabouts when Assistant Commissioner Mackaay was a staff officer to the Assistant Commissioner Traffic and he was given a Scoping Report document on the police force to read and prepare briefing notes for the Assistant Commissioner Traffic?
- (3) Did Assistant Commissioner Mackaay in fact carry out these duties?
- (4) After performing these duties did Mr Mackaay then sit for promotion to the rank of Commander and appear before the same Assistant Commissioner who was sitting on the interview promotional panel he had prepared the review of the Scoping Report for, and further answered written material as a major part of this interview of his knowledge relating to the Scoping Report?
- (5) Were the other candidates provided with a copy of the Scoping Report before being interviewed by the panel?
- (6) Who were the other applicants who sat for the promotion to the position of Commander at that time?
- (7) Was Mr Mackaay successful with his promotion at this time to the rank of Commander?
- (8) Who else was successful in gaining a promotion?
- (9) Is the Minister satisfied with the police service promotional system and procedures as described?
- (10) Which section of the police service investigates irregularities and where police are believed to have lied, or cheated at police promotional interviews?

Hon PETER FOSS replied:

- (1) Yes.
- (2)-(3) There were two major reports released in 1993 and 1994 which significantly impacted upon the Police Service. These were the McCarrey Report and the Arthur Anderson Scoping Report. The McCarrey Report was a public document and the Arthur Anderson Scoping Report after consideration by Police Executive, was distributed Police Service-wide and released as a public document. Assistant Commissioner Thickbroom was the Assistant Commissioner Traffic in 1994 and Mr MacKaay was his Staff Officer. It is not possible to establish if briefing notes on the Arthur Anderson Scoping Report were prepared for the Assistant Commissioner Traffic.
- (4) After the application, interview and selection processes and the then applicable appeal and grievance periods were completed, Mr MacKaay was appointed to the rank of Commander on April 20, 1994. The selection panel comprised Acting Deputy Commissioner LD Ayton as the Chairman, and Assistant Commissioners PG MacGregor and LK Thickbroom. The shortlisted applicants were interviewed regarding significant McCarrey report recommendations relating to the Police Service and the implementation of those recommendations. The McCarrey Report published in 1993 was readily available to the public.
- (5) Not applicable.
- (6) In accord with Public Sector Standards and confidentiality requirements, the Police Service will not divulge the particulars of other applicants for promotion to the position of Commander at that time.
- (7) See (4).
- (8) Chief Superintendent Drifill and Detective Chief Superintendent Hay.
- (9) The Police Service promotional system is continuously adapting to the changing environment and having regard to best practice nationally and internationally. The Merit Based promotional system was in place in 1994 having replaced the previous seniority-based promotional system. The present ADVANCE system was considered in its turn to have been an improvement on the Merit system. The Police Service is committed to continuous improvement in recruitment and selection.
- (10) Irregularity or impropriety on the part of an applicant in any part of the selection processes at the time of Merit Based selection would initially likely involve the Police Service Internal Investigations Unit which reported directly to the Deputy Commissioner. Additionally, all applicants had wide ranging access to appeals processes including the ability to appeal the selection of a particular applicant.

ATTORNEY GENERAL, CORRESPONDENCE FROM PROFESSOR F. JEVONS

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

- (1) Are you in receipt of correspondence from Professor F Jevons, AO of the Department of History and Philosophy of Science University of Melbourne?



- (2) What are the dates of such items of correspondence?
- (3) Have you responded to the items of correspondence?
- (4) If so, when?
- (5) If not, why not?

Hon PETER FOSS replied:

- (1) Yes.
- (2) 5, 13 and 19 December 1996  
10 and 28 January 1997  
6, 10 and 28 February 1997  
12, 17 March 1997  
24 April 1997  
2 May 1997  
2 June 1997  
21 August 1997  
19 September 1997  
12 October 1997  
4 November 1997  
27 February 1998  
4 and 26 March 1998  
6, 11, 23 and 29 April 1998  
7, 14 and 15 May 1998  
7 June 1998  
21 July 1998  
4, 20 and 26 August 1998  
2 September 1998  
5 October 1998

- (3)-(4) Yes, to some.

- (5) I have given up responding to Mr Jevons. He raises no new matters for my consideration and merely uses the device of correspondence to repeatedly defame persons whose actions have been vindicated by legal process, namely a hearing by the Hon James Muirhead as delegate to the Visitor of Murdoch University.

PORT KENNEDY LAND CONSERVATION DISTRICT COMMITTEE AND SEA RESCUE GROUP,  
RELOCATION

739. Hon J.A. SCOTT to the Minister for Finance representing the Minister for Lands:

- (1) Was the relocation of the Port Kennedy Land Conservation District Committee ("LCDC") and the Port Kennedy Sea Rescue Group a result of court action?
- (2) What were the terms set down by the court in regard to the relocation?
- (3) Has the Department of Lands carried out the terms of this settlement to the letter?
- (4) If not, why not?
- (5) What was the total cost of relocating the Port Kennedy Land Conservation District Committee ("LCDC") and the Port Kennedy Sea Rescue Group, including court costs?

Hon MAX EVANS replied:

- (1) The Port Kennedy Land Conservation District Committee (LCDC) no longer exists and was not relocated. Prior to their relocation an incorporated association, the Port Kennedy Land Conservation and District Committee Inc (PKLCDC Inc) and the Port Kennedy Sea Rescue Group were occupying without permission land owned by LandCorp. The occupation of the land denied LandCorp the ability to develop land worth in excess of \$5 million. LandCorp commenced legal action to allow for the Groups' removal. Eventually the PKLCDC Inc and the Port Kennedy Sea Rescue Group agreed to the terms of Consent Orders heard before the Hon Justice Walsh in Chambers on 9 January 1998. In breach of the Consent Orders, subsequently the two Groups sought to obstruct LandCorp in their relocation to the new site identified at the time of the issue of the Consent Orders. It was necessary for LandCorp to take further action in the Supreme Court to restrain both Groups from interfering in LandCorp's carrying out the relocation.
- (2) A copy of the original Consent Orders and a copy of the Order for Interim Injunction are tabled. [See paper No 586.]

- (3) LandCorp has been unable to complete the provision of services as required by the WA Planning Commission to the site.
- (4) LandCorp has been frustrated in the completion of its obligations by the attempts of both Groups to vary the new site from that identified at the time of the issue of the Consent Orders. The WA Planning Commission has refused to vary the site and accordingly there exists no lease arrangements between the two Groups and the WA Planning Commission. In the event that the Groups secure their tenure, then LandCorp will complete its obligations.
- (5) The cost of constructing the new site has amounted to date to \$60 895. The cost of the relocation of goods and chattels of the two Groups has amounted to date to \$41 593. The legal cost incurred by LandCorp has related primarily to the objective of gaining access to its land rather than merely relocating the two Groups. The actual Court case which resulted in the issue of the restraining order found that costs be paid by the two Groups.

### QUESTIONS WITHOUT NOTICE

#### VACSWIM

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

In relation to the minister's answer to my question yesterday on Vacswim -

- (1) How many organisations responded to the advertisements calling for requests for a proposal?
- (2) Who is the preferred proponent with whom contract negotiations are being carried out?
- (3) Is the minister, or any of his staff, involved in these negotiations?

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

I thank the member for some notice of this question.

- (1) Two organisations responded to the advertisements calling for requests for proposal for Vacswim.
- (2) As contract negotiations have not been completed, it would be inappropriate to name the preferred proponent at this stage.
- (3) No. Negotiations are being conducted between the Education Department and the preferred proponent. Arthur Andersen management consultants have been contracted to assist the Education Department in this process.

#### RIPON HILLS ROAD PROJECT

**742. Hon TOM STEPHENS to the Minister for Transport:**

When the former Minister for Transport announced on 3 December 1996 the Ripon Hills Road project, did the estimated figure of \$45m include the sealing of the road?

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

I thank the member for some notice of this question. Yes.

#### BOOZE BUSES

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

I regret to say that some notice of this question has been given.

- (1) Was Marketforce authorised to act as an intermediary for the Western Australia Police Service in discussions with the Channel Nine television station on revealing the location of booze buses?
- (2) Who gave it that authority?
- (3) Was Marketforce paid any commission by the Government or Channel Nine for its role as intermediary?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) Marketforce is a regular provider of advertising services and marketing strategies for the Western Australia Police Service.
- (2) No authorisation is required for companies to approach the Western Australia Police Service with proposals for marketing strategies.
- (3) No.

#### AUDITOR GENERAL'S REPORT ON FISHERIES WA

**744. Hon KIM CHANCE to the Minister representing the Minister for Fisheries:**

Is the Minister for Fisheries aware that the Auditor General's twelfth report identifies instances of illegal fishing, which are recorded in data held by the Fisheries WA's catch and effort statistical system but which have never been corrected nor used as a basis for prosecution by the department? If so, will the minister explain what actions he will now take to ensure that identified breaches of the law are properly investigated by the appropriate agency?

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

I thank the member for some notice of this question. The Auditor General's twelfth report was delivered to the office of the Minister for Fisheries on the afternoon of 9 December 1998. The minister is attending official duties in the country and has yet to receive and consider the report.

#### GOODS AND SERVICES TAX, CHARITABLE ORGANISATIONS

**745. Hon TOM HELM to the Minister for Finance:**

In answer to my question without notice 637 yesterday the minister advised that charitable organisations would be goods and services tax free. Did he mean that goods purchased by an organisation such as the Volunteer Fire Brigade will be GST free?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question. Hon Tom Helm's previous question without notice was in relation to the impact of the GST on the fundraising activities of voluntary and charitable organisations. My answer indicated that most fundraising activities of charitable organisations would be GST free to the extent these activities consisted of sales of donated and second-hand goods or other goods or services sold for less than 50 per cent of their tax-inclusive market value.

The current question raises a different issue; that is, whether a GST would apply to purchases made by voluntary or charitable organisations. If a non-profit body such as a charity has an annual turnover in excess of \$100 000, it will be required to register for GST purposes. It will have to pay GST on most of its purchases, but will be able to claim full input tax credits. This means that purchases by charitable organisations registered for GST purposes will be effectively tax free.

#### DIVE VESSELS

**746. Hon MURIEL PATTERSON to the Minister for Tourism:**

With the success of the dive wreck HMAS *Swan* in attracting dive visitors to Western Australia, is there any other plans to scuttle future vessels off the Western Australian coast to add to the attractions for divers?

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

I thank the member for some notice of this question. The vessel *Swan*, which was decommissioned and sunk off Dunsborough on 14 December 1997, has been publicised worldwide as a diving wreck. In just 12 months it has attracted more than 10 000 diving enthusiasts from the United Kingdom, Germany, Holland, Switzerland, the United States and Singapore. It has also generated intense interest from local and interstate divers.

The Western Australian Tourism Commission is always seeking new opportunities to provide additional diving experiences for the nature-based and adventure-tourist niche markets. While ex-naval vessels are difficult to acquire, the Tourism Commission maintains regular contact with the Australian Navy to remain abreast of plans for the decommissioning of vessels.

If the opportunity arises, every endeavour will be made to secure another wreck which could be strategically placed off the coast of WA, thereby providing additional diving experience. The diving wrecks near Dunsborough, Albany - with an old whaler - and Esperance - with the *Senko Harvest* - are contributing to the economy of the south west of the State with accommodation, restaurants and other tourist attractions, including local dive charger companies, receiving a substantial benefit.

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT, RETENTION OF TREES

**747. Hon NORM KELLY to the minister representing the Minister for the Environment:**

Has the Minister for the Environment determined or received from the Department of Conservation and Land Management any request to determine the number, condition and age of trees to be retained on sites subject to gap treatment to provide the habitat function throughout the cutting cycle of the forest as required by ministerial condition 13.1 placed by then environment minister, Jim McGinty, on 24 December 1992? If yes, will the minister provide details of such determination or request?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

This question has been addressed in EPA bulletin 912 and in CALM's response released on 7 December 1998.

METRO BUS DRIVERS, SEX TAUNTS

**748. Hon LJILJANNA RAVLICH to the Minister for Transport:**

I refer to the article at page 3 of this morning's *The West Australian* headed "Drivers despair over sex taunts" and ask -

- (1) Why did MetroBus fail to take action over graffiti and radio taunts aimed at Paul and John?
- (2) What action will the minister take regarding the injustices suffered by these two employees while employed by MetroBus?
- (3) How many other cases of victimisation or discrimination by employees have been recorded by MetroBus over the past three years?

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

- (1)-(3) I am advised that MetroBus took action and the matter was resolved and disciplinary procedures were taken against the offender. All perceived injustices suffered by the two employees while employed by MetroBus were resolved and settled. It is not possible in the given time to advise the member of other possible cases of this nature, as MetroBus files are in storage.

WESTERN AUSTRALIA'S TIDIEST TOWNS

**749. Hon B.K. DONALDSON to the minister representing the Minister for Local Government:**

Some notice of this question has been given. I understand that the Minister for Local Government this afternoon announced the winners of various categories in the Tidy Towns competition and Western Australia's tidiest town. Can the minister advise the House of the successful towns?

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

The annual Tidy Towns competition run by the Keep Australia Beautiful Council is a long-standing and highly successful program which receives substantial community input. As a fellow representative of the Agricultural region, Hon Bruce Donaldson will be delighted to know that the Minister for Local Government has announced that Western Australia's Tidiest Town is Bruce Rock.

Several members interjected.

Hon M.J. CRIDDLE: Winners in particular categories include the towns of Bindoon, Bruce Rock, Wongan Hills, Wickiepin, Albany and Lombadina. Hon Dexter Davies will be pleased to hear that Wyalkatchem was also successful. All the winning towns are to be congratulated, as is everyone who participated in the Tidy Towns program.

WIND-GENERATED ELECTRICITY, ANNUAL PRODUCTION

**750. Hon GIZ WATSON to the Leader of the House representing the Minister for Energy:**

Some notice of this question has been given. In relation to the development of wind power in Western Australia:

- (1) What is the current annual production of wind-generated electricity by Western Power?
- (2) Is any other electricity supplied to Western Power from independently owned wind-generators?
- (3) If so, how much?
- (4) When did Western Power or the relevant authority begin generating wind power in Western Australia?

- (5) What has been the annual increase in production of wind-generated electricity since wind power was established?
- (6) Are any plans currently in place to further utilise wind power for electricity generation in Western Australia?

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

I do not appear to have that question or answer and I ask the member to put the question on notice.

#### DISABILITY SERVICES COMMISSION, SPECIALIST POLICY UNIT

**751. Hon CHERYL DAVENPORT to the minister representing the Minister for Disability Services:**

- (1) What steps is the Disability Services Commission taking to establish a specialist policy unit to address issues and develop policies for the specific needs of Aboriginal people with disabilities?
- (2) How does the Disability Services Commission-
  - (a) undertake consultation with Aboriginal people and organisations in Western Australia?
  - (b) provide access to its services for Aboriginal people with disabilities in rural, regional and remote parts of Western Australia?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (1) Responsibility for addressing issues and developing policies for the specific needs of Aboriginal people with disabilities resides with the director, country services. The needs of all people with disabilities, including Aboriginal people, are reflected in the Disability Services Commission's strategic plan and five-year business plan strategies.
- (2)
  - (a) The Disability Services Commission has a range of mechanisms in place to consult with Aboriginal people and groups. These include the statewide regional advisory forum network, regular and close consultation between Aboriginal people and local area coordinators based in local offices around the State, and regular visits by the DSC chief executive officer and board to rural and remote regions. Recently the DSC board made a two-day visit to Kalgoorlie where it met with Bega Garnbirringu, the Aboriginal Health Service.
  - (b) The DSC provides access to services for Aboriginal people in rural and remote areas of Western Australia primarily through local area coordinators based throughout the State, including in remote regions such as Fitzroy Crossing and Kununurra. In addition, the DSC funds a number of non-government agencies which provide services to Aboriginal people with disabilities including Aboriginal-specific agencies such as Bega Garnbirringu and the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Woman's Council.

#### KEVIN CULLEN HEALTH CENTRE, BUSSELTON, AUDIOMETRY SERVICES

**752. Hon E.R.J. DERMER to the minister representing the Minister for Health:**

I ask this question on behalf of Hon John Cowdell, who has been distracted by other parliamentary business. Some notice of this question has been given.

- (1) Can the minister confirm that -
  - (a) the service known as the "Hearing Clinic" which provides audiometry services at the Kevin Cullen Community Health Centre in Busselton has ceased;
  - (b) the only audiometry service now available to public patients in Busselton is one day a month at the Vasse Leeuwin Health Service Office;
  - (c) the nearest other service for public patients is a one-day-a-week clinic at the community health service in Bunbury which caters for children and will treat adults only if it is not fully booked?
- (2) If yes to the above, what action will be taken to ensure that public patients at Busselton have adequate access to an audiometry service?

**Hon MAX EVANS replied:**

- (1)
  - (a) Yes. The speech pathology department located at the Kevin Cullen Community Health Centre in Busselton was providing an audiometry service for children and adults. This service duplicated those provided for children by child and school health nurses through their screening schedules;

- (b) No, an audiometry service is provided by the Australian Hearing Service for both adults and children in relation to hearing tests for hearing aids. This occurs two days per month at the Vasse Leeuwin Health Service Office, or more often when needed. Four other accredited hearing services also visit Busselton and offer audiometric testing to both public and private patients;
  - (c) Yes, clients may attend Bunbury for audiology testing which includes audiometry. Both children and adults are seen at this clinic with children being a priority.
- (2) Audiometry testing for children is provided as part of the screening schedule provided by child and school health nurses. Additional screening is provided for children on referral by teachers, parents and doctors. The demand for adult audiometric testing in Busselton is low. Over the past two years a total of 21 audiometric tests have been conducted on adults in Busselton. The resource used to provide this service has been reallocated to the child and school areas where the demand is increasing. In the past year 2 195 audiometric tests were conducted on children in Busselton. It is logical that health resources are directed to areas of maximum need and it is reasonable for the few adults requiring audiometric testing who cannot be tested by the Australian Hearing Service to be referred to Bunbury.

#### LAKE MONGER, PLANNED IMPROVEMENTS TO PARKLAND

**753. Hon RAY HALLIGAN to the Minister for Tourism:**

What funding or other assistance is the Western Australian Tourism Commission providing towards the planned improvements to the parkland surrounding Lake Monger?

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

I thank the member for some notice of this question. Apart from its attraction to the Perth population, Lake Monger is considered an important nature-based tourism experience by many of the international tourists who visit Perth, especially as it is one of the few places where they can interact closely with Western Australia's world-famous black swans. Through its tourism development fund, the Western Australian Tourism Commission has provided \$18 000 towards signage and information infrastructure around Lake Monger so visitors can further enjoy an important wetlands attraction close to the City of Perth in an environmentally sensitive way. This will complement the existing visitor servicing and interpretive signage program that the Town of Cambridge is undertaking as part of the overall amenity improvement and management plan for Lake Monger. The grant from the tourism development fund to the Town of Cambridge was among the allocation by the Western Australian Tourism Commission of \$2m with a further \$4m available during the next two years to develop more tourism infrastructure throughout the State.

#### SOUTH WEST HEALTH CAMPUS, OPERATING THEATRES

**754. Hon BOB THOMAS to the minister representing the Minister for Health:**

In relation to the new South West Health Campus, how many operating theatres will be available in -

- (a) the public hospital?
- (b) the private hospital?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (a) Three major and one day procedures theatre;
- (b) Three major and one day procedures theatre.

#### ABORIGINAL AFFAIRS DEPARTMENT, PEOPLE WITH DISABILITIES

**755. Hon CHERYL DAVENPORT to the minister representing the Minister for Aboriginal Affairs:**

What role is the Aboriginal Affairs Department currently taking in relation to policy coordination issues pertaining to service provision for Aboriginal people with disabilities by the Disability Services Commission?

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

I thank the member for some notice of this question. The Minister for Aboriginal Affairs has provided the following response -

The Aboriginal Affairs Department liaises closely with the Disability Services Commission on matters of policy development and implementation relevant to the needs of Aboriginal people with disabilities. The AAD is aware

that the DSC, through its strategic plan and five-year business plan has integrated the needs of equity target groups, including Aboriginal people with disabilities and their families.

#### WEST COAST RESOURCE CENTRE

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

I refer to an answer given by the Minister for Education in the other place on 3 December in which he stated, "I will certainly undertake to look into any issue raised in this Parliament, including the West Coast Resource Centre."

- (1) What action has the minister taken in relation to the Perth education district office decision to withdraw support for the West Coast Resource Centre?
- (2) What is the outcome of this action?
- (3) If the minister is not prepared to have the decision reviewed, how does he justify this further reduction in support services to schools which has already involved the closure of the Balcatta reading clinic and a reduction in the psychology services directly available to the district?

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

I thank the member for some notice of this question.

- (1) At this stage the West Coast Resource Centre will continue to operate with all its existing staff except for 0.7 full-time equivalent curriculum improvement officer; and 0.5 FTE will be relocated to the Perth district office, and 0.2 FTE to the Joondalup district office.
- (2) The outcome of the action is that both government and non-government schools in the Perth and Joondalup education districts, despite a reduction in funding due to declining student numbers, will continue to have access to the West Coast Resource Centre on a user-pays base. They will pay less for the use of the centre than has been the case in 1998. There will be a release of 0.7 FTE to support schools in the implementation of the curriculum improvement program, inclusive of the curriculum framework; and the schools will benefit from a management review of the centre to improve its efficiency and effectiveness.
- (3) Resources previously allocated to the Balcatta reading clinic have been redirected to develop the district service centre, which provides resources to districts in the areas of learning difficulties and disabilities. These resources can be accessed by a much wider cross-section of schools and will assist in addressing student needs within existing school and class structures, rather than isolating children for short-term remediation. The overall student services resource has been affected by a reduction in student numbers in the Perth district. Decisions made at the district level will maintain the quality and provision of psychology services to schools.

#### WELLINGTON DAM CATCHMENT AREA, LANE

**757. Hon TOM HELM to the minister representing the Minister for Water Resources:**

Following the minister's recent advice to Hon John Cowdell that tenders for the land being sold by the Worsley Timber Company in the Wellington catchment area closed at 4.00 pm yesterday, can the minister now advise whether the State Government has tendered to purchase the land?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question. The Water Corporation has tendered for the purchase of that portion of land which includes much of the Wellington dam water body.

#### SALE OF BUNBURY LAND

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

Can the minister advise the House how former Westrail land - the site of the old Bunbury railway station, bounded by Sandridge and Picton Roads - has been disposed of and whether its sale was subject to proper and established processes for the sale of public assets? If the minister is not able to advise me of that detail now, will he provide that information next week?

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

I will endeavour to get the information next week as best I can.

#### KINGSLEY PRIMARY SCHOOL, SATELLITE LANGUAGE CENTRE

**759. Hon CHERYL DAVENPORT to the Leader of the House representing the Minister for Education:**

- (1) When was the decision made to establish a satellite language centre at Kingsley Primary School in Armadale?

- (2) When were Kingsley Primary School, Carlisle Language Development Centre and affected parents advised of this decision?

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

I thank the member for some notice of this question.

- (1) 8 September 1998.
- (2) The Kingsley Primary School and the Carlisle Language Development Centre were advised on 8 September 1998. The affected parents were advised in the week commencing 9 November 1998, after enrolments for 1999 had been determined. One student currently attending the Carlisle Language Development Centre elected to attend Kingsley Primary School because that student lives in the area. All others are new enrolments who live closer to Kingsley Primary School than to the Carlisle Language Development Centre.

#### SALMON GUMS PRIMARY SCHOOL

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

- (1) How many staff will Salmon Gums Primary School lose in 1999 as a result of the teacher staffing formula?
- (2) Is the minister aware of the difficulties that the school will face in managing with only two full-time teachers?
- (3) How will the minister ensure that country schools are not unfairly disadvantaged by the implementation of the teacher staffing formula?

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

I thank the member for some notice of this question.

- (1) Salmon Gums Primary School will not lose any teachers in 1999 due to the teacher staffing formula. In 1998, Salmon Gums Primary School was staffed above formula by 0.65 staff. In 1999, Salmon Gums Primary School will be staffed above formula by 0.15 staff. In 1999, this will provide Salmon Gums Primary School with 2.55 teachers.
- (2) In consultation with the district office and the respective principals, a shared position between Salmon Gums Primary School and Scaddan Primary School has been arranged. This involves over-establishment staffing for both schools. The teacher establishment at Salmon Gums is 2.55 staff. This includes an additional 0.15 teacher time, which will provide the principal with added flexibility with regard to meeting the needs of students at the school.
- (3) The new staffing formula introduced in 1998 has a clear underlying rationale that focuses on distributing existing resources more equitably across the education system and providing schools with maximum staffing flexibility. Provision for the administrative load in small schools has been made within the formula, which has been generally well received by schools.

#### LETTER BOMBS

**761. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Public Sector Management:**

I have a heap of questions left over, and it is good to be able to use them. I refer to the recent letter bomb blitz targeted against federal public servants and ask -

- (1) Are any security arrangements currently in place to protect Western Australian public servants from a similar campaign of terror?
- (2) In the light of the federal experience, does the Government intend to review these arrangements?
- (3) If not, why not?
- (4) Are public servants working in sensitive areas such as the Equal Opportunity Commission or Family and Children's Services given special advice on how to protect themselves and their families outside their formal workplace?
- (5) If not, why not?

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

It is good that many members of the Opposition are not here this afternoon for question time, because it allows members like Hon Ljiljanna Ravlich to ask some of the questions they have had on notice for a long time. All the members of at least one party are not in the Chamber and hardly any of the other opposition members are here. I would like to ask a question: Where are they all?



The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! They are elsewhere on parliamentary business, and the Leader of the House would be aware of that.

Hon N.F. MOORE: I am.

I thank the member for some notice of this question.

- (1)-(5) Chief executive officers are responsible for the management of their agencies, including ensuring that appropriate security arrangements are in place having regard to the assessed risks. The disclosure of specific detail of such arrangements could compromise their effectiveness. Within the past two years, the Ministry of the Premier and Cabinet has ensured that appropriate staff have attended "Bomb Threat Procedures and Suspicious Parcel Recognition" training programs which have been conducted by the Police Service. In response to the most recent incidents in the eastern States, two further sessions for new staff and those who have supervisory responsibilities were conducted this week. Information about the procedures for handling bomb threats and identifying suspicious packages is also included on the ministry's Intranet. The last electorate officers' conference was devoted almost entirely to security matters, and plans are in hand to provide a refresher course at the next conference, which should be held next year.

#### FAMILY COURT OF WA, MEDIATION

**762. Hon N.D. GRIFFITHS to the Attorney General:**

- (1) Is it government policy that mediation in the Family Court of Western Australia should be an option for litigants?
- (2) Is it the case that no mediation services have been provided by the Family Court of WA since the pilot mediation program ceased in June 1997?
- (3) Has the Attorney General approached the Commonwealth for funding for mediation services in the Family Court of WA?
- (4) If so, when?
- (5) What was the Commonwealth's response?

**Hon PETER FOSS replied:**

- (1)-(5) Certainly it is the State Government's preference that there be mediation. My understanding is that mediation has not been offered by the court since that date. I have been approaching the Commonwealth generally for proper funding for the Family Court because we have not had what I believe is appropriate funding at all from the Federal Government. We have an agreement with the Federal Government for reimbursement of the expenditure of the Family Court, but the federal Treasury has been applying dividends to the state Family Court in the same way that it applies them to federal departments. That is notwithstanding that the Family Court of Western Australia is already known to be far more efficient than the Family Courts throughout the rest of Australia. I am having an argument with the federal Treasury, which does not accept that to be the case despite the fact that a commonwealth select committee reported on all the Family Courts and was highly commendatory of the Western Australian Family Court; in fact, it suggested that many of the things done by the Family Court of Western Australia should be adopted by the Family Courts in other jurisdictions. Therefore, unfortunately, the dispute over funding is considerably wider than merely mediation services. It is our intent that the Federal Government should appropriately honour the agreement it has in regard to the Family Court in its entirety.
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