WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1998

LEGISLATIVE ASSEMBLY

Wednesday, 24 June 1998

Legislative Assembly

Wednesday, 24 June 1998

THE SPEAKER (Mr Strickland) took the Chair at 11.00 am, and read prayers.

CAR REGISTRATION FEES INCREASES

Petition

Dr Gallop (Leader of the Opposition) presented the following petition bearing the signatures of 626 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned citizens are totally opposed to the State Government's decision to impose a new tax on WA motorists through massive increases in car registrations fees.
>
> Western Australian motorists already pay directly to the costs of roads through State and Federal fuel levies.
>
> The revenue received by the State Government from the fuel levy and from the sale of the gas pipeline provides government with resources to develop our transport infrastructure. This new tax is unfair and has a disproportionate impact on middle and lower income earners.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 244.]

LANGFORD REDEVELOPMENT PROJECT

Petition

Ms McHale presented the following petition bearing the signatures of 90 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned wish to express our utmost disappointment and concern at the delay in the commencement of the Langford Redevelopment Project.
>
> We call upon the Government to take heed of the community's needs and concerns and take immediate steps to ensure that no further delays are experienced and that work on this project is undertaken forthwith.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 245.]

GRAND BOULEVARD AND BOAS AVENUE, JOONDALUP, TRAFFIC SIGNALS

Petition

Mr Baker presented the following petition bearing the signatures of 65 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned, hereby request that traffic control signals be installed as a matter of urgency at the intersection of *Grand Boulevard and Boas Avenue* in Joondalup. This location is extremely hazardous due to the dual lane configuration of Grand Boulevard and the increased use of the intersection by motorists and pedestrians accessing the Central Business District, nearby Police Station, Law Courts, Lakeside Joondalup Shopping City, banks, retail outlets, professional suites and Government agencies.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 246.]

SWANBOURNE PRIMARY SCHOOL RELOCATION

Petition

Dr Constable presented the following petition bearing the signatures of 666 persons -

To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned residents of Western Australia oppose the proposed relocation of Swanbourne Primary School and consider the community and its children would be better served by upgrading the existing school and site in accordance with the existing upgrade plans (for which funds remain available). This has been successfully done at Hollywood Primary School.

- We protest that prior to proper community consultation the Minister indicated that the school should probably be moved.
- We protest that the Minister made his decision to relocate the school without a proper inclusive community consultation process taking place.
- We protest that this is a denial of natural justice and breaches a fundamental principle of the Education Department's L.A.E.P.
- We protest that the Minister's decision is inconsistent with the Community Planning Codes initiated by the Ministry of Planning which aim to promote and enhance the idea of "community" in all developments.
- We request that an immediate moratorium be placed on any proposed sale of the existing site and relocation of the school until a proper inclusive community consultation process has taken place.
- A proper inclusive community consultation process requires all relevant data, e.g. educational, demographic and financial, as well as the results of traffic, environmental, health, social, planning, Aboriginal and other heritage impact studies to be made available to ALL those of the wider community upon whom relocation could have significant impact.

Your petitioners therefore respectfully request the Legislative Assembly will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 247.]

IMMORAL ADVERTISING

Petition

Mr Cunningham presented the following petition bearing the signatures of 42 persons -

To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, would like to express our displeasure at the proliferation of immoral advertisements on television and other media. We do not want to see prostitutes advertising their wares at any hour of the night. This is totally inappropriate and denigrates both women and men.

It's a sad statement when the media continues to encourage both violent and lewd behaviour even though they know that this is reflecting back in the behaviour of society as has been so violently and tragically demonstrated in recent times.

We wish the media to take a stand and reflect the majority view of society instead of putting monetary concerns ahead of moral responsibility.

Where does it end - are we going to see children advertising their 'wares' to pedophiles through the media next?

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

[See petition No 248.]

POLICE PATROLS

Petition

Mr Pendal presented the following petition bearing the signatures of 127 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned citizens of Western Australia request that the State Government increase the numbers of police patrols in the suburbs as a means of decreasing the incidence of home and commercial burglaries, and that the Government insist on a rearrangement of police resources to ensure that the current clearance rate for burglaries in South Perth is substantially improved.
>
> Your petitioners therefore humbly pray that you will give this matter your earnest consideration and your Petitioners in duty bound will ever pray.

[See petition No 249.]

HARMFUL SUBSTANCES

Petition

Mr McGowan presented the following petition bearing the signatures of 520 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, wish to express our extreme concern at the availability of substances such as glue, paint and petrol to people under the age of 18 years.
>
> These substances are potentially extremely harmful and we believe that their sale to minors should be made unlawful.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 250.]

AQUACULTURE DEVELOPMENT IN WESTERN AUSTRALIA

Statement by Minister for Primary Industry

MR HOUSE (Stirling - Minister for Primary Industry) [11.13 am]: I advise the Parliament of a new initiative in aquaculture development in this State. Fisheries WA has recently launched a proposal to attract part of the $200m southern bluefin tuna industry to Esperance. The proposal is currently being assessed in accordance with ministerial policy guidelines which will include referral to relevant decision making authorities and a 60 day period for public comment. Consideration is being given to the establishment of an Esperance based community advisory group to enable matters of importance to be worked through with the local community. Lessons will also be learnt from the successful existing industry at Port Lincoln. Western Australia is superbly placed to develop a range of world class and high value aquaculture industries due to the quality of our marine environment and waterways.

As worldwide demand for seafood continues to grow and production in wild-capture fisheries reaches its potential, aquaculture will be called on to fill the shortfall. This Government has moved decisively to provide the framework to assist industry to fulfil this potential.

In addition to the $150m pearling industry, aquaculture production in Western Australia currently focuses on the farming of mussels, marron and yabbies and the production of algae for beta-carotene for the food industry. Work is under way to examine the potential for other high value species such as barramundi, jewfish, abalone, a new species of pearl oysters and, as mentioned earlier, the farming of southern bluefin tuna.

The coalition Government has made a major financial commitment in excess of $12.5m for aquaculture development since 1994. Fisheries WA is implementing the Government's aquaculture initiatives through its aquaculture program and five regionally based aquaculture development officers. The Aquaculture Development Council also provides independent advice to me on strategic development opportunities for the growing industry. Support to new aquaculture industries has also been boosted by development of the Broome Tropical Aquaculture Park and the Great Southern Aquaculture Park in Albany at a cost of almost $2m. Other major projects have included a $200 000 refurbishment of the Pemberton trout hatchery; preparation of comprehensive aquaculture development strategies

for the Kimberley, Gascoyne and Albany harbours; assessment of opportunities for inland aquaculture around the State; and development of new guidelines to assess aquaculture proposals.

We have also continued support for the aquaculture development fund for research and development projects. To date 40 projects worth more than $400 000 have been funded.

The future for aquaculture in Western Australia is bright and this Government is committed to its sustainable development.

WESTERN AUSTRALIAN PRISON OFFICERS

Statement by Parliamentary Secretary

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [11.16 am]: The functions, duties and responsibilities of prison officers in Western Australian prisons are not widely known to the general public. Prison officers operate in an environment which is alien to most people and the officers rarely get the recognition they deserve for the important duties they carry out on behalf of the community. It is important that we recognise the responsibility placed on the officers who, in order to maintain the safe and secure custody of prisoners, work in a demanding and complex environment that by its very nature can subject them to risk from prisoners in their care.

Regardless of the offence for which a person is imprisoned, be it murder, theft or sexual assault, the treatment and level of care he or she receives in prison becomes a public responsibility and it is important that we recognise the skills and work carried out by prison officers who have the task of dealing with prisoners on a daily basis.

Vulnerable and disturbed prisoners are a part of virtually every prison in the western world and the work of prison staff in providing assistance and support to these individuals is often underestimated. Prison officers work in an environment which is often stressful and it is a credit to their aptitude, training and professionalism that they are able to interact with these prisoners in a positive way.

It is however not unusual for prison officers to be faced with actual or potential violence from prisoners and subsequently find themselves subject to allegations of misconduct from a prisoner or prisoners. For reasons of justice and accountability, it is important that any such allegations are fully and properly investigated. Some allegations may be correct and may be sustained but it is wrong for prison officers either as a group or individually to be prejudged purely on the basis of an allegation which in the end may have no substance. It is unfortunate that in some sections of our community there seems to be a general willingness to believe that officers are guilty just because the allegation has been made.

There is also unfortunately little appreciation of the level or depth of commitment by the men and women who make up the Western Australian prison service, nor of their proven capacity, often at some risk to themselves, to perform their duty of care to those prisoners who are most vulnerable or who put themselves at risk of self- harm.

We need to be aware that these are the same officers who time and time again are faced with actual or threatened violence against themselves or their family, verbal abuse, racial slurs or other forms of intimidation. Regardless of the provocation, they must maintain a level of restraint which is reflective of the high degree of professional conduct we have come to expect from prison officers in this State.

We must remember that the people they deal with are there because the courts have seen no alternative but to gaol them. This in many cases is seen as essential for the protection of society. The officers are therefore dealing with a part of society with a greater than usual number of violent people who have little to lose.

On numerous occasions, through the intervention of prison officers, not only have the lives of prisoners been saved but also prisoner self-harm and injury has been minimised if not totally prevented. We would do well to reflect on how we would react to some of the difficult situations prison officers face when dealing with agitated or distressed prisoners, prisoners threatening acts of violence against another prisoner or officer, and other various forms of intimidation.

Prison officers deserve recognition for the work they do and should be commended for the service they continue to provide to our community.

BILLS (5) - INTRODUCTION AND FIRST READING

1. Appropriation (Consolidated Fund) Bill (No 3).

2. Appropriation (Consolidated Fund) Bill (No 4).

Bills introduced, on motions by Mr Court (Treasurer), and read a first time.

3. Child Welfare Amendment Bill.

   Bill introduced, on motion by Mrs Parker (Minister for Family and Children's Services), and read a first time.

4. Coroners Act Amendment (Deaths in Custody) Bill.

   Bill introduced, on motion by Mr Riebeling, and read a first time.

5. Workplace Agreements (Provision of Choice) Amendment Bill.

   Bill introduced, on motion by Mr Kobelke, and read a first time.

WESTERN AUSTRALIAN GREYHOUND RACING ASSOCIATION AMENDMENT BILL

Second Reading

Resumed from 28 April.

MS WARNOCK (Perth) [11.23 am]: The Opposition supports this Bill. The official history of greyhound racing in this State is shorter than the history of both thoroughbred racing and trotting. Thoroughbred racing started early after the European settlement of this colony; greyhound racing started a great deal later than that.

In 1972, the Greyhound Racing Control Bill was introduced in this place to legalise the sport of greyhound racing, which at that time was legal in five other States and was fairly popular, but had been outlawed in this State in 1927 when the Racing Restriction Act came into operation. A speech made in this House in 1972 states -

> The Racing Restriction Act as it now stands makes it unlawful for the use of any mechanical device or contrivance for the promotion of or in connection with racing by or between animals other than horses, at or in any place to which the public have access on payment or otherwise.
>
> The Bill under discussion contains a proviso that exempts greyhound racing from the provisions of the 1927 Act. This legislation is divided into five parts and is purely for the purpose of establishing the sport.

A decision was made in 1972 to reintroduce greyhound racing, or certainly to make greyhound racing official in Western Australia, under fairly strict regulations. In establishing the sport in 1972, it was noted that in New South Wales, where it was already legal, in the previous year $74 900 000 had been invested on greyhounds through the Totalisator Agency Board, which comprised 32.7 per cent of all TAB investments in that year. To give members an idea of how greyhound racing in this State has progressed since that time, in Western Australia last year, $93.4m was invested in greyhound racing, which comprised 13.77 per cent of all TAB investments. The total TAB investments last year were $678.5m. Western Australia was the last State to introduce this sport and thus had the opportunity of observing the way it had been run in other States. That may account for the fact that it appears to be a very successfully run sport in Western Australia.

The Greyhound Racing Association commenced with seven members appointed by the Governor. Its function was basically to control and regulate greyhound racing. The 1972 Bill gave power to the board, with the approval of the Minister, to make rules for the control and conduct of greyhound racing. One of those rules was the prohibition of betting on greyhound trials. When the Greyhound Racing Control Bill was introduced in 1972, the Prevention of Cruelty to Animals Act and the Dog Act were amended at the same time, the latter Act to require that a greyhound wear a muzzle and be controlled when in public.

The Western Australian Greyhound Racing Association Amendment Bill is a fairly simple Bill and is designed to tighten up some controls and overcome some technical difficulties associated with the regulation and control of the greyhound racing sport in Western Australia. The principal elements of these changes are to remove the requirement to obtain ministerial consent to changes to the rules of racing, including the adoption of national rules of racing; to broaden the framework for the making of these rules and increase the range and scope of penalties that may be applied; and to more accurately reflect its role by renaming the Western Australian Greyhound Racing Association the Western Australian Greyhound Racing Authority.

Basically that sums up the Bill and explains why the Opposition is happy to support this. It will not be long in outlining its reasons for the support of this Bill.

I will give the House a current picture of the industry in Western Australia after its introduction in 1972. The first issue of the WA greyhound association's members' newsletter in April discusses the $100m per annum which greyhound racing generates in TAB investment, which provides $5m for the Government and contributes 14 per cent of the TAB's expenses. This newsletter, in the section titled "Heard Around the Traps", states -

> The WA TAB has released its figures for the first six months for the 1997-98 financial year.
>
> The results were pleasing with turnover exceeding $375m - equating to a 7.87 per cent increase in turnover over the same period last year.

It is well known among the racing fraternity that the TAB had a better year this year, which is good news for all codes of the racing industry.

Mr Bloffwitch: Hear, hear!

Ms WARNOCK: I hope that means that the member will provide us with a dissertation on greyhound racing a little later. Further, the article states -

> All three racing codes showed gains with Greyhounds leading the way with a 13.5 per cent increase.

Obviously the people who run greyhound racing are very keen to get the point across that it is a very successfully run code and generates a fair amount of income. It is interesting the way it does that. It realised before the other codes that it must turn the industry into a leisure and entertainment industry, because not only punters turn up at the track, but also punters' friends who have never had a bet in their lives and they should be given a reason for turning up. Therefore, a variety of entertainment is available at a greyhound racing track. A disco is held after the racing, there is a very extensive child care and child entertainment section, and there is an excellent restaurant. The Minister should go there sometime.

Mr Cowan: Not to visit a disco!

Ms WARNOCK: Perhaps both of us should give that a miss. Nonetheless, there are many other reasons for us to go there.

Mr Cowan: Stick to aerobics.

Ms WARNOCK: Yes. The Minister and I have had some experience of that, albeit a long time ago. The people running this industry realised that they must compete with everybody else involved in the leisure and entertainment industry. They worked extraordinarily hard to draw the crowds to the tracks and I think they did that very well, certainly at the Cannington track. It is very successful and well run, and Ken Norquay, the chief executive officer, and his staff should be congratulated.

By coincidence, this morning *The West Australian* featured on its front page, somewhat unusually, an article about greyhounds. Incidentally, the greyhound association feels it should get a great deal more coverage in the newspapers than it does. It included a photograph of a racing greyhound which is bringing a great deal of excitement to a Pinjarra nursing home. We have been told in the past about pets being taken to various wards in hospitals, including the cancer wards, and aged people's homes because animals have a healing power and people enjoy having animals around, particularly if they cannot have their own animals. According to the article in this morning's newspaper, the local greyhound people have realised that. A local trainer, Barry Thompson, has donated a greyhound to the home. The greyhound has not been retired; it is still racing, and its winning ways have brought in much needed prize money to the people in the home. It is not only a comfort to the residents, but also a fundraiser, which is wonderful. I congratulate the greyhound racing fraternity, in particular the Thompsons, for that nice gesture.

Mr Bloffwitch: I wonder whether you can find out the secret of how to win.

Ms WARNOCK: Perhaps the greyhound just receives good vibes from the people in the nursing home. I hope they do not feed it anything like hamburgers and other things that it should not eat. Obviously, this greyhound is encouraged by the enthusiasm of the elderly residents for its efforts on the track. It is a winning greyhound and it is doing well. Not only is it warming the hearts of the people there, but also they are receiving monetary support because it is winning. I congratulate the greyhound racing fraternity. It is full of very good-hearted people and this exemplifies that.

I recommend to those members in this House who have not had the opportunity, to get out to the track. The Opposition supports this Bill.

MR MARSHALL (Dawesville - Parliamentary Secretary) [11.36 am]: I support the Bill to amend the WA Greyhound Racing Association Act of 1981. The Western Australian Greyhound Racing Association is the authority responsible for the control, supervision, conduct and promotion of greyhound racing in Western Australia. As the previous speaker said, of the three codes, greyhound racing has been looked on in the past as the underdog code. However, it has a lot to teach the other codes of racing and trotting when it comes to promotion. Its race meetings attract over 150 000 people to its three venues; Cannington, Mandurah and Northam, Northam being a new club. It is showing considerable growth in TAB terms with this year's off course greyhounds investments being on target

to exceed $100m. That is an extraordinary figure to the people outside the industry, who do not understand the following that greyhound racing has. Of that $100m, $5m will go to the Government in the form of taxation. Greyhound racing provides an enormous amount of employment. We talked about the horse racing industry and what it means to the State in employment; that was referred to in the debate on the amendment to the development Bill last week. However, over 2 000 people are employed and participate in the greyhound industry.

Mandurah, which is on the outskirts of my electorate of Dawesville, is very important to the industry because its new track serves the electorate in many ways. It is very important to the city, and besides being a first class provincial racing venue, it serves the community by way of hospitality. It has a beautiful hospitality area which provides a facility for weddings, swap meets, clubs and functions. It is so good that it is the largest function centre in Mandurah. I was told when doing some research that the restaurants at Cannington and Mandurah attract sales of over $2m annually providing the two venues with profits of $400 000 to $500 000 respectively per annum. The facilities at the trots and the gallops are magnificent and equal to the best in the world; however, they are not open to the public to use for functions such as weddings and community promotions.

Greyhound racing in Western Australia has the highest market share for its code in the TAB turnover of any State. In the past five years it has increased its share of the betting investment in the racing codes from 11.5 per cent to 14 per cent. It provides excellent racing, particularly at Cannington and Mandurah, where the bulk of its stake money is allocated. Greyhound owners and trainers compete for more than $3m in prize money annually.

With regard to the prize money, I have previously owned gallopers and trotters. Three or four years ago I represented the Premier at the annual awards night for the Western Australian Greyhound Racing Association. Sitting at the head table that night, I spoke about the cost of involvement in racing and trotting. The president of the association asked why I did not have a greyhound. I was not keen on the idea, but I asked how much greyhounds cost. He estimated a figure of $300. That made me think, because I had been paying $20 000 for gallopers and trotters. It sounded like a piece of cake. I said I might be interested. Such is the promotion of the game, that the next day a local trainer contacted me and asked if I was interested in buying a dog. I asked whether it was $300 but he said that that would just buy a share, and that the cost of owning a dog was between $3 000 and $5 000. In an attempt to get out of the commitment, I finally said I would be interested in purchasing the dog if it could be named "Dawesville". I do not know whether members are aware of how difficult it is to name a racehorse. People must submit between eight and 10 names, and they are checked all over Australia. They get knocked back, and more names must be submitted. One of my first horses was called Top Serve, followed by Top Return - I do not know why that name came to mind - and Freo's Home, which won about three races. That discussion took place about six months before the election and Dawesville was a new electorate. If the dog could be called Dawesville, I could envisage the headline in the Press if it won - "Marshall wins with Dawesville".

Mr Brown: It might be Dawesville wins with Marshall!

Mr MARSHALL: It was a bit of both. The name came through and I found myself caught up in greyhound racing. It added to my education about sport in Western Australia. I had not been to greyhound racing before, and suddenly we were watching our dog racing. The dog started 15 times and each time it won prize money. It won three races and was placed in the others. After the first win, a photograph of Alan Martin, a constituent and the dog's trainer, and I, with the dog pulling us along, appeared on the front page of the local newspaper under the headline "Marshall wins with Dawesville". Four months later that headline was repeated after the election. Therefore, I have a very good feeling about greyhound racing. It was the tip that got me over the line in the election.

On a more serious note, I asked my trainer to comment on greyhound racing. He said greyhound racing is well controlled and is a popular, simple betting medium. It is fast and exciting, has a short time span, races are run at regular intervals, with a maximum of eight runners in each race, and on most programs there are 12 races. Punters wager confidently on greyhound racing where there is no human element. For the benefit of members who may not know, I indicate that two hours before their races dogs are placed in cages, and no-one is allowed to have contact with them before they are released in the race. They cannot be doped or manhandled during that time. Most races are over in 50 seconds or less, and at the end of the race the dogs are worn out and on the verge of collapse. They are put back in the cages and allowed to recover before the trainers can pick them up. It is a very scientific sport, and all these things were new to me. The trainer also said that punters invest consistently at all major venues, and the turnover at the Mandurah track is on a par with the totalisator investments at the city track in Cannington.

Members should also be aware that the greyhound racing industry in Western Australia is leading Australia and some other parts of the world. In September 1998 the Chairman of WAGRA, Ted Karasek, and the chief executive officer, Ken Norquay, will step into the roles of national chairman and secretary of the Australian Greyhound Racing Association respectively for a two year term. WAGRA is also one of only three Australian greyhound entities which are members of the World Greyhound Racing Federation. Western Australia's importance in the national scene is evidenced by WAGRA's appointment to host the 1998 national sprint and distance championships at Cannington and

the national conference in Perth in September. These events are the Interdominions of the greyhound world. People think of greyhound racing as the poor relation of the other racing codes, but that is not correct. It is an important part of the entertainment world, which caters for a different sector of the community

I once said in this place that horseracing is the sport of kings, and I often wondered how that came into being. Horseracing originated in England, and people had to be members of royalty before they could be on committees for racing. That is where the saying came from. Horseracing mostly involves big money and business people. These people pay amounts such as $300 000 for a horse. No-one pays that much for a greyhound. Big money is involved in the racing industry. By contrast, in the trotting industry there is more of a family environment. Typically, an owner will have a 20 hectare property, and he and his family will do the breeding, training and grooming. A night at the trots is a family night. The punters want to make money from the races, but many people are involved in the industry for the sheer joy and love of horses. The whole family is involved in preparing the horse for the race and there is much anxiety and expectancy. After the race there is often despondency. However, they are back again the following week.

At the greyhound races I see the guys I grew up and played football with in Palmyra and Fremantle. Some are battling and in and out of jobs, and many do not have a tertiary education. They like the thrill of gambling and the competitiveness, as do many Australians. These people can buy a share in a dog for only $300 and the dogs do not cost much to run. They can share in the excitement, have some ownership of the dog and have their own colours. Greyhound racing is very important to Western Australia and Australia as a code because it caters for another group of people who want to be involved in racing.

With all that in mind, the changes being considered by Parliament have been well documented and read. WAGRA wants to put itself on a footing similar to that of the other major controlling authorities in Australia, and the change of the word "Association" to "Authority" clearly recognises the parity with other like organisations. WAGRA also is conscious of the need to recognise similarities between the rules under which national greyhound racing is conducted. These changes to the Act will provide for WAGRA to accede to changes in rules adopted at the national level. Greyhound racing in Australia, no matter in which State, should have consistent conditions and rules thus making it proper and simpler for the owners and trainers who provide the product. The amendment Bill will make it easier for the authority to amend its rules in keeping with national policy. I support the Bill.

MR COWAN (Merredin - Deputy Premier) [11.50 am]: I thank the members for Perth and Dawesville for their contribution to this debate and for their support for the Bill.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and passed.

ACTS AMENDMENT (GAMING) BILL

Second Reading

Resumed from 21 May.

MS WARNOCK (Perth) [11.51 pm]: The Opposition supports this Bill because it is a proper response to a June 1996 report into two Acts, the Gaming Commission Act and the Casino Control Act. Rodney Chapman's report made a number of sensible recommendations and these are largely reflected in the Bill. The purpose of the original Gaming Commission Act was to ensure the integrity of the gaming industry in Western Australia and to control gambling, so that it should not become a social menace. Most of the changes to the Act that we are dealing with today will tighten up the regulations. This is a good thing.

Let us consider first an interesting part of the Bill which relates to unclaimed winnings. The original Act made no provision for unclaimed winnings which have been accumulating in a fund held by the Burswood Resort Casino. This Bill puts in place a plan to put the unclaimed winnings in a special Gaming Commission trust fund and for them to be spent on community projects. This is a good idea. That is rather like the unclaimed dividends from racing and trotting which go into the Racecourse Development Trust to be used in the first instance to refurbish and improve country and provincial racecourses and now training tracks, as a result of a Bill that we dealt with recently. These unclaimed winnings are money accumulated and held in an account for the Burswood casino and also unclaimed winnings relating to other forms of gambling for which there has been no plan until this Bill that we are dealing with today. It is a good idea for these issues to be dealt with in this way.

I spoke to the Chief Executive Officer of the Office of Racing and Gaming and asked what was intended for the community fund. He said it could be used for almost any community purpose; for example, a donation to refurbish areas in Kings Park or the Perth Zoo, or numerous other projects for which a community fund might be required. I remind the House that we discussed recently the Lotteries Commission Act which has an enormous community fund

and part of its function is to parcel that out to various community groups to enable them to do all kinds of very useful things. The use of the unclaimed winnings from gaming is a good idea as well. It has a benevolent purpose and we must applaud that.

We should also applaud several other matters in this Bill, including the fact that commission members will not be permitted to gamble at the casino during the period of their appointment. This has been commission policy, and it will now become part of the legislation so that there should be no perceived conflict of interest. That will be welcome. In areas involving gambling in which large sums of money are won or lost it is important there should be no conflict of interest and no perceived conflict of interest. One would like the reputation of this State in regard to gambling to be above reproach and for WA to be the best place in Australia to lose one's money, so to speak. A series of changes in the Bill will remove conflict of interest or even perceived conflict of interest.

Another matter is juveniles and the casino. I am pleased to see that there will be tougher regulations regarding juveniles. It is presently an offence for a person under 18 years of age to go into the casino and to remain there. Oddly, no offence is committed if that juvenile is found to be gaming there, which is rather strange; and he or she is not obliged to return any winnings if he or she is found in the casino and has been successful. This Bill creates that offence, so that gambling under 18 years of age will be illegal and winnings must be forfeited. A person suspected of being under age can also be asked to provide evidence of his or her age. All of these changes aim to improve the gaming regulations in Western Australia and that will be a good thing.

At present there is no requirement for junket operators, as they are known - that is, people who bring in high roller gamblers to the casino - to be approved by the Gaming Commission. This Bill provides the commission with the formal regulations to approve these junket operators. That again is directed at making sure that all the gaming and gambling in Western Australia is above reproach. This will make the procedure more open and accountable and subject to parliamentary scrutiny, and that is a good idea. This, like many other changes, will tighten up on the rules and regulations surrounding gaming.

With all the concern that has been expressed around Australia about the amount of gambling that goes on, the possible effect on those people who are prone to be affected by an obsession with gambling, and the fact that Governments rely too much on gaming revenue, it must be a good thing that we are seeking to tighten the controls on gambling in Western Australia. That is one of the reasons that the Opposition supports this Bill.

Two matters in the Bill that I will refer to briefly are close associates of the casino, and illegal gaming machines. As part of its intention to tighten controls the commission must also address the reputation, financial status and capacity of persons concerned in or associated with the conduct of the gaming operations of a licensed casino.

The Bill empowers the Minister to require a close associate of a public company that is a casino licensee to divest any interest in a public company if that close associate is found to be of unsuitable character. When I asked the head of the Office of Racing, Gaming and Liquor whether any concern had arisen about anybody associated with the casino in Western Australia, the answer was no. Simply, when examining Acts around Australia in relation to gambling and gaming, the writer of the report took the view that a provision found in the New South Wales Act was a necessary part of general gambling control. Certainly, if that is the case, we should support that provision which is designed to assist making gaming in Western Australia above reproach. That is a good thing.

Illegal gaming machines is an interesting subject. A situation arose last year in which the Government had to take action over some gaming machines which were used in a certain way in some hotels. It had to proclaim that the hotels could no longer use the gaming machines in that way. I remind members that the Act prohibits the possession or use of electronic gaming machines other than those authorised for use at the Burswood Resort Casino. A great deal of controversy has been evident in WA over the last few years, and pressure has been applied by sections of the community to introduce the so-called poker machines more widely to assist licensed clubs and hotels to increase their receipts. There is no plan in this measure or elsewhere of which I am aware to change that restriction. I mention that because discussion about illegal gaming machines can be misleading.

Since the Act came into operation in May 1988, all but the first prosecuted case have failed to convict as a result of the findings by magistrates that the types of machines being used were not poker, fruit or roulette machines. Magistrates were not persuaded that gaming was evident, notwithstanding that the machines had meters and could accumulate credits. Confusion arose about the machines used in licensed clubs and hotels and how they related to those legally used in the casino. Clause 58 will amend the Act to prohibit the possession or use of gaming machines not located at the Burswood casino or for which a permit has not been provided. The Bill also provides for the forfeiture of machines when a person is convicted of possession of illegal gaming machines.

Another clause in the Bill provides for the introduction of electronic gaming machines into the State for the purpose of testing, examining, repairing, display and manufacture. Obviously, if one seeks to sell a new machine, or a person

repairs machines, it should not be illegal to bring the machines into the State, notwithstanding the fact that only the casino has the right to have the machines present. Currently, section 39(2)(e) of the Gaming Commission Act provides that a machine shall not be taken to be used for gaming if a player receives nothing more than the opportunity to play the machine again without paying. That distinguishes the kinds of machines under consideration.

The intention of the section was to permit certain machines, such as pinball machines, to be lawfully played in Western Australia, particularly in amusement parlours. As suppliers are using the section to place machines similar to video draw poker machines in hotels and clubs, clause 46(3) provides the Gaming Commission with the power to prescribe the premises at which amusement machines of this type may be played.

Members may recall that at the end of last year the Government took action because people were using machines licensed for use by certain charities to raise funds. They were using machines to raise funds illegally in their hotels. Charities which depended on the machines to raise funds for their purposes were having a hard time as a result of the introduction of these illegal machines. It is a complicated issue, and an attempt is made in the Bill to straighten out the matter. It is not an attempt - if anybody wants to take that view - to introduce poker machines more widely in Western Australia.

Another kind of lottery with which members may be familiar is called a trade promotion lottery. This is not a real lottery and has fairly tight parameters. It is used if one wishes to promote an aspect of one's business. Perhaps the member for Geraldton may wish to promote something in his business, and everybody who buys something from his business may place a receipt or some other paper into a barrel.

Mr Bloffwitch: A lot of shopping arcades have such things.

Ms WARNOCK: That is right. People place a receipt or something similar into a machine, and the winner gains a prize. It cannot be regarded as a normal lottery under the meaning of the Act; it is a specific trade promotion lottery. However, if one goes beyond that, one can be regarded as conducting an unlawful lottery.

As the State gains from gambling in Western Australia, we have good reason to control carefully what might be regarded as illegal gambling. The Bill has many other matters which I might mention, but they are well covered in the second reading speech. All the matters addressed in the Bill were outlined in a report of a couple of years ago made to Parliament. All those matters are directed towards improvements in the control of gambling in Western Australia. As I have said before, I am not a gambler but I am by no means morally opposed to it. We need to control it well in our community.

Mr Osborne: You're in the Labor Party - you are by definition a gambler.

Ms McHale: We all gamble on our future.

Ms WARNOCK: That is the diplomatic way of putting it. I will ignore the comment from the member from down in the bush!

I am not morally opposed to gambling; nonetheless, I believe in firm controls over it, not only for the benefit of those people who might otherwise gamble excessively and get themselves into difficulties, but also because the State has a legitimate interest in gaining revenue from gambling. That is the way it should be. This Bill attempts to keep gambling in Western Australia above reproach so we can successfully compete with other States. Casinos are appearing in increasing numbers in Australia. Therefore, anything which improves the reputation of this State as a safe and proper place to gamble, even if a person, alas, loses his or her money, is a good thing. The Opposition supports the Bill.

MR COWAN (Merredin - Deputy Premier) [12.09 pm]: I thank the member for Perth for her comments and general support for the Bill.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and passed.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 1997

Committee

Resumed from 10 June. The Deputy Chairman of Committees (Mr Baker) in the Chair; Mr Shave (Minister for Fair Trading) in charge of the Bill.

Clause 9: Sections 12A, 12B and 12C inserted -

Progress was reported after the clause had been partly considered.

Mr BROWN: I move -

Page 24, lines 20 to 24 - To delete the lines and substitute the following -

(b) the tenant under the retail shop lease believes that the refusal is because the tenant -

(i) did not open; or

(ii) had indicated that the tenant may not open,

the retail shop the subject of the lease at specified hours or specified times.

Clause 9, in part, seeks to insert new section 12C. The essence of the amendment is to overcome the problem debated on the last occasion. The amendment will extend the protections available to a tenant with a lease under the existing Act. When that lease expires, any new lease will be entered into under the new Act. It seemed that section 12 provided no protection for a tenant with such a lease who indicated that he may not open when the landlord requires him to open but has not refused to open at those times. In those circumstances, that tenant may not be granted a new lease. Two things occur simultaneously when a new lease is granted under the new Act. Firstly, the old lease will expire under the existing Act, because the old lease and the existing Act continue until such time as the lease expires. The new lease will come into effect with the new Act. Therefore, there will be not only a changeover of lease but also a changeover of the legislative applicability at that time, because the existing clause in the Bill refers to a situation in which a tenant has not worked the hours that a landlord wants him to. However, tenants on leases under the existing Act will not have that option because they must open at the time that the lease currently prescribes. That existing lease will not be challenged by virtue of this Bill.

This amendment seeks to provide protection for those tenants who, although opening at hours specified by the landlord, may not wish to open at those times. They may open at those hours now because it is a requirement of the lease and the law. However, when the new lease comes into force it may be well known that the tenant will not open at those hours because of a preference for different hours. In those circumstances, we seek to put in place a mechanism to protect the tenant to some extent from finding himself in that situation.

That outlines adequately the purpose of the amendment. It does not detract from the intent of the clause; it extends the operation of the clause to encompass the unusual circumstances that will apply when existing leases expire and new leases come into effect under the new Act. For those reasons I consider it to be on all fours with the intention of the existing clause.

Ms MacTIERNAN: I thank the member for Bassendean for debating so eloquently this amendment. It is an amendment which we forged together and which arose out of concerns that had been raised by the member for Bassendean in earlier debate.

I anticipate that the Minister will say there will be problems in establishing that the reasons for refusal by the landlord to renew the lease is for the reasons we have set out in this amendment. However, to that I say two things. Firstly, that is an evidentiary problem. What we are trying to do here is provide the jurisdiction; it is then up to the tenant to establish his case. This will not be an easy matter. It will not overcome the evidentiary problems a tenant will have. However, it is important that we at least recognise that issue by providing the jurisdictional framework for tenants to put forward their arguments.

Secondly, if that were the Minister's argument - and I do not say that the Minister is predictable - that same argument could be used against his proposed legislation because under that legislation if a tenant believes that the refusal to renew the lease is because he had not opened, the tenant likewise has to take the matter to the tribunal. The same evidentiary problems will arise for that tenant in proving that his lease was not renewed because he did not open, as will be faced by a tenant wishing to establish that his lease was not renewed because he had indicated to the landlord that he was not prepared to open for the prospective hours that the landlord wanted.

With this amendment the Opposition is simply saying this provision should not be limited to situations where, in the past, the tenant has had an altercation with the landlord, but should recognise that a new legislative regime is in place that notionally prohibits the landlord from establishing those hours, thereby giving content to this provision.

As the member for Bassendean pointed out, at present the vast majority of tenants, being well aware that protection does not exist under the current legislation, have opened for the hours specified. Those people will not be able to take advantage of the protection in this clause. With this amendment tenants who have indicated to the landlord their reluctance to comply in the future or have expressed to the landlord in the past their unhappiness about the hours of operation, and who then seek to take advantage of the new freedoms offered by the legislation, will have some recourse to protection when their lease is up for renewal. This amendment is to allow the full force and effect of these amendments that the Minister is introducing into the legislation.

Mr SHAVE: When we discussed this earlier I indicated that the Government would not accept this amendment. Although the member for Armadale has outlined the Opposition's reasons for the amendment, the Government considers it impractical. For that reason it will not accept the amendment.

Ms MacTIERNAN: Why is it more impractical for tenants to take their cases before the tribunal setting out their belief that their leases were not renewed because of past statements made about their unwillingness to open at certain hours, than what the Minister is proposing; that is, for tenants whose leases are not being renewed to explain to the tribunal they believe their leases are not being renewed because they did not open on a certain date? Both situations present much the same evidentiary challenge. One is not more impractical than the other. The Opposition recognises it will be a tough call for a tenant to establish this, but in precisely the same way it will be tough for a tenant to establish what the Minister has provided in the Bill. The Opposition is seeking to expand the class of issues that can be taken into consideration so the clause does not apply to only past failure but also to the landlord's apprehension about future refusal to open in specified hours.

Mr SHAVE: I have indicated the Government's position.

Ms MacTiernan: I want the Minister to explain the reason that our amendment is any more impractical than what is in the legislation.

Mr SHAVE: My position has been put to the member that we will not accept the amendment. I do not have any further comment.

Ms MacTiernan: You can't explain it.

Mr SHAVE: I will not make any further comment.

Mr BROWN: It is disappointing that the Minister either will not or cannot explain why he considers this amendment impractical. I will therefore outline the effects of this clause without the Opposition's amendment. The following scenario will illustrate my case.

This Bill comes into operation at the end of this year and the existing lease of a retailer expires 12 months later. Under the current lease the retailer must open for certain hours. Under the Act that stipulation can be made in the lease. However, the retailer wants to open at different times. He has made it clear on occasions in discussions with the landlord that he does not like to open Thursday nights until nine o'clock or Saturday afternoons because he is an avid football supporter, for example. Under those circumstances the retailer's lease is not renewed. On my reading of this clause no remedy exists for the retailer in those circumstances; that is, the retailer cannot argue at the tribunal that his lease has not been renewed as a result of the opening hours that the landlord wants to operate.

Based on that scenario, there is no protection in this clause for any retailer with an existing lease. Retailers who enter the industry after this Bill comes into operation and who do not have an existing lease will be able to open at times they desire. It will provide them with a mechanism, five or 10 years later, depending on whether the lease provides an option for renewal, to argue that the lease has not been renewed because they refused to open when the landlord wanted them to open.

For every retailer with an existing lease, this clause will not provide one ounce of protection. I do not know whether it was the Minister's intention to provide no protection to retailers with current leases. As the member for Armadale said, it will be difficult to prove that the lease has not been renewed either because the tenant refused to open during certain hours or because he indicated he did not want to open during certain hours. Indeed, many retailers have indicated to me that they have some reservations about the worth of this clause. That cynicism will be enhanced when they realise that there will be no protection for existing retailers. Was it the Minister's intention to provide no protection for existing retailers with leases?

Mr SHAVE: I have sought advice from those involved in the industry about matters pertinent to the Green Paper. No industry comments were made about these matters during the discussions and no further advice has been received from them about the amendments. It would not be proper for me to accept the amendments without consultation and a view being expressed.

It was always intended that the legislation would be applicable to new leases. It was not designed to deal with retrospectivity. I have covered that three or four times during the debate on this Bill. I will not accept the amendment at the moment.

The member asked whether it was the Government's intention not to protect existing lessees. The leases represent contracts entered into between the parties. It was not intended to try to restructure, redefine or rewrite the contracts by introducing this legislation.

The Government will undertake further discussions with the groups involved. If we can get a reasonable level of support from the various groups, when it goes to the other place we will consider the amendment. However, we are not prepared to accept it now without those discussions.

Mr BROWN: I am pleased that the Minister will have some discussions on the matter. However, this amendment does not seek to apply the law retrospectively to existing leases; it seeks to deal with the expiry of an existing lease. It does not seek to put in place an arrangement for existing leases by changing those leases; it seeks to put in place an arrangement for certain matters to be taken into account when an existing lease expires.

This is a philosophical issue. It could be argued on the one hand by those opposed to the proposal that an existing lease should run its full term and that nothing in that existing lease should be taken into account in the renewal. In that case, it is important to let lessees know that they have no protection under this provision when their lease expires. It is important to be very clear about their rights or lack of rights when their lease expires. If the philosophical view is that one should not change the lease retrospectively - this amendment does not do that - and if it is the Government's view that a provision like this, which comes into operation when the lease expires -

Mr Shave: When a renewal is available.

Mr BROWN: No, when a new lease is entered into. Attaching something like this when an existing lease expires has a flavour of retrospectivity. If that is the Government's view, it must be communicated very clearly to lessees. I do not want lessees mistakenly believing that they will have a remedy if their lease is not renewed at the end of its term because they have not or do not want to open at certain hours. It is important that the Government let them know that that is not the intention of the legislation and that they will not have a remedy. They should not think they have a remedy and go to the tribunal and get legal advice only to find that the Act does not give them the opportunity to argue their case. It relates only to new leases entered into under the new Act and not leases which were in place and which have expired under the old Act. That is a most important point. The Minister knows that and this point has been made to me over and again by lessees who have been caught having to pay out hundreds and sometimes thousands of dollars for legal advice and representation. They are reticent about doing that.

While a number of the provisions in the Bill are worthwhile, it would be a retrograde step to create the notion in the minds of lessees that they have some right or opportunity when it does not exist. The obligation is on the Government, not on the Opposition, to say that this is its intention and that this remedy or potential remedy will not be available to them as existing lessees. If the Government takes that philosophical view then, while I do not agree with it and it leaves existing lessees very vulnerable, at least they will be told that that is the Government's intention and that they can swim for themselves. I do not want people to have the idea that they have some remedy available when that is not the case.

Ms MacTIERNAN: I support the comments made by the member for Bassendean. There seems to be some ambiguity in what the Minister is saying. Clause 14, which deals with the saving and transitional provisions, clearly includes in the definition of "new lease" a lease which is an extension of a term of a retail shop lease entered into before the coming into operation of that provision if the extension is granted on or after the coming into operation of that provision. The situation contemplated by the member for Bassendean and me in framing this amendment involves the type of lease that the Minister has flagged previously as being a new lease and a lease to which he understands this Act to have application. His earlier response is inconsistent with the way he has drafted his transitional provisions.

I will set out the situation to which we are referring by using a practical example. Frankie Bloggs might have a lease at the Maddington City shopping centre. All his options have expired, so his lease is terminating shortly after this Act comes into operation. However, he is then granted an extension of the lease. It is important to understand that the Minister has made a distinction in the saving provisions between a new lease that is an extension of an old lease and a new lease that is an exercise of an option. Frankie has gone through his options; his lease has expired, and he is now getting a new lease, but effectively within the language of clause 14, that new lease is an extension of the existing lease. From time to time during the life of the lease, Frankie has had run-ins with the management of the shopping centre over the length of hours that they had to rely on. Frankie has made numerous representations on behalf of other merchants. He has said that they should not have to open, say, on Saturday afternoon because business is dead from three o'clock onwards. However, the manager says that it is not good enough, and that they should do what they are told. Frankie is very excited about this Bill; he notes that the provisions have changed and that finally he has some power. Supposedly he can rely on the provisions in the Bill which say that he does not have to open during specified hours.

Frankie's lease expires some time after the Bill is proclaimed. He goes to the shopping centre manager and says that he would like his lease to be renewed. The lessor does not agree and says that in the past Frankie has indicated great unhappiness with the hours. The lessor says that he knows that Frankie will not be prepared to open for the full hours

required under the terms of the previous lease. The lessor will say that he can no longer impose those conditions in the new lease; therefore, he is not inclined to support Frankie's request for an extension of the lease. There is no remedy for Frankie, no capacity to go to the tribunal and say that he sought to take advantage of the new protections that are supposed to cover him, because technically it is a new lease and he cannot take advantage because the only way to seek a review is where Frankie did not open during specified hours rather than not indicating that he would not open if he had that power.

Mr SHAVE: I have already said that we will consider that proposition. I want to consider it in a practical way because the member has raised Mr Bloggs' situation at the Maddington shopping centre. Let us say that I am the manager of the shopping centre; legislation is in place and many tenants come and go. Tenants now know that they signed leases which mean they can open and close without having a gun held at their heads by the proprietor of the shopping centre; they have the power about which the member is talking. Why would the owner of the shopping centre, to whom Frankie Bloggs has said that he wants to keep trading and wants an extension of the lease, say to Frankie that he can have the extension if the owner can have guarantees that Frankie will open during certain hours, when Mary Smith at shop No 3 and Jack Johnson at shop No 10, under the Act, will not have the enforcement provisions placed on them by the owner? Why would the owner want to continue to persecute Frankie when other people in the centre are coming and going and trading during different hours?

I am considering this scenario from a practical point of view. I do not think the owner will try to impose that position on a person who seeks an extension. Having said that, that may be the reason that the member for Bassendean and the member for Armadale are the only two people who have brought this proposition to my officers. However, we will consider the situation and work it through with the different groups.

The member for Bassendean queried whether it was the Government's intention that existing tenants should be persecuted if the options ceased and an extension was sought and tenants would not have the same rights as people taking on a new lease. On the basis of equity, it could be argued - I think this is what both members were arguing - that when the options are finished and an extension occurs, that could effectively be a new lease, and people should be treated on a similar basis. We will consider that, and if we consider that it is fair and reasonable I cannot see why we would not support it. However, I want to work it through and talk to the groups without saying now that we are happy with this. I understand the scenario outlined, but from a practical point of view it will not occur. I do not think that in shopping centres where people have the right to open and close, one person will be held to ransom by the owner.

Ms MacTIERNAN: It is not so much being held to ransom. I do not think the owners will seek to extract guarantees. I say that new people coming in will not have a history. We are concerned about those people who are already in shopping centres and have a history of making complaints about trading hours, and as a result of past conduct are flagged by the shopping centre manager as people who would seek to exercise their rights under the legislation not to open. They would be discriminated against and would be in a far more vulnerable position than the new people who do not have a history and could make any statement to a shopping centre manager, knowing full well they did not have to honour those statements due to the provisions of the legislation.

It is not worth labouring the point any further. We put this proposition on the Notice Paper immediately after our last discussion, which was some weeks ago, to give the Minister time to consider it. Now he is saying that no work has been done. The second point is that the mere fact that the Minister said he has had no representations on the matter does not mean that none has been made. The Minister will recall that when I raised with him the issue of franchise operations within department stores and the way in which the definitions will catch them in the provisions of the Act, I pointed out some of the inappropriateness and the Minister said that the matter had not been raised with him. I checked with the people who had contacted me, and they had appointments with the Minister's office. They thought they had an appointment with the Minister, but that was after the long debate on this Bill when the more sturdy of the opposition members were still able to stay awake and meet with those delegations; but the more sensitive and delicate Minister had to retire to bed. I understand those people met with departmental officers. The Minister said that representations on the matter had not been made to him, but when we look at other examples where similar claims have been made, we must take the Minister's comments with a grain of salt.

Amendment put and negatived.

Clause put and passed.

New clause 10 -

Mr BROWN: I move -

Page 24, after line 30 - To insert the following new clause -

Section 13C inserted

10. After section 13B of the principal Act the following section is inserted -

" **Unconscionable conduct connected with lease renewal**

13C. (1) A landlord must not, in renewing a retail shop lease, or in connection with the renewal, or possible renewal, of a retail shop lease to a tenant engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a landlord has contravened subsection (1) in connection with the renewal of a retail shop lease to a tenant, the Tribunal may have regard to -

(a) the relative strengths of the bargaining positions of the landlord and the tenant;

(b) whether, as a result of conduct engaged in by the landlord, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the landlord;

(c) whether the tenant was able to understand any documents relating to the supply of goods and services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were exerted against, the tenant or a person acting on behalf of the tenant by the landlord or a person acting on behalf of the landlord in relation to the renewal of the lease or possible renewal of the lease;

(e) the amount for which, and the circumstances under which, the tenant could have acquired an identical or equivalent lease from a person other than the landlord;

(f) the extent to which the landlord's conduct towards the tenant was consistent with the landlord's conduct in similar transactions between the landlord and other like tenants;

(g) the requirements of this Act;

(h) the requirements of any other legislation or industry code, if the tenant acted on reasonable belief that the landlord would comply with that code;

(i) the extent to which the landlord unreasonably failed to disclose to the tenant -

(i) any intended conduct of the landlord that might affect the interests of the tenant; or

(ii) any risks to the tenant arising from the landlord's conduct (being risks that the landlord should have foreseen would not be apparent to the tenant);

(j) the extent to which the landlord was willing to negotiate the terms and conditions of any lease for the occupation of the retail shop by the tenant;

(k) the extent to which the landlord and the tenant acted in good faith;

(l) whether there have been substantial and persistent breaches of the lease conditions;

(m) a desire to change the tenancy mix or redevelop the centre for which vacant possession is required;

(n) the economic performance of the tenant compared to other comparable businesses in the retail shopping centre or locality during the life of the lease;

(o) the level of investment obligated under the lease and the ability of the tenant to meet that investment at a reasonable rate over the term of the lease;

(p) any compulsion upon the tenant to undertake during the term of the lease a refurbishment or a refit and the ability of the tenant to meet that cost at a reasonable rate over the balance of the term of the lease;

(q) the value of the current store fitout to the tenant's business as a going concern;

(r) the availability of suitable comparable premises in the immediate vicinity; and

(s) the disparity between the rental level of any final offer and that as determined as a fair market rent for the premises by a specialist retail valuer.

(3) A landlord or any person acting on behalf of a landlord is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, to a tenant by reason only that such landlord or person institutes legal proceedings in relation to that lease or possible lease or refers a dispute or claim in relation to that lease or possible lease to the Tribunal.

(4) For the purposes of determining whether in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, a landlord or any person acting on behalf of a landlord is in breach of this section the Tribunal -

(a) must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged breach; and

(b) may have regard to the circumstances existing before the commencement of this section but not to the conduct engaged in before that commencement.

(5) On hearing a dispute at lease end in respect of whether a landlord, or any person acting on behalf of a landlord, has acted unconscionably under this section the Tribunal may -

(a) dismiss the claim;

(b) uphold the landlord's decision not to renew the lease but make provision for payment to the tenant in recognition of the contribution that the tenant has made to the economic value of the retail shop or the retail shopping centre during the life of the lease; or

(c) issue a new lease with the terms and conditions as determined.

(6) Where the Tribunal makes an order or orders in accordance with subsection 5(b) in assessing any economic loss the Tribunal must consider matters such as -

(a) any forced disposal of the tenant's stock at a discount rate; and

(b) any inability to recover the tenant's cost of any fixtures or fittings.".

This clause seeks to introduce a new section 13C, which will provide a mechanism for regulating unconscionable conduct in connection with the renewal of a lease. Subsection (1) provides a remedy where the landlord engages in unconscionable conduct in the renewal or possible renewal of a shop lease. Subsection (2) sets out a series of matters that can be taken into account by the commercial tribunal in determining whether unconscionable conduct has been a feature of the arrangements or negotiations with regard to the allocation of a retail shop lease to a tenant.

One of the issues that the tribunal can take into account is the relative strengths of the bargaining positions of the landlord and the tenant. It is often the case that the bargaining power between the two parties is unequal, and the party in the lesser bargaining position is required to acquiesce. Another issue that the tribunal can take into account is whether, as a result of conduct engaged in by the landlord, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the landlord. Another matter the

tribunal can take into account is whether any undue influence or any unfair tactics were exerted against the tenant with regard to the renewal.

Mr CUNNINGHAM: I am very engrossed in what the member for Bassendean is saying and would like to hear more.

Mr BROWN: I thank my colleague for giving me that opportunity. Other matters that can be taken into account by the tribunal in considering unconscionable conduct are whether there was a willingness to negotiate, whether the parties acted in good faith, whether the level of investment obligated under the lease was reasonable for the tenant and the tenant could recoup that investment over the term of the lease, and whether the rent that was determined was a fair market rent.

Subsection (5) provides that the tribunal, after examining the conduct of the parties, may do three things: Dismiss the claim; uphold the landlord's decision not to renew the lease, but make provision for payment to the tenant in recognition of the contribution that the tenant has made to the economic value of the retail shop or the shopping centre; or issue a new lease with terms and conditions as determined. The new subsection does not provide that the tribunal will take the place of the landlord, but it does provide a remedy for small retailers who believe that they have been dealt with harshly and capriciously on seeking to renew their lease to go to a tribunal and seek that they be not disadvantaged because of their lack of bargaining power.

I turn now to the reason for such a provision. A letter that I received from the Retail Traders Association of Western Australia dated 9 March states -

> We believe that lessors should not have unfettered power at the end of a lease and our preferred position would be to enact legislation that gives the lessee a preferential right for lease renewal at fair market rent. As you can see from the discussion paper and notwithstanding the recently introduced amendments to the South Australian legislation we accept that Governments are generally reluctant to introduce legislation that will substantially diminish property rights.
>
> Our approach has therefore been to focus on fostering a cooperative negotiating environment at lease end in order to minimise the opportunity to exploit lessees. This approach involves:
>
> . Preventing lessees from being forced to accept unreasonable terms in leases; and
>
> . Addressing issues of unconscionable conduct if an offer of a lease renewal was not made by a lessor.

Progress reported.

[Continued on page 4617.]

Sitting suspended from 1.01 to 2.00 pm

VISITORS TO PARLIAMENT HOUSE

Statement by Speaker

THE SPEAKER (Mr Strickland): On behalf of members I welcome to the Legislative Assembly His Excellency the Ambassador for Italy, Mr Castellaneta, and the Consul, Dr Carnelos, from Italy.

In addition, I had the pleasure of having a farewell luncheon with Mr Cai, the Consul General from China, and his wife, Madame Yang.

[Applause.]

[Questions without notice taken.]

BILLS (2) - RETURNED

1. Advance Bank (Merger with St. George Bank) Bill.

2. Advance Bank (Merger with St. George Bank) (Taxing) Bill.

Bills returned from the Council without amendment.

CRIMINAL LAW AMENDMENT BILL (No 1)

Receipt and First Reading

Bill received from the Council; and, on motion by Mr Prince (Minister for Health), read a first time.

SURVEILLANCE DEVICES BILL

Suspension of Standing Orders

MR DAY (Darling Range - Minister for Police) [2.38 pm]: I move -

That so much of the standing orders be suspended as is necessary to enable the order of the day in relation to the Surveillance Devices Bill 1997 -

(a) to be taken forthwith for the purpose only of putting one question in Committee to insert in the Bill the following schedule of amendments, and if the insertion of amendments is agreed to, to report the Bill from Committee with amendments including the amendment to clause 3 already agreed to; and the Chairman of the Committee is directed to put those questions accordingly, and

(b) if reported from Committee with amendments in accordance with (a), for the recommittal of the whole Bill as amended to be set down as an order of the day for the next day of sitting.

Following concerns which were expressed during debate on the Surveillance Devices Bill towards the end of 1997 about the perceived impact of the Bill on the activities of news media organisations and journalists, I have given consideration to how those concerns may best be addressed. As a result of extensive consultation with representatives of the Media, Entertainment and Arts Alliance, major print and electronic media organisations, and the privacy and legislation subcommittee of the Institute of Mercantile Agents Ltd, a public interest part has been drafted for insertion into the Bill.

The public interest part will allow members of the public, including private investigators and the media, to install, use or maintain a listening or optical surveillance device if there are reasonable grounds for believing that the use of the device is in the public interest and if the person using the device is a party to the conversation or activity or acting on behalf of a party.

The public interest clause also provides for the emergency use of a listening or optical surveillance device in matters that are serious and urgent.

The purpose of this motion is to allow all amendments that reflect the Government's position to be incorporated in the Bill so that the Bill may be reprinted to include these amendments and add further clarity when the Bill is recommitted and restored to the Notice Paper in its fresh version for the next sitting. These amendments are for the inclusion of the public interest clause, those amendments currently listed on the Notice Paper; and to insert subsection (3) under clause 7.

MRS ROBERTS (Midland) [2.40 pm]: I have only recently been advised of the intention of the Minister. I received a copy of the amendments today. The Opposition has no difficulty with the amendments being incorporated in the Bill to enable a clearer print of the Bill so that we can comment on the amendments when we debate them during the next sitting of Parliament.

Question put and passed with an absolute majority.

Committee

The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Day (Minister for Police) in charge of the Bill.

SCHEDULE OF AMENDMENTS

Clause 5

Page 9, after line 25 - To insert the following -

(d) the use of a listening device in accordance with Part 5; or

Clause 6

Page 11, after line 10 - To insert the following -

(d) the use of an optical surveillance device in accordance with Part 5; or

Clause 7

Page 12, line 9 - To delete "subsection (2)" and substitute the following -

subsections (2) and (3)

Page 12, after line 28 - To insert the following -

(d) the attachment, installation, use or maintenance of a tracking device in prescribed circumstances; or

Page 12, after line 31 - To insert the following -

(3) Subsection (1) does not apply to the use of a tracking device by a person in the course of that person's duty as a law enforcement officer where the device has not been attached or installed or caused to be attached or installed by that person or by a person acting on behalf of that person.

Clause 9

Page 15, after line 17 - To insert the following -

(viii) in accordance with Part 5; or

Clause 12

Page 18, line 5 - To insert after "section 17(6)" the following -

or 23(2)

Clause 13

Page 18, line 23 - To insert after "offence has been" the following -

or may have been

Page 21, line 33 - To insert before "that where" the following -

except in the case of a tracking device (maintenance/retrieval) warrant,

Clause 15

Page 23, lines 26 and 27 - To delete "the Deputy" and substitute "a Deputy".

Clause 17

Page 26, line 19 - To insert after "offence has been" the following -

or may have been

Page 28, line 6 - To insert after "use" the following -

, installation, maintenance, or retrieval

Clause 20

Page 29, lines 22 and 23 - To delete paragraph (d) and substitute the following -

(d) retrieve, or cause to be retrieved, a surveillance device;

Page 30, after line 8 - To insert the following -

(h) connect a surveillance device to an electricity supply system and use electricity from that system to operate the device; or

(i) temporarily remove a vehicle from premises for the purpose of the attachment, installation, maintenance or retrieval of a tracking device and return the vehicle to those premises,

Clause 21

Page 30, line 23 - To insert after "offence has been" the following -

or may have been

Page 31, line 11 - To insert after "has been" the following -

or may have been

Clause 22

Page 34, line 16 - To insert a comma after "g".

Clause 23

Page 34, lines 25 to 32 - To delete subclause (1) and substitute the following -

(1) An application for a warrant under this Part to a court must not be heard in open court.

(2) The following material must not be made available by a court for search by any person except on the direction of a Judge, or in the case of an application made under this Part to a magistrate, of the Chief Stipendiary Magistrate -

(a) an application to the court under this Part and any material relating to it including any record of it or of the hearing of it;

(b) any orders made on such an application;

(c) any warrant issued on such an application;

(d) any written report delivered to a Judge under section 21(4);

(e) any record of evidence or information brought before a Judge under section 21(8).

New Part

Page 35, after line 5 - To insert the following new Part -

PART 5 — USE OF SURVEILLANCE DEVICES IN THE PUBLIC INTEREST

Division 1 — General

Interpretation

24. In this Part -

"**child**" means a person under 18 years of age;

"**mental illness**" has the same meaning as in the Criminal Code;

"**mental impairment**" has the same meaning as in the Criminal Code;

"**public interest**" includes the interests of national security, public safety, the economic wellbeing of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens.

Unlawful act

25. This Part does not apply if in the course of installing or using a listening device or an optical surveillance device an act is done that is unlawful under any law or any Act other than this Act.

Division 2 — Use of listening devices and optical surveillance devices in the public interest

Use of listening devices in the public interest

26. (1) A person who is a party to a private conversation may use a listening device to record or monitor the private conversation if a principal party to the private conversation consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the listening device is in the public interest.

(2) A person who is acting on behalf of a party to a private conversation may use a listening device to record, monitor or listen to the private conversation if a principal party to the private conversation consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the listening device is in the public interest.

(3) A person who has under his or her care, supervision or authority a child or a protected person who is a principal party to a private conversation may, on behalf of the child or protected person, use a listening device to record, monitor or listen to the private conversation if there are reasonable grounds for believing that the use of the listening device -

(a) will contribute towards the protection of the best interests of the child or protected person; and

(b) is in the public interest.

(4) In this section -

"**protected person**" means a person who by reason of mental impairment is unable to consent in accordance with subsection (1) or (2) to the use of a listening device.

Use of optical surveillance devices in the public interest

27. (1) A person who is a party to a private activity may use an optical surveillance device to record visually the private activity if a principal party to the private conversation consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the optical surveillance device is in the public interest.

(2) A person who is acting on behalf of a party to a private activity may use an optical surveillance device to record visually or observe the private activity if a principal party to the private activity consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the optical surveillance device is in the public interest.

(3) A person who has under his or her care, supervision or authority a child or a protected person who is a principal party to a private activity may, on behalf of the child or protected person, use an optical surveillance device to record visually or observe the private activity if there are reasonable grounds for believing that the use of the listening device -

(a) will contribute towards the protection of the best interests of the child or protected person; and

(b) is in the public interest.

(4) In this section -

"**protected person**" means a person who by reason of mental impairment is unable to consent in accordance with subsection (1) or (2) to the use of an optical surveillance device.

Division 3 — Emergency use of listening devices and optical surveillance devices in the public interest

Emergency use of listening devices in the public interest

28. A person may use a listening device to record, monitor or listen to a private conversation if at the time of use there are reasonable grounds for believing that the circumstances are so serious and the matter is of such urgency that the use of the listening device is in the public interest.

Emergency use of optical surveillance devices in the public interest

29. A person may use an optical surveillance device to record visually or observe a private activity if at the time of use there are reasonable grounds for believing that the circumstances are so serious and the matter is of such urgency that the use of the optical surveillance device is in the public interest.

Report to a Judge

30. (1) A person who uses a listening device or an optical surveillance device under section 28 or 29 must deliver without delay a written report to a judge -

(a) giving particulars of the device used;

(b) giving particulars of the use of the device and the period during which it was used;

(c) specifying the name, if known, of any person whose private conversation was recorded, monitored or listened to or whose private activity was observed or visually recorded;

(d) specifying the circumstances that cause the person to believe that it was necessary to record, monitor or listen to the private conversation or observe or visually record the private activity; and

(e) containing particulars of the general use made or to be made of any evidence or information obtained by use of the device.

(2) A person who contravenes subsection (1) commits an offence.

Penalty:

(a) for an individual: $5 000 or imprisonment for 12 months, or both;

(b) for a body corporate: $50 000.

(3) Where a report is given to a judge under subsection (1), the judge may direct that any record of evidence or information obtained by the use of the surveillance device to which the report relates be brought before the judge.

(4) A record of evidence or information brought before a judge under subsection (3) must be kept in the custody of the judge and the judge may order that it be returned, or made available to any person, or destroyed.

Division 4 — Publication or communication in the public interest

Order allowing publication or communication in the public interest

31. (1) A judge may make an order that a person may publish or communicate a private conversation, or a report or record of a private conversation, or a record of a private activity that has come to the person's knowledge as a direct or indirect result of the use of a listening device or an optical surveillance device under Division 2 or 3, if the judge is satisfied, upon application being made in accordance with section 32, that the publication or communication should be made to protect or further the public interest.

(2) A judge, when making an order under subsection (1), may impose such conditions or restrictions as the Judge considers necessary in the circumstances.

(3) Upon an application made under section 32 a judge may make an order that a report or record of a private conversation, or a record of a private activity -

(a) be made available to any person or destroyed;

(b) be delivered to -

(i) the police force of the State or of another State or a Territory;

(ii) the Anti-Corruption Commission;

(iii) the Australian Federal Police; or

(iv) the National Crime Authority; or

(c) be kept in the custody of the court if the judge is satisfied that it is necessary to protect or further the public interest.

Application for a publication order

32. (1) An application for an order under section 31 is required -

(a) to be in writing;

(b) to set out the grounds on which the application is based; and

(c) to include an affidavit of the person making the application deposing to the facts required by the judge to enable the judge to deal with the application in accordance with that section.

(2) A judge may require further information to be given, orally or by affidavit, in relation to an application under section 31.

Confidentiality

33. (1) An application under this part to a judge must not be heard in open court.

(2) The following material must not be made available by a court for search by any person except on the direction of a judge -

(a) an application under this part and any material relating to it including any record of it or of the hearing of it;

(b) any orders made on such an application;

(c) any written report delivered to a judge under section 30;

(d) any record of evidence or information brought before a judge under section 30(3).

(3) A direction is not to be given under subsection (2) if, in the opinion of the judge, it could result in the publication of any information or allegation contrary to section 54 of the *Anti-Corruption Commission Act 1988*.

Clause 34

Page 44, after line 15 - To insert the following paragraph -

(c) with respect to proceedings under Part 5;

The CHAIRMAN: In accordance with the resolution of the House, the question is that the above schedule of amendments referred to the Committee by the House be agreed to, and that the clause of the Bill, as amended, be agreed to.

Question put and passed.

Bill reported, with amendments.

The SPEAKER: In accordance with the resolution, I direct that the recommittal of the Bill be set down as an order of the day for the next day's sitting.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 1997

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Shave (Minister for Fair Trading) in charge of the Bill.

New clause 10 -

Progress was reported after Mr Brown had moved the following amendment -

Page 24, after line 30 - To insert the following new clause -

Section 13C inserted

10. After section 13B of the principal Act the following section is inserted -

Unconscionable conduct connected with lease renewal

13C. (1) A landlord must not, in renewing a retail shop lease, or in connection with the renewal, or possible renewal, of a retail shop lease to a tenant engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the tribunal may have regard for the purpose of determining whether a landlord has contravened subsection (1) in connection with the renewal of a retail shop lease to a tenant, the tribunal may have regard to -

(a) the relative strengths of the bargaining positions of the landlord and the tenant;

(b) whether, as a result of conduct engaged in by the landlord, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the landlord;

(c) whether the tenant was able to understand any documents relating to the supply of goods and services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were exerted against, the tenant or a person acting on behalf of the tenant by the landlord or a person acting on behalf of the landlord in relation to the renewal of the lease or possible renewal of the lease;

(e) the amount for which, and the circumstances under which, the tenant could have acquired an identical or equivalent lease from a person other than the landlord;

(f) the extent to which the landlord's conduct towards the tenant was consistent with the landlord's conduct in similar transactions between the landlord and other like tenants;

(g) the requirements of this Act;

(h) the requirements of any other legislation or industry code, if the tenant acted on reasonable belief that the landlord would comply with that code;

(i) the extent to which the landlord unreasonably failed to disclose to the tenant -

(i) any intended conduct of the landlord that might affect the interests of the tenant; or

(ii) any risks to the tenant arising from the landlord's conduct (being risks that the landlord should have foreseen would not be apparent to the tenant);

(j) the extent to which the landlord was willing to negotiate the terms and conditions of any lease for the occupation of the retail shop by the tenant;

(k) the extent to which the landlord and the tenant acted in good faith;

(l) whether there have been substantial and persistent breaches of the lease conditions;

(m) a desire to change the tenancy mix or redevelop the centre for which vacant possession is required;

(n) the economic performance of the tenant compared to other comparable businesses in the retail shopping centre or locality during the life of the lease;

(o) the level of investment obligated under the lease and the ability of the tenant to meet that investment at a reasonable rate over the term of the lease;

(p) any compulsion upon the tenant to undertake during the term of the lease a refurbishment or a refit and the ability of the tenant to meet that cost at a reasonable rate over the balance of the term of the lease;

(q) the value of the current store fit out to the tenant's business as a going concern;

(r) the availability of suitable comparable premises in the immediate vicinity; and

(s) the disparity between the rental level of any final offer and that as determined as a fair market rent for the premises by a specialist retail valuer.

(3) A landlord or any person acting on behalf of a landlord is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, to a tenant by reason only that such landlord or person institutes legal proceedings in relation to that lease or possible lease or refers a dispute or claim in relation to that lease or possible lease to the tribunal.

(4) For the purposes of determining whether in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, a landlord or any person acting on behalf of a landlord is in breach of this section the tribunal -

(a) must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged breach; and

(b) may have regard to the circumstances existing before the commencement of this section but not to the conduct engaged in before that commencement.

(5) On hearing a dispute at lease end in respect of whether a landlord, or any person acting on behalf of a landlord, has acted unconscionably under this section the Tribunal may -

(a) dismiss the claim;

(b) uphold the landlord's decision not to renew the lease but make provision for payment to the tenant in recognition of the contribution that the tenant has made to the economic value of the retail shop or the retail shopping centre during the life of the lease; or

(c) issue a new lease with the terms and conditions as determined.

(6) Where the Tribunal makes an order or orders in accordance with subsection 5(b) in assessing any economic loss the Tribunal must consider matters such as -

(a) any forced disposal of the tenant's stock at a discount rate; and

(b) any inability to recover the tenant's cost of any fixtures or fittings. ".

Mr BROWN: I referred to correspondence that I received from the Retail Traders Association in which members expressed support for this new clause. The correspondence continues -

> The process under which this could be achieved is detailed in the attached discussions document and is based upon the importation of Section 51AC of the Trade Practices Act, adapted to take account of specific issues relevant to retail leasing. Whilst we have been advised that the proposed amendments to the Trade Practices Act relating to unconscionable conduct will provide an avenue for lessees to take action in relation to disputes at lease end, such action will be in the Federal Court and therefore prohibitively expensive for the majority of small and medium retail businesses.

That letter indicates support for this amendment. I refer also to a document prepared by the Australian Retailers Association, entitled "Improving Australia's Retail Leasing Environment" which contains a heading "Addressing the Vulnerability of the Sitting Tenant". The discussion paper was prepared following negotiations with the Property Council of Australia in October 1997. Under the heading "A Need for Direction for Existing Leases at Lease End", the paper reads -

> The ARA believes that legislative protection must exist to prevent an existing lessee being exploited at the end of the lease. There is substantial evidence that existing lessees are vulnerable to exploitation at lease end because of the inequitable bargaining position that may exist between the lessor and the lessee. This results from:
>
> (i) Planning Constraints
>
> Planning Laws usually restrict the availability of premium retail space. A retailer has little or no opportunity of finding suitable alternative space in a particular locality if the lessor decides not to renew the lease or demands a rent that is beyond the lessees capacity to pay, as a condition of the new lease.
>
> (ii). A Fixed Investment
>
> An existing lessee is always reluctant to move because of the substantial capital investment made to the property during the life of the lease through fitout costs and, in some cases, contributions to the Centre running costs.
>
> Little of this investment would be recouped if the lessee was forced to transfer to alternative premises.
>
> In addition relocation to a new premises will often involve substantial new investment.

(iii) Disclosure of turnover

Most leases compel the lessee to provide the lessor with the turnover of the shop each month. This enables the lessor to build up a substantial profile of the trading performance of the lessee and places the lessor in a position of strength at lease renewal time.

Lessees are therefore often forced to accept a rent above the market rate which creates significant ongoing commercial difficulties for the business. There are many instances, where a lessee has left a retail shop because of excessive demands, only to see the new lessee with the same usage being granted a lease with a much lower rent.

The discussions between the ARA and the PCA attempted to identify appropriate mechanisms to ensure a level playing field in the negotiation of a new lease for a "sitting lessee".

Mr McGOWAN: I would like to hear more from the member for Bassendean.

Dr Hames: You are the only one!

Mr BROWN: The Minister for Housing is not interested in this matter. I am sure that will come as a bit of a disappointment to many retailers in his electorate.

Mr Shave: You will send them all a letter!

Mr BROWN: They may be advised about that.

The comments made by the Australian Retailers Association are not insubstantial. I note the Minister is not interested in them, and I will convey his withdrawal.

The document states under the heading "The need to create a retail partnership" that -

There is increasing recognition that the future success of retailing is dependent on the development of constructive partnerships between lessors and lessees. This can only be achieved if both parties work collaboratively to ensure (i) that each receives a reasonable return for their efforts and (ii) there is good faith and a degree of certainty in the commercial relationship.

Failure to establish a degree of equity in the tenancy relationship places the long term viability of retailing at risk. This will have significant ramification for the broader community given the number of people employed in the industry and the substantial exposure of small investors in retail property trusts.

The document then considers the position put by the Property Council of Australia and states that -

The PCA contend that lessors have a fundamental property right emanating from their ownership and substantial capital investment in their properties. A Lessee therefore should have no rights at the end of the lease term.

The document then contains the detailed response from the Australian Retailers Association, which I will not quote. The document refers to the fact that the fundamental difference of opinion is the question of property rights and the reticence of Governments of all political persuasions to trample on property rights.

The document states under the heading "A Way Forward" that -

The ARA believe that lessors should not have unfettered power at the end of a lease. Our preferred position would be to enact legislation that gives the lessee a preferential right for lease renewal at fair market rent. . . .

The ARA accepts however that Governments are reluctant to introduce legislation that will substantially diminish an individual's "property right".

Our approach has therefore been to focus on fostering a cooperative negotiating environment at lease end in order to minimise the opportunity to exploit lessees. This involves:

. Preventing lessees from being forced to accept unreasonable terms in relation to new leases; and

. Addressing issue of unconscionable conduct if an offer of a lease renewal was not made by the lessor.

Our approach is predicated on the view that subject to satisfactory performance a lessee should have an implied right of "fair treatment" at the end of a lease.

It then suggests that that might be done by means of unconscionable conduct provisions. That suggestion by the Australian Retailers Association is very much incorporated in this amendment. This matter has been given detailed consideration by not only the retail traders in this State but also the national organisation of retail traders in trying to find a way through this very important issue for lessees in this State and other States.

I turn now to a number of major reports on retail tenancy that support the position that I have outlined.

Mr McGOWAN: The Minister for Housing and I are desperate to hear what the member for Bassendean has to say.

Mr BROWN: I turn first to the report of the House of Representatives Standing Committee on Industry, Science and Technology dated May 1997 and headed "Finding a balance". This substantial report was commissioned by the Howard Government and the then federal Minister for Small Business and Consumer Affairs, Hon Geoff Prosser. This unanimous report came from a committee that was dominated by federal coalition government members, and it deals with the types of problems that are encountered by small retailers. I will quote some parts of the report to indicate the degree to which this amendment is important and is desired by small business, in particular small retailers. The report states at paragraph 1.3 at page 1 that -

> There is a common theme underlying the types of unfair business conduct raised by all areas of small business, namely an inequality of power.

Some of the complaints that are mentioned in that report are unfair contract terms arising from a refusal of big business to negotiate the terms and conditions of contracts; and the complexity of documentation and lack of standard form plain English contracts for small business dealings.

The report states at paragraph 1.4 that -

> These issues bias business dealings in favour of powerful companies with the financial resources to engage in lengthy litigation. The consequence has been that small business in its many dealings with big business often has to accept unfair terms and conditions on a 'take-it-or-leave-it' basis.

When I raised this matter previously, the Minister accepted that in many instances there was a difference of bargaining power between small retailers and large shopping centre owners. It engenders feelings of unfairness to small business. It also has an economic impact on small business. The report states at paragraph 1.5 -

> The capacity of some small business to grow is being inhibited because of unfair terms and conditions. Many small business operators lose their homes and livelihoods because such conduct induces the failure of their businesses.

The heavy social costs are highlighted throughout the report in the specific submissions received, while the economic impact is considered later in the chapter.

This is a very substantial report running to some 300 pages. Right at the outset on page 2, the report refers to complaints by small business about the manner in which they have been dealt with. This theme is repeated over and again in this report; the report is riddled with such statements, I think because members of Parliament at the federal level, whether coalition or Labor, were clearly influenced by the magnitude and the force of the submissions made to them by small businesses, retailers, and their families.

Mr CUNNINGHAM: I am absolutely intrigued by what the member for Bassendean has said about this matter and I would like to hear some more.

Mr BROWN: On page 5 at paragraph 1.20, a reference is made to the measures that the Government can take to address market failure, and the fact that such measures can be justified on economic as well as social grounds. This is not a question of simply introducing measures to seek to overcome inequity. These measures are proposed by the committee, not simply to address an imbalance of bargaining power, which results in people who do not have bargaining power finishing up with poor terms and conditions, or poor leases. This committee has recognised that strong economic and social reasons exist for rectifying inequities. During the second reading debate, I quoted from pages 4 and 5 of this report a chilling statement from a specialty retailer who was driven out of business. It took the attention of the committee, and obviously that is why they included it in the report.

At page 6 of the report, reference is made to unfair conduct being a serious problem. Again at page 6, although reference is made to the free enterprise system and self-interest within that system, it argues that self-interest does not always operate to the best interests of the communities at large, nor the economy or the social

fabric of the community in which we live. Again it recognises the great disparity in the bargaining power between many business relationships. This emphasis is picked up again at paragraphs 1.32 and 1.37 of the report. Whether one looks at what is being said by the Retail Traders' Association, the Australian Retailers Association, or the House of Representatives Standing Committee on Industry, Science and Technology, the message is the same: A strong case is made for state intervention by way of legislation to provide a remedy for the type of unfair conduct which we are seeing.

If that is not enough, I also refer to a report entitled "Under the Microscope", produced by the Micro Business Consultative Group, which was established by the former federal Minister for Small Business and is made up of small business people, some of whom are from Western Australia. At page 63 of that report, the authors write -

> . . . there is a range of circumstances in which this inequity of power leaves micro businesses at a disadvantage in their commercial dealings with large businesses, and in a position in which harsh and unjust conditions are imposed.

Later on the same page it was noted -

> The Micro Business Consultative Group generally supported the report's recommendation.

It refers there to the report of the House of Representatives standing committee. This is not a report coming from politicians; it is from people who represent the interests of small business around Australia in a group put together by the federal Minister for Small Business. To emphasise the point, the group also makes the point on page 65 of its report that occupancy costs in Australia can be as much as three times those in the USA and have an adverse impact on the retailing sector, particularly small retailers.

Mr CUNNINGHAM: I am captivated by the message of the member for Bassendean, and I would like to hear more.

Mr BROWN: I am getting to the end of the submission that I make to the Minister on this matter. At page 67 under the heading "Recommendations" the report refers to the types of matters that need to be addressed with commercial tenancies and recommends that provisions be made for security of tenure.

I apologise for the time I have taken to put these matters to the Minister. However, whether one looks at what is being said by small business in this State, by small business through the national Australian Retailers Association, by the Federal Parliament through its committee system, or by small business in the report commissioned by the federal Minister for Small Business; the theme is very clear: Small retailers are feeling the brunt of the problem of securing a renewal of leases and wish to ensure that arrangements are put in place to guarantee, to some extent, security of tenure so that when a small lessee is prepared to pay the market rent and is a reasonable tenant, there is no reason not to renew their tenancy. I am aware that provisions have been included in the Trade Practices Act and that the Australian Competition and Consumers Commission has been allocated in the order of $450 000 by the Australian Government to fight some cases on behalf of small business subjected to unfair conduct.

Two strong comments have been made to me by the Retail Traders Association of WA. First, those actions are representative actions; that is, the money allocated will not be allocated to every small business or to every small business with a particular problem. The ACCC will pick appropriate cases and run test cases to establish the law. It is hoped there will then be compliance on a more general level. That may or may not be the case, but that is the rationale. Secondly, as the Retail Traders Association points out, if small retailers find themselves in this unfortunate situation, they will not get the financial backing and many will not have the wherewithal to go to the Federal Court to fight this issue, particularly if they are against significant property owners. Therefore, they want an opportunity to deal with this matter at a local level, as inexpensively as possible. They see the Commercial Tribunal with this head of power as an opportunity to present their arguments and seek relief through that tribunal. They have made out a strong case.

Certainly when I talk to small retailers and their associations, this is obviously the most important issue. They commend the Government for this Bill, and most of the amendments seek to add to rather than detract from the Bill, but of all the provisions, they think the most critical and central issue for them is security of tenure. Without tenure, they do not have a business and then everything else in the Bill means nothing. They are keen for this type of provision to be included in the Bill.

Mr BAKER: I accept much of what has been said by the member for Bassendean, but I point out that many of the provisions in the proposed new section are covered by existing law; for example, the commonwealth Trade Practices Act or common law. The member briefly referred to the Trade Practices Act, and he will

agree that in most cases the landlords of commercial properties are body corporates rather than natural legal entities. As such, on that basis alone they are prima facie subject to the provisions of the Trade Practices Act. Provisions in that Act deal with unconscionability, as well as other matters. I will quote some provisions from the commonwealth Act which go a long way towards satisfying many of the concerns raised and also some of the provisions in the text of the proposed new section. For example, section 51AA of the commonwealth Act, under the heading "Unconscionable conduct within the meaning of the unwritten law of the States and Territories" states -

> A corporation must not, in trade or commerce, engage in conduct that is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.

Subsection (2) states -

> This section does not apply to conduct that is prohibited by section 51AB.

Section 51AB deals with cases involving the supply of goods and services. The member's proposed new section 13C(2)(c) specifically refers to that aspect. It is accepted that section 51AA cross-references with the unwritten law from time to time of the States and Territories. It is generally accepted that that refers to the common law.

I now refer to cases which have expanded on this section, particularly the definition of "unconscionable". I quote from the publication *Annotated Trade Practices Act*, editor Russell V. Miller, seventeenth edition, published by LBC Information Services, Sydney, New South Wales 1996 -

> **Unconscionable**
>
> This term is not defined in the Act.
>
> In general terms, conduct will be regarded as unconscionable where, in accordance with the ordinary concepts of humanity, it is seen to be so against conscience that the court should intervene.

The case referred to is Zoneff v Elcom Credit Union Ltd (1990) ATPR 41-009. I refer to a summary of the major judgment in that case -

> The matters to which the court may have regard are as follows:
>
> the relative bargaining strengths of the parties;

That is a fundamental issue to which the member referred in his proposed section 13C(2)(a). The summary continues -

> whether the consumer was able to understand the documentation;

That is referred to in proposed subsection (3). The summary continues -

> whether undue influence or pressure was exerted or unfair tactics used;

The member referred to the general spirit of that statement throughout the body of the proposed new section. The summary continues -

> whether the consumer was required to comply with conditions which were not reasonably necessary for the protection of the legitimate interests of the supplier;
>
> the amount for which and circumstances under which the consumer could have acquired equivalent goods and services from another party.

Beyond that, the member is aware of the other relevant provisions, and I acknowledge that the Act applies only to corporate lessors or landlords. Beyond that, the common law doctrines of torts or civil wrongs of undue influence, duress, and unconscionable bargain are available to a party to a transaction.

I wonder whether much of the proposed section is covered under existing law. In that regard I note that paragraph (h) of proposed section 13C refers to the fact that the tribunal should have regard to the requirements of any other legislation, and it goes on to refer to industry codes. I ask the member for Bassendean whether in his view much of his proposal is already covered for corporate landlords under the Trade Practices Act and common law, in relation to the torts or civil wrongs I mentioned previously.

Mr BROWN: The point made to me by the Retail Traders Association is that in some matters remedy is available under the Trade Practices Act. However, that is not universal. The difficulty for small retailers is simply the cost of pursuing issues under the Trade Practices Act.

Mr Baker interjected.

Mr BROWN: I bow to the member's wisdom on that. I am not in a position to debate that matter because I do not know.

Just as the Minister listened to various groups, I have also listened to various groups. On this issue I listened strongly to the Retail Traders Association, and I am told it wants this type of provision because it sees limitations in the Trade Practices Act. It did not say the Trade Practices Act is of no value or that recent amendments are of no value. However, for ease of access and cost, the association wants this type of amendment. Many retailers, who are perhaps a little more relaxed about dealing with the Commercial Tenancy (Retail Shops) Agreements Act, rather than the Trade Practices Act, want this type of provision or the other type detailed in the Notice Paper. The purpose of moving this amendment is to create a situation in which a remedy is available for small lessees that does not require them to go through the Federal Court and engage in significant litigation at significant cost. The member for Joondalup might say that I have got it wrong, and I will be happy to convey his views to the Retail Traders Association.

Mr Baker: I accept what the member has said. However, a strong argument is that much of what the member has said, insofar as corporate vessels are concerned, is already covered in the Trade Practices Act or at common law, so is it necessary to go to this extent? The member is extending the notion of unconscionable conduct to include matters which would not come within the definition or in ordinary concepts and usages.

Mr BROWN: We all know that the House of Representatives standing committee referred not to unconscionable conduct but to unreasonable conduct and suggested broadening the scope of that term. I have not picked up on the committee's words. I have talked to the Retail Traders Association. This clause emanates from a paper presented at national level by the Australian Retailers Association. I believe that association would have sought some advice on that, or at least ensured that the paper was written by someone who was fairly knowledgeable about the subject. I do not profess to know all the law in the area or come here armed with that technical information. I come here as a layperson. However, I have read the reports and talked to retailers, who say that this type of protection is necessary for them to remedy the types of problems that they confront when they are told, "This is the deal: You will pay 35 per cent or you'd better move on down the road." People are objecting to that.

Mr BAKER: I refer to proposed new section 13C(5) and the various findings that the tribunal can make in response to an application and under paragraph (c) the power of the tribunal to issue a new lease with the terms and conditions as determined. Is the member for Bassendean proposing that the tribunal can issue a new lease and impose such terms and conditions that it believes are reasonable, appropriate or fair, just, equitable, reasonable and proper in the circumstances without any reference to parties?

Mr BROWN: The onus is on the tenant to prove that unconscionable conduct has been engaged in. Unless the tenant can carry that burden of proof there is no remedy. It would be difficult to hold up a whole lease as unreasonable and ask the tribunal to rewrite the lease. For example, I would have thought that if the owner was demanding 70 per cent above the market rent the tenant could apply to the tribunal for an order to pay the market rent. The tenant would have to prove it was an unconscionable act. If the rent being sought was a small amount above the market rent it would probably not be unconscionable or unreasonable. However, if it were double the market rent it would be.

Mr BAKER: Proposed new paragraph (c) refers to the power of the tribunal to issue a new lease with the conditions as determined. It does not say the tribunal can vary, alter or modify the existing lease. Essentially the member is saying that a new document, rather than a varied or altered previous document, can be determined by the tribunal, and the parties to the previous document are bound to the new document. That would be unfair. The phraseology is too broad. I could understand if the member wanted to alter or modify a rent clause. However, he refers to a new lease.

Mr BROWN: It is a question of definition. If one makes one or two minor changes to a lease it is either a new lease with variations or a new lease. It is a matter of semantics.

Mr Baker: What is your intention?

Mr BROWN: My intention is that the person would have to prove that an action was unconscionable and the tribunal would have to deal with that aspect of it. It would be hard with a 30 page lease document to hold up the whole lease as being unreasonable. Generally speaking, retailers might consider that one or two things in the lease might be unreasonable or unjust.

The Opposition's aim is to produce a draft ordinary plain English lease. If this amendment were picked up

one would probably be able to argue only about those matters that were different from the ordinary lease or on the issue of the rent that is charged. Most of the time this comes down to whether the rent that is charged is close to the market rent or is 50 per cent or 100 per cent above the market rent. That is generally the primary concern.

Mr SHAVE: The member for Bassendean hit the nail on the head when he said that unconscionable conduct is the major area in which small retailers feel that they are at a severe disadvantage when they deal with shopping centre owners or owners of other large properties. It is difficult to determine the best location for legislation relating to unconscionable conduct. The member for Joondalup pointed out that the Trade Practices Act offers protection in some areas. The member for Bassendean pointed out that it was not enough. I am inclined to agree with the member for Bassendean that it would be of benefit to have some form of regulation in a state Act rather than a federal Act.

The next point is the best legislation in which to locate this matter. As I said, parties in lease renewals should not engage in unfair business behaviour. Unfortunately, unconscionable conduct is a wide issue involving many areas, and many tenants, not only those covered under retail tenancy legislation, are affected.

I now record the Government's view on where these proposals are best placed if enacted or legislated. I indicate to the member for Armadale and the Retail Traders Association that the Government has concerns in this area, and notes the reports, particularly the standing committee report on the position of small retailers. I signalled in my second reading speech the possibility of later amendments to this measure. After further discussions with people at the commonwealth level, part of the commercial tenancies legislation may change. However, the general advice from people within the department, and others, is that the Fair Trading Act is probably the most appropriate Statute in which to house a balance of remedies for unconscionable conduct. It is not only small retailer traders in shopping centres who experience the problems raised by the member for Bassendean. For that reason, the Government is considering placing any proposed change in this area of unconscionable conduct in the Fair Trading Act.

Mr BROWN: I am interested in what the Minister has had to say about the Fair Trading Act, and I am keen for him to elaborate further on that aspect.

Mr SHAVE: It is the Court Government's policy to extend the provision of the Trade Practices Act to all small businesses. As part of the recent state Budget initiatives, I announced funding to establish a project team to action the Government's broad policy objectives. To assist all small businesses, the groups will evaluate measures to overcome these imbalances in bargaining power, uncompetitive behaviour and, specifically, unconscionable conduct.

The Government will not accept the proposed amendments to the Bill. Although we hope this legislation will pass through this Chamber and the other place, it is not the Government's intention to complete consideration of the commercial tenancy issue upon this Bill's passage. The Government recognises a problem exists. The only difficulty I have with the amendments is that this Bill is not the best place to deal with all small retailers. This is a contentious issue. Requirements will arise in areas such as drafting. This is a late amendment - it is the Opposition's right to introduce such an amendment - and this provision did not form part of the original Green Bill and was not part of our Bill. That does not mean that the issues raised by the member for Bassendean do not have merit. However, a lot of consultation will be required. We will not determine the best approach in a short time, and certainly not today. Clearly, the Government could say it will adopt this amendment if industry agreement is reached following consultation; if agreement is not reached, the amendment will not proceed. We cannot adopt that approach with legislation, just as we could not do so with the management fees issue. Agreement will not be reached on this central issue.

During the recess last month we sought comment from the industry stakeholders. The response was predictable - the retailers were very supportive, and the Real Estate Institute of WA and the Property Council of Australia opposed it. It was suggested to me that this legislation should be delayed until we have established something at the national level, where a task force should be established. I resisted that suggestion strongly. People have waited long enough. When we deal with this issue, we will do it properly.

The Ministry for Fair Trading, as the member for Armadale would be aware, handles approximately 45 Acts. Therefore, any decision made on unconscionable conduct will affect many different areas. To be fair and equitable, any changes made will be better made to the Act after thorough consultation. Following that consultation, I do not expect total support from everyone for any changes we may make.

Mr BROWN: What are the names of the people looking at the matter? What is the group called and what is its timetable for reporting - is it six months, 12 months or two years? Further, although I understood the

Minister to say that the Government has concerns in this area, and acknowledges some of the matters I referred to in reports, no decision or commitment is made to introduce legislation to deal with unconscionable conduct and contracts. However, is there any commitment by Government, no matter what form the committee report may take, that it is committed to legislating - without making a commitment regarding its content- in this area in some form?

Mr SHAVE: My understanding is that the group has not yet been formulated. It will include retailers. I expect people like the Retail Traders Association will have significant input, as will the Property Council of Australia and others, into the suggested time frame, the brief of the committee and how it will operate.

My adviser tells me it was budgeted for on 1 July and no decisions have been made about the members. The Minister is waiting for recommendations from the Ministry of Fair Trading. It has funding that will enable it to operate for two years if necessary. I, as the Minister, think that we could come up with findings. In the media statement that I made that I have just seen, I said that recommendations should flow from this team to the Government with findings completed within 12 to 18 months. Eighteen months would be at the end of the spectrum. I do not want it dragging on for two, three, four or five years. I would hope to see something positive within a reasonable period and 18 months is sufficient time for these people to come up with proposals.

Mr Brown: Is there a commitment to introduce legislation?

Mr SHAVE: There is no commitment to introduce legislation. However, after looking at the report from the standing committee that the member for Bassendean referred to, there is a desire on the part of all of the parties that have had input - perhaps not the property owners - to have change. The committee recommended that the issue of unconscionable conduct should be addressed by the State Government. I do not have a problem with that.

I could say, "Yes, we are going to introduce legislation." However, there is no commitment to what that legislation will encompass. That is virtually promising half of nothing when the member for Bassendean says that I could have said that. If we are to spend money to address this issue, at the end of having spent that money and conducted an in-depth assessment, we could come up with legislative changes unless we adopt an approach that we will spend the money with the possibility that we will not come up anything or there should not be any changes. First of all, it is irresponsible for a Government to take that approach. The member for Bassendean has seen the comments at the federal level on the report from the standing committee. There is a belief by people who have already looked at the issue that there is a need to resolve some of the problems raised in that report. Is there a commitment? No, there is no commitment that legislative changes will occur. However, my view is that, if we are going to spend the money and there is a need - and there seems to be a need - to come up with satisfactory changes to the current imbalance, there will be some legislative changes. I would be surprised if there is not.

Mr BROWN: Firstly, I agree with the Minister that this is a matter that is not isolated to the retail sector. It has far more applications. I agree with the Minister that in this sector and in a number of other sectors - indeed some of the others have been brought to my attention recently, and probably to the Minister's attention and to the attention of most members in this Chamber - are the concerns raised by milk vendors who have been writing to everyone.

Mr Shave: Robin - I cannot remember the name - he writes forever.

Mr BROWN: I cannot remember. However, a few milk vendors have been very vocal about the nature of the contracts provided to them, which appear to be non-negotiable. There is also a number of other areas of concern. This matter has been discussed with a number of retailers. Many of them have operated in the retail area in other small businesses; many of them are worldly wise and have been around for some time. They understand, and do not pretend otherwise, that this is a matter solely in this area. They say, and it has some weight, that they have been waiting for these changes for a long time. There was pressure on the previous Government in this Parliament when the former member for Balcatta, Nick Catania, the Opposition spokesperson for small business, introduced a Bill that was defeated in the House. A Green Bill was introduced prior to the last election. The then Minister for Small Business said that if the Government were re-elected that Green Bill, or a Bill, would be reintroduced and go through the Parliament in the first term after the Parliament returned. It is in *Hansard* and I will give the reference.

People tell me that if we look at the history of the Retail Tenancy Act, we will see that amendments do not occur every second week. Amendments tend to occur in a wave; they go through Parliament and after that there is nothing for a period. They are not confident that this matter will be revisited in a year or two or three

years. In the meantime, they are caught in this position. If their leases expire, they see themselves in an extremely vulnerable position, particularly with the newer shopping centres that are being established. As members know, the newer centres these days have premises without even a shop front. They lease a space and install everything - the shop front, the lighting, the sound system, the lot. Many times there is no change out of $100 000 or more. They mortgage their houses up to the eyeballs. Although they are happy to take the risk and recognise that business has no guarantee, if they have read the market wrongly or do not produce the right services or goods, that is their fault, and they will pay the price for that and lose. People accept that. They accept that they are in business to make money and accept the risks. What they do not accept, even grudgingly, is being hit for rents which are way beyond the pale. They consider that to be unreasonable. They do not want to be subsidised. They are happy to take all the other risks and if they miss out, bad luck. However, they consider it to be unjust and inappropriate when rents are set beyond the market rate.

I ask the Minister to consider including a provision - whether it is this provision or some other provision - in this Bill. He does not have to do it today. However, he should look at it between now and when we return from the winter break as this matter will not be considered by the other place for some weeks. Could something be included in this Bill now which could be taken out at a later stage when other legislation is introduced, if and when the Minister introduces other legislation?

Mr SHAVE: To put it into the legislation and take it out later is a novel approach. I am sure that would have the approval of the small retailers. We will have a look at that in the break. However, I am not optimistic that that is the path we should follow.

Mr BROWN: I have endeavoured to cover all the arguments in support of this clause. Common ground exists in this debate. I acknowledge that a provision of the type proposed by the Opposition was not included in the Green Bill. However, the Minister probably knows that submissions were made by various groups about what should be included in legislation. I do not think I have been misled in believing that some submissions, from the retailers rather than the property owners, suggested that a provision of this generic type should be included in the legislation.

Although this clause might have come forward since this Bill has been on the Table over perhaps the past five weeks, the notion of a clause relating to unconscionable or unfair conduct is not a novel approach. I wish I had thought of it. It has been around for quite a while and has been considered by much more refined minds than mine. The approach certainly is desired by industry.

Although, as I said, I acknowledge the Minister's comments, I invite the Minister to consider this clause over the break because he would be applauded, although not by the whole industry. One can please some of the people some of the time, all of the people some of the time and some of the people all of the time, but not all of the people all of the time. It would be a good opportunity for the Minister to please some of the people all of the time.

New clause put and a division taken with the following result -

Ayes (18)

Ms Anwyl	Mr Grill	Mr McGowan	Mrs Roberts
Mr Brown	Mr Kobelke	Ms McHale	Mr Thomas
Mr Carpenter	Ms MacTiernan	Mr Riebeling	Ms Warnock
Dr Edwards	Mr Marlborough	Mr Ripper	Mr Cunningham *(Teller)*
Dr Gallop	Mr McGinty		

Noes (28)

Mr Baker	Mrs Edwardes	Mr Marshall	Mr Prince
Mr Barron-Sullivan	Dr Hames	Mr Masters	Mr Shave
Mr Board	Mrs Hodson-Thomas	Mr McNee	Mr Sweetman
Mr Bradshaw	Mr House	Mr Nicholls	Dr Turnbull
Mr Court	Mr Johnson	Mr Omodei	Mrs van de Klashorst
Mr Cowan	Mr Kierath	Mrs Parker	Mr Wiese
Mr Day	Mr MacLean	Mr Pendal	Mr Osborne *(Teller)*

Pair

Mr Graham	Mr Barnett

New clause thus negatived

New clause 10 -

Mr BROWN: I move -

Page 24, after line 30 - To insert the following -

Sections 13C, 13D, 13E, 13F and 13G inserted

10. After section 13B of the principal Act the following sections are inserted -

" **Preference to be accorded to existing lessee**

13C. (1) Where a landlord of premises in a retail shopping centre proposes to re-let the premises, and an existing tenant wants a renewal or extension of the term, the landlord shall give preference to the existing tenant over other possible tenants of the premises.

(2) Unless the tenant has notified the landlord in writing within 12 months before the end of the term that the tenant does now want a renewal or extension the landlord must presume that the existing tenant wants a renewal or extension of the term.

(3) The landlord is not bound to prefer an existing tenant under this section where -

(a) the existing tenant has been guilty of a substantial breach or persistent breaches of the lease;

(b) the landlord requires vacant possession of the premises for the purposes of demolition or substantial repairs or renovation; or

(c) the tenant is not prepared to pay market rent;

(d) subject to subsection (4), the landlord wants to change the tenancy mix in the retail shopping centre; or

(e) the landlord obtains an exemption under subsection (5).

(4) Where a landlord decides against renewing or extending an existing tenant's lease on the ground described in subsection (3)(d) the tenant -

(a) is entitled to receive fair compensation; and

(b) may apply in writing to the Tribunal for an order that the landlord pay compensation to the tenant in respect of pecuniary loss suffered by the tenant as a result of the failure to renew or extend the retail shop lease.

(5) A landlord may apply in writing to the Tribunal for an order exempting the landlord from complying with this section on the ground that renewal or extension of the lease would substantially disadvantage the landlord.

(6) In this section -

"lease" means retail shop lease; and

"market rent" has the same meaning given to it in section 11.

Process for preferential right

13D. (1) Where an existing tenant of premises in a retail shopping centre has a right of preference under section 13C, the landlord shall, at least 6 months (but not more than 12 months) before the end of the term, begin negotiations with the existing tenant for a renewal or extension of the lease.

(2) In compliance with subsection (1), before entering into a lease with another person, the landlord must -

(a) make a written offer to renew or extend the existing lease on

terms and conditions no less favourable to the tenant than those of the proposed new lease; and

(b) provide the existing tenant with a copy of the lease or proposed lease (as renewed or extended) and any prescribed statements required in relation to it.

(3) Where a landlord offers to renew or extend a retail shop lease under this section -

(a) the offer remains open for 10 days (not including any Saturday, Sunday or other public holiday) after it is made or for the period stipulated in the offer, whichever is the longer;

(b) if the tenant wishes to accept the offer referred to in paragraph (a) the tenant must notify the landlord in writing of his or her acceptance within the period referred to in that paragraph; and

(c) if notice is not given in accordance with paragraph (b), the offer lapses.

(4) The negotiations under this section are to continue until -

(a) the tenant rejects an offer made under this section or the offer lapses; or

(b) the tenant indicates in writing that the tenant does not want to continue negotiations for a renewal or extension of the lease.

Notice of absence of duty of preference

13E. Where, in accordance with section 13C(3), a landlord is not bound to give preference to a tenant of a retail shop in a retail shopping centre, the landlord shall, at least 6 months (but not more than 12 months) before the end of the term of the lease, by written notice -

(a) notify the tenant of that fact; and

(b) state why in the circumstances of the case the landlord is not bound to give the tenant preference in accordance with section 13C.

Failure to negotiate or notify

13F. (1) Where the landlord fails to negotiate or to notify the tenant as required by sections 13C, 13D and 13E and the tenant by notice in writing to the landlord given before the end of the term of the lease requests an extension of the lease under this section, the term of the lease is extended until the end of 6 months after the landlord begins the required negotiations or gives the required notice.

(2) During an extension of the lease under subsection (1) the tenant may terminate the lease by giving not less than 1 month's notice of the termination in writing to the landlord.

Fair dealing between landlord and tenant

13G. If a landlord fails in any respect to comply with the provisions of sections 13C, 13D, 13E or 13F and the tenant, in the circumstances of the case, is disadvantaged by the failure, the tenant may apply in writing to the Tribunal for an order or orders resolving the dispute. ".

A different way of achieving a similar objective is to insert a clause in the Bill which provides for preference to be given to an existing lessee when a lease comes to an end. The new clause seeks to insert proposed section 13C, of which proposed subsection (1) provides that where a landlord proposes to let premises and an existing tenant wants renewal or extension of a lease, the landlord shall give preference to the existing tenant. It does not refer in this clause to anything unconscionable; it provides for preference to be given to existing tenants.

Proposed subsection (2) of proposed section 13C provides that unless a tenant has notified a landlord 12 months beforehand that the tenant does not want to renew the lease, the onus is on the landlord to assume that the tenant wants to continue the lease. Proposed subsection (3) provides circumstances in which a landlord is not required to prefer an existing tenant over a new tenant.

Proposed section 13D sets out the mechanism under which this preferential right would operate if, for example, an existing tenant has been guilty of substantial or persistent breaches of the lease; where a landlord requires vacant possession of the premises because of the need to demolish or repair the premises substantially; where a tenant is not prepared to pay market rent; where the landlord wishes to change the mix of the tenancies; or where the landlord obtains an exemption from giving preference to a sitting tenant. It provides that, at least six months, but not more than 12 months before the end of the lease, the landlord will commence negotiations with the tenant for a renewal or extension of the lease; that before the landlord issues an offer to any other tenants to take on the premises, the landlord will make a written offer to renew or to extend the lease; and the written offer will contain conditions which are no less favourable to the tenant than those proposed in a new lease. There are various mechanistic clauses about how long the offer remains open and a requirement for some fair dealing in negotiations. Equally, there is a mechanism where it is considered that the process has been abused and one can have reference to the commercial tribunal.

Ms McHALE: The small business operators to whom I have spoken have homed in on the previous clause, which unfortunately government members declined to accept, and also this clause. It provides for small businesses that are struggling in the suburbs to have some continuity of tenure, some security of business. Very rightly and properly, this clause provides a balance: It allows tenants to have a reasonable assurance that their businesses can continue when the leases come up for renewal and it also protects the landlord from being bound by provisions in circumstances which suggest the tenant should not have preference.

Given the attitude shown to small business by this Government in not accepting some fundamental amendments put forward by the members for Armadale and Bassendean, it is hardly surprising to see the level of cynicism among small business. If the Government is serious about small business, it will look very closely at this clause and will seriously consider accepting it. As I say, it gives a balance to both parties. It allows some preference for continuity of the business, which is imperative for people when doing financial planning. If they do not know whether they will get a renewal of their lease under acceptable arrangements, it undermines the business and provides for a very unstable economy.

Mr BROWN: Essentially, this clause is taken from some legislation in South Australia, although it is not a direct replica of it. It followed the "Report of the Joint Committee on Retail Shop Tenancies" of the Parliament of South Australia which was laid on the Table of the House of Assembly and ordered to be printed on 1 August 1996. This report was produced during the term of a coalition Government which enacted relevant legislation. The report is instructive in how the Parliament arrived at this type of clause in the South Australian legislation.

I will briefly go through the report and some of the major comments made by members serving on the committee. On page 15 under the heading "Term of Reference 1 - Rights and Obligations of the Parties at the End of the Lease" the report states -

> Problems arise when the landlord or tenant's expectation of the other party's intention at the end of the lease does not accord with the party's actual intentions. This is partly owing to the length of time between a lease's commencing and ending. It is not uncommon to find a lease for an initial term of five years and two five year options, making a total term of 15 years. Making commercial decisions over this length of time involves a high degree of speculation. It is for this reason that, initially, neither party may be willing to commit themselves to a lease for a long term.
>
> A landlord has to balance the competing interests of having long term tenants who produce a regular source of income against the restriction that imposes on reletting the tenancy to a different tenant who may be more successful, pay more rent and draw more customers to the retail shopping centre. Because it is the future rental returns on a property that determine the present capital value of the property, a landlord needs to ensure that the rental returns are maximised.
>
> A tenant may be unwilling to enter into a lease for a long-term. The tenant may be embarking on a new business venture and have concerns about its profitability and, for that reason, negotiate a relatively short lease term. There are substantial financial risks for a tenant who is faced with an unsuccessful business and a long term of lease yet to run. If the tenant is unable to sell the business and assign the lease, the costs associated with meeting the financial obligations under the lease until a new tenant can be found are often sufficient to ruin the tenant financially.

The report goes on to present arguments on both sides of the debate and on page 16 under the heading "Submissions by Landlords", it states -

> Organisations that represent landlords believe the current provisions of the Act relating to the rights and obligations of parties at the end of a lease are fair and adequate and should not be changed. They strongly resist any move to increase protection or benefits to tenants.
>
> The rationale for this is twofold. First, is their fundamental view that as land owners a landlord should have the right to determine how it uses its property and secondly that both parties to a lease have full knowledge of the terms and conditions at the time they enter into the lease.

On page 18 of the report the contrary view is put forward from the tenants, which states -

> Individual tenants and organisations that represent tenants' interests would like to see the Act amended to provide increased protection for tenants at the end of the term of their lease. They submit that the goodwill of the business depends upon the security of tenure. At the end of a tenancy, unless tenants are able to negotiate a new lease, they will be unable to sell their businesses as going concerns.

Ms MacTIERNAN: I wonder whether the member for Bassendean has in mind to consider those remarks, because I think they are very important and pertinent.

Mr BROWN: The report continues -

> The costs to a tenant of establishing a business, developing it and running it are substantial. The costs are both financial and personal with a considerable amount of time and energy devoted to the creation and management of the business. One of the factors motivating the tenant is the hope that his or her efforts will be rewarded by an increase in goodwill. Professor A.F. Millington in his report "*Retail Property in Australia*" states:-
>
> > "Lessees require a guaranteed period of occupation which is sufficient to justify the investment they would ideally like to make in the establishment and development of a business, such time period being adequate to allow them to establish it, develop it, and then to reap the full rewards for doing so. For most lessees a five year period will be too short, and it is suggested a period of eight or ten years is likely to be more equitable to lessees".

The report then includes an analysis of the arguments put to the committee. It states -

> The Committee recommends that the Act be amended to provide that the landlord must give the existing tenant the first right of refusal on a new lease unless it can be established that the landlord would be disadvantaged by the granting of the right or that any of the following occur:-
>
> (i) the tenant has been in breach of the lease;
>
> (ii) the landlord has plans to redevelop the centre; or
>
> (iii) the centre would benefit from a change of tenancy mix; or
>
> (iv) the landlord can obtain a higher rent for the tenancy.

Based on that report, legislative changes were made in South Australia to give preference to the existing tenant.

The amendment before the Committee is not an exact copy of the South Australian provision. However, it seeks to provide a balance; it does not say that in every circumstance a tenant must be given preference. Clearly, if a person has not been a good tenant, there is an exemption. Likewise, if a tenant is not prepared to pay the market rent, there is no reason that the landlord should give him or her preference.

This amendment provides a reasonable balance. It also provides comfort for small lessees in that it creates a right for them to be given preference to their existing premises over anyone else and sets out a mechanism under which that right can be implemented. That has been included in the South Australian legislation, so we are not seeking to introduce novel legislation that has not been enacted in other States.

The Opposition seeks to create a right that many small retailers to whom I have spoken are very keen to see included. It could have been established by going down the unconscionable conduct route. Given that the Minister wishes to pursue that matter in other legislation, this is a method of securing the objective of giving preference to the existing tenant without going down that path. I commend the amendment.

Mr SHAVE: The Government has had limited time to discuss these amendments with industry stakeholders. I am not trying to point score; I do not blame the Opposition for that. If the Government were to make changes it would need to canvass the proposals very widely.

I have stated previously that many landlords have a small property that they rent out; they are not necessarily large property or shopping centre owners. If we are to make changes such as this, we must consult all groups involved. That has not happened.

Apparently the amendments contain drafting errors. In fact, the proposed clause is at odds with other clauses in the legislation. The member is a lawyer -

Mr Brown: No, I am not.

Mr SHAVE: I thought the member was a lawyer.

Ms MacTiernan: He is a first-class bush lawyer.

Mr SHAVE: There are many bush lawyers in this place; he is not alone.

The amendment is at odds with the legislation and therefore the Government will not accept it. I am sure that the matters raised by the member were put to the committee prior to the drafting of the Bill. That is not to say that further consideration will not be given to the issues raised. I refer to the perceived imbalance of the rights of tenants as against the rights of landlords in a leasing situation. I appreciate the work that has gone into drafting these amendments, but the Government will not accept them at this time.

Ms MacTIERNAN: The Minister's comments are a little disappointing. The member for Bassendean put these amendments on the Notice Paper at least a month ago. Therefore, members have had some time to consider them.

Mr Shave: They were submitted on 10 June.

Mr Brown: There is some disagreement between the Minister and me about the timing of the lodging of the amendments.

Ms MacTIERNAN: As the member for Bassendean has pointed out, the issues that he raised are not new in the debate between landlords and tenants. They have been very comprehensively canvassed and dealt with in other jurisdictions. Given the inordinate amount of time this Bill has taken in gestation - about five years - I have no doubt that the issues canvassed by the member for Bassendean were the subject of some debate and discussion by the Minister's advisers, if not by the Minister himself.

The amendment before us is very sound. There are still plenty of opportunities for a landlord to have very fundamental control over his or her property. This is not a defacto seizure of title from a landlord. Landlords have five very clear grounds for not granting the first right of refusal. They are that a tenant has been guilty of an existing breach; the landlord requires vacant possession for demolition or redevelopment; the tenant is not prepared to pay market rent; the landlord wants to change the tenancy mix; or the landlord has obtained an exemption by demonstrating to the tribunal that he will suffer disadvantage if he is not given that exemption.

It is very difficult to see how a landlord would be genuinely disadvantaged in a way that was unfair vis a vis the rights of the tenant. A person such as Frank Bloggs at Maddington shopping centre might have a five year lease with a five year renewal. Over those 10 years, he might have built up his menswear store significantly, and a great deal of goodwill might be attached to that site. If the shopping centre proprietor decided in his wisdom to get rid of everyone and completely revamp the centre, he would have the right to do that. However, the proprietor might really want to boot Frank out and get in some menswear chain that was prepared to pay an above market rent. That menswear chain would be able to take advantage of Frank's goodwill, without having to pay a cracker for it, simply by locating in the spot from which Frank had built up his business. The quid pro quo for the landlord would be that this newcomer would be prepared to pay well in excess of market rent. It would be quite unfair for the landlord to exploit, by way of a higher rent, the fact that Frank had lost his goodwill and someone else had capitalised on it.

Mr BAKER: Nothing would prevent a landlord or a tenant, or a commercial lessor and a lessee, from agreeing to insert a provision in a lease that would give the lessee the right of first refusal in the circumstances described in this proposed new clause. As the member for Armadale said, one of the five exceptions is outlined in proposed subsection (3)(d), which states "subject to subsection (4), the landlord wants to change the tenancy mix in the retail shopping centre". Proposed subsection (4) provides that if the landlord decides to change the tenancy mix, the tenant is entitled to receive fair compensation.

Mr BROWN: This proposed new clause is drawn primarily from the South Australian legislation. Even when parliamentary counsel drafts a Bill, we can sometimes find fault with the drafting. We saw that today with a Bill that was introduced by the Minister for Police, where on greater reflection it was apparent the wording was not very good, and the Bill will need to be redrafted. If that can happen when very experienced parliamentary counsel draft a Bill, it can obviously happen when simple lay people like me draft clauses. I do not have any qualifications, nor do I profess to be the greatest draftsperson to walk this earth, but the purpose of the Opposition in putting up an amendment is to give us the opportunity to argue about the principles of that amendment. As members of this Committee and the Parliament are aware, it is not unusual for Ministers in this place to accept amendments in principle, subject to parliamentary counsel's redrafting those amendments to pick up the essential themes.

I understand that some of the arguments that can be used about opposition amendments are that the words do not fit nicely and will clash with other parts of the Bill, or whatever. However, that does not detract from the merit of the argument that we are seeking to put. We have seen with other Ministers at the Table that if the merits of the argument are accepted, it is possible to draft words which reflect it. If the merit of this argument were accepted, obviously we would be amenable to the Minister's parliamentary counsel drafting a clause that would adequately fit within this Bill and achieve the objectives that are broadly sought.

We will deal later with the question of tenancy mix. This is quite an important issue, because the House of Representatives Standing Committee on Industry, Science and Technology recognised that tenancy mix can have a profound effect on the viability of individual businesses, particularly in a shopping centre. A small restaurant or cafeteria might have a burgeoning business and be quite viable until another cafeteria was allowed to be established three doors away, which causes the first cafeteria to experience financial difficulties.

Tenancy mix is an important issue. This proposed new clause states that a landlord who does not wish to renew a lease on the ground that he wishes to change the tenancy mix will have the unfettered right to do so, but not without compensating the tenant. If the tenant had sunk into his business capital that could not be recouped, obviously that tenant would be compensated.

I understand what the Minister has said about this matter. All I can say in response is that time and time again, small retailers have told me that the crucial issue with regard to this Bill is security of tenure. This proposed new clause is another way, apart from the unconscionable conduct provisions, of trying to achieve that objective.

Progress reported.

[Continued on page 4671.]

ROBINSON UNIT

Grievance

DR GALLOP (Victoria Park - Leader of the Opposition) [4.30 pm]: My grievance today is to the Minister for Health. The Opposition has been pointing to the Health Department budget shortfall and what it has meant for service delivery, particularly in the major public hospitals. There is now clear evidence that this budget shortfall is impacting on the delivery of mental health services in Western Australia.

I refer to the decision to cease the weekend program at the Robinson Unit, which is part of the child and adolescent mental health service offered by the Bentley Health Service. The State Opposition has been approached by parents who are concerned about the implications of that decision. One of them wrote that without the support of the facilities provided by the Robinson residential unit and the carers who provide a tremendous service and support network for parents and siblings, she believes she would have lost her child and she would have needed more personal counselling and personal trauma care than she has received. She wrote that she could not stress enough the importance of this unit remaining open and being available to families in need, as it is only one of the few services available. She asked that the Government give no consideration to cutting or closing the facility. That letter was from the parent of a young person who had been accessing services at the unit. It related to a suicidal adolescent, and the parent is very grateful for the service provided and the stability brought into her life and the life of her son as a result of the Robinson Unit.

This unit is a six bed residential facility which caters for young people between the ages of eight and 18 years who experience psychiatric disorders, and have anger management and schooling problems associated with attention deficit disorder. The weekend service is very important for families, as it is the only one available following the changes to the Stubbs Terrace facility, which no longer has a weekend service. It allows

families under stress to access services out of normal working hours. This is important for families who do not live in the metropolitan area and particularly for working mothers who need after hours and weekend options.

Although the program is therapeutically based, it has a respite component. The Government's view that this can be bettered by a more therapeutic weekday program ignores the realities of working and family life. Yet again, the Government of Western Australia has tried to justify a real loss of service - in this case the weekend program - with fancy words about improving the delivery of what is left. The trouble with this Government is that the losses always outweigh any gains or, in most cases, the gains are purely theoretical but the losses are real.

When the Government closed its sister facility on the same site at Hillview Terrace, East Victoria Park, the decision was made to keep the Robinson Unit but to relocate it to another site. I note that the Government also promised to replace the Hillview 12 bed residential service, which was closed in 1995, with a new facility at Bentley. That facility has never been built, and by 1996 it had dropped off government correspondence about what it intended to do. I ask the Minister what has happened to the promise to replace the 12 bed residential unit at Hillview. It has never been delivered.

My first question to the Minister about the Robinson Unit is: Does the Government still intend to relocate the unit? If so, what planning has been done to effect this objective? I trust there will not be a repeat of the Hillview situation, in which the service was undermined and then closed before an alternative was in place. The Friends of the Child and Adolescent Psychiatric Services feel betrayed because they agreed to the closure of the Hillview facility on the ground that the then Minister made a commitment, on the basis of a report he received, that a replacement unit would be established. I visited the Bentley Health Service and was shown a site on which the Government would build the alternative, but it has not happened. I seek a guarantee from the Minister tonight that the Robinson Unit will not be closed before an agreed alternative is in place for the users of that service.

I now turn to the current issue at hand - the decision to terminate the weekend service. This is part of an increasing problem of reduced access to after hours services generally, and one that is disturbing to advocates for the young people experiencing serious mental illness. I asked a question about this, and the Government gave the predictable answer that changes are proposed that will markedly improve the access of clients to the currently limited child program by replacing the weekend residential program with a more therapeutic day program utilising evidence based clinical practice and international trends. We keep hearing those words in relation to mental health services. The Government closes a service and says that, as a result of the devolution of power to the regions, they will be able to deal with issues on a better basis and provide a better service. The parents of the seriously disturbed children know only that no service is available at weekends. The same problem occurred with the Stubbs Terrace service.

I do not think the Minister has properly justified this closure by referring to clinical issues. The real reason for this closure is a budget shortfall in the Health Department. This is another area of health which needs options and alternatives but in which the budget has been cut. The staff were informed that the decision to close the unit had nothing to do with clinical reasons, but was due to a $200 000 budget shortfall in the Bentley Health Service. None of the justifications given for this closure is sufficient to dispel the view in the community that this decision was all about cost cutting on the part of the Government.

MR PRINCE (Albany - Minister for Health) [4.37 pm]: I thank the Leader of the Opposition for raising this matter. He raised it some months ago in relation to the development of a Bentley, Armadale and Kalamunda south east metropolitan corridor child and adolescent mental health service collaboration. He did not speak specifically about the Robinson Unit at that time.

I will first briefly deal with the question of budget shortfalls. There has been no cut to the Health budget since this Government has been in office. When the first year of the new Medicare agreement started, when a Labor Government was in power federally, $70m was taken from the financial assistance grants and put into the hospital grant. Consequently, $70m was moved the other way. One of the Leader of the Opposition's former colleagues, Hon Keith Wilson, was very concerned about it because he was Minister for Health at the time it was negotiated. It came into effect just after the current Government came to power. No cuts have been made in the budget in the past two years.

Dr Gallop: Get to the weekend service at the Robinson Unit.

Mr PRINCE: The Leader of the Opposition spoke about budget shortfalls and I am giving him some facts. An additional $250m has been put into the health area in the past two years. It is not a cut. There is a

shortfall in funding, which has been well explained and there is no secret about it, across Australia. Those are the facts and they relate to factors over which neither the Leader of the Opposition nor I nor the State has control, such as private health insurance, medical technology, the ageing population and the intransigence of successive Federal Governments to fund Medicare properly.

The Leader of the Opposition and I were respectively shadow Minister for Health and Minister for Health when we dealt with the Mental Health Taskforce, the state mental health plan and the mental health legislation. The Leader of the Opposition knows as well as I do that the Government has made, and lived up to, a commitment to direct extra money into mental health. The Leader of the Opposition may say that a shortfall has occurred elsewhere, but in mental health -

Dr Gallop: These are fancy words; I am talking about the weekend program which has been cut.

Mr PRINCE: I did not interrupt the Leader of the Opposition during his speech. An extra $40m has been committed to and spent on mental health.

The importance of this unit cannot be understated - I know that. I have received many letters from people who have either had or have children in the program. However, it has only six beds, and the review has highlighted that very few people can enter the service; that is, it services four to six people for a 10-week period. As a result, changes are planned to improve the access of clients to the program. From July it is intended that the weekend residential program will cease. In consultation with the clinical staff, a new day program is being established. This takes into account evidence-based clinical practice, all the best known international trends, and includes a move to community and school-based requirements. In fact, the whole concept is to provide support to continue normal social interaction, and the requirement is to treat the whole family unit, not the child separately. It is best clinical practice coming to the fore. The information advice from the clinicians who run the mental health division - the Leader of the Opposition and I are not clinicians -

Dr Gallop: No. I am a politician. It is about time that politicians took an interest in the issue, rather than devolving it to the public sector, which mucks it up!

Mr PRINCE: I refer to consultant psychiatrists who, unlike the Leader of the Opposition, know what they are talking about. In tandem with this development, the weekday service will offer a more flexible and intensive program, with admissions determined by clinical need rather than a set 10-week time frame for a maximum of six children. This will achieve a considerable increase in the number of clients seen. It will improve access to the program, and provide optimum allocation of resources for children and their families. It will deal with a great many more children than is presently the case.

Closing the service will certainly present difficulties for rural clients. However, they will not be ignored. I remind members that more Liberal than National Party members represent rural electorates. A planning day will be held this Friday at which many options of services for rural people will be explored. One option may be to conduct a residential course during the school holidays, which would be better for those children than anything else.

As I said in answer to a question about a month ago, in addition, Bentley, Armadale and Kalamunda Health Services have recently developed the south east metropolitan corridor collaboration for child and adolescent mental health services. This has taken services out into the corridor where they were never found before. None of these is a Liberal electorate. Right now new community clinics are being established at Kalamunda and Armadale in order to provide services closer to home. These services provide a comprehensive and coordinated approach. The services are being increased and redesigned in accordance with best clinical practice so that more children will receive a better service than was the case in the past.

Rather than restricting or reducing the service, the changes to child and adolescent mental health are enhancing services to children and their families. The result of other changes elsewhere will be improved clinical outcomes and the advance of treatment protocols which represent best practice worldwide. We will achieve this result - it is happening. That is what the clinicians, who are among the best in Australia, have designed for children in the metropolitan area and elsewhere in this State. They are far better able to make that determination than either the Leader of the Opposition or the member for Fremantle.

VEHICLE LICENCE FEES

Grievance

MR BARRON-SULLIVAN (Mitchell) [4.45 pm]: My grievance, on behalf of a number of my constituents, is directed to the honourable Minister representing the Minister for Transport. My constituents have expressed concern about an aspect of vehicle licence fees collection. Vehicle owners who received their

licence renewals notice with a due date for payment of 30 June are being required to pay at the rate which applies from 1 July. With licence fees increasing significantly, effective from 1 July, these vehicle owners must pay more than if they were billed at the rate which applied on the day at which the licence fell due for renewal.

This is not a matter of whether licence fees should have been increased, but a specific anomaly in the billing system. I appreciate that a licence applies for a specific period; in this case from 1 July to 30 June. Also, I fully understand the technical and legal reasons behind this situation. However, the fact remains that it is a widely held view that any charge imposed for any reason should be imposed at the rate which applies at the time at which that charge is due for payment. Therefore, if my subscription to *National Geographic* falls due for payment on 30 June, I expect to pay the 12 monthly subscription rate which applies on that day, as set out on my reminder notice. Similarly, if on 30 June I buy an airline ticket to fly somewhere in August, I expect to pay the going rate as at 30 June.

It is my firm contention that a vehicle licence due for payment at 30 June should be billed at the rate applicable on the day on which payment is required, not the rate which applies on the first day of the respective licence period. Of course, if a person's vehicle licence fell due for payment on the day on which the licence renewal took effect - 1 July in this case - no cause for concern would arise, and that person could not reasonably argue that the licence should be paid at a rate which applied the day before. Nor do I deny that if a person's licence fell due after 1 July, and he wished to the pay the licence in advance, the rate applicable on the day on which the licence renewal fell due should be the rate payable. In other words, the matter raised does not involve the advance payment of licence fees.

I raised the matter in Parliament as soon as possible because, with 30 June approaching rapidly, a number of people in my electorate and elsewhere will be increasingly keen to see the matter resolved so they can get on and pay their licence fees. Understandably, some are reluctant to pay up until they know whether the matter can be resolved favourably.

Personally, I support the position of my constituents. There is a valid argument that we are discussing a government licence fee, and as it takes effect at midnight on 30 June, it should be paid for at the rate which applies throughout the licence period, effective on 1 July. However, I firmly contend that we, as elected representatives, should do the utmost to ensure that the way in which the business of government is carried out reflects as much as possible community expectations and normal, everyday practices. I made a point of canvassing the views of a number of people about this matter, and nobody outside Parliament or the bureaucracy has disagreed that commonsense dictates that licence fees should be paid for at the rate which applies on the day on which the fees are due and payable.

Of course, implications may arise for third period insurance coverage if the licence fee were not paid on the first day of the period of operation of that licence. However, my constituents do not suggest that their licence fees should be paid later than the due date of 30 June. They simply want to pay at the rate which applies on that date. If this could be done, their third party obligations would be fully met, and they would be covered for personal injury from the outset of the new licence period immediately after midnight on 1 July.

I say to the Minister that the fairest solution appears to be to enable vehicle owners whose licences are due for renewal on 30 June to pay at the rate which applies on that day. I appreciate that this may be hard to arrange as we are close to that date, and a number of people presumably have already paid the fee at the asked rate. However, alternative arrangements could be made so licences which commence on 1 July are billed at the rate applicable on that date. Also, the amount due would not be payable until 1 July. In other words, it should be possible to reduce the degree of ambiguity on this matter.

I assure the Minister that a lot of confusion exists on this matter in the electorate. Not only are private vehicle owners affected but also it is possible that a proportionally high number of small business owners will be affected. Many of them take advantage of federal tax arrangements and end of year vehicle sales to purchase new vehicles towards the end of the financial year. It is reasonable to expect, therefore, that this will result in a relatively high proportion of licence renewals falling due on the last day of the financial year.

Finally, I stress that I understand the technical reasons for this apparent anomaly arising from the manner in which licence arrangements apply. As elected representatives, however, we should not simply attempt to justify it on technical grounds or that it is due to revenue implications. Surely we should endeavour to meet community expectations and try to reduce the ambiguity in such cases. With this in mind, as I said earlier, I made a point of speaking to people about it. They indicated there was a degree of confusion and that they would like the ambiguity in this matter removed. They would like to pay for licences on the due date at the rate that applies on that day. I share that commonsense view.

MR OMODEI (Warren-Blackwood - Minister for Local Government) [4.50 pm]: I thank the member for Mitchell for his grievance. I am glad he understands the technicalities of this issue - he certainly lost me about halfway through his speech. The Minister and the Department of Transport have provided me with the following comments.

The new vehicle licence fees were published in the *Government Gazette* dated 12 May 1998. For the purpose of section 28A of the Road Traffic Act, the specified day of commencement was cited as 1 July 1998. Section 18(4) of the Road Traffic Act prescribes that -

> . . . the renewal shall be deemed to be a continuation of the licence and to have effect on and from the day next succeeding the day on which the licence expires . . .

For vehicle licences which expire at midnight on 30 June 1998, the effective date of the next registration period is 1 July 1998. Those vehicles therefore attract the fee prescribed for that period of registration. As a courtesy, the Department of Transport posts out notices of renewal to vehicle owners in advance of the registration expiry date. This allows owners to ensure that, upon payment, the registration remains current. The notice of renewal shows the expiry date to be the "due date" to remove any implications of continuity of registration, including third party insurance, should the registration not be effective for any use of the vehicle after 30 June 1998.

In the light of the apparent confusion outlined by the member for Mitchell, caused by the showing of the due date as the expiry date, the Department of Transport has undertaken to change the notice of renewal to remove any ambiguity. I think the member seeks to remove that concern and confusion.

Regardless of any future changes to the notice of renewal, legislation prescribes that registration of vehicles expiring on 30 June 1998 must attract the new vehicle licence fees. I assure the member for Mitchell I will be raising this matter with the Minister to ensure that the member's concerns are dealt with and that any ambiguity on this issue is clarified.

CHILD CARE FUNDING

Grievance

MS ANWYL (Kalgoorlie) [4.53 pm]: My grievance is to the Minister for Family and Children's Services. I gave the Minister some notice of this issue shortly before lunch. I trust she has had an opportunity to examine it. I have previously advised this House of my grave concerns about the consequences of the funding cuts to child care made by the Howard Government. Among those consequences is a dramatic decrease in the number of children accessing child care places because parents can no longer afford to pay for child care. To be clear, about $937m has been pulled out of child care in this State since the Howard Government was elected. That equates to about 9 per cent of the surplus that the Prime Minister has crowed about for so long.

The Minister's response has been largely one of wait and see; that is, she did not present a submission to the senate committee on this issue because she felt it was appropriate to wait and see. On the other hand I undertook a survey of 114 child care centres which I presented to the senate committee. About 80 per cent of them thought their financial viability was threatened.

The focus of this grievance is out of school or vacation care; that is, before and after school care, and school holiday care provided by centres. Changes were made on 27 April of this year. Only about 60 per cent of parents who are now eligible to claim subsidies are doing so. That means 40 per cent of parents are not claiming subsidies. The Department of Family and Children's Services has a significant role in ensuring parents are aware that they can claim subsidies, notwithstanding the Federal Government made the cuts.

The number of children in this type of care is declining. Eighty-eight centres have closed in Australia since 27 April, that is within only a couple of months. This has huge implications for the welfare of Western Australian children. In the next round of closures we can only expect more children will not have any before or after school care and will not have access to care during school holidays.

The Department of Family and Children's Services has announced that in the next fiscal year it will provide $165 000 for July school holiday programs. On the face of it, I applaud the Minister's initiative. As she knows I have lobbied for the Government to attempt to bail out struggling child care centres in this State. However, I am informed by the Western Australian Out of School Care Association that the effect of this $165 000 will be to create two classes of vacation care for the July school holidays. A media statement of 1 May 1998 announced that the $165 000 is to support particularly affected vacation care services through their transition to the new commonwealth funding arrangements.

The problem is there seems to have been a misunderstanding in the Minister's department about exactly what the commonwealth changes mean. They mean that the user must now pay and no subsidy is being provided for out of school care centres fees. I am told by Marilyn Carr of the WA Out of School Care Association that half the centres will receive that $165 000 funding for July and they will charge parents approximately $65 for a week's care for one child. However, the centres that do not receive that funding, and that are reliant on federal funding, will be charging $110 a week. If I were a parent I would be tempted to send my child to the cheapest service.

This comes when approximately 88 centres have closed in a matter of months as a result of these changes. The after school care centres are already doing it tough and the federal transitional funding they receive will not subsidise fees. Centres will close. They are already becoming underutilised. Rather than assisting - I acknowledge that it was well meant - the funding has compounded the situation.

For example, the Save the Children Fund ran two centres in Lockridge and Koongamia. The Lockridge centre has closed. It was unable to continue to provide a service for up to 40 children aged between four and 13, mostly from single parent and low income families. The Thornlie service has closed, although the Langford service will continue to provide care, sponsored by Boogurlarri Community House.

Western Australian children will have no before or after school care or school holiday programs. I can see no additional funding in the state Budget to provide family support for these measures. Increased funding will be required across a large number of portfolios as a result of the social consequences of these children not receiving some sort of care. Funding of $150 000 is to be made available in the Budget for a study of out of school care. However, the sector has informed me that this study has been done many times, and the money will be squandered by spending it in that fashion. I present the Minister with a constructive solution: Rather than leave these children home alone or out on the streets, I urge the Minister to forsake her "wait and see approach", acknowledge the number of out of school care centres that are closing in this State, act now and apply that $150 000 to preserve the existing services and ensure that the welfare of Western Australian children is adequately protected by the State. The State demands this responsibility through statutory obligations

MRS PARKER (Ballajura - Minister for Family and Children's Services) [5.00 pm]: I appreciate the member for Kalgoorlie's raising this matter. I also acknowledge and appreciate the notice she gave me of this grievance. The member for Kalgoorlie correctly referred to a media statement I made at the time of the 1998-99 state budget announcement in which $715 000 was allocated for initiatives in children's services. Among other things, $165 000 was allocated to provide support for particularly affected vacation care services.

Let me provide some background for the implications to the sector of the changes of 27 April and what was in place before that time. Two types of service for vacation care operate in the State. The member for Kalgoorlie mentioned that we had created two classes of service. There have always been two categories of service: One was commonwealth administered and the other was state administered. After the changes to the commonwealth funding arrangements took effect on 27 April, the commonwealth administered services were eligible for child care assistance and were provided with a transitional grant. Those services had a fair degree of security. The state administered services faced significantly different circumstances. They had to prove or establish their eligibility for the child care assistance at federal level, and it had to be work related assistance. In the early stages, those services did not have the security of knowing they could prove that eligibility.

The circumstances under which the state administered services operated created a lot of anxiety among those service providers. Contrary to the member for Kalgoorlie's claim that there was a "wait and see approach", the State Government stepped in early and identified the amount of money required to provide support to those services through this transitional period. The Government would not stand back and see centres suffer without providing some sort of support. The Government decided that while the process was in train, the state administered services should apply for and hear the decision from the Federal Government about whether they qualified for that assistance. On 1 May, Family and Children's Services decided to fully fund those organisations to take them through that transitional period. Since that time, all but six of those state administered services have qualified for commonwealth funds. Family and Children's Services is a supporter of the sector and I am in touch, and certainly the department is in touch, with the sector. We have decided that the six services that did not qualify for federal assistance are important service providers for family support services and non-work related care, and we will continue to fund them to the end of their service agreement in July 1999.

There are two types of service, and that has always been the case. However, while the commonwealth

administered services had the security of knowing they would receive assistance and had a transitional grant, we at a state level thought it very important to assist those state administered programs during that transitional period. I am aware that the person from the WA Out of School Care Association mentioned by the member for Kalgoorlie has had some grievance about the matter. However, the feedback I have received from the sector has been very positive.

Ms Anwyl: She is the president of the peak body.

Mrs PARKER: That is right. I will mention that in a moment. The agencies that have been offered the arrangements that we have made available have all taken advantage of that assistance. We have had feedback from a number of organisations that they are grateful for the support. I have been congratulated on this decision by a number of different services.

Ms Anwyl: What about disparity of fees? That is the key to the issue.

Mrs PARKER: I will comment on the claims that have been made by the WA Out of School Care Association. For example, at a meeting held in Midland a few weeks ago there was talk of a need for regulations and that the Government had to do something about the matter. I know that the member for Kalgoorlie and a number of other members of Parliament were at that meeting. I understand that that meeting was attended by more members of Parliament than members of the public! There was talk of regulating out of school hours care. The member for Kalgoorlie was asked what she would do about regulations if she were in government and she answered that she was not able to say, exactly.

We have identified and acknowledged the need for regulations in this sector. Consultation has occurred with the sector. I do not know whether these people have embraced that consultation process, but consultation on regulations to this out of school hours sector has already taken place.

Ms Anwyl: Why spend another $150 000 on it?

Mrs PARKER: I am expecting advice on this matter in the next few weeks to provide regulations covering the quality of care in this sector. The Government is supportive of the child care sector. We value the out of school hours group and have made that money available so that we can see people through the transition that has resulted from the Federal Government's changes. I look forward to the quality of care in this State continuing to be among the best in the country.

INTRODUCED BIRDS

Grievance

MR MASTERS (Vasse) [5.08 pm]: Contrary to public opinion, this is not a grievance about migrants working in escort agencies, but about introduced birds of the feathered variety! There is something special about Australia. It is the oldest continent on Earth and, excluding Antarctica, it is actually the driest. It has the most infertile soils of any country or continent on the planet and has proportionately the largest desert area of any continent. It is also the most isolated, and by that I mean not just geographically, but also in the historical geology of the country. Australia was separated from all other land masses around 65 million years ago when it started heading north away from Antarctica at the speed of about 4 cm a year.

Due to those factors, Australia has developed a truly special flora and fauna which is unique; there is nothing else like it on this Earth. Most of Western Australia has been subjected to continuous weathering for some 250 million years. For example, some of the climates that we have enjoyed or suffered over that time are our present day desert or very dry climates; shallow seas have covered most of Australia over different times in its history; parts of Western Australia have been under many hundreds of metres of ice because of glaciers, and it has also had rain forests.

These facts have helped to create our unique plants and animals, but they also explain why our environment is so vulnerable to invasion from foreign organisms. Our isolation has left our wildlife susceptible to competition from species from other countries that they have never previously encountered; in other words, they have no natural defence mechanisms against these species.

I understand that in the next 12 to 24 months there will be a review of the Wildlife Conservation Act. One issue that will need to be dealt with in the review is the protection under law given to exotic species which have established viable breeding populations in this State, primarily in the south west. As I understand the Act in its current form, any species of plant or animal which is able to sustain itself in the wild is defined as wildlife and is automatically protected. It requires a declaration from the Minister before a species that falls into this category is made unprotected, such that it can be "taken", meaning shot, poisoned or captured,

without fear of prosecution. I believe the people of Western Australia have generally reached a level of understanding of their environment which will allow them to accept most, if not all, exotic plants and animals in the State to be automatically declared unprotected and therefore made available for taking, if the Act were to be rewritten along those lines.

Let me give members a few examples of my concerns about introduced birds, animals and other foreign species. There are some obvious nasties out there in our environment. They include rabbits, foxes and feral cats. Rabbits have a really big impact on our native flora. Cats and foxes have devastated our small to medium sized marsupials. We have the world's worst record for the extinction of native animals, primarily marsupials, and it is principally because we have introduced foxes and feral cats over the years. In the northern part of Australia, including Western Australia, are camels, goats, donkeys and horses. Those last three animals are cloven hoofed. It is universally recognised that they cause great damage to our pastoral soils and vegetation, affecting not only our natural environment but also the viability of the pastoral stations that carry large numbers of those introduced animals. At the other end of the scale are very small organisms that have been introduced to the country and are causing severe problems. For example, I refer to the dieback fungus which has caused major damage to our banksia woodland and coastal heaths and is a serious threat to continued forestry in large parts of our jarrah forest. Veldt grass, which is causing big problems in Kings Park; pampas grass, which is causing major problems in places like Albany and to a lesser extent in my electorate of Vasse; and bridal creeper, which is an environmental weed causing major problems and threats right throughout the south west, are only three of many hundreds of species of introduced plants which cause problems.

Dr Turnbull: Blackberry.

Mr MASTERS: Blackberry is a good example. It is an environmental weed as well as a problem for farmers. Fish such as mosquito fish from South America, carp and red fin perch, and invertebrates such as Japanese starfish which is causing enormous problems on the east coast of Australia; and in places like Cockburn Sound and in the south west are giant tube worms.

I really want to talk about introduced birds. Kookaburras were introduced into Western Australia. They do not cause so much of a problem, except that in farming areas they eat lots of small birds such as robin redbreasts.

Dr Turnbull: They eat snakes.

Mr MASTERS: It is bad that they eat snakes. The kookaburra is one example. We have Indian turtle doves and Senegal doves and in the eastern States, of course, sparrows and starlings. I wish in particular to draw the Minister's attention to the dangers being posed by two bird species which occur in other parts of Australia but which are now establishing themselves in and around Perth. The rainbow lorikeet was first reported from Perth in the 1960s, but today it is spreading throughout the Perth area. The Department of Conservation and Land Management has said that it is not overly concerned, but I am greatly concerned. The population of long-billed corella is now only hundreds of birds but over time it will reach thousands.

I ask the Minister to take into account during the review of the Wildlife Conservation Act the ability to have these species declared unprotected and therefore be made available for "taking".

MRS EDWARDES (Kingsley - Minister for the Environment) [5.16 pm]: I thank the member for raising this issue; it is particularly timely, given the current review of the Wildlife Conservation Act. Two separate pieces of legislation cover the introduction and keeping of exotic and native birds in Western Australia: The Agriculture and Related Resources Protection Act, which is administered by Agriculture Western Australia and the Wildlife Conservation Act, which is administered by the Department of Conservation and Land Management.

Under the Wildlife Conservation Act, all animals native to Australia, regardless of whether they naturally occur in Western Australia, are protected as fauna. For this reason the kookaburras, which were established in Western Australia only after the deliberate release programs in the early years of this century, are protected as native fauna. On a number of occasions, mainly as a result of public pressure in the Perth metropolitan area, moves have been made either to declare an open season on kookaburras or to declare them to be unprotected in the wild, but those moves have not been successful, despite the view that kookaburras may be having a significant impact on the native bird species in the south west.

CALM administers all licensing for native birds, and administers the licensing of exotic birds by agreement with Agriculture WA on its behalf. All applications to import and keep new species of native birds are assessed by CALM. The same staff are involved in this assessment as those who undertake the assessment

of exotic species. The decision making process is also guided by the basic charter of the Wildlife Conservation Act in that CALM is required to conserve native species in Western Australia.

Intentional releases of birds into the wild have generally come about through individuals having a desire to see the species in the wild or depressed retail markets making it uneconomical for agriculture to keep excess stock. It is an offence under regulation 58 of the Wildlife Conservation Regulations to release any bird, other than a homing pigeon, or mammal from captivity without prior written approval. CALM however is unable to do anything to prevent such releases unless it obtains information that results in the offenders being made answerable for their actions. Those species of exotic and introduced birds that have been shown to be having adverse environmental or agricultural impacts are declared as "pests, declared birds" under the Agriculture and Related Resources Protection Act, or "unprotected" or "open season fauna". These declarations provide a means whereby people may control such species using prescribed methods without the need for a licence from Agriculture WA or CALM.

The possibility of establishing some form of escaped animal control trust account from a proportion of licence fees is being considered in the preparation of a replacement Wildlife Conservation Act. Such an account could be used to fund future eradication campaigns before the wild populations become uncontrollable. If members look at some of the costs, they will find that control programs are invariably costly. For example, to eradicate 71 house sparrows from a site in Wanneroo in 1994 cost an estimated $30 000.

I am very pleased that the local member raised those issues. It is timely given the current development and review of the Wildlife Conservation Act. I will ensure that his comments are referred to the department for consideration.

The DEPUTY SPEAKER: Grievances noted.

KEYSTART SCHEME ADMINISTRATION

Motion

MS MacTIERNAN (Armadale) [5.20 pm]: I note the absence of the Minister for Housing. The Minister told me that he would be paired after dinner. I do not see much point in beginning to outline my case, in the absence of the Minister. I suggest that the coalition Government look carefully at its Whip, and consider whether he is sufficiently on the ball to ensure that the procedures of the House are kept moving. It has been evident for the past 10 to 15 minutes that grievances would end early, and I must compliment the opposition Whip who was on the ball and regularly phoned me to ensure that I was here so that I could make a start. It is very distressing that the government Whip has not been able to perform at the same level as the opposition Whip, although it could be it is not the government Whip's fault, but rather those whom he has been trying to whip have steadfastly refused to be whipped! It is very annoying, given that we have such a small window of opportunity to address this matter with the Minister for Housing whose parliamentary activities tonight mean that he cannot be here to answer these very real and substantial concerns.

The ACTING SPEAKER (Mr Sweetman): Order! The member for Armadale is doing an excellent job filibustering until the Minister arrives. However, she should formally move her motion.

Ms MacTIERNAN: I could move a censure motion against the Minister! I will move the motion but I note that every time I give notice of a motion, the Minister concerned becomes ill or is suddenly called to urgent parliamentary business. We have had many such instances.

I note the Minister for Housing has just arrived. I should tell him that I was about to move a censure motion against him and the government Whip for his failing to appear on time! I move -

> That this House calls upon the Government to urgently review the administration of the Keystart scheme by its current private operators and in particular calls on the Government to justify the transfer of management of repossessed homes to a company related to a director of Keystart management, and the consequent escalation of the debt burden of dispossessed Keystart borrowers.

For some time I have been raising my concerns about the management of Keystart. Although Keystart is a government scheme, which the Labor Government commenced in 1989, and its overall responsibility falls within the Housing portfolio and under the administration of Homeswest, the scheme is managed by a joint venture of two private operations - Stanton Partners and a company named International Financing and Investment Pty Ltd, commonly known as "IFI". The administrators of the scheme were appointed in 1993 by the coalition Government.

The concerns I have raised in the past have dealt with a number of low income home buyers who find themselves in situations of substantial negative equity; that is, they borrow, say, $115 000 to buy a property, only to find when they get into trouble and must dispose of the property it is worth only around $100 000. I have set out my concerns before in this place. The classic rejoinder of the Minister for Housing when I identified the problem was that it was worse under Labor. I admit that there were negative equity problems under Labor, but those problems arose from different circumstances. When we set up the scheme in 1989, interest rates were 10 per cent and over a short time escalated to 18.5 per cent. Therefore, it is hardly surprising to find negative equity across the board in such an environment. However, it is somewhat more surprising and alarming that in the environment experienced over the past three years of declining interest rates, we are still seeing such a significant rise in negative equity.

There is also the question of the very high interest rates - well above the market rate - charged by the Keystart managers to low income people. The Minister's classic rejoinder is that it is more expensive to put together the finance because there is a greater degree of risk. I do not believe that the evidence supports that statement. Given that the scheme is government backed, I do not believe there is a need to do that and I am concerned that a careful analysis would reveal that since this group has taken management there has been an increasing differential between the market rate and the rate charged to low income people whom we are supposed to be protecting.

Against that background, when I heard of the latest issue I was very perturbed. I have been approached by a number of real estate agents and others who have wanted to take up this issue. This matter concerns the administration of repossessed homes. Because of the problem with negative gearing, when people find themselves in difficulty for a number of reasons, and they are unable to dispose of their homes at a level that would enable them to discharge their outstanding mortgage, their homes are repossessed by the lending institution under instructions from Keystart.

As at the end of last year, something in the order of 200 homes were mortgages in possession; that is, homes that had been repossessed but not on-sold. Traditionally, the properties have been administered by various building societies - I think about six. They have taken back the properties; they move in and spend a couple of thousand dollars on tarting up the properties. They do a paint job, and tidy up, to make the properties more presentable for the market - the things we do routinely when we put a home on the market.

Late last year, Keystart decided that the administration of the repossessed homes would be dealt with no longer by the building societies. The building societies generally administered the properties for around 0.5 per cent of the outstanding balance. Therefore, on average, in administering such a property a building society would charge around $400 to $500. However, for some reason, around November 1997, Keystart decided it would take back the work formerly undertaken by building societies, and would give it to a company called Donbar Holdings Pty Ltd.

Point of Order

Dr HAMES: The matter being addressed was referred to the police, and the people involved have been charged. The specific details to which the member is about to refer are sub judice.

The ACTING SPEAKER (Mr Sweetman): The member for Armadale would be even more aware than I of the conditions applying to the sub judice rule. The Minister is correct. The member must be cautious in her presentation.

Debate Resumed

Ms MacTIERNAN: It is very interesting to note that the matter has been referred to the police because when I raised this issue previously with the Minister, the Minister seemed to know nothing about it. Obviously some developments have occurred.

Dr Hames: I would be happy to check *Hansard* but I am sure the matter has been referred to.

Ms MacTIERNAN: The Minister has been saying that about these other incidents of corruption that I have raised with him, whether it is Northern Realty or the Industrial and Commercial Employees Housing Authority. He says he cannot answer any questions on those issues because they have been referred to the police. The Minister must be starting to ask a few questions about the administration of his department as so many matters which arise in his department have been referred to the police and they cannot be discussed in this place.

Dr Hames: This matter has nothing to do with the matters to which you refer.

Ms MacTIERNAN: The common theme is that every time we raise a question about something that is happening in his department that seems unorthodox, we receive the response that he cannot tell us anything about it because it is with the police. It seems to me that something very wrong is going on in his department. I will now take on board this new information -

Dr Hames: As usual you are doing a very long stretch of the truth.

Ms MacTIERNAN: Hold on! The Minister is the one telling me that this issue that I am about to raise relating to the probity of the administration of Keystart cannot be discussed because the matter has been referred to the police! However -

Dr Hames: I have not said that at all and you know very well that the only issue to which you cannot refer is the specific issue that relates to the case. You can talk about some of the details of the management and so on, but not the specifics of the company that you were starting to refer to.

Ms MacTIERNAN: Unfortunately, it is necessary to talk about some of the specifics of the company to make the point. A company was engaged to do the work that previously had been done at a cost of about $400 to $500 a year by the building societies. I would appreciate it if the Minister would enlighten us on some of these details. One of the reasons I brought this motion before the House was to seek a justification and information. From what we understand, this company was then paid on a fee for service basis. It was paid a percentage of the cost of the repairs that it effected. Bearing this in mind, the homes have been repossessed and they have had some repairs done to them. Under the new arrangement with the new company, and from the evidence we have, the company was then paid on the basis of a percentage of the cost that it incurred in effecting the repairs. If that were the case, this would provide a very substantial incentive to ramp up the costs of those repairs. From what we have been told by various agents - I have a letter detailing one of those instances - there has been a very substantial overcapitalisation of these -

The ACTING SPEAKER (Mr Sweetman): Order! The member for Bunbury is trying to chair the House proceedings as well. The member for Bunbury should keep order in the House as should the members behind the Chair. If they must conduct discussions, they should go into the hall.

Ms MacTIERNAN: I think he is so upset by the way we have reflected upon him as the Whip that he has his eye on the position of the Chair.

Now that this company is involved, a move appears to be made towards a very substantial overcapitalisation on these properties. I have a letter from an agent which was sent to Keystart. I will not provide the exact address, although I have it in this document, because that may contravene the Credit Act and the confidentiality provisions. However, there was a house in Picton Terrace, Alexander Heights, on which various works were done while it was in the possession of the building society. An offer was obtained for $115 000. That offer was refused by Keystart. It was then handed over to Donbar. Donbar spent another $7 000 on the house and it ended up being sold for less than $115 000. In that example some $7 000 has been squandered on a fairly modest property. Another example has been reported in Chale Street, Merriwa. This property was valued at $85 000 and, according to the information we have received of which we would certainly like some confirmation, something in the order of $30 000 was spent on that property. No-one could possibly justify that level of repairs and refurbishment to a house that was only worth $85 000 at the outset. Another property referred to us is in Leady Rise, Quinns Rocks. The building society obtained an offer of $85 000, which at that time it thought reasonable; the outstanding amount was $86 000 and therefore there would have been a shortfall of only $1 000. That was rejected by Keystart and handed over to Donbar. Very substantial works in the nature of reticulation and landscaping were effected on the house. Six months later the property has not been sold. The attitude of the company has been described to me by some of the people involved in this exercise as "Sydney or the bush". It is not simply a situation of modest repairs being done to suit the state of that market; that company is going into those houses and putting in carpets of a standard that is inappropriate for the capital value of the house. The standard of painting being done on the houses is also inappropriate and all the time fees are accumulating to the mortgagees, the people who have already lost their homes. These people have lost their homes and they have a shortfall in the monetary value of their homes. Every time this company does one of those over the top repair jobs, the costs of that are debited against this person, so the debt gets even larger. If that is not case, the debt is being absorbed by Keystart out of the profits of the scheme, and that money is owned by the Government; it is not coming out of Keystart's profit. It receives its payment as a percentage of the book. Either the poor impoverished home buyer who has already lost his house is bearing the burden, or it is the Government.

This was only half the problem. I wanted to refer to another matter to do with the practices of this company. However, I am being prevented from doing so because the Minister tells me it is with the police.

Point of Order

Dr HAMES: The court case does not relate to the management. The court case relates only to Donbar Holdings and the actions it has been accused of. If the member wants to speak about the management, I do not believe that is sub judice. She would know better than I. No legal action is pending against the scheme managers.

Debate Resumed

Ms MacTIERNAN: The quality and conduct of the company that the managers engage reflects upon the scheme's management. I have outlined my concern about Donbar Holdings' inflated cost levels. The other aspect of this issue now is the subject of charges, so I cannot go into it. However, it is important to point out how close is this nexus between the management of Keystart and the conduct of this company. This is not just a normal line of responsibility whereby the Keystart scheme management was negligent or lacked probity by engaging this company; it is more than that. At the time that the grant was made and this work was taken from the building societies and given to Donbar Holdings one of the directors of that company was Robert Peter Cockburn Salmon. He is not only a director of the beneficiary of the endowment by Keystart, but also a director of International Financing and Investment Pty Ltd. One of the senior directors of the company that is bestowing the contract upon Donbar Holdings was, at the time, and until such time that I raised this with the Minister, a director of Donbar Holdings.

I conducted another company search today suspecting that, the matter having been raised and being subject to an official investigation, he might have flown the coop. Sure enough, Mr Salmon is no longer listed in the company records as a director. The significant point remains that when Donbar Holdings was given the job Mr Salmon was a director of that company and of IFI Pty Ltd, which is one of the joint venturers administering the Keystart scheme.

These allegations give rise to concerns that the Keystart scheme management let a contract to a company in which one of its principals had an interest; let a contract without a tender and at a cost greater than the existing arrangement; allowed that company to systematically overcapitalise its properties; and I will not mention the final point. The losers in all of this are the punters who have lost their homes and who find themselves with inflated debt levels. If they do not foot the bill, the Government does as more money flows out of this scheme to cover these losses.

Agents are gravely concerned about the way in which Keystart is managing these properties. It fails to put tenants in these properties. It is losing interest on 250 vacant properties because it is not seeking to mitigate its losses. This money is being lost by the Government. One of these agents has stated his concerns in a letter. He said that the Premier claims there is no money for nurses and hospitals and there is no money to compensate the agents, yet money is being systematically lost.

Point of Order

Dr HAMES: Since the member is reading from a letter I request that it be tabled.

Ms MacTIERNAN: It is not an official document.

Debate Resumed

Ms MacTIERNAN: I find it ironic that when I asked the Minister for Local Government to table a document earlier, the Minister for Housing grabbed the document from him and hid it under his papers, so if the Speaker had been so mindful as to order the tabling of those papers the Minister for Local Government would be able to say that he did not have them.

Mr MacLean: The Martians are coming tomorrow.

Ms MacTIERNAN: Everyone saw the Minister's actions.

I have outlined the concerns that Keystart's management let a contract to a company in which one of its principals had an interest; it let a contract without a tender process and at a cost which is greater than the existing arrangement; and it allowed that company to systematically overcapitalise on its properties. Will the Minister table the documents detailing the decision to engage Donbar Holdings? Will the Minister advise who proposed and who approved that decision? How much has been paid to Donbar, and how has the cost of the work for which Donbar or its subcontractors claimed been verified? Will the Minister advise, particularly in light of his statement that charges have been laid, whether Donbar is still performing work for the Government; and against whose account these costs incurred by Donbar and its contractors have been held?

Are they being credited in full to the accounts of home buyers or are they being accounted for by the Government? It is alarming. This is the third instance in which I have raised a significant issue in the Minister's department and he has said that he cannot deal with it because the matter is before the police.

DR HAMES (Yokine - Minister for Housing) [5.46 pm]: I will respond to the last point first and indicate what a lot of nonsense it is to say that I do not respond to issues that are raised. When issues are raised we respond to them directly. If some of those issues require investigation by police, so be it. In this instance, the points raised by the member for Armadale suggest in some way that, by bringing forward these matters, that has resulted in the department seeking information and then laying charges. The fact is that Keystart was aware of this issue. As soon as Keystart's management found out about this issue, which was well before the member made statements on the matter, it was referred to the police and the scheme managers immediately ceased any dealings with the company.

I will address the points made by the member for Armadale shortly. However, in response to some of the comments that were made by the member and as a prelude to the specifics that she raised, I will give some background to the Keystart program . Keystart has been a tremendous scheme for this State. It was started by the Labor Government in 1989.

Ms MacTiernan: You only have limited time, Minister, due to your unavailability.

Dr HAMES: I have enough time to respond to all the issues that the member for Armadale raised and I ask her to give me the time to do it without interrupting.

Ms MacTiernan: You are facing a time limit.

Dr HAMES: The member for Armadale does not want me to talk about this. She has done nothing but attack Keystart, despite the fact that retailers for this scheme, including a union, have stated they are not happy with what the member is doing. They say they have no control over what she does, and I am not surprised at that. Those retailers and many others in this State gain an enormous benefit from the Keystart loans. The Keystart program provides loans for a huge number of people in the member's electorate who would not otherwise be able to purchase their own homes. In Western Australia 25 000 families, or 60 000 people, have been assisted by this scheme; 92 per cent are first home buyers. The Keystart book is currently worth $1.14b with a cumulative value of over $2b. The member for Armadale continually states that Keystart is charging a high interest rate.

Keystart does not charge a high interest rate if one considers that home buyers are not required to have mortgage insurance and zero deposit is required. Because there is a zero deposit requirement, naturally it caters for first home buyers in low income groups. It is quite natural that the default rate on home loans is higher. This scheme was not designed for the Government to lose money. Governments have lost money on schemes like this over and over again. The New South Wales Government in particular will not touch schemes like this because they have lost an enormous amount of money. This scheme has not cost this Government a dollar since it started. It is going extremely well and more and more people are getting into Keystart loans. The problem for most people who are on low incomes is that often they have sufficient income to service a loan but they cannot afford to raise the deposit.

Ms MacTiernan: Will the Minister clarify that? This is contrary to what the Government has said before. Since when has there been no deposit? When was that introduced? I am reading a Keystart document which refers to a low deposit of 2 per cent.

Dr HAMES: The member for Armadale is correct. I apologise. The deposit required is very low. I do not have specific details.

Ms MacTiernan: It is generally 5 per cent.

Dr HAMES: I think it is 2.5 per cent.

Ms MacTiernan: That is for the first home buyers. It is around 5 per cent for the non-first home buyers.

Dr HAMES: Yes. I apologise for that. However, it is far less than anybody else in the market has to raise to get a loan. That is the point of the scheme. It is to provide for those people who cannot get the deposit. The difficulty is that those people have greater difficulty in servicing the loan. Therefore, we must make available loans like that in order to stimulate the market. The member for Armadale goes on and on about the interest rate and I do not think it is a reasonable argument. As far as negative equity problems are concerned -

Ms MacTiernan: Will the Minister deal with the issue of Donbar Holdings, otherwise this will have to go on after dinner?

Dr HAMES: I point out to the member that she had exactly the same amount of time that I will get. In the earlier part of her speech she referred to all these items. I am responding directly to comments that she made during the first part of her speech. If she stops interrupting me, I will be able to deal with the points raised by her towards the end of her speech.

The member talked about negative equity problems. As I pointed out to the member before, the Newstart program that the Opposition, when in government, initiated was one of the worst schemes ever because that allowed the debt equity ratio to deteriorate and resulted in people owing far more than their loan. I have the figures.

Ms MacTiernan: I acknowledge that, Minister.

Dr HAMES: The member for Armadale does not want to hear it, that is the problem.

Ms MacTiernan: No. I acknowledge it.

Dr HAMES: There were 5 461 loans originally in this scheme. We have been able to sort out all those loans; there are now 116 people left on that scheme. Part of the reason for that is the safety net we put in place to try to save all those people who have got into difficulties since. The member for Armadale made telling points earlier about the Keystart loan scheme; however the reality is that many of those people were not part of that scheme; they were part of alternate schemes. Some of those who had excessive debt had borrowed money to buy cars.

Ms MacTiernan: The Minister does not know what he is talking about.

Dr HAMES: I caused to be investigated cases that were specifically raised by the member for Armadale. In the case where the loan was well above the value of the house, the home buyers had been paying their housing loan up to a certain time and had purchased other things - totally nothing to do with their Keystart loan. I can provide those details. The safety net that we put in place allows a freezing of the interest rate as a first step for people who get into difficulties. The second step is to extend the period of the loan. If they are still in severe difficulties, Homeswest will buy portions of their equity to allow them to stay in their homes. Therefore, it turns into a different type of loan. Lastly, Homeswest will buy back the home and offer full rental. We have bent over backwards, far more than any bank would, to save these people and give them an opportunity to stay in their homes as long as possible.

I now refer to the specific details that the member for Armadale raised. I refer particularly to the scheme managers. We have been extremely happy with the scheme managers who have been doing a tremendous job managing the whole scheme. There have been some problems with the retailers under those managers, relating to the ongoing management of some of the people who have got into difficulties for different reasons; for example, a marriage breakdown. When one partner moves away, the other has to sell.

There was a large drop in values in 1995 when many people purchased their homes and they now have negative equity in that property. Although these savings schemes are in place, some of them do not want to stay in the home because their family is breaking up. Scheme managers became unhappy with some of the retailers - not all - and the speed with which they are able to on-sell those properties, the exact point raised by the member for Armadale. However, the problems were with the retailers of the loans. They were not disposing of the properties in a time that we thought was reasonable. Therefore the managers took over that aspect of the properties. We felt they were not spending enough time to bring the properties up to standard, nor were they valued properly. I have made that point before. The scheme managers talked over that aspect.

Ms MacTiernan: Did they take it over from all retailers?

Dr HAMES: Contrary to the member for Armadale's motion to the House that the transfer of management was to a company, the management was transferred from the retailers to the scheme managers. Therefore, the member for Armadale's motion is incorrect.

Ms MacTiernan: Okay, what did Donbar do?

Dr HAMES: Scheme managers employed a company to do the upgrading of these properties to bring them up to a condition for sale. One condition was that it had to be at cost plus 10 per cent. A certain number of quotes - I think three - had to be obtained for the upgrading of that property. That has happened.

Ms MacTiernan: Therefore, it was cost plus 10 per cent?

Dr HAMES: That is right. The point raised by the member for Armadale with regard to alleged illegal activities with these groups is sub judice and it is agreed it is a different issue.

Ms MacTiernan: But it was a cost plus 10 per cent contract. Therefore whatever the costs were, you gained 10 per cent?

Dr HAMES: Whatever the costs were, they went out to tender on a cost plus 10 per cent basis.

Ms MacTiernan: Could the Minister tell me how the company was selected to do that work?

Dr HAMES: I do not know how the company was selected but I will respond to those issues. The member for Armadale raised a series of questions and I am running out of time. I want to deal specifically with the points she raised. The person who won the contract in Donbar Holdings was a friend of Mr Salmon, who was a director of International Financing and Investment Pty Ltd.

Ms MacTiernan: So, he was a director?

Dr HAMES: He was, as the member said, a director of both companies. He was not aware at the time that decision was made that he was a director also of Donbar.

Ms MacTiernan: He was not aware that he was a director!

Dr HAMES: No. I will explain what happened. This person came from another country - I am not sure where - and was a friend of Mr Salmon. The director had asked Mr Salmon to act as a director of the company when he came to Australia. He agreed to do that. However, he was not required to attend any meetings. He was not required to do anything; the company in effect ran itself. He was merely there to give support to the manager of Donbar Holdings in the first instance when that company was established. As soon as he found out - when it was explained to him - he resigned as director.

Ms MacTiernan: The Minister is saying that this man who is manager of his multimillion dollar company did not know he was on the board as a director?

Dr HAMES: If the member wants to make statements about the director of IFI and whether what he has done is right or wrong, I invite her to go outside this House and do it.

Ms MacTiernan: The Minister is telling me that he did not know he was a director of a company!

Dr HAMES: I believe he will be able to defend himself adequately to the detriment of the member for Armadale.

Ms MacTiernan: He has been a director for nine years. I will show the document to the Minister. I will table it.

Dr HAMES: If the member will just sit back and listen for five minutes I will summarise what I just said to her.

Ms MacTiernan: The Minister stated he did not know he was a director.

Dr HAMES: He became a director to help a friend. He did not do it to receive anything from the company.

Ms MacTiernan: One cannot put one's name on the register as a company director and say, "I have no responsibility".

Dr HAMES: I will close my remarks because of the time. As soon as he discovered that he was a director still when advised by Donbar, as the member knows, he removed himself from that position. The real question is whether he did the right thing in employing someone who was known to him in that way. That is not a matter that I have time to deal with at this stage.

Sitting suspended from 6.02 to 7.30 pm

MS MacTIERNAN (Armadale) [7.30 pm]: I must make a small explanation. Initially I did not think this debate would extend past the dinner break in line with a joint agreement that had been made. The Minister for Housing made me very angry. The debate was to be curtailed. The Minister for Housing was not to be here this evening and he asked for limited time of 15 minutes within which the debate would take place. He spent two-thirds of that time - 10 minutes - addressing issues other than those raised in the motion. I was timing the Minister.

Dr Hames: They were issues raised by you. Go back and look at *Hansard*. Read your report and see whether I responded to anything you did not bring up.

Ms MacTIERNAN: I will agree with the Minister that I raised a couple of issues, in passing, that occupied only a small percentage of my speech. However, the Minister imposed a time limit of 15 minutes on this debate and then spent two-thirds of that time addressing the problems. I raised very real problems, and he spent five minutes explaining -

Dr Hames: There was not a great deal of substance to them. They did not need any more than five minutes.

Ms MacTIERNAN: There was a great deal of substance to them. The Minister has obviously been listening to Federal Parliament, taking lessons from Senator Warwick Parer. The Minister has come back with this sole excuse for this disgraceful situation: This man, who is a director of a very large international financing and investment management company which is running this major operation in Keystart, did not know he was a director of the other company. He did not know about that!

Dr Hames: He did not know. Before you make too much fun, he happens to be here listening to you make fun of him like that. I do not think it is appropriate that you should do that.

Ms MacTIERNAN: I am making fun of the fact that a Minister could get up in this place and expect anyone to accept that as an excuse for a massive conflict of interest in the operation of a government organisation.

Dr Hames: Why don't you go outside the House and say that?

Ms MacTIERNAN: I can go outside the House any day and say - this is in the documents - that this man is a director of International Financing and Investment Pty Ltd. He was a director -

Dr Hames: We are not arguing with that; we are arguing with your slandering him by saying that he said that he was unaware, and that that is unbelievable.

Ms MacTIERNAN: It is unbelievable.

Dr Hames: I am telling the member that that is the truth. She should go outside and say that she finds it totally unbelievable, and we will see what happens.

Ms MacTIERNAN: I find it unbelievable, because I make a presumption that when we put a company in charge of an operation of the scale of Keystart, the people in that organisation have some competence, some basic knowledge of the Corporations Law and they know, for example, about the obligations of a director and that directors cannot merely say, "My mate wanted me to become a director, but he said I didn't have to do anything." That is supposed to be okay. That is what the Minister is asking us to accept. The Minister is the one who is slandering Mr Salmon, and who is saying that he had absolutely no knowledge of the Corporations Law. The Minister's explanation requires him to have disregarded systematically the Corporations Law.

Dr Hames: I did not say that at all.

Mr Court: I am getting nervous.

Ms MacTIERNAN: I think the Premier should be getting nervous. He has a Minister in this place who is fiddling while Rome burns.

Dr Hames: The person about whom we are speaking is on the board, but not all members are there when decisions are made. He was not there when the decision was made. The company did not know that at that time. It was a long time after he had agreed to be on the board. It is a trustee company. He was not a beneficiary. He gets no money from being a member of that subsidiary company.

Ms MacTIERNAN: I take it all back; I have been wrong: It is totally plausible that Mr Salmon did not know that he was a director of not only IFI but also this other company, that he was totally unaware he held a current directorship. I will also believe it was just a pure coincidence, sheer chance, that out of the tens of thousands of companies that are around in Western Australia today the very company chosen by IFI to perform this costs-plus contract - money for jam - happened to be a company of which this man was a director, and he did not know about it. I ask the Minister to give us a break.

Dr Hames: He was not there when the decision was made. That company had been doing work for them in the past.

Ms MacTIERNAN: It is a huge coincidence. It is extraordinary.

At the very least, the Minister made a very interesting admission during his speech. Even if we go along with this farce that this man did not know he was a director of the company, those in Donbar Holdings Pty Ltd, the beneficiary of this costs-plus contract, were his mates. We have heard that. The position put to us by the

Minister tonight is that it was pure coincidence that Mr Salmon happened to be a director of the company, but Donbar comprised a group of his mates. I would like the Minister to explain to us - he has advised me that some time in the future he will get this information - how such a company came to be appointed without a tender; what processes the management of Keystart went through for it to arrive at this decision; whether this decision to take the work from the building societies and put it with Donbar Holdings was made by the managers or whether it was made with reference back to Homeswest and the management team.

I also ask the Minister to provide the exact costs that have been incurred under this costs-plus contract; how much has been paid out, and the total amount paid to Donbar; and the consideration given to the very problematic nature of a costs-plus contract, given that it would provide inherently an incentive to ramp up the costs of the homes that were being dealt with. I would also appreciate being provided with a list of all expenditures made by Donbar against each of the properties. It is very important for the Minister to explain exactly what is happening with each of the homes, and whether the amounts which have been expended have been justified by the subsequent sale price that has been achieved.

Dr Hames: I said this to you after my speech, so it will not be recorded in *Hansard*: I am happy to provide those answers as quickly as possible where we are able to and where they are not sub judice.

Ms MacTIERNAN: I have not raised those sub judice matters again. As I said to the Minister, while I appreciate that undertaking, I hope that in this case he delivers. In the past when I have had questions on notice I have not been very successful in getting answers. I have questions relating to GEHA and ICEHA that have been in the system -

Dr Hames: I have no record of any outstanding answers to questions from you beyond the prescribed time. If you bring them to my attention I will see what can be done.

Ms MacTIERNAN: They are not beyond three months. Even the Ministry of Fair Trading is able to answer its questions more promptly.

I have set out the case. At least we have been entertained by the pathetic attempts of the Minister to account for this conflict of interest and the mismanagement of Keystart.

Dr Hames: I hope you take up your commitment to go outside and make these statements.

Ms MacTIERNAN: I look forward to the Minister's providing the information. I point out once again that I am happy to go outside the House and say that this man was a director of company A and a director of company B at the time company A gave a contract to company B, and that I find it very difficult to believe that he was unaware of his obligations under the Corporations Law. If he believes that it is defamatory for me to say that I find it difficult to believe that he was not aware of his obligations, I invite him to line up with Hon Eric Charlton and take legal action against me.

Question put and a division taken with the following result -

Ayes (13)

Ms Anwyl	Mr Grill	Mr Marlborough	Mrs Roberts
Mr Brown	Mr Kobelke	Ms McHale	Mr Thomas
Mr Carpenter	Ms MacTiernan	Mr Riebeling	Mr Cunningham *(Teller)*
Dr Edwards			

Noes (22)

Mr Baker	Mrs Edwardes	Mr Masters	Mr Sweetman
Mr Barron-Sullivan	Dr Hames	Mr McNee	Mr Trenorden
Mr Bloffwitch	Mrs Hodson-Thomas	Mr Minson	Mr Tubby
Mr Court	Mr Kierath	Mr Prince	Mr Wiese
Mr Cowan	Mr MacLean	Mr Shave	Mr Osborne *(Teller)*
Mr Day	Mr Marshall		

Pairs

Mr McGowan	Mr Barnett
Mr McGinty	Mrs Holmes
Ms Warnock	Mr Johnson
Mr Ripper	Mrs van de Klashorst
Dr Gallop	Mr Bradshaw

Question thus negatived.

WORKPLACE AGREEMENTS (PROVISION OF CHOICE) AMENDMENT BILL

Second Reading

MR KOBELKE (Nollamara) [7.47 pm]: I move -

That the Bill be now read a second time.

This Bill seeks to provide choice for Western Australian employees in respect of employment under the terms and conditions of a Western Australian workplace agreement. The Court Government established workplace agreements under the 1993 Workplace Agreements Act with much rhetoric about it providing greater choice in the forms under which people would be contracted for employment. This rhetoric has now been shown to be false. The offer of choice was always a false promise to camouflage the undermining and removal of the standards of protection afforded workers under the award system.

The Labor Opposition remains committed to the repeal of the Workplace Agreements Act 1993 and other Court Government industrial relations changes that have attacked the conditions and protections that had previously been available to Western Australian workers.

The changes proposed by this Bill seek to give effect to the promise of choice clearly given by the Court Government and not currently provided for in the Act. Our attempts to improve the functioning of the Workplace Agreements Act cannot in any way be interpreted as support for the Act.

Some workers were initially enticed into workplace agreements and opted out of award conditions because they were offered higher salaries. The trading off of conditions under workplace agreements was attractive for some employees as it was the only way of gaining wage increases. However, once locked into workplace agreements, many employees find that they are not able to force employers to uphold the terms of the agreements. They also find that they are significantly disadvantaged when the agreements expire and they seek to renegotiate their terms of employment.

In 1997, after four years of operation, only 10 per cent of the public sector work force employed in Western Australia were on Western Australian workplace agreements according to the answers given to questions on notice. This is despite concerted efforts by the Court Government to entice, cajole and pressure workers into accepting workplace agreements. For example, the Court Government advertises public sector job vacancies which state two different salary levels for the same position. A higher salary is advertised and payable if the prospective employee accepts a workplace agreement.

The Court Government also offered employees financial advantages by way of salary packaging only on the basis that they accepted workplace agreements. Employees seeking to avail themselves of salary packaging were denied the choice of whether to continue under award conditions of employment. It was only because the Community and Public Sector Union-Civil Service Association took the matter to the Western Australian Industrial Relations Commission that the Court Government was this year forced to allow salary packaging to award employees.

The Department of Productivity and Labour Relations has established a section to promote workplace agreements to the private sector. Under the Court Government, the department now gives emphasis to establishing a form of employment contract that disadvantages employees and is much less committed to upholding and protecting the rights and employment conditions of working people.

Many more examples can be found of various forms of coercion that are being used by the Court Government in its effort to force people into workplace agreements; yet in four years, it has been able to get only 10 per cent of the public sector work force employed on workplace agreements. It is now the policy of the Court Government to offer public sector employment only to those willing to accept the terms and conditions of a workplace agreement. Where is the choice promised by the Court Government? There is no choice if the alternatives are to accept the workplace agreement or be denied a job. The Court Government misled this Parliament and the people of this State when it told us that people would have a real choice about whether or not to accept a workplace agreement.

Let us look at exactly what was said by the Minister for Labour Relations in his explanation of the Court Government's workplace agreements. Page 1451 of *Hansard* of Thursday, 8 July 1993 states -

> The effect of the legislation will be to provide, for the first time, a real choice for employers and employees as to the industrial relations system governing their relationship by establishing a new stream, based on workplace agreements . . .

> The focus of the new system will be on the workplace and the development of a workplace culture in which employees can take an active and responsible role in directly setting their own work conditions.

Page 1760 of *Hansard* of Tuesday, 3 August 1993 states that -

> . . . workers will have the power of veto over any workplace agreement and they will not be able to be forced into a workplace agreement against their will.

It states also -

> For the first time, workers will have some genuine choice.

It states also -

> For the first time we are legislating to give everyone in this State a set of minimum conditions, and freedom of choice.

Page 3062 of *Hansard* of Thursday, 19 August 1993 states -

> . . . if he and the people he represents do not want workplace agreements they do not have to have them. They are merely offered as a choice and if people do not want them they should ignore them.

Page 3517 of *Hansard* of Thursday, 9 September 1993 states -

> In order to maximise the choice available, the WA Government supports the retention of the award system. Employees who wish to remain under awards should be allowed to do so.

Page 9596 of *Hansard* of Thursday, 9 December 1993 states -

> If employers find ways of getting around the three Acts and workers are being forced into workplace agreements against their will I will shut down any of those provisions.

It is the Court Government that is seeking to force workers into workplace agreements against their will.

The Court Government's propaganda also espouses that workers should have a choice, despite the Government's refusing to give them a choice. A pamphlet distributed by the Department of Productivity and Labour Relations entitled "You Make the Choice!" states -

> The choice is yours. Stay with the existing arrangements or enter a workplace agreement.
>
> You cannot use threats or intimidation to force someone to enter an agreement. Genuine consent is needed or an agreement will not be registered.

The experience of many Western Australians is that they are not offered a genuine choice when they are forced into a Western Australian workplace agreement. When a person is told he must accept a workplace agreement if he wants the job, a new position or a promotion, or alternatively go without the job, he is given no choice with regard to his contract of employment. Choice of employment and of conditions of employment should be a basic right of citizens of a State with the wealth and level of economic development of Western Australia; yet a Premier who trumpets how Western Australia is leading the nation is denying Western Australian workers the right to choose the form of contract under which they wish to be employed.

The two main provisions of this Bill are to provide new employees with choice, and to allow an employee under a workplace agreement to opt out of that agreement. It will be a requirement if this Bill becomes part of the Act that a workplace agreement cannot be registered unless it has with it a form indicating that the new employee has been offered a choice. This additional form will be in plain English and will be determined by regulations to be set by the Minister. A new employee who is offered a workplace agreement will need to sign a form indicating that he has also been offered the same job under an alternative form of employment such as an award. He will sign indicating that he has been offered a choice, and he will also sign indicating that he has made the free choice to take up a workplace agreement as the form of contract of employment.

The second provision of the Bill will allow employees who are already in workplace agreements to opt out of such agreements. Any reasonable contract provides the choice of opting out of the contract, given the required period of notice. Without such a provision, the contract has the potential at common law to be judged as harsh and unconscionable. First time employees aged 16 or 17 with no experience of work and employment conditions have a real potential to be caught in a Western Australian workplace agreement that is a form of contract of employment that may be judged as harsh and unconscionable.

Workers who find themselves in workplace agreements about which they have been misled or which they cannot enforce because the procedures available for enforcement are not available to them can opt out of the workplace agreements. Such a worker will again need to submit to the Commissioner of Workplace Agreements the standard form set by regulation indicating his wish to opt out of the workplace agreement. The Commissioner of Workplace Agreements will have the responsibility of informing the employer that the employee wishes to end the workplace agreement. A period of 28 days must elapse from the lodgment of that form to the time when it will take effect, and the contract of employment will continue, not under a workplace agreement, but in a form which was available in default of the workplace agreement.

The option of taking an unfair dismissal case will be available in situations where a worker is victimised by an employer. The question of enforcement is very difficult, because employees under workplace agreements must resort to the civil jurisdiction in order to uphold their rights under those contracts of employment. That is simply impossible for most employees. A case has gone through the courts recently, which I do not think has been finally determined, where an employee has had to go to considerable lengths and incur huge cost and great financial risk in order to uphold his rights under a workplace agreement. In cases such as that, most employees are simply cowered and unable to uphold their rights. A provision such as this in the Workplace Agreements Act will give an employee a simple and effective means of upholding his right to opt out of a workplace agreement and continue his job under an award or some other form of contract.

There is a need for balance between the interests of employees and employers, between wage costs to business and improving the real take home pay of workers, between the profit share to the owners of capital and the labour that sustains the business enterprise, and between creating jobs and improving the working conditions of employees. The Australian Labor Party is about attaining that balance, while protecting the interests of the working men and women of this State. In recent years the Court Government has made major changes to the labour laws of Western Australia. These changes have radically shifted the balance of power to the detriment of employees.

Many commentators now regard Western Australia as having the worst industrial relations laws in Australia, laws which provide the least protection for workers from exploitation by a minority of bad employers. The Court Government is seen as kicking for one side, against the interests of ordinary Western Australians.

This Bill provides for real choice and, as such, will provide an element of protection for Western Australian workers. I commend the Bill to the House.

Debate adjourned, on motion by Mr Osborne.

WORKPLACE AGREEMENTS FOR NEW PUBLIC SECTOR EMPLOYEES

Motion

MR KOBELKE (Nollamara) [8.01 pm]: I move -

> That this House condemns the Court Government for requiring new public sector employees to only be offered employment under the terms and conditions of a workplace agreement and for the Government's denial of choice which makes a lie of its justification and selling of workplace agreements as providing choice in the workplace.

Mr Trenorden: Can you not get a new topic?

Mr KOBELKE: It is a very important topic and it is one the member for Avon has not woken up to. It is biting very deep in the community, because since 1974 the relative earnings, as measured by the Australian Bureau of Statistics, of Western Australian women in all sorts of employment and men in part time employment have plummeted. The graph is dramatic and it can be attributed to only one factor; that is, the Court Government's industrial relations policies. Some people in this place are so out of touch with reality, which is why One Nation is making huge inroads into their electorates, that they do not know, do not care and do not understand that the average Western Australian worker has had a relative drop in wages due to the industrial relations policies of this Government. It is impacting severely on public sector employees, who also have borne the brunt of this Government's downsizing policies.

After four years of being unable to entice, cajole or pressure public sector employees to take up workplace agreements, in January this year the Government decided to force all new public sector employees to take up workplace agreements. Its earlier efforts with the Police Force two years ago had not been successful, and the Government tried it again in January this year with the interns at the teaching hospitals. That was not too successful. The last time I spoke to a representative of the Australian Medical Association it was still being negotiated. Has it been settled yet?

Mr Prince: It has been settled at 2 per cent.

Mr KOBELKE: Did they go to workplace agreements?

Mr Prince: They were given a choice.

Mr KOBELKE: Originally they were told that if they did not sign a workplace agreement they would not have a job in the hospital as an intern. That meant that having completed their five or six years of study, they could not be registered or work as a doctor. It is total intimidation of young people who wish to serve this State in the medical profession.

Ms MacTiernan: Is the Minister breaching the policy?

Mr Prince: No.

Ms MacTiernan: Who does it apply to and who does it not apply to? Is the practice to change?

Mr KOBELKE: We may hear the Minister's response later. The Government has progressively picked on one group after another in an attempt to force them into workplace agreements. Two years ago it was the police, in January this year it was the new interns, and then it was held over the nurses during their negotiations. Many other groups were told that if they did not sign workplace agreements, their negotiations could not be progressed. Notices are now being sent to people, particularly those in the health sector, advising that they will be required to take up workplace agreements. An administrative circular has been sent to the Graylands, Selby-Lemnos and Special Care Hospital requiring the staff to enter into workplace agreements. It is also happening with Aboriginal health workers.

In September-October 1996, Aboriginal health workers began negotiating an enterprise bargaining agreement to receive an increase in their conditions and rates of pay. Those negotiations continued until February 1998 when an enterprise agreement was agreed to in principle. It went to Cabinet on 17 June 1998. The health workers have now been told the agreement cannot be progressed unless they sign workplace agreements. After 21 months of negotiation, Aboriginal health workers have been told that the salary increase is conditional on their accepting a workplace agreement. The situation is disguised somewhat. As workplace agreements are getting such a dirty name in the community, the agreement is identified as a workplace enterprise agreement. They have been told it is a Western Australian workplace agreement. I refer to a letter signed by Rob Lindsay, Acting Co-ordinator Industrial Relations of the Health Workforce Reform Division of the Health Department, which states -

> This is to confirm my advice to you by telephone that Cabinet have approved registration of the above agreement subject to the following conditions:
>
> 1. That agreements are certified as single business agreements;
>
> 2. That agreements include a scope clause enabling a State employment agreement to come into effect.
>
> Further I confirm that the 12% increase payable in accordance with the provisions of the agreement is in addition to the $10 ASNA applied to the Award in 1997.

One group after another is being set upon by this Government to try to force them into a workplace agreement.

The result of this, and the downsizing and total mismanagement by the Court Government, is the destruction of a top quality public sector, in which individuals have professionally served this State well for many years. This Government is so set on the ideological course of removing everything from government, that it is destroying that loyal and capable public sector. Morale in the public sector is at an all time low. The nurses' dispute has been going on for weeks. The police are now in industrial disputation, and two years ago teachers were in industrial disputation for 12 months. All this Government can do is try to push down further the wages and conditions of Western Australia's public servants.

If the workplace agreements are of any value or have any attraction for staff, why must the Government coerce and force people into them? Clearly, the facts speak for themselves. Workplace agreements are a means of undermining the conditions of employment of Western Australians, particularly those employed in the public sector. This Government is very slow to wake up but, fortunately, in one respect, it is not as smart as the average Western Australian. They know what a workplace agreement is about. I spoke to a gentleman tonight who was employed on a workplace agreement. He is complaining about that agreement and dealing with the matter through the courts. I asked what his view is of workplace agreements, and he said he would never sign

another one because under workplace agreements employees have no rights. Employees who want to uphold their rights are faced with enormous costs in the courts. That message has got through to the people of Western Australia. Some have been enticed into them by higher salary offers and have traded off conditions for a pay increase, because that is the only way to get one. However, this Government has not fooled public sector employees in Western Australia. Although they may take a workplace agreement because it is the only option available, they know they are putting themselves in jeopardy. They will be clearly disadvantaged in the longer term. For many people, not even that temporary respite of advantage is involved. Bus drivers - an issue the member for Armadale may explore - were forced into private employment to see a massive fall in their take-home pay. When I was door knocking in an area, the wife of a household indicated she was a supporter of the Labor Party. I asked whether I could speak to her husband, but she said that he was too upset to speak to me. I noticed upon arriving a "For Sale" sign at the front of the house. Her husband was a bus driver. They had built a house with a big mortgage. This Government, through contracting out and workplace agreements, reduced his take-home salary to such an extent that they could no longer meet the mortgage repayments and the house was on the market. They must return to renting. These people lost their house through the Government's policy and workplace agreements!

Unfortunately, many Western Australians are suffering under the yoke of this appallingly bad Government, which is kicking with the big end of town against the ordinary worker in this State, particularly against the loyal and long-serving members of our Public Service. The Government will not continue to get away with this disgraceful disregard for their interests.

The repeal of the Workplace Agreements Act is Australian Labor Party policy. We will continue to take up the issue and try to protect public sector workers from the onslaught of this Government, which wants to increasingly cut back staffing levels and the conditions of employment within the public sector.

Members on this side of the House will continue to fight to gain some respite for people in the public sector, without whom the quality of life in this State cannot be maintained. Already there has been a huge increase in the crime rate, which must be placed alongside the total loss of morale in the Police Service. There has been a huge increase in hospital waiting lists, which can be placed alongside the loss of morale in the health sector. Hospitals cannot get doctors and nurses. People know the situation and do not want to work in the public sector under this Government.

There has been a reduction in the quality of services. The way of life in Western Australia depends on the quality of services offered by the public sector. If the Government continues to outsource and reduce the size of that public sector, and to reduce the employment conditions of people working in the public sector, it will destroy one of Western Australia's principal assets.

MS MacTIERNAN (Armadale) [8.13 pm]: I, along with every other member on this side of the Chamber, endorse with great force every sentiment expressed by the member for Nollamara in his passionate speech. We understand, as the member for Nollamara outlined, that this issue is crucial for the people of Western Australia.

Unfortunately, the Minister has been called away on urgent parliamentary business. It is a pity that, given the notice he has had of this debate, and given its importance, he is not able to attend to respond to the real concerns to be raised. It makes a farce of this place. We have a limited amount of private members' time and we raise serious issues; they are certainly not frivolous as they go to the very core of the administration of this State. This motion relates to key principles of government. However, Ministers cannot even make themselves available for debate. Frankly, one must ask about the contempt which this Government shows for Parliament. Not one Minister is in the Chamber. One backbencher is asleep.

Mr Osborne: I reject that absolutely!

Ms MacTIERNAN: The member has woken up. The Minister has now returned to the Chamber.

Mr Kierath: It is probably because I've heard it all before.

Ms MacTIERNAN: If that is the case, it is about time the Minister gave an answer. It is about time he explained the key points. How can he repeatedly describe his legislation as all about choice when the Minister, in his role within this Government, is doing all he can to remove choice? We know that the Minister has a problem and the figures are not very good -

Mr Kierath: It is 145 000 agreements; we are delighted.

Ms MacTIERNAN: I challenge that. Will the Minister be honest for once, if that is at all possible? The figure cited is 145 000 signed workplace agreements. If one worker has signed seven workplace agreements,

that one person will be listed seven times in the 145 000. Following that logic, something like 100 million Western Australians are on awards.

Mr Kierath: We have been doing a survey; the ABS does surveys.

Ms MacTIERNAN: The 145 000 agreements cited by the Minister is cumulative, is it not?

Mr Kierath: In part it is. In the past three or four years we have deleted from the figures those agreements which can be determined as to be deleted.

Ms MacTIERNAN: I would like to see the detail of that. The Minister has made that up. When we last questioned the Commissioner of Workplace Agreements about this -

Mr Kobelke: In the Estimates Committee this year.

Ms MacTIERNAN: That is right. The Minister describes himself as a Christian, yet he is completely incapable of telling the truth. Questions of judgment are one thing. Maybe the Minister believes the nonsense about providing choice in a general sense. The Minister's behaviour, on behalf of the Government, demands that no choice will be provided, making a complete hypocrisy of the line presented. This causes one to believe that even in the Minister's nineteenth century Liberal philosophy, he never truly believed that claim. If he truly ascribed to the notion of choice, and that the union movement bullied people into entering into awards, he would not have taken the action to impose workplace agreements in an uncoordinated way over the past two years. From 1 July, the Minister will supposedly take this action in a coordinated way.

If the Minister gives as his answer that there is a choice - take the job or leave it - he stands condemned by the people of Western Australia. Absolutely no choice is offered. A person has the right to a job. However, this Minister wants to impose a condition on that right. The Minister has railed against compulsory unionism and closed shops: He would certainly never accept an argument that one need not be a member of the BLF, so do not take the job. He would not accept that. Nevertheless, he is telling the people of Western Australia that they have a choice: Take the job or remain unemployed.

I now document a few cases arising in my Transport portfolio. The first is a case of a Harry Francis Mann, who contacted me in Kalgoorlie a couple of years ago. He is a highly experienced locomotive driver. He saw Westrail advertising for loco drivers in Kalgoorlie when loco drivers were in short supply. He duly went to an interview, and was told he had been successful. However, he was required to sign a workplace agreement. He rang back and said, "I am keen; I want the job. You want loco drivers based in Kalgoorlie, so we can we do business. I have been a union man all my life; I am not prepared to sign a workplace agreement. That fundamentally cuts across the principles I believe in of collective bargaining." The Bunbury Port Authority's response was that that was too bad; he could not have the job.

That was two years ago. It is interesting that this event occurred within the Transport portfolio. We became aware in 1995-96 that this was widespread in the Transport portfolio because the policy throughout those organisations was that no-one was to be given a job unless they were prepared to sign a workplace agreement, no matter how in demand were their skills. It is not a surprise.

Members may recall a memorandum the Opposition discovered that Eric Charlton wrote to every other Cabinet Minister boasting employees under his portfolio had signed more workplace agreements than people in any other portfolio; therefore, he was a real man and it was about time the others got their act together.

Mr Kierath: I think he is a pretty good Minister.

Ms MacTIERNAN: I am sure the Minister would think that. He is judging the Minister for Transport according to a false standard.

Mr Kierath: I am also his local member.

Ms MacTIERNAN: I am glad to see the Minister lives in the Minister for Transport's electorate; either that or he has moved to Tammin.

To judge a Minister's performance - clearly the Minister for Transport was judging himself by this yardstick - based on the number of people who have been deprived of choice and who have been compelled to sign workplace agreements on the pain of not getting a job is most unworthy.

Mr Kierath: He has done more for Transport and the railways of this State than you ever did in office.

Ms MacTIERNAN: What the Minister for Transport has done for the working people of this State is a disgrace.

I refer to two young men who approached me at the Bunbury wharf where the Minister for Transport denied me authority to speak to the workforce. Such is the openness and accountability of this Government the shadow Minister is not allowed to talk to workers. The workers stopped work and met me in a park outside the wharf, which was the end result of very sensible administration by the Minister!

During that meeting a couple of young blokes, who were engaged as trainees at the Bunbury port a couple of years ago, put their case to me. When they had successfully completed a two year traineeship, they were transferred to the main integrated labour program. Understandably, they anticipated that they would be entitled to remain working under the enterprise agreement. However, they found that so keen was the Bunbury Port Authority, acting under the whip of the Minister for Transport, to get its people onto workplace agreements, the lads were notionally sacked at the end of their traineeship and re-employed. That action was taken to circumvent the provisions of the Workplace Agreements Act which provides that workers continuously employed cannot be compelled to sign workplace agreements.

The two young men were duly re-employed because their traineeship was aimed at providing them with employment on the port. It was not a general traineeship through which they could have got a job anywhere; it was a traineeship in stevedoring and maintenance. The employment of those two young men was "terminated" so that they could be compelled to sign workplace agreements. They hated that action; they wanted to be part of the enterprise agreement even though they were paid more to be on workplace agreements. A short term bribe was offered to them, but they wanted to be part of the EBA with the people they worked with.

There is no more compelling reason for being part of an enterprise agreement than working at regional ports. The regional ports enjoy probably one of the most innovative work systems in Australia. They have an integrated labour program under which employees are trained to do the entire range of work on the wharf. So much so, that, for example, the young woman whose normal job is in reception can be called out to help moor a ship. The chap doing the accounts in the finance section can do a bit of welding and can be incorporated into a crew that does basic maintenance work when there is a run on jobs.

Mr Wiese: Surely you approve of that.

Ms MacTIERNAN: Absolutely. It was a great labour program developed under the waterfront reform instigated by the Labor Government. It is multiskilling par excellence. It is a work force that has subscribed to great productivity objectives. However, the workers have subscribed to them collectively because the only way to run an integrated labour program is by having a united work force. However, what do we see? We see this Minister telling all these people who have worked with extraordinary success in an integrated labour program that they must be atomised; they must be separated and made to individually negotiate their contracts of employment.

If the Minister for Labour Relations understood the true meaning of productivity he would appreciate that that process undermines the collective endeavour that brings about such great productivity. An organisation cannot achieve substantial productivity gains without a very strong collective spirit because the outcomes require a great deal of team work.

The Minister's theoretical nonsense of workplace agreements is based on the notion that by dividing the work force, separating it, putting one person at odds with another and creating a direct employee-employer relationship, productivity outcomes will be advanced. It is a nonsense. Productivity requires a collective endeavour.

Necessarily, those young men have a very close working relationship with the other employees on the wharf, all of whom are on the enterprise agreement. They also want to be on the enterprise agreement. They want a chance to enjoy the choice the Minister for Labour Relations has told us about time and time again in this place. Where is the choice for those young men? They spent two years training as wharf workers with government assistance. Where is their choice? Is their choice to throw away two years and all that training and to find work elsewhere? Is that a choice? Why does the Minister not give them the opportunity to choose between a workplace agreement offering more money and an enterprise agreement? If his system is so good why is he denying them choice? He cannot explain it.

There are many examples that every one of us could give here tonight. I have one more; this time it has been taken to absurd heights. No longer content with not allowing employees to have a choice, the Transport portfolio is adopting the notion that employers also should not have a choice. It is not only employees who will not be able to say whether they want workplace agreements, an award or an enterprise agreement; the employers also will be compelled. This is seen most prominently in the privatisation of the wharves, the

various port facilities and most notably in the new James Point port, for which no-one can find a rationale other than the Minister for Transport's wanting to get the Peter Reith elephant stamp for establishing the first union free port. Provision 2.9 of the $1 000 port proposal document - no-one could actually find out what this proposal was unless they were prepared to spend $1 000 - states -

> It is a fundamental requirement of this process, that the Port owner/operator categorically and unequivocally guarantees continuity of the Naval Base/Kwinana Port's services and operations.
>
> This obligation can be met by maintaining an in-house work force capability, or through contracts with third parties. This will require respondents to propose management and employees operational practices through Contracts of Employment that clearly demonstrate how this objective will be achieved.
>
> Respondents proposals must demonstrate in principal how they will ensure the uninterrupted provision of Port services.
>
> EOI responses which do not meet this condition will be declared non conforming proposals and will be omitted from further consideration.

The various proponents claimed that they had been told that they must have workplace agreements and that the section of the document to which I referred was code for something more. Through our searching, we found a document which supported that. The document "Government of Western Australia - Proposed Port Development Naval Base/Kwinana, WA" states -

> It is a fundamental requirement that the Port owner/operator unequivocally guarantee continuity of service and operations at the Port. This can be achieved by implementing management and employment operational practices through Contracts of Employment, creating a direct Employer/Employee relationship, which will promote efficiencies in the port and deliver reductions . . .

The message prescribed here is that unless a person does this, that person is not even in the running, and will not be considered as a tenderer for the construction and operation of this port. It has gone beyond guaranteeing continuity of service. This document demands that unless a direct employee-employer relationship is created, awards and enterprise bargaining agreements are done away with, and workplace agreements are embraced, a person will not receive this contract. This is another bizarre twist to the whole process. This Government is saying to employees that the choice about which the public was informed, the choice it used as a moral linchpin to underpin this legislation, will be jettisoned when it comes to the public. This Government is saying that not even employers will have a choice and unless they employ people through workplace agreements, it will not do business with them. It is an absolute disgrace. I want this Minister to stand tonight and not wax on with all the figures about so many people on workplace agreements, etc. I want the Minister to tell us how this moral underpinning, how this question of choice which he has said has been at the heart of this, can be thrown out and the employers and working people of Australia can be denied any opportunity of choice if they want to undertake employment with the Government or do business with the Government. He is a disgrace!

MR McGINTY (Fremantle) [8.35 pm]: My contribution will be fairly brief for the very simple reason that it is my belief that the Minister for Health misled the Parliament yesterday. I am pleased the Minister for Health is in the Chamber. I will point out how he misled the Parliament. He did that because he is embarrassed by the policy backflip involved in what is now confronting employees of the State and he is embarrassed about its application in the Health Department. Yesterday, we drew attention to a document which is circulating in the Health Department. It claims that all positions advertised externally to the public are to be advertised as subject to a workplace agreement only.

This has removed the option for current public sector employees who are applying for a promotion or appointment to elect to remain under their current award conditions. In other words, if someone applies for a job, he has no choice - it is a workplace agreement or nothing. If a current employee applies for a promotion or a transfer he has no choice - it is a workplace agreement or nothing. In other words, that employee must give up his rights. That is where the Minister for Health misled this House. When we asked him whether he thought that the Liberal Party election promise to offer choices to employees was being violated by what he was now doing in his own department, his answer regarding people already employed was that there was significant choice.

Mr Kierath: Absolutely.

Mr McGINTY: There is no choice whatsoever. If an employee applies for a promotion or transfer he must give up his right to award conditions of employment. Is that right?

Mr Kierath: It is available externally. That is not the case.

Mr McGINTY: This removes the option for current public sector employees who are applying for a promotion or appointment to elect to remain under their current award conditions - no choice. The Minister for Labour Relations is also trying to mislead the House.

Mr Trenorden: Someone is trying to mislead the House.

Mr McGINTY: It is in writing. It is the Minister for Health's own department. There are new employees on the one hand and current employees on the other.

Mr Kierath: That has always been the case.

Mr McGINTY: That they have a choice? Who has a choice of staying under the award?

Mr Kierath: Any existing employee.

Mr McGINTY: Someone who applies for a promotion?

Mr Kierath: If it is externally, you still have the choice; it is policy.

Mr McGINTY: That is not what it says.

Mr Kierath: I am afraid it does; that is what the policy says.

Mr McGINTY: I would never believe the Minister for Labour Relations because he is very loose with the truth. No-one in their right mind would believe the Minister because he does not tell the truth. It is a well known fact.

Mr Kierath: That is what the policy says.

Mr McGINTY: Here it is in writing from the Health Department. The Minister is trying to mislead the House. Yesterday, the Minister for Health tried to pretend that people had a choice in these matters. This is a dud product, promoted by the Minister for Labour Relations, which he cannot sell without compelling people and taking away their freedom to decide.

Mr Kierath: What choices do they have under awards?

Mr McGINTY: They have none with the Minister. It is either the Minister's diabolical workplace agreements designed to drive down wages and working conditions or a person does not get the job. What sort of choice is that? Here is the great libertarian who wants to deny people any choice whatsoever. What a joke he is. He told people a barefaced untruth in the election campaign. He is now doing the exact opposite. The Minister never intended to give people a choice. They must be driven down into a workplace agreement, with all of the downside that that involves.

I simply draw attention to the fact that the Minister for Health, who has scurried from this Chamber, when confronted with these issues yesterday misled the House. He said that people had a choice; that current employees had a choice; that new employees had a choice. It is absolute nonsense. I expected something better from the Minister for Health. I expected him to say, "Sure, we have taken away that choice. My hands are tied by a government policy invented by the Minister for Labour Relations. I do not agree with it but nonetheless there you go." A stronger Minister would have done that. I expect that those Ministers worth their salt will stand up to the bully tactics of taking away rights that people want and cherish. They will say that for their employees, whether in the Education Department or any other department, they will not cop the stupidity and the lack of choice that are involved in the policy this Minister has thrust on the Government. Quite frankly, it will cost dearly. Ministers are now not telling the truth in this place. The Minister for Labour Relations has tonight perpetuated the lie. The Minister for Health yesterday extended that untruth and expected people to cop it. The Minister for Labour Relations has been exposed. It does not count.

MR KIERATH (Riverton - Minister for Labour Relations) [8.42 pm]: This is another example of something with absolutely no substance, like the matter of public importance that we had last week. The Opposition has such a policy vacuum that it has no new initiatives. If I did not know better, I would say that something was going on in its ranks. If I were the Leader of the Opposition, I would sack half the front bench and bring in new blood. I will give members the reason for saying that. I have an article from which I will quote. The Opposition is so modern and so with it that the article is only five years out of date. The article is dated 14

August 1993 - not 1998 - five years ago. The article, entitled "Minister admits job-seeker risk" and which appears on page 6 near the front of the newspaper reads -

> Labour Relations Minister Graham Kierath conceded that new job seekers will not have the same protection as existing workers under new industrial relations laws.

Is that pretty plain? It must be pretty plain even to the Opposition in the policy vacuum in which it operates. The article later states -

> "When a job is advertised it is advertised with wages and conditions - if you are not happy with those conditions you do not apply for the job," Mr Kierath said.
>
> However, he said the Government would amend the Workplace Agreements Bill, being debated in the Legislative Assembly, to allow workers' concerns to be addressed within 21 days of the agreement being signed.

Mr Trenorden: That is brand new news. It is only five years old!

Mr KIERATH: Yes, it is June 1998 now. This is a real "with it" Opposition. It has such good ideas that it must drag something up that has been around for five years. It is unbelievable. I thought I was to hear something new tonight. I was criticising the fact that some of our members were not here. One of the reasons is that they have not heard anything new tonight. This is about as old as it can get. I do not know what the Opposition will come up with for the rest of the week. Even the media said today that the events in this place were pretty flat. If I did not know better, I would swear that there was about to be a reshuffle on the front bench. I have been hearing rumours.

Mr Osborne: How do they tell the difference?

Mr KIERATH: I do not know. What sort of Opposition comes up with something that is five years old? I will give the member for Fremantle some credit. At least he has got onto an instruction which was sent out recently and is relatively new.

Mr McGinty: Do you agree the Minister lied?

Withdrawal of Remark

The SPEAKER: Order! I ask the member for Fremantle to withdraw that.

Mr McGINTY: I withdraw.

Debate Resumed

Mr KIERATH: The other policy initiatives have never been any secret; in fact, they have been very widely known to almost everybody who wanted to know.

Mr Kobelke: Give us the details.

Mr KIERATH: I did. The member was not here when I read from the newspaper article, but for his benefit he can borrow it. The article is dated 14 August 1993, some five years ago. The headline is quite clear about the legislation and the rights that it affords workers or employees. If the member reads the Act, he will find that it refers to employees. Employees are people who are employed and have existing contracts of employment. Those people have all the choices. It is true that for new job seekers, as has been the tradition in this State, an employer has the right to set specific wages and conditions associated with particular vacancies. I cannot believe the hypocrisy of the Labor Party which comes in here and complains about restricted choice when the award system which operated for some 93 years provided no choice at all. A worker was not able to contract out of the award under any circumstances. For 93 years it was okay not to give people choice; that is, give them only one option of the award and no other choices whatsoever.

Several members interjected.

Withdrawal of Remark

The SPEAKER: Order! I ask the member for Nollamara to withdraw.

Mr KOBELKE: I withdraw.

Debate Resumed

Mr KIERATH: When this Government offered workers choice for the first time, the Opposition complained

about some of that choice being restrictive, not to employees but to new job seekers. If that is the comment, by all means the criticism can be directed at us for new job seekers but not for employees. The member for Armadale and the member for Fremantle were both trying to be pedantic about the definition of employee. The member has a degree in law, as has the member for Fremantle, who is also a very capable advocate in employee labour relations. He knows the difference between a person who is covered by the definition of employee and one who is not because the Industrial Relations Act applies to employees but not to a number of other people.

I cannot believe the substance of this motion tonight. We on this side of the House must have some reassurance from this that the current Opposition and the way it is structured is extremely ineffective.

Mr Trenorden: Pauline is the opposition.

Mr KIERATH: There is obviously more opposition than in this group opposite. In a letter dated 13 March of this year, the chief executive officer of the Department of Productivity and Labour Relations advised all public sector agencies of the Government's workplace bargaining strategy. It contains a number of components. First of all it states that all agencies are required to have available state workplace agreements to offer to employees - those are existing workers. They must be offered one by 30 June 1998. The Opposition talks about misleading, and the member for Fremantle was misleading. However, this letter reads -

> Furthermore, "all Government positions advertised external to the public sector are to be advertised subject to a State workplace agreement only".

All existing employees in the public sector will continue to have the choice between a workplace and an industrial agreement.

Mr Trenorden: They do not want people to have choice.

Mr KIERATH: That is the point. When the Opposition was in government it never gave people the choice. It was award only.

Mr Prince: They wanted people to be captives of the unions.

Mr KIERATH: The Minister for Health has put it better than I. The Opposition when in government wanted workers to be part of the award because they wanted them to be captives of the union movement. It gave preference to union clauses in a lot of the awards. That is what the Opposition thinks of choice. Look at its track record. The former federal Minister, Joe Riordon, who was a Commissioner of the Australian Industrial Relations Commission, had the claim to fame of inserting preference to union clauses in all the Federated Clerks Union awards. That is how he made his name in the Labor movement. That is what the Opposition thinks of choice. It says that when it is in power and it is in a position to do something, employees cannot have any choice. Members opposite come into this place and dare to criticise us for restricting choice when they are not prepared to give choice at all. Quite clearly the Government's workplace reform agenda is directed at encouraging employers and employees to take direct responsibility for their labour relations outcomes. Therefore, the increased reliance on bargaining at the workplace level -

Several members interjected.

The SPEAKER: Order! The normally very well-behaved member for Wagin is interjecting out of his seat. I have allowed a fair few interjections, particularly from the members who have participated in the debate; but the level of interjection is far too high.

Mr KIERATH: The increased reliance on bargaining at the workplace level is central to the implementation of workplace reform. It is a key part.

Mr Kobelke: It is lowering wages.

Mr KIERATH: I will come to that in a moment. The intention of the Government's policy is to promote agreements in the workplace, and a strategy has been developed to do exactly that. I make no apology for that. I stand for the promotion of workplace agreements. I do not resile from that position. I proudly support that stance. The Government has always publicly stated its preference for workplace agreements. The policy was issued on 13 March - and again one could ask why the matter is being debated in June. At least, in this case, members opposite are only three months behind the times, instead of five years!

Several members interjected.

Mr KIERATH: We have worked out members opposite: When we put out press releases, they are not

reported. When we do not put out a press release, members opposite report it in this place. Come in spinner! That is one reason I do not put out press releases any more. Members opposite can guarantee me a run in the media; whereas if I put out a press release the subject matter does not even get a run!

Mr Prince: Their reaction time is not so quick!

Mr KIERATH: They are only five years behind the times! This is unbelievable stuff!

The benefits from our policy are simply this: If we can foster that direct employer-employee relationship, without third party interference, it is positive for all concerned. We should bear in mind also that employees can utilise a bargaining agent, if they want to, and I have said many times that I thought many more people would make use of that facility; but many people have said that they can handle it on their own.

An opposition member: They have no choice!

Mr KIERATH: They have no choice! Fewer than 5 per cent of people choose a bargaining agent to represent them. That means that 95 per cent of people have decided to bargain for themselves.

Several members interjected.

Mr KIERATH: If half the number of opposition members have been promoted from the trade union movement, and they are an indication of the quality of trade union representation, I could perhaps understand why people choose to represent themselves rather than go to members opposite!

This policy gives people the ability to negotiate the terms and conditions that suit both sides. They may be different from what the members for Armadale, Fremantle or Nollamara think. In the past, people had no say; now, for the first time, they have a say regardless of the thinking of members opposite. I am proud to report that the wage outcomes in the public sector under workplace agreements have tended to be better when compared with the relevant award or industrial agreement. On the one hand, the members for Nollamara and Fremantle say that we are trying to drive down wages and conditions; but, on the other hand, they accuse us of enticing people into workplace agreements by offering them more money! Members cannot have it both ways: We are either buying them into workplace agreements or we are downgrading them! We cannot do both at the same time; it is impossible!

I will provide some figures shortly - I think I can feel a greeting or two coming on - relating to Western Australia's wages compared with those paid in the rest of the country. We have heard about this alleged denial of choice. The policy of engaging new employees under workplace agreements is not in breach of the Workplace Agreements Act; it is not contrary to any policy commitments made by this Government. It applies only to those people seeking employment in the public sector; not the existing employees. Employees within the public sector who are being transferred or promoted between agencies will continue to have a choice between workplace or industrial agreements.

There is nothing new in this: Our policy which was released in 1992 used the word "employees". We thought these great bastions of the Labor movement, who claimed to represent the working men and women, claimed to have backgrounds in labour relations, and claimed to have expertise, would recognise the definition of an "employee". Our 1992 policy states that employees will be free to remain under the current award system or choose a new system to better suit their needs. The key word is "employees", not "potential employees" or "prospective employees". By definition, employees are already employed.

The policy was reiterated on 14 August 1993. Another statement was set out on 28 October 1994 when I made it clear that it was not the case. I have already read from some press clippings.

Acceptance or rejection of any offer of a workplace agreement still remains a matter of individual choice for a potential employee. Having said that, if a new employee signs a workplace agreement, there is a registration period of 21 days during which the person can say that the terms and conditions are unacceptable. It is possible, as I have always said, to offer a contract of employment which is dependent on the successful registration of a workplace agreement. On that basis, if the employee refuses to accept the contract obviously employment would cease. A number of employers have used that process.

Several members interjected.

Mr KIERATH: A widely accepted practice throughout the world is that employers can offer new employees terms and conditions for the new employment. Under previous Labor legislation, there are such things as greenfield sites and new arrangements. The union movement acknowledges that, and employers have been prepared to offer conditions and wages perhaps different from others within industry. There is nothing new

in that. Any potential new employees have the ability to negotiate the terms and conditions they want. If they are intimidated by the process, they can appoint a bargaining agent. However, only one in 20 people ever do that; the other 19 out of 20 accept the responsibility themselves. That is the difference.

I spoke to a group of students last year. We were talking about employment relationships. I said that they were no different from human relationships. With my wife I negotiate things which suit our relationship. It is not always a level situation. I reckon I am always done, because she ends up with the upper hand. Nevertheless we strike a set of conditions and an agreement that suits us and our relationship. We do not use the terms and conditions that suit the member for Armadale or her relationship with her partner! We develop conditions that are acceptable to us and our relationship. As long as the parties are happy with that situation, and understand what they are doing, so it should be.

I turn now to other issues that were raised, including interns. This is a simple situation. Interns had a choice between an enterprise agreement or a workplace agreement. The member is correct; there was some disagreement over that, for some time; but in the end it was sorted out.

The member for Nollamara made two points: First, he said that we were enticing people into workplace agreements by offering them higher rates of pay.

Mr Trenorden: And then he said they were on lower wages!

Mr KIERATH: That is my next point. The member for Nollamara also said that workplace agreements were undermining wages and conditions. He said that people were being enticed by offers of higher salaries to enter workplace agreements. I remind members that before this legislation came into force, members opposite said that wages and conditions would be reduced by 25 per cent. We all remember that. However, compared with other States, Western Australia has gone from the bottom of the pile to the second highest level of take home pay for its workers. New South Wales has a higher level. However, Western Australia has moved from second or third bottom of the list to the second highest under this coalition Government. We have delivered higher pay increases than any previous Government in this State! One of the reasons is we have a wages policy. We argue the conditions. We argue that workers should have pay increases.

The SPEAKER: Order! There are too many interjections. I cannot allow people who have not really been participating in the debate to interject from side to side while members are trying to give their speech.

Mr KIERATH: I am saying it is part of the wages policy. We go into the commission and go into wage cases and we say that the policy is very clear; we want people to have pay increases of 3.5 per cent each year. Traditionally Governments have tended to go into the commission and run an economic argument against wage increases because it is always difficult. We said that we will provide half the wage increase through new money and half through productivity increases. That is a sharing of the arrangement. Our financial basis has produced one of the key ingredients of our financial success in this State and compares favourably with other States. We have control of wages. We have allowed for realistic increases.

The accord brought workers in this country a reduction in real wages. Trade unionists came to me and said they did not like the accord, because under it, a real decline in workers' wages was experienced in this country. A real increase in wages has taken place under this Government. We have taken the workers of this State from the second or third lowest paid to the second highest, and the only State better is New South Wales. If members compare the net value of useful take home pay of workers in this State with that in New South Wales and then compare the cost of housing in both States, they would have to say that Western Australians have the highest net disposable income from their take home pay of any State in the country.

As these prophets of doom and gloom on the other side said wages and conditions would be slashed by 25 per cent, to go from the bottom of the pile to the top of the pile is an extremely proud record, and to do it without fuelling inflation is an even better achievement.

I recently attended a Labour Ministers' conference from which the New South Wales Minister was absent; however, all Ministers present were envious of the productivity improvements this Government was getting from its wages policy. They said they would follow the policy of the Opposition of refusing it; then they would have a big stoush, and be forced into it without getting any productivity returns. Sometimes it is difficult to get productivity increases in areas of government. However, we are getting substantial productivity increases across the public sector, which allow for an increase in pay without being inflationary. That is the magic formula that everyone in this country has been searching for and we have it here in this State.

The member for Armadale went on about the Minister for Transport. I confess that the Minister for Transport

is my favourite National Party Minister. I hope members will not hold that against me. He has done more for public transport, road transport, rail transport and sea transport in this State than any other Minister that I can think of in the past 20 or 30 years. I thought in the early days that he did not have a passion for public transport. Yet public transport in my electorate is far better than it was before. As members know, I have a large family and my children travel on public transport. The circle routes that are operating now are wonderful. Since the bus service was privatised in our area, the buses run on time! One can actually count on a bus arriving and taking people somewhere for the first time! The member can criticise the Minister for Transport in some areas, but his results in transport are outstanding.

It is true that he wants our ports to provide good port services because, whether we like it or not, 90 per cent of the export income of this country goes through our ports. They are still the lifeblood of this country and we must ensure that we have continuity of supply through that service. If the Transport Minister gets continuity of supply on the wharves, I will be right alongside him, because they are absolutely critical to the lifeblood of this country.

The member for Fremantle repeated the outrageous lie that we are trying to drive down wages with workplace agreements. The point was made that under the award system we have this one size fits all mentality and that we do not cater for differences in employment relationships, differences in businesses, and all those things. I have always accepted there are always a few rotten apples. By and large, people have been able to make arrangements to suit themselves and if a productivity increase has been achieved, they have been able to share that productivity increase, in the case of the employer, through higher profits, and in the case of the worker, through higher take home pay which is what a lot of people are interested in. As I said, if we listened to this group opposite, we would be right at the bottom of the pile. What does the man in Canberra know about running a car business in Geraldton? Absolutely nothing! One of the industrial relations commissioners came to one of my contracts and he was the one who was making decisions on the industry. The first thing he asked was the dumbest question I have ever heard. I can talk about him now because he is no longer a commissioner; he was Senior Commissioner Halliwell and he did not even understand the basics of the cleaning industry. Here was the person making decisions that affected all our livelihoods and he did not have the first clue.

I have tried to make my points tonight and I have done a reasonable job of emphasising how withered this out of date Opposition really is. It is in a complete policy vacuum.

Withdrawal of Remark

Ms MacTIERNAN: It has been brought to my attention that a standing order precludes a member from reflecting adversely on a judge in a court in this jurisdiction. I believe that in making some adverse commentary on Commissioner Halliwell that the Minister for Labour Relations may have inadvertently breached that standing order.

Mr BLOFFWITCH: The Minister merely said that when the judge, who probably had no experience in that industry, went to the site he had no knowledge of it. I do not see that as an insult to a judge or any other judicial position.

Mr KIERATH: First of all the person to whom I referred was not a judge, he was a commissioner of the Western Australian Industrial Commission. He has since retired and no longer holds the status of commissioner.

Mr THOMAS: The ruling of a Speaker on a previous occasion was that the provision which prevents members in this House from reflecting adversely on the judiciary applied to members of the WA Industrial Commission.

Mr Osborne: Was that a Labor Speaker?

Mr THOMAS: I have no idea. The comments made by the Minister for Labour Relations related to the time when Senior Commissioner Halliwell was a member of the commission and that ruling would apply.

The ACTING SPEAKER (Mr Barron-Sullivan): The point of order does not stand. I remind the Minister to take care when he is making reflections on public officials of any sort.

Mr KIERATH: If it would clear the record I will withdraw my comments and apologise to the person concerned. I did not want to drag him into the debate. I wanted to highlight the problems with the previous system in making decisions on the workplace. It was not my intention to reflect unfairly on any member of the Industrial Relations Commission either past or present.

Debate Resumed

Mr KIERATH: I got carried away with members' interjections. They went up the creek without a paddle and I was silly enough to follow. I would hate to be caught up a creek without a paddle with the member for Nollamara.

Members opposite cannot have it both ways. They cannot continue to say that the coalition's industrial relations policy would drive wages and conditions down by 25 per cent, when we have taken Western Australia from the bottom of the pile to second highest in the country and, arguably, with the highest disposable take home pay of any worker in Australia. The member for Nollamara says one moment that we are using workplace agreements to undermine wages and conditions, and in the next breath that we are making higher salary offers to entice people into workplace agreements. It lacks all credibility. Members opposite must decide one way or the other. If they argued for one side or the other at least they would be consistent.

Ms MacTiernan: Would the Minister take an interjection so we can explain it to him?

Mr KIERATH: No, the member for Armadale has had her chance.

At the risk of being accused of tedious repetition I will read an article dated 14 August 1993. The policy has been around since 1992, but this article refers to specific circumstances in August 1993. The purpose of this motion must be to drag out the time of the Parliament on a useless issue.

Mr Bloffwitch: I do not think you are right, and that must be the first time! They have such a passionate belief in the award system that they cannot see anything else.

Ms MacTiernan: You justified departing from the award system on the basis of choice.

Mr Bloffwitch: Isn't that choice?

The ACTING SPEAKER: I remind members that any discussion in this Chamber goes through the Chair, not as banter between members. We have heard debate between the two sides not interjections.

Mr KIERATH: The motion states that this House condemns the Court Government for requiring new public sector employees to be offered employment only under the terms and conditions of a workplace agreement. That policy position is five years old.

The Government has decided that all existing public sector employees should have a choice. We have said that by 30 June, unless an agency is granted an exemption, every agency must develop a workplace agreement to offer to its employees. If the employees do not want it, they can refuse it. That is their right.

Mr Bloffwitch: They can refuse it. I told the nurses in our hospital they do not have to accept it.

Mr KIERATH: The member for Geraldton has hit the nail on the head. That is a good example. Workplace agreements were offered to nurses, and about 40 have signed up. Even I would admit that workplace agreements have been widely rejected by the nurses.

Mr Bloffwitch: None of them has read it.

Mr KIERATH: That is part of the reason. They have been listening to the ANF. I have a couple of friends who are nurses. They said that the ANF told them not to sign it, and they would not touch it with a 10 foot barge pole. That is their right. However, a number of people have signed, and that is also their right. At least those 40 people have had a choice. There must be something in it for them, and they are pleased with that. That is the system working extremely well.

However, the Government has said - I guess this is the difference - that as from 1 July signing a workplace agreement will be a condition of employment for new employees.

Mr Bloffwitch: When you hire someone you are entitled to do that.

Mr KIERATH: That is right. That was reiterated in August 1993. There is nothing new in that. If the Opposition wants to criticise us for that, members opposite should be upfront about it.

Mr Trenorden: There has been an election since then.

Mr KIERATH: That is right. Members opposite thought we would go down the path that Victoria followed, although Victoria has not suffered as a result of it. Members opposite thought we would make major changes and it would be their vehicle to re-election. What has really got up members' noses and stuck in their throats is that we gave existing employees a choice. Instead of being threatened by us they will look at the results

and say, "Look, a coalition Government has delivered us real increases in wages. When we had a Labor Government state and federally under the accord we had a real reduction in wages." That is true. It is also true that many people vote through their hip-pockets. That is why the Labor Party was roundly rejected at the last state election. They tried to scare people and people were not scared.

I do not say that workplace agreements are all beer and skittles. I have been watching a group of people I know extremely well. They have gone from being a little scared because they listened to the Transport Workers Union, to the situation now where they are more empowered because they know more about their rights under awards, agreements and workplace agreements than ever before in their working lives. Now they are starting to ask questions about certain practices: What it costs them, and how they can change what they think is a silly element of government into an area that will deliver them a higher pay packet to take home. More people are thinking about how they can make their workplaces better in terms of take-home pay and productivity. We are empowering workers more than ever before in the history of this State.

Mr Kobelke: You are disgusting; take your hand out of your pocket. You speak such utter drivel.

Mr KIERATH: This member for Nollamara will find out. The member for Fremantle is not here. When he went up north to Hamersley Iron Pty Ltd and told the workers that he would repeal the Workplace Agreements Act, they booed him. They said they did not want it repealed.

He made another public statement that he would not repeal it but he would make sure that although they were going to repeal the Act, that they would be able to do it by some other name, or some other mechanism. However, they wanted to knock the title off, but it would still allow them to do what they have done. That is a classic. The reason I raised that matter was that that used to be the heart of the trade union movement in the Pilbara. If one looks at the members in this House, we lost one at Northern Rivers at the last election. It was strongly suggested that the influential factor in that defeat was workplace agreements. Before the last state election, the member for Burrup had the fifth safest Labor seat in the State. It was a seat that even a drover's dog could win. So long as one had preselection by the ALP, one was guaranteed to be the member. The member turned the fifth safest seat into one of the most marginal seats.

Mr Trenorden: Do you realise he conceded defeat at the election?

Mr KIERATH: Yes, someone told me that. I can understand that because if the boxes for Hamersley Iron - I am not sure whether it is Tom Price or Paraburdoo - went from a majority of about 608 votes for the ALP down to about eight. A huge majority was just gutted.

Mr Brown: There are very few people up there now. It will not be like that next time.

Mr KIERATH: The Opposition should be very careful as sometimes it is trendy to come into this place and knock something like the Workplace Agreements Act. However, those people who are using it and getting good deals out of it are the people whom members opposite should not go around scaring. On one hand I agree that if someone has a worse deal under a workplace agreement, members opposite are right and if they scare them they will win them over to their way of thinking and their way of voting. On the other hand, if they are getting better deals, they will not want to go back. They are in the blue collar area of the Pilbara, the heartland of the trade union movement and they voted through their hip pocket. I have said it about five times and I am about to sit down now; however to summarise: This motion is the worst ever motion that the ALP has come up with.

Mr Trenorden: That is a big statement; there have been worse than that.

Mr KIERATH: Maybe it is not the worst in quality. It is the oldest motion members opposite have ever moved because it is five years out of date.

MR BLOFFWITCH (Geraldton) [9.23 pm]: I am absolutely amazed with the success within the small business industry of workplace agreements and the freedom they have given small business. We have never before had the freedom to sit down with the people who work for us and negotiate something with which both sides can be happy. It amazes me that anybody can stand and say that that is a step backwards in this country.

One of the major reasons that I decided to become a politician was the inflexibility of the award system. Having been a small businessman, in many cases - let us be honest - when I had a very small business I used to pay cash to young kids for casual labour to help us on service stations. We used to do that because under the award provision there was never any way to do that legally. I admit that no tax would have been paid on those wages; that used to happen in the industry. Why did we do that? It was because we had an inflexible system. The award would be handed down each year on each of these positions. It would tell one exactly what one had to pay. It did not matter if the year before the business had lost $10 000 - the award would

contain a 3 per cent increase. Have members ever heard such rot? The business has just lost money but the national system says that we must pay the workers an additional 3 per cent. That is the greatest recipe for closing businesses and letting them all go down the gurgler.

What has the Minister done with his Workplace Agreements Act? What he has done is give us the opportunity to sit down and talk to the workers and say, "Ladies and gentlemen, things are going well, we can pay you more" or, "Ladies and gentlemen, things are going poorly; the business is going bad. I ask you to make sacrifices." Why should I have to get a lawyer to argue that in an industrial court, in either Perth or Canberra? Why can I not just talk that over with my workers? That is what the Opposition has always prevented me from doing. That is the authority the Minister has given me. Let me tell members opposite that if the Labor Party ever takes that right away from the small business sector, it will never ever get into government again; I know this because I have spoken to many people in Geraldton who have gone from awards to workplace agreements. In every case they have said, "We do get more money and you are right." In a lot of cases the first thing I asked my mechanics to do was to give up two hours a week. I said, "You all work under this wonderful, bloody Canberra system that gives us a 38 hour week. Unfortunately our service department stays open 40 hours. That is a bit inconvenient when you all go home at 3.00 pm on Friday and nobody is here." They said, "Yes." I said, "Under the other system I had to pay you time and a half. What I would like to do is enter into an agreement and ask some of you to work 40 hours." That was the first time I ever had the power to ask my staff to work 40 hours. About half of the mechanics said, "We are more interested in money than we are in leisure time, and we would like the 40 hours. What are you offering, Bob?" I think I ended up paying an extra $40 a week. They all said, "God, we are absolutely happy with that What do we have to do?" I said, "Here's the agreement."

Mr Ripper: How much did you save on the double time obligation?

Mr BLOFFWITCH: I never saved any time on the double time obligation. It was during normal working hours when I could not charge the customer a penalty and the idiots opposite with their award system -

The ACTING SPEAKER (Mr Barron-Sullivan): Earlier on I was reading something and I am not sure that I heard some language by the member for Geraldton that perhaps should not be used in the Chamber. I use this opportunity to remind the member to be very careful in his selection of words.

Mr BLOFFWITCH: Thank you, Mr Acting Speaker. It is a passionate subject with me and I apologise for anything I did say.

What we have been given is something that the small business sector wants. Members opposite can never understand because they probably have come from a different position. When we are sitting in our little business, whether it be a sandwich shop or a delicatessen - we may have two staff - and we must telephone our association to find out what is the award and the system, and then a staff member says, "Why can't I work the extra two hours and we just work out a deal?" We have to say, "We can't do that." Alternatively, if we telephone the association and say, "How about getting that changed in the award?", they say, "Bob, that is mission impossible. Not only can we not do it, we are not going to do it because if there is any variation we could be penalised; things could happen, so we are not going to do it." That happened probably half a dozen times when I rang the association. The Minister gave us workplace agreements which allowed employers to talk to their staff. When we talk to our staff and ask them to enter a workplace agreement, they are suspicious that we are going to try to screw them out of something.

They are right to think that. All employees think that of employers. The first person who signed a workplace agreement in my business had worked for me for 20 years. He said that everybody was worried about signing workplace agreements but because he had been with me for 20 years and I had never cheated him, he was prepared to sign one. From then on everybody who works in the business has signed workplace agreements. People will not sign them instantly. Members opposite are quite right: There is a fear of the unknown and that makes people suspicious. I genuinely ask members opposite not to scare people about workplace agreements, but to encourage them to ascertain whether there is any advantage by going into such agreements.

Mr Kobelke: We don't need to. There are enough walking wounded.

Mr BLOFFWITCH: If people find something in a workplace agreement which is abhorrent or they do not like, they can point that out to their employers and say that it is not negotiable. I ask members opposite not to frighten people about signing workplace agreements, but to encourage them to take up the opportunity and endeavour to work out successful agreements between employees and management.

The philosophy of those opposite is that they would rather a Canberra magistrate ruled on the industrial award for a small business, than have the employer and employee sit down and reach agreement. I merely ask

members opposite to take up my suggestions. If they do not, it shows they are so out of tune with what is happening in Australia in this regard, it just does not matter.

MR BROWN (Bassendean) [9.31 pm]: I have listened to this debate with considerable interest, particularly the matters latterly raised by the member for Geraldton. He might remember that during the debate on the workplace agreements legislation, proposals were advanced that, if there was to be a workplace agreement, it must be equivalent to or better than the value of the award. That was proposed as the test. In this State the workplace agreements legislation does not provide that as the test. The workplace agreements legislation in this State sets a substandard, minimum wage and some very minor conditions of employment.

Mr Bloffwitch: If it had done that, would you have been in favour of a workplace agreement?

Mr BROWN: Probably not, to be honest. Had that been the test, the concern that people would be worse off in terms of value would have been addressed. We would have been able to take a matter before a commissioner for workplace agreements and argue, for example, as in the case of the member for Geraldton, that under the award a person was working 38 hours a week for $400 and under the workplace agreement that person worked 40 hours a week but was paid $440; what the balancing act was between those two situations; and whether it was fair or unfair. We could test -

Mr Bloffwitch: That is what the two of you decide and if he had asked for $440, I probably would have agreed to it.

Mr BROWN: That is the case of the member for Geraldton, but that is not typical in every case.

Mr Bloffwitch: Don't begrudge me the opportunity to do it because we have some bad people out there.

Mr BROWN: Recently the Director of Public Prosecutions was reported in *The West Australian* as saying that self-regulation is for fools; in other words, if we expect people will self-regulate and be fair, we are mugs.

Mr Bloffwitch: He is right. We are putting in place commercial tenancy legislation because we do believe him.

Mr BROWN: The test here is what are the minimum conditions of employment. The argument used during the original debate on the workplace agreements legislation was that if we wanted greater flexibility than that in the award, we must use the value of the award as the base by which the relative value of the workplace agreement is measured.

Mr Bloffwitch: What about asking the person who checks on the workplace agreements to ascertain out of all the agreements registered, those which contained conditions under which wages went down.

Mr BROWN: We have some statistics on that, although we can never check their veracity. The statistics produced by the Commissioner for Workplace Agreements show that 83 per cent of workplace agreements contain a base rate higher than the relevant award. They go on to show that, in many instances, the conditions of the workplace agreements have replaced provisions, such as overtime, shift work and the like, in awards, and that when the calculations were done, the commissioner did not take into account the over-award payments being made.

I will put forward this scenario: Shift worker A is paid a base rate of $400 a week, an over-award payment of $50 a week and a shift allowance over a shift cycle of another $100 a week; that is, $550 a week on average over a shift cycle. Let us look at the calculation used by the Commissioner for Workplace Agreements in determining whether that person is better off. It is based on whether the workplace agreement rate is higher than the award base rate of $400. In that scenario, if the shift worker is paid $420 a week under the workplace agreement - it represents $130 a week less than the person was paid under the award - in these statistical arrangements the person is better off. We can see the manipulation of the process.

Workplace agreements are secret. We cannot see them unless they are in the public sector. We cannot check whether a workplace agreement provides that the total value is better or worse than the relevant award. That information is secret and it cannot be viewed other than by the person who has signed the agreement or the employer. The Minister and the Government are saying that this system works; individual bargaining works and delivers results. In the United States of America 87 per cent of employees individually bargain; therefore, about 13 per cent of the United States work force is covered by collective agreements, and that is all. Only 13 per cent of workers are in unions. The statutory minimum wage in the United States is $5.15 an hour, and that figure was increased by President Bill Clinton. Millions and millions of American workers are paid the minimum rate of $5.15 an hour - and not a single dime more. In 1991, an extensive survey undertaken for the US Government showed that 19.7 per cent of workers received a wage lower than the poverty line.

Mr Baker: How does their national employment rate compare with ours?

Mr BROWN: It is lower. The argument used by Prime Minister Howard - he raised it some time ago and then backed away - is that we should have lower wages and lower unemployment. However, the US also has the hangover from that - a crime rate much greater than anything anyone has seen in Australia.

Mr Baker interjected.

Mr BROWN: Recent research reports from the Institute of Criminology plot the societal changes in Australia in relation to income and education. There is a clear relationship, found not by me but by the Institute of Criminology in detailed research -

Mr Kobelke: Some would say that the United States labour system is not regulated by an industrial commission but by the penal system.

Mr BROWN: That is correct. We can see what has happened in this system. At the end of the Second World War about 45 per cent of workers in the United States were organised. That figure is now about 13 per cent. The reduction in the number of organised workers has lead to a corresponding increase in the number of workers paid a wage below the poverty line. There is a direct correlation between those two facts. Basic research shows that and how it has impacted on the United States.

When we look at the system of which the Minister is so proud, we can see some of the long term effects. Most of these effects are not seen immediately. A recent independent survey carried out in my electorate indicated that people have a very clear perception of workplace agreements and who is benefiting from them, and it is not workers.

Let us consider some of the things the Government promised when it introduced workplace agreements. It is instructive to refer to what the Minister said in his second reading speech in introducing the Workplace Agreements Bill as follows -

> The Government holds that only by providing workers and employers with choices -

He is talking about choices. Later in the speech he states -

> The effect of the legislation will be to provide, for the first time, a real choice -

He later states -

> This Bill, then, will establish the alternate system. It will not do so by abolishing the old. Employers and employees will be able to chose the system they prefer.

The speech is riddled with this concept of choice. We all recall that prior to the 1993 election people were told that they would have a choice. It is all very well for the Minister to come up with some fine interpretations about the commitment he made. He said that the Liberal Party documents referred to "employees". Of course, one had to interpret that as meaning people then employed. It did not refer to people who were applying for jobs. According to the Minister, anyone could see that this choice would apply only to existing employees and that there would be no choice for new employees.

The past few months have shown us the results of politicians using smart words. We saw it in Queensland and we have heard people complaining about the duplicity of politicians. The Minister used those words to deceive. Who would apply that narrow interpretation? That was never made clear prior to the 1993 election. It is a very cute way of saying that the Government has not broken any promises. It is no wonder that politicians are less popular than used car salespeople.

I refer to the question of whether people are worse off or better off under workplace agreements. I have raised this with the Minister on a number of occasions. I referred first to a survey that the Commissioner for Workplace Agreements does from time to time and also to a press release issued by the Minister in 1996. In question 3140 in *Hansard* of 17 March 1998, I asked the Minister -

> (1) Did the Minister issue a media statement on 5 July 1996 saying that 83 per cent of workers who shifted to workplace agreements had a higher pay rise than workers in the award system and that the other 17 per cent found other benefits outweighed a pay rise?

The Minister said in the press release that every person who signed a workplace agreement was better off. The question continued -

> (2) If so, does every employee covered by a workplace agreement receive -

(a) a wage rate higher than the wage prescribed in the relevant award;

(b) employment conditions equal to or better than those contained in the relevant award?

The Minister answered -

> I am not aware of the details of all workplace agreements registered.

He makes the claim and then says he does not know the detail. How one makes the claim without the detail, I do not know. Then he goes on to make the following assumption -

> However, because they are entered into by employees who generally want them, these employees achieve outcomes for their employment which are to their advantage compared to outcomes under awards, and which suit their personal choice.

How does one arrive at that view if in order to get a job, workers are faced with a very simple choice? If they want a job they must sign an agreement; if they do not want the job, they should go down the road. Incidently, if they do not take the job, the prospective employer might ring the Department of Social Security and report that they refused the job and the department might then cut off their unemployment benefits. This is ridiculous.

I asked the following question of the Minister representing the Minister for Transport in October 1997 -

(1) Further to question on notice 1800 of 1997, is the Minister aware of the conditions of employment provided to MetroBus drivers and drivers of private bus operators?

(2) Are the conditions of employment provided by private operators more favourable than the conditions provided to MetroBus drivers?

(3) In what way are the conditions more favourable?

Of course, the Minister did not want to answer that question. His answer states -

> The conditions of employment of the private operators' employees is a matter between the employees, the private operators, and any union with which the parties are associated.

That is a neat way of not answering the question.

Mr Kobelke: It could be that he preferred not to know.

Mr BROWN: I do not know. When I asked the Minister for Education whether school cleaners who are under contract are paid a rate that is much lower than the rate paid to cleaners who are employed by the Government under an award, the Minister neatly avoided that question by saying he did not know. I know the answer to that question, and I can tell the Minister that many hundreds of cleaners are paid the minimum rate, and not 5¢ more. Although they get a 15 per cent loading if they are casual employees, they are paid considerably less than their counterparts who are directly employed by the Government to clean schools. The conditions of employment and the rates have been lowered.

I asked the Minister for Transport in question 1800 whether MetroBus had drawn up a schedule of the rates that applied to MetroBus drivers and to private bus drivers, and whether that schedule revealed that bus operators who worked a standard 38 hour or 40 hour week for MetroBus received a higher rate of pay than bus operators who were employed by private contractors. The Minister's answer was that MetroBus drivers received a higher base rate. He then went on with some waffle about the need to look at their conditions. When I asked the Minister whether he had looked at the conditions, he said he did not know about them.

At least the Minister for Transport has been honest. The only reason we received that answer was that MetroBus had drawn up a schedule which showed that the private operators paid lower rates. A person does not need to be Houdini or some super whizz kid to work out that an operator who tenders for a bus contract in competition with MetroBus and that will pay its drivers $50 or $60 a week less than they are paid currently will be able to offer a lower contract price. Nothing is magical about that. Bozo the clown could work that out.

We see time and time again when we ask questions about this issue that Ministers either duck and dive and do not answer the question; or, if they do answer the question and answer it honestly, the rates of pay applicable to people under workplace agreements are lower than the rates of pay that are applicable to the same work when carried out by employees engaged directly by the Government. We have seen time and time again that the notion that people will be better off is wrong.

The Minister talked also about the number of people who are employed under workplace agreements. The number of workplace agreements will increase, because the way it operates at the moment is as follows: If I ran a vineyard and put on 40 casual workers for one month and signed them all up on workplace agreements, those workplace agreements would be registered and would continue for the next five years. However, if in the following year I employed another 40 casual employees and signed them all up on workplace agreements, those agreements would also be registered, and there would now be 80 workplace agreements, and so it goes on. At the end of the five year period, 200 workplace agreements might be registered; and if it was the off season, not a soul would be employed under them. If a condition of those workplace agreements was that they would continue until they were replaced by another workplace agreement, they would continue forever. They might be counted 10 times! One employee position might result in 20 agreements, none of which would apply. The Minister would come in here and say that he had 150 000, 180 000 or 300 000 workplace agreements, and in time there would be about 10 million workplace agreements in Western Australia, but there would be only two million employees!

In the Minister's mind, he will have signed everyone up, but it will be only in the Minister's mind. It will not be a reality. The Minister will tell everyone, "People love workplace agreements. They have all signed them. They cannot get enough of them. They want to sign them." How ridiculous and stupid can he be! It is just unbelievable! The Minister puts out big brochures with graphs. That does not mean anything! Talk about misleading the taxpayers! We then have the big successes! These workplace agreements are great! We asked the Minister how many police officers in this State are employed under a workplace agreement. Not one! How many prison officers are employed under a workplace agreement? Not one!

Mr Kierath interjected.

Mr BROWN: That is right. After 1 July, a person will not get a job if he does not sign a workplace agreement. When we talked about sign or resign, we meant exactly that. A person will either cop what the Minister wants or he will not get a job. That will be the position in Western Australia. There will be no question of choice. People will be employed under these conditions or they will not be employed at all. We know exactly how that system will operate.

The Minister talked about wage increases. I will tell members how it works. The union seeks to negotiate an enterprise agreement. The Minister is not happy with that, so the negotiations are stalled deliberately. At the same time a workplace agreement is developed, with a wage increase that appears to have come out of the negotiations. That is offered immediately to employees, and the negotiations with the union are stalled for months or years. They do that under the Minister's directions to get people to enter into workplace agreements.

Mr Kierath interjected.

Mr BROWN: The Minister for Labour Relations should be quiet. I have two minutes left in which to speak. I was not very impressed when electorate officers representing members on this side of the House were used as pawns because they refused to sign workplace agreements. Electorate officers of Liberal and National members of Parliament received wage increases, but electorate officers of Labor members of Parliament - who refused to sign workplace agreements - were kept waiting for 10 months for a justified wage increase. Finally, it was agreed to and that was disgusting. As I said to the Minister's head of department, I do not mind people having a go at me; I am elected to this place and I can wear it. However, it is a low dog act to have a go at my staff and I resent it. I resented it then and I resent it now. Quite frankly, the Government has to be pretty low to get stuck into those who have no real power. These are the morals of this Government. If I had those morals today, I would get out; I would resign.

Government members interjected.

Mr BROWN: I could not live with myself. I could not look in the mirror if I was prepared to use the superior power of Government, of being a Minister, on poor little electorate officers who have no power. Government members should all be ashamed of themselves. They have mercilessly used that power. Damn them for doing so.

Question put and a division taken with the following result -

Ayes (16)

Ms Anwyl	Mr Grill	Mr McGinty	Mr Ripper
Mr Brown	Mr Kobelke	Mr McGowan	Mrs Roberts
Mr Carpenter	Ms MacTiernan	Ms McHale	Mr Thomas
Dr Edwards	Mr Marlborough	Mr Riebeling	Mr Cunningham *(Teller)*

Noes (23)

Mr Baker	Mr Day	Mr Marshall	Mr Shave
Mr Barron-Sullivan	Mrs Edwardes	Mr Masters	Mr Trenorden
Mr Bloffwitch	Mrs Hodson-Thomas	Mr McNee	Dr Turnbull
Mr Board	Mr House	Mr Minson	Mr Wiese
Mr Court	Mr Kierath	Mr Nicholls	Mr Osborne *(Teller)*
Mr Cowan	Mr MacLean	Mr Prince	

Pairs

Mr Graham	Mr Barnett
Ms Warnock	Mr Omodei
Dr Gallop	Ms Parker

Question thus negatived.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 1997

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Mr Sweetman) in the Chair; Mr Shave (Minister for Fair Trading) in charge of the Bill.

New clause 10 -

Progress was reported after Mr Brown had moved the following amendment -

Page 24, after line 30 - To insert the following -

Sections 13C, 13D, 13E, 13F and 13G inserted

10. After section 13B of the principal Act the following sections are inserted -

" **Preference to be accorded to existing lessee**

13C. (1) Where a landlord of premises in a retail shopping centre proposes to re-let the premises, and an existing tenant wants a renewal or extension of the term, the landlord shall give preference to the existing tenant over other possible tenants of the premises.

(2) Unless the tenant has notified the landlord in writing within 12 months before the end of the term that the tenant does now want a renewal or extension the landlord must presume that the existing tenant wants a renewal or extension of the term.

(3) The landlord is not bound to prefer an existing tenant under this section where -

(a) the existing tenant has been guilty of a substantial breach or persistent breaches of the lease;

(b) the landlord requires vacant possession of the premises for the purposes of demolition or substantial repairs or renovation; or

(c) the tenant is not prepared to pay market rent;

(d) subject to subsection (4), the landlord wants to change the tenancy mix in the retail shopping centre; or

(e) the landlord obtains an exemption under subsection (5).

(4) Where a landlord decides against renewing or extending an existing tenant's lease on the ground described in subsection (3)(d) the tenant -

(a) is entitled to receive fair compensation; and

(b) may apply in writing to the Tribunal for an order that the landlord pay compensation to the tenant in respect of pecuniary

loss suffered by the tenant as a result of the failure to renew or extend the retail shop lease.

(5) A landlord may apply in writing to the Tribunal for an order exempting the landlord from complying with this section on the ground that renewal or extension of the lease would substantially disadvantage the landlord.

(6) In this section -

"lease" means retail shop lease; and

"market rent" has the same meaning given to it in section 11.

Process for preferential right

13D. (1) Where an existing tenant of premises in a retail shopping centre has a right of preference under section 13C, the landlord shall, at least 6 months (but not more than 12 months) before the end of the term, begin negotiations with the existing tenant for a renewal or extension of the lease.

(2) In compliance with subsection (1), before entering into a lease with another person, the landlord must -

(a) make a written offer to renew or extend the existing lease on terms and conditions no less favourable to the tenant than those of the proposed new lease; and

(b) provide the existing tenant with a copy of the lease or proposed lease (as renewed or extended) and any prescribed statements required in relation to it.

(3) Where a landlord offers to renew or extend a retail shop lease under this section -

(a) the offer remains open for 10 days (not including any Saturday, Sunday or other public holiday) after it is made or for the period stipulated in the offer, whichever is the longer;

(b) if the tenant wishes to accept the offer referred to in paragraph (a) the tenant must notify the landlord in writing of his or her acceptance within the period referred to in that paragraph; and

(c) if notice is not given in accordance with paragraph (b), the offer lapses.

(4) The negotiations under this section are to continue until -

(a) the tenant rejects an offer made under this section or the offer lapses; or

(b) the tenant indicates in writing that the tenant does not want to continue negotiations for a renewal or extension of the lease.

Notice of absence of duty of preference

13E. Where, in accordance with section 13C(3), a landlord is not bound to give preference to a tenant of a retail shop in a retail shopping centre, the landlord shall, at least 6 months (but not more than 12 months) before the end of the term of the lease, by written notice -

(a) notify the tenant of that fact; and

(b) state why in the circumstances of the case the landlord is not bound to give the tenant preference in accordance with section 13C.

Failure to negotiate or notify

13F. (1) Where the landlord fails to negotiate or to notify the tenant as required by sections 13C, 13D and 13E and the tenant by notice in writing to the landlord

given before the end of the term of the lease requests an extension of the lease under this section, the term of the lease is extended until the end of 6 months after the landlord begins the required negotiations or gives the required notice.

(2) During an extension of the lease under subsection (1) the tenant may terminate the lease by giving not less than 1 month's notice of the termination in writing to the landlord.

Fair dealing between landlord and tenant

13G. If a landlord fails in any respect to comply with the provisions of sections 13C, 13D, 13E or 13F and the tenant, in the circumstances of the case, is disadvantaged by the failure, the tenant may apply in writing to the Tribunal for an order or orders resolving the dispute.

Ms MacTIERNAN: The member for Bassendean's amendment would provide some security of tenure for an existing lessee by effectively giving that person a first right of refusal. The member for Joondalup argued that there is nothing prohibiting a tenant and landlord from including such provision in a lease. That is a particularly silly argument.

Mr Baker interjected.

Ms MacTIERNAN: Of course, it is true! There is absolutely nothing that prevents it. However, that is fundamentally to misunderstand the nature of the legislation we have before us. The Commercial Tenancy (Retail Shops) Agreements Bill is here because we recognise there is an inherent inequality of bargaining power between the landlord or the managing agent as his representative and the tenant.

Mr Baker: That is the case with every financial transaction since day one.

Ms MacTIERNAN: It is the reason we have this legislation and why we prescribe a range of conditions. The same argument could be used for everything in this legislation - the original legislation and the amending Bill. We could say that we do not need it because it can be put in a contract. The recognition that tenants have difficulty negotiating these sorts of conditions lead to the original legislation being introduced by the Labor Government in 1985 and now being subject to considerable review by the current Minister. That argument does not address the issue at all.

The Minister said that he has not had time to consult with the various stakeholders and it will be put to one side and looked at on another occasion. It is unfortunate that the Minister has taken that view. This amending Bill has been many years in the making, and it has been under active consideration by the current Government for at least three years. At that rate, it is highly unlikely that any further amendments will be made within the life of this Government. Although the Minister has been gracious enough to recognise the merits of the amendment put forward by the member for Bassendean, it is somewhat disingenuous to say that the Government will think about it later and come back with more amendments. We all know that will not happen. There is much competition for parliamentary time and for the time of parliamentary draftspersons. If the legislation is to be improved, the Government must seize the moment and the opportunity now.

I understand there has been some confusion about when these proposed amendments were made available, but at the very least the Government should use the parliamentary recess to consider this matter. If amendments were to be effected in the upper House, I know the Opposition would dispatch the Bill with due haste when it returned to this Chamber. They cannot be passed off for some other time or some other Bill. They must be dealt with in this Bill. The member for Joondalup and the Minister expressed some concern about proposed subsection (4). It may be that the section could stand without subsection (4) or with a modified version. I urge the Minister to consider this amendment.

Mr BROWN: It is not my intention to go through all the arguments I went through before. I reiterate before the matter is put to the vote that security of tenure is the largest issue facing small retailers. Without security of tenure, many feel vulnerable and do not speak up about things they would like to mention. They feel their tenancy may be in jeopardy if they speak up about certain matters. Without security at the end of the lease, they are in very difficult circumstances. In some cases valid reasons have not been given for not granting lessees a new lease when their lease period runs out. Some lessees tell me they have paid the rent, improved the shop and increased custom but, nevertheless, at the end of the lease period they have not been offered another lease. Many of the people with whom I have discussed this matter feel bitter about their experience and carry it with them.

Although the proposed section may not be eloquent enough and the language or concepts could be improved - I accept that could well be the case - the intent is clear. As the member for Armadale said, the Opposition would not be averse to a different section that picked up most of the concepts outlined. A new section could be drafted after the Bill leaves this Chamber and goes to another place.

I have discharged my obligations and the commitments I made to all the small retailers who have raised this matter with me, by trying to promote the previous new section which was defeated and this proposed section. The retailers have made their position clear and all I can do is try to persuade the Minister in the strongest possible terms about the views expressed to me honestly and sincerely by small retailers.

I will not pursue the matter further, not because the proposed section is not of value and not because the issue is insignificant, but because everything that could be said has been said. This proposed section and/or the previous section would provide some measure of reassurance to small retailers.

New clause put and negatived.

New clause 10 -

Mr BROWN: I move -

Page 24, after line 30 - To insert the following new clause -

New section 13D

10. After section 13B of the principal Act the following section is inserted -

" **Relocation entails obligations**

13D. (1) Where a retail shop lease contains a provision that enables the landlord to require the tenant to relocate the tenant's business from one shop to an alternative shop in the shopping centre, the lease shall be taken to provide that -

(a) the tenant's business cannot be relocated unless and until the landlord has given 3 months written notice of the relocation (**"the relocation notice"**) with details of -

(i) the alternative shop to be made available to the tenant; and

(ii) the proposed refurbishment, redevelopment or extension to the first mentioned shop sufficient to indicate a genuine proposal that is to be carried out within a reasonably practicable time after the relocation of the tenant's business and that cannot be carried out without vacant possession of the tenant's shop;

(b) the tenant is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease excepting the term of the new lease which may be for the remainder of the term of the existing lease; and

(c) the rent for the alternative shop is to be the same as the rent for the shop to which the existing lease relates provided that such rent may be adjusted to take into account the difference between the market value of the shop to which the existing lease relates and the alternative shop at the time of relocation.

(2) Where the tenant receives a relocation notice in accordance with subsection (1) the tenant may terminate the lease within 28 days after receipt of such notice by giving written notice of termination to the landlord.

(3) Where a tenant terminates a lease in accordance with subsection (2), the lease is terminated 60 days after receipt of the relocation notice unless the landlord and tenant agree that the lease is to terminate at some other time.

(4) Where a tenant receives a relocation notice in accordance with subsection (1) and the tenant does not give the landlord a notice of termination in accordance with subsection (3), the tenant is taken to have agreed to relocate to the alternative shop identified in the relocation notice.

(5) Where a tenant agrees to relocate the tenant is entitled to payment by the landlord of the tenant's reasonable relocation costs including costs incurred by -

(a) dismantling and reinstating any fixtures and fittings;

(b) packing and removal;

(c) any new fitting requirements;

(d) any legal requirements associated with the relocation; and

(e) any disruption to trading relating to the tenant's business. ".

This proposed section seeks to provide a series of provisions that will apply when a landlord requires a tenant to relocate his or her business from one shop to an alternative shop during the course of the lease. The proposed section contains a number of provisions: First, that a tenant cannot be relocated unless and until the landlord has given three months' written notice of the relocation. Secondly, that an alternative shop must be made available to the tenant and that any proposed refurbishment, redevelopment or extension to the first mentioned shop is carried out within a reasonable time after the relocation. In addition, the tenant is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease, and the rent for the alternative shop is to be the same as the rent for the shop to which the existing lease relates, subject to some differences between market value being taken into account.

The clause also gives the tenant the opportunity to terminate the lease if such relocation occurs. It provides in general terms that where a tenant agrees to relocate, he is entitled to payment by the landlord of the reasonable relocation costs, including costs incurred by dismantling and reinstating any fixtures and fittings, packing and removal, any new fitting requirements and so on.

Tenants are sometimes required to move from one shop to another in a centre, and this new section seeks to provide compensation and payment to a tenant in that eventuality. Again, this matter was discussed with the Retail Traders Association, which stated in its letter to me of 9 March this year -

> We support the contention that lessees should be entitled to compensation in the event of relocation at the request of the lessor. This issue has been agreed at the national level. (See clause 34A of the attached agreed harmonised legislation).

I am sure the Minister is aware of that document. In addition, I refer to a communique arising from a special meeting of state and commonwealth Ministers and Parliamentary Secretaries held in Canberra on 5 December 1997, which I understand the Minister attended. Point 15 of that communique states -

> Ministers and Parliamentary Secretaries recognised that compulsory relocation can have a significant detrimental effect on a retail tenant. On the other hand, landlords also require a degree of flexibility in their tenancy mix and location to maximise centre turnover and the value of their investments. Ministers and Parliamentary Secretaries considered that tenants should be provided with adequate written notice of any relocation, and should recover from the landlord reasonable costs associated with any compulsory relocation during the course of a lease.

Wherever we look, be it to the national level, the Retail Traders Association or a fair trading inquiry, there is argument for such a clause dealing with relocation.

Mr SHAVE: The principle involved is people having the right to fair compensation for compulsory relocation. Everyone from all areas supports that view. I imagine that even the Property Council of Australia supports the principle, even though it may not like paying the money. However, when a decision is made to compulsorily relocate someone, for whatever reason, to improve the shopping centre, fair compensation should be paid. We must ask whether the existing provisions provide for that compensation.

As a result of the amendment proposed, we made some inquires regarding the views of the Commercial Tribunal and others on this area. The advice is that the latest report of the operations of the Commercial Tribunal over a 12-month period is that over 1 300 applications were made by either landlords or tenants in matters relating to relocation, development or compensation. As a result of those determinations, only one relocation dispute on which the tribunal made a ruling was reported as proceeding to a higher court. In essence, my advice is that the existing system is working well. Under the Act, the registrar is in a pivotal position to impose decisions regarding relocation compensation to protect the interests of sitting tenants. These matters must be agreed before the landlord is granted approval to, or proceeds with, work on tenancy relocation.

Although I understand the intent of the proposal, the Government's view is that the existing situation, in which the registrar is adjudicating, is working. We have not had a groundswell of requests for a change in this area. In fact, when we canvassed industry groups on whether they believed the amendment should form part of this legislation, the Western Australian Council of Retailers Association felt it would do no harm and should be included, and the Retail Traders Association, the other group representing small traders, said it did not support its inclusion as it believed that the existing provisions were reasonable. As I am not in favour of over prescribing legislation unless a need is demonstrated, and as the present system is working, and providing the necessary protection for the interests of the sitting tenant, the Government will not accept this amendment.

Ms MacTIERNAN: I am a little confused. The Minister has told us that 1 300 applications were made to the Commercial Tribunal in the last year on the basis of relocation. It seems to be an indication that relocation is a problem.

Mr Shave: It was not just for relocation. I said it was for relocation, compensation provisions and redevelopment issues.

Ms MacTIERNAN: The fact that only one of those cases went to appeal is not an indication that the Act has adequately dealt with the situation to date. We do not know what happened to the other 1 299 applications; that is, whether the Commercial Tribunal ruled no jurisdiction, how the Commercial Tribunal made the determination, or whether the tribunal felt the legislation did not contain the power to provide equity and fairness. To say that we had 1 300 cases of which only one went on appeal, so we do not have a problem, is to fundamentally misunderstand what can happen between the process of application and appeal. The introduction of these numbers is a cause for alarm. We should ensure that the legislation is absolutely clear and, as proposed by the member for Bassendean, sets down a very transparent regime by which people know that compliance is required. This would set a clear path for settling disputes of this nature, or determining a proper level of compensation. We cannot take any comfort from what the Minister has said. Certainly, I see his adviser making some notes, and I hope some greater elucidation on those points will be provided.

Mr BROWN: These amendments are moved as a result of the discussions with people in the industry; they are not moved for academic reasons, or because somehow the Opposition thinks in isolation that they happen to be a good idea. I hoped the new clause would have been adopted. The Minister has not indicated in any way that the provisions of the proposed clause are unreasonable or limiting. In any event, this clause seeks to pick up generally a number of things contained in the model clause.

If the Government will not accept the amendment there is not much point in pursuing the matter further other than to say that I will refer the Minister's views to people to whom I have spoken to see whether there is any strong desire to have this matter included in the legislation. If people are not interested in pursuing the matter we will not pursue it just for academic purposes.

I assure the Minister that we seek the insertion of this clause not just because it is a good idea. Many good ideas emanate from the various reports on commercial tenancy that we have not picked up here just because we think they are good ideas. We move these amendments because discussions with either lessees or organisations representing retailers reveal that they see merit in these issues and require them.

This clause is a fair way from the security of tenure issues to which I have referred previously. Obviously if one of the previous new clauses were accepted we would go a long way towards dealing with at least a prime issue of concern to retailers. I understand where the Minister is coming from. As his view is that this type of clause is not desired I will refer to the people to whom I have spoken for their advice.

Mr SHAVE: In response to the concerns of the member for Armadale about the number of complaints, although I may not be able to reassure the member, people in the retail area who might read the comments will not be aware that among the number of complaints I have received about the tribunal's decisions on the 1 300 lodgments not one letter disagreed with the tribunal's findings on relocation.

I have checked with my adviser - he would usually give me a briefing paper - and no significant number of people have complained about a problem with the determinations the registrar is making in these cases. The view I am being given is that although people do not always hear the decision they want, the decisions have been balanced and reasonable and are serving the purpose.

Ms MacTiernan: Under what section of the Act is the registrar making those decisions?

Mr SHAVE: Clause 13(7) in the Blue Bill.

Ms MacTiernan: That applies only to where the lease is about to be determined, rather than the other situations.

Mr SHAVE: My advice is that the registrar has been making determinations since 1985.

New clause put and negatived.

New clause 10 -

Mr BROWN: I move -

Page 24, after line 30 - To insert the following new clause -

Section 14A inserted

10. After section 14 of the principal Act the following section is inserted -

" **Free association of tenants**

14A. (1) Two or more tenants in a shopping centre may establish a merchants association for tenants of that shopping centre provided that membership of such an association is open to any tenant in the shopping centre.

(2) The landlord of a shopping centre must consult with an association established under this section in relation to -

(a) tenancy mix;

(b) variable outgoings;

(c) promotional or other levies,

and the landlord may consult with the association on any other matter affecting such shopping centre.

(3) Any provision of a retail shop lease that purports to prohibit or exclude a tenant's membership of an association established in accordance with this section is void. ".

Proposed subsection (2)(a) should be "the budget for variable outgoings" rather than "variable outgoings".

This provision was recommended by the fair trading inquiry of the House of Representatives Standing Committee on Industry Science and Technology. Recommendation 2.8 suggests the establishment of merchants' associations in shopping centres; that all tenants in a shopping centre belong to a merchants' association; that articles of association for merchants' associations be appended to the standard retail lease; and that merchants' associations approve the annual budget of variable outgoings and promotions levies at the annual general meeting. Recommendation 2.10 was that merchants' associations should be consulted on changes in the tenancy mix.

It is true that different practices exist from centre to centre. Some tenants have reported to me that within their centre there is a collaborative approach where the tenants meet collectively with the landlord; that the landlord examines proposals of promotional levies and assesses the likely costs of security, power, gardeners, etc that form part of the variable outgoings; and that there is fairly healthy discussion between the landlord and tenants through their association. If that were the case throughout the State this clause would not be necessary. However, the reality is that merchants' associations are not welcome at every centre. It is clear that some centres want to ensure merchants' associations do not become established.

A management regime is used at some centres, which seeks to ensure that tenants do not meet collaboratively to consider these types of issues. I have discussed this matter with a number of retailers. They are quite keen to see this type of provision included in the Bill. This proposed clause is much less restrictive than the recommendations of the Ministry of Fair Trading inquiry. It said that there must be a merchants' association in every centre. The amendment does not say that; it says there should be an opportunity to create a merchants' association if tenants wish to do so. There is no obligation on all tenants to be members but it does create an obligation on the landlord to consult. The consultation is nothing more than that. The amendment seeks to create an opportunity for tenants to come together to form merchants' associations, and to have consultations with the landlord on the types of matters that are referred to in the amendment. One hopes that this type of clause would lead to better relationships between the landlord and tenants collectively. It certainly will not have any impact where existing associations already undertake this task and have consultations with the landlord on those matters. That is not the case at every centre. Certainly a number of lessees have indicated to me that they would like to see a right to establish merchants' associations contained in the Bill

and a right for those merchants' associations to consult with the landlord collectively on issues which affect all tenants, such as tenancy mix, budgeting for variable outgoings and promotional or other levies. The amendment is very positive because it creates a right while at the same time not imposing an unreasonable obligation on landlords.

Mr SHAVE: This issue was not raised in the submissions that we received from stakeholders when we first developed the amendment Bill. That is not to say of course that the member for Bassendean has not been approached by other people. Since that time, quite clearly that has probably occurred and that is why he is raising the issue now. The recent survey undertaken by my officers and Ministry of Fair Trading staff has confirmed as a result of the amendment put up that there was lack of consensus between the various groups involved. The necessity to legislate for this type of arrangement is highly questionable. If people want to form a merchants' association, they are free to do so now.

Ms MacTiernan: There is a suggestion, and we know that it happens in some places, that tenants are expressly prohibited from forming an association. Do you support that?

Mr SHAVE: No I do not. I have a bit of a problem. Tenants have the right to join an association if they so wish. I was talking to my adviser regarding the amendment. One of the areas of concern with the proposed new clause is the situation when a large number of tenants want a development to go ahead but two tenants come together who are active in their association. Those two tenants may decide that they do not want something to happen at the shopping centre because it might affect their particular circumstances. The other people might not be involved. If they decide to block something, it could be to the detriment of the other people involved. Where is the line drawn on consultation? The member for Bassendean says that a landlord of a shopping centre must consult. If some people are particularly belligerent in a negotiation and say that they have not been consulted properly, my advice is that legally those people might be in a position to frustrate other tenants and the landlord in their intent to make change or do something that is necessary for the shopping centre. I guess that is one of the reasons that the proposal did not receive full support from all of the retail trading people involved. The Western Australian Council of Retailers Association certainly did not support it and the Retail Trading Association had some reservations. As I said on the previous amendment, the Government would not agree to over prescribe or have excessive unnecessary legislation, therefore the amendment is not supported.

I take the point of the member for Armadale with regard to leases that might specifically prohibit tenants from forming an association. During the break we will go back to the groups involved. We will get some advice from the Law Society on its experiences and its views on the equity and fairness of this. A chart has been given to me which shows who agrees to what. The Law Society did not feel that it was necessary to have that provision in the legislation. As I have said, we will look at that point in terms of putting a clause in the Bill. My legal adviser tells me that the New South Wales legislation contains such a provision. I do not believe that shopping centre owners should exclude people from the right to form an association and represent themselves. If we are to do it, we will certainly redraft the clause or, if there is an acceptable amendment, we will see that it is moved in the other place.

Ms MacTIERNAN: The Opposition is pleased that the Minister is at least prepared to look at this. If the member for Bassendean were prepared to move new subsection (3) by itself, I hope that the Minister would give it consideration now. There can be no justification for excluding a tenant from forming an association in order to advance the tenants' interests. It is contrary to all principles for which this Government has said it stands. It is completely indefensible that tenants be expressly prohibited by the terms of their agreement from entering into arrangements which might advance their interests. I take some heart that the Minister will at least consider this. The arguments in favour of proposed new subsection (3) are so self-evident as not to require further consultation.

Mr SHAVE: My offer is genuine. We will consider this point. If the member for Bassendean were to move proposed subsection (3) we could sit here and redraft it now. The amendment refers to a specific section. If the member moved that part of his amendment, there would still be a need for a redraft. I am comfortable with the notion that tenants should have the right to form an association. I am reasonably optimistic that when this Bill goes to the other place, if a satisfactory amendment is moved to proposed subsection (3) it will come back to this place in that form or in a similar form.

Mr BROWN: The retailers to whom I have spoken are keen to form a merchants' association. However, they realise that without protection in this legislation, they will not have a chance to establish an association and thereby have the ability to consult with the landlord as a collective. A number of tenants want to form a merchants' association to enable them to consult with the landlord on issues that affect all tenants. I am told that, given the relationship at shopping centres, it is impossible to establish a merchants' association without

some considerable risk to the tenants. Secondly, as a group, if they try to talk to the landlord about matters of concern for the entire group, such requests are rebuffed and are not acceptable to the landlord. The tenants consider that they are disadvantaged. Large shopping centres can contain 150 to 200 shops, and there can be arguments about security, cleaning, car park patrols, or anything else. One tenant will not carry much weight when talking about a general matter such as security, lighting generally for the shop, advertising or promotional levies. Tenants want to be able to put their case to the landlord. They cannot compel or negotiate with the landlord; all they can do is confer. They want the opportunity of putting their case as a collective to the landlord. They hope that in that way at least they will be able to influence the decision making processes of the landlord.

The Minister's proposal to consider proposed subsection (3) to prohibit a provision in a lease excluding the participation of a merchants' association is a positive step. That by itself will not lead to the formation of a merchants' association because, although it will not be possible to discriminate, there will still be resistance towards recognising and negotiating on these central issues. Without that provision in the Bill it will not become a reality for the tenants who are keen to see it occur. Tenants are keen to see this occur for the same reasons as are contained in the fair trading report. I accept the Minister's argument that if only two tenants were involved - when there may be 50 in the building - those two may seek to unduly influence the situation. However, the clause states that the association must be open to every tenant to join. There are two alternatives: One is to say, as the fair trading report said, that every tenant must be a member. In that case, the Minister would remind us about compulsory unionism and compulsory membership of organisations, and so on, but I do not want to enter that argument. The provision should state that every tenant is eligible to join the association. They cannot set up an association which is exclusive to certain groups. Therefore, the eligibility rule for membership must be broad enough to allow all tenants to join, but an association can be established by two or more tenants. I ask the Minister to think more broadly about the provision than he has so far indicated.

New clause put and negatived.

New clause 10 -

Mr BROWN: I move -

Page 24, after line 30 - To insert the following new clause -

Section 15A inserted

10. After section 15 of the principal Act the following section is inserted -

" **Standard leases in plain English**

15A. (1) The Minister must make regulations prescribing a standard lease in plain English not later than 12 months after the day on which this Act comes into operation.

(2) In order to comply with subsection (1) the Minister must consult with -

(a) the Property Council of Australia;

(b) the Retail Traders Association of WA Inc;

(c) the Real Estate Institute of WA Inc; and

(d) the WA Retailers Association Inc,

in relation to the form and content of the standard lease.

(3) The standard lease as prescribed by regulation must be used for all leases (including any renewed or extended lease) which is entered into after the day on which the regulation prescribing the standard lease is published in the *Government Gazette*.

(4) Subject to section 15, a standard lease may be varied by either party to the lease by appropriate deletions or additions to such lease. ".

The new clause seeks to require the Minister to make regulations prescribing a standard, plain English lease no later than 12 months after the day on which this Act comes into operation. The clause does not specify what the lease should be. It states that the lease should be drawn up by the Minister in consultation with the

four peak organisations. It further states that the standard lease prescribed by regulation must be used for all leases from the day on which the regulation is gazetted. However, the standard lease may be varied by either party to the lease by appropriate deletions or additions.

Retailers have made strong representations to me in this regard. They say that they have paid hundreds of dollars for a lease that is simply a photocopy of another lease. They can see no value in that, because it is exactly the same lease used by someone else. When they are handed the lease, if they are not sure about it because it is complicated, they must take it to their lawyer to check whether it is fair and reasonable, and incur additional costs in the process. Small retailers feel very strongly about this. They consider that a standard lease that was set by the Minister in consultation with the four peak organisations would be a balanced lease. At least if a new retailer is presented with a standard lease that is recognised in the regulations, and negotiated between the four peak groups, the retailer could be relatively confident that it is a fairly balanced lease. Therefore, the retailer need only go to the attached schedules. If the lease were deleted and a large schedule were included, one could question what it was about and ask what the landlord was trying to do. If a standard lease were used, it would contain the rent, and so on, and could be scrutinised by a layperson who could say that he was happy with the figures and would not need to pay to have the lease checked. He would say that it is a balanced proposition and, as a single person, he could do no better; it sets out what he wants; it is in plain English and he is happy with it.

It could save small retailers hundreds if not thousands of dollars. I urge the Minister to accept this new clause. I was told by REIWA that it is developing standard leases and so on, but it is nevertheless a REIWA lease. It is not a lease that has been negotiated through a process with people representing retailers, landlords and land agents. I propose a lease that would be represented by these four groups. This is a most important provision. It is not a highly complex provision, but it is one that small retailers want.

Mr SHAVE: The theory of a standard lease is admirable. My advice is that the commercial reality is that a standard lease has not emerged that is acceptable to all parties. Experience has demonstrated that it is not possible to settle the drafting of a universally acceptable lease form which provides for all the widely differing heads of agreement, covenants and conditions which inevitably occur in the circumstances impacting on retail lease arrangements.

I have an extract of *Hansard* that people brought to my attention because I wanted to ensure that if we did not support it, we were not in fact doing something that was of a disservice to everyone. This debate occurred on the tenancy changes in 1990 when Mr Catania was the spokesperson. I am not point scoring; I am just letting the members know what Mr Catania's views were. In discussions in 1990, the issue of standard leases came up and at that time in a discussion between the member for Avon and Mr Catania, Mr Catania commented that the ideal situation was that we should have fair, standard leases; however, such leases would be very difficult to draft, and because of the wide range of retail situations, they would be very costly and practically impossible to apply. I suspect that at the time Mr Catania received that advice, he went to the groups that were interested in this issue, as we have done on that issue. The Retail Traders Association said it would not support the standard lease proposal, not because the principle was not right, but because it was impractical. WACRA was supportive to a degree, but the support was qualified. REIWA, the Property Council, the Australian Institute of Valuers, and the Law Society were all negative about the proposal. With the advice that I have received, I do not believe that it is in everyone's interest, either the retailers or the property owners, to impose a requirement for a standard lease.

The member the Bassendean raised the issue about REIWA's involvement in this proposal. My advice is that REIWA had tried to develop, but had abandoned up until this time, the concept of a standard retail lease because it had not been able to come up with a satisfactory solution, or the industry did not accept the proposal that REIWA came up with. Strong support does not exist for this proposal. The principle is right in that its aim is to save money and provide equity in what people receive when a lease is drawn up; however, the Government will not accept the amendment. Members will recall that the tenant guide is a feature of the amendment Bill. This guide will be developed in conjunction with key stakeholders, and it will put information in plain language to assist prospective tenants prior to entering into retail leases as to what they should be looking for; and they should seek independent advice prior to signing a tenancy lease.

Mr BROWN: This amendment came forward after discussions with a number of retailers. It was strongly supported by them and of course recommended by the fair trading inquiry. There is no question that if a clause of the nature that is proposed went into to the legislation, it would have the effect of requiring such a lease to be formulated. The difficulty in this area is the problem of developing such a retail lease.

The other problem for small retailers is that they are confronted with a legal document, one for which they consider they are horrendously overcharged and which they cannot make head nor tail of; it may as well be

written in Latin. They must go off to members of the legal profession and find out what it really means. Some would say that that is a bit of work creation, but the small retailers who have spoken to me would rather that some work creation be done in some other ways and not in this way. That is true about people who are entering business for the first time, because this is just another entry cost in starting off a new business. When they are confronted with a lease that they cannot understand - they may be a mug and just sign it, but not too many of them that I have met fall into that category - most of them are astute enough to go off either to someone who has greater experience in dealing with such documents, or to their friendly lawyer, and obtain some advice and assistance. Of course lawyers must eat and lawyers must charge. Again they must meet the costs of all of that.

It is not my intention to keep talking around and around on this issue, other than to say that in letters that I have received from retailers and in discussions I have had with them - and this is not just in passing; this is people putting it very strongly to me - they expressed the view that they were very aggrieved by the current arrangements, and they felt that a standard lease would overcome these types of problems, without in any way suggesting that it would be an easy process to arrive at that conclusion. I do not think anybody would ever say that. I gave small retailers an undertaking that I would pursue the matter in this place. I understand the Minister is not prepared to accept the amendment, but I can say to the Minister and the Government from speaking to a number of retailers that whatever views might come from the peak organisations, this is certainly a demand from the grassroots.

Retailers consider that they are very vulnerable in the current process and they are paying too high a price for a photocopy of a lease that is passed from one tenant to another. They are paying $600 and $700 for 20 pages of photocopying, and they consider that is extortion.

New clause put and negatived.

Clauses 10 to 13 put and passed.

Clause 14: Saving and transitional -

Mr BROWN: This clause provides that most of the provisions of this Bill will come into operation at the commencement of a new lease. The Government has taken the view that legislation which applied to existing leases would be tantamount to retrospective legislation. I understand that view; however, it is not shared by many retailers. They consider that the matters referred to in this legislation should be implemented immediately because they are experiencing problems and there are no good grounds for delay. If there were grounds for delay it should not be for such a huge period. For example, if a five year lease with a five year option has just been signed, one could argue that these new provisions should commence to operate 12 months after the amending Bill comes into operation. This matter was raised with me, and I undertake to have further discussions with retailers about it before it is considered by the other place. While no amendment has been proposed in this place, there may be some in the other place.

Mr SHAVE: I thank members for their input during Committee.

Clause put and passed.

Title put and passed.

Report

Bill reported, with an amendment, and the report adopted.

House adjourned at 11.15 pm

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

TAX REFORM

Mr Page's Comments

3440. Mr TRENORDEN to the Treasurer:

(1) Has the Treasurer seen comments made by New South Wales Labor Minister for Local Government, Hon. E. Page MP, on the future of States?

(2) If so, are Mr Page's comments reflective of Labor's attitude towards tax reform and fiscal imbalance?

Mr COURT replied:

(1) No.

(2) Not having seen the comments made, I cannot provide any view on whether those comments are reflective of Labor's attitude towards tax reform and fiscal imbalance. However, if the member wishes to provide further information on these comments, I will pursue the matter further. As the member will be aware, the Western Australian Government supports tax reform and believes this must encompass reform of Commonwealth/State financial arrangements to provide States with greater revenue autonomy and certainty.

CENTRAL WAIT LIST BUREAU

3609. Mr McGINTY to the Minister for Health:

(1) I refer to Central Wait List Bureau and ask, will the Bureau be collating surgery waiting list statistics for all hospitals including -

  (a) non-teaching hospitals;

  (b) country hospitals;

  (c) privatised hospitals such as Joondalup Health Campus?

(2) If yes, when will those figures be published?

Mr PRINCE replied:

(1) Yes.

(2) (a) All non teaching hospitals will have wait list information available by August 1998.

  (b) Country hospitals will have access to Health Care and Related Information Systems (HCARe) wait list module by 1 July 1998. The regional hospitals have been encouraged to collect wait list information for 1997/98 and are all in a position to populate the HCARE data collection module as it becomes live. Therefore it is anticipated the Central Wait List Bureau (CWLB) will be able to provide regional wait list statistics by September 1998.

  (c) Joondalup Health Campus provide public patient wait list data and the CWLB will include that data in July statistics.

MR ALEX VAN BLOMMESTEIN'S FOOT OPERATION

3648. Mr McGOWAN to the Minister for Health:

I refer to the case of Mr Alex Van Blommestein and his need for an operation on his foot and ask -

(a) when will this operation take place;

(b) why has this operation been delayed;

(c) is there any prospect of this operation taking place any sooner;

(d) are there alternative sites where this operation may be undertaken; and

(e) what is the approximate cost of this operation?

Mr PRINCE replied:

(a) No booking date has been set.

(b) The patient is rated as "non urgent".

(c) If Mr Van Blommestein considers that his condition had deteriorated since his last review, he should contact his general practitioner/consultant for a reassessment of his status.

(d) The Consultant Orthopaedic Surgeon also operates at Rockingham Hospital and maintains his own booking list. Mr Van Blommestein's case may be reallocated to a consultant at another of Perth's metropolitan public hospitals under arrangements being facilitated by the recently-established Central Wait List Bureau:this would be dependent upon Mr Van Blommestein's clinical condition being suitable for treatment at another metropolitan public hospital.

(e) Between $7,000 - $15,000 in a public hospital.

NORTHERN CITY BYPASS COST INCREASE

3656. Ms WARNOCK to the Minister representing the Minister for Transport:

(1) Will the Minister confirm that the cost of the Northern City Bypass project is now in excess of $400 million?

(2) If not, why not?

(3) If so, what is the latest cost estimate?

(4) Is the Minister or the Department of Transport aware of any cost increases in the construction of the Northern City Bypass which have not been made public and for which the Government is liable?

(5) If so, will the Minister detail these increases?

(6) If not, why not?

(7) Can the Minister give an assurance that any further increases in the cost of the Northern City Bypass will be at the expense of Baulderstone Clough Joint Venture?

(8) If not, why not?

(9) Will the Minister clarify under what circumstances future cost increases in the Northern City Bypass will be borne by the Government rather than Baulderstone Clough Joint Venture?

(10) If not, why not?

Mr OMODEI replied:

The Minister for Transport has provided the following response:

(1)-(6) Construction of the Graham Farmer Freeway is being undertaken by Main Roads not the Department of Transport. The original estimate in 1995 dollars was $335 million and did not include any allowance for rise and fall. It has subsequently been decided on efficiency grounds to combine certain works with the Graham Farmer Freeway project as well as modify several features of the work to meet requests from other agencies and the Community.

Original Cost Estimate (excludes Rise and Fall)		$335 000 000
Estimate for Rise and Fall (March 1998)		$ 12 000 000
Variations	$ 22 330 000	
Less Contributions for Other Parties	$- 3 450 000	
Less Other Associated projects	$- 2 950 000	
Nett Increase on Original Estimate		$ 15 930 000
Revised Project Estimate		$362 930 000

Since the original estimate was prepared, Main Roads accounting practices have changed to now include a standard overhead administrative cost to all projects. This standard cost would apply

regardless of whether the original estimate of $335 million or the revised estimate of $362 million is used. In this case the overheads are currently in the order of $37 million based on the revised estimate. This process is being reviewed to ensure actual costs of projects is clearly defined.

(7)-(10) Where Main Roads increases the scope of works the additional contract cost would normally be borne by Main Roads. Conversely, if a Contractor incurs costs above its estimates it is up to the Contractor to meet these costs from within the tendered price. These arrangements are in accordance with Main Roads contract documents and apply to all contractors generally, not just the Baulderstone Clough Joint Venture.

BENTLEY HOSPITAL'S OPERATING THEATRES

3657. Dr GALLOP to the Minister for Health:

(1) (a) Will the Minister confirm if general surgeon James Kent has been refused access to operating theatres at Bentley Hospital; and

(b) if yes, why?

(2) (a) Will the Minister confirm if other surgeons have also had their access to Bentley's operating theatres refused; and

(b) if yes, how many and why?

(3) (a) Will the Minister confirm if Bentley Hospital has either banned elective surgery or reduced the number of elective surgery operations; and

(b) if yes, why and when did the ban or reduction become effective?

(4) How many elective surgery operations were performed in each month at Bentley Hospital in-

(a) 1996;
(b) 1997; and
(c) so far this year?

(5) How much money was allocated for elective surgery at Bentley Hospital in its-

(a) 1997-98;
(b) 1996-1997; and
(c) 1995-96,

budgets?

(6) How much will be allocated for elective surgery at Bentley Hospital in the 1998-99 budget?

Mr PRINCE replied:

(1) (a) Mr James Kent has not been refused access to operating theatres at Bentley Hospital. Mr Kent accesses the theatres for urgent and emergency cases but does not have regular theatre sessions at the Hospital for non-urgent elective surgery. As Mr Kent has only 8 patients in the Hospital's catchment area, he is not eligible for a regular theatre session in line with the theatre allocation policy introduced by the Hospital's Medical Advisory Committee in March 1995.

(b) Not applicable.

(2) (a)-(b) Not applicable.

(3) (a) Bentley Hospital has not banned or reduced the number of elective surgery operations below the level agreed with the Health Department.

(b) Not applicable.

(4)

	(a)	(b)	(c)
	1996	1997	1998
Jan	234	395	332
Feb	328	423	363
Mar	334	403	384
Apr	292	384	298

May	414	404	
Jun	381	396	
Jul	405	420	
Aug	390	410	
Sep	404	410	
Oct	437	422	
Nov	407	375	
Dec	318	278	NB: YTD 1997/98 to end April

(5) (a) $14,550.8m

(b) $14,799.7m

(c) $14,109.5m

(6) Unknown at this stage.

MAIN ROADS SERVICES IN THE CENTRAL AREA

3706. Ms MacTIERNAN to the Minister representing the Minister for Transport:

(1) What are the Government's commitments that impact on Main Roads services in the central area?

(2) Why has the Minister chosen Northam rather than Geraldton as the base for Main Roads services in the central area?

(3) Will the Minister explain how he will manage the Government's commitments for the Geraldton area from Northam?

Mr OMODEI replied:

The Minister for Transport has provided the following response:

(1)-(3) Proposed changes in Main Roads administration and operation will ensure maximum allocations of funding to all regions of the State. There will be increased decision making carried out within the regions and every region will benefit as a consequence.

NOEL BUTTIN ARCHIVE CENTRE

3796. Mr BROWN to the Minister representing the Minister for the Arts:

(1) Is the Minister aware of the possibility of the Noel Buttin Archive Centre at the Australian National University being closed down?

(2) If not, will the Minister ascertain if there are any proposals or initiatives to close the Centre?

(3) Is the Minister aware that if the Centre is closed archival records may be dispersed?

(4) Is the Minister aware that -

(a) archival records stored at the Centre directly relate to the Western Australian history; and

(b) such records may be dispersed to other collections?

(5) Is the Minister aware that for historical purposes it is important to keep the records easily accessible, traceable and preferably in one place?

(6) Will the Minister make representations to the Australian National University to verify the status of and the items relevant to Western Australian history?

(7) If so, will the Minister make representations to the University to ensure that such items of importance to Western Australian history will be properly retained?

(8) If so, when?

(9) If not, why not?

Mrs EDWARDES replied:

The Minister for the Arts has provided the following reply:

(1) Yes, the Library and Information Service of Western Australia (LISWA) has been closely monitoring the events surrounding the proposed closure of the Noel Butlin Archives Centre (NBAC) since August 1997.

(2) There are no longer any plans or initiatives to close the Centre.

(3) The Centre is not going to be closed so the records will not be dispersed.

(4) (a) Yes.

(b) They will not be dispersed as the Centre is not closing.

(5) Yes.

(6) No. LISWA has already investigated the nature of the Western Australian materials in the archives and has determined that they are subsets of nationally significant collections that should remain with the NBAC.

(7) No.

(8) I will not be making any representations.

(9) I am confident that the NBAC staff and the newly appointed NBAC advisory committee will ensure proper archival retention.

LIBRARY INFORMATION SERVICES

Senior Positions

3797. Mr BROWN to the Minster representing the Minister for the Arts:

(1) How many senior positions in the Library Information Services of Western Australia are currently vacant?

(2) What is the title of each senior position that is vacant?

(3) How long has each position been vacant?

(4) What steps have been taken to fill the vacant positions?

(5) When were those steps taken?

(6) If no steps have been taken to fill the vacant positions, why not?

Mrs EDWARDES replied:

The Minister for the Arts has provided the following reply:

(1) None.

(2)-(6) Not applicable.

CARNARVON GROWERS SUBJECT TO PRICE MANIPULATION

3899. Mr BROWN to the Minister for Small Business:

(1) Is the Minister aware a number of Carnarvon growers are facing financial problems due to Perth buyers driving prices down by claiming they can purchase at a lower price from the Eastern States?

(2) Is the Minister aware that growers believe the market is being manipulated to their disadvantage?

(3) Will the Minister instigate an investigation into the purchasing arrangements to ensure that growers are not being manipulated into accepting lower prices?

(4) If not, why not?

(5) What action does the Government intend to take to assist growers in this regard?

Mr COWAN replied:

(1)-(2) Yes.

(3)-(5) All purchasing arrangements entered into between growers and buyers are commercial transactions. Transactions at Market City are governed by by-laws. Following a request by the Minister for Primary Industry these by-laws have been reviewed and are currently out for comment from growers, buyers and agents.

DISCOVERY CENTRE, GINGIN

3935. Mr BROWN to the Minister for the Environment:

(1) Have any funds been allocated in the 1998-99 budget to construct a discovery centre near the proposed gravitational wave observatory in the Shire of Gingin?

(2) If so, how much?

(3) Have any funds been set aside in the forward estimates to construct a discovery centre near the proposed gravitational wave observatory in the Shire of Gingin?

(4) If so, how much has been allocated?

(5) In what financial year/s is/are the allocation/s made?

Mrs EDWARDES replied:

(1) No.

(2) Not applicable.

(3) No.

(4)-(5) Not applicable.

PINE PLANTATION HARVESTING AND REPLANTING

3944. Dr EDWARDS to the Minister for the Environment:

(1) How many hectares of the Department of Conservation and Land Management (CALM) managed pine plantation have been harvested in each of the past five years?

(2) How many hectares of harvested pine plantation has CALM replanted with pine in each of the past five years?

Mrs EDWARDES replied:

(1) AREA HARVESTED

	1993/1994	1994/1995	1995/1996	1996/1997	1997/1998
CLEAR FELL	1642	2990	1427	1444	1050*
THIN	1326	2995	2616	3760	5950*
TOTAL	2968	5985	4043	5204	7000*

* projected estimate

(2) HARVESTED AREA PLANTED

1993	1311.3 HA
1994	851.5 HA
1995	1263.5 HA
1996	1295.4 HA
1997	1352.6 HA

BREAST CANCER COUNSELLING AND PSYCHOTHERAPY SERVICE

3952. Ms WARNOCK to the Minister for Health:

In relation to the Government two year plan for women (1996-98) -

(a) when will the Government trial the Breast Cancer Counselling and Psychotherapy service which aims to provide a statewide service for women diagnosed with breast cancer;

(b) if the Government has already done so -

(i) when was the service implemented;

(ii) what services have been made available; and

(iii) where have these services been provided;

(c) if not -

(i) why not; and

(ii) does the Government intend to honour this pledge?

Mr PRINCE replied:

(a) This service commenced in 1996.

(b) (i) The service was implemented in 1996.

(ii) A clinical psychology service for women who have breast cancer and their families.

(iii) The service is located at Royal Perth Hospital but is available statewide.

(c) (i) Not applicable.

(ii) Yes, the service has been established.

MIDWIVES' PRIVATE PRACTICE RIGHTS IN HOSPITALS

3969. Dr CONSTABLE to the Minister for Health:

(1) What is the current status of midwives in private practice servicing their clients in Woodside, Armadale, and Swan Districts Hospitals, and King Edward Family Birth Centre and -

(a) how does this compare with private midwives practising in public hospitals in other Australian jurisdictions; and

(b) has the Government received any legal advice as to whether the arrangement contravenes any provision of Part IV of the Trade Practices Act, and if so, what was the substance of the advice?

(2) Will Western Australian midwives be accorded the same status as New South Wales midwives who have admission rights for low risk women to birth centres and high risk women to labour ward facilities in some public hospitals?

Mr PRINCE replied:

(1) As from 1 June private midwives will be offered the opportunity to become casual employees of the relevant hospital for the purposes of conducting the confinement of patients in a hospital or birth centre.

(a) There are a variety of private midwifery practices throughout Australia including team based midwifery, midwifery managed birth units, and private midwives having clinical privileges in public hospitals. To date the Health Department has not conducted any comparative studies on private midwifery practices with other states and territories in Australia or overseas.

(b) The Health Department and I have not had any legal advice on this issue.

(2) Private midwives in WA have not had admission rights to birth centres or hospitals. Midwives have had clinical privileges to care for women in a collaborative way with doctors and hospital personnel. At present, private midwives can enter a contract with the relevant hospital as casual employees for the purposes of conducting the confinement of patients in a hospital or birth centre.

METROPOLITAN HEALTH SERVICES BOARD'S EXPENDITURE BREAKDOWN

3975. Mr McGINTY to the Minister for Health:

Will the Minister provide a detailed expenditure breakdown of the Metropolitan Health Services Board this financial year?

Mr PRINCE replied:

The details of the MHSB's actual expenditure up to and including 28 May are as follows:

Board member payments	$305,371
Board support costs	$62,106
Secretariat wages	$198,373
Secretariat support costs	$64,670
Set up costs	$352,192
Rationalisation reviews	$122,000
Total	$1,104,712

Interstate travel for this period equates to $7,762. This was undertaken by Board members and is included in the Board Support costs figure.

HEALTH SERVICES, FUNDING ALLOCATIONS

3976. Mr McGINTY to the Minister for Health:

(1) What are the allocations to each Health Service, including each metropolitan hospital, for the 1998-99 financial year?

(2) What were the allocations for the past two years?

Mr PRINCE replied:

(1) The allocations to Health Services for 1998/99 are not yet finalised. Memorandum of Understandings are now being developed and will be negotiated with Health Services in the next few weeks. Final allocations will be available on 30 June 1998. There will be a single Memorandum of Understanding with the Metropolitan Health Service Board that will specify service activity and the value of services to be purchased. The Board will make financial allocations to the metropolitan Health Service Providers.

(2) The allocations for the past two years are as follows -

METROPOLITAN HEALTH SERVICE BOARD
HEALTH SERVICE BUDGET ALLOCATION ($000s)

Health Service	Budget 1995/96	Budget 1996/97
Armadale	23,021.2	25,457.1
Bentley	31,817.3	35,340.6
Fremantle	98,556.5	118,276.1
Graylands	44,249.4	49,874.9
Joondalup - H C of A	n/a	15,512.4
Kalamunda	7,321.9	8,111.6
Lower North	35,484.7	34,564.1
Mount Henry	8,936.1	6,409.3
PMH/KEMH	114,221.3	125,966.0
Rockingham	15,662.1	17,306.0
Royal Perth & Inner City	216,129.0	238,479.6
Sir Charles Gairdner	146,458.3	161,596.7
Swan	27,557.4	31,114.7
Wanneroo	17,291.7	5,942.1
Total	**786,706.9**	**873,951.2**

COUNTRY		
Health Service	Budget 1995/96	Budget 1996/97
Avon	7,087.6	8,155.3
Bunbury	19,582.3	20,507.5
Central Great Southern	5,926.9	6,370.7
Central Wheatbelt	4,792.3	5,127.0
East Kimberley	10,518.4	11,448.1
East Pilbara	19,752.3	20,360.2
Eastern Wheatbelt	6,624.4	7,139.4
Gascoyne	10,522.4	11,209.7
Geraldton	15,839.6	16,808.6
Harvey/Yarloop	2,660.6	2,869.8
Lower Great Southern	20,822.5	22,648.3
Midwest	3,949.7	4,783.5
Murchison	2,425.5	2,338.8
Northern Goldfields	24,550.2	27,714.0
Peel	12,601.8	14,469.1
South East Coastal	7,067.9	7,512.6
Upper Great Southern	11,767.7	12,321.9
Vasse Leeuwin	8,289.1	9,170.6
Warren Blackwood	9,033.3	9,102.8
Wellington	5,709.8	6,269.3
West Kimberley	24,630.0	27,533.4
West Pilbara	10,979.8	11,625.5
Western	4,459.0	5,067.8
Total	**249,593.1**	**270,553.9**

MOTOR VEHICLE HEADLIGHTS, DAYTIME USE

4005. Ms MacTIERNAN to the Minister representing the Minister for Transport:

(1) Is the Department of Transport or the Office of Road Safety currently considering requiring car drivers to keep their headlights on during the day?

(2) Has any consideration been given to the fact that on country roads this may diminish the impact of lit escort vehicles for oversized loads?

Mr OMODEI replied:

The Minister for Transport has provided the following response:

(1) The RAC campaign for lights on vehicles was supported by the Road Safety Council and the Office of Road Safety.

(2) Research in European countries has clearly indicated that daylight running lights have a positive road safety impact by enhancing vehicle visibility. This benefit should be available to all vehicles on a voluntary basis.

WOMEN'S HEALTH CENTRES

4015. Ms WARNOCK to the Minister for Health:

In relation to the Government's Two Year Plan for Women (1996-1998) -

(a) has the Government developed quality measures which ensure women's health centres are contracted to provide services to an agreed standard?;

(b) if not, why not;

(c) if not, when will this promise be fulfilled; and

(d) if yes, what measures -

(i) have been developed;
(ii) been implemented; and
(iii) if they have been implemented, when were they implemented?

Mr PRINCE replied:

(a) Yes.

(b)-(c) Not applicable.

(d) (i) A new contract framework for women's health services has been developed which incorporates Output Based Management and achievable outcomes for designated service programs.

(ii) Women's health services are required to comply with all appropriate legislation, ensure that activities are undertaken by appropriately trained or qualified staff and work towards standards which ensure the provision of gender sensitive and culturally appropriate services.

(iii) June 1997.

MINISTER FOR THE ARTS

4034. Ms McHALE to the Minister representing the Minister for the Arts:

I refer to the Minister's comments in *The West Australian* on 16 April 1998 wherein he measured his commitment to the Arts by "donning a loin cloth in *Aida*", can the Perth community expect to see the Minister donning a costume in the *Phantom of the Opera*, and if so, which character?

Mrs EDWARDES replied:

The Minister for the Arts has provided the following reply:

My wife thinks I am suffering from over exposure in cameo roles and has recommended I give this production a miss.

MENTAL HEALTH FACILITY FOR PRIMARY SCHOOL CHILDREN

4086. Dr GALLOP to the Minister for Health:

(1) Does the Health Department provide a service facility for primary school age children who have mental health problems?

(2) If yes, what is the name of this facility?

(3) How many clients can it cater for?

(4) How many staff are involved in providing this service?

Mr PRINCE replied:

(1) Yes.

(2) Stubbs Terrace hospital is the service facility specifically set up to provide treatment for primary school age children aged up to, and including 12 year of age. In addition Princess Margaret Hospital, the Robertson Centre and all Child and Adolescent Mental Health Services clinics assist primary school age children.

(3) Ten at any given time.

(4) 24.5 FTE.

HEALTHWAY

Projects in Aboriginal Communities

4106. Ms WARNOCK to the Minister Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway given prominence to successful projects carried out in Aboriginal communities in order to encourage further high quality funding applications;

(b) if yes -

(i) which/what projects; and
(ii) what prominence have they been given; and

(c) if not, why not?

Mr PRINCE replied:

(a) Yes.

(b) (i) Six scholarships at $12,000 each have been awarded to key Aboriginal Women to undertake community based health promotion projects while completing their Masters study programs at Curtin University.

(ii) The projects have received prominence through statewide and regional media, Healthway newsletter and annual report.

(c) Not applicable.

HEALTHWAY

Research Projects into Aboriginal Health

4107. Ms WARNOCK to the Minister Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway encouraged the development of at least two viable research projects with benefits in Aboriginal health;

(b) if yes -

(i) what are the names of the projects;

(ii) when were the projects launched;

(iii) who took part in the research projects; and

(iv) what has been the benefit to Aboriginal health; and

(c) if not, why not?

Mr PRINCE replied:

(a) Yes.

(b) (i) a) Risk factors for otitis media in Aboriginal and non-Aboriginal children
b) A community-based lifestyle program for cardiac risk factor modification

(ii) a) Has not been launched yet
b) Was launched in January 1998.

(iii) Dr Deborah Lehmann, Institute for Child Health Research
Ms Elsie Edwards, Ngunytju Tjitji Pirni
Mr Harvey Coates, Department of Otorhinolaryngology, Princess Margaret Hospital
Dr Thomas Riley, Associate Professor, Department of Microbiology, University of Western Australia
Dr Peter Thompson, Head of Cardiovascular Medicine, Sir Charles Gairdner Hospital
Dr Sandra Eades, Perth Aboriginal Medical Service
Dr David Atkinson, Director Centre for Aboriginal and Dental Health, University of Western Australia

(iv) Neither project has been completed, therefore benefits to Aboriginal people are not yet known.

(c) Not applicable.

HEALTHWAY

Royal Perth Hospital Research Project

4108. Ms WARNOCK to the Minister Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway provided $100 000 for a two year research project at Royal Perth Hospital addressing stroke survivors and the promotion of the health of their carers;

(b) if yes, when was the funding provided;

(c) what stage is the research project at;

(d) who are/were the members of the research team;

(e) does Healthway -

(i) intend to release the results of the research project;

(ii) if not, why not; and

(iii) if yes, when; and

(f) if the funding was not provided, when does Healthway intend to honour the promise made by the Minister?

Mr PRINCE replied:

(a) Yes.

(b) Year 1 funding was provided on 18 October 1996, Year 2 funding on 19 December 1997.

(c) The project is currently in its final year. Data has been collected on stroke survivors and their carers. Currently follow-up interviews are being performed and data analysis is being undertaken.

(d) Members of the research team include:

Dr Graeme Hankey, Consultant Neurologist, Royal Perth Hospital
Dr Edward Stewart-Wynne, Consultant Neurologist and Head of Stroke Unit, Royal Perth Hospital
Professor Peter Burvill, Professor of Psychiatry and Head of Department of Psychiatry and Behavioural Science, University of Western Australia
Ms Jennie Linto, Research Nurse, Royal Perth Hospital

(e) (i) Yes.

(ii) Not applicable.

(iii) On completion of the research project, after December 1998.

(f) Not applicable.

HEALTHWAY

University of WA Research Project

4109. Ms WARNOCK to the Minister for Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway provided a research team at the University of Western Australia with $239 000 over three years to address improved support for carers of people with disabilities;

(b) if yes when was the funding provided;

(c) what stage is the research project at;

(d) who are/were the members of the research team;

(e) does Healthway -

(i) intend to release the results of the research project;

(ii) if not, why not; and

(iii) if yes, when; and

(f) if the funding was not provided, when does Healthway intend to honour the promise made by the Minister?

Mr PRINCE replied:

(a) Yes.

(b) Year 1 funding was provided on 18 October 1996, Year 2 funding on 24 November 1997. Year 3 funding will be provided after confirmation has been received at Healthway of satisfactory 2nd year progress.

(c) The project is in its second year. To date the existing carer support kit has been evaluated, an improved carer information package and method of delivery has been developed and an evaluation is being undertaken of the comparative cost-effectiveness of the Carer Support Kit and the improved information package and methods of delivery.

(d) Members of the research team include:

Dr Jane Barratt, Research Officer, University of Western Australia

Professor DÆArcy Holman, Professor of Public Health, University of Western Australia
Associate Professor Michael Hobbs, Associate Professor of Public Health, University of Western Australia

Dr Penelope Fleet, Chief Executive Officer, Brightwater Care Group

(e) (i) Yes.

(ii) Not applicable.

(iii) On completion of the research project, after December 1999.

(f) Not applicable.

HEALTHWAY

University of WA Research Project

4110. Ms WARNOCK to the Minister for Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway provided a two year research grant of $118 000 to a team at the University of Western Australia to examine early childhood outcomes following maternal postnatal depression;

(b) if yes when was the funding provided;

(c) who were the members of the research team

(d) what stage is the research project at;

(e) does Healthway -

(i) intend to release the results of the research project;

(ii) if not, why not; and

(iii) if yes, when; and

(f) if the funding was not provided, when does Healthway intend to honour the promise made by the Minister?

Mr PRINCE replied:

(a) Yes.

(b) Year 1 funding was provided on 18 October 1996, Year 2 funding on 31 October 1997.

(c) Members of the research team include:

Dr Ron Hagan, Neonatal Paediatrician, King Edward Memorial Hospital
Ms Sherryl Pope, Chief Clinical Psychologist, King Edward Memorial Hospital
Dr Noel French, Neonatal Paediatrician, King Edward Memorial Hospital

(d) The project is in its final year. Interviews are being conducted to assess the psychological status of the mother and her partner when the child reaches three years of age. Data analysis will commence when the majority of families have been interviewed.

(e) (i) Yes.

(ii) Not applicable.

(iii) On completion of the project, after December 1998.

(f) Not applicable.

HEALTHWAY

Smoking Project

4111. Ms WARNOCK to the Minister for Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway maintained $300 000 annually to a three year project on young people and smoking, in particular to counter the high rate of smoking by young women;

(b) if yes, who has taken part in the project;

(c) is the project still in operation;

(d) if yes, what are the results so far;

(e) if not, why not; and

(f) if not, when will Healthway honour the commitment made?

Mr PRINCE replied:

(a) Yes.

(b) All WA school students aged between 10-15 years, over 2,000 school teachers, all major health agencies, 8 regional public health units, and 180 school nurses. There are 158,000 10-17 year olds in WA.

(c) Yes: it has just been allocated a further 3 years funding of $1,158,700.

(d) The last Australia-wide survey (SASS) on smoking behaviour in young people was conducted in June 1996 prior to the program's major strategy implementation. The next survey will occur in June 1999. Results of the media campaign show a 93% awareness of the campaign by 12-15 year olds with 67% understanding the message well. There are also small but significant shifts in a positive direction in behavioural intention away from smoking. 93% of non-smokers have reinforced their intention not to smoke in the future.

(e)-(f) Not applicable.

HEALTHWAY

Drug and Alcohol Prevention Project

4112. Ms WARNOCK to the Minister for Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway sought funding and sponsorship opportunities to promote drug and alcohol prevention messages to young women;

(b) if yes -

(i) what funding has been sought;

(ii) what sponsorship has been sort;

(iii) what funding has been promised;

(iv) what funding has been received;

(v) what sponsorship has been promised; and

(vi) what sponsorship has been received;

(c) what promotions have taken place as a result of funding/sponsorship received under this program; and

(d) if no funding or sponsorship has been sought, why not?

Mr PRINCE replied:

(a) Yes.

(b) (i) $996,208

(ii) $22,211,907

(iii) $900,465

(iv) as per (iii)

(v)-(vi) $10,023,515 to sport and arts organisations. $1,546,200 to health agencies in support sponsorship

(c) A range of educational and promotional activities as well as the introduction of healthy environments at sport, arts and community based events.

(d) Not applicable.

HEALTHWAY

Research Scholarships for Women

4113. Ms WARNOCK to the Minister for Health:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has Healthway encouraged women into Healthway health promotion training and research scholarships and fellowships for career development in health promotion and research;

(b) if yes -

(i) how has this been achieved;

(ii) how many women have been encouraged into research scholarships/fellowships; and

(iii) in what specific area are these women working;

(c) if not, why not; and

(d) if not, what action will Healthway take to fulfil the promise made?

Mr PRINCE replied:

(a) Yes.

(b) (i) Through the major tertiary institutions, University of Western Australia, Curtin University and Edith Cowan University

(ii) Six women have been awarded scholarships and one woman has been awarded a fellowship

(iii) Cardiovascular disease, Child pedestrian injury prevention, Asthma, Drug education, Alcohol and other drug prevention in indigenous communities, Mental health and Muslim refugees

(c)-(d) Not applicable.

OMEX PETROLEUM, RELOCATION

4117. Mrs ROBERTS to the Minister for the Environment:

(1) Is the Minister aware that Omex Petroleum has vacated its site in Clayton Street, Bellevue?

(2) If so, will the Minister please advise if any assistance was offered to Omex by the Government to relocate?

(3) Is the Government intending to pursue Omex for polluting the site?

(4) If so, what are the details?

Mrs EDWARDES replied:

(1) Fuchs Australia Pty Ltd, which I understand now owns the Omex brand oil business, is intending to relocate its oil drumming business to Canning Vale in July 1998. There are other businesses, owned by the Quackenbush family listed as operating from 103 Clayton Street, Bellevue which will transfer when the State acquires the land for the site remediation project.

(2) No assistance has been offered by my portfolio for the relocation.

(3) The Government is pursuing all available legal avenues as part of the process of acquiring the land for the site remediation project.

(4) It is not appropriate for me to release the details until the processes are complete.

OMEX SITE, BUFFER ZONES

4119. Mrs ROBERTS to the Minister for the Environment:

(1) Will the Minister advise if the recommendation passed by the Omex Community Consultative Committee on 22 April 1998, regarding buffer zones has been actioned by the Department of Environmental Protection?

(2) If not, why not?

Mrs EDWARDES replied:

(1) The Chairman of the Consultative Committee has written to me advising me of the recommendation made by the Committee. I have responded to him setting out the Government's position on property purchase in relation to the Omex project, which I have made public several times.

(2) Not applicable.

OFFICE OF MULTICULTURAL INTERESTS

4128. Ms WARNOCK to the Minister for Multicultural and Ethnic Affairs:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has the office of Multicultural Interests developed a set of -

(i) guidelines; and

(ii) strategies,

to assist public sector agencies plan and deliver culturally sensitive health services;

(b) if yes, will the Minister provide details on -

(i) guidelines; and

(ii) strategies,

formulated/implemented;

(c) if not, why not; and

(d) if not, when does the Government intend honouring its commitment?

Mr BOARD replied:

I am advised that:

(a)-(b) The Office of Multicultural Interests (OMI) developed *Valuing Diversity: Guidelines* for Government Agencies to assist public sector agencies to respond equitably and efficiently to their culturally diverse clientele through the development and implementation of appropriate policies, programs and practices. To assist agencies with the implementation of these guidelines, OMI has offered a customised consultancy service on an as request basis. To assist agencies to be more responsive to the needs of their clientele, which includes the planning and delivery of culturally sensitive health services, OMI works closely with the Multicultural Access Unit of the Health Department, participates on relevant committees and provides advice and referral to appropriate agencies.

(c)-(d) Not applicable.

OFFICE OF MULTICULTURAL INTERESTS

4129. Ms WARNOCK to the Minister for Multicultural and Ethnic Affairs:

In relation to the Government Two Year Plan for Women (1996-1998) -

(a) has the Office of Multicultural Interests promoted the provision of language services which address women's needs across all State Government agencies;

(b) if yes, will the Minister provide details;

(c) if not, why not; and

(d) if not, when will the Government honour its promise?

Mr BOARD replied:

I am advised that:

(a)-(b) Since the implementation of the Western Australian Government's Language Services Policy in 1992, the Office of Multicultural Interests (OMI) has promoted the policy and continues to provide advice and assistance to public sector agencies on related issues. Through the Policy, OMI aims to ensure that language proficiency is not a barrier to non-English speakers (which includes women) in accessing services provided by State public sector agencies.

(c)-(d) Not applicable.

CONTRACT AND MANAGEMENT SERVICES, DEPARTMENT OF

Senior Staff

4142. Mr BROWN to the Minister for Works:

(1) Further to question on notice No. 3848 of 1988, how many senior staff (above level 6) are employed in the Department of Contract and Management Services?

(2) Have senior staff (above level 6) been seconded or placed in other departments and agencies, as previously advised, been requested by those departments and agencies?

(3) Is the nature of the work being carried out by department staff seconded or placed in other departments consistent with and/or complementary to the work being carried out by the Department of Contract and Management Services?

(4) If so, does this situation apply in every case?

(5) If not, why not?

(6) If not, what was the reason for such staff being seconded or placed in another department or agency?

Mr BOARD replied:

I am advised that:

(1) Seventy four.

(2) Further to Question on Notice 3848 of 1998, of the four remaining Department of Contract and Management Services (CAMS) senior staff seconded or placed in other departments and agencies, only one was requested by the host department or agency.

(3)-(4) One placement is consistent with and/or complementary to the work being carried out by CAMS.

(5) The other employees in this situation are either on secondment at their request or are on placements arranged by CAMS.

(6) To accommodate development opportunities or as placements for people who have become registered redeployees.

QUESTIONS WITHOUT NOTICE

WESTERN AUSTRALIA POLICE SERVICE

Section 8 Appeals

1313. Dr GALLOP to the Minister for Police:

In light of the Minister's admission yesterday that he had not read the final report of the Wood royal commission, will he now reconsider his position in relation to section 8 appeals and ensure that police officers in this State have access to full and independent appeal rights under that section of the Police Act?

Mr DAY replied:

I am glad the Leader of the Opposition draws attention to that report. Justice James Wood said that it is not appropriate to simply transpose appeal procedures designed to accommodate the review of dismissal decisions in general employment which do not depend on the retention of the commissioner's confidence in an employee vested with far reaching powers nor do they follow a carefully constructed mechanism designed to ensure the fairness and correctness of the original decision.

He further said that the commission is firmly of the view that option 3 as referred to in the report, in which there is transposition of principles of unfair dismissal review does not accord with the legislative policy which underpins the commissioner's confidence and power. The argument that police should have the same rights of review for unfair dismissal as other employees is superficial and unsound.

Dr Gallop: Read option 2. Do your work and justify your salary. You are doing absolutely nothing.

Mr DAY: There is a very good rationale -

Dr Gallop: You are a hopeless Minister.

The SPEAKER: Order! I have allowed the Leader of the Opposition to interject and make some points, but his interjections are now becoming excessive.

Mr DAY: There is a very good basis to the position taken by the Government as far as this matter is concerned. As I said yesterday -

Dr Gallop: But it is not the Wood royal commission.

Mr DAY: I have just quoted from the Wood royal commission.

Dr Gallop: You did not, you have misquoted it.

Mr DAY: Is the Leader of the Opposition suggesting that I cannot read?

Dr Gallop: Go to option 2, which refers to the Industrial Relations Commission.

Mr DAY: I will come to option 2 in a minute. There is a very good basis for the position which has been taken by the Western Australian Government on this matter.

Several members interjected.

The SPEAKER: Order! There are far too many interjections, albeit at a very low level, from members on my right, and I caution the Leader of the Opposition.

Mr DAY: As the royal commission report in New South Wales stated, it is not possible to simply transpose those industrial relations procedures to an appeals situation. The police in Western Australia, as in other places, are in a very special position in the community. They have a very difficult job to do, which is often dangerous, and no-one will support them more in doing that job than I or the Government. Any police officers who are doing their jobs honestly, in good faith, properly and decently - as 99.9 per cent are - have nothing to fear from either the section 8 process or the activities of the Anti-Corruption Commission. There is a very good basis to the position taken by the Government.

The other point which should be considered is the substantial changes made to the operation of section 8, as a result of the review undertaken by Mr Michael Codd, former head of the Department of the Prime Minister and Cabinet, who is regarded by both sides of politics as fair, even-handed and reasonable in these matters. He recommended to this Government that the commissioner's confidence provisions should not be removed. On the other hand, he also recommended that the Government put in place a set of procedures so that any officer facing action under section 8 is able to seek an independent review of the process to ensure it is completely fair, open, above board and based on proper evidence which justifies the position of the commissioner. I suggest that members of the Opposition and members of the Police Service take a good look at the administrative arrangements put in place to deal with section 8, which I tabled in this Parliament yesterday. They are very comprehensive. Quite clearly, the member for Midland and the Leader of the Opposition do not want to take notice of them.

POLICE SERVICE

Wood Royal Commission's Recommendations

1314. Dr GALLOP to the Minister for Police:

Is it the case that option two outlined in the final report of the Wood royal commission, allows for an appeal to the Industrial Relations Commission and orders for reinstatement?

Mr DAY replied:

A very substantial review has been carried out of section 8 as it applies in Western Australia. In January this year, Mr Michael Codd made significant recommendations to the Government, which were accepted and endorsed in full and have now been put in place. This Government actually does something about these matters rather than just talks about them.

MITCHELL FREEWAY

Whitfords Avenue-Erindale Road

1315. Mr MacLEAN to the Minister representing the Minister for Transport:

I ask this question on behalf of the member for Carine, who is absent on urgent parliamentary business.

(1) When will construction of the third lane for higher occupancy vehicles on the Mitchell Freeway, between Whitfords Avenue and Erindale Road, commence?

(2) What features will the proposed incident management system provide for motorists?

(3) How will the project benefit residents of the northern suburbs?

Mr OMODEI replied:

The Minister for Transport has provided the following response:

(1) The widening is to improve traffic movement along this section of the freeway, and it is planned to commence by late 1999. The widening will allow improved traffic management options, such as a

dedicated lane for high occupancy vehicles, to be implemented as traffic conditions necessitate in future years.

(2)-(3) Incident systems monitor traffic movements along sections of the freeway and provide early identification of congestion caused by incidents such as crashes and vehicle breakdowns. Road user information systems will also be used to advise motorists of traffic conditions further along the freeway, delays and alternative routes in cases of emergencies. This type of technology is already being used on sections of the Kwinana Freeway and the Narrows Bridge and has minimised delays to motorists causes by congestion and breakdowns. Timing for the introduction of this technology for the Mitchell Freeway is still to be decided.

AUSTRALIAN FEDERAL POLICE

National Crime Authority Report

1316. Mrs ROBERTS to the Minister for Police:

(1) When did the Minister receive the Australian Federal Police report on the National Crime Authority operation that he has been referring to in the past few days?

(2) Did the WA Police Service have input into the report and, if so, what was the nature of that involvement and when did it commence?

(3) How long has the Commissioner of Police had the report?

Mr DAY replied:

I thank the member for some notice of this question.

(1) I have not been provided with a copy of the investigation report to which the member refers. However, on 19 June I was provided with two summaries of the investigation.

(2) Yes, the WA Police Service was involved as a member of the joint task force with the Australian Federal Police, which investigated the allegations. The joint task force commenced its investigations in February 1997.

Mrs Roberts: Is the report that the Minister referred to as the FPA report a report of the joint task force between the WA Police Service and the Federal Police?

Mr DAY: No. It was not a joint task force between the WA Police Service and the FPA, it was the AFP.

(3) The report was handed to the Commissioner of Police in mid-December 1997.

INDUSTRY 2030

Picton Deviation

1317. Mr BARRON-SULLIVAN to the Minister representing the Minister for Transport:

I refer to the Industry 2030 document released in Harvey last month which included a reference to the Picton deviation, a proposed bypass road which, if constructed, would seriously affect the livelihood of 100 local businesses. Will the Minister confirm that plans for the Picton deviation have been abandoned in favour of widening the existing South West Highway through Picton?

Mr OMODEI replied:

The Minister for Transport has advised that the Picton deviation is no longer under consideration. The preferred alignment is to widen the South West Highway.

INDUSTRY 2030

Picton Deviation

1318. Mr BARRON-SULLIVAN to the Minister representing the Minister for Transport:

Why was the Picton deviation referred to in the Industry 2030 documentation and will the Minister instruct Main Roads as a matter of priority that the Ministry for Planning and the City of Bunbury are requested to remove any mention of the Picton deviation from all planning documents, including the new town planning scheme No 7?

Mr OMODEI replied:

The Minister has also provided me with some information on this issue. The Picton deviation is included in the port access road report which was concluded in May 1997, prior to the option being abandoned. The Industry 2030 report is a summary of the port access road report and other reports related to proposed industrial development. Main Roads will advise the Ministry for Planning and the City of Bunbury that the port deviation is no longer under consideration.

PUBLIC SECTOR REDUNDANCIES

1319. Dr GALLOP to the Premier:

Some notice of this question was given yesterday.

(1) How many of the 650 public sector workers the Premier plans to make redundant in 1998-99 are currently employed outside the metropolitan area?

(2) How many of the 200 Main Roads workers he plans to make redundant are currently employed in non-metropolitan WA?

(3) Is the Premier now ready to provide the details?

Mr COURT replied:

(1)-(3) I thank the Leader of the Opposition for notice of this question yesterday. Based on 1997-98 statistics and information provided, it is estimated that 110 of the 650 public sector employees who are expected to accept voluntary severance in 1998-99 are from outside the metropolitan area, and approximately 100 of those are Main Roads employees from outside the metropolitan area.

LABOR PARTY CRITICISM

1320. Mr BAKER to the Minister for Labour Relations:

During a question to the Premier yesterday the Leader of the Opposition said, in respect of the Anti-Corruption Commission, that "it has made mistakes, and we shall criticise it, as we should". He also accused the Premier of undermining the ACC. Is the Minister aware of certain issues in his portfolio area upon which the Labor Party has remained strangely silent even when laws were broken?

Mr KIERATH replied:

There is an old saying that people in glass houses should not throw stones. The Leader of the Opposition, his predecessors and his entire party have been flexible about whom they criticise. It is very convenient indeed. This handy discretion is notable when it comes to unions. In the past, people have suffered because they refused to join unions. In fact, one man was bashed by a union official. Did we hear from the Opposition then? No. There was dead silence. That union official was fined $1 500, appealed the decision, lost the appeal, and what did the union then do? The union secretary threatened industrial chaos if the fines were even collected. Obviously the organisation did not intend to take any notice of the law or the courts. Did we hear criticism from the Opposition then? No, not a single word.

When the Labor Party was last in government, a worker was sacked for refusing to join the union. Did members opposite uphold the law? I think the member for Thornlie knows the case in question. No action was taken to uphold the law.

The third case I cite was when the Construction, Forestry, Mining and Energy Union recently defied an order of the Australian Industrial Relations Commission and went on strike. Did we hear condemnation from the Opposition of that action? Not on your nelly. Did we hear the Opposition trying to uphold the law? Not a whisper was heard from the Opposition. This so-called Leader of the Opposition is rather sanctimonious in his approach to these issues. He accused the Premier of undermining the ACC, yet the actions of the Leader of the Opposition undermine the Industrial Relations Commission and everything it stands for. If that is not a double standard, I do not know what is.

MAIN ROADS WA

Privatisation of Traffic Signalling and Light Maintenance

1321. Ms MacTIERNAN to the Minister representing the Minister for Transport:

(1) Can the Minister confirm that one of the four selected tenderers for the multi-million dollar contract

for the privatisation of Main Roads WA traffic signalling and light maintenance is none other than the Queensland Department of Main Roads?

(2) Was advice sought from Crown Law because of concern about accepting a bid from another Government, and is the Queensland Government forming a separate corporate identity to overcome any constitutional or political difficulties?

(3) Was Main Roads WA permitted to tender for this work and if not, why not?

Mr OMODEI replied:

I apologise to the member for Armadale as I have not received a response -

Ms MacTiernan: We gave you notice yesterday!

Mr OMODEI: I know that notice was given. I have not received a response with which I am satisfied, and I ask the member to either put the question on notice or ask it again tomorrow.

Ms MacTIERNAN: I have a supplementary question.

The SPEAKER: Before the member for Armadale asks the supplementary question, all the members in the Parliament realise that Ministers who represent the Minister in another place have to get advice from that Minister, therefore it is very difficult to ask a supplementary question unless we witness the history that we just did. Knowing that, does the member for Armadale still wish to ask a supplementary question?

Ms MacTIERNAN: Absolutely.

MAIN ROADS WA

1322. Ms MacTIERNAN to the Minister representing the Minister for Transport:

Is the Minister prepared to table the answer that was provided to him by the Minister for Transport, notwithstanding the Minister's statement that he was not satisfied with that answer?

Mr OMODEI replied:

I have already said to the member that I will provide the answer to the question if the question is put on notice.

Dr Gallop: The Minister cannot do this. Mr Speaker, he has got to answer it. That is ridiculous.

The SPEAKER: We have gone through this many times. Members ask questions, Ministers give the answers and we all make a judgment on what they give.

LOCAL GOVERNMENT BOUNDARY REVIEWS

1323. Mr BLOFFWITCH to the Minister for Local Government:

Will the Minister give an indication of the time frame of the boundary reviews that are occurring at the moment in Geraldton, Greenough and Chapman Valley?

Mr OMODEI replied:

This is my portfolio. I can advise the member that, as he is aware, there has been a formal proposal put to the Local Government Advisory Board on the boundaries of the city of Geraldton, the shires of Greenough and parts of Chapman Valley. The Department of Local Government visited the shires and towns last week and has initiated discussions with those councils. The advisory board will deliberate the proposal in the coming months. It is anticipated that should the proposal be accepted by the communities of those municipalities, we will move towards a new combined city effective 1 July 1999 with elections to be held sometime before 2000.

The Local Government Act sets down clearly the activities of the Local Government Advisory Board. The communities of Geraldton, Greenough and Chapman Valley will have input. There will be a mandatory six weeks' consultation period with the communities and they will have an opportunity to put submissions to the Local Government Advisory Board. A petition for a poll or referendum will require 250 signatures, or 10 per cent of residents. That poll will be held after the advisory board has deliberated on the matter. If the poll receives 50 per cent of voter turnout, the poll will be binding on the Minister. If not, then whatever proposal is recommended to the Minister will proceed. In the end, the Minister can only accept or reject the outcome of the advisory board's deliberations. That is what will occur in the Geraldton, Greenough and Chapman Valley areas.

The advisory board is also considering formal proposals for the shires and towns of Northam and Narrogin. I reassure the member for Geraldton - who has always had a very close interest in this matter - that due process will be followed to the letter of the law.

LOCAL GOVERNMENT BOUNDARY REVIEW

1324. Mr BLOFFWITCH to the Minister for Local Government:

I have a supplementary question. What are the names of the people who will be conducting this inquiry? Is it normal for people within the electorate to be appointed commissioners if this proposal goes ahead?

Mr OMODEI replied:

The advisory board is chaired by Charlie Gregorini, President of the Shire of Swan and comprises the following members: Garry Hunt, Chief Executive Officer of the City of Perth; Ian Mickel, Shire President of Esperance; John Hardwick, Mayor, City of South Perth; and John Lynch, Executive Director of the Department of Local Government.

REGIONAL FOREST AGREEMENT PUBLIC CONSULTATION PAPER

Employment Impacts

1325. Dr EDWARDS to the Minister for the Environment:

I refer to the regional forest agreement public consultation paper in which it points out that the supply of first and second grade jarrah logs will decline from current levels of 490 000 cu m to 300 000 cu m after 2004.

(1) Why was this reduction not factored into the employment impacts of the three approaches outlined in the consultation paper?

(2) Does this not make the employment analysis in the consultation paper invalid?

(3) Will the Minister now order a review of these employment impacts?

Mrs EDWARDES replied:

(1)-(3) I am not sure that the reduction was not factored into the employment impacts. I will get back to the member with details on that issue.

DUNCRAIG SENIOR HIGH SCHOOL

Bushranger Cadet Program

1326. Mr JOHNSON to the Minister for Youth Affairs:

I understand the Minister recently established the fiftieth youth training scheme cadet unit in Western Australia and that with the Minister for the Environment he also launched the bushranger cadet program. Given the obvious success and popularity of the cadets, how soon can a bushranger unit be established at Duncraig Senior High School in my electorate, which I know is very keen on the bushranger concept?

Mr BOARD replied:

I thank the member for some notice of this question.

I hope it is not out of order but as the Minister for Multicultural and Ethnic Affairs I pay tribute to Mr and Mrs Cai Chuan who are here today. As the Consul General for the People's Republic of China, Mr Cai has done an outstanding job developing both trade and cultural ties. As Dean of the Consular Corps he has established a strong movement in Western Australia.

In response to the member for Hillarys, we were in the member for Cockburn's electorate at Lakeland Senior High School a few weeks ago to launch the fiftieth new cadet unit, an emergency service unit in Western Australia. It was a great day for not only Lakeland high school and the member who was pleased with it, but also for the program which is continuing to expand.

Our champion for youth, Dean Kemp, and an officer from the Office of Youth Affairs are in Esperance today visiting Esperance Senior High School which is keen to start the environmental bushranger cadets. I thank the Minister for the Environment for her support. Duncraig Senior High School was one of the first schools to sign up for the bushranger cadets. Its program will commence within the next four weeks.

REGIONAL FOREST AGREEMENT REPORTS

1327. Dr EDWARDS to the Minister for the Environment:

(1) Why have the national estate identification and assessment report or the tourism report, both commissioned as part of the regional forest agreement process, not been released yet?

(2) When are these reports due to be released?

(3) Will the Minister assure this House that the closing date for public submissions will be extended to allow the public to take these very important reports into account?

Mrs EDWARDES replied:

(1)-(3) We are hopeful that the last of the remaining reports will be released by the end of this week.

Dr Edwards: That was said during the Estimates Committee hearings.

Mrs EDWARDES: Some of the maps have contained so much detail they have taken up to 10 days to print. Most of the information has been summarised in either the public consultation paper report or the comprehensive and adequate reserve report. It is not as though the information is not in the public arena; nonetheless we are conscious of wanting to follow through with our commitment that all reports will be published. As the member for Maylands will be well aware it is a joint process between the Federal Government and the State Government. I therefore cannot make a unilateral decision on the extension of the date.

MAIN ROADS WA, BUNBURY REGIONAL OFFICE

1328. Mr BARRON-SULLIVAN to the Minister representing the Minister for Transport:

Some notice of this question has been given.

(1) Will the Minister give an assurance that the regional office of Main Roads WA in Bunbury will not be relocated to Narrogin or elsewhere?

(2) Are any staff transfers under consideration?

Mr OMODEI replied:

The Minister for Transport has provided the following response -

Mr Brown: He has a response this time!

Mr OMODEI: Yes, and he had one last time.

(1) Yes, it seems that a rumour to this effect was started without any foundation whatsoever.

(2) No.

WOOD ROYAL COMMISSION REPORT ON PAEDOPHILIA

1329. Ms ANWYL to the Minister for Family and Children's Services:

I refer to the Minister's claim in this place on 17 September 1997 that she was still considering the Wood Royal Commission report on paedophilia.

(1) Has Family and Children's Services prepared a formal response and, if so, will the Minister table it?

(2) If not, how does she explain her tardiness?

(3) Has the Minister now made a decision on the motion of Hon Barbara Scott of 21 August 1997 that an office of children be established as was recommended by Commissioner Wood in New South Wales and, if not, why not?

Mrs PARKER replied:

(1)-(3) The issues raised by the Wood Royal Commission have been considered across government. Today I introduced legislation to amend the Child Welfare Act in respect of the child protection services register. Tomorrow in the second reading speech I will address issues relating to that register and an update of all the responses by the Government to recommendations in the report, those initiatives in place and other related matters.

BUS SERVICE, CANNING VALE

1330. Mrs van de KLASHORST to the Minister representing the Minister for Transport:

I ask this question on behalf of the member for Southern River, as she is away ill today. In view of the answer provided by the Minister to the member for Swan River's question regarding the implementation of a bus service in Canning Vale, will the Minister define the route the bus will take in order to reach Ranford Road and subsequently enter Canning Vale?

Several members interjected.

The SPEAKER: Order! Every member in this place is entitled to ask a question. When a member asks a question it is not the right of other members to interject and make known their own judgments about that question.

Mr OMODEI replied:

The Minister for Transport has provided the following response: The route for the planned new bus service along Ranford Road involves the bus commencing its journey near the Warton Road-Ranford Road intersection, which is the terminus for this service, and travelling along Ranford Road to South Street, onto the Kwinana Freeway and into the busport at Perth. This route would therefore provide a service to the residents of Canning Vale, Sanctuary Waters, Ranford Road, Livingstone Road, Waratah Road and areas of Willetton and Leeming. This service will be introduced in late 1998, subject to the availability of the additional buses required. Introduction of the service requires realignment of two existing city link services to the north.

The SPEAKER: For the first time, questions were asked by a member on behalf of another member. We seem to be venturing into new areas. I will think about that. Members get the opportunity to ask questions if they are present and they can put a question on notice if they are not. Members have suddenly introduced that innovation, but it may not continue.

YOUTH ALLOWANCE

1331. Ms ANWYL to the Minister for Family and Children's Services:

I refer to the imposition of the Howard Government's common youth allowance on 1 July and ask -

(1) Does the Minister support the move to means test Western Australian families who have unemployed adult sons and daughters and, if so, on what basis?

(2) Why has the Minister not budgeted for extra crisis relief when clear evidence exists that this policy will hurt struggling Western Australian families?

(3) What research will be undertaken by the department into the impact of the removal of unemployment benefits for young people aged 16 to 21 years?

Mrs PARKER replied:

(1) The youth allowance is a federal initiative and I will not comment on those decisions.

(2) This Government has very clear policy and funding commitments to the department as evidenced by its big budget increases over the term of this Government.

(3) This Government has established the poverty task force. The report produced by the task force requested that the Government undertake research into impacts on families on low incomes. I am waiting for the results of that research. I am not sure whether the task force addressed that issue. However, this Government is committed to those people in difficult circumstances and research is already under way under the umbrella of the poverty task force.
