WAREHOUSEMEN'S LIENS AMENDMENT BILL 2013

Second Reading

Resumed from 8 May.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [3.58 pm]: Madam Deputy Speaker, thank you for the opportunity to speak on this important bill. It may come as some surprise to you to see me on my feet at the moment, and no-one is more surprised than I am, for that matter, because this legislation is important. In fact, it is so important that I think I will leave it to the shadow Attorney General to speak on it!

MR J.R. QUIGLEY (Butler) [3.59 pm]: I do not know whether I can get an extension on my 60 minutes; I hope I do, because there is quite a bit of ground to cover here! Why are members being so lighthearted about such a weighty piece of legislation? Although this bill has only six clauses that occupy less than one page of printing, there are a few comments that need to be made about the Warehouseman's Liens Amendment Bill 2013.

Dr K.D. Hames: Why?

Mr J.R. QUIGLEY: The first is a question of priorities. Let us look at what this bill does. From the outset, I say that the opposition supports this legislation. This amending bill will delete section 13 of the Warehousemen's Liens Act, which is the requirement for the Governor, acting on the advice of course of the Executive Council, to make such rules as required from time to time under the warehousemen's liens legislation to do with the making of rules, prescribing of forms and the setting of fees in relation to applications made to the Magistrates Court for the sale of goods. For those in the chamber who are not familiar with the term "warehousemen's lien", it is like a mortgage, and the person who is storing goods—this is known in legal language as a bailment; so the bailee, the warehouseman—has a right to claim a lien over those goods to prevent their removal prior to the payment of their fee for hire or reward for storage. If that is not met, the bailee—that is, the warehouseman—can go to the Magistrates Court and seek the appropriate orders that will allow them to sell chattels to recover fees.

Dr K.D. Hames: That is a good explanation. I understand it now.

Mr J.R. QUIGLEY: Thank you, Deputy Premier.

Prior to the passage of this legislation, at the moment the court is required when making applications for the sale of bailed goods to have its rules, forms and fees proclaimed by the Governor of Western Australia, who obviously acts on the advice of cabinet and the Executive Council. Why should it not be that the rules be governed by the court to which the application is made? The short answer is none. That is why the opposition supports the measure. It will streamline the process.

However, I would like to make some comments about the court's power to do that. The court—I am not just talking about the Magistrates Court's civil jurisdiction, but all courts in Western Australia—is under increasing pressure by the government to pay for the ordinary running of the court that one might expect to be paid for by consolidated revenue, and to recover this from users of the court. The most glaring and perhaps most disturbing example of this exists in the Family Court of Western Australia. The Family Court of Western Australia had conferred upon it by legislation extra jurisdiction to deal with applications in relation to de facto property, because prior to the passage of legislation in this Parliament, when people living in a de facto union—that is, not a de jure marriage but a de facto marriage—separated and were the joint holders of property, we all know that they, up until about eight years ago, had to sort out their property dispute in the Supreme Court of Western Australia and argue on contribution, trust and all other matters until legislation conferred upon the Family Court of Western Australia the power, the jurisdiction, to decide upon de facto property disputes. When that went to the court—there is a point to all of this—the Western Australian government gave the Family Court funding to take on this extra workload, which was obviously required because of the number of de facto unions in our jurisdiction and the rate of failure of de facto unions. Although I do not have the figures in front of me, they would be no less than I would expect from marriages, which means that up to four in 10 would fail and require property rights adjudicated upon. Therefore, the Family Court was given funding. The Family Court has been told this year that that funding which has been in place for two years is now no longer going to be there, and that the Family Court will just have to make do. It was given some sort of compensation—remember, it is the Family Court of Western Australia—by making its temporary magistrate a permanent magistrate, but as for the funding of that part of the jurisdiction, it was told it could recover that through court fees.

The Family Court has the power to set its own fee regime. This is disturbing, and it is something that the Chief Justice of Western Australia is on about, because court fees, of course, and the shifting of the financial burden for funding the courts from the state of Western Australia to individual court users raises a question of access to justice. In the Family Court where litigation has arisen from the dissolution of de facto unions, the parties will be met with considerable court fees because the court has to recoup from its fees its running costs.

This is really new and dangerous territory for Western Australia. The same occurs in the Supreme Court, where the pressure is on the Supreme Court to keep raising its fees to defray expenses. That is rightly being resisted by the Chief Justice, at least in argument and in advocacy, and this raises the question of access to the courts in Western Australia.

I take the opportunity to raise these concerns in debate on this bill, not because I have those particular concerns for applications brought under the Warehousemen's Lien Act, because a warehouseman—it is a commercial operation—in any event has a lien over chattels and should be able to defray whatever expenses he or she is confronted with when making an application, but because access to justice and the reasonableness of fees being charged to the public who use our courts are very important principles. Our courts have always been regarded as the centrepiece of our civil society for the resolution of disputes, and it should not depend on a person's capacity to meet a filing fee whether they can initiate proceedings in any court. This is happening at a time when, for political reasons, the government has lots of money to lavish about. When I say "lots of money to lavish about", I mean lavish about on favoured areas of the courts. I refer specifically to the absolutely wasteful and nonsensical proposal that was thought up on the run during the election campaign to have Sunday and night courts as a concept for rapid justice. I draw attention to that, Madam Acting Speaker —

The ACTING SPEAKER (Mr N.W. Morton): Really!

Mr J.R. QUIGLEY: I am sorry, I mean no slight! I am being gender non-specific in my language. Perhaps one amendment I could move—it was proposed in our caucus but we did not waste too much time on it—is to change the title of the bill to "Warehouseperson's" liens legislation.

Dr K.D. Hames: Do you know that "man" comes from "manus" meaning hand for the chair? So the reference to chairman has nothing to do with male or female.

Mr J.R. QUIGLEY: I was referring to "warehousemen". I will not waste further time on that.

The point I am making is about night and Sunday courts. We heard in estimates that the government will spend $900 000 a year to run a Sunday morning court to admit people to bail, when under schedule 1 of the Bail Act an authorised police officer has the power to admit anyone to bail. Instead of having an inspector at the court properly schooled on the provisions of the Bail Act so that they can quickly make decisions, the government says, "No, we've got to spend $900 000 a year in putting a magistrate into that court for a couple of hours on a Sunday morning to hear bail applications." What would happen if no magistrate was there on Sunday? The person would front up to the Central Law Courts on Monday. What an inconvenience for some antisocial hoon who has had to cool his heels in the lockup!

Dr K.D. Hames: Is it possible to deal with the legislation?

Mr J.R. QUIGLEY: We will.

I am saying that there is $900 000 to spend on that, but my residual worry about this legislation is that there will be more pressure on the courts to increase fees to pay for the running of the court. That is my first comment. I will make a second comment on this legislation, because the Minister for Health deep into this Thursday afternoon asks us to deal with this legislation and get back to the point. The point is, Minister for Health, that there are many pressing legal issues that this government has been slack about dealing with and that just do not get dealt with. Those legal issues get announced and then get pushed off into talkfests, but this bill comes forward as the priority.

Proposed legislation for representative proceedings, otherwise known as class actions, was pushed off into a talkfest. People throughout Western Australia are suffering because they cannot bring class actions in their courts, unlike the citizens of Victoria, New South Wales and other jurisdictions who can bring class actions in their courts. We cannot do that in Western Australia. What would it take to be able to bring a class action? It would take a small bill that could be printed on this sheet of paper, this Warehousemen's Liens Amendment Bill. We could replicate the provisions for class actions that I think are in part IVA of the Federal Court of Australia Act 1976. The federal legislation for class actions is not dissimilar to the Victorian legislation. We could be debating legislation to replicate the commonwealth legislation instead of debating some rather piffling legislation about who sets the fees on an application by a warehouseman to sell the contents of a storage unit. Legislation for class actions would actually give relief to Western Australians; for example, all those people caught up in the Margaret River and Toodyay bushfires who cannot bring a class action. I realise that it is in the government's interests not to have those people bring a class action, as the government does not want to be sued. Mr Keelty found the former Department of Environment and Conservation at fault for the Margaret River bushfire, and the government offered the people affected $75 000 or $100 000 for the shortfall in the amount provided by their insurance policy. I have spoken to those people. They are going through the toughest time in the world to get compensation, because insurance companies are fighting them and they cannot bring a representative class action in Western Australia. I would much rather be debating a bill for that this afternoon, and I am sure the Chief Justice and the courts would breathe a sigh of relief if we found ourselves moving forward in that

direction. Each person involved in the Toodyay bushfire had to institute his or her own proceedings. This clogs up our courts.

When I make suggestions to the Attorney General of Western Australia for a sentencing council, for example, he says, "All that Labor wants is talkfests." What did the government do with the proposed legislation for representative or class actions? It delayed it by sending it off to an interminable inquiry at the Law Reform Commission, at a time when there was working legislation at the commonwealth level that has been the subject of so much litigation and appeals that it is settled legislation. We could have been debating that legislation this afternoon.

Alternatively, we could have been debating the piece of legislation we proposed the other day to deal with limiting the time in which mentally impaired people are held in prison to no longer than the time an accused would have been sentenced had he or she been compos mentis and able to plead guilty to the offence. We proposed that legislation so that we would not again have a Marlon Noble case or any other such case of an infirm person unfit to plead being held in prison for years and years on a detention order. It rankles all Western Australians when there is such patent injustice. The government could not deal with that legislation. It said, "Oh, we'll conduct an inquiry into this." That minimalist legislation would have relieved a couple of dozen people—only about 30 are being held in Western Australia—of the weight of the yoke of injustice and would have relieved a lot of members of the judiciary and caring people in our community who see these injustices occurring.

That legislation could have been dealt with. However, the government's pressing priority is to get back to this bill, as the Minister for Health said in the chamber, because its priority is to deal with this bill. This is the important bill for this chamber: a bill for the magistrate who sets the fee that someone pays and the rules that they must comply with in the hearing of an application. I realise that it is important for the magistrate hearing the application on the day to set the fee, the procedure and the rules. However, the person who sets these procedures is just not a matter of any moment to Western Australians. It will not even get half a by-line in any newspaper or media. However, parliamentary time and the pressing business before this community to deal with the effective running of our courts, to deal with people's access to justice and to deal with justice itself does not seem to have any priority at all for this government. I am really looking forward to the debate—I hope the Premier will be in the chamber for it—on the Criminal Law Amendment (Home Burglary and Other Offences) Bill. It was second read by the Minister for Police weeks and weeks ago in a disgraceful, misleading speech in which she slandered the judiciary on an entirely false basis. Now the government will not bring on the bill for debate so that I can respond to it. The government will not bring on the bill so that I can expose her false assertions about judges. We now know the particular judges she was slandering because we pressed her for the names of the cases. We cannot wait to debate those particular cases and those particular judges and demonstrate to this Parliament and to the community the falsehoods that have been perpetrated upon this community in chasing a mandate for mandatory sentencing. That is a mandate that we will not seek to frustrate but on the way through, we will expose false assertions in this Parliament for what they are.

The ACTING SPEAKER (Mr N.W. Morton): Member, whilst I appreciate your interest in the home invasion legislation, that has absolutely nothing to do with the bill that we are discussing today, so can you bring your comments back to the debate around the Warehousemen's Liens Amendment Bill?

Mr J.R. QUIGLEY: The point I was making is that it is a question of misplaced priorities. Once again, this bill has taken precedence over other pressing matters that this community wants to have dealt with and needs to have dealt with. Having said that, we support this bill in its entirety.

MR P. PAPALIA (Warnbro) [4.21 pm]: I will briefly address the Warehousemen's Liens Amendment Bill 2013, focusing on the final point that the member for Butler, our lead speaker, made with respect to the urgency of it. This bill has been brought on today, taking precedence over other bills and other matters. The fact that this government is seeking to address this matter as a priority over other bills that are not being introduced in this place is worthy of recognition and acknowledgement. If we look at the past two weeks, I can think of two issues that were raised by the opposition that are of far more import and urgency than this bill. One relates to recognising Indigenous Western Australians in the Western Australian constitution. That is undeniably important, and I know the minister supports that, but we have to question why that was not made a priority over this bill. The other issue is limiting the incarceration of mentally impaired defenders to the maximum sentence that they might have achieved were they found guilty had they been able to plead. Those two issues alone deserve far higher priority than this bill. We have to question why they were not introduced. We can think of some others very easily. Cyberbullying was legislated at the federal level but not supported through Western Australian legislation. As a consequence, Western Australian police are reluctant to enforce the legislation. They find it difficult and challenging, so it does not get enforced.

That brings me to the issue that a government member in the other place, Hon Phil Edman MLC, introduced into the debate this week as a matter of urgency and questioned why it had not been dealt with; that is, synthetic

cannabinoids. We raised the matter two years ago. We were subsequently told that it was in hand and we were accused of being irresponsible. If it is illegal at the federal level, which the government has finally discovered after three days of debate—it has determined that it is illegal right around the country, thanks to a federal regulation—why have we not introduced legislation in Western Australia to enable Western Australian police to more easily enforce the law? If that is not a problem, why is it not enforced already?

I would have thought that all those things would have been priorities for the government, apart from the issues raised by the member for Butler, which were legitimate observations. I will throw in another one. Why do we not have a proper response to domestic violence in Western Australia? For instance, why has legislation not been passed to ensure that dangerous domestic violence perpetrators are not tracked by GPS tracking devices when we can do it when dangerous sex offenders come out of prison? The government made that a priority but it cannot help domestic violence victims by introducing similar legislation to ensure that domestic violence perpetrators are tracked.

Dr A.D. Buti: It was an election commitment, member. Another one was broken.

Mr P. PAPALIA: Yes, another broken commitment. Those are all serious issues that should have been given far more significant and higher priority than this bit of legislation, which is ridiculous in its simplicity and its lack of import to most Australians but which we support going through Parliament.

It does not hurt to point out to the minister, the Deputy Premier, and to this place that the Barnett government has some distorted priorities. It is far more focused on cheap political stunts and trying to offend and undermine the work of some standing committees in the Western Australian Parliament, some of which was presented today in Parliament. We saw the government's focus: its entire question time was devoted to a cheap political stunt as opposed to addressing some real issues. I have just mentioned a whole bunch of alternative real issues that could have been addressed prior to bringing this bill into this place. I support the bill and I support entirely the comment of the member for Butler as our lead speaker. It was appropriate and it needed to be said. It is ridiculous that we are dealing with this bill instead of those serious matters that we should be dealing with in this place.

DR K.D. HAMES (Dawesville — Deputy Premier) [4.26 pm] — in reply: While the members who have spoken have dealt with very little of the Warehousemen's Liens Amendment Bill 2013—it is a very simple bill and I understand why they have taken this opportunity to make some points about other issues—it needs to be said that machinery of government matters need to be addressed and there is never a great time for any government to bring in simple changes to make things easier. I suspect that this bill was brought on at the request of the Governor, given that it will take some of the load off him and lessen his work. He would have asked that this be brought on. We do not say, "Well, sorry, Governor, but we have more important things to deal with than your time and your workload."

Mr P. Papalia: I reckon he might have supported Indigenous recognition in the Constitution.

Dr K.D. HAMES: He might have done that, but that is not to say that we will not do that.

I understand that the member is making a point but we are dealing with fairly simple legislation, as has been said. I thank members for their support of the bill and I commend it to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Dr K.D. Hames (Deputy Premier)**, and passed