

Mr E.S. RIPPER: Yes. As I said in answer to the Leader of the National Party's previous parliamentary question, anyone can see the regional development advantages of a gas pipeline to Northam, a power station there and the development of the Avon Industrial Park. It is really a question of all the competing priorities that the State Government has and how those competing priorities are resolved. As I said before in answer to the Leader of the National Party, I am happy for proper discussions to take place between the Office of Energy and the proponents. I am disappointed that their view is that they have not been able to have those proper discussions.

Mr M.W. Trenorden: I will work with you, minister.

The ACTING SPEAKER (Mr A.J. Dean): Grievances noted.

### **DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 2004**

#### *Introduction and First Reading*

Bill introduced, on motion by Mr J.A. McGinty (Attorney General), and read a first time.

Explanatory memorandum presented by the Attorney General.

#### *Second Reading*

**MR J.A. MCGINTY** (Fremantle - Attorney General) [10.16 am]: I move -

That the Bill be now read a second time.

The Director of Public Prosecutions Act 1991 presently empowers the Director of Public Prosecutions to bring, take over and prosecute offences on indictment and to bring and conduct prosecutions not on indictment for indictable offences, including the summary trial of indictable offences. The DPP is not currently empowered to bring, take over or prosecute summary offences.

The Bill provides that the DPP can bring, take over and conduct prosecutions for summary offences, and brings it in line with similar legislation in all other States, apart from Queensland. The Bill will enable the DPP to oversee all summary prosecution processes by developing universal policies and guidelines, providing expert advice about specific prosecutions, and providing prosecution services in appropriately important cases.

The most significant change that will result from this Bill is the ability of the DPP to commence, conduct or take over summary offences that are currently prosecuted by the Western Australia Police Service. This is consistent with the thrust of the 1999 Law Reform Commission report on the "Review of the Criminal and Civil Justice System in Western Australia", which recommended the involvement of the DPP at an early stage in criminal proceedings. It is also consistent with a similar recommendation made in the transfer of police prosecution functions steering committee report in 1998, which was completed following a review undertaken by the former Government. It is envisaged that, due to its finite resources, the DPP will become involved only in the most serious or complicated summary offences of this type.

The State Solicitor's Office will maintain the primary responsibility for summary prosecutions that are commenced by government departments and agencies. A protocol agreed to by the current DPP and State Solicitor sets out the limited circumstances in which the DPP may take over such summary matters. For example, the DPP would not seek to take over such a prosecution unless he believed compelling public interest considerations existed that required it; and the DPP would not seek to take over such a prosecution without first consulting the State Solicitor. It should be noted that once the Bill has been enacted, the DPP will request the Attorney General to issue a direction under section 27 of the Director of Public Prosecutions Act 1991 to this effect.

The Bill supports the separation of powers as an essential part of the democratic process and the maintenance of the rule of law. It will ensure that the investigation, prosecution, defence and judicial processes are separate, independent, adequately resourced and appropriately accountable.

The main benefit of this Bill will be more consistent, effective and fairer prosecutions, which will be achieved by greater coordination, development and maintenance of appropriate prosecution guidelines and policies across government. I commend the Bill to the House.

Debate adjourned, on motion by Mr R.N. Sweetman.

### **JUSTICES OF THE PEACE BILL 2003**

#### *Second Reading*

Resumed from 4 December 2003.

**MS S.E. WALKER** (Nedlands) [10.19 am]: This is the fourth Bill in the package of reforms known as the magistrates package of Bills. The Opposition supports this Bill. I have quite a lot of questions to ask the Attorney General on this Bill. This Bill is interesting, because I have not before had the opportunity to look at the qualifications, jurisdiction and appointment of justices of the peace in this State, and how far those provisions extend. It has been an interesting exercise to go through the Justices Act, in which the jurisdiction and powers of JPs are provided. The current provisions of the Justices Act are being drawn out of that Act and new legislation, called the Justices of the Peace Bill,

is being formed. Interestingly, the Justices Act will be renamed the Criminal Procedure (Summary) Act once it gets off the ground. The current Act has been and will be referred to in other Acts, but I understand that the drafting of the new legislation is nowhere near complete. When I spoke in the Assembly on the Magistrates Court Bill, which was the first in this line of Bills, I said that the Opposition was concerned about certain aspects of the package of legislation but generally supported the philosophy behind it. The Opposition does not support the Magistrates Court Bill because it does not believe that the Attorney General should extend the powers on the appointment or suspension of magistrates. In our view, it was an absolute disgrace that rather than modernising the provisions on when a magistrate can be removed from office, the Attorney General expanded them. Those provisions of the Magistrates Court Bill are shameful. The current Act does not appear to contain any formal qualifications, but these seem to have been extended under the Bill. I will come to that matter presently.

In my contribution to the second reading debate on the Magistrates Court Bill I referred to the basis on which these Bills were brought forward; that is, following an extensive review in 1997 by the Law Reform Commission of Western Australia. I refer to the Law Reform Commission of Western Australia report headed "Review of the Criminal and Civil Justice System". The executive summary by Wayne Martin, QC, the chairman at the time, states -

In September 1997 the Law Reform Commission of Western Australia (LRCWA) received the largest reference in its 30-year history: -

That reference was from Attorney General Peter Foss, QC, MLC -

to review the criminal and civil justice system. In order to accomplish this important task within a relatively short period it was necessary to transform the Commission's approach to its work.

The commission began with a major outreach to the public for submissions. In bringing forward this package, the Attorney General is following on from the work done by the former coalition Government. As Mr Martin, QC said, it was the largest reference from an Attorney General in the commission's history. Because that reference was so large, the Attorney General has introduced many different Bills to reform the criminal and civil justice system as suggested by the Law Reform Commission. Part of this package changes certain areas in relation to justices of the peace. I refer to the Attorney General's second reading speech not on this Bill but on the Courts Legislation Amendment and Repeal Bill 2003, which forms part of this package and which we will deal with today. He stated -

Currently, members of the Children's Court sit and hear minor offences when magistrates are unavailable. Members of the Children's Court are Justices of the Peace who are given the additional appointment of being members of that court. Not all JPs are members of the Children's Court.

How is it determined when JPs are to be members of that court? I do not ask that question because I think there is anything suspicious about that, but because I am interested. The Attorney General went on to say -

The Bill repeals the position of member of the Children's Court. Instead, JPs will be able to sit on the Children's Court without being specifically appointed as a member of that court; that is, all JPs will be able to sit in the Children's Court. This is a more flexible and convenient approach. It will enable that court to more efficiently and expeditiously deal with the cases that come before it. Further, this will put the role of JPs in the Children's Court on a basis similar to their role in the new Magistrates Court.

It has been interesting for me to read the new Bill, because it contains a lot of good provisions. They seem good. I do not know if you are a JP, Mr Acting Speaker (Mr A.J. Dean), or who in this House is a JP, but it appears that many politicians are JPs. I am not a JP and never have been one. How JPs are chosen interests me. I do not know about the experiences of other members of Parliament, but from time to time people come to my office to apply to become JPs, some of whom are acquaintances of mine and some of whom I have never before met. Members of Parliament must make an assessment of those people and whether to recommend them to the Attorney General to become JPs. That can sometimes be a little difficult. I am not sure how other members go about it. I am not sure whether the Attorney General does a check. I would be very interested to hear from the Attorney General what happens. I have sent quite a few recommendations to the Attorney General and he has knocked most of them back. I will not take that personally. He told me that he did so because my electorate already has enough JPs. I always forewarn anyone who comes to my office to apply to become a JP that the application will probably be knocked back.

It is important to understand and outline the current legislation on JPs. As I said, the current provisions for the appointment of a justice of the peace are found in the Justices Act. Section 6 of the Justices Act states -

The Governor may appoint such and so many justices male and female as may from time to time be deemed necessary to keep the peace in the State of Western Australia, or in any magisterial district therein.

Such justices may be so appointed either by a General Commission of the Peace under the seal of the State in the form contained in the Second Schedule or to the like effect, or by a special appointment of the Governor notified in the *Government Gazette*. In the latter case the justices so appointed shall be deemed to be included in the then subsisting General Commission of the Peace for the State, or for such magisterial district, as the case may be, from the time when they are so appointed.

Any justice may be appointed to keep the peace in more than one magisterial district.

Section 7 states -

A justice may be removed or discharged from his office either by the issue of a new General Commission of the Peace for the State, or for the magisterial district, as the case may be, omitting his name, or by an order of the Governor notified in the *Government Gazette*, without any writ of *supersedeas* or other formal writ.

I compare that with the Justices of the Peace Bill, which appears to provide qualifications. I am sure the Attorney General will tell me why those qualifications have been chosen. They seem fairly appropriate, but I wonder whether the situation is the same in other jurisdictions. As members can see, there currently do not seem to be any qualifications for the appointment of a JP. Clause 8 of the Bill states -

A person is qualified to be appointed as a JP if the person -

- (a) is an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth; and
- (b) is enrolled as an elector for the Legislative Assembly in accordance with the *Electoral Act 1907* or for the House of Representatives in accordance with the *Commonwealth Electoral Act 1918*.

I can understand the citizenship provision, but I wonder about the requirement that the person be on the electoral roll and whether that is common in other jurisdictions. Is it a recommendation in the Law Reform Commission report? Interestingly, there are new and extensive provisions for when a JP's appointment may be terminated. I would have thought that, under section 7(2) of the Justices Act, the Attorney General had complete power and control over terminating the appointment of a JP. I could be wrong. Clause 14 will force JPs to undertake training. I think that is a good thing. We may have JPs who have been in the system for 30 or 40 years - I do not know; perhaps the Attorney General will tell us - and, as the years go by, they do not do any training to understand new provisions and laws. It appears that the Attorney General is tightening up on that. Clause 14(1) states -

The Governor, on the recommendation of the Minister, may terminate the appointment of a person as a JP.

It does not appear to give a reason. Subclause (2) states -

The Minister must make such a recommendation about a JP who has been sentenced to a term of imprisonment.

Can a person be a JP if he has served a term of imprisonment?

Mr J.A. McGinty: No.

Ms S.E. WALKER: Are criminal record checks conducted?

Mr J.A. McGinty: Police checks are a requirement for appointment.

Ms S.E. WALKER: A police check. Can a person who has a criminal record be appointed as a JP?

Mr J.A. McGinty: If a person has been convicted of a serious crime, that would act as a disqualifying factor.

Ms S.E. WALKER: If a person was convicted years ago of an offence in the Court of Petty Sessions -

Mr J.A. McGinty: If it was a long time ago, it would not necessarily be held against a person. If it were contemporary, it most probably would.

Ms S.E. WALKER: As indeed it is for a lawyer; that is, a person seeking admission to the Bar or the Supreme Court.

Mr J.A. McGinty: Yes. Most probably a similar approach.

Ms S.E. WALKER: It would have to be seen whether a person had a criminal record. It could be examined to see what it was, when it was, and whether it is relevant.

Mr J.A. McGinty: Yes.

Mr M.G. House: If a JP commits a criminal offence, is he not automatically disqualified?

Mr J.A. McGinty: Not automatically, but I have had to contact a number of JPs and require their resignation when they have been convicted of offences.

Mr M.G. House: You could remove them if they did not agree to withdraw their services?

Mr J.A. McGinty: Yes. I have had to do that on a couple of occasions.

Ms S.E. WALKER: That is interesting, because the Attorney General said it was when they were convicted. This provision refers to a JP being sentenced to a term of imprisonment. A person can be convicted and not go to prison.

Mr J.A. McGinty: If someone is convicted of what I regard as a reasonably serious offence and not sent to prison, I would write to him asking him to tender his resignation. I would require it.

Ms S.E. WALKER: Okay, is it mandatory? It uses the phrase "the minister must".

Mr J.A. McGinty: Which clause is that?

Ms S.E. WALKER: Clause 14(2) at page 9 of the Bill. It states -

The Minister must make such a recommendation about a JP who has been sentenced to a term of imprisonment.

It seems to me that the Attorney General can make any recommendation he likes under subclause (1). I could be wrong, but it appears that the Attorney General has the power to remove a JP from office for any reason that he considers appropriate.

Mr J.A. McGinty: I think that is right.

Ms S.E. WALKER: I know we are not in consideration in detail, but I wonder why the Attorney General is imposing limitations. He does not normally do that; he normally tries to expand provisions. I agree with the Attorney General: if a person is convicted of a serious offence, he ought not to be a JP. That person will receive a substantial fine or an order. Perhaps we can look at that later.

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: Another change, which is a good thing, is contained in subclause (3). It states -

The Minister may make such a recommendation if -

(a) the JP has not complied with section 11 within six months after being appointed;

Clause 11 refers to a JP not having taken an oath or affirmation of office. That is fair enough. Is it contemplated that a JP would have performed his functions properly if he had not taken an oath or affirmation? Subclause (3)(b) states -

the JP, having been directed under section 17(2) to do an approved training course, does not complete the course to the satisfaction of the Minister within the period specified in the direction;

Are there JPs who have difficulty with reading and writing?

Mr J.A. McGinty: I suspect there may be. I do not know of one. I think it is quite likely that would be the case.

Ms S.E. WALKER: Such a person would have difficulties. He may be a very good JP but he may have difficulty complying with subclause (3)(b). I am thinking of a particular person, who is a JP. A recommendation may also be made if a JP becomes insolvent and is put under administration. That seems fair enough.

Mr J.A. McGinty: I take the member back to the training course. It is only in recent years that the training course has become mandatory. A lot of JPs - I put myself in that category - have never done the training course.

Ms S.E. WALKER: That explains a lot.

Mr J.A. McGinty: Indeed. The training course relates to new appointees; it is not intended to deal with current JPs and require them to do the course. We will come to that during consideration in detail.

Mr T.K. Waldron: Are there ongoing courses for JPs who have been appointed for some time?

Mr J.A. McGinty: Not a formal course as such.

Ms S.E. WALKER: This provision really concerns people who become JPs after the Bill is proclaimed?

Mr J.A. McGinty: It is the current practice that a person is required to complete the course before he is appointed a JP. The Attorney General will authorise someone to be appointed as a JP subject to him completing the course.

Ms S.E. WALKER: I am sure there are some who have difficulty reading and writing but who are very good JPs. Under this provision, they will be knocked out.

Mr J.A. McGinty: A person will be prevented from becoming a JP in the future; that is, people who are not currently a JP.

Ms S.E. WALKER: A currently appointed JP who perhaps did not have a lot of schooling but has become a solid member of the community and has been a JP for years will be retained?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: Could such a person take an oral version of the course?

Mr J.A. McGinty: I need to get some advice on that.

Ms S.E. WALKER: I think it is important. I am thinking of someone in particular. It would be very unfair otherwise, because that person is doing a great job. Because of that person's background, he did not have a lot of schooling. This provision would knock out such people. However, that may be the Attorney General's intention. I do not know.

I do not know why the next provision has been included. Clause 14 (3)(d) states -

the Minister considers that the JP -

- (i) is mentally or physically incapable of performing satisfactorily the functions of a JP;
- (ii) is incompetent, or guilty of neglect, in respect of the functions of a JP;

I do not know why the Attorney General has to include that. I suspect that if the Liberal Party were introducing those provisions, the Attorney General would have a lot to say. He would jump up and down about it. It is very demeaning to include something like that in a Bill. At the moment, the Attorney General has the power under section 7(2) of the Justices Act to remove a JP. He did so not long ago. I think that was done because of what the Attorney General thought was his general unsuitability and judicial demeanour. I find this provision very demeaning and paternalistic. It is arrogant to say that if he considers a JP to be mentally or physically incapable of performing his functions, he can remove him. It is like the provision in the Magistrates Court Bill 2003. I think it is a disgraceful provision concerning the removal of a magistrate after he or she is sent to two doctors to see whether he or she is of sound mind. The minister has told the House that that is because the magistrates want it. They do not want it. Why would they want it? Would anyone want to think that a superior person who is employing them in some way - I use the term very widely - can declare them physically or mentally unfit or incapable? I do not agree with that provision. I did not agree with its inclusion in the Magistrates Court Bill, and neither did the Liberal Party. There is no need at all for that provision. I agree, however, with the approved training course, because I can see that a person could meander along, continuing to get things wrong for years without being brought to account. Clause 14(3)(iii) also allows the termination of the appointment of a justice of the peace if that person -

has become unsuitable to be a JP, having regard to the status of the office of JP and the community's expectations of JPs;

That is very wide. Clause 14(3) continues -

- (iv) has been persistently biased when performing the functions of a JP;
- (v) has persistently ignored his or her conflicts of interest when performing the functions of a JP; or
- (vi) has contravened this Act.

Clause 14(4) states -

The CEO must serve a notice of the termination on the JP by post and publish it in the *Gazette*.

Is that normally done now, or is the person's name just eliminated? Does the minister, every so often, publish the names of JPs and, when a name is removed, just leave it out, or does the minister actually announce that a person is no longer a JP?

Mr J.A. McGinty: Any removal of a JP is on the basis of either a written resignation or a written notice from me to the JP to that effect. I will need to get advice on what is then published in the *Government Gazette*. It is either that someone has ceased to be a JP, or a full list. I am not sure which, but I will find out and advise the member.

Ms S.E. WALKER: It is important because I would like to know the consequences of any changes to the power of the minister to remove JPs. The person ceases to hold office as a JP on publication of the notice in the *Government Gazette*.

The qualifications for JPs have been changed, which is a good thing. I am not sure if there should be any more. Maybe a person should be tested for the ability to read and write. That might sound almost nonsensical, but I remember reading of a case years ago - the Attorney General might remember it - of a librarian in a law library who could not read or write. When someone asked him for one of the books, he knew the colours. It seems to me that there is no basic qualification and no testing, but I do not want to cast aspersions on anyone over that. Some people are automatically JPs under section 9 of the Justices Act 1902. I have not got as far as seeing whether this will be changed by the Bill. Section 9 reads, in part -

- (1) A person who is for the time being -
  - (a) the mayor of a city or town; or
  - (b) the president of a shire,

within the meaning and for the purposes of the *Local Government Act 1995*, shall, by virtue of his office and without any further commission or authority than this Act, be a Justice of the Peace for the magisterial district or districts in which the city, town or shire, as the case may be, is situated.

Section 12 provides for judges to be JPs. It reads -

- A person who is for the time being
  - (a) a member of the Executive Council of the State;
  - (b) a Judge of the Supreme Court;
  - (c) a Judge of The District Court of Western Australia;

- (d) a Judge of the Family Court of Western Australia;
- (da) a Judge of the Children's Court of Western Australia;
- (db) a magistrate of the Children's Court of Western Australia;
- (e) a magistrate; or
- (f) a Coroner,

or who is for the time being acting in such an office or exercising the powers thereof, shall, by virtue of that office and without any further commission or authority than this Act, be a Justice of the Peace for the State.

Section 13 allows for a person to be a justice of the peace even though he or she is not resident in the State. Does that mean that a person can currently apply from outside Western Australia to be a justice of the peace?

Mr J.A. McGinty: I do not know whether that can currently happen. I am not familiar with any cases in which it has occurred.

Ms S.E. WALKER: Section 13 allows for a person to be appointed as a JP even though he or she is not a resident of the State. One of the questions I will ask the minister is whether, if a person is a JP and goes to reside in, say, New South Wales, he or she will cease to be a JP for Western Australia. I would be interested to know how that will operate in relation to section 14, which reads -

Any act done by a justice by virtue of his office out of Western Australia for the purpose of the authentication of the signature of any person to any instrument intended to take effect within Western Australia, and any oath administered by any such justice by virtue of his office out of Western Australia in any case in which an oath may be administered by a Justice of the Peace for Western Australia, shall, unless such act or oath is required by law to be done or administered within Western Australia, be valid and effectual within Western Australia.

I would not mind knowing what that means, because it appears that a JP can operate outside the State. The jurisdiction may be changed for justices of the peace. The general jurisdiction of justices of the peace is set out in section 20 of the Justices Act, which reads -

- (1) Whenever by any Act past or future, or by this Act, any person is made liable to a penalty or punishment, or to pay a sum of money -
  - (a) for any offence made punishable on summary conviction; or
  - (b) for any offence, act, or omission, and such offence, act, or omission is not by the Act declared to be treason, felony, a crime, or a misdemeanour, and no other provision is made for the trial of such person,

the matter may, subject to subsection (2), be heard and determined by 2 or more justices in a summary manner under the provisions of this Act.
- (2) Where for any indictable offence offenders may in some circumstances be punished summarily, a person shall not be charged with the offence before justices, and justices shall not deal with the charge or examine the defendant or commit him for trial, if there is a magistrate available or the defendant does not consent, in which case a reference in this Act to any number of justices shall be read and construed, with such modifications as are necessary, as a reference to a magistrate.

Does that mean that, currently, one or two justices of the peace cannot hear an indictable matter to be dealt with summarily? Perhaps the Attorney General can seek advice and let me know. I wondered about that, given that there seems to be a move downward of criminal matters in our three-tiered court system. I compare that with section 31 of the Act, which reads -

Where a complaint must be heard and determined, or a conviction or order must be made, by 2 or more justices, the justices making the decision must be present and act together during the whole of the hearing and determination.

I am wondering if that is still carried on. I have not had a look at that in the Bill before the House. One justice has jurisdiction only in some circumstances, as set out in section 32, which reads -

Any one justice may exercise the jurisdiction of 2 justices under this or any other Act whenever no other justice usually residing in the district can be found at the time within a distance of 16 kilometres; provided that the justice, on any conviction, certifies, in writing, that no other justice can be found within 16 kilometres.

A JP came to see me about this Bill. He thought it was a good Bill, but he was concerned that some police officers go "warrant shopping". They know that certain JPs will sign search warrants and others will not.

Did the member for Girrawheen say something?

Ms M.M. Quirk: No.

Ms S.E. WALKER: I am sorry; I thought she wanted to contribute to the debate.

A member: I thought you were not taking interjections.

Ms S.E. WALKER: I do take them from women backbenchers, because what they say sometimes makes sense, depending on who they are.

Some clarification was sought of whether the Bill would tighten up that provision.

The Opposition is happy to support this Bill. The shadow Minister for Health has an amendment, which I believe is on the Notice Paper. I am happy for the Opposition to support this Bill and for it to go to consideration in detail.

**MR T.K. WALDRON** (Wagin) [10.51 am]: The National Party supports the Bill. The Bill deals with three main issues. They are the criteria and guidelines for recommending appointments to the Governor of justices of the peace and the termination of appointments; training courses prior to appointment of JPs; and current JPs being required to undertake training if they have not done so previously. I understand that the Bill also abolishes ex officio appointments for council mayors and shire presidents. Is that correct?

Mr J.A. McGinty: That is right.

Mr T.K. WALDRON: It also imposes age limits of 70 or 75 years with ministerial approval. I believe that is a good move. Some JPs at 70 to 75 still have a lot to offer, but it is fair for the minister of the day to have the right to decide it. As I understand it, after that age JPs can go on signing documents and so on but cannot appear on the bench. Is that correct?

Mr J.A. McGinty: That is right.

Mr T.K. WALDRON: They are available for those duties. I believe this is a good Bill and the National Party will support it, but I will raise a few issues that I have experienced over the past three years, as that might be of help in the future. JPs perform a really important function in our communities. It is vital that JPs be available in country communities. Of course, JPs are volunteers. I always admire volunteers in any area who assist our communities, but I particularly admire JPs because being a JP requires commitment and brings big responsibilities. It is a bigger issue in some of our smaller centres where JPs must deal with people whom they know, because at times that puts extra pressure on them. Generally, I think JPs do a fantastic job. I applaud and admire them.

The training aspect of this Bill is terrific. It is important that JPs undertake training, which is what this Bill puts forward. It is essential, because JPs need to know that they have the knowledge to deal adequately with cases that come before them. Having the confidence from having undertaken training will enable them to perform better. They will feel more relaxed when performing their duties, and I believe they will therefore perform their duties better. The community needs to know that JPs have a reasonable level of training and will carry out their duties well, so that the community has confidence in its JPs. Those who appear before JPs also need to know that, because at the end of the day they are the ones who will bear the results of what a JP decides.

The Bill does not include provisions for compulsory ongoing training or professional development. I have been thinking about this over the past few days. The Bill probably should include it. It may be something that we should look at in the future. The odd JP who has been one for a while might think that because of his experience he has all the knowledge he needs, but laws change and so do community attitudes. It is therefore important that JPs have ongoing training or professional development. When I say that, I am very aware of the fact that these people are volunteers and of the time they give up. We do not want to impose too much on them. I know of some who do not go to seminars or whatever because they believe they do not need to any more. Maybe we should consider a balance in what pressures can be placed on JPs, because we do not want to drive people away. I put the idea forward as something worth considering. I believe there should be some ongoing training requirement.

I have made a few observations of the selection of JPs in my region over the past three years. One of the reasons a JP will not be appointed is that there are enough JPs in an area. However, in a few cases JPs are still listed but because of their changed circumstances are no longer operating properly as JPs. Some have retired from public life but have stayed on the list but are never available.

Does the ratio of male to female JPs ever come into consideration or is it a question of the best person for the job, whether that person be male or female?

Mr J.A. McGinty: It has come to my consideration. I have been very keen to address the imbalance. Traditionally JPs were gentlemen.

Mr M.G. House: Absolutely! There is no doubt about that.

Mr J.A. McGinty: Then the member for Stirling was appointed!

Mr T.K. WALDRON: I will go along with that! I get the point.

Mr J.A. McGinty: There are two areas in which I have been very keen. Within the context of the right person for the job, I have been keen to see more women appointed and I have also been keen to see more people from different ethnic

backgrounds appointed. If you go back and analyse the figures, you might see a bit of a bias towards those two areas of appointment, but overwhelmingly people will not be appointed unless they have the ability to do the job. For instance, in my area of Fremantle there is a shortage of Croatian and Italian JPs. Some have been appointed during my time, which has addressed the imbalance of the traditional English gentleman being the person who is the JP.

Mr T.K. WALDRON: The reason I raise the point is that I think ethnic and Aboriginal people and females should be appointed. I notice the imbalance. The right person for the job should always be selected. If people are not up to it they should not be selected; it does not matter whether they are male, female, Aboriginal, Croatian or whatever. That is something we need to keep in mind.

I do not know whether the list of JPs is looked at to assess their level of activity or whether local courts must produce activity reports on JPs. If somebody is a JP but is never active, I do not know whether that person's appointment should be taken away. When considering the appointment of another JP, perhaps that should be taken into account.

Mr J.A. McGinty: That is a contentious issue and one to which I do not really know the answer.

Mr T.K. WALDRON: I do not think I do either, other than to say that if a community had eight JPs, four of whom were never active, it might come to the point that when a really good candidate applied the police might say there were no real problems as it already had eight JPs. If four are inactive, we should perhaps consider appointing another one. I guess that is what I am saying. Department of Justice officers tend to call on the same JPs because of their regular availability, and some do not get called on as much as others. That is another matter.

There are four points about selecting JPs. The age of JPs has been addressed. If there are 10 JPs in an area and six of them are 65 years of age, we must look at appointing more. There is the question of their ability to attend court regularly and whether distance and business commitments affect their ability to attend court. Whatever happens, we should not be turning down outstanding people unless there is a real glut of applicants in a town. If somebody is outstanding, it may come back to the question of local people saying that they have enough JPs but they will consider that person because of that person's outstanding ability. That is another point I make in trying to be positive. The criteria should be flexible enough for the Attorney General to appoint outstanding people.

I want to raise one other issue that I believe is affecting the workload of JPs in my area; that is, the removal of magistrates' visits to some smaller country centres to hear cases. For example, in my region last year we lost the magistrate's visits to Wagin, Pingelly and Corrigin. All those cases now are referred to Narrogin. I took a delegation of local government representatives to meet with the Chief Stipendiary Magistrate, Steven Heath. We were concerned about the effect that decision would have on local towns, the distances that witnesses and people who had been charged would have to travel to get to court and how, in some cases, those people would get there. Some people do not have a drivers licence and there is no public transport in most regions. People must arrange for somebody to take them to court and that raises a person's ability to pay etc. We were concerned about the build-up of trials and the workload that would place on justices of the peace in Narrogin. Steven Heath gave us a terrific hearing. He was very supportive of the issues. He made it clear to us why the decision had been made. He explained to us the distances that the magistrates had to travel and the number of cases they heard etc. The delegation took that on board.

Steven Heath agreed to provide to the shires and me statistics of cases from those regions over some time, which he has done. We are grateful for that. Those statistics have probably not changed a great deal since I was given them. However, some problems are starting to be seen locally. I raise that matter because it is something we will have to keep an eye on. I have spoken to local solicitors who have told me about cases in which people who have been charged and do not have a drivers licence have found it difficult to get to court. As I said, there is no public transport. Some people who have been charged have not known what to do, and they have decided not to appear. A couple of people have broken bail and, therefore, could be sent to jail when they next appear before the court. The Attorney General does not want people sent to jail for minor offences. These types of changes could lead to that. It is not occurring on a big scale, but I am watching it closely. I am making the Attorney General aware of it in this debate. I am concerned about that happening in Narrogin and I will continue to monitor developments and keep the Attorney General informed.

A magistrate visits Narrogin once a month and sits for two days because of the increased workload. The magistrate used to sit for only one day. The JPs in Narrogin sit for one day a week when the magistrate does not visit the town. That occurs three weeks out of every four. People in the system have told me that JPs used to hear about five or six cases but they now hear up to 20 cases. I would like those figures confirmed. Those matters were raised with me when I spoke to people. Maybe the Government will need to reconsider how frequently magistrates visit small towns. They are important for the towns and the community. Obviously this service provides jobs and supports businesses, and it is another service that those towns have lost. If it is causing problems in the bigger towns, maybe the issue will need to be revisited. I support JPs. They do a terrific job generally. I support the Bill and congratulate the minister for introducing it. However, ongoing training must be considered further.

**MR P.D. OMODEI** (Warren-Blackwood) [11.02 am]: As has been explained, this Bill is part of a suite of Bills that the Attorney General is introducing to the justice portfolio, including the Oaths, Affidavits and Statutory Declarations Bill 2003 and the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2003. I indicate my



support for the Bill and for the comments of the member for Wagin. I will not revisit those issues. They are common across regional Western Australia and are also prevalent in my electorate.

It is good to keep the spirit and tradition of justices of the peace intact. It is a long-held tradition. As the Attorney General said in his second reading speech, the history of the legislation goes back more than 100 years. JPs play an important role, particularly in small communities around Australia. They must be praised for that. They are called out at all hours of the night to sit when obviously they have other things to do. Their contribution to society cannot be understated. They must be supported.

What is proposed in the legislation is a good idea. I wonder how many of the 3 000 JPs in Western Australia undertake active duty. I suspect that the shadow Minister for Health's amendment to the Bill regarding giving retired JPs the title of "JP retired" may provide an out for a lot of JPs who do not want to lose the status of their position that they have long held. I served as an honorary JP during my time in local government, and I found it interesting and challenging. I support compulsory training for JPs, as indicated in the legislation. It would be difficult to monitor whether JPs are active. Other aspects of the legislation create difficulties. As members of Parliament, we are asked to make recommendations on people who want to become JPs. It is important for the local member to be consulted because usually the local member would have a reasonable knowledge of that person's activities in the community.

In my neck of the woods there is a large transient population. At certain times of the year, usually about the beginning or middle of June, there is an exodus of elderly people from Augusta and the south west communities. They travel in their caravans to Jurien Bay and further north and spend winter in the sun. That trend will not diminish; it will increase. As a result, the availability of people who are JPs is reduced, and this can create difficulties from time to time. Accessibility to justices of the peace is sometimes an issue too. Most shire presidents are JPs and many of them live 50 kilometres or more away from the local town. When the local policeman needs to get hold of a JP in a hurry, sometimes one is not available because there are not enough of them.

Recently I wrote about a person who wants to become a JP. Justices of the peace tend to be people who are involved in real estate, because they are required to sign statutory declarations, swear affidavits and so on. That matter must be taken into account. The amendment proposed by the shadow Minister for Health is important because it will provide some flexibility. Rather than people remaining as JPs forever and a day into their dotage and the job being a burden to them, if former JPs retained some status by being referred to as "JP retired", it would allow new JPs to be appointed in their place. Once the JPs retired, they would not be allowed to sit on the bench and make judgments on charges that have been laid, nor would they be able to sign statutory declarations etc. To all intents and purposes, they would be retired. Those who replaced them would need to be accessible to the local constabulary and the local community at short notice.

That is the main point I want to make. Most of the other points have been made. I am sure that the member for Nedlands will raise those matters during the consideration in detail stage. I am a strong supporter of JPs. They do a terrific job. In the main, they are unseen and unheralded, and they do a helluva lot of work that the local community does not know about or tends not to acknowledge. It is important that, as a result of the passage of this legislation, we take the opportunity to acknowledge the efforts of serving JPs and encourage new JPs. It will be obvious to them that they must undertake training. That is important not only in the pursuit of justice but also to ensure that JPs know that they are doing the right thing. This is good legislation. We would be happier if the Attorney General supported our amendment on the Notice Paper.

**MR M.G. HOUSE** (Stirling) [11.09 am]: I am pleased to support this legislation. I will not go over the ground that has already been covered by the member for Nedlands about the specifics of the Bill, but there are a couple of things that I particularly want to say. I have had the privilege of being a justice for just over 30 years. I used to do a lot of court work before I became a member of Parliament. In fact, in my home town we used to hear about 380 cases a year, which, according to the records, was a very high number for a country town. There are a number of reasons for that. I lived fairly close to town at the time and was a shire councillor, so I was often called on to appear before the court. Being a justice in a small country town is not an easy thing to do in many instances. I can recall instances - I will not go into the detail - of being called in on a Saturday morning to find that my next-door neighbour, with whom I was friendly, was up on a drink-driving charge. In a couple of instances, I can recall the court dealing with matters a little more serious than that. It is a pretty challenging experience to sit in judgment on one's peers under those circumstances. I recall those moments because, by and large, justices across rural Western Australia period have done a terrific job over a long period. I am talking about times when circumstances with magistrates were a little different and the justices had the ability to impose jail sentences. Then there came a time when it was more common to refer people on more serious charges to the Magistrates Court. The responsibility of putting something in jail was huge, which perhaps some justices did not understand the enormity of at the time. In those days there was no compulsory training for justices. In fact, there was very little voluntary training. Many justices were just appointed - to use the Attorney General's words - from the gentlemen's club, although perhaps not in all cases, and there was no court training. The responsibility of sending people to jail was a huge task. There were plenty of instances in which there was a serious miscarriage of justice under those circumstances, not because people wanted to make mistakes but because they were guided incorrectly, usually by the police officers in small country towns where there were no other alternatives from

which to seek advice. However, they were minor cases, and, by and large, justices of the peace over a long period have done a terrific job.

I strongly believe that the training regimes that have been introduced for justices of the peace are absolutely necessary. There probably needs to be a refresher opportunity for training as the law changes. I know those opportunities are made available to justices of the peace on a voluntary basis, but if a person is to participate in court, he needs to update his knowledge of the law - it is a very necessary thing to do. As a justice I attended a couple of those training courses in which practical demonstrations were run. I remember one course held in Albany in which a demonstration of a crime scene was run. A few people walked across a stage dressed in different clothing - a woman in a green dress with a black handbag and a guy with a hat on and whatever. Ten minutes later the group of us were asked to write down in detail what we had seen on the stage 10 minutes before. Members would not believe the disagreement we had around the table about what we had actually seen - it was unbelievable! It taught me one thing: if I am ever charged with anything, sure as hell I do not want to be tried by a jury of my peers because the chances of them getting it right might be pretty slim. However, it demonstrated that people can be persuaded very easily to believe that they have seen something that they did not actually see, and that people's attention to detail is often very small. If a person doubts that and thinks he is an exception to that rule, he should try it under practical conditions - it is quite an interesting exercise.

Mr T.K. Waldron interjected.

Mr M.G. HOUSE: Not with my mob, they get beaten every week unfortunately. I emphasise that the training is a very important part of the job.

There is a real need for justices of the peace in the country, and the selection process over the years has been tightened. Undoubtedly, we are now getting people who are prepared to spend the time training and to do the job properly, and that is very important. Usually, those people are leaders in their community. I agree with the member for Wagin and the Attorney General's interjection that we need people with more diverse ethnic backgrounds to be appointed. Traditionally, that has not happened. I make that point with particular regard to Aborigines. My home town has a reasonably large Aboriginal population and many of those people are reasonably well educated, are au fait with their own people and understand the law reasonably well. In my judgment they would make very good justices, bearing in mind that in most cases justices sit as couples. Justices used to be able to sit as an individual justice under exceptional circumstances. I am not sure if that is still the case -

Mr J.A. McGinty: You still can in limited circumstances.

Mr M.G. HOUSE: I remember that when I was first a justice and when a court was convened the court always made sure that a senior person was with me. As I got to understand the processes and the law better, younger or less experienced justices sat with me. I think that can be done with Aborigines to ease them into the process, and I think the Aboriginal community would respond to that in a positive way, particularly in cases that involve Aborigines.

In many instances, in any one area there are a number of inactive justices. I know that the Attorney General originally proposed in this legislation that people be retired involuntarily from being a justice of the peace. I am very pleased that that did not proceed. If people who have given a long period of court service and served their community well as a justice of the peace reach an age at which they believe they can no longer do that task but might still be able to witness documents and do some of those minor things, it is appropriate that they retain the title. I do not think that that would be a great burden on the system. That needs to be taken into account when considering the number of justices in an area so that there is still enough active people servicing the area. The shifting sands of rural communities are such these days that if people are to be appointed from diverse backgrounds, often they will move in and out of the rural communities - they might be bank managers, for example, who are there for two or three years and then leave. The balance of people can be quite an issue. The country's needs are probably different from the city's needs in that respect. In the country, justices of the peace are seen as leaders in their community. They take a leading and active role in most things that happen, which is appropriate. I also agree with the Attorney General's comments about appointing more female justices. That adds a balance to the leadership group in rural country towns and is a positive step.

I am pleased to support this legislation, which has got the balance right. I pay tribute to all those people in rural Western Australia who have served as justices of the peace over a long period. They have done a terrific job, they deserve to be recognised and I am pleased that they generally are.

**MR M.F. BOARD** (Murdoch) [11.18 am]: I wish to speak briefly on this legislation and add my support to that of other members for the need for some reform in this area. I also put on record the important work that justices of the peace do. I would go so far as to say that our community system would not function without a position such as justice of the peace. Talking about this Bill gives us the opportunity to reflect on the amount of work that is done, in this case, by members of the community or volunteers, to make our system work better, to give a strong interpretation of the law, and to inculcate an understanding of the law and the way in which the system works through the community. In particular, I want to talk about an issue that was just touched on by another member. One of the difficulties we face is that people who are appointed justices of the peace in Western Australia carry with them the status that they have been accepted by the Attorney General and the system and endorsed by the Governor as a person who needs to be not only qualified but also of sufficient standing in the community to apply the law and make decisions on behalf of the legal

system. That carries with it prestige and presence. It is a recognition of a person's contribution and his or her standing in the community.

Over decades, justices of the peace have been appointed. They may fulfil their role in the community through work with recreational or social clubs. Some people may have been appointed justices of the peace because of their occupation; they may have needed to fulfil certain obligations under the law as part of their occupation. Some justices of the peace are retired people who are prepared to serve their community in a role that requires a great deal of time. Of course, they become known to the police, legal practitioners and the community generally. They may be involved in the simple task of witnessing documents. Many thousands of documents are witnessed every day in Western Australia, and many need the signature of a justice of the peace. If we did not have active justices of the peace, in many ways our system would stagnate and stall, and it would become much more difficult for people to fulfil many of their obligations under the law.

I acquaint the Attorney General with the amendment on the Notice Paper in my name; that is, at page 9, after line 8, to insert a new clause. I will move that amendment in consideration in detail. I will indicate now why I believe that amendment is important. As the member for Stirling has just indicated, the situation around Western Australia currently, but particularly in the metropolitan area - this problem is typical in my electorate - is that many people who have been appointed justices of the peace and have held that position for a long time are no longer active justices of the peace. They may live in retirement homes, on estates or at home. However, because of a change in occupation, because of retirement or perhaps because of health circumstances, they are not active justices of the peace. Their previous service has been important and worthwhile, and is recognised. However, the difficulty is that their name remains on the register. When a person applies to go onto the register, he may not be able to do so because it is adjudged that the requisite number of justices of the peace is already in that geographical area. Therefore, no further justices of the peace can be appointed in that area. Although there are a given number of justices of the peace, often they are difficult to find when they are needed, particularly after hours and on weekends.

In the amendment, we are proposing a new category of justice of the peace; that is, a justice of the peace (retired). A person would be able to maintain his status by at least having "JP" after his name, but he would become a retired justice of the peace. This often happens with military appointments, and even with magistrates. Many people keep their titles when they retire from active service. It is recognition of the fact that they have had that status, and that they have worked in the system and fulfilled their role satisfactorily in the community. I believe this would create a number of vacancies fairly quickly. There would be an opportunity for people to come off the active list, but not necessarily resign and thereby lose their status of justice of the peace. They would be justices of the peace (retired) who were no longer active. Therefore, a vacancy would be created.

I hope the Attorney General will give consideration to this amendment in the consideration in detail stage. If it were passed, a number of people would be able to be relieved of their responsibilities as justices of the peace. Other people would be able to go onto the register reasonably quickly, as long as they satisfied the requirements for appointment as justices of the peace, including training, checks on their background and so forth. We would have more active JPs, and that would alleviate some of the pressure currently on JPs, some of whom are fairly overburdened, I believe. There would be a greater spread of justices in terms of location and the types of activities they undertake. I ask the Attorney General to give consideration to the amendment. It is only an administrative matter. I do not think it would create confusion in the community. Only those people who are active JPs would be on the list; those who carry the status of JP (retired) would not be active in the system. However, they would be recognised formally as a result of their contributions in the past as justices of the peace. If the Government accepts this amendment, it will create a situation in which people will be able to leave the system but retain their status.

The people involved are not necessarily elderly. Many people think that when justices of the peace reach a certain age, they move away from the system because of age or health factors. That is not the case. Many people became justices of the peace early in their lives because of their careers and the work they were undertaking. They may have moved away from that work and not be interested in fulfilling those obligations any longer. However, because they have achieved that status, they do not want to give it away. They would be able to retire from the active list of justices of the peace. There may be an opportunity at a later stage for those people to become active justices of the peace once again. They would then have to be judged under the system. The amendment provides an opportunity for people to come off the active list without necessarily losing the status of the appointment that they had. I believe this would be a good, strong amendment to the legislation, which would expedite the process of appointment and retirement of justices of the peace. I hope the Attorney General will consider that amendment when it is moved in the consideration in detail stage.

**MS K. HODSON-THOMAS** (Carine) [11.27 am]: Since becoming a member of Parliament, I have become a justice of the peace. I undertook the training that was required six and a half years ago. I found the justice unit very interesting. The course could be undertaken either externally or at the Edith Cowan University, which is where I undertook the course. I recommend it to all justices of the peace, and I am pleased that that will be a requirement under the legislation that we are dealing with currently. It would be interesting to find out how many other justices of the peace in this place have undertaken any required training.

Mr M.P. Whitely: I have.

Ms K. HODSON-THOMAS: It is good to hear that the member for Roleystone has also undertaken the required training. I found it particularly interesting. It has certainly assisted me with my duties as a justice of the peace. As a justice of the peace and a member of Parliament, it is inappropriate, in my view, for me to do more than perhaps sign summonses and arrest warrants, although I have never been required to do more than sign a summons. Generally, I sign statutory declarations and witness documents for people who come to my electorate office or contact me at home. I think the police have visited me at my home on only one occasion. It is a role that requires great commitment. I admire the contribution made by the people in our community who offer themselves up for this role and its tasks, because many give long hours to that role.

I also wanted to touch on the amendment proposed by the member for Murdoch. I am aware that a number of JPs are perhaps not participating as actively as they could. The amendment proposed by the member for Murdoch would perhaps allow people to maintain the status of the justice of the peace title while relinquishing their duties, so that other people could take up those positions. Over the past few years a number of the applicants I have put forward to the Attorney General to become JPs have been rejected, not on the grounds that they were not competent or capable of doing those tasks but because there were already many justices of the peace within my region and the Attorney General saw fit not to appoint any more. I have been a strong advocate for women taking up the role of justice of the peace. In the past three years, one woman has come to me seeking appointment as a justice of the peace. Her application was rejected. I am disappointed that the Attorney General did not see fit to appoint her. I did not intend to make a long contribution to this debate. I may ask some questions of the Attorney General during the consideration in detail stage. I hope that he will take up the amendment that the member for Murdoch has lodged on the Notice Paper.

**MR J.N. HYDE** (Perth) [11.32 am]: I fully support this legislation. It is important to acknowledge the strong, voluntary work of JPs in our community, and certainly of those in my local electorate.

**DR J.M. WOOLLARD** (Alfred Cove) [11.32 am]: I support this legislation. I too have done the JP course since becoming a member of Parliament. I did the course at Murdoch University. It was a wonderful course, which gave real insight into some of the issues that confront justices of the peace. Some people drove for three or four hours to attend the course and stayed in Perth overnight. The course is also run externally. I applied to become a JP to assist in all areas in which JPs can assist. However, when I was doing the course I realised that, as a member of Parliament, there were only certain aspects of the JP role that I could perform. Within my area there are some wonderful justices of the peace. We have a list of JPs in the office. Because I am called on to act as a JP only occasionally, if I know someone is coming to my office I phone one of the JPs on my list, explain the issue and ask whether there is anything new that I need to know. They are wonderful people. Most members have centres in their areas that are staffed by JPs. In my area, JPs staff a centre at Garden City Shopping Centre. They work very hard to keep a roster going so that people know that they can go to the centre to access a JP. When someone has come to my office and it has taken me 20 or 30 minutes to sign numerous pieces of paper, I have appreciated the role of JPs!

I agree with the amendment proposed by the member for Murdoch and hope that the Attorney General will give it serious consideration. JPs play a vital role in and have made a major contribution to society. It would be nice if their role were recognised. I will also ask some questions when we move into the consideration in detail stage. As is the case with other members, people have come to me to apply to become JPs. I have sent off their applications to the Attorney General and not one has been appointed in my area, because the Attorney General has said that there are already plenty. I pass on his message to JPs. People sometimes call me and say that I am number 14 on their list. They need something signed urgently, but have had trouble finding someone. It might be after hours. Last year I looked up the people who were JPs within my area and sent them a letter to see who was and who was not active. On the one hand, the Attorney General knocks back these applications and on the other hand people say to me that they cannot find a JP when they need one after hours. I would like to know some of the statistics. I would like to know the statistics for my area. I am not being cynical. I do not believe this is a case of appointments being made on the basis of who knows whom. The department has a list of JPs. Rather than that list being arranged alphabetically, perhaps something else needs to be done, such as outlining which JPs are active, to assist people who need assistance. I am again talking about the signing of documents, which is important to people on some occasions. They might call on a justice of the peace in an emergency.

I have not yet had the privilege of acting as a JP within the lower court system. However, I look forward to being able to assist in that area at a future stage in my life.

I hope that the Attorney General will consider the contribution made by justices of the peace. We have not before had an age limit for JPs. If there is to be a cut-off point for acting as a JP, it would be nice to provide some acknowledgment of the contribution made by those people.

**MR D.A. TEMPLEMAN** (Mandurah) [11.38 am]: I support the Bill before the House. When I was chairman of a volunteering committee set up by the Minister for Community Development, who also has responsibility for volunteering, the committee visited regions in Western Australia. It became apparent to the committee that JPs were not necessarily recognised as well as they should be. JPs contribute to their communities in a voluntary capacity. I support the Bill in terms of the definitions it contains and how it clarifies that role. Important elements of this

legislation clarify the roles and responsibilities of justices of the peace. I agree with the member for Perth and other members that it is important that we congratulate JPs and acknowledge the tremendous role they continue to play in our communities.

**MR J.A. MCGINTY** (Fremantle - Attorney General) [11.39 am]: I thank all members for their contributions to this debate, and the support that this Bill enjoys in the House. This Bill provides just recognition for the tremendous contribution that justices of the peace make to our community in two senses. Firstly, the rule of law is fundamental to a civilised society. Justices of the peace have a profound role to play in upholding the law in our community. Secondly, justices of the peace are, without exception, eminent members of their local communities. This Bill recognises the contribution that is made by justices of the peace at both those levels to the community. For the first time, this Bill gives us dedicated legislation for justices of the peace, which is a recognition of their contribution. It also contains a very significant number of important provisions that put justices of the peace in a modern context. The need for training and spelling out qualifications are issues that provide justices of the peace with the recognition that they so rightly deserve. I thank members for their support of the Bill.

Question put and passed.

Bill read a second time.

### *Consideration in Detail*

**Clauses 1 and 2 put and passed.**

**Clause 3: Interpretation -**

Ms S.E. WALKER: I know nothing about the training course that justices of the peace currently undertake or the one that is proposed they undertake. I do not know whether it forms part of the Law Reform Commission's recommendations. What is the approved training course? What is the current situation and what is it intended to be? What happens in other States?

Mr R.F. JOHNSON: I have a question along the same lines. Is it the same training course that is presently in operation? The current course can be done in person and is run by the Royal Association of Justices. I am also aware that it runs a correspondence course. Students are given information and have to answer questions to the satisfaction of the Royal Association of Justices in order to qualify as a justice of the peace.

Mr J.A. MCGINTY: The training course is run independently of the Department of Justice, through Murdoch University. The course controller is Dr Kathryn Trees. I believe the course runs for one semester.

Dr J.M. Woollard interjected.

Mr J.A. MCGINTY: No. It is run only through Murdoch University at the moment.

Dr J.M. Woollard: It can be taken as an elective for a law degree and other programs. It is a properly accredited course.

Mr J.A. MCGINTY: Yes. A Law Reform Commission report was released in the 1980s that dealt with the Courts of Petty Sessions. One of the recommendations was that there be developed a course of training and instruction for justices of the peace. The notion has been there for some time. The training course was established some years ago, but it was not a condition of appointment for a justice of the peace. That has come about in the past year or two. I cannot give the exact date. It used to be that the training course, which came in a few years ago, was required to be done after a person had been appointed as a justice of the peace. Recent changes require it to be done as a condition of appointment as a justice of the peace, unless there is a ministerial exemption. When approval is granted, it is on the basis that if a person completes the course he will be appointed as a justice of the peace. I do not have information on what applies in other States. This seeks to put into statutory form the arrangements that are already in place. It is not intended to change those arrangements. The course is a good one. The House has members who have participated in that course.

Dr J.M. WOOLLARD: The JP course is an accredited course. People undertaking the course are given assignments and homework, as is done with many other courses. The course is marked as a pass or fail. The unit contains a lot of work for students. It is worth four credit points for law students. It is a lot of work for someone completing the course on a part-time basis while working. The course is run very well by the university.

Ms S.E. Walker: What sort of subjects are in it?

Dr J.M. WOOLLARD: For people like me, who are very new to the legal system, the course gives an explanation of the court system and the sorts of issues a person might encounter as a justice of the peace. It provides the knowledge necessary to deal with those issues, especially in the outer metropolitan area. Students are introduced to different people who they could contact later if they needed assistance in different areas. Students are told where they can go to "buddy" a current JP until they feel comfortable in the role themselves. The course run at Murdoch University is excellent.

Mr J.A. McGinty: I thank the member for Alfred Cove for providing that information.

Ms K. HODSON-THOMAS: I completed a justice unit at Edith Cowan University and I am beginning to wonder whether I have the appropriate training. The recommendation at the time I became a JP was that I should undertake the course. I did four assignments at ECU. As the member for Alfred Cove said, a number of students travelled from the country to embark on the course. I would just like some clarification about whether I should now go and do a refresher course.

Mr J.A. McGINTY: I am sure that that is not necessary. I am told that a course was run through Edith Cowan University, and in the late 1990s Murdoch University won the contract to run it. Murdoch took over the course that was previously provided by ECU.

Ms S.E. WALKER: Obviously, under this provision, JPs will have to do refresher or updating courses. Is that right?

Mr J.A. McGinty: No. I guess there would be a capacity at some time in the future, if someone wanted to, to require that as part of their ongoing training. At present, however, all we are talking about is the course that we have just spoken about being a condition of the appointment as a justice of the peace.

Ms S.E. WALKER: The provisions for termination in clause 14 state that the Attorney General can direct that a person do an approved training course. This still relates to clause 3, because we are talking about approved training courses. Does the Bill only contemplate that the Attorney General will direct some people if it is brought to his attention that they could do with a bit of a refresher?

Mr J.A. McGinty: All that is envisaged at this stage is that this is the course to become a JP. In some areas it might be thought appropriate to appoint someone as a JP and, because of a shortage in a country town, for instance, allow the course to be done later, as someone is needed immediately. It just has that element of flexibility. No consideration has yet been given to any courses other than the introductory course referred to.

Ms S.E. WALKER: A constituent who is a JP came to see me. He was worried that he might not pass if he had to do extensive written examinations.

Mr J.A. McGinty: I assure the member that there is no intention to go back and require people who are currently good JPs to do the course.

Ms S.E. WALKER: I think one of the National Party members expressed that view in this speech - that people would have to undertake refresher courses, which I think is a good idea. Has the Attorney General given any consideration to that?

Mr J.A. McGinty: Not at this stage, although this legislation would allow that to be done. It is not intended at this stage to do that.

Dr J.M. Woollard: As part of the course, JPs are encouraged to join their local branch. They receive a regular newsletter about what topics are being put on in educational updates. That helps JPs keep their knowledge up to date.

The ACTING SPEAKER (Mr J.P.D. Edwards): I draw the attention of members to the fact that conversations across the Chamber are highly irregular. Will members please direct their comments through the Chair. I understand there is a follow-up of the question and answer here and I have given some latitude to the member for Nedlands and the Attorney General in response and reply, but we are starting to get outside of that by taking other interjections.

Mr J.A. McGinty: The member for Alfred Cove is doing remarkably well.

The ACTING SPEAKER: I understand that, and that is why I have allowed some latitude. However, could members please direct their comments through the Chair.

Ms S.E. WALKER: You are a wonderful Acting Speaker, always following due process!

I thank the member for Alfred Cove, because that is a bit of a concern to me. I know JPs are not paid and that they do a marvellous job, but it is important that they are kept up to date. I thought this Bill would encourage that. I see, from what the member for Alfred Cove says about training, that there is no compulsory ongoing training for JPs. I wonder whether the Attorney General has given any consideration to requiring JPs to become members of that organisation.

Mr J.A. McGinty: This is not compulsory unionism you are talking about, is it?

Ms S.E. WALKER: Certainly not; my ideology is in stark contrast to that of the Attorney General. I am not soft on sentencing. I am not soft on a lot of things.

Ms M.M. Quirk: Except yourself.

Ms S.E. WALKER: I thank the member.

I saw someone shaking their head, but I will not name them. It is important that JPs are kept updated and abreast of what is going on. Someone could be a JP for 40 years and never really know how the law has changed.

Mr J.A. McGinty: I have a figure that may provide some comfort on that issue. There is no mandatory ongoing refresher courses or continuing education, but I am told that slightly fewer than 70 justices of the peace out of a total of 3 300 have not done any ongoing courses. Most justices of the peace are very community minded. They get in there, if the local magistrate, particularly in country areas, is running a course, or the Royal Association of Justices of Western Australia is running a course. Most justice participate to some degree in those courses. They are provided, but they are not compulsory.

Ms S.E. WALKER: The Attorney General has answered my next question, which was about the number of JPs. I will wait to ask about the qualifications.

Dr J.M. WOOLLARD: I congratulate the Attorney General's department for this Bill. As a fairly recently appointed JP - I have only been a JP for a year or two - and because the issues that come into my office span different areas, I will phone the department when a difficult issue comes in and ask what to do. It might be someone who wants me to sign something, or they may come from another country. I am trying to think of some of the issues that come into my office.

Ms K. Hodson-Thomas interjected.

Dr J.M. WOOLLARD: No - not that one! Depending on the issue, a JP can phone other current JPs whose names are provided by the department. The department has also been very good in its advice. There is a web site for issues, and staff will normally get back to me if I have a concern and tell me how to deal with it.

Ms S.E. WALKER: The term "insolvent under administration" is new. Can the Attorney General tell me why that has been put in?

Mr J.A. McGINTY: This is the equivalent of bankrupt, or people who are under part X administration under the Bankruptcy Act but who are not formally declared bankrupt. The intention is that people who have found themselves financially embarrassed in terms of bankruptcy-type provisions will be excluded from holding this office. It has a similar effect to the provision used in the Magistrates Court Bill.

Ms S.E. Walker: Is this the case in other States, or was this provision recommended by the Law Reform Commission? Do you presently remove JPs who are insolvent?

Mr J.A. McGINTY: I am advised that that currently is considered at the time of appointment.

Ms S.E. Walker interjected.

Mr J.A. McGINTY: I cannot think of a case in which it has been drawn to my attention that that has been the reason it has been done.

Ms S.E. Walker: Have you ever removed someone?

Mr J.A. McGINTY: I have removed many people, and some of them were even JPs!

Ms S.E. Walker: I am working on removing the Attorney General.

Mr J.A. McGINTY: I have never removed anyone for this particular reason.

Dr J.M. WOOLLARD: I refer to the definition of "register" in clause 3. I have submitted applications on behalf of constituents who wanted to become JPs, and the Attorney General's response has been that we have sufficient numbers at the moment. I sent a letter to the JPs in my area some 18 months ago, and a few months later someone from the department phoned and asked why I had sent that letter. I was told that the department would be collecting that data itself. Some JPs were very concerned because they got a letter from me asking if they were still practising, and then they got a letter from the department asking if they were still practising.

I would be interested in the results that were collated from the questionnaire and telephone calls, because I would like to know how many JPs are active in my electorate - when I say active, I mean active on a regular monthly basis, six-monthly basis or whatever.

Mr J.J.M. Bowler: They may be available to sign documents.

Dr J.M. WOOLLARD: They might make themselves available. As I have said, I might be No 12, 13 or 14 on the hit list when somebody is trying to contact a JP.

Mr J.A. McGINTY: A survey was done, I think in March of last year. I am told that about 88 per cent of people surveyed indicated that they were still active. That is obviously their perception. Members here have expressed the perception that there are a lot of inactive JPs. I guess there is the problem of the difference between the JPs' perception and the perception of other people in the community. As a result of the survey, I think that just over 100 people resigned their commission on the basis, generally speaking, of age and their view that they were no longer able to contribute. If the member wishes for more detailed information and if she details the information she wants, I can certainly provide it either in toto or for her electorate.

Dr J.M. Woollard: I would appreciate it. I would prefer to say to somebody in my office that I am sorry but it is not worth while putting in an application because the complement of JPs is full, but the Attorney General or the department

will send me statistics in six months and if there are vacancies I can let the person know and put forward an application. I think that would be nicer for people who are volunteering their services than getting what they perceive as a knock-back from the department.

Mr J.A. McGINTY: The former Attorney General established a procedure for members of Parliament who are required to endorse or nominate people to become justices of the peace. A member might have a particular candidate who he thinks should be appointed above all others to service an electorate. It might be to service an identified need in the electorate by representing a particular ethnic group or organisation within that constituency. A member is allowed to nominate one person a year as a special merit nominee. Subject to there being no adverse reports, that appointment would be endorsed. That procedure is currently available and has been available for a number of years.

Mr R.F. Johnson: Is it still available?

Mr J.A. McGINTY: Yes. For instance, if there were a shortage of Italian-speaking JPs, I might recommend as a special merit nominee the President of the Italian Club, Fremantle, who is an eminent member of the community.

Mr R.F. Johnson: You can do that job. You speak Italian very well, and it is your electorate.

Mr J.A. McGINTY: I thank the member very much.

Ms K. Hodson-Thomas: How many JPs in general have been appointed to your electorate compared with other electorates?

Mr J.A. McGINTY: I have separated myself from the process. My electorate officer deals with them. I officially sign the letter because that is what is required. I think I get as many knock-backs as would the member for Carine. What we have been keen to do - this is where some applications have been successful and others have failed - is address the issue of the shortage of women JPs, or JPs serving particular ethnic communities. Some members today have spoken today of the need of more Aboriginal JPs. If there is a marginal case, they are appointed, whereas if an area is flooded with JPs, we are quite tight about approving the appointment of JPs. I get far more complaints from my side of politics than I do from members opposite for refusing to appoint their nominees. We will undertake to provide the member for Alfred Cove with that information for her electorate.

Ms K. HODSON-THOMAS: I apologise to the member for Alfred Cove, because I am sure she wants to continue, given that she wanted to make a number of points. I too would like to obtain that information for my electorate if that is possible. I recommend people who are applying to the Attorney General, and I now forewarn them that the likelihood is they will be rejected.

If at this time, when my electorate is well represented by women and men, a 35-year-old woman were to apply to be appointed as a JP and was rejected, and if she were to come back in five or six years time and re-apply, the likelihood is that, because she had been rejected in the first instance, she would be rejected again, yet she may well be a worthy candidate. I dealt with a matter similar to this in our last term in government. I argued the case for somebody who was, in my view, someone who had special abilities and had been rejected previously when the former member put in the application. The then Attorney General said to me that the department would not consider the application. I argued the toss with him and eventually won. If somebody were rejected, would it mean that at some future time the likelihood is that person would be rejected again?

Mr J.A. McGINTY: May I assure the member for Carine of two things. First, occasionally, and it is not all that often, there is a reason that somebody is rejected. I can think of one person in the northern suburbs a bit south of the member's electorate who was rejected because of prior convictions. I remember the letter that we sent out was perhaps a bit thin on the kind side in saying that the person was not appointed. However, when somebody is eminently able to be appointed a candidate and there are too many JPs at the time, that would not be held against that person in the future; in fact, it shows an ongoing interest. If the sole reason for rejection is that the area is currently well serviced, the fact that a person has applied before is certainly no detriment to that person's application in the future.

Ms K. Hodson-Thomas: Could you provide those statistics?

Mr J.A. McGINTY: Yes, we will.

Dr E. Constable: Perhaps to everybody.

Mr J.A. McGINTY: In response to the member for Churchlands' interjection, perhaps we could undertake to circularise all members of the Assembly with the results of the survey that was done last year. Perhaps any information could be broken down by electorate, suburbs or something of that nature.

Dr J.M. WOOLLARD: Clause 3 refers to approved training courses. At the moment the documentation that is completed for someone who wishes to become a JP is a nice pamphlet of two or three pages, which is given to someone to take home, to read and to fill out. One then sends it to the Department of Justice. With this new legislation, will the course come before people put in their applications to become JPs or will people continue to submit their applications and the department say yes or no provided they complete a course within six months? What will happen in the future?

Mr J.A. McGinty: It will be the latter.



Dr J.M. WOOLLARD: They will have six months or maybe one year.

Mr J.A. McGinty: We do not want people doing the course in the hope that they might then be appointed. In the example given by the member for Carine, if an area is well serviced, they will not be appointed. It applies only to those people whom we have said we will appoint; in other words, they have been approved for appointment provided they do the course. That is the stage at which people will do the course.

Dr J.M. WOOLLARD: In that case, will it be possible when the new legislation goes through to add more to the booklet that explains to people the course that they will need to undertake at Murdoch, because the course is complex and detailed. As a member, I might not have quite so many people wanting to put in applications if they realise the extent of the work required to pass that course.

Mr J.A. McGINTY: I am happy to look at the booklet that spells out those details, and we will make adjustments if necessary. I cannot guarantee that anything will flow from that, but we will look at the matters the member has raised. Until about six months ago, the standard letter advising local members that somebody was recommended to be appointed as a JP did not spell out that the person would be required to undertake the course as a condition of the approval.

Dr J.M. Woollard: I have not received one of those.

Mr J.A. McGINTY: Not many people have. I have changed the standard letter to spell out that a JP is approved subject to doing the course.

Ms S.E. WALKER: Clause 3 is a continuation of the conversation the Attorney General had with members who have previously spoken. Once a member recommends that a person be appointed as a JP, who makes the recommendation? What happens to the letter when it gets to the Attorney General's department?

Mr J.A. McGINTY: A letter from the local member with the application form from the constituent who wants to become a JP is sent to the Department of Justice. The department scrutinises it by applying the criteria of whether the area is well serviced with JPs and things of that nature. The department then conducts a police report or a criminal record check on the individual. If the applicant is considered to be appropriate and meets all the criteria and should be appointed, a magistrate will interview the applicant to determine his suitability. A report is sent to me to recommend that appointment. In most cases I accept the recommendation from the Department of Justice, but occasionally I do not. Twelve months ago a Chinese woman applied to become a JP. I asked the department to reconsider the appointment in light of the balance of issues about which I spoke earlier. If the applicant is approved, the Governor must recommend the appointment, subject to the applicant completing the course. My department would write and inform the local member that subject to the person completing the course, the applicant would be recommended for approval. My recollection is that this Government has appointed more JPs to country areas than to the city because of what we regard to be an oversupply of JPs in the city. I do not know the figures, but I would be surprised if there were not fewer JPs in Western Australia today than there were three or four years ago. That answers the member for Carine's question about the frequency with which we have been appointing JPs. We have been trying to keep it fairly tight.

Ms S.E. WALKER: It is interesting. Like other members, I usually receive notification that an application has been knocked back. When the people who make the recommendation to the Attorney General consider the matter, they must have statistics on the local member's electorate. They rely on the statistics they have for each electorate. Therefore, it should not be a problem for the Attorney General to provide that information. When I send the Attorney General an application recommending that someone be made a JP, the people who determine the application must look at the statistics and work out how many JPs there are in my electorate. As I said, the applications I have sent have been knocked back. However, there must be a need for JPs in my electorate because people have told the applicants that they could not find a JP. Why are applications to become a JP in my electorate being knocked back? It is nothing personal to me, but it is personal to the Liberal Party.

Mr J.A. McGinty: And to the Labor Party.

Ms S.E. WALKER: I will ask the Attorney General a hypothetical question. A local member of Parliament must recommend that a person become a JP. My hypothetical scenario might sound sensible to the Attorney General, but it could put a member in a funny position. A local member would be put in a difficult position if a person who had been charged several years ago with falsifying a signature on an important document but who had not been prosecuted because the matter did not go to trial applied to become a JP. The applicant might hold a prominent position in which he or she signs a lot of documents. The applicant would want the member to recommend that the person be given the authority to sign documents and to do things as a JP. This is important, Attorney General. If a member were to recommend that person - I am not saying that the member should, I just need to know what the department would do - how would the Attorney General handle that? Would the Attorney General consider the allegation that had been made against the applicant and then conduct a police check?

Mr J.A. McGinty: Is the member saying that the person had been convicted?

Ms S.E. WALKER: No.

Mr J.A. McGinty: Or that the case was dismissed?

Ms S.E. WALKER: Yes. Bear in mind that only the police records could tell the Attorney General why the case had been dismissed. The case might have been dismissed because a witness did not turn up to court, or for a variety of other reasons. Would the Attorney General's office feel comfortable about that? The Attorney General said that he had to do a balancing act. The Attorney General would be giving the applicant some authority within an electorate. Would the Attorney General expect the local member not to recommend that applicant?

Mr J.A. McGINTY: The answer is in two parts. Firstly, I will deal with an applicant who had been convicted of an offence of that nature. The fact that a conviction was recorded against the person for dishonesty for falsifying a signature goes very much to the role of a JP, which would count very heavily against the applicant. If the offence took place 20 years ago when the person was 16 years old and the applicant had led an impeccable life since that time, those factors would be taken into account. The second part of the answer is that if an allegation or a charge had been made but had not been proceeded with or had been dismissed in the courts, no great emphasis would be placed on that at all. However, once an applicant had gone through all the preliminary tests, and assuming he had faced the charge and it was dismissed by the court, the police would be asked to conduct a report on the person. From time to time the police strongly recommend that a person not be pointed as a JP. Sometimes that recommendation is based on very objective criteria, such as the person having a conviction, or something of that nature. At other times the applicant might be a person of interest to the police, as the terminology goes, because of other matters. Alternatively, there might have been a souring of the relationship between the applicant and the police and therefore the police might recommend that the person is not an appropriate person to be appointed as a JP. Generally speaking, given the importance of the police in this process and the relationship between JPs and the police, we would place considerable weight on the view of the police. It may count against that person in the secondary stage when the police check is done, whereas it may not count in a more formal sense of evaluating convictions that might disqualify a person from holding office.

Ms S.E. Walker: The difficulty as a local member is that you would have to work out whether you would recommend the person in those circumstances. Would the local member be obliged to put forward the application?

Mr J.A. McGINTY: Not necessarily. It would help the Department of Justice if attention were drawn to the fact that that type of circumstance had arisen in the past. However, it is up to the Department of Justice to do the appropriate checking, which it does in conjunction with the police. That is not to say that occasionally things do not slip through. I would expect that a diligent local member would draw attention to the matter and leave it up to the Department of Justice to take the matter into account. As long as people are made aware of the issue, I would not have a problem with someone recommending that the applicant not be appointed notwithstanding that issue, unless the local member knew more about it and knew that the applicant was an infamous crook or something of that nature. However, if that is all there was to it, the duty of the local member stops at disclosure.

Ms S.E. Walker: Is there any other way a person can become a JP other than through a recommendation of a member of Parliament?

Mr J.A. McGINTY: A person could apply through a local magistrate, particularly in country areas in which the magistrate might identify a particular need -

Ms S.E. Walker: Is it only through a sitting member that a person can apply to become a JP?

Mr J.A. McGINTY: Overwhelmingly, it is through the local member that a person can apply. However, in remoter parts of the State, a magistrate may identify a need and will write to me recommending a particular individual. There are really only those two options: through the local member or through the local magistrate.

Ms K. Hodson-Thomas: Is it done through only Legislative Assembly members?

Mr J.A. McGINTY: No, it can be done by upper House members as well.

Ms S.E. WALKER: What is the identification number all about? Is it for anonymity?

Mr J.A. McGinty: An identification number?

Ms S.E. WALKER: Yes, under this clause.

Dr J.M. WOOLLARD: An identification number is given to a person when he or she becomes a justice of the peace. Most JPs have a stamp with their name and number on it to be stamped on documents they witness for people.

Mr J.A. McGinty: Again, I thank the member for Alfred Cove for that information.

**Clause put and passed.**

#### **Clause 4: Functions of JPs -**

Ms S.E. WALKER: This is an important provision. The general jurisdiction of a justice of the peace is set out under section 20 of the Justices Act. Clause 4(1) of this Bill states -

A JP has and may perform -

- (a) the functions conferred on a JP by laws . . .

What is that all about? Where can we find a comprehensive summary of that?

Mr J.A. McGINTY: In terms of justices of the peace sitting in the Magistrates Court - if I can put that way - the functions are found in the Magistrates Court Bill, which we dealt with as part of this package of legislation. Clause 7(2) of that Bill prescribes -

In circumstances prescribed by the regulations or by another written law, the Court may be constituted by -

- (a) 2 or more JPs; or  
(b) one JP.

That enables the Magistrates Court to be constituted by one or more justices of the peace. To find out what the functions of a justice of the peace are, a person must refer to other laws. For instance, if dealing with a statutory declaration, the functions are found in the Act regulating statutory declarations.

Ms S.E. Walker: Is there anything in which it is comprehensively outlined?

Mr J.A. McGINTY: Not in a statute.

Ms S.E. Walker: It would be good if we had that information.

Mr J.A. McGINTY: It is all covered in the training course and it is just a matter of providing a manual outlining the several Acts that give justices of the peace the power to do things. Clause 4(1) states -

A JP has and may perform -

- (a) the functions conferred on a JP by laws that apply in Western Australia, including this Act and other written laws; . . .

Ms S.E. Walker: That does not really tell us anything.

Mr J.A. McGINTY: It does not spell out what they are, other than say that a person needs to refer to other laws to find them. If a JP witnesses the signing of a document, there is an appropriate law dealing with that. If he is sitting in a court, that is dealt with in the Magistrates Court Bill and its regulations. Therefore, this provision refers to other Acts.

Ms S.E. Walker: How does this relate to section 20, "General jurisdiction", of the Justices Act? Is there another section in that Act dealing with jurisdiction?

Mr J.A. McGINTY: Yes.

Ms S.E. Walker: It is quite funny, is it not? Is there a jurisdiction provision in this Bill?

Mr J.A. McGINTY: No. Effectively, in terms of the -

Ms S.E. Walker: Is that an oversight?

Mr J.A. McGINTY: No. This clause deals with the functions of a justice of the peace. To the extent that they appear in court, the functions are found in the Magistrates Court Bill - soon to be an Act - and its regulations, which will have a provision comparable with section 20 of the Justices Act. The other powers of witnessing documents and the like are to be found in other written laws.

Ms S.E. Walker: Under section 20 of the Justices Act - the Attorney General might be able to assist me here - on what matters can a justice sit? Any summary matter or no summary matter? Under section 20, what power do justices have?

Mr J.A. McGINTY: The general rule is that two justices of the peace constitute the court. One can constitute the court if there is not another justice within a 16-kilometre radius of the court. That is the general provision for simple offences. Indictable offences can be dealt with by consent but not otherwise.

Ms S.E. Walker: I am sorry, can two justices sit on an indictable matter with consent?

Mr J.A. McGINTY: They can sit on a matter that can be heard summarily; that is, on only an either-way offence. I think that section 22 of the Justices Act requires consent, and any decision to imprison is reviewed automatically by a magistrate.

Ms S.E. WALKER: It is disappointing that the functions of a JP are not laid out somewhere for everyone to see. I would not mind being supplied with some information about the jurisdiction of JPs. Surely the department must have it somewhere. Someone in the justice system must know.

Mr J.A. McGINTY: There is a JP's handbook. I will arrange for some copies to be brought up this afternoon and made available. I think the answer might be found in that.

Ms S.E. WALKER: That would tell us about their current jurisdiction. I also want to know what their jurisdiction will be under this Bill. Will it be extended?

Mr J.A. McGinty: I do not think it has been extended in any way.

Ms S.E. WALKER: The Attorney General does not think so.

Mr J.A. McGinty: No.

Ms S.E. WALKER: How will we know?

Mr J.A. McGinty: When we look at the manual I will be able to be more prescriptive.

Ms S.E. WALKER: This is quite an important matter. Will the Attorney General provide information this afternoon?

Mr J.A. McGinty: Yes.

Dr J.M. WOOLLARD: If that manual is to be provided this afternoon, the Attorney General might also wish to make a call to Murdoch University, which could also send a copy. It is part of a full kit of information that is given to people doing the course. It gives a clear description of the functions of a JP and the different Acts that come into play according to the different cases.

Mr J.A. McGinty: I thought I should have referred the question from the member for Nedlands to the member for Alfred Cove.

Ms S.E. WALKER: The Attorney General is not off the hook yet. I thank the member for Alfred Cove for that information; that is great. However, surely there is a list of the proposed functions of a JP in the Bill? It is a jurisdictional matter.

Mr J.A. McGinty: It has not changed under this Bill.

**Clause put and passed.**

**Clause 5: JP's functions reduced at age 70 and 75 -**

Ms S.E. WALKER: This is an interesting clause. I suppose I could start by asking the Attorney General why this provision has been put in the legislation. This is something new, is it not? When I first came into this Chamber, we debated a lot of legislation on discrimination. The Attorney General has discriminated against the magistrates in this State with the Magistrates Court Bill.

Mr J.A. McGinty: That's right.

Ms S.E. WALKER: That is right; the Attorney General has discriminated against them, and he makes no apology for that. That is his favourite phrase, and I notice a few others on his team have picked it up. The Attorney General has discriminated against the magistrates by making their retirement age 65, as opposed to the retirement age of District Court and Supreme Court judges of 70. However, he has discriminated even further against judges and magistrates by saying that a justice of the peace will have his functions reduced at 70 and 75. Only their functions will be reduced; they do not have to retire. I wonder where, if anywhere, it states at the moment at what age a justice of the peace must retire, and why the Attorney General has brought this in.

Mr J.A. McGINTY: This clause provides for the cessation of a JP's authority to perform court duties and duties under the Prisons Act 1981 at the age of 70 years. It also prescribes that a JP who has reached the age of 75 years cannot perform other judicial functions under the Bail Act 1982, the Criminal Investigation (Identifying People) Act 2002, the Criminal Property Confiscation Act 2000 or the Misuse of Drugs Act 1981, or issue warrants for the purpose of the entry or search of a place, vessel or vehicle, the seizure of anything, or the arrest, apprehension or detention of a person. This derives from the Law Reform Commission's 1986 report on "Courts of Petty Sessions: Constitution, Powers and Procedure", and also the 1994 "Report on Justices of the Peace and Commissioners for Declarations in Western Australia". What is prescribed in this legislation has been operating policy since September 1999. Although we are writing it into the statute now, there is no change from what has been operational for the past five years.

Ms S.E. Walker: But why?

Mr J.A. McGINTY: It is most probably just an accommodation of the interests of justices of the peace who, after many years of service to the community, wish to continue serving the community, albeit in a limited role as they get older. This was implemented in 1999, and we are simply reflecting it now in the legislation.

Ms S.E. Walker: You referred to a Law Reform Commission report that is 20 years old.

Mr J.A. McGINTY: Yes.

Ms S.E. Walker: You are not prepared to allow magistrates to sit beyond the age of 65, but you are prepared to allow two JPs to do the job of a magistrate until they are 70. Can't you see the inconsistency?

Mr J.A. McGINTY: With both magistrates and justices of the peace, there has been no change to the situation that has been in place for a number of years, and this legislation does not propose to change that.

Ms S.E. Walker: Under the Justices Act - I may have missed it - is there a retirement age?

Mr J.A. McGINTY: No, there is not, for the simple reason that it has been done administratively within the department, no doubt by means of some sort of consultation with the Royal Association of Justices and the Department of Justice, but not in legislation.

Ms S.E. Walker: How do you envisage exercising your power in clause 5(3)? Would you get them to undergo a medical check-up? How does that operate?

Mr J.A. McGINTY: The current practice is that a justice of the peace will write to the minister, sometimes with the support of the local magistrate or the local police, who will say, "There is a shortage of justices of the peace in this area, and this person is still doing a good job. We would like him to continue for another year or so until a replacement can be found." I give written authority to enable that person to continue. Generally speaking, it is only in country areas where there is a shortage.

Ms S.E. Walker: So they automatically stop unless you say they can continue.

Mr J.A. McGINTY: Yes, that is right.

**Clause put and passed.**

**Clause 6 put and passed.**

**Clause 7: Acts done outside WA or limit of jurisdiction, validity of -**

Ms S.E. WALKER: I have been looking at the Justices Act. I read it out, because I think I queried it. Section 35 refers to the extent of the jurisdiction. There are functions under clause 4 but the jurisdiction wording comes under clause 7. Does this clause reflect section 35 in part III of the Justices Act?

Mr J.A. McGINTY: I think it is section 14 of the Justices Act.

Ms S.E. WALKER: To assist my understanding, can the Attorney General tell me what this clause is about and whether it is any different from what is done now?

Mr J.A. McGINTY: I am told that it is just a wording change. It is not intended to reflect any change in policy.

Ms S.E. WALKER: How does it operate? Can the Attorney General tell me how it works with a JP? Can a JP go interstate and sign a document?

Mr J.A. McGINTY: I believe the member's observation is correct. If a justice of the peace from Western Australia were to witness a document outside of the jurisdiction, for instance, it must be a document that is intended to be given effect to in Western Australia - not any other document. Therefore, it becomes relevant only if the document comes back within the jurisdiction.

Ms S.E. Walker: So a person cannot practise as a JP outside WA.

Mr J.A. McGINTY: No.

Ms S.E. Walker: Subclause (2) states -

If a JP's commission limits where or the circumstances in which the JP may perform the functions of a JP -

Is a JP's commission limited at the moment? I thought something said that it was for the whole of Western Australia.

Mr J.A. McGINTY: I am told that historically some people - although there are not any currently, but there might still be some people who were appointed historically - were appointed justices of the peace for a particular magisterial district. There have not been any appointed during my time that are so limited, as far as I am aware. However, it has happened historically. I guess this is a provision to allow that to continue.

Ms S.E. Walker: Did you not think of just extending it and making it for all of Western Australia?

Mr J.A. McGINTY: I am told - again, I do not have personal knowledge of these matters, given that they predate my time as Attorney General - that its practical application would, for instance, be the appointment of an Aboriginal elder for a particular area or community in an attempt to limit that person to that sort of function, which I would have thought is quite appropriate.

Ms S.E. Walker: Are many Aboriginal elders or Aboriginal people JPs?

Mr J.A. McGINTY: I do not know is the simple answer. I know we have appointed some, but I am not sure how many.

Ms S.E. Walker: Is this clause any different from the current provision in the Justices Act?

Mr J.A. McGINTY: I am told that it is not.

**Clause put and passed.**

**Clause 8: Qualifications for appointment -**

Ms S.E. WALKER: I find this clause interesting, because I have never before had to look at those provisions. When I was doing my research, this seemed strange to me. A magistrate must have certain legal training; that is, five years

study at the University of Western Australia, then a year of articles, then a year of restricted practice and then five years of experience. A person must notch up 12 years to be eligible to become a magistrate, yet people who have no formal qualifications - I am not casting any aspersions on these people - can replace someone with that sort of training.

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: That was why I was concerned about JPs. I endorse what other members have said about JPs; they do a great job. However, they do not have any regular or mandatory ongoing training.

Mr J.A. McGinty: But this legislation will require them to do the initial training course.

Ms S.E. WALKER: Yes, but they could do that training course and then not know anything about, for instance, the laws that the Attorney General introduced that relate to the Sentencing Act. They are quite complex. If a JP were handling a summary indictable matter, he would have to know all about that new legislation. There is nothing that states that JPs must be cognisant of new legislation. I find that to be extraordinary. JPs act in a voluntary capacity. I cast no aspersions on JPs. I make an intellectual observation that on the one hand a person must have 12 years of study and experience behind him before he can get a guernsey as a magistrate, and on the other hand two people do not need any qualifications and are not paid to do the same job. They do not do the exact same job, but they do very important work that relates to the liberty of people. The liberty of people is a very serious matter. JPs are not required to do any ongoing training. For instance, politicians have an idea about and understanding of new legislation, but the people in the community who are called upon to go to prisons or Courts of Petty Sessions to deal with people's liberty may not. That is unfair on the community. Has anyone, in looking at this package, done any research into whether this could act unfairly on people in the community when they are sentenced? For instance, does the Attorney General have any statistics on how many people have been sentenced by justices of the peace in Western Australia, and for what and how long?

Mr J.A. McGINTY: I do not have those statistics with me. There is no change in terms of the eligibility criteria proposed in this Bill. One might make the same comments about members of Parliament. We could ask what is the requirement to be a member of Parliament. The only requirement is that a person be elected. That does not mean that that person has any knowledge, ability, skill or capacity. A person could be the village idiot and be a member of Parliament. Perhaps some are.

Ms S.E. Walker: Some are. I am looking to my left. This is not the same as being a member of Parliament. This is about people's liberty. The removal of liberty is very serious. I do not think you can equate the two. We make laws.

Mr J.A. McGINTY: We are not proposing any change.

Ms S.E. Walker: I know. I asked whether any research had been done by anyone.

Mr J.A. McGINTY: Not that I am aware of. The system has historically operated in this way and we are not proposing any change to that.

Ms S.E. Walker: But you do change situations and try to get rid of historic things.

Mr J.A. McGINTY: Yes.

Ms S.E. Walker: We want to be modern, don't we?

Mr J.A. McGINTY: Indeed.

Ms S.E. WALKER: Why has the Attorney General brought in the new provision on qualifications? Under the Justices Act, there is no provision on qualifications. Why must someone be an Australian citizen and on the electoral roll to be a JP?

Mr J.A. McGINTY: It is a reasonable requirement that someone be an Australian citizen to hold this position. There would not be much argument about that. The second requirement is for a person to be enrolled as an elector. Essentially, that is a residential requirement. That is how to determine whether someone is a resident of the State. I am happy with that, because if someone is not civic-minded enough to put himself on the electoral roll, he is probably not civic-minded enough to be a justice of the peace. A person can go on the electoral roll for a district only if he is a current resident of that district. I am told that the 1986 Law Reform Commission report -

Ms S.E. Walker: That is now 20 years old.

Mr J.A. McGINTY: It is still valid. The report on Courts of Petty Sessions states -

The Justices Act does not specify any qualifications for appointment as a justice. In response to a question in Parliament in 1983, the Minister representing the Attorney General in the Legislative Assembly said that the criteria for appointment were as follows:

“(1) Australian citizenship, and a minimum of 12 months' residence in Western Australia.

The reference for that has been cut off the bottom of the page.

Ms S.E. Walker: It could have been you. No, you were not here then.

Mr J.A. McGINTY: No. It then refers to a person's willingness to fulfil the duties of the position, his good character and reputation, and a perceived need for additional justices in the area. The report also outlines that the following persons were excluded from appointment -

- (a) those not resident in the State;
- (b) those with a record of criminal or serious traffic convictions;
- (c) those whose appointment would result in a conflict of interests; and
- (d) those over 65 or under 25 years of age.

Ms K. HODSON-THOMAS: I refer to the qualifications for appointment as a JP. I was a referee for someone who applied to become a JP. I had to complete a form and talk about the character of that person. Is that still undertaken? Is a referee required to put in writing why he or she is prepared to be a referee for a candidate?

Mr J.A. McGINTY: The same requirements are still in place. However, they cut in only once the applicant for appointment as a justice of the peace gets beyond the point of it being determined whether the locality is already well served by JPs. If it is likely that a person will be appointed, written advice is sought on the character and capacity of that person and things of that nature.

Ms S.E. WALKER: I refer to the research undertaken when an application for appointment is received. It is possible that someone could move into a district and for 10 years be very civic-minded and establish a reputation in that community. However, that person may have a medical condition or there may be some other factor that would make him unsuitable for appointment as a JP. Is no research into or checking of medical histories undertaken?

Mr J.A. McGINTY: No. Nothing like that is done. The nearest parallel that I can think of would be Jean Valjean. It is a matter of checking the criminal record of a person, not his medical record.

Ms S.E. WALKER: Who is Jean Valjean? It sounds like Gerard Depardieu. Jean Valjean is from Les Misérables! That is my favourite. That is where I have heard that term. He is my ideal man, in terms of character.

**Clause put and passed.**

**Clause 9: Minister may recommend appointment to Governor -**

Ms S.E. WALKER: Is there any difference between this clause and the way appointments are currently made?

Mr J.A. McGINTY: No is the simple answer.

Ms S.E. WALKER: There may be no difference, but is the wording different? The clause is quite extensive.

Debate interrupted, pursuant to standing orders.

[Continued on page 1567.]

## **BALLAJURA COMMUNITY COLLEGE**

*Statement by Member for Ballajura*

**MR J.B. D'ORAZIO** (Ballajura) [12.51 pm]: A school and its community having high expectations for student achievement and behaviour can result in some exciting outcomes, as is witnessed in one of the schools in my electorate. Ballajura Community College comprises a student population of 1 950 students. The student population is drawn from 48 different nationalities and encompasses 13 religious backgrounds. Staff and the school's leadership have negotiated with the community agreed desired outcomes for academic excellence and rigour and the type of safe and inclusive learning environment they want for students. On a recent visit to the college, I was able to see first-hand the effect of some of these outcomes, such as every student dressed in school uniform. All students in the classrooms that I visited were seen to be engaging directly in their learning and the level of self-discipline and class participation was extraordinary. The discipline and behaviour of the students was exceptional. It was obvious that the students take great pride in themselves.

When walking through the school grounds, it was amazing to see the cleanliness and presentation of the school premises. There was no graffiti and the facilities were in magnificent condition. The student-negotiated outcomes have resulted in a significant reduction in damage and graffiti, which was previously caused by inappropriate in-school behaviour. The savings in school funds previously used to rectify the damage and remove graffiti has been significant. In agreement with the students, the funds are now used to enhance the students' learning environment. More than \$50 000 was used in this manner in 2003. In addition, school data indicates a significant reduction of inappropriate behaviour in class and in the school grounds.

Ballajura Community College staff believe very strongly that values are "caught, not taught". Through leadership and staff modelling values in the classrooms, and across and within the college community, they are setting desired examples of behaviour, attitudes to learning and a commitment to excellence and learning.