WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Thursday, 10 September 1998

Legislative Council

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

EUTHANASIA

Petition

Hon Tom Stephens (Leader of the Opposition) presented the following petition bearing the signatures of 335 persons -

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

We the undersigned residents of Western Australia respectfully commend to the attention of the House that:

1. Every act of euthanasia carried out with the approval of the State necessarily involves a judgement by the State that the person killed had a life that no longer mattered;

2. Inquiries into the legislation of so-called "strictly regulated voluntary euthanasia" by the House of Lords Select Committee on Medical Ethics (1994), the New York State Task Force on Life and the Law (1994), the Canadian Special Senate Select Committee on Euthanasia and Assisted Suicide (1995), and the Australian Senate Legal and Constitutional Legislation Committee (1996) each concluded that it is impossible to ensure adequate safeguards for voluntary euthanasia and that therefore legalising euthanasia what will always create more victims than beneficiaries;

3. That any Bill to legalise euthanasia should be rejected as an attempt to remove the equal protection from intentional killing enjoyed by all Western Australians under existing law.

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

[See paper No 154.]

WORKSAFE WA

Motion

Resumed from 9 September, on the following motion -

That the House direct the Standing Committee on Public Administration to inquire into and report upon -

(1) The degree to which and the methods by which WorkSafe WA applies and seeks to ensure compliance with the Occupational Safety and Health Act 1984.

(2) The extent to which compliance with the Occupational Safety and Health Act 1984 has been impacted upon by privatisation and contracting out.

(3) The degree to which legislative changes since 1993 have impacted on the safety of Western Australian workers, with particular reference to the Industrial Relations Legislation Amendment and Repeal Act 1995 and the Labour Relations Legislation Amendment Act 1997.

(4) The extent to which WorkSafe WA complies with safety standards enforcement in demolition and other high-risk industries.

(5) The extent to which a declaration by the WorkSafe WA Commissioner not to respond to safety complaints by unions had an effect on the administration of the Occupational Safety and Health Act 1984.

(6) The extent to which the construction branch of WorkSafe WA meets compliance with the Occupational Safety and Health Act 1984.

(7) The extent to which reporting of occupational injuries and diseases as per the requirements of the Occupational Safety and Health Act 1984 truly reflects the extent and rate of occupational injuries and diseases in Western Australian workplaces.

(8) The extent to which existing penalties for breaches of occupational health and safety standards adequately reflect the pain and suffering of victims.

(9) Any other matters relating to WorkSafe WA and its operations that the committee deems necessary in conducting its inquiry.

HON LJILJANNA RAVLICH (East Metropolitan) [11.02 am]: When I concluded my remarks yesterday, I was trying to make the point that it is important that the Standing Committee on Public Administration undertake a very thorough investigation of WorkSafe WA and report its findings to this place. The report that was brought down by the Commissioner for Public Sector Standards is very damning and leaves many questions unanswered. The public administration committee would need to do a great deal of work to assess the accuracy of the information that led the Public Sector Standards Commissioner to draw the conclusions that he has drawn in his report.

Yesterday I spoke about how much the story had changed with regard to the actions of Mr Batholomaeus. I want to take members through that course of events, because I have no doubt that WorkSafe WA had a policy of not responding to union members. That policy was made unilaterally, in the heat of the moment, by Commissioner Batholomaeus. That policy was condoned by the former Minister for Labour Relations, and clearly it would also have had to be condoned by the Premier.

What happened over time is that as the pressure came on Mr Batholomaeus, the story started to change. In my view, Mr Batholomaeus is a most unreliable witness. On 26 June 1997, he announced that his officers would not deal with unionists because of the events of that day. Those events are outlined clearly in the report of the Commissioner for Public Sector Standards. The commissioner went to the extent of attaching a press release which was put out by Commissioner Batholomaeus on 26 June 1997. If ever a piece of evidence indicated that WorkSafe WA had a policy of not dealing with unions, it is this press release prepared by WorkSafe and distributed to all the media outlets in this State for communication to the Western Australian public. That press release signalled a new policy direction by WorkSafe WA. It states -

> "When our staff saw 30 protestors approaching this morning they electronically secured the building. However, 30 thugs unlawfully entered the building via an emergency fire escape and traumatised staff at WorkSafe WA and the Department of Immigration," . . .

If the workers at the Department of Immigration were traumatised, we have heard very little about it. Apart from anything else, this was a great opportunity for a commissioner to flex his muscle, and thereby do his minister a favour, against a group of people whom he knew his minister despised.

That is about the sum of it. That is the course of events which led to a 13-month inquiry and a very damning report by the Commissioner for Public Sector Standards. This press release continues -

> Mr Bartholomaeus said he assumed the attack on his department was because his inspectors would not tolerate thuggery and intimidation by union officials at workplaces.

Here is the most damning line, which should leave no-one in any doubt about the fact that a policy was initiated and carried out by WorkSafe WA. Commissioner Batholomaeus states -

> "We will have nothing to do with union representatives for six months and review our policy after that", . . .

Clearly, it was a policy. Unquestionably, it is referred to as a policy. "Nothing to do", means nothing to do. No dispute. This sentence will become very handy. However, this Government sought QC advice on this policy! What a waste of taxpayers' money. Here it is in black and white. It can be no clearer. The WorkSafe Commissioner said WorkSafe would have nothing to do with union representatives for six months and that it would review the policy after that.

Hon Peter Foss: Which QC is this one?

Hon LJILJANNA RAVLICH: Mr Cock, QC, in his advice to the Government said there was no such policy. I am sure that Western Australian taxpayers would like to know how Mr Cock, QC, concluded that there was no such policy, given that this comment was made under a WorkSafe letterhead, and made public to the Western Australian media and people on 26 June 1997. Why pay for the services of a man to do no more than rewrite history? I will go into more history in that regard later.

Without a shadow of doubt, the WorkSafe policy on 26 June 1997 was not to deal with unionists because of the events of that day; also, it was stated that the policy would be reviewed in six months. Commissioner Saunders' report indicates regarding Mr Batholomaeus -

> On 23 June 1997 he advised the Parliamentary Commissioner for Administrative Investigations that, because of the unlawful entry by unionists, WorkSafe's relationship with unions "will be strictly in accordance with the *Occupational Health and Safety Act 1995*". . . .
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> On 3 October 1997, Mr Batholomaeus advised the Office of the Public Sector Standards Commissioner that it was "unreasonable . . . to require WorkSafe Western Australia to recognise a role for unions in resolution of health and safety issues at the workplace when neither the Parliament nor the Tripartite Commission recognises that role for unions".
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> On 14 October 1997, he advised Dr Schapper . . . that to respond to unions as his department had previously done "would be ultra vires the *Occupational Health and Safety Act* . . ."

That can mean only one of two things: He was acting outside the Act either prior to or after this event. Whichever way one looks at it, the WorkSafe Commissioner must have been acting outside the Occupational Health and Safety Act. He also said that the union involvement would circumvent the statutory provisions, and that if union involvement were tolerated by WorkSafe WA, it would obstruct the efficient and effective operations of the Act.

Clearly, this commissioner has an aversion to a certain class of people. This aversion was adopted because his minister at the time had the same problems with this class of people. As a consequence, he went down this path. The Commissioner for Public Sector Standards found in his report -

> On 13 November 1997, in what appears to be a contradiction of his earlier view, Mr Bartholomaeus advised me that his officers would not discount information from union representatives "which would bring to our attention a dangerous situation" and would "err on the side of safety" in considering information from whatever source.

That is directly in contradiction with the media statement released by the WorkSafe Commissioner on 26 June 1997. He went from that position to cover his tracks. Some months later, he decided to give some ground - although not in a practical sense. However, given the pressure of the Commissioner for Public Sector Standard's inquiry upon Commissioner Batholomaeus, it is apparent that he changed his tune over time. A very damning parts of the commissioner's report relates to WorkSafe's claim of one of its greatest victories. WorkSafe continually crows about achievements in worker safety in improved rates of occupational injuries and diseases. The terms of reference for this inquiry outlined in this motion will ensure that a comprehensive analysis will be carried out of the way in which statistical data is collected by WorkSafe for the purpose of reporting. Commissioner Saunders' findings indicate that many questions need to be asked. Basically, Commissioner Saunders found that Mr Bartholomaeus claimed that after not dealing with unions, a productivity improvement was achieved. In fact, he cites this as one of the positive outcomes of introducing that ban. Clearly, it is a breach of public duty. It represents an absolute disregard for the rights of Western Australian workers.

The Commissioner for Public Sector Standards rightly picked up the injuries and diseases statistics issue: Even though Mr Bartholomaeus claimed a productivity improvement as a result of not dealing with unions, Commissioner Saunders found that one cannot achieve productivity improvements simply by not responding to calls from certain sections of the public. If one achieves productivity improvements by not responding to problems, in real terms they are not productivity improvements at all. For some time the Government has tried to pull the wool over our eyes and the eyes of the Western Australian people by claiming significant productivity improvements in the rate of occupational injuries and disease.

I shall refer to a couple of comments by the commissioner. He stated that in some workplaces employees may fear retribution should they raise health and safety concerns directly with the employer, or if the employer became aware that they had made a report to WorkSafe, employees may instead approach a union representative to raise the matter; and that clearly, where WorkSafe declines to receive information from a union representative, the potential consequences are either that no investigation of a health or safety issue is made or it is delayed. Clearly, there is substantial under-reporting of occupational injuries and diseases. That reporting, particularly during the six months while the ban was in force, was purely and simply because that government agency, which is funded by taxpayers' money, did not respond to calls for investigations. To achieve productivity improvements in such a manner is a serious breach of not only the Act but also public sector standards.

There are major problems. The Commissioner for Public Sector Standards could not accept that the barring of dealings with unions was a necessary precondition to productivity improvements and enhanced outcomes. It was always open to WorkSafe to change its mode of response to safety concerns raised by unions and to alter its operating method in a manner described in WorkSafe's latest letter to the commissioner. All public sector agencies, he claims, are expected to achieve continuous efficiency and effectiveness improvements in any case without erecting barriers against certain sectors of their clientele. After erecting such barriers and not responding to calls from union officials, productivity improvements were claimed by Commissioner Bartholomaeus. That is about as effective as saying that we have no accidents on our roads and therefore closing services that might be aligned with the assessment of such matters.

It is amazing that the Government, when it established the office of the Commissioner for Public Sector Standards, was to introduce new standards across the public sector - for example, codes of ethics and codes of practice - which would lift the standard of the Public Service as it had never been lifted before. At that time, much was said about the role that the new officer would have. Commissioner Saunders has done a reasonable job and has investigated the issue very thoroughly. However, it is amazing that, having established the office to maintain standards in the Public Service, the Government refuses to accept that those standards exist, and, when there is a breach of those standards, it fails to accept the umpire's ruling. Given that the Government has no regard for Commissioner Saunders' efforts over 13 months in gathering data for the report, given that the Government has no regard for the legal costs that have been incurred by Western Australian taxpayers in order for the report to be finalised and put into the public arena, and given that the Government has so little regard for the commissioner's office, one can only ask why taxpayers should be asked to continue to fund an office for which the Government has absolutely no respect. Many Western Australians will ask, "What is the role of the commissioner, given that a senior public servant can breach the law of the State and his own organisation's code of conduct, which is contrary to his employment contract and his performance agreement, and no-one bats an eyelid?"

Hon E.R.J. Dermer: It is an absolute outrage.

Hon LJILJANNA RAVLICH: Because he is the Liberal Party's mate, it is okay.

Hon N.F. Moore: He is no mate of the Liberal Party.

Hon LJILJANNA RAVLICH: He is no mate of the Leader of the House. The Leader of the House seems to be going to great lengths to protect somebody who is not a mate of his.

Several members interjected.

The PRESIDENT: Order! I want no interjections. We have only to read yesterday's *Hansard* to understand why I do not want interjections today. According to *Hansard*, yesterday's debate was nothing more than a mass of interjections. Hon Ljiljanna Ravlich has the floor; she may address the Chair.

Hon LJILJANNA RAVLICH: Thank you, Mr President. I would be interested to know how much it costs to operate the office of the Commissioner for Public Sector Standards, whether the Government will continue to maintain that office, and the justification for maintaining that office at enormous cost to Western Australian taxpayers when the Government has no regard for that office's role or responsibility or for the commissioner's findings. They are simple questions and I await the answers with bated breath.

I now refer to the second reading speech in 1994, when the office was created. The then minister stated -

> The approach adopted in the Bill is to identify the principles of good management of the public sector and clarify the roles of the key people involved . . . Special care has been taken in drafting this legislation to ensure that lines of accountability from Parliament through to Ministers, boards of management and chief executive officers are not distorted by directions from third parties . . . This Bill gives effect to the royal commissioners' recommendations with regard to public sector integrity in that -
>
> > it creates an independent statutory office of the Commissioner for Public Sector Standards responsible for establishing sector wide codes of ethics, setting out minimum standards of conduct and integrity, and establishing minimum standards of merit, equity and probity in human resource management activities such as recruitment and selection;
> >
> > merit and equity are given explicit recognition as governing principles of the legislation . . .

So it goes on. The office was set up to make sure that everyone complies with the code of ethics, the code of conduct, and standards. Clearly, there are breaches, but little occurs. The speech continued -

> The unacceptable behaviour of some people in government in the 1980s and early 1990s underscores the need for these matters. While we cannot legislate for honesty in government, we can take measures to protect Public Service integrity, specify the roles and responsibilities of key players in the process, promote ethical conduct, develop standards and monitor compliance.

That is not happening.

Quite clearly a breach of standards and a breach of compliance has occurred. This is a key reason that a full and comprehensive inquiry into WorkSafe WA is absolutely essential, because we must not only deal with a commissioner who is out of control, but we must also investigate and take a second look at that whole issue which the Commissioner for Public Sector Standards glossed over, in my view; that issue which warrants further investigation is the allegation of corruption and bribery in the construction branch of WorkSafe WA. Much work is to be done by this committee.

The second reading speech also stated that the new legislation would give the proposed Commissioner for Public Sector Standards jurisdiction across the public sector to monitor standards and also to provide a framework for management of the whole public sector. He might have this jurisdiction, but the bottom line is that no-one is listening; the Government does not care. What is the point of giving somebody any jurisdiction if, at the end of the day, the Government will not respond to anything the person has to say? There is no point in giving somebody power, an authority or jurisdiction, if it is deemed that that power is totally irrelevant, as has been the case with the commissioner's findings on WorkSafe Commissioner Bartholomaeus.

The speech also clearly outlines the functions of chief executive officers who will now have statutory backing, besides having the statutory responsibility to provide policy advice, deploy resources, devise organisational structures, classify jobs, and resolve or redress grievances of staff. Quite clearly, chief executive officers or commissioners have statutory responsibility and mechanisms are in place to deal with them if they do not meet these statutory responsibilities. However, in this case the Government has almost turned a blind eye to the breach of statutory responsibilities by WorkSafe Commissioner Bartholomaeus. Many people are simply asking why this is the case and why this officer has been allowed to get away with so much.

I want to review some of the comments the Attorney General made on Tuesday of this week regarding the findings of Mr Robert Cock, QC; findings which the Attorney General had in the contents of a letter, but which he refused to table in this place. I am intrigued to know the contents of that letter.

Hon Tom Stephens: When you give this to the standing committee, it might be able to get the letter.

Hon Peter Foss interjected.

Hon LJILJANNA RAVLICH: I hope it will get the letter. This is why it is absolutely imperative that this matter be dealt with by the standing committee. Given this letter and that this legal advice had been paid for with taxpayers' money, and given the importance of this issue, which is shown by the public debate which is occurring outside this place, I am amazed that the Attorney General -

Hon N.F. Moore: Nothing is happening outside this place. You are the only person talking about it ad nauseam.

Hon Tom Stephens: You are doing a great job.

Several members interjected.

The PRESIDENT: Order! The Leader of the Opposition will come to order and the Leader of the House will also cease interjecting. Members would do themselves a favour by reading yesterday's *Hansard*. If they do that, they should then think about what others will think of this place when they read the way this debate was conducted. I am happy to let the debate run as freely as possible, but when stupid, inane comments are made for the sake of stupid, inane comments, obviously that is where I draw the line.

Hon LJILJANNA RAVLICH: The point I was trying to make was that this legal advice from Robert Cock, QC was paid for by taxpayers. It should have been made publicly available by being tabled in this place, but for some reason it must contain very secretive information which should not be -

Hon Peter Foss interjected.

Hon LJILJANNA RAVLICH: It must contain something because the Attorney General failed to -

Hon Peter Foss interjected

The PRESIDENT: Order! The Attorney General.

Hon LJILJANNA RAVLICH: He failed to table that advice in this place. I am intrigued to discover the contents of that letter.

Hon Peter Foss: You will be disappointed.

Hon LJILJANNA RAVLICH: If I am successful in having this matter referred to the public administration committee, I am sure that the committee would also be interested in looking at not only that correspondence but also other correspondence the production of which has been funded by Western Australian taxpayers.

Hon Peter Foss interjected.

The PRESIDENT: Order! The Attorney General.

Hon LJILJANNA RAVLICH: The Commissioner for Public Sector Management found that there were essentially two elements to the allegation: WorkSafe committed itself to a policy which compromised the performance of a public duty, and that policy was unjustified. It is clear that WorkSafe's policy was extended to a class of people. We know it is clear because it is in the press statement; it is in black and white and it was authorised by Commissioner Bartholomaeus, so there can be no disputing the fact. WorkSafe extended that policy to the class of union representative and it was a reaction to the alleged conduct of a few people. It constituted a bias or lack of impartiality under the code of ethics and the code of conduct. That is what the commissioner found, as he found that WorkSafe's policy reflected an element of punishment. He found that WorkSafe had taken the law into its own hands contrary to its obligations under the code of ethics and to protect people's rights and due processes.

I think we have a very sad situation in this State when people can take the law into their own hands. Why is it that this officer has the right to take the law into his own hands? I wonder what would happen to me if I did that? Some varied opinions have been expressed according to the Commissioner of Public Sector Standards. This is exactly what Commissioner Bartholomaeus did at WorkSafe. Commissioner Saunders has had 13 months to look at this case, and he also has a very thick file, so I would say he is well versed in the course of events and has spoken to many people. He has drawn this conclusion but some people will not accept his findings. When we see public officers of this State taking the law into their own hands; my, my, how low can things get? This comes from a Government which continually crows about accountability and which is supposed to be accountable. Can this State get any lower?

Point of Order

Hon PETER FOSS: The member has been speaking for nearly two hours, and we are hearing some tedious repetition at this stage.

The PRESIDENT: I have listened closely, perhaps more closely than most members, to what has been said. While it appears to me that the same points have been repeated, I cannot at this stage say there has been tedious repetition. However, I remind Hon Ljiljanna Ravlich that the motion before the Chair is seeking the agreement of the House to have particular terms of reference referred to a standing committee, and the member is meant to be convincing the House why it should or should not agree to the motion. There is no need to go to great lengths to discuss the specifics of the case in hand, because, no doubt, if the matter is referred to the standing committee, the member will take the opportunity of providing such information as she thinks appropriate to that committee for its consideration in due course.

Debate Resumed

Hon LJILJANNA RAVLICH: The Standing Committee on Public Administration has many areas to investigate. I have focused my presentation on the events which have emerged over a few days. On behalf of Western Australian taxpayers and workers, on many occasions I have brought to this House my concerns regarding workers' safety in Western Australia, and those concerns cover a wide range of areas. However, although those points are important - they are listed on the Notice Paper at points 1 to 9 of my motion - we have reached a stage where a very thorough investigation is required of the processes which have been allowed to continue in this government agency.

I specifically request that this matter be dealt with by the Standing Committee on Public Administration because, given the events of the last few days in particular, we are talking about the whole question of administration and policy formulation within a government agency. It is fundamental to the ongoing operations of this government agency that some of these matters, if not all, be addressed through committee scrutiny in order to improve the situation. The Standing Committee on Public Administration is the best committee to deal with these matters. The matter of policy and departmental administration is absolutely fundamental to the investigation which I hope this inquiry will carry out.

I draw on the events of the last few days because they demonstrate that the administration within WorkSafe WA and the decision-making processes within that organisation leave a lot to be desired. I demonstrate that point by a recent example which has been brought to not only my attention but also the attention of the Western Australian people. There can be no doubt that further investigation into the processes and policies of the administration of WorkSafe WA is required, as well as a whole range of other issues which interlink with that, such as the impact of the Labour Relations Legislation Amendment Act of 1997, and of contracting out and privatisation. These are all key issues, but there can be no more fundamental issue than the administration of a government agency which currently challenges all the laws of this State.

Western Australia has laws about how agencies are governed and codes of conduct and ethics about how people should behave. Recently these have been breached. I am entitled to ask why this has happened and why nothing has been done. Therefore, it follows that it is reasonable for this committee to thoroughly investigate my concerns. It is also reasonable to say that it is a very damning finding when an officer, such as Commissioner Bartholomaeus, is found by the Commissioner for Public Sector Standards to have instituted a new policy to punish unions and union representatives. Considerable dispute surrounds that finding, and if it so chose, under the ninth term of reference, the committee would have an opportunity to investigate that and any other relevant matters more thoroughly.

The fundamental issue is that this Parliament cannot allow the standards in any government agency in the state public sector to slip. Members cannot simply talk about standards in government; there is no point in all the rhetoric. One ounce of action is worth many ounces of rhetoric. All we hear from this Government is the rhetoric, and it is not good enough to create the office of Commissioner for Public Sector Standards and then ignore its findings. Senior officers should not take the law into their own hands. They should not breach the code of conduct and the code of ethics. Western Australian taxpayers - I include myself among them - expect more. Some people in this Government forget we live in a democracy and that it is the right of individuals to belong to unions, just as it is their right to choose to belong to an employer association. Every attempt is made by the Government to take away workers' rights to collective representation.

The PRESIDENT: Order! The member is now canvassing an area which is almost outside the terms of reference. This is a referral motion which deals with the reasons that something should, or should not, be referred to a standing committee. Whether a person is a member of a union seems to me to be not relevant - but marginal - to the argument of referral. In due course the committee will go into all the substantive issues that are required to be considered. That is its job. The member's job is to convince the House whether the committee is ever to be given an opportunity to consider the terms of reference.

Hon LJILJANNA RAVLICH: Mr President, the point is that there is a lot for the committee to look at. I want to put on record certain things to indicate to the committee what I believe should be key areas of concern in its investigation. This is probably why I labour over certain issues. These are not just my concerns. The Commissioner for Public Sector Standards has received many concerns, if not complaints, from many quarters. He has received correspondence about WorkSafe

Western Australia from the Opposition spokesperson for industrial relations. He has received complaints from the Trades and Labor Council, from the Australian Liquor, Hospitality and Miscellaneous Workers Union. There are many other complaints which I do not know of.

We have only to look at the report of Commissioner Saunders in relation to this matter to realise that the committee will have so much work that it might even be helpful that prior to its deliberations it also have some additional guidance about those areas that I deem to be particularly important. There can be no doubt one of the areas I deem to be particularly important is the report from the Commissioner for Public Sector Standards. Many questions are still left unanswered. The WorkSafe organisation is charged with a very important responsibility in my view, both in an administrative sense in and in terms of the Occupational Safety and Health Act, which is to promote secure, safe working environments. No doubt targets are set in relation to that. It is beholden on all of us to ensure that a government agency achieves the objectives it sets for itself, and that the administration for which it has carriage is undertaken in such a way that it is to the benefit of, in this case, all Western Australian workers. I am saddened to report that that is simply not happening.

There has been a breach, not necessarily of the Occupational Safety and Health Act, but of other Acts and of the codes of conduct and codes of ethics. It reflects very badly on the Government. It is beholden on all of us, when we see these sorts of events occurring, to express our concern and our disappointment, and to attempt to redress the matters and improve the situation on behalf of Western Australian taxpayers. That is exactly what I am hoping will be done through this inquiry. I understand the Premier has now called for additional information from the Public Sector Standards Commissioner in relation to the action of Commissioner Bartholomaeus. Indeed, I understand that Mr Robert Cock, QC made a finding in regard to Commissioner Bartholomaeus. I refer to the uncorrected proof of *Hansard* of Tuesday, 8 September 1998 in which Hon Peter Foss said that the report by Robert Cock, QC stated that there is no finding that he either proposed, developed or implemented the policy.

In view of the fact that there was a press statement, we must establish whether there was or was not a policy. Clearly there was. On 26 June 1997, a key policy in terms of the administration and the operations of a key government agency, which I hope the committee will look into, was released publicly. We paid a Queen's Counsel to tell us that there is no finding that Commissioner Bartholomaeus either proposed, developed or actually implemented a policy. Therefore, he has been shown to have done wrong. This is more correctly expressed under section 81 of the Public Sector Management Act. There is a suspicion of misconduct. A suspicion of misconduct - I would say that is probably a lesser evil than a breach of section 59 of the Public Sector Management Act - is a serious allegation in itself. I am concerned on a number of levels, one of which is that we are paying a Queen's Counsel to tell us that what is factual, is not factual. I want to know how much we paid for that advice.

Hon Ken Travers: He is not telling us; the Attorney General is telling us.

Hon Peter Foss: He was employed.

Hon LJILJANNA RAVLICH: He has told the Attorney General. If there has been a suspected breach under section 81 -

Point of Order

Hon PETER FOSS: We are definitely getting to tedious repetition. I suspect the member is just trying to speak until 12 o'clock.

The PRESIDENT: Order! I was just about to raise this issue with Hon Ljiljanna Ravlich. In respect of the matters which she has just canvassed, she has done so on a number of occasions. I am quite sure, if this motion is carried, when the committee reads her speech it will be aware she raised that point on a number of occasions. There is no need to raise it again. That is where she may be close to infringing the standing orders in respect of tedious repetition. I ask the member to move her comments along.

Debate Resumed

Hon LJILJANNA RAVLICH: Mr President, I am sure that this is only the second time I have raised the question of the breaching of section 81 of the Public Sector Management Act, if that; in fact I think it is the first time I have raised section 81 of the Public Sector Management Act.

The PRESIDENT: Order! I do not know whether the member is challenging what I have just said. I am not here to argue with her about whether she has raised something once or twice. I am talking about the general principle of repeating herself over and over again. I am trying to be as helpful as I can. I realise that this matter is dear to the member's heart. I am sure it is dear to the hearts of many members; however, the bottom line is that this is a referral motion and it is not for any member in this House to canvass the substantive issues that the committee is required to canvass if the motion is carried.

Hon Ljiljanna Ravlich's job is to convince the House that the matter should be referred to the committee, and to support her case she can, if necessary, refer to the various terms of reference. If the matter is referred in due course, no doubt she will appear before the committee and give whatever evidence she deems appropriate. That is the context in which I raise the point of tedious repetition. I trust that Hon Ljiljanna Ravlich understands that to be the case.

Hon LJILJANNA RAVLICH: Thank for your guidance, Mr President. I put on record that I hope that the committee looks closely at the advice from Robert Cock, QC on his findings that Commissioner Bartholomaeus breached section 81 of the Public Sector Management Act.

Debate adjourned, pursuant to standing orders.

COMMITTEE REPORTS - CONSIDERATION

Committee

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

Standing Committee on Estimates and Financial Operations - Resignation of Gary Byron, Director General, Ministry of Justice

Resumed from 20 August on the following motion -

> That the report be noted.

Hon KEN TRAVERS: When this report was tabled, I read it with great interest. I had briefly followed the debate in the media when Mr Byron resigned and I wish I had had more time to sit in on the committee hearings. However, I have taken the opportunity to read this report and some of the transcripts in detail. It is extraordinary. From my reading of this report, it is clear that a senior member of the Premier's staff, his chief executive officer, lied to a CEO of another department -

Hon N.F. Moore: Will you say that outside?

Hon KEN TRAVERS: I will say it here.

Hon N.F. Moore: Say it outside!

Several members interjected.

Hon N.F. Moore: The report did not find that at all and you know it.

The CHAIRMAN: Order, members! Order, Leader of the House!

Hon KEN TRAVERS: I am about to tell the Leader of the House why the report was wrong.

The CHAIRMAN: Order, members! Hon Ken Travers has the floor.

Hon KEN TRAVERS: It is clear from the evidence given to the committee. I will be interested to hear the Government's response. I also intend to take up some of the remarks made previously in this debate. The findings of the committee were misplaced on this matter. This goes to item 12.3 in the committee's report. It reads -

> The Committee is unable to make a recommendation arising out of its reservations concerning parts of Mr Fletcher's evidence, as it is not satisfied beyond a reasonable doubt that in relation to this evidence Mr Fletcher was being untruthful.

The committee used the test of "beyond reasonable doubt". Anybody with a bit of knowledge about the law and who goes to the Industrial Relations Commission in this State would be aware that the test is not beyond reasonable doubt. The test is "on the balance of probabilities". When one goes through this evidence on the balance of probabilities, it was Mr Fletcher who lied to a CEO. I suspect he may have lied to the Attorney General. These things go to the very heart of the matter. At the end of the day, the Premier is ultimately responsible for determining whose evidence is correct; that of Mr Fletcher, Mr Byron or the Attorney General. He is the one who should be trying to find the answer to that question and taking the appropriate action. If it is correct that Mr Fletcher got it wrong, that his interpretation - which is clearly different from that of the Attorney General - is wrong, the Premier should want to act. I cannot believe that the Premier has done nothing about this conflict between the evidence of the Attorney General and his chief of staff. The Premier has done nothing to find out whose recollection is correct.

Hon Tom Stephens: He should sack one or the other.

Hon Peter Foss interjected.

Hon KEN TRAVERS: I will get on and give a defence of Mr Byron because he is the one person who has not been defended in all of this.

Hon N.F. Moore: You have actually admitted that you were not at the committee hearings and you are making all these judgements based on no evidence at all.

Hon KEN TRAVERS: Based on this report and transcripts, Leader of the House.

Hon N.F. Moore: The committee made its own decisions and you were not there. You are now making decisions that differ from the committee's.

The CHAIRMAN: Order! Hon Ken Travers will address the Chair.

Hon KEN TRAVERS: I am happy to go through this report and highlight to members the differences in the evidence given by Mr Byron, the Attorney General and Mr Fletcher. The committee did a reasonable job of reflecting the different accounts given by those three people and the conflicts in that evidence.

Hon B.K. Donaldson: It is magnanimous of you to say that it did a reasonable job, this committee you never attended, very magnanimous!

Hon KEN TRAVERS: The committee has missed the mark in its conclusions because of its test of beyond reasonable doubt. That is used in criminal cases in this State, not civil cases. The committee should have gone to that. The reality is, even if that is not the case, the Premier has an obligation to act. He should want to know whether it was the recollection of his chief of staff, of the CEO who has resigned or of the Attorney General which was wrong. It is incredible that the Premier is not keen to find that out. Regardless of what is said or done in this place, a responsible minister, the Premier's chief of staff and a CEO have given conflicting evidence to a committee. How can the Premier not want to know who was wrong?

Hon N.D. Griffiths: He is no leader.

Hon KEN TRAVERS: He is no leader at all. I think the term"wimp" was used.

Hon Peter Foss: You are making a very false assumption - it probably comes from being a Labor person - that people who have conflicting evidence are necessarily lying. They may just have conflicting recollections.

Hon N.D. Griffiths: I have heard that before. You persecute people on that basis.

Hon Peter Foss: I am amazed that Hon Nick Griffiths did not pick you up on that.

The CHAIRMAN: Order! Three members are trying speak at once and only one has the call.

Hon KEN TRAVERS: It is quite extraordinary that a man of the Attorney General's integrity, who has many times in this place pursued issues of corruption of the processes of government - I have read the *Hansard* from before I came here, I know he has and that he pursued those issues because he is a man of integrity - someone who has campaigned against those things in this State, is now involved in cutting those corners and ignoring those compromises that go to the issue.

Withdrawal of Remark

Hon PETER FOSS: Although I am very flattered at the nice words the member has had to say about me, he does appear to have said some things about me which I do not think are permitted in a parliamentary circumstance, because he said that I am involved in cutting corners on government integrity.

The CHAIRMAN: The Attorney General objects to the reference to his cutting corners. Is the member prepared to withdraw that reference?

Hon KEN TRAVERS: Of course I will withdraw it if it offends the Attorney General.

The CHAIRMAN: You will withdraw it per se.

Hon KEN TRAVERS: I withdraw.

Committee Resumed

Hon KEN TRAVERS: I appreciate the Attorney General's raising the issue of people having different recollections. When one goes through the report one can see that the problem was that Mr Byron could not recall. He used those famous words that members opposite have often tried to use against members on this side. At recommendation 11.1 of the committee's report the committee considered the central conflicts, one of which was that Mr Fletcher could not recall saying to Mr Byron that the Attorney General had dug his toes in and that the Premier would not oppose him. On one side of the debate Mr Byron had meticulous, contemporaneous notes and was clear and precise in his recollections of what occurred; on the other side, Mr Byron was saying that he could not recall. The Attorney General says that it is all a question of recollection. Mr Fletcher said that he could not recall.

Hon Peter Foss: You cannot remember names.

Hon KEN TRAVERS: We have Mr Byron with meticulous, contemporaneous notes which were put in his diary immediately after the event.

Hon Peter Foss: He did not have a diary. The notes were specially made for the occasion.

Hon KEN TRAVERS: Were they contemporaneous?

Hon Peter Foss: That is another question. He certainly does not keep a diary; he never has. He started to keep notes for a specific purpose. He did not make notes of every meeting.

Hon KEN TRAVERS: Does the Attorney General accept that they were contemporaneous?

Hon Peter Foss: Some of them, certainly.

Hon KEN TRAVERS: The bits that agree with the Attorney General's evidence?

Hon Peter Foss: He started off not making contemporaneous notes and later on he did. He makes that quite clear if one talks to him. I am not saying this from my own belief but from what he said about the time he made them.

Hon KEN TRAVERS: On the one hand we have the CEO with meticulous, contemporaneous notes and who is clear and precise in his evidence; on the other hand we have someone using evasive language, who cannot recall and made no adequate records of what happened. That is an extraordinary situation.

Hon Peter Foss: The other thing you must keep in mind is that they were not his standard diary. They were notes he started to make after a period of time. It is quite clear that the reason he took them was a self-serving purpose. I do not wish to do other than clarify the matter. You are trying to put the position slightly higher than you are capable of doing. I am not saying that there is not a germ of truth in what you are saying but, nonetheless, you are trying to put it higher than you should.

Hon KEN TRAVERS: A germ of truth?

Hon Peter Foss: The fact is that one person kept notes and another person did not. Keep in mind that a person who did not normally keep notes started keeping notes after events had occurred, and did so for his own personal purposes. They must be treated slightly differently from ordinary contemporaneous notes.

Hon N.D. Griffiths: Perhaps with greater weight.

Hon Peter Foss: Or less.

Hon PETER FOSS: I support the motion that the report be noted. Obviously, I do not want to get into the committee's findings. However, I believe that some points are being made a little more strongly than they should be. My understanding is that Mr Byron does not normally keep notes. He started keeping them once he saw there was some possibility of a dispute. The earlier notes were not contemporaneous but were made reasonably close to the time to be of value but not necessarily to be treated as totally and absolutely correct. I believe that his later notes were contemporaneous but he did not necessarily make notes on every conversation, so there were gaps in conversations which took place of which no notes were made at the time or later.

More importantly, the member should keep in mind that Mr Byron was making the notes for the purpose of supporting his situation. As a lawyer, I am sure that Hon Nick Griffiths would understand this proposition: Yes, the notes are obviously important but one cannot necessarily assume that a contemporaneous note is like an affidavit or that it is absolutely the truth, especially when it is not part of the normal course of events but somebody starts to make for a particular purpose.

Several members interjected.

Hon PETER FOSS: All I am trying to do is to bring the member's remarks down to what I see as a reasonable comparison. It is perfectly reasonable to compare somebody who has notes against somebody who does not have notes. I do not think that the member should put it quite as high as he has put it. If he wishes to put forward an argument that could be accepted, he would be better to tone it down and say that on one side a person was keeping notes specifically for the occasion, and admits they were specifically for the occasion, and on the other side a person was not keeping notes. On one side those notes were commenced after the events had occurred. They record some of the meetings and not others. The notes were clearly made for Mr Byron's own purpose. I do not think that anyone would dispute that. That does not mean that one disregards them but one treats them with the appropriate weight and the appropriate respect. I am sure Hon Nick Griffiths would not dispute what I have said on the appropriate regard to have to the notes.

Hon Ken Travers: What do you see as his purpose for starting to take the notes?

Hon PETER FOSS: I do not really want to go into it but it is quite clear. I could attribute motives to him. I could certainly tell the member some motives. Quite clearly, he foresaw the possibility that there might be litigation either instigated by him or by the State.

Hon Ken Travers: Why would Mr Byron instigate litigation?

Hon PETER FOSS: The member obviously has not followed the debate because otherwise he would realise that Mr Byron was suggesting some litigation.

Hon Ken Travers: Back in the early stages?

Hon PETER FOSS: At the very early stages.

Hon Ken Travers: When did he first suggest to you that he would instigate litigation?

Hon PETER FOSS: I do not think that we should get into the detail. The member asked me to suggest a reason. I have given him a reason. A clear reason for a lawyer to start taking notes is when he sees that there may possibly be litigation. The difference between the member and me is that I am not trying to attack the committee; I am supporting the motion that the report be noted. The member is arguing a legal point. I am trying to assist him where I believe he has overstated the case. The member has asked me why a person would start to take notes. Rather than talk about why Mr Byron took notes -

Hon Ken Travers: Why did Mr Fletcher not take notes?

Hon PETER FOSS: Let me pose a theoretical situation: The member is a lawyer involved personally in a major conflict. He believes that it may end up in court. What would he start doing? If he were a lawyer, he would start taking notes. The member asked me why Mr Byron took notes and I am telling him why. I am not saying it by way of criticism because it seems to me exactly what one would expect a lawyer to start doing if he believes that he may possibly be involved in a conflict in which he may have to give evidence.

Hon N.D. Griffiths: I would expect them to be very accurate notes indeed.

Hon PETER FOSS: One would hope so. There is a difference between a lawyer's notes taken as a lawyer and a lawyer's notes taken as a personal combatant.

Hon Max Evans: Self-interest.

Hon PETER FOSS: Yes, self-interest, self-perception and all of those things. Perceptions are just as much part of what one writes down as what actually happened. We have an almost verbatim report made by Hansard as we talk in this House.

Hon Max Evans: What do you mean by almost?

Hon PETER FOSS: Hansard improves the minister's comments. The important thing is that we occasionally say that we do not understand what has been recorded even in *Hansard* because it is not what we recollect. However, we work our way through and find out what it was.

Hon N.D. Griffiths: I will read *Hansard* on Tuesday!

Hon PETER FOSS: It is possible to say that even Hansard has not correctly recorded something. I am not trying to challenge everything Hon Ken Travers is saying. I think he is putting the issue at a higher level than is warranted in the circumstances. His reference to the notes does not take into account the circumstances under which the notes were taken, nor the person's interest. I am sure if Mr Fletcher had been writing notes they would have been totally different from those of Mr Byron.

Hon Ken Travers: Why was he not writing notes?

Hon PETER FOSS: He is not a lawyer.

Hon Ken Travers: He is the Premier's chief of staff.

Hon PETER FOSS: I would be interested to know whether Hon Ken Travers writes personal notes on everything that occurs in his life.

Hon Ken Travers: When I am in a situation like that I do.

Hon PETER FOSS: There we are. There is no doubt about it; when we think it might help we start making notes.

Hon Ken Travers: That is what you are saying Byron did.

Hon PETER FOSS: That is exactly what I am saying. The fact that Mr Fletcher did not make notes does not make him any less believable than Mr Byron. It means he might not have covered a certain part of his anatomy as well as Mr Byron.

Hon Ken Travers interjected.

Hon PETER FOSS: We must keep in mind that the biggest difference between the two is that one is covering his anatomy carefully and one is not. Unfortunately these problems can arise if we do not cover our nether parts.

Hon Ken Travers is putting a greater reliance on some of the documents than is fair. He can make the comparison that one person had notes and -

Hon Ken Travers: That is one element of the case.

Hon PETER FOSS: I realise that.

Hon Ken Travers: There are issues to do with motivation and the language that was used in the hearing; it all comes together.

Hon PETER FOSS: One might say that too. However, I want to pick up Hon Ken Travers on one little thing because he seems to be dealing with it as an open and shut case and that is not an appropriate way to deal with it. One of the issues which Hon Ken Travers overstated, and on which I think he was incorrect, was his reference to Mr Byron's putting something in his diary. I understand he does not maintain a diary. He started taking notes for the purpose of those events. There is nothing wrong with that.

Hon N.D. Griffiths: I do not think the member used the term "diary".

Hon Ken Travers: I meant it in the sense of a record.

Hon PETER FOSS: He did. It is possible by a series of slight progressions and impressions to raise an issue to a higher level than we would if we applied our mind to it. I am asking Hon Ken Travers to be a little more aware of the situation and on that basis to not put it at such a high level. He has put the issue somewhat higher than it is capable of being put.

I think an interjection was made by someone on this side of the Chamber that the committee has lived with this; it has not just read the transcript. It has seen the witnesses and its members have come to a conclusion. That conclusion is obviously the view of the committee. That may encompass a view that is extreme one way and a view that is extreme the other way. That often happens. One of the criticisms of the legal system is that we can go through the entire appellant process and get different views on exactly the same piece of law all the way through. Until we get to the last one we do not know which is the correct one. That does not mean it necessarily is the correct one; it just happens to be further up the ladder and therefore the view that stands.

Hon Ken Travers should take into account that the people who had the opportunity to make the decision in this case were the members of that committee.

Hon KEN TRAVERS: I appreciate the comments of the Attorney General. However, I was making the point that the committee has gone for a test - item 12.3 is evidence of that - of beyond reasonable doubt in relation to Mr Fletcher's evidence. The test should have been the balance of probabilities - the test that is used in the Industrial Relations Commission in this State. More importantly, the person who must seek to get to the bottom of this matter should be the Premier. The question remains: What has the Premier done about it? He has done zippo. He has a minister, his chief of staff and a chief executive officer of one of the most important departments in this State all blueing and voicing different views that go to the heart of public administration; yet he does not want to find out the answers. That is because those answers will mean he will have to sack either his Attorney General or his chief of staff. If it were someone on this side the Government would probably have established a royal commission into it until it got to the bottom of the matter.

I accept the Attorney General's point that, in isolation, the issue of notes is not a case in itself. However, added to that is the language that was used in the committee hearing and the testimony of Mr Byron, who was always clear and precise about his recollection.

Hon Simon O'Brien: Were you present in the hearings?

Hon KEN TRAVERS: I have read some of the transcript.

Hon Simon O'Brien: We are not talking about the transcript. I am talking about being present to hear the tenor and the tone of voice and the way language was used.

Hon KEN TRAVERS: Does Hon Simon O'Brien accept my analysis that Mr Byron presented his evidence differently from the way Mr Fletcher presented his evidence?

Hon Simon O'Brien: They are different people; of course their evidence was different.

Hon KEN TRAVERS: Was not one clear and precise and one evasive and using terms such as "I can't recall".

Hon Simon O'Brien: I will address that point, rather than interject.

Hon KEN TRAVERS: Hon Simon O'Brien can address it now.

Hon W.N. Stretch: You should stick to standing orders -

Hon KEN TRAVERS: I look forward to hearing Hon Simon O'Brien's comments on this.

The other issue to consider in a matter such as this is motivation. Hon Muriel Patterson took a cheap shot at him in her

comments last week. On the one hand, what is the motivation for a senior public servant to tender his resignation from a well-paid position compared to, on the other hand, the motivation for Mr Fletcher to not want the truth to come out. Could it be that he might be found to have breached the Public Sector Management Act, misrepresented the views of the Attorney General to a chief executive officer or lied to the Attorney General?

However, Mr Byron, a senior public servant, has gone to the Premier and the Attorney General and said,"I do not want your $160 000-a-year job and the headaches and heartaches of this place; and I will make up a big story. I will remember terms such as 'dug his toes in' and 'the Premier would not oppose him on this matter'". They are very clear.

At page 26 of the committee's report, under the heading "Mr Byron and Mr Fletcher" it reads -

> . . . Mr Byron maintains that he asked Mr Fletcher twice whether the Attorney General had lied to which Mr Fletcher responded "yes" on both occasions. On the other hand, Mr Fletcher's recollection was that he made no mention of the Attorney General lying and simply agreed with Mr Byron that the matter had probably "got to a point of no return".

We need only look at the rest of the comments made by the Attorney General and Mr Fletcher to see that there is some friction between those two. Again, surely the Premier's chief of staff would have defended one of the Premier's ministers if he thought Mr Byron was suggesting that the Attorney General had lied. Surely, if Mr Byron had made that allegation in front of Mr Fletcher and he knew that not to be the case he would have jumped up to defend the Attorney General. But no, he did not. Why? All the way through this report is a litany of evidence to suggest there is conflict between the Attorney General and his office and the chief of staff of the Premier's office.

Hon Simon O'Brien: When you read the transcript you will see we examined Fletcher minutely on that specific point. He gave acceptable answers which give a good insight into the responsibilities of a chief of staff.

Hon KEN TRAVERS: That was not to defend the minister. There is a difference between the chief of staff of the Premier and that of the minister's office.

Hon Simon O'Brien: He took the view that it would be unprofessional for him to jump into a bun fight in front of another minister or other people. He was not in front of anyone else at that stage.

Hon Simon O'Brien: That is an interesting part of the transcript.

Hon KEN TRAVERS: He was not in front of anyone else. At that stage it was just a conversation between Mr Byron and Mr Fletcher. Mr Fletcher's response was to the effect that he let Mr Byron slag off about the Attorney General but did not respond. He just sat there and let him go on. That is the interpretation. Members should have a look at it.

It is a shame there were no recommendations in the report. Mr Payne was clearly set up to be the fall guy for inaction on the planning of prisons. All through the report there are comments accepting that it was not Mr Payne's fault but at the same time that he must be moved on. At one point Mr Fletcher said to Mr Byron that he knew it was the fault of the Attorney General and his officers. Too right it was the fault of the Attorney General and his officers that planning for prisons in this State has been stuffed up.

Hon Peter Foss: That is absolutely wrong. The report was sitting on Mr Byron's desk for two months and Mr Byron was blaming everybody else.

Hon KEN TRAVERS: When did the Attorney General receive the Australasian Correctional Services report in his office?

Hon Peter Foss: That was not the report on which I was relying. I was relying on an earlier report from the prisons office.

Hon KEN TRAVERS: No. The Attorney General received the first report and he responded to it. Then he received a further follow-up report. The Australasian Correctional Services report was lost in his office for months.

Hon Peter Foss: No, it was not. That is wrong too.

Hon KEN TRAVERS: It did not get lost? When did the Attorney General first read it?

Hon Peter Foss: I cannot remember the date now but it did not get lost in my office.

Hon KEN TRAVERS: When I asked questions last year in the Estimates Committee about whether anyone had suggested a prison in the northern suburbs, why did the Attorney General try to ridicule me by saying that no-one seriously suggested a prison in the northern suburbs?

Hon Peter Foss: Nobody has. The Government never has suggested it.

Hon KEN TRAVERS: No. The Attorney General did not say "the Government". He said that no-one has suggested it.

Hon Peter Foss: I am sure you suggested it. You have probably gone around telling everybody in the northern suburbs. That does not mean it is suggested.

Hon KEN TRAVERS: No. The Attorney General had a report sitting in his office for months - a report that got lost in the maze of his office for months.

Hon Peter Foss: That is wrong too.

Hon KEN TRAVERS: Then he blames Mr Payne at the end of it all.

Hon Peter Foss: That is so wrong. That was not gone into. It was not even dealt with by the committee.

Hon KEN TRAVERS: Shall we move on from the prison in the northern suburbs that the Attorney General misled us on in the Estimates Committee?

Hon Peter Foss: It has never been suggested by the Government that there will be a prison in the northern suburbs.

Hon KEN TRAVERS: That is not what the Attorney General said in the Estimates Committee. He said that nobody had ever suggested a prison in the northern suburbs.

Hon Peter Foss: Not one of us has ever suggested it.

Hon KEN TRAVERS: Nobody? No-one?

Hon Peter Foss: I am sure the Labor Party has suggested it.

Hon KEN TRAVERS: No, it has not suggested it. The Attorney General said that no-one suggested it and a report which suggested it was lost in his office.

Hon Peter Foss: I am asked on behalf of the Government and I answer as to what the Government says, and nobody in the Government has suggested it.

Hon KEN TRAVERS: Let us take another look at where the Attorney General's office has stuffed up prison planning. When I asked again about whether a prison was proposed at the Saranna site across the road from the Gnangara pine plantation, he said that it was not a prison, it was a low security off-shoot of the Bandyup prison. A prison for low security prisoners is still a prison.

Hon Peter Foss: Which one are you talking about now?

Hon KEN TRAVERS: The Saranna site. Does the Attorney General remember that? It was the one that was stuffed around for 12 months and in the end the Attorney General said that it could not be put at that site because it did not look sufficiently prison-like.

Hon Peter Foss: I made my remarks on Saranna the first day I went there.

Hon KEN TRAVERS: Did the Attorney General take 12 months to get there?

Hon Peter Foss: No, I did not take 12 months.

Hon KEN TRAVERS: Negotiations with the people there took place for 12 months.

Hon Peter Foss: There are some very interesting questions about that, but I certainly did not take 12 months.

Hon KEN TRAVERS: What are they?

Hon Peter Foss: Let us carry on.

Hon KEN TRAVERS: We will come back to that. The other classic with this Attorney General is -

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

Hon KEN TRAVERS: I was waiting for Hon Simon O'Brien as I thought he was going to make a response but, unfortunately, he does not want to.

Hon Simon O'Brien: You have a contribution problem.

Hon KEN TRAVERS: We can look at the Saranna site which was messed around. Then there is the other one where the Attorney General was complaining -

Hon Peter Foss: Where does this come up in the report?

Hon KEN TRAVERS: The Attorney General asks where in the report this comes up. The whole basis of the problem -

Hon Peter Foss: Where does it come up in the report?

Hon KEN TRAVERS: I will go through it. It reads -

> The Premier's account is that, on Thursday 15 January 1998, he was advised by his Chief of Staff, Mr Ian Fletcher, that he had discussions with the Attorney General concerning the Offender Management Program. According to the Premier, Mr Fletcher indicated that the Attorney General should speak to Mr Byron about the delays in implementing Government policy in the Offender Management Division.

That is where it comes up.

Hon Peter Foss: Where does it come up about Saranna? You are way off. You are raising a whole lot of things that are not in the report. Show me where the word "Saranna" appears in the report.

Hon KEN TRAVERS: The Attorney General does not want to talk about the issue.

Hon Peter Foss: Show me where there is anything about amendments to the security of prisons.

Hon KEN TRAVERS: If the Attorney General will be quiet for one second I will explain it, as I will need to do so in a slow, careful way for him. The whole basis for the Government wanting Mr Payne out of the offender management program was as a scapegoat. That is what this matter goes back to.

Hon Peter Foss: Scapegoat?

Hon KEN TRAVERS: Well, who was responsible for the delays in prison management planning in this State?

Hon Peter Foss: Mr Byron was responsible for overall planning.

Hon KEN TRAVERS: Is it now Mr Byron's fault?

Hon Peter Foss: The honourable member knows he is responsible.

Hon KEN TRAVERS: That is why this relates exactly to the report.

Hon N.D. Griffiths: So much for the Westminster system.

Hon KEN TRAVERS: I will get onto *Yes Minister* in a moment. That is the amazing aspect about this. It is Mr Byron's fault, not the minister responsible for prison planning. The fundamental problem that brought about this issue in the first place was the failure of this Government to manage and plan prisons in this State. The Attorney General says Saranna has nothing to do with prison management. Saranna, my good friends in this place, involved a proposal for a low security prison to deal with the low security prisoners from Bandyup prison. If members talk to anyone in this State they will tell them that.

I have heard the Attorney General say in this place that the most pressing issue that needs to be dealt with is the lack of facilities in this State for low security women prisoners; that they all have to be lumped into Bandyup with maximum security prisoners. It is expensive, it is not fair on them and it is a wrong policy. The Attorney General should not tell me that Saranna has nothing to do with it. The Government was stuffing around for 12 months and then, when the Attorney General finally went out to look at the place, he cancelled the proposal because it did not look like a prison.

Hon Peter Foss: I went out there the first day. I rejected it and they continued fiddling around for 12 months, if you want to know what really happened.

Hon KEN TRAVERS: Did the Attorney General put in writing that he rejected it?

Hon Peter Foss: I went out and told them verbally immediately. I told them to come up with proper thinking. If you read the papers that have been submitted, you will see that I said, "You are just not getting on with it".

Hon KEN TRAVERS: So when they sent out further reports to the Attorney General's office during that 12-month period, did he send them back and say, "Look, I told you lot on day one this was not an option"?

Hon Peter Foss: Go and have a look.

Hon KEN TRAVERS: Will the Attorney General table those documents?

Hon Peter Foss: The documents are already with the committee and have been tabled by the committee. Go and have a look.

Hon KEN TRAVERS: Is that the point the Attorney General is making?

Hon Peter Foss: You will find I have sent things back saying, "I do not know how many times I have told you, this is not what is required. Do what I have asked of you." Go and read the document.

Hon KEN TRAVERS: Did the Attorney General say that the Saranna site was not the appropriate site?

Hon Peter Foss: You see, you do not know. Go back and read it.

Hon KEN TRAVERS: No. Did the Attorney General say that the Saranna site was not the site?

Hon Peter Foss: I said quite plainly when I first went there that I did not like the place and indicated, "Come up with something proper."

Hon Max Evans: He said that half an hour ago. You have a short memory.

Hon KEN TRAVERS: No, there is a difference between saying, "What you are doing with the planning is not meeting my requirements" as opposed to saying clearly to them that the Saranna site is not the appropriate site.

Hon Peter Foss: They said they could make a proposition that would be acceptable to me. I said, "I do not like it and if you want to make it acceptable you have to do this, this and this." They never came up with it.

Hon KEN TRAVERS: So the Attorney General did not rule out the Saranna site from day one?

Hon Peter Foss: I ruled it out on the basis of what they had. They never came up with anything acceptable.

Hon KEN TRAVERS: So the Attorney General did not rule out the Saranna site from day one?

Point of Order

Hon SIMON O'BRIEN: I raise a point of order on the issue of relevance on the basis that the motion is that the report be noted. The report does not deal with any of these matters being discussed.

Hon KEN TRAVERS: I have already put my case on why this report deals with prison management planning, and this issue is directly related to it.

The CHAIRMAN: I do not think there is a point of order. However, Hon Ken Travers may wish to address the Chair on this matter rather than conducting a dialogue with the Attorney General.

Committee Resumed

Hon KEN TRAVERS: Clearly it goes to it. The Attorney General also made reference to another area in which he was having problems, as I understand it - I am sure I will be corrected if I am wrong.

Hon Peter Foss: I will sit here quietly.

Hon KEN TRAVERS: The Attorney General complained that the issues he picked up on his trip to America were not being incorporated in the proposals for prison planning. I am trying to find the section of the report which makes reference to that.

Hon Peter Foss: Like what? I will be very surprised if that is in there.

Hon KEN TRAVERS: So, the Attorney was not having problems with offender management's implementing -

Hon Peter Foss: The trip was not for the purpose of designing prisons, and Mr Byron knew that. He had taken over complete control.

Hon KEN TRAVERS: The trip was not concerned with planning of prisons!

Hon Peter Foss: No, if you read it you will see that that was the case. If you had read my report, the press statement I put out beforehand and the summary, you would realise it was not. If you read anything you would realise that.

Hon KEN TRAVERS: Section three of the report refers to prison management and infrastructure.

Hon Peter Foss: Read on.

Hon Simon O'Brien: Which document is that?

Hon KEN TRAVERS: It is the document the Attorney tabled on his visit to North America and the United Kingdom. Why did he go to so many prisons?

Hon Peter Foss: Read the report and you will know. You have obviously read the index, and that is excellent to know.

Hon KEN TRAVERS: I always read the Attorney General's reports; they are stimulating.

Hon Peter Foss: I do not think you have. If you had you would know why I went and what I went to do.

Hon Simon O'Brien: Your speech is getting better as it goes on, because it is increasingly punctuated by longer periods of silence.

Hon KEN TRAVERS: I am looking for the references because I realise I must point them out in detail.

Hon Peter Foss: Why not start with the appendix? You obviously did not get to the end of the report.

Hon KEN TRAVERS: It was a hard slog, but I got through it. Section 3.5 refers to other prison issues and lists all the meetings the Attorney General attended. It then refers to prison design - subject matters discussed or noted. The report points out that although not always discussed, there were obvious and substantial differences in the various institutions visited. Then it has a list of the prisons.

Hon Peter Foss: I did not go there for that purpose. However, I had my eyes open and I saw some things. I did not go for that purpose, nor did I come back with any suggestions about that.

Hon KEN TRAVERS: That is the only part of the report that does not include a section on relationships to initiatives in Western Australia, and now I understand why.

Hon Peter Foss: The reason is that I did not go for that purpose.

Hon KEN TRAVERS: I understand now. I am not sure why the Attorney went.

Hon Peter Foss: Read the whole report and you will find out.

Hon KEN TRAVERS: I am not sure what he did. I am glad to note that he visited prisons, but prison planning was not the issue. It was the most important issue facing the State at the time, but he was not looking at that. He was on a junket.

Hon Peter Foss: Have you read the report?

Hon KEN TRAVERS: I have.

Hon Peter Foss: Can you say categorically to this House that you have read it from cover to cover?

Hon KEN TRAVERS: I have read the sections that relate to this.

Hon Peter Foss: You have not read it from cover to cover?

Hon KEN TRAVERS: No. It was a hard slog.

The CHAIRMAN: Order! We are getting out of control.

Hon KEN TRAVERS: The other issue is contracting out of prison functions.

Several members interjected.

The CHAIRMAN: Order! Hon Derrick Tomlinson will come to order.

Hon Derrick Tomlinson: I object! The amount of interjecting that has been going on has been keeping me awake.

The CHAIRMAN: The objection is not sustained as yet.

Hon KEN TRAVERS: I thought the member would have been in hibernation at this time of year, but perhaps he is coming out of it.

Contracting out of prison functions is a classic. It sounds like *Yes Minister*. The Attorney gives the example of the United Kingdom, where it is suggested there are savings, and then the example of the United States, which has not quantified savings, and if there are any the amount is very small. The Attorney General suggests an inquiry. Sir Humphrey would have been proud of that; it is very courageous.

Hon Peter Foss: What do you think we should accept? If I get different results, should I accept one or the other without inquiry?

Hon KEN TRAVERS: No, but I can understand why the public servants do not understand what the Attorney wants.

Hon SIMON O'BRIEN: I have not spoken previously because I wanted to see whether any other members would make a contribution before I responded as a member of the committee. Then, of course, Hon Ken Travers stood for the third time. He did not have a contribution to make either.

Hon N.D. Griffiths: You were not paying attention.

Hon SIMON O'BRIEN: I sifted through his comments -

Hon N.D. Griffiths: I think you have dropped an "h".

Hon SIMON O'BRIEN: - as they filtered spasmodically across the Chamber, but I did not find anything in that process that was slightly useful to the House in considering this report.

Hon N.D. Griffiths: That says more about you than it does about Hon Ken Travers.

Hon SIMON O'BRIEN: I am afraid that, despite the member's jingoistic and loyal interjection, no-one on this side of the House or any impartial observer would agree with that or disagree with what I have said.

Hon N.D. Griffiths: I am glad you have distinguished between members on your side and impartial observers.

Hon SIMON O'BRIEN: If Hon Nick Griffiths wishes to associate himself with the comments of Hon Ken Travers, so be it.

Hon N.D. Griffiths: I will make my own speech when I wish to. I am listening to you and I would like you to say something about the report, rather than making unduly critical comments about the contributions of other members.

Hon Peter Foss: Who did not talk about the report either.

Hon SIMON O'BRIEN: Hon Nick Griffiths is entitled to make his own speech. I just wish he would not do it by interjection.

This is the twenty-second report of the Standing Committee on Estimates and Financial Operations. There was some excitement in political circles on or about 19 January 1998, when Mr Gary Byron caused something of a sensation as a result of the way in which he resigned as Director General of the Ministry of Justice. There appeared to be a smell of blood in the air. Initially there was a great deal of media interest. A number of people wanted to approach this whole issue from the point of view of whether someone was about to get the Attorney General or the Premier. Later the focus was whether someone would get Ian Fletcher. A number of people engaged in some way in the political process in this State thought there might be a scalp in it and they would rejoice in that.

No scalps have been presented with this report. The earnest entreaties of Hon Ken Travers and others in trying to introduce some supposed evidence after the committee conducted a long and exhaustive inquiry, taking evidence from a whole range of witnesses - a number of whom gave evidence on several occasions and provided further evidence in a written form through lawyers - will not work. Hon Ken Travers was not a party to that process, but he now claims to be an expert and is holding up documents that by his own admission he has not even read.

Hon Ken Travers: I have not dealt with anything that is not relevant to this report.

Hon SIMON O'BRIEN: I do not want to delay the Committee. I will move quickly to highlight again the key conclusions of this inquiry. Rather than "getting" the Attorney General, the result of this inquiry exonerated him from any improper behaviour or failure to follow proper process in the suggested removal of Mr Payne from his position in offender management.

Hon Ken Travers: So it was Fletcher then?

Hon SIMON O'BRIEN: The first point the Committee should note is that the Attorney General gets a clean bill of health from this report. The second point is that the result of the deliberations of the committee - whether Hon Ken Travers likes it or not - is that the Premier also gets a clean bill of health.

Hon Ken Travers: Fletcher did it.

Hon Ljiljanna Ravlich: Find a scapegoat.

Hon Ken Travers: Fletcher is still there and he is still bagging the Attorney General behind his back.

Hon SIMON O'BRIEN: We turn now to the findings of the committee, and not the rantings of members opposite.

Hon Ljiljanna Ravlich: You should talk about ranting!

Hon SIMON O'BRIEN: I am, and I apologise if that offends Hon Ljiljanna Ravlich, because she is something of an expert on the subject. Perhaps the members opposite who are members of this committee might care to enlighten Hon Ken Travers as to how the process was carried out because, apart from one exception, which I will come to in a minute, the committee endorsed this report.

Hon Bob Thomas: You might be embarrassed if I stand and speak about one remark that you made, so I do not intend to.

Hon SIMON O'BRIEN: I am glad on this occasion that Hon Bob Thomas will save us from embarrassment.

Hon Ken Travers: Fletcher did it in the Premier's office and he cannot recall with what! It is like a game of Cluedo with you lot.

Hon SIMON O'BRIEN: The strong allegation from Hon Ken Travers is that Mr Fletcher's evidence was suspect.

Hon Ken Travers: Which particular part are we talking about? "Evasive" was one of the words I used.

Hon SIMON O'BRIEN: Hon Ken Travers said Mr Fletcher was evasive and unreliable.

Hon Ken Travers: I also said that he lacked adequate records.

Hon SIMON O'BRIEN: The report states that the committee was not in a position to make conclusive findings

Hon Ken Travers: The Premier should do that, should he not? The Premier should find out whether Byron was lying.

Hon SIMON O'BRIEN: Hon Ken Travers has had three bites of the cherry. I will carry on, if he does not mind. At paragraph 11.5 the committee noted -

> . . . the Committee appreciates the difficulties of Mr Fletcher's position and that he was acting in the course of his duties and should not have been expected to have predicted the sequence of events that followed.

Hon Ken Travers fails to appreciate that, and I am trying to enlighten him. When Mr Byron talked to Mr Fletcher he was in a far different frame of mind than the frame of mind of Mr Fletcher. Mr Byron was about to make a dramatic decision in his own life about acting on a matter of principle and resigning from his job in a quite extraordinary way.

Hon Ken Travers: He would need a strong motivation.

Hon SIMON O'BRIEN: Mr Fletcher, on the other hand, as Hon Ken Travers pointed out, is the chief of staff in the Premier's office. At all times Mr Fletcher would have numerous issues to deal with, and there would be a stream of senior executives coming to see him with problems about this and that.

Hon Ken Travers: It is a pretty serious issue.

Hon SIMON O'BRIEN: There is no question of that, though perhaps Mr Fletcher did not realise how serious it was at the time.

Hon Ken Travers: It is also serious when he bags a minister.

Hon SIMON O'BRIEN: He approached it from a different point of view. When the meeting was arranged Mr Fletcher would have approached it in a fairly routine way, whereas to Mr Byron it was a serious and personal matter.

Hon Ken Travers: Mr Fletcher does this all the time. He calls them in and bags their minister.

Hon SIMON O'BRIEN: The chief executive officer of the Premier's office talks with any number of senior executives on a range of matters every day of his working life.

Hon Ken Travers: That is why they need to trust that he is telling the truth.

Hon SIMON O'BRIEN: That is one reason that Mr Fletcher did not necessarily have total recall of every word or phrase that was uttered during those meetings - there were a number of meetings. Whereas Mr Byron, who also kept some written record as well as being focused on the conversation because of the personal importance that it had to him, had a far sharper recollection in his own mind of what occurred at those meetings.

Hon Ken Travers: The principal reason was that Byron knew that Payne was about to be shafted for the mismanagement in offender management.

Hon Peter Foss: He did not know what was happening.

Hon SIMON O'BRIEN: Mr Byron gave evidence to the committee that that was his belief, and that is why he acted in the way he did. There is only one problem: He was wrong. The committee took evidence and its finding is that Mr Byron was wrong.

Hon Ken Travers: So who is responsible for the failure to plan for prisons in this State then?

Hon SIMON O'BRIEN: We are talking about an issue which is confined to this report.

Hon Ken Travers: You do not want to answer that.

Hon SIMON O'BRIEN: Hon Ken Travers has already gone over a hill and wants to talk about something else.

Hon Ken Travers: It is at the heart of the issue.

Debate adjourned, pursuant to standing orders.

Sitting suspended from 1.00 to 2.00 pm

CRIMINAL LAW AMENDMENT BILL (No 1)

Returned

Bill returned from the Assembly with amendments.

POLICE AMENDMENT BILL

Receipt and First Reading

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

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [2.04 pm]: I move -

That the Bill be now read a second time.

The increasing incidence of damage by graffiti is causing great concern to the community. Indeed, some members of the community, particularly the elderly, find this offence intimidating. Until now police have been powerless to prevent graffiti offences prior to their occurring.

The provisions of this Bill will for the first time empower the police to take direct action to prevent graffiti damage from taking place. The Bill creates an offence of being in possession of graffiti implements in suspicious circumstances, without proof to the contrary, and provides police with appropriate powers of search, seizure and disposal of graffiti implements. The new powers proposed by this Bill will give police the ability to stop, detain and search persons located in suspicious circumstances and take appropriate action against them. Furthermore, graffiti implements found in their possession, without lawful excuse, may be seized so as to prevent any continuation of their unlawful use. As a safeguard, the Bill also allows police to retain items seized from young offenders who have been cautioned. Those items will then be available for return to a responsible adult after 48 hours. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

BAIL AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [2.06 pm]: I move -

That the Bill be now read a second time.

In so moving I remind the House of a number of comments I have made when introducing other Bills - in particular the Criminal Law Amendment Bills, Nos 1 and 2, of 1998 - as I consider those comments are as applicable to this Bill as to the earlier Bills. Specifically, I have remarked to the effect that the criminal law of this State is a matter of great importance to those involved in law enforcement and, perhaps more importantly, to members of the community. These are sentiments which the House would share, and they are sentiments underpinning the current Bail Amendment Bill.

Secondly, reflecting this, I have previously announced a significant review of the criminal and civil justice systems by the Law Reform Commission, which has been asked to look at the laws, procedures and practices relating to criminal trials and civil litigation, including the role of the legal profession, and to make recommendations as to what changes are necessary to provide the community with a more accessible, affordable and less complex legal system. This is important in the present context because not only does the review reflect the community's interest in our system of laws, but also the outcomes of the review will form the backdrop against which ongoing legislative reform will be occurring in the area of the criminal law.

Thirdly, I have previously pointed out that the Government will seek to ensure the relevance of the criminal law by bringing to the Parliament as diverse a range of amendments to the criminal law as is necessary to achieve this objective - often in the form of Criminal Law Amendment Bills. Such Bills are aimed at achieving a considered response to a range of more pressing issues of concern to the community, and facilitate the more effective enforcement of the criminal law.

The Bill now before the House clearly sets out to achieve these objectives.

Before progressing to comment on the key features of the Bill I would like to make a number of observations on the Bail Act 1982 so as to set the backdrop against which this Bill can be better understood. The Bail Act 1982 was assented to on 18 November 1982. The broad aim of the Act was to create uniform procedures that would apply to all bail considerations and decisions. The Act was also intended to ensure that all parties to the bail decision are made aware of their rights, obligations and duties. Interestingly, the Act was not proclaimed to come into operation until early February 1989, and while there have been a number of amendments over recent years, the Act has remained essentially unchanged since its proclamation.

The Bail Act is one of the core procedural Acts in our system of criminal justice, as it essentially serves the purpose of ensuring that alleged offenders, who have not yet had their cases adjudicated by a court, will present themselves to court

at the time of their trial. It is in this sense that the system of bail has much to commend it as an integral part of an effective system of criminal justice. That said, the Bail Act and the processes which relate to it continue to attract a high degree of community interest, and community animosity. Flowing from this, the Government recognises that there is a community expectation that important components of the justice system will be amended as necessary to reflect emergent problems and issues.

I would also like to take this opportunity to bring to the attention of the House the fact that the Government is now moving on several fronts in order to ensure that the system of bail in this State reflects best practice.

First, the Bail Amendment Bill now before the House reflects a considered response to a number of problems with the operation of the law of bail as it now stands.

Secondly, a further Bail Amendment Bill is expected to be introduced into Parliament this session. This second Bail Amendment Bill reflects the fact that almost from the outset in 1989 certain procedural difficulties became apparent as having a detrimental effect on the operations of the Act. Therefore, unlike the Bill now before the House, the proposed second Bail Amendment Bill very much reflects procedural and administrative amendments to the Act which are neither a fundamental policy change nor a law and order measure.

Thirdly, I have requested the Ministry of Justice to initiate a ground-up review of the Bail Act with a view to bringing a major Bail Amendment Bill to Parliament at some later stage. The actual timing of this will be very much dependent on the consultation required and the degree of change.

Part of the significance of the Bail Act review which I have initiated is that the Bail Act, having been developed in the late 1970s and early 1980s, remains one of the few pieces of core justice legislation which have not been reviewed and significantly amended in recent years.

Both the Bill now before the House, and the procedural Bill which I have indicated is likely to become before the House later in this session, are important for what they seek to do, in the community interest, in the area of bail. However, these Bills do not derogate from the need for a more fundamental review of the purposes, role, aims and objectives of bail as an integral part of our system of criminal justice.

The Bill now before the House is aimed at significantly improving the operation of the system of bail in this State. Members would be aware that a number of recent incidents have raised important questions concerning the operation of the system of bail. These include the capacity for offenders to be released on bail on a number of successive occasions - often referred to as the "revolving door" phenomenon. In response, the Bill will serve to address a range of community concerns and to enhance protection of the community.

Against all of this background I will now comment on the key features of the Bill.

Removal of the presumption of the right to bail: Currently in the Bail Act there is a presumption of a right to bail, especially, as I have previously commented, given that the principal purpose of bail is to ensure that alleged offenders present themselves for trial. Reflecting this, it is obvious, and simple notions of justice dictate, that many cases do not justify keeping people in gaol for a lengthy period before trial. Even when the charge is serious, the refusal of bail can lead to questions about its appropriateness. The recent case of the three US Navy personnel charged with rape, and then acquitted, caused such questioning. It is equally obvious that there are certainly a broad range of occasions where it is appropriate to change the presumption. The first and second schedules of the Bail Act set out some of those occasions. The second schedule in particular contains a list of serious offences where, if a person is already on bail for a serious offence and is arrested on another, there have to be exceptional reasons to permit release on bail. In the current Bill this concept has been extended in a number of areas.

The first extension relates to when the accused is on parole, work release or home detention. Currently, as mentioned above, schedule 2 applies where the person is on bail for a serious offence. The Bill extends the rule to the case where the person is on parole, work release or home detention for a serious offence. The second extension relates to when the offence is a breach of bail conditions.

Currently, although the bail undertaking can impose a wide series of conditions aimed at preventing further offending by the accused, the breach of these is not an offence. The only breach that results in an offence is a failure to turn up at the court on the required day. The requirement to turn up in court is seen as the principal reason for bail conditions. Under the Bill, not only can additional conditions be imposed as part of bail, but also the breach of some of these conditions is made an offence in its own right. Although I will comment later as to the specifics of these new conditions, I draw the attention of the House to the fact that the new "breaching" offence is included in schedule 2. This is an important change because many people, especially the elderly, are afraid to report offences because they fear repercussions. These repercussions may escalate into actual violence but often start as abuse and threats.

The court already has power to impose conditions on bail which keep the person accused away from the victim, and which

enable police to act against the person if he is found in a district or area from where he has been forbidden, without having to wait until actual violence is offered to the victim. At the moment, all the police can do is bring the defendant before a judicial officer to reconsider the question of bail. In view of the presumption in favour of bail, this has been of little effect. As I indicated, the Bill provides that such a breach is a second schedule offence, which means that there is a greater chance of success in having bail refused.

This is also important in the area of domestic violence. Many victims, especially women, are afraid to make complaints or commence proceedings against violent partners because of the repercussions. Police find that they are often powerless to intervene until a further act of violence is offered. This leads to an unsatisfactory state of affairs for both victims and police. In the past, police have also been reluctant to involve themselves in protective orders because there were few avenues for enforcement open to them. Now, under the Bill, the fact that the breach of these conditions is not only a breach of bail but also a second schedule offence will hopefully encourage police to take a more active role in preventing further violence.

Restriction on granting of bail in urban areas: Although the Act provides a clear distinction between schedule 2 offences and the rest, in practice this distinction has little effect. The Act permits the granting of bail by authorised officers and justices of the peace. It is fair to say that the judicial balancing act that is required of a person granting bail is not an appropriate one to place on a police officer. Nor, for that matter, is it an easy one for a justice of the peace. Also, if bail is granted by a police officer, it is then hard for the police to oppose bail when it later comes up before the court.

When the bail decision comes up for renewal in a court it is seldom re-examined - the usual thing is for bail to be renewed, as it is unlikely that, having previously granted bail, the police would then argue against a re-grant of bail.

However, just as there are very good reasons for having a system of bail, so too there are very good reasons for some of the current practices to be occurring. Specifically, the recommendations of the Royal Commission into Aboriginal Deaths in Custody encourage the granting of bail and this has certainly reduced the number of Aboriginal and non-Aboriginal deaths in custody. Police standing orders recognise this, and do not allow a police officer a great deal of discretion or latitude to refuse bail despite the specific terms of the Bail Act. Rather than attempting to draft standing orders which would more minutely describe the circumstances that should lead to a police officer refusing bail in these circumstances, or further restrict the grounds upon which a person on a second schedule offence can be refused bail, this task is now placed upon the court.

The Bill significantly departs from current practice in removing the right of both police officers and justices of the peace to grant bail on repeat schedule 2 offences, though this departure is limited. Specifically, it is recognised that such a departure is only practicable in what are termed "urban areas". For the time being, the Bill provides that the Perth metropolitan region is the only urban area, but provision is made for further areas to be prescribed.

The recognition by the Bill that a different regime is needed outside urban areas, and in particular in the north west and other remote areas of the State, means that the Parliament may be able to improve the bail regime so that it is tighter for the bulk of the cases in the metropolitan area - while recognising the particular difficulties of remoter areas and the different community controls in those areas in relation to bail consideration.

Specifically, while recognising that in "other than urban areas" there will be a continued reliance upon police officers and justices of the peace to consider bail, the Bill recognises that in relation to some offences in urban areas the bail decision is most appropriately made by a court.

The law that each will apply will remain the same wherever bail is being considered, but it is recognised that it is not practical to require a person to be brought before a court in these "other than urban areas" places in order to secure bail. It is not practical, either, for the police, who would have to travel hundreds, if not thousands, of kilometres to find a magistrate, nor is it practical to deny the accused the right to bail while that journey takes place.

Specifically, the consideration of bail will be made by a court only where the person is charged with a serious offence in an urban area, where -

the defendant is either already on bail for a serious offence;

the defendant is a parolee in respect of a serious offence; or

the defendant is on another form of early release order for a serious offence.

Importantly, under the Bill, a breach of a violence restraining order, whether the defendant is on bail or not, and which occurs in any part of the State, will require that bail cannot be considered until the defendant is brought before a court.

This provision places a significance on the role of violence restraining orders as part of the Government's domestic violence strategy, as no longer will a justice of the peace or an authorised police officer be able to consider bail for such offences.

Currently, such decisions are made by either a court, a justice of the peace or an authorised police officer, which, as I have previously observed, is not usually the case.

Protective conditions: An important aspect of the Bill is that it introduces the concept of classifying certain bail conditions as "protective conditions" for bail undertakings. These are those intended to protect persons who may be in fear of their safety or property and they also extend to conditions in a violence restraining order. However, rather than doing this by means of introducing the concept of a specific protection condition, the approach taken is in part by referencing existing provisions of the Bail Act - specifically clauses 2(2)(c) or (d) of part D of schedule 1, which relate to a court's power to impose conditions aimed at protecting the safety, welfare or property of alleged victims.

Importantly, by these means, the Bill includes a capacity to specify protective conditions in favour of people who may not be named in the complaint relating to the alleged offence; for example, children who may be living with the complainant/victim.

Such provisions are important from the perspective of the Government's domestic violence strategy, as the bulk of serious personal assaults occur within the family situation. Police are relatively powerless to prevent recurrences of family violence and an enormous amount of police effort is spent in attending such incidents. Their present powers seriously limit their ability to deal with such violence until after a serious assault, which in some cases may involve murder, has occurred.

The approach taken in the Bill will allow police to charge where there has been a breach of protective conditions in bail, where at present all they can do is ask for further conditions to be imposed or request that bail be revoked.

As I have previously mentioned, to further strengthen the position of the police, a breach of such a condition will become an offence in its own right - and a serious offence under the Act.

Importantly, the court will also be required to treat any breach of a protective condition as serious, even if on the face of it the conduct complained of may apparently be trivial in nature. Likewise, when bail is being considered for serious offences the court will be required to have regard to the purpose of protective conditions. It is too late so far as the community, the police or the victim are concerned if the police can act only after a serious breach of the peace has occurred. It is legislative policy that it should be possible for the court to circumscribe an accused's activities so that the police can act once the accused starts along the path that can lead to a breach of the peace. Protective conditions are imposed to enable police action before serious harm or alarm occurs.

This is already the law, but courts have a tendency not to act unless a serious offence has resulted from the breach. This defeats the purpose of the order, which is to place a block to prevent the accused from getting back to commit the offence, rather than waiting for the offence to occur. If the accused crosses that block then the police can act without having to wait for a further serious breach of the peace.

Creation of new offences to deal with persons who breach the conditions of bail: Currently section 51 of the Bail Act provides that offenders who breach their bail undertaking by failure to attend court commit an offence. However, the Act does not provide that breaches of other conditions of the undertaking constitute an offence. The Bill provides that section 51 of the Act is to be amended so that a breach of a protective condition contained in a bail undertaking will also become an offence. A penalty of $10 000 or three years' imprisonment will apply to any breaches, including breaches of protective conditions.

Amend the Bail Act to expand the range of serious offences: Breaches of violence restraining orders, and of protective conditions contained in bail undertakings, will become offences for which the granting of bail will be restricted. The Bill also provides that the references in schedule 2 of the Bail Act, limiting the types of burglary and car theft, which are defined as serious offences, are to be amended so that all burglary offences, and car theft, are deemed to be serious offences.

Refusal of bail on grounds of seriousness of alleged offence: Another important aspect of the Bill is that it has provisions which will make the granting of bail inappropriate where the alleged circumstances of the offence amount to wrongdoing of a serious nature. While it may be that a person charged with a particularly vicious crime is likely to appear in court in accordance with his or her undertaking, and is unlikely to commit further offences or endanger witnesses or any other person or otherwise obstruct the course of justice, there are clearly times when the sheer seriousness of the circumstances of the crime itself make it inappropriate to release the person on bail.

Making of restraining orders during bail considerations: The Bill provides that a court is to consider whether a restraining order should be made when it is deliberating on bail. While the Restraining Orders Act 1997 already allows for this, a specific reference in the Bail Act will direct the court to specifically consider this issue. This is especially important where the bail is granted by a police officer because he cannot issue a restraining order and must consider whether a telephone order should be applied for. The power conferred by the Restraining Orders Act is not available to those persons who most frequently grant an original bail application.

Broadened range of bail conditions: Presently the Bail Act has provision for a defendant to undergo various forms of treatment or examination. The Bill provides for a person to be given bail conditions to attend counselling. Although not limited to, it is specifically aimed at domestic violence matters where the defendant may be required to attend, say, an anger management course. The Bill provides that service providers be gazetted by regulation to ensure that the court is better

placed to select courses or other interventions which have the best chance of achieving the objective being sought by the court in making the order in the first instance. At present the court has the difficult choice of either depriving an accused of liberty or risking an escalation of violence. Experience in South Australia has shown that early intervention helps avoid the escalation of domestic disputes which, at worst, have so often led in Western Australia to murder. If intervention waits trial then by the time that occurs the situation may have become irrevocably antagonistic.

Concluding comments: It can be expected that the number of remandees in lock-ups and prisons will increase as a result of these amendments. While the financial and other impacts are unknown, they will be monitored by the Ministry of Justice.

Based on the South Australian experience the police should experience a freeing-up of resources due to more positive controls over, or approaches to, domestic violence incidents. These disputes have proved among the most dangerous to police themselves to attend and lead to a high number of serious personal crimes.

While the limitation on the ability of police to grant bail will cause extra cost to police in conveying prisoners before magistrates, it is the police who presently consider that there is wasted effort on their part where serious offenders are quickly returned to the streets.

In conclusion, the Bill reflects a number of creative approaches to addressing a vexed area of the criminal justice system. The Bill, as noted earlier, is but one of a number of steps to address community concerns, community perceptions and operational efficiencies in the system of bail. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Stephens (Leader of the Opposition).

ADDRESS-IN-REPLY

Amendment to Motion

Resumed from 9 September.

Debate adjourned to a later stage, on motion by Hon B.K. Donaldson.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL

Second Reading

Resumed from 9 September.

HON RAY HALLIGAN (North Metropolitan) [2.20 pm]: When the House adjourned last evening I was speaking on a proposition that had been put forward about someone who had started a business in a shopping centre and was concerned that either the shopping centre owner or another tenant had started a similar business and may be creating unfair competition. It was suggested that the make-up of the complex and the different types of businesses being run in that shopping centre should remain in that manner for all time. The implementation of certain things to cause that to happen, and assist that business owner who said they were hard done by, may place them also in an awkward position. I mentioned previously the double-edged sword. We must be mindful and very careful of it, as are small business owners and operators. That small business operator may wish to change the type of business that they are operating. If certain things were implemented to stop others from going down a particular path, it could stop that small business person. Again, we must be mindful of not placing these people in an untenable position.

The types of businesses required in shopping centres will depend greatly on supply and demand. We are all aware that initially a greater demand for a product or service often creates a short supply. Invariably, the price then goes up; new players come in and provide for that unmet demand and the price stabilises. We have also seen that invariably when supply outstrips demand, prices fall. A product is often sent off to subsidiary companies to be sold at lower prices which will not reflect on the brand name or on the organisation that is trying to sell that product.

Hon Bob Thomas: There is an irony. Our rents in commercial retail outlets are three times higher than American rents. How do you explain that?

Hon RAY HALLIGAN: It might at first glance appear normal. I will give an analogy. I have no detail on what the honourable member is talking about in respect of rents in America and the fact that ours appear to be three times higher. However, there are situations where often we do not compare like with like. People often provide explanations and seek answers, but they are not comparing oranges with oranges. There are examples in the South Pacific where people receive a certain wage and many people in Australia cannot understand why those people do not receive what we receive here. They are not comparing like with like. I notice the Hon Bob Thomas is frowning.

Hon Bob Thomas: They are both industrialised market economies.

Hon RAY HALLIGAN: It depends on so many different factors. Why is it that US cars are much cheaper than cars in Australia?

Hon Bob Thomas: Probably because of economies of scale.

Hon RAY HALLIGAN: It goes beyond that. What the honourable member is saying and agreeing to is there are many factors that make up the end result and each and every one of them needs to be analysed.

Hon Bob Thomas: I am saying it is ironic.

The PRESIDENT: Order! Perhaps the honourable member can say it during Committee.

Hon RAY HALLIGAN: There are many factors associated with small business and its profitability; that is reflected in larger businesses also. Everyone would agree that the way to free enterprise is to negotiate. It is important that people who wish to go down the path of self-employment and small business people, must become mindful of that fact. However, what is implemented, whether in legislation or by usage, is implemented for the spectrum of people in business. I am not denying the fact that some small business people need to be protected in some way from the unscrupulous. We are aware that they exist. However, I repeat that we must be careful of not going down the path of over legislating in this area.

When people decide to become self-employed they take on themselves a number of responsibilities that they alone need to accept. One of those responsibilities is to undertake market research. The fact that a shopping centre has been established and there are vacant shops in that centre does not mean that everybody can start a business in that vacancy and suddenly start making money. There must be a sufficient demand for what these people are offering. It is up to the people who want to start that business to establish what is that demand. I have seen people look at a shop frontage. Invariably the sign is still there that indicates it operated in a certain field. For some unknown reason, people believe that if they have some expertise in that area they can just walk in and either take over the existing business or start up that same type of business within that vacant space.

Working hard and doing the right thing was mentioned earlier. That is a very simplistic attitude to all of this. Running a small business is definitely very difficult. It takes an enormous amount of time and it requires expertise. It does not simply happen; one must work particularly hard at it. One must also be mindful of changes in demand - what it is people want and what is happening in the industry. It is no good continuing to do something just because it has been done that way for 20 years. If an industry changes direction - information technology is an obvious industry to mention - unless those involved keep up they will be left behind and might wonder why they are not making money.

After undertaking market research, prospective lessees should also undertake a feasibility study. Are they physically able to provide what it is people are demanding? Then, of course, they must determine the viability of the business - the financial aspects of it. It may be physically possible - the business may be able to obtain the product either here or overseas at a reasonable price - and people might be prepared to pay for it. Then they must go through the sums. One aspect of viability is competition. Members may be surprised at the number of people who have said to me over the years that their business has no competition, it does not exist. What they mean is that there is not another business of that type operating within 200 metres. Unfortunately they are also unaware that there can be direct and indirect competition. Again, that is something they may need to learn, but it is certainly something about which they should be counselled.

It is from that point that they develop a business plan. Unfortunately, even many of the successful businesses in the marketplace today have never developed a business plan. They do not know how to and they have been particularly fortunate. If members need an analogy, they should look at some of the professional people who go through university. Doctors are a good example. They are technically competent and we accept that. However, members should ask them what they learnt about starting a business during their seven years or so at university. Of course, the answer is nothing. Their course does not include information about how to start and operate a business. Invariably they find a premises and there is a demand for what they are offering. One might say that they succeed in spite of themselves. It is not that they have caused anything to happen, but there has been sufficient demand for what they are offering.

I am not suggesting for one moment that if a business has competition it should not start operating. However, those involved should be mindful of all the circumstances. I refer again to the organisations such as the Small Business Development Corporation and the business enterprise centres. They can provide advice and guidance about what business people should do and what they should watch for. Often people go into business knowing all they need to know but still do not succeed. At the end of the day, those people usually understand exactly what has happened and do not become bitter and twisted and want any number of amendments to legislation.

I will cite the example of a person who worked for a fire door company. I will not mention names. He managed the Western Australian establishment of a very large national company but was retrenched. He was technically competent and also knew about the management and sales aspects of the industry. He was also aware that, because there were so few players in the industry, if he started the business it was highly likely that the large players would try to undercut him. Because he did not have all the capital that they had, that action may well put him out of business. Knowing that, he was prepared to try. Fortunately, he had sufficient property to manufacture the doors in house - he did not need to expend a considerable sum on commercial premises. However, the prediction came true. He started the business and was able to tender for contracts.

The larger businesses wanted his business and were able to undercut him. In a relatively short period - about 18 months - he had to look in another direction. The point is that he understood what he was up against. It was not nice, admittedly, but that is the commercial world, and he was aware of that.

Hon Norm Kelly: Are you supporting a move to allow a few people to control new entrants into a market?

Hon RAY HALLIGAN: It is a matter of whether one can do anything to change that situation. As I said, that is the way of business. There should be some protection for smaller businesses. Hon Norm Kelly mentioned the scenario of larger businesses and referred to Liquorland. We know that those businesses can look after themselves. They will always find ways and means to bypass any legislation we are likely to put place. That is why we should be particularly careful. It is inappropriate to put up barriers to allow some people through who do not know what they are facing.

Of course, the prospective lessee is also responsible for organising his or her finances. It probably would not surprise members to know that many people go into business undercapitalised. They find themselves in difficult circumstances, often due to their own ineptitude. They have not thought things through to their best possible advantage. They are not prepared to accept the situation when the figures do not stack up - when they test the viability of their proposal and it is marginal at best. Unfortunately there are those who, when they ask themselves what other options they have, believe that they cannot find a job, and they go down that path anyway. They will mortgage the home - the wife will not be pleased - and put all the money into the business. Then far too many lose that home. If we can do anything to alleviate their suffering - the best way to do that is to stop them going down that path - it would be to cause them to get counselling.

Hon Norm Kelly: The best way is to improve the unemployment figures, so that fewer people are in that situation.

Hon RAY HALLIGAN: That is another assumption. That means that we should stop people from exploring self-employment. It is a legitimate employment avenue.

Hon Norm Kelly: You made a good point in relation to people being retrenched, receiving a big pay out and then looking at their employment options. Often self-employment is their only option. That is one of the difficulties.

Hon RAY HALLIGAN: Another example is of a retrenchment in which, again, an unknowing person looked in the newspaper and saw a shop for sale. That shop sold baby and children's wear. It was just around the corner from where he and his wife lived, and this fellow convinced his wife they should purchase it - they could walk to work and it was their our own business - only to go broke nine months later. Why? It was because the young people had moved further away and the demand was not there. I see nothing wrong with exploring self-employment. Although I am not suggesting that everyone can become self-employed; far from it. The principles of self-employment need to be taught in school. People should also be taught that they need to obtain information and that agencies and people will provide them with information that will assist, counsel and help. At the end of the day while the decision is theirs, they should ensure they have prepared themselves for the steps they are about to take.

It has been said for some considerable time that the payments made for professional advice are not a cost to the business, but an asset. However, many people do not recognise that fact. One can advise them to go to an accountant. I am praising accountants this time, Minister for Finance; they can help. Often that advice will be ignored. One of the statements made to me by thousands of my clients is "I need to know about taxation".

Hon Max Evans: You have to make a profit first.

Hon RAY HALLIGAN: I would shake my head and say that was the last thing they needed to know, because they can employ a professional for that, and unless they make a profit they do not pay tax. What came first?

Hon Kim Chance: A GST.

Hon RAY HALLIGAN: That will save them money.

Hon Kim Chance: Not if they are buying petrol.

Hon RAY HALLIGAN: It will assist their cash flow.

Hon Bob Thomas: It will take money from their customers' pockets.

Hon RAY HALLIGAN: Unfortunately, I do not have time to educate Hon Bob Thomas.

Hon Bob Thomas: The customers will have less to spend.

Hon RAY HALLIGAN: It is important that everybody be allowed to explore self-employment, but it must be done in the right way. Professional advice is particularly important. Professional advice is available. In some specific areas there may be no charge and in other areas there is a charge. People need to be aware of the advice that is available. We would have far fewer bankruptcies and far fewer problems with landlords if professional advice had been sought.

Hon Norm Kelly: That has been proved. The failure rate for people who participate in a small business course - I have done them myself - is far lower than it is for those people who have not gone through them.

Hon RAY HALLIGAN: There is still no guarantee of success, because demand shifts and industry may take another direction and if one is not up with that one can be left behind. These processes are available - they have been around for some considerable time - and it is particularly important that they are utilised by people who wish to become self-employed. One area of concern relates to banks. As part of their lending criteria banks should insist that a person has gone through a training course similar to the one that Hon Norm Kelly mentioned. That is one way to protect their shareholders' money. It is not as though they would be asking people to outlay thousands of dollars. That would be in the interests of the prospective small business operator and also the bank, looking after the interests of its shareholders. That is particularly important. I hope one of these days the banks will go down a path of this nature.

I hope that the majority of members opposite will accept that the Bill as presented by Hon Max Evans does not necessarily require the innumerable changes that have been proposed.

Hon Bob Thomas: Improvements.

Hon RAY HALLIGAN: I acknowledge the concern and the intent of the movers of the amendments. However, many of those amendments could detract from the Bill and possibly cause hardship to those people whom the movers are trying to protect. I support the Bill.

HON KIM CHANCE (Agricultural) [2.44 pm]: I welcome the Bill, as do other members of the Opposition. If the Bill helps to resolve some of the horrendous situations that small business lessees are confronted with on a daily basis, particularly in respect of sometimes greedy and unreasonable property owners, it is surely worth our support. The Bill does that, and the amendments proposed by the Opposition will assist even further. In saying that though, I have noted carefully the comments made by Hon Ray Halligan, and I need to consider what he has to say during committee. He made some good points and we need to take them on board.

I endorse the way in which the Government has used the Green Bill process as an aid to the consultative phase of this Bill. I have always endorsed the use of the Green Bill process. It is an under-utilised but effective way of ironing out possible problems with proposed legislation. I first came across the Green Bill process in the Fish Resources Management Act in 1994, which was subject to the Green Bill process for at least 12 months prior to its introduction into this place. That was a major change in a large piece of legislation, and some of the changes involved were highly controversial. However, by the time that legislation had been through the Green Bill process my recollection is that it breezed through in a matter of a couple of days, yet it was fundamental change and legislation on a massive scale. Hon Ken Travers and I share an interest in water law reform. Hon Ken Travers has been trying to persuade the Minister for Water Resources that the route he needs to follow in terms of the implementation of the Council of Australian Governments' proposition is the overhaul of the 1914 Act.

The Green Bill process is a good one and it has made a contribution to the ready acceptance that this Bill has had across all parties in this place. There is no doubt that there is a critical need for legislation such as this to provide some countervailing influence over the exponential growth of control by major chains in the retail sector.

There can be no doubt that that level of growth of market power in that sector is exponential. It is not only exponential in that area; the growth of the major chains in other areas of marketing, particularly the marketing of agricultural commodities, is extremely concerning and threatens some of the marketing arrangements on which we have relied in the past to give producers of goods some degree of stability.

In Western Australia, indeed nationwide, we lack those same anti-trust laws which protect private enterprise in the United States from exploitation by holders of significant market dominance. Anti-trust laws do not necessarily guarantee fairness in every case. I am not necessarily an advocate of anti-trust laws because I have seen their effect in the United States to sometimes be counterproductive to the consumers' ultimate benefit. In the absence of any form of anti-trust laws, save the commonwealth legislation via the Trade Practices Act, which could possibly be described as a pro-competitive piece of legislation, it is necessary for us to frame legislation which gives retailers some protection. I have never been a commercial retail tenant. However, I have been in a position where I have observed the operations of large companies which have been inclined to use their market power against small operators in a manner that was so predatory that, had it occurred in the context of industrial relations, it would have resulted in a national strike. This is a point that one of my colleagues made yesterday which must be underlined - the circumstances of the abuse of market power. Examples were quoted in this place yesterday and today and were so severe that they could not possibly be contemplated in any other jurisdiction in which the relationship of one party to another is mediated.

Small business operators cannot strike; they are entirely powerless against the predations which have been mentioned in this debate and which I have seen occur at first-hand. Labor members have recognised the massive imbalance that exists. In supporting and welcoming the Government's strong initiatives with this legislation, we will seek to provide even more power

through our amendments in areas dealing with unconscionable conduct and other important areas. Building owners and commercial landlords are entitled to a fair return on their investment. However, a fair return does not include the use of dominant market power to seize an overwhelming slice of the market share from their customers. That has already occurred, particularly in the service station industry, and we cannot do anything about it. That has occurred at the cost of family businesses and consumers alike because every time a major fuel company uses its market power to shut down a franchise holder, it cuts out yet another small business family and perhaps one or two other families who may have been employees of that business, and the consumer must drive further to the remaining service station and join the queue.

Hon Ken Travers: Sounds like a milk vendor.

Hon KIM CHANCE: It does sound rather like the milk vendors and I might refer to that shortly.

Hon N.D. Griffiths: I am looking forward to your speech if you do, because you have a great knowledge of the milk vendors.

Hon KIM CHANCE: I will touch on them in a moment. A fair return and the pursuit of that fair return does not excuse the use of power to arbitrarily terminate a lease to a tenant whose investment will be destroyed by that termination. I will not give examples in which that has occurred as examples were quoted yesterday and have been quoted again today. The example that struck home to me was similar to one that I heard about in which the shopping centre owner encouraged a person, in one way or another, to operate in one specific type of retailing - the case I heard about was a florist shop. Within weeks of signing the renewal of the contract, the shopping centre owner then permitted another florist shop to open in the same small shopping centre. It would be verging on the illegal if that were to occur in almost any other jurisdiction.

Recently we have been able to consider both the third and the sixth reports of the Standing Committee on Public Administration, in which that committee reported on the devastating results of a decision to alter the legislative arrangements affecting small businesses in the milk distribution industry. Because it was a government decision which caused such misery for those people, there was an avenue for appeal and hopefully still an avenue for redress. Unlike the milk vendors' case, there is no avenue for appeal for these small business operators. There is no possibility of redress for those people whose businesses have been destroyed by the selfish and completely inconsiderate actions of a giant property owner. That is why this legislation is so vitally important; it is not perfect, but it is a start.

Yesterday I received a letter from Mr Greg Spooner of Balga which deals with the effect of the Bill on the interpretation of what constitutes "floor area" in the definition of the Bill. The definition of "floor area" is critical to the application of the Bill. I would appreciate it if the minister noted the concerns of Mr Spooner. Indeed, I am happy to provide a copy of his letter if the minister wishes.

Hon Max Evans: Okay.

Hon KIM CHANCE: I hope that he will address the matter in his response to the second reading debate, even if not in detail. This must be considered during the committee stage. I am very grateful to Mr Spooner for bringing this matter to my attention. Hon Tom Stephens also received a copy of the letter. The definition of "floor area" is critical to the Bill's implementation because the protection of this Bill does not apply to premises exceeding 1 000 square metres.

Hon Max Evans: What is the nature of his business? Is it a large department store?

Hon KIM CHANCE: He has raised the concern generically. However, it would have particular application in country areas where there is an external floor area. It is not so much areas contained by walls.

Hon Max Evans: I think Ken Travers mentioned it.

Hon Ken Travers: He referred to the tarmac area around service stations.

Hon Max Evans: It is not repetition now.

Hon KIM CHANCE: My letter arrived only yesterday.

Hon Tom Stephens: My letter arrived today and you have taken away half my speech.

Hon KIM CHANCE: Once premises exceed 1 000 square metres, the only legislation that is applicable is the Property Law Act. It is taken outside the scope of this Bill. Going into the Property Law Act compels the tenant to seek legal remedy from the District Court rather than the Commercial Tribunal. I will refer to that letter. Mr Spooner's letter reminds us that -

> In the Ministers introduction of the Act he stated that it was meant to exclude large department stores.
>
> Judicial interpretation of floor area however has seen the floor area of the shop itself potentially relegated in some cases to a small portion of the final equation with, in the words of our own Justice Ipp, that the floor area is . . .

I will now read part of a ruling from Justice Ipp which is quoted in the letter. It continues -

> 'so much of the surface area of the demised premises designed and available for use in the retail shop the subject of the lease' . . .

That is the definition that Mr Spooner advises us has been used for the purposes of judicial interpretation. The reference for that is Monarco and Foster v Anardo Pty Ltd and Australian Retail Properties Pty Ltd. He states also -

> In the city and certainly in a shopping center that may not be a problem as shops generally are just shops and the floor area is the floor area of the shop building, or is curtailed by the walls in a shopping centre.
>
> My concern is rather more for country areas.
>
> Where land is available a shop or non franchised service station may be positioned on a large block with an expanse of hot mix bitumen on the property for dust control or appearance or simply because the buildings are set back some way from the road. Judicial interpretation means that because people drive on or across that area to get to the buildings to park or refuel etc. that area becomes floor area.
>
> If a tenant measures up the area of the shop and the 'driveway' and related buildings and comes to a conclusion that the area is still under 1000 m^2 (let us say 800 m^2) then takes on the landlord in an effort to come under the protection of the Act and wins the landlord has the ability to, given the availability of land, simply place 210 m^2 more under bitumen for under $10,000, call it a truck parking area and force the place outside the Act for the next tenant at the termination of the current lease.
>
> As the premises then come solely under the Property Law Act this compels the tenant into the District Court . . .

He then makes the point that I have already made. He states also -

> The interpretation may also be doing a disservice to other small property owners in the retail area who have small shops on large blocks both in the city and the country.
>
> I believe the Act should have this loophole closed, by reinforcing the point that it is intended to exclude department stores and support small business operators and emphasizing the role of buildings rather than "other areas" that are not directly related to the business.

I do not know how we will handle that matter.

Hon Max Evans: In a short time I will not be able to give you an opinion. Is what he is putting forward only theoretical, or is he talking about his own property?

Hon KIM CHANCE: The minister should speak to Mr Spooner. I do not know whether it is hypothetical or real, and the small business lobby groups may be able to advise us whether it does manifest as a problem, but Mr Spooner certainly regards it as a problem, or a potential problem -

Hon Max Evans: Many things can be regarded as a problem.

Hon KIM CHANCE: - to the extent that he has chosen to write to a number of members of Parliament, and I am extremely grateful that he has.

Hon Max Evans: Otherwise you would have nothing to say!

Hon KIM CHANCE: The Opposition has recognised at least part of Mr Spooner's point to the extent that we have tabled an amendment to clause 4 of the Bill to delete the figure of "1 000" square metres and substitute the figure of "2 000" sq m.

Hon Max Evans: For a service station on half an acre it would be quite easy to add another 200 sq m and go to up to 2 000 sq m. It is not hard. We just keep extrapolating it out until we take over the whole farm.

Hon KIM CHANCE: Yes. Not all of Mr Spooner's issues are picked up in the amendment, as far as I can determine. We should consider those matters very carefully when we meet as a Committee of the Whole, and I look forward to the Minister's response. I am extremely pleased that we have been able to get to this legislation at this stage. I know that some of my colleagues may be critical of the Government for taking some years to get this legislation to this place, but it is better to go through the consultation phase in the way that we have gone through it and to get a result where every party in the Legislative Council supports the legislation and, indeed, wants to improve the legislation. I look forward to the discussion in the Committee of the Whole, and I welcome this Bill in whatever form it may finally appear.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.05 pm]: It is often the case in this place, where members have particular areas of interest and specialty, that when certain issues come before the House, we can guarantee that certain members will rise to talk on those topics. Some Bills attract many more contributions from all sides of the House than do others -

Hon Max Evans: The Dog Act!

Hon TOM STEPHENS: - particularly when they are in the category that the Minister for Finance has just mentioned. I have not spoken regularly on issues of this type -

Hon N.F. Moore: So why change your strategy now?

Hon TOM STEPHENS: For a number of reasons, including the fact that when I started my young life -

Hon N.D. Griffiths: Your young life? How many lives have you had?

Hon TOM STEPHENS: A young life, a mid-life and an old life.

The DEPUTY PRESIDENT (Hon J.A. Cowdell) Order! The Leader of the Opposition will sort out his age situation shortly.

Hon TOM STEPHENS: I grew up in the small corner stores and general businesses that my father used to run in the country areas of New South Wales. I grew up always watching the operations of a small business person who struggled in the face of the various ups and downs of the commercial life that he faced. I am sure we have all had the formative experience of seeing what goes on in the lives of our parents and what factors have interacted in their business and working lives to create either prosperity or adversity. I am speaking about the late-1950s and early-1960s, when the emergence of the large business chains in those areas started to impact upon the operations of small businesses and to apply pressure to the small corner stores, which had until that time been quite successful. The planning decisions that were increasingly being made in those times impacted not so much directly upon the business of my parents, but certainly upon the shape of business soon thereafter. Those planning decisions allowed stores to be concentrated in major shopping centres, and that often took business away from the main streets of towns and into new locations. Those shopping centres provided, by virtue of the planning approvals, very advantageous opportunities for the developers, the owners and the operators. This changed the whole face of commerce, which responded to those changes. Typically, businesses like the corner store were placed under enormous stress, and regularly folded. In my family's case, fortunately, that was not the experience. However, the edge was certainly taken off the prosperity of those businesses. Many stores folded and neighbourhoods lost the advantage of businesses operating in close proximity in the suburb or locality. People were increasingly moved in directions away from the corner store and main streets of towns to designated shopping centres in new areas.

This state and national trend applied in country and metropolitan areas. In the vast Pastoral and Mining Region, I have seen this trend impact on the lives of neighbourhoods from Kununurra to Kalgoorlie. Businesses have been buffeted and reshaped by planning decisions of local authorities allowing new shopping centres to be established. Often, these centres have grabbed a competitive advantage as the positioning of some centres has determined that these will be the only successful centres for retail activity. Some centre owners and operators have been advantaged indeed in the weighting of the overall situation. Previously, operators had some prospect of competition between retailers spread more consistently throughout the community. With the concentration of retail outlets at one big centre, certain owners developed real clout. In response, legislative initiatives have been applied in almost every jurisdiction in the country. Some template legislation on this issue, to which other members have referred, led to much debate in the national Parliament. Those provisions are now part of the federal Trade Practices Act regarding commercial tenancies. In any piece of law, the challenge is always to achieve the right balance and to find ways to ensure that the various participants on any playing field have the opportunity of equity and justice.

I begin my contribution to this debate by referring to one commentary on this legislation.

Hon Derrick Tomlinson: What - you're only just starting!

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Order!

Hon N.D. Griffiths: The Leader of the Opposition is making a contribution to the debate, unlike some other members.

Hon TOM STEPHENS: The commentary commences with the thought that the basic problem is that most of the parent Act, let alone the Bill itself, is misconceived. The commentary reads -

> It proceeds on the basis that lessees are simple, helpless folk and lessors are powerful, unscrupulous people who all own major complexes like The Galleria or Booragoon.

Hon Max Evans: You are in conflict with your colleagues in the way they spoke before.

Hon TOM STEPHENS: Unfortunately the concentration of the Minister for Finance lapsed. The preamble to this comment was that the challenge in any area of law is to achieve the right balance. Commentary will be provided from the left and right, so to speak, on any issue of law. The challenge for Parliament, government and the community is to get the balance right.

Hon N.D. Griffiths: One must put the law in context.

Hon TOM STEPHENS: I start my remarks by drawing on commentary from this angle -

> This is not to suggest that most of the Act is appropriate even for the major centres, but rather to draw attention to the thousands of shops whose owners are themselves small-business. Typically, given the domination of the larger

> centres, these share the interest of their lessees in viable retail trade and stable long term tenancies. This precludes many of the practices at which the ever more detailed provisions of the Act are apparently directed (with very little practical effect).

That representation to me observes that the owner of a shopping centre or a group of shops need not be in the category of the massive property owning giants which straddle the national stage and who comprise the list of Australia's wealthiest men and women. It can include people of modest circumstances and means who have invested, for example, their superannuation in property. They may have borrowed, supplemented by superannuation arrangements, to invest in these properties for the long term. In those circumstances, they look for an investment which is reliable, with a reasonable and fair return on their investment.

In those circumstances, a confluence of interest exists between the owner and the lessee. Nothing is done by the owner to place at risk the viability of his or her tenant; rather, he will do everything possible to bolster the capacity of the tenant to take out long-term leases which continue to attract a good many shoppers and visitors to those centres. As a result of that shared interest, most frequently, almost universally one would hope, landowning business interests and property-owning people will see that their interests are best served and protected by bolstering the strength of the shopping facilities to attract trade.

Landlords will enter into a variety of arrangements with their lessees that will build a determination on the part of their tenants to be proactive in bolstering their trade. In turn, there will be tenants who are interested in striking up commercial arrangements with their landlords that reinforce the interests of the landlords in bringing customers to shopping centres. Sometimes tenants will deliberately seek a rental based on a percentage of turnover. Some people will want their leases to be structured in that way because they know that if their landlord's return is based on an equitable formula that includes the notion of turnover, the shopping centre owner will be very keen to make sure that that shopping centre and all the facilities around it will be a very pleasant place to which shoppers will be attracted and thereby increase turnover for the tenants and the landlord.

This provision is therefore quite sensibly retained within the statutes of this State, despite the fact that, historically, some sectors of industry were clamouring for a clamp-down on formulas that somehow insist upon lease arrangements between tenants and landlords proscribing the packaging of the cost of a lease in the way I have described. That would be most unacceptable when we recognise that, typically, there is a commonality of interests between the tenant and the landlord.

I refer again to the representations that I received and about which I spoke just a few moments ago. The view from this direction is that there is an important misconception in the view that constant fiddling and government intrusion into ordinary commercial contracts will help retailers in a meaningful way. The commentary says quite simply that it will not.

Typically retailers' problems are driven by some fundamental factors. The state of the economy is probably the most fundamental factor facing retailers. There are, of course, other factors such as the increasing dominance of major chains and the excessive provision of retail space. Some planning regimes that have operated throughout the State have impacted very adversely on retailers' prospects in many parts of metropolitan Perth and in other population centres of the State. Those problems are not easily addressed by fiddling at the edges of retail leases that small shopping centre tenants face.

I will digress momentarily: Perhaps the worst threat that retailers have looming at them at the moment is the potential arrival of a goods and services tax. The arrival of that awful tax package, if it were to happen as a result of a catastrophic result at the federal election, would deliver to the Australian community the misfortune of another term under the coalition Government. We would see the most devastating blow indeed to small business and to other businesses throughout the State and nation. It will be much more deleterious to businesses than the standard of retail leases that generally operate within the State. Quite seriously, that is the worst prospect with which the sector is faced, rather than the problems that exist for many, in effect a very small proportion of commercial tenants in this State.

Too often, tinkering with commercial tenancy legislation delivers real advantages for the businesses of the legal fraternity. The prospect for small business proprietors of being able to make a fair return on their investment and their effort is diminished every time they are sent in the direction of the lawyers whose support and professional assistance is required before they can work their way through amendments to the statute and the impact of those amendments and many complex aspects of law on the commercial arrangements that they have entered into with their landlords.

Regrettably for the small business community, its problems are not easily solved simply by fixing up that aspect of law to limit the capacity for landlords to engage in unscrupulous behaviour with regard to lease arrangements. Whether or not variable outgoings such as management fees or land tax are included in commercial lease arrangements will in the end not determine the viability or otherwise of the majority of businesses; rather, those businesses will have their viability determined by state and federal Governments getting the economic levers and handles in the right position and not imposing upon the economy of the State tax regimes, planning decisions and other decisions of government that will produce deleterious results for the business community and indeed the wider community of the State.

In the view of a person from whom I have heard during my consideration of the Bill, the problems inherent in imposing a regime that produces a single inflexible formula to arrive at the percentage of variable outgoings to be applied to all premises should be taken on board. Important details of the Bill are questioned because the Government of the day has not fully researched the issue, but has worked on the assumption that the direction in which it is moving with this initiative is the only way to respond to the problems that have been presented by the small business community.

One important such detail relates to the basis for the calculation of a lessee's contribution to the lessor's outgoings, according to this particular contribution that I have received. It says -

> The provision that variable outgoings can be apportioned solely on the proportion of retail space occupied has been treated as self-evidently right and fair.

My scribe writes to me and says -

> It is not self evident at all. For example, especially considering that substantial outgoings (for rates) are based on gross rental values, what is inherently unfair about apportioning outgoings as a proportion of rent payable, or some combination of both?

When the minister responds to the second reading debate he might comment on the concerns put to me by my correspondent. The correspondent says -

> The position with mixed purpose buildings, e.g. ground floor retail and other floors office space, is uncertain at best, and potentially a rich source for confusion, disputes and litigation. Another plus for the lawyers.

I hope that the minister will respond to that concern. The adjustments that this provision will encourage will inevitably lead to a situation in which outgoings paid to the lessor will at some stage exceed 100 per cent of his actual costs. That will not involve any difference in the total income of the lessee. The appearance, not the reality, of unfairness will be what causes more heartburn, conflict and trouble between tenants and landlords, rather than leaving things as they were, says the argument put to me.

Hon Max Evans: You seem to be building an argument that we are not making any worthwhile changes and we should leave it as it is.

Hon TOM STEPHENS: As I said in my preamble, in any area of law, one must find the balance. Here is an argument that is being put from one side of the discussion, and in a moment I want the minister in his reply to respond, hopefully in detail, to the concerns that have been put to me by this correspondent.

Hon Max Evans: You are being a bit of devil's advocate.

Hon TOM STEPHENS: I want to consider another side of this equation, because this correspondent fears a substantial erosion of the rights of owners of retail properties.

Hon Max Evans: Who is the correspondent; what is his background?

Hon TOM STEPHENS: A shopping centre owner.

Hon Max Evans: A private one or a company?

Hon TOM STEPHENS: Private. I will come back to that in a moment.

We know also that the amendments that are being made to the Act are welcomed by advocates for small business within the Western Australian community. Proposed further amendments have been placed on the Notice Paper by my colleague Hon Bob Thomas.

Hon Max Evans: And Hon Ken Travers.

Hon TOM STEPHENS: Has he placed amendments?

Hon Max Evans: Yes.

Hon TOM STEPHENS: I missed that small detail. I will not need to address that.

Hon Max Evans: You have not missed much, but it is there.

Hon TOM STEPHENS: My understanding is that those amendments have the support of sections of the industry and practitioners in this field who are advocates for the small tenants of these major shopping centres who have experienced difficulty.

Hon Max Evans interjected.

Hon TOM STEPHENS: A view is held that even these amendments do not go far enough in redressing the imbalance that is considered to exist in this field. I throw down to the minister who is handling this legislation -

Hon Max Evans: But you said there was not much imbalance and it was going well. That was the argument you put to us before.

Hon TOM STEPHENS: No, the minister was not listening.

Hon Max Evans: I was listening.

Hon TOM STEPHENS: I am starting to worry about the Minister for Finance if he cannot hear my -

Hon Max Evans: I am getting confused by what you are saying.

Hon TOM STEPHENS: I will go over it slowly so that the minister gets it right. I am saying that the minister must strike the balance -

Hon Max Evans: I know that.

Hon TOM STEPHENS: I have outlined how a person from the shopping centre owner side of the equation has constructed a set of arguments, and the minister is obliged to respond to those concerns that I have put before the House on behalf of that sector. I am sure that scribe has accurately reflected the legitimate concern of that group within our community.

On the other side of the equation are the concerns of others who are the advocates for and tenants of shopping centres whose experience has not been so fortunate, whose landlords are not so committed to principles of equity and justice, and whose experience of life is to have been placed at a disadvantage by having gone into the premises of avaricious, greedy, rapacious and unjust property owners. Unfortunately such property owners exist, and their interest is consistently championed in this place by members opposite. I want to ensure that the minister takes on board the concerns of the landlords who are trying to do the right thing and to be decent landlords and do not want their circumstances to be messed up by regulation. However, at the same time, I want to ensure that the people who have had a different experience of commercial life are not left unprotected because they have fallen into the clutches of landowners who have decided to be rapacious, greedy, avaricious and unjust in their dealings with vulnerable tenants.

A case is put that the Act has not addressed the conduct known as misleading and deceptive dealings with tenants. The argument is put that the mandatory provision of disclosure statements and tenants' disclosure obligations which forms part of the Act goes some way towards enforcing accountability. However, any action to address the harm caused must be taken through the Federal Court. The immediate deterrent should be to introduce penalties for non-disclosure of information or for supplying information judged by the Commercial Tribunal to be misleading or deceptive, up to $50 000, and for compensation to be paid to the aggrieved party. That is the case that is put to me from someone on this other side of the ledger. It is unsatisfactory to require tenants to go to the Federal Court for redress. I ask the minister: Has consideration been given, or will it be given, by the Government to find some way - if not in this Bill, in future legislation - to tackle misleading and deceptive conduct by those shopping centre owners and managers who induce tenants into arrangements with misleading information on, for instance, tenancy mix?

Hon Max Evans: We do this in the House the whole time.

Hon TOM STEPHENS: On the minister's side of the House? Does the Government do this the whole time? I hope that eventually, at the annual general meeting, the electors will get the chance to dish out tough medicine to those on the other side of the House who peddle misleading information, which the Government so often does.

Hon Max Evans: You know what it is all about.

Hon TOM STEPHENS: The minister is responsible for legislation and he should be considering whether he thinks it is right that if landlords engage in misleading and deceptive conduct, redress can be obtained only by going to the Federal Court. Is it perhaps more appropriate for aggrieved tenants to have access to the Commercial Tribunal to obtain compensation from a party whose behaviour might fall into that category?

On the question of misleading information as to tenancy mix or anchor tenants, a tenant may quickly sign a tenancy agreement on the basis that the post office has just been secured for the shopping centre. He may then be told that the post office has gone to the competitor down the road. The majority of that tenant's business might be lost because many potential customers will go to the shopping centre in which the post office is located.

Hon N.D. Griffiths: Blame John Howard for that. He is closing down the post offices.

Hon TOM STEPHENS: What if conduct has been knowingly misleading and deceptive? Hon Muriel Patterson is a kind-hearted and generous woman at times, and surely she agrees that someone who had experienced that sort of unconscionable, misleading and deceptive behaviour should be entitled at law to put a case to the Commercial Tribunal as to why there should be an opportunity for redress.

Hon Muriel Patterson: Every day in business people have to make decisions, and they have to be based on judgments.

Hon TOM STEPHENS: What if those decisions have been based upon deceptive, misleading, false and unconscionable behaviour?

Hon Muriel Patterson: Generally those types of businessmen do not last because they lose their reputations.

Hon TOM STEPHENS: What about the injured party?

Hon Ray Halligan: I suggest the injured party is somewhat foolish to rely on the word of one person and commit funds to whatever he was doing and therefore lose them. He needs to check with other people as well.

Hon TOM STEPHENS: If a tenant of small means does all those things but still has been misled by unconscionable behaviour, the only redress at the moment is to go to the Federal Court of Australia. Another alternative that should be open is to give such tenants access to the Commercial Tribunal. In those circumstances the Government should consider an argument to allow tenants access to this tribunal for redress. However, up to this point the Government has not done that.

I will give some examples before I conclude my remarks. To take the example of the anchor tenant, in various parts of my electorate where there are no mail deliveries in a town, the presence of the post office is very important. Nearly every person in the town goes to the post office every day. If prospective tenants have been deceived into thinking that the post office will be in a particular shopping centre, and after they have signed a tenancy agreement they suddenly find that it is not, that has a significant impact on their potential business.

Hon Ray Halligan: I like your use of the word "deceived". Could you explain that a little more?

Hon Kim Chance: Told that it was so when it was not so.

Hon TOM STEPHENS: That is right.

Hon Ray Halligan: And you rely on that. I would suggest you are a fool.

The DEPUTY PRESIDENT: Order!

Hon TOM STEPHENS: The world is littered with fools. The question is what redress such people have.

Hon Ray Halligan: The courts.

Hon TOM STEPHENS: The Federal Court, but there is a cost in doing that. However, at the moment the House is dealing with the opportunity for the Government to amend the statute that governs the Commercial Tribunal in order to give access to those people who have been fooled.

Hon Ray Halligan: The member is suggesting they were deceived; it was a criminal act. The courts are still available to those people.

Hon TOM STEPHENS: The Commercial Tribunal tries to strike a balance in this area between vulnerable prospective tenants and people who peddle in unconscionable behaviour. The opportunity exists for statutes like this to be amended in order to create an opportunity for redress through the Commercial Tribunal.

Hon Ray Halligan: The member should continue his argument. He may convince me yet.

Hon TOM STEPHENS: Such tenants could also put forward the number of expected patrons as a legitimate argument. The question is whether the landlord should be faced with the prospect of paying compensation to an aggrieved party. A case exists for access to the Commercial Tribunal in order to take action against shopping centre owners and managers who induce tenants with misleading information as to tenancy mix.

Unconscionable conduct will commonly involve the use of, or insistence upon, a legal entitlement to take advantage of a special vulnerability or disadvantage in a way that is unreasonable. Once again, the argument against the inclusion of this section in the commercial tenancy legislation is that it forms part of the federal Trade Practices Act. The necessity to take the action through the Federal Court is beyond the capability of many small business proprietors.

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon TOM STEPHENS: I was previously dealing with some of the concerns of one section of the community which, according to my correspondent, fears -

> Increasing regulation of retail tenancies will create increased scope for uncertainty, disputes, litigation and non-productive expense.

My correspondent continues expressing the fear that these measures-

> . . . will not decrease lessees' overall costs.

However, the correspondent states -

> In the end, a lessee will decide what total costs are acceptable (irrespective of how divided between rent and outgoings, or for that matter, wages). Conversely, a lessor will decide what minimum return on his investment is acceptable (again without regard as to how the various elements of that return are arrived at). A retail lease, like retail trade itself, is subject to the laws of supply and demand, that is, market forces.

The correspondent continues -

> Why any government should insist on becoming a major participant in that process is hard to understand.

However, some players in this area of commercial tenancy have had a different experience altogether. They have not experienced beneficial ownership, a landlord who acts conscionably, honestly and fairly but rather incidents that depict unconscionable conduct. Some landlords have linked themselves in contractual arrangements with tenants that cry out for redress. With this legislation before us, the Government needs to explain why this statute does not include a provision for penalties for landlords who engage in misleading, deceptive and unconscionable conduct. I have two examples which relate to businesses which trade under the name of Old Shanghai in Northbridge and Fremantle. I am told that the Northbridge Old Shanghai comprises nine tenancies forming an Asian food hall and drinks outlet.

Hon N.D. Griffiths: A good place to take the kids.

Hon TOM STEPHENS: Apparently it is not a good place to take one's tenancy agreement, if the argument put to me is taken at face value, and I have no reason to do otherwise. The premises has a head lessor, Anthemis and Glenbury; the nominee and the person who manages the food hall is a Mr Flottman, a proprietor of Glenbury nominees.

[Quorum formed.]

Hon TOM STEPHENS: The tenants are all Asian other than the Bar Shanghai which is owned and operated by the lessor, Mr John Flottman, who apparently also manages the food hall. Many of these tenants have tried to respond to what they consider to be unfair demands placed upon them by this manager on behalf of the property owner. They express concerns of tenants being pitted against one another through attempts to suggest that a particular tenant needs to be "controlled". Patrons are provided with items from a menu not authorised by the landlord and which are said to be the dishes of another tenant. That menu causes division among the tenants. The landlord, through the manager, then insists tenants attend mediation with the commercial registrar. There, the tenant, endeavouring to represent himself, is regularly subjected to traumatising actions on the part of the landlord's agent, the manager. If tenants complain about inflated power charges and challenge the manager to reduce the bills they are sent letters from the landlord's solicitors. These letter are sent immediately and inform the tenant that the sublease provides that in addition to rent he must pay various outgoings associated with the running of the premises. The solicitors, on behalf of their client, use the delay in payment caused by the query to make a threat that they do not intend to give any further notice but will stick strictly to the terms of the lease and that the query represents a delay in payment and, therefore, a default of the lease.

This is for Asian tenants, many of whom have a limited knowledge of the English language. They are then faced with this very belligerent approach by the landlord in response to an inquiry about these charges in reference to power bills. We are told that the tenants are charged a fee for the use of cutlery of $37 000 per annum. An endeavour has been made to charge key money of $30 000 per tenant as a condition of the renewal or extension of the lease. I have been given the extract of the offer to extend the sublease which supports that concern. It refers to new tenants having solicitors advise them on their leases, and these solicitors suggest they then pay them $2 000. Inside this account are additional amounts payable; approximately $42 000 has been identified.

Hon Max Evans: It must be a profitable business.

Hon TOM STEPHENS: Is it a profitable business or what is going on here?

Hon Max Evans: You said earlier how wonderful the landlord is.

Hon TOM STEPHENS: The responsibility of the Minister for Finance is to come forward with legislation that strikes a balance. I am raising concerns with the minister that have been put on behalf of a landlord who conducts himself conscionably, and here we have another side to the equation. I am asking the minister whether he believes that these concerns being expressed by the advocates of these tenants are adequately addressed and provided for by the Act as it exists, and as would be amended by virtue of the legislation that is before the House. Does the minister think it appropriate that some landlords create modern sweat shops in which many migrants set up small businesses and find their tenancy agreement is such that almost all of their income goes into the hands of the landlord by way of payment for these leases, thus reducing the capacity of these families to provide decent wages for themselves for the long hours they must put into the business to meet the rapacious and greedy demands of this type of landlord?

Hon Ray Halligan: Did these people see a solicitor before signing that lease?

Hon TOM STEPHENS: I am now moving on to describe a situation in which, having signed the leases, they are faced with intimidatory actions by the landlord and are trying to find ways to protect themselves. Their circumstances are not adequately provided for yet. Apparently some tenants of food halls have found that their menu is being attached to their lease, and the lease is then being construed as being proscriptive of the type of item that can be supplied by their shop.

Hon Max Evans: Surely they would have seen a solicitor before they signed the lease with this in it.

Hon TOM STEPHENS: One would hope that they have. I cannot speak for all of these tenants, but I can say that some of them have found themselves in deep trouble with what appears to be discriminatory behaviour by the landlord. That is, some tenants are being allowed to have a free ranging menu that competes, in the view of other tenants, unfairly with their menu, while others are being singled out if they happen to query the power bill or the outgoings. They are suddenly being told, "The menu that was attached to your lease is proscriptive. The fact that the type of cuisine you are now serving has extended beyond that menu is the basis upon which your tenancy is subject to either cancellation or a warning that could lead to cancellation of your lease."

Hon Ray Halligan: Your colleagues' colleagues are to be questioned. Surely the lessee, as is normally the case, obtained legal representation to look through the lease before signing it.

Hon TOM STEPHENS: In many circumstances that will have happened. We heard earlier about the regular failure of small business; 78 per cent of new businesses are said to fail. Clearly we have various sections of the ethnic community moving into these outlets to establish their restaurants. It is a familiar pattern of economic activity by new arrivals in this country. These people then find themselves caught up in lease arrangements that allow activity that, on the face of it, looks to me like unconscionable behaviour on the part of the landlord towards those tenants. All I say is that an argument exists for these tenants to be covered by a provision in this statute that might redress the balance. They should have the opportunity to go to the Commercial Tribunal to explain that the behaviour of their landlord represents unconscionable behaviour, rather than leaving small business people such as these with the only alternative to seek redress in another court.

Hon Ray Halligan: Your point is taken, but might I suggest that invariably when a lease is involved, a member of the legal fraternity is involved. I would hope that fraternity understands what these people might go through should they come up against an unscrupulous landlord such as the one you described and provide those people with some form of counsel.

Hon TOM STEPHENS: I am saying to the member that they need not only the aid of the lawyer; they need the aid of the law. The law would be of use to them if it provided them with access to the Commercial Tribunal when faced with unconscionable behaviour on the part of their landlord.

Hon Ray Halligan: Prevention is better than cure and the solicitor who was involved in the lease may very well, and probably would, take up the case if the lessee was placed in the situation you are describing.

Hon TOM STEPHENS: I hear the member's argument and that is one of the approaches that he or I would take in setting up in business. However, many will not and in those circumstances I believe another way is available to level the playing field to ensure that the likes of the landlord I have presented have their actions tested and evaluated by the Commercial Tribunal to determine whether they are engaging in activities that represent reasonable behaviour.

Hon Max Evans: Now you are talking about misleading, but you said the lease had the menu attached. There is nothing misleading. The lease was signed on the basis of the menu. The tenant was not misled into understanding that he could have any menu.

Hon TOM STEPHENS: The use of a menu attached to the lease has been used in an arbitrary manner for some tenants, but not all tenants. When a tenant raises issues about, for example, the disbursement of costs related to the power bill, the landlord refers him to the menu attached to his lease. The landlord tells the tenant he is acting outside the conditions and is at risk of losing his tenancy, despite the fact that the tenant must compete with other businesses in the same food hall who have roamed freely across the cuisine and placed pressure on the business of the tenant who is being threatened with the attachment to his lease. It is said by the advocate for tenants in this particular centre that a discriminatory and arbitrary approach is being adopted.

Hon Max Evans: You said "all tenants". Is the landlord a local company?

Hon TOM STEPHENS: Apparently it is a local company. I named it earlier. I hope that circumstances such as this are not too frequent. That particular circumstance received limited coverage in *The West Australian* of 8 August which describes a couple being bullied out of business. This case involves the same Mr Flottman and the same Fremantle Old Shanghai food markets. It is another example of a couple of Vietnamese tenants whose circumstances are outlined in the article under the heading "Couple 'bullied out' of business". The circumstances that I am presented with describe tenants working 14 hours a day and paying $1 800 a square metre for their tenancy in these food halls. It appears there is an element of using and exploiting people who are in a very weak position within the community. These tenants arrived in this country from Vietnam. In fact, both couples were refugees from Vietnam.

All I can say to the likes of this particular shopping centre management is that, although the balance might not be struck yet in an appropriate way, the evidence of that type of activity among landlords in Western Australia cries out for eventual changes to the law over and above those which are currently being embarked upon by this Government. There is a need to make sure the playing field is level, and that the weak and vulnerable in tenancies such as this are not subject to unfair, unconscionable, dishonest or misleading activity on the part of landlords.

A range of issues have been raised in this debate, not simply by me, but also by my colleagues. Some amendments on the Supplementary Notice Paper need to be tackled. Some of the proposed amendments, if placed on the statute book, would provide a more equitable and balanced playing field than that which currently exists. I hope the minister will explain to the House whether, in the view of this Government, there will be an opportunity to protect those tenants in the circumstances I have outlined today, who are faced with what can only be described as unconscionable behaviour on the part of their management and landlords. I hope a day will come when there is an easier opportunity for redress than that which is currently available to those tenants.

Debate adjourned, on motion by Hon Max Evans (Minister for Finance).

ADDRESS-IN-REPLY

Amendment to Motion

Resumed from an earlier stage, after the following amendment had been moved -

To add after the word "Parliament" at the end of the motion the following words -

That the Legislative Council regrets to inform His Excellency that the Court-Cowan Government continues to fail to properly support the administration of justice, and in particular notes -

(1) the crisis in legal aid;

(2) the treatment of justices of the peace;

(3) difficulties in the prison sentence including prison planning and deaths in custody; and

(4) issues of public safety generally.

HON MURIEL PATTERSON (South West) [4.47 pm]: I add my support to Hon Simon O'Brien's Address-in-Reply motion, in response to the speech of His Excellency the Governor, Major General Michael Jeffery, at the opening of the second session of the Thirty-fifth Parliament on Tuesday, 11 August.

The Government has an excellent forward-looking program, one that each citizen of Western Australia can only benefit from and look forward to. This is the first opportunity I have had to welcome Hon Dexter Davies, who came to the Parliament mid-term as a result of the resignation of Hon Eric Charlton. All members hope that Hon Dexter Davies will enjoy his time in this Parliament, and I am sure he will be of great benefit in his representation.

Hon Eric Charlton gave his services to this Parliament as Minister for Transport to the great benefit of the Western Australian public transport system and the country and city roadways. For the first time there has been a reduction in rural transport freight rates of 7 per cent across the board, which has made the operations of many farmers viable. Hon Eric Charlton instigated changes to the south west roads in my electorate to provide safety and comfort to both industry and private citizens. Western Australia is a huge State with a road structure any State could be proud of. As I travel around my electorate, I find it very much safer with passing lanes and wider roads. I acknowledge the degree of improvement in the short time this Government has been in office.

My congratulations to Hon Murray Criddle on his elevation to the Ministry, as Minister for Transport. I am sure he will prove to be a worthy successor to Hon Eric Charlton. We certainly wish him well. I wonder why the Opposition has spent so much time during the year voicing such negative criticism of the Government.

Several members interjected.

Hon MURIEL PATTERSON: We have had a very good time. We have seen some remarkable changes.

Hon Tom Stephens: You are about the only good member among them.

Hon MURIEL PATTERSON: It is time to look at ourselves and to be grateful for what we have in this country. Last weekend it was my pleasure to attend the opening of the new premises of the Albany Bridge Club.

Debate adjourned, pursuant to standing orders.

CURTIN UNIVERSITY OF TECHNOLOGY AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon N.F. Moore (Leader of the House), read a first time.

Second Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.02 pm]: I move -

That the Bill be now read a second time.

Curtin University of Technology, with over 6 000 overseas students, has by far the largest enrolment of international students of any university in Western Australia. It has been at the forefront of the export of education nationally for some years and has a number of twinning arrangements with international partners in western Malaysia, where international students do part of their course in Malaysia and part at Curtin University's Bentley campus.

The university has expressed the desire to establish a branch of the university in Miri in Sarawak, East Malaysia. This will require an amendment to the Curtin University of Technology Act.

The Curtin University of Technology Act currently empowers the university to establish branches of the university but limits those branches to such places "in the state as the council (of the university), with the approval of the minister, thinks fit". In this respect the Curtin Act is quite different from those of other universities in Western Australia, which places Curtin at a distinct disadvantage. The simple removal of the words "in the state" will open up the possibility for the university to establish an offshore campus.

Although, as a general rule, international students undertake at least some of their courses through attendance at a university campus in Perth, there is a growing trend towards more offshore delivery - partly due to policy changes in countries such as Malaysia and Singapore which signal a move for more education to be delivered in the home country.

The university needs to establish a business arrangement with other parties in Malaysia to operate a campus in Sarawak, as a branch of the university, under the name of Curtin University of Technology. To do this, the Act needs to be amended to provide for the university to carry out its functions and exercise its powers, including the power to enter into business arrangements, both within and outside Western Australia.

Further, the university's statute-making powers will be broadened to include statutes for -

(i) the affiliation with another educational institution, subject to the consent of the governing body of that educational institution; and

(ii) the establishment and conduct of external teaching and educational facilities within or outside the State.

The establishment of a branch of the university will still require the approval of the minister. All statutes must be approved by the Governor, published and tabled in Parliament.

The State Government encourages the export of education from Western Australia. International education benefits the State enormously, injecting more than $420m into the economy each year, as well as generating revenue for the education providers.

Passage of this legislation will facilitate Curtin University's plans to become the first Australian university to establish a campus in East Malaysia. Teaching could commence in 1999 with English language bridging and intensive English courses, foundation courses in commerce and engineering, the Bachelor of Commerce with majors in accounting, economics, finance and marketing, and the first year of the Bachelor of Engineering. Other academic programs will follow. This will enhance the university's presence in the region and add to its international profile. It will also provide opportunities for Australian students and academic staff to study and teach abroad. I commend the Bill to the House.

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

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.04 pm]: I move -

That the House do now adjourn.

Iranian and Lebanese Communities - Adjournment Debate

HON LJILJANNA RAVLICH (East Metropolitan) [5.04 pm]: I must bring to the attention of the House an urgent matter relating to the Iranian and Lebanese communities. The other day an Iranian gentleman, who is very heavily involved in the Iranian community, Dr Razavi, approached my office. He brought to my attention the fact that the members of the Iranian

and Lebanese communities were extremely angry and disappointed by the comments of Pauline Hanson's controversial adviser, David Oldfield. The comments by Mr Oldfield were printed in the *Sunday Times* of 16 August this year. I can assure all members that the comments were not well received. They are racist and the sorts of comments One Nation uses to exploit situations and to divide people. In the newspaper article, David Oldfield is reported as saying -

"Home invasions are ethnically based, Lebanese or Iranian". . .

The media has contacted Mr Oldfield and asked him whether he made those comments, and he vehemently denied them some time ago. Unfortunately, I was advised by my electorate officer that David Oldfield had been on the radio again today espousing exactly the same line about ethic people, particularly Lebanese and Iranian communities, being the cause of crime.

These communities, in deep disappointment, banded together and thought the best way to approach this situation would be to draw up a petition. I tabled that petition containing 500 signatures on Wednesday. It asked the Western Australian Parliament to reaffirm its commitment to a multicultural society and to condemn the racist comments by One Nation members towards those communities. The members of these communities are lovely people. I have had a lot to do with members of the Iranian community and I have always found their behaviour to be beyond reproach. They are very decent people whom this country should be very proud to have.

Hon Kim Chance: Hear, hear!

Hon LJILJANNA RAVLICH: I am confident the vast majority of Western Australians feel as I do. It is only bad apples like Pauline Hanson and her senior advisor, David Oldfield, who peddle this sort of trash about ethnic minority groups. Members of the Lebanese and Iranian communities were feeling particularly vulnerable, given that they had been singled out, for some reason, based on absolutely nothing - no research, no data, no nothing - just the whim of this person to vilify these sections of our community.

What an appalling situation that is. David Oldfield had more to say about other people. He said that 100 per cent of heroin comes from Asia, the implication being that all Asians must be totally responsible for the problems associated with heroin use in this State. He went on to say that multiculturalism destroys the balance. This is the nonsense his party peddles. It picks off groups which it considers may not be in a position to protect themselves or to respond. It identifies these groups and uses them as scapegoats. What a pathetic, cheap shot by this party and its senior officers. This demonstrates that the strategy of One Nation is to attempt to incite hated and prejudice targeted at minority groups. One Nation employs tactics that feed and promote ignorance and a lack of cultural understanding. It is the lowest of the low.

I reaffirm Labor's commitment to Australia as a multicultural society. It is a part of the Government's responsibility to assist all Australians to live together productively and with an equal sense of belonging to this nation.

We do not cop the statements made by Pauline Hanson, such as that Australia is in danger of being swamped by Asians, that a multicultural society can never be truly strong or united, or any other cheap throwaway lines which are founded on absolute and utter ignorance. No ethnic group in our community cops that sort of nonsense. Our society is an outstanding example of people from many countries coming together and making it a fully enriched and productive community of which to be a part. As you would be aware, Mr President, the Australian Labor Party signalled its position some time ago that it will put One Nation and all fellow travellers last on our how-to-vote cards. Due to our principle, that was a very easy decision for us to make. We are a party of principle. I am happy to put that on record. However, we have yet to hear that position being advocated by the Liberal Party in this State, irrespective of the fact that John Howard has called for it nationally.

Dr Hames, the Minister for Housing made a point in the other place today. I will quote from an uncorrected proof.

The PRESIDENT: Order! The member may not do that. The member might be able to indicate something which she heard in some other place but she certainly cannot quote in this House a debate from today in the Legislative Assembly.

Hon LJILJANNA RAVLICH: Thank you, Mr President. I was very disappointed when I heard that Dr Hames, who is a former Minister for Multicultural and Ethnic Affairs, stated that he would be putting One Nation last, provided of course that the party room makes that decision. I thought that he was a man of principle. I would be a little concerned if the party room decision overrode the principles of individuals in the Australian Liberal Party.

Hon W.N. Stretch: Your party never does that.

Hon Max Evans: No!

Hon LJILJANNA RAVLICH: Our record stands for itself. Members opposite have not done it. The bottom line is that we have done it. There is strong evidence to suggest that some members on the other side would do it but they may not be in a position to be able to put One Nation last because they will be overrun by the party room. The bottom line is that they will do as they are told because the Australian Liberal Party does not have any principles. What a bad reflection on the members on the opposite side.

Several members interjected.

The PRESIDENT: Order! I am having difficulty hearing Hon Ljiljanna Ravlich.

Hon LJILJANNA RAVLICH: The Australian Labor Party has put on record its position on One Nation and where it goes on our how-to-vote card. I challenge the Liberal Party of this State to make the right decision at its meeting relating specifically to this matter, which I understand will be held tomorrow.

Commonwealth Games - Adjournment Debate

HON RAY HALLIGAN (North Metropolitan) [5.14 pm]: Members will be aware that the Commonwealth Games have come round yet again. Over 460 Australian athletes will be at those games. Western Australia with its proud sporting tradition is once again represented by a large contingent of athletes and officials in the 1998 Commonwealth Games taking place in Kuala Lumpur, Malaysia. Although the competition in some disciplines has already begun, the opening ceremony, weather permitting, will be held tomorrow evening. People in Australia are to show their support for our teams, especially our athletes, by wearing a hint of green and gold tomorrow, Friday, 11 September for that opening ceremony.

Western Australia will be represented by 44 athletes and officials in 13 sports, from high jumpers to gymnasts to lawn bowlers. Included in the representatives from Western Australia are the women's hockey co-captain and co-vice captain and the head coaches of the men's and women's hockey teams, both of which are expected to be serious gold medal contenders. In cycling the recently crowned world women's pursuit champion, Lucy Tyler-Sharman, and former world sprint champion, Darren Hill, are both Western Australians and also favoured as medal contenders. Our State has five representatives in the athletics contingent and a similar number of swimmers in the high profile swimming team, including the highly ranked Julia Greville.

A number of these representatives have previously contested Commonwealth Games and done particularly well but the Western Australian Institute of Sport has also assisted with a great number of the contingent going to Kuala Lumpur. Western Australia has a record contingent of 31 athletes of which 23 representatives have come through the Western Australian Institute of Sport. It is acknowledged that these numbers are somewhat inflated because of the new sports of cricket, hockey, netball, rugby, squash and 10-pin bowling. Nonetheless, it is a significant number of representatives. We certainly wish them well. I have a list of the Western Australian representatives and the roles they will play in the games. I seek leave to have this information incorporated in *Hansard*.

[The material in appendix A was incorporated by leave of the House.]

[See page 1191.]

Hon RAY HALLIGAN: I am sure everyone will join with me, certainly the Minister for Sport and Recreation, and with all Western Australians in wishing all of our representatives the very best of luck in their endeavours in Malaysia over the next 10 days. On Tuesday, 29 September there will be a welcome home parade. People are asked to keep that date in their diaries and look to their local newspapers for more information on what will occur in the Perth central business district on that day.

Forests - Adjournment Debate

HON NORM KELLY (East Metropolitan) [5.18 pm]: I take this opportunity to speak about a small coupe of old growth forest in the south west of the State. I have used the adjournment debate before to talk about Dombakup 24. Unfortunately, there is a need to talk about this coupe once again. Dombakup 24 is a coupe of less than 200 hectares of karri, jarrah, tingle and sheoak forest about 10 or 11 kilometres west of Northcliffe. Until last month the Department of Conservation and Land Management had earmarked Dombakup 24 for clear-felling. However, on 4 August CALM announced an indefinite moratorium on logging this forest. The Australian Democrats applaud the Department of Conservation and Land Management for placing the moratorium on the coupe.

As members will probably recall, Giblett block was successfully rescued from clear-felling earlier this year as a result of community sentiment and recognition of its heritage value as an old growth forest. However, people are probably not aware that as a result of that decision and the need to replace the timber that would have come from Giblett, and to keep up its quotas, CALM had to search for a replacement forest to log. This is why Dombakup 24 fell under the spotlight. It was not part of the original logging plan for 1998 and, because of that, was not part of the normal logging processes. It was tacked on at the last minute to replace Giblett block. In its hasty decision to clear-fell Dombakup 24, CALM's planning was abysmal.

The roadworks in preparation for logging were commenced before completion of the roading check-list, before the logging concept plan was finished, before any neighbourhood liaison had taken place and certainly before any checking for sites of Aboriginal significance occurred. CALM also chose to ignore past studies on this tract of forest, even though it could not claim ignorance on the issue. Many of the studies resulted from previous research by CALM. I am referring to both archeological and environmental studies. If CALM had followed its own procedures, including neighbourhood liaison prior to constructing 8.5 kilometres of logging roads through the forest, it would have been informed of the existence of significant Aboriginal places in the forest. If CALM had contacted the Manjimup Aboriginal Corporation it would have been told of

the significance of the forest to Aboriginal people. If these most basic procedures had been followed, the roads would not have been constructed and Dombakup 24 would have remained in its pristine state.

To its credit, CALM acted swiftly when it finally acknowledged that it had made serious mistakes and authorised an archeological study to be undertaken in the forest coupe. The study, which was written by Joe Dortch, Amy Gardos and Tom O'Reilly from the centre of archaeology at the University of Western Australia, has been completed and the report has been publicly released. In its statement of significance, it reads -

> The entire area of Dombakup 24 is highly likely to contain many undisturbed archeological sites. . . . The entire study area is archeologically significant because:
>
> 1. it contains the only archeological site so far located in Karri tall open-forest,
>
> 2. these sites are probably the last undisturbed sites associated with Aboriginal exploitation of the Northcliffe Silcrete Quarry, which is an important site in south-western Australia,

The report says further -

> The artefacts found in this survey are the first to be found in Karri tall open-forest, and the sites they represent are largely undisturbed. Therefore, they deserve further investigation. Such investigation will reveal aspects of past Aboriginal use and control of forests. It will also give insight into the size and nature of the silcrete quarry. Our findings also suggest that the existence of other Aboriginal sites in Karri and other forests is a reasonable proposition.
>
> Because of the high archeological research potential and heritage value of Dombakup 24, we recommend that the coupe should not be logged. Furthermore we suggest that archeological research in forests be given a high priority, before other potential sites are disturbed.

One of the authors, Joe Dortch, is no stranger to the area, nor to areas of Aboriginal significance. His father, Charles Dortch, also an archeologist, surveyed the significance of the area in 1972 and reported his findings in 1976. This information has been around for a long time. It further highlights CALM's laxity in not investigating this issue seriously.

I bring this issue to the attention of the House in the hope that this travesty will not occur again. The Department of Aboriginal affairs has approximately 15 000 Aboriginal sites listed in its database. However, the department conservatively estimates that 1 000 more sites exist but as yet are unrecorded.

Before granting a mining licence, all prospectors, whether they be large corporations or fossickers with metal detectors, are advised that they must comply with the provisions of the Aboriginal Heritage Act before proceeding with excavation of any kind. The provisions include an extensive search for areas of Aboriginal significance.

A brochure from the department of Minerals and Energy reads -

> Damage to a site under the Aboriginal Heritage Act 1980 carries a penalty of up to $2,000 and one year imprisonment and under the Heritage of Western Australia Act 1990 a fine of up to $10,000 and two years imprisonment.

That indicates the seriousness with which these matters should be taken. The fact that CALM undertook to construct logging roads throughout this area of incredible significance without having done even the most basic of searches is of serious concern. We must ensure it does not happen again. If the mining industry must comply with strict guidelines set by the Aboriginal Heritage Act, so too should CALM and the entire timber industry. There is no reason CALM should be desecrating areas of pristine natural beauty prior to - if at all, for that matter - undertaking the necessary searches.

The recommendations included in this report are of particular merit. Recommendation No 5 reads -

> The presence of artefacts in pure Karri stands and other forest types suggests that potentially, other forest blocks contain Aboriginal sites. CALM should consider giving archeological surveys in all forests a high priority, to avoid disturbing other sites. Either CALM, or other interested organisations, should implement a long-term research programme to assess past Aboriginal use of forests, to make the best use of such surveys and bring their findings into perspective. Publishing these findings in peer-reviewed journals will ensure that this research has high standards and obtains the best results. Because their cultural heritage is involved, Aboriginal communities should have a guiding role in site surveys and long-term research.

Recommendation No 1 reads -

> CALM should not allow logging in Dombakup 24 because logging there would disturb archeologically significant Aboriginal sites.

I call on the Department of Conservation and Land Management to upgrade the moratorium it has on Dombakup 24 to

change it from "indefinite" to "permanent", to accept the recommendations of the Dortch report and to ensure that future logging in old growth forests does not disturb areas of Aboriginal significance.

In a draft report prepared by Penny O'Connor in January for the Regional Forest Agreement, which is still not out for public release, two recommendations read -

> CALM should consider the immediate appointment of Policy Officers responsible for indigenous and non-indigenous cultural heritage.
>
> CALM should consider ensuring that where documents make a commitment to protect and conserve other values within areas of multiple use, specific reference is made to cultural heritage values.

Fisheries Research Officers - Adjournment Debate

HON KIM CHANCE (Agricultural) [5.29 pm]: Today I came across a matter of some urgency. I met with the representatives of a number of Fisheries research officers who are in dispute with the Fisheries Department as their employer. They are crew members of the research vessel *Flinders*. As a result of the dispute, they have refused to return to crew the vessel, which is stranded at Dampier.

The end result of that is that important research work which should be under way at the moment is not being carried out. The issue in dispute is not something I will debate in any great depth because an application has already been made in the Industrial Relations Commission relating to that matter. For the purpose of briefly informing the House, I advise that, as I understand it, research employees while at sea are required to work an undefined number of hours overtime and are paid on the basis of a flat 30 per cent loading in lieu of overtime. However many hours research officers work, they are paid only a 30 per cent loading, even though they may be working 15 or 16 hours a day. I understand also that this matter has been in dispute for a number of years and has finally come to a head.

Hon Max Evans: What loading do you think they should have? Boats are out there 24 hours a day.

Hon KIM CHANCE: That is a matter for the parties to determine.

The PRESIDENT: Order! This is where we will get ourselves into trouble. Hon Kim Chance has already said that this is a matter currently before the Industrial Relations Commission, as I understand it. As such, it is possible to breach the rule in respect of sub judice. Hon Kim Chance was indicating that he was aware of that and did not want to infringe. It would be better if there were no interjections because Hon Kim Chance knows the standing orders and no doubt will comply.

Hon KIM CHANCE: Thank you, Mr President. I have no intention of breaching the rule or in any other way interfering with the proper function of the commission and I do not intend to refer to the dispute again. However, it is useful to members to understand what the dispute is about. I will leave that issue alone because it is not the dispute that I want to bring to the attention of this place. What I want to bring to the attention of this place is the manner in which the dispute has been managed by Fisheries WA management.

On 8 September a Fisheries manager, Dr Jim Penn, told workers at a staff meeting that unless they returned to their vessel they would be dismissed. There is no legislation which allows either that fact to occur or for that threat to be made. On another occasion the workers were threatened with the provisions of the third wave legislation. It was reported to me that a manager said that Fisheries would become pioneers of the third wave legislation used against employees who are in dispute. Those two things were reported to me as statements which were made. From what I have seen in writing, it is clear that Fisheries management has put to both the research officers and their union that these people should now take recreational leave while the matter is resolved in the commission. Again, there is no legal capacity to enforce that decision on those people.

I raise this issue now for one reason and one reason only; that is, I want to give notice that when Parliament resumes on Tuesday I will ask the minister who represents the Minister for Fisheries in this place, firstly: Does the Minister for Fisheries support the alleged threat to dismiss employees for refusing to return to their workplace? If he does, under what Act of Parliament is he happy to support the actions of the Fisheries manager? If he does not support that threat, will he take action against the Fisheries manager who made the threat which has led this dispute to a stage where it may become much more difficult to resolve?

Secondly, I will ask the minister who represents the Minister for Fisheries in this place: Does he support the threat of the use of the third wave legislation which was allegedly made to these employees? If he does support the threat of the third wave provisions, will he advise us why on this occasion, above all other occasions, the Government has chosen to put in place the provisions of the third wave legislation when it has consistently and persistently refused in the past to use the provisions of that legislation? Does it believe that because only a limited number of people are involved and because they are a relatively isolated group as Fisheries officers working well away from the centre of union support, they might be an easy target? I will be interested in the advice of the minister in this place. If the minister's advice is that Fisheries management did not intend to use the third wave provisions, I want to know what action the minister intends to take against

the manager for threatening to use the third wave provisions; because, again, that action has threatened to seriously escalate this dispute. I will also ask the minister representing the Minister for Fisheries in this place whether he endorses the requirement contained in the letter to those persons and to their union that they take recreational leave while this dispute is sorted out in the Industrial Relations Commission; because, again, I do not believe there is any legal basis for such a requirement to be made.

I have raised these issues because they need to be canvassed and the minister needs to be given adequate notice that I will ask those questions on Tuesday. There have been too many occasions when the existence of heavy, blunt-instrument legislation such as contained in the third wave can make an industrial dispute far worse than need be. This is a matter which could have been resolved through the normal processes of negotiation and, if necessary, arbitration. What is threatened now is the escalation of a dispute across a far wider spectrum of Fisheries activities than would otherwise have occurred. This is bad management and it is something that the minister has a responsibility to stand on.

Question put and passed.

House adjourned at 5.36 pm

APPENDIX A

WA ATHLETES SELECTED

Commonwealth Games

Team Management		**Cricket**	
Don Stockins	Chef de Mission	Adam Gilchrist	
Wendy Prichard	Team Manager - Hockey (W)	Brendon Julian	
Jack Walls	Ass. Manager - Weightlifting	Damien Martyn	
		Tom Moody	
Coaching Staff		**Gymnastics**	
Geoff Marsh	Head Coach - Cricket	Allana Slater	Women's Artistic
Richard Charlesworth	Head Coach - Hockey (W)	Kristy Darrah	Rhythmic Sportive
Terry Walsh	Head Coach - Hockey (M)		
Nikolai Lapchine	Ass. Coach - Gymnastics (W)	**Women's Hockey**	
		Michelle Andrews	
Services		Rechelle Hawkes	Co-Captain
Trish Heberie	Video Tech - Hockey (W)	Kate Starre	Co-Vice Captain
Medical		**Men's Hockey**	
Noel Patterson	Chiropractor	Damon Diletti	
Dr David Kennedy	Doctor	Paul Gaudoin	
Bernd Adolph	Masseur		
Malcolm Calcutt	Masseur - Athletics	**Lawn Bowls**	
Corinne Reid	Psychologist - Hockey (W)	Roma Dunn	Singles
		Lee Poletti	Fours
Athletics		Stewart Davies	Fours
Declan Stack	400m, 4 x 400m Relay		
Paul Burgess	Pole Vault	**Shooting**	
Alison Inverarity	High Jump	Mike Giustiniano	Rapid Fire Pistol
Tracey Shepherd	Pole Vault		Centre Fire Pistol
		Leslie Imgrund	Smallbore Rifle
Boxing			
Erie Wiltshire	51 kg Class	**Swimming**	
Daniel Green	75 kg Class	Julia Greville	200 m/400 m Freestyle
			4 x 200 m Freestyle Relay
Cycling		Rachel Harris	400 m Ind. Medley
Darryn Hill	Track		800 m Freestyle
Lucy Tyler-Sharman	Track	Richelle Jose	200 m Backstroke
		William Kirby	200 m Butterfly
Diving		Jennifer Reilly	400 m Medley
Vyninka Arlow	10 m platform		
		Ten Pin Bowling	
		Michael Muir	

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

TOURISM

Events Projects, Purchasing Transactions

12. Hon LJILJANNA RAVLICH to the Minister for Tourism:

Page 39 of the Auditor General's report regarding Events Projects states that "all purchasing transactions in excess of $50 000 will be referred to the State Supply Commission in future" -

(1) Have purchasing transactions in excess of $50 000 in the past not been referred to the State Supply Commission?

(2) On how many occasions has this occurred?

(3) Can details of these occasions be provided?

(4) If not, why not?

Hon N.F. MOORE replied:

(1) The Auditor General was referring to the securing of events or similar with sole suppliers, not the overall purchasing procedures of the Western Australian Tourism Commission (WATC). The WATC had not previously considered these as "purchases" that were to be referred to the State Supply Commission.

Earlier this year, the State Supply Commission sought Crown Solicitor's advice on this issue and was advised that they should be referred to State Supply even though the securing of an event was a sole supplier situation in nearly all cases, (eg, only Paul McNamee can supply the Hopman Cup or only the Australian Cycling Federation can supply the World Track Cycling Championships).

The WATC now refers all events to the State Supply Commission. Prior to this, events were not referred to State Supply.

(2)-(4) Not applicable.

ROYAL PERTH HOSPITAL WAITING LIST

135. Hon NORM KELLY to the Minister for Finance representing the Minister for Health:

(1) What were the waiting list figures for Royal Perth Hospital for the months of -

(a) May;
(b) June, and
(c) July 1998,

in the categories of the following cases -

(i) urgent (waiting more than 30 days);
(ii) semi-urgent (waiting more than 90 days); and
(iii) routine (waiting more than 365 days)?

Hon MAX EVANS replied:

(1)	(a)	May	
		(i) Urgent	89
		(ii) Semi urgent	98
		(iii) Routine	1425
	(b)	June	
		(i) Urgent	70
		(ii) Semi urgent	114
		(iii) Routine	1515
	(c)	July	
		(i) Urgent	81
		(ii) Semi urgent	138
		(iii) Routine	1627

COMMITTEES AND BOARDS

Insurance Policies for Members

190. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Regional Development:

In relation to appointments to the governing board of each of the following bodies -

(a) Kimberley Development Commission;
(b) Gascoyne Development Commission
(c) Wheatbelt Development Commission;
(d) South West Development Commission;
(e) Mid West Development Commission;
(f) Peel Development Commission;
(g) Pilbara Development Commission;
(h) Great Southern Development Commission; and
(i) Goldfields Esperance Development Commission -

(i) are members of the board the subject of any policies of insurance arranged by the board including indemnity insurance?

(ii) If yes -

(A) what is the nature of the policy and the liabilities covered by the policy;

(B) who is the insurer;

(C) what is the maximum liability of the insurer under the policy;

(D) what is the annual premium for the policy;

(E) who is responsible for disclosing any material matters to the insurer which might affect the obligations of the insurer to meet its liability under the policy; and

(F) has the board or any of its members made any such disclosures during the currency of any insurance policy?

(iii) Has the Government or the board provided any of its members with any indemnity other than through a policy of insurance?

(iv) If yes, when was the indemnity provided and why?

(v) Who are the board's solicitors?

(vi) How does the board choose its solicitors?

(vii) What payment for legal advice and representation were made by the board in the last financial year?

(viii) Is the board or organisation required to publish an annual report?

(ix) When was its last report due?

(x) When was its last report published?

(xi) When will its next report be published?

The answer was tabled. [See paper No 155.]

COMMITTEES AND BOARDS

Stakeholders

191. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Regional Development:

In relation to appointments to the governing board of each of the following bodies -

(a) Kimberley Development Commission;
(b) Gascoyne Development Commission
(c) Wheatbelt Development Commission;
(d) South West Development Commission;
(e) Mid West Development Commission;
(f) Peel Development Commission;
(g) Pilbara Development Commission;
(h) Great Southern Development Commission; and
(i) Goldfields Esperance Development Commission -

(i) has the organisation determined who its stakeholders are; and
(ii) if yes, who are they?

Hon N.F. MOORE replied:

All Development Commissions referred to in (a)-(i):

(i) Yes.

(ii) All businesses, industry associations, Local Governments, non-government organisations, government agencies, community groups and individuals principally within the respective Commissions' regions.

CANNING VALE PRISON

233. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

(1) What is the current average daily muster at Canning Vale Prison?

(2) What was the average daily muster at Canning Vale Prison in 1997?

(3) How many cells are being "doubled up" to meet the demand of the daily muster?

(4) What is the standard bed capacity at Canning Vale Prison?

Hon PETER FOSS replied:

(1) As of 30 June 1998 – 315.

(2) As of 30 June 1997 – 315.

(3) 26.

(4) 294.

THERAPEUTIC MASSAGE REGULATION

254. Hon KIM CHANCE to the Minister for Finance representing the Minister for Health:

(1) Has the Minister for Health, or the former Minister for Health, met with representatives of professional therapeutic masseurs to discuss the possibility of drafting industry specific legislation for the regulation of therapeutic massage in Western Australia?

(2) If so, what progress has been made to date between the Government and the industry towards gaining agreement on drafting principles?

(3) Can the Minister indicate how long it might take to reach the point when legislation will be available for comment?

(4) Is the Government committed to working towards legislation to protect both consumers and the masseur's professional standards?

Hon MAX EVANS replied:

(1) No.

(2) Not applicable.

(3) No.

(4) Any decision to regulate therapeutic massage services should take account of the harm to the public that may be associated with the provision of these services by unqualified or under-qualified practitioners. Representatives of therapeutic masseurs have been asked to identify the risks to the health and safety of the public that could be reduced by introducing statutory regulation. Upon receipt of this advice, the matter will be the subject of further consideration by the Minister for Health.

"JERVOISE BAY PROJECT NEWS"

263. Hon N.D. GRIFFITHS to the Leader of the House representing the Minister for Commerce and Trade:

(1) Who printed the newsletter entitled "Jervoise Bay Project News" Issue No 1, July 1998?

(2) What was the total cost of the newsletter?

(3) What was the cost of the distribution of the newsletter?

(4) To whom was the newsletter distributed?

Hon N.F. MOORE replied:

(1) The newsletter was designed and produced by JMG Marketing (Aust) Pty Ltd and was printed by Pilpel Print.

(2) The total production cost of 7,200 copies was $3 349.60.

(3) The cost of distributing 6,000 copies was $484.96.

The remaining 1,200 copies are being distributed by the Jervoise Bay Project Office during briefings and visit programs.

(4) The 6,000 copies were distributed to the households and businesses in Hope Valley, Wattleup, Coogee, Cockburn, Munster, parts of Spearwood and also to parliamentary members, local government and community group representatives with a direct interest in the Jervoise Bay Project.

MINING

Fimiston I and II Tailings Dams

278. Hon TOM HELM to the Minister for Mines:

I refer to a file note signed by Mr Bob Stevens, Senior Policy Officer, Minister for Mines dated February 17, 1997 to the Director General, Department of Minerals and Energy, Reference 81053, 81179, 81291 and 81353 -

(1) Did Mr Bob Stevens state verbally on July 13, 1995 to agents/representatives of Optimum Resources that he rang the company Kalgoorlie Consolidated Gold Mines "(KCGM") asking them to concede or deny one thing, has the existence of that dam, Fimiston II tailings dam raised the water level on Optimum's tenements, and the company KCGM conceded yes it has?

(2) If so, can the Minister explain why KCGM was not prosecuted or the *Mining Act 1978* and Regulations enforced to stop KCGM causing inconvenience with mine water and pollutants to the holder of P26/1848 and P26/1858?

(3) Is the statement "I agreed with him that the water table on these tenements on that day in July 1995 was high, as clearly evident, when at his request, I looked down a PVC drill collar and could see water (and hear the splash of a pebble dropped onto the water table) about 1.5 to 2 metres below the land surface" truthful and correct?

(4) If not, why not?

(5) Has Mr Bob Stevens ever stated verbally to agents and representatives of Optimum Resources with respect to the Fimiston I and Fimiston II tailings dams that it appears the tailings dams have contributed to a higher water table on Optimum Resources tenements?

(6) If so, can the Minister explain what action was taken by Mr Stevens and the Department of Minerals and Energy to stop KCGM from causing inconvenience with mine water pollutants to the holder of P26/1848 and P26/1858 and breaching the *Mining Act 1978* and Regulations?

(7) Has Mr Bob Stevens prior up to his site inspection in July 1995 verbally admitted to agents/representatives of Optimum Resources that the operator of the Oroya tailings dam was causing inconvenience to the holders of P26/1848 and P26/1858 and breaching the *Mining Act 1978* and Regulations?

(8) If so, can the Minister state why the operator of the Oroya tailings dam was not prosecuted for causing inconvenience to the holder of P26/1848 and P26/1858?

Hon N.F. MOORE replied:

(1) No. Mr Stevens recalls a discussion he had in June or July 1995 with a KCGM staff member concerning several matters about which Optimum Resources Pty Ltd had been complaining at that time.

Mr Stevens did not ask KCGM to "concede or deny one thing", but does recall the staff member stating that it was possible that tailings dams near Optimum's tenements had contributed to a rising of the water table beneath the surface of those tenements.

Consistent with advice he had previously received from the Department of Minerals and Energy, Mr Stevens and the KCGM staff member agreed that, in the absence of sufficient evidence, it was not possible to conclusively

determine whether or not the tailings dams had contributed to a rising water table in this area or, if they had, the extent of that contribution compared to natural causes.

(2) Not applicable.

(3) Yes.

(4) Not applicable.

(5) Yes. In his file note of 17 February 1997 Mr Stevens stated "... Whilst it was possible that nearby tailings dams ... might be a contributing factor, I was not professionally competent to determine what the cause(s) of the high water table ... might be as I had no technical qualifications in that regard... I had however, heard ... that this area had a naturally high water table which, a layman might suggest, could be at its highest during winter each year ..."

(6) The Department of Minerals and Energy does not consider that KCGM is causing inconvenience to the holder of Prospecting Licences 26/1848 and 26/1858 in terms of Regulation 98 or breaching the Mining Act 1978 and regulations.

(7) No. Mr Stevens has always maintained that he is not technically competent (in hydrology, geochemistry etc) to determine the accuracy of Optimum's allegations against the operator of the Oroya Tailings dam.

(8) Not applicable.

MINERAL SANDS

Royalty Holiday for Mining Companies

284. Hon J.A. SCOTT to the Minister for Mines:

(1) Which mineral sands mining companies in Western Australia have received a "royalty holiday" from the State Government and what was the period of that "royalty holiday"?

(2) What is the value of these forgone royalties for each company?

(3) How long will these companies continue to receive their 'royalty holiday' and what is the expected value of those forgone royalties?

(4) Will the Government rule out further "royalty holidays" for the mineral mining companies in the future?

Hon N.F. MOORE replied:

See answer to question 1746 on Tuesday 9 June 1998.

QUESTIONS WITHOUT NOTICE

MAIN ROADS WA, LEAKED DOCUMENTS INVESTIGATION

156. Hon TOM STEPHENS to the Minister for Transport:

(1) In addition to the moneys paid to International Investigations Agency, what other costs have been incurred by Main Roads Western Australia in the conduct of the leaked documents investigation?

(2) What costs have been incurred specifically for legal fees, and can the minister list all firms and agencies which have provided legal services in matters associated with this investigation, and the costs incurred to each of these?

Hon M.J. CRIDDLE replied:

(1)-(2) I realise that notice has been given of these matters. This is exactly why I called for the Premier to carry out an investigation into the matter. I will let that investigation go through the process and come forward with a result, because, as I said yesterday, I am very unhappy with what I am finding out about that investigation and the procedure. When I get all that information and the Premier reports back to me, I will provide the information.

MAIN ROADS WA, LEAKED DOCUMENTS INVESTIGATION

157. Hon TOM STEPHENS to the Minister for Transport:

Was the minister directed by the Premier or someone in the Premier's office to write to him in the terms in which he has written, requiring or asking for an inquiry into the Main Roads' leaked documents; and why did the minister not leave the matter to the State Supply Commission or the Commissioner for Public Sector Standards?

Hon M.J. CRIDDLE replied:

I was not directed at all. When I left this place after question time, in the evening before I sent the letter, I had a conversation with one of the people in my office, and he commenced some telephone calls to other people; and as a result, I decided to write the letter.

MAIN ROADS WA, LEAKED DOCUMENTS INVESTIGATION

158. Hon N.D. GRIFFITHS to the Minister for Transport:

The Minister for Transport said on ABC Radio on Tuesday that the report leaked from Main Roads WA, the subject of an investigation, was confidential, and that is why the investigation was called. Is the minister aware that on 10 January 1998, the Commissioner of Main Roads said that the police were not called because the report was not marked confidential? Was the report confidential; and if it was, why were the police not called to investigate the matter?

Hon M.J. CRIDDLE replied:

This goes right back in history. The point is that I was not the minister at that time. I have this problem at this juncture, and I will deal with it as best I can, with the process that has been put in place. The whole idea of the investigation that is now in place is to come up with the solutions to something about which I do not have full knowledge.

WORKERS COMPENSATION MEDICAL PANELS

159. Hon HELEN HODGSON to the Attorney General representing the Minister for Labour Relations:

In reference to medical panels constituted under the Workers' Compensation and Rehabilitation Act -

(1) How many doctors have -

(a) been registered, and

(b) been appointed

to sit on medical panels?

(2) What remuneration is paid to a doctor each time he participates on a medical panel?

(3) What qualifications are required to be held by a doctor to be eligible to participate on a medical panel?

(4) If a worker who appears before a panel has suffered more than one type of injury, how is it decided which type of specialist doctor will sit on the medical panel for that worker's case?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

Two types of medical panels are constituted under the Workers' Compensation and Rehabilitation Act 1981. The industrial diseases medical panel is constituted under section 36(1), and the medical assessment panels are constituted under part VII of the Act.

(1) (a) IDMP - 11 MAP - 247

(b) IDMP - 10 MAP - 125

(2) IDMP - $230 per hour

MAP - Specialists, $400 per hour; general practitioners, $300 per hour. The fee covers all tasks undertaken by the panel members. The actual payment varies depending upon the time taken.

(3) IDMP - Physician who specialises in diseases of the chest or in occupational diseases.

MAP - To be eligible, a doctor is to be a resident in a State or Territory of the Commonwealth and practising in a clinical capacity as a medical practitioner.

(4) IDMP - Not applicable.

MAP - Panels are constituted by two or three medical practitioners, of which at least one is to be a specialist in the branch of medicine or surgery relevant to the question and one a general practitioner. Generally there are two specialists and one general practitioner for each panel. Where there is more than one type of disability, a specialist from two branches of medicine may be chosen. In the event there are more than two types of disabilities, medical practitioners most relevant are chosen after consideration of the medical reports.

OMEX SITE, BELLEVUE

160. Hon GIZ WATSON to the minister representing the Minister for the Environment:

With regard to the remediation of the Omex contaminated site in Bellevue -

(1) What is the current status of land acquisitions to date?

(2) Have any contamination investigations been carried out on lots 53, 54, 55 and 56?

(3) If not, why not?

(4) If yes, can the minister give details?

(5) Is it the case that the petrol station located on lot 136 will remain in operation during the remediation of the site?

(6) If yes, will this decision influence the future land use options for the site once it has been remediated?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Properties on lots 48, 49 and 50 have been settled and are owned by the Western Australian Planning Commission.

(2) Yes.

(3) Not applicable.

(4) Details were provided on the monitoring bore installed in lot 54, with ground water contamination found as outlined in the Geological Survey of Western Australia report No 1995/41 dated 1995. Another bore was installed and soil and ground water samples taken on lot 53, as part of the Golder investigation of February 1997, and copies were made publicly available through distribution from the Department of Environmental Protection to all major libraries.

(5) Yes.

(6) No.

CAPEL-BUSSELTON GAS PIPELINE EXTENSION

161. Hon MURIEL PATTERSON to the Leader of the House representing the Minister for Energy:

(1) What is the current status of the natural gas pipeline extension to Busselton?

(2) When will the gas be available to residential users, and how many users are expected to be able to access the network?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) The natural gas pipeline extension from Capel to Busselton was completed in April 1998. AlintaGas connected the first residential customers in Busselton in June 1997. Since that time, further customers have been connected on an ongoing basis as the gas distribution network has been extended throughout the area. It is expected that construction of the network will be completed by 2002.

CURTIN AVENUE, WIDENING

162. Hon J.A. SCOTT to the Minister for Transport:

(1) Will the minister confirm the statements made by the member for Cottesloe at a recent public meeting that the proposed widening of Curtin Avenue will provide routes for trucks to and from the Port of Fremantle?

(2) If so, does this mean that -

(a) live sheep trucks and ore trucks will be able to use the route;

(b) uranium ore will be able to be transported along the route;

(c) B-double trucks will be able to use the route?

(3) Has the Department of Transport made any projected estimates of truck movements along Curtin Avenue for the periods -

(a) when Curtin Avenue is completed; and

(b) when the roads creating Stephenson Highway are completed?

(4) If so, can the minister supply me with those estimates; and if not; why have not such estimates been done?

Hon M.J. CRIDDLE replied:

The member has just made some major changes to the question. As time is involved in researching the matter, I ask that the member place the question on notice.

BUNBURY REGIONAL HOSPITAL

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

(1) Was a local committee established to consider the possible future uses of the current Bunbury Regional Hospital and the surrounding land?

(2) Has the committee completed a report?

(3) Was Mr Barron-Sullivan, the member for Mitchell, on that committee?

(4) Was the report made available to Mr Barron-Sullivan?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(2) Yes.

(3) No.

(4) Yes.

BEENUP MINESITE

164. Hon CHRISTINE SHARP to the minister representing the Minister for Resources Development:

(1) Is it correct that the Beenup mine near the Scott River is expected to be closed down later this year?

(2) Will BHP Petroleum Pty Ltd be responsible for the rehabilitation of the site?

(3) Has the procedure to ensure that the acid sulphate soils in the mine development storage area do not oxidise following the closure been properly assessed?

Hon N.F. MOORE replied:

(1) No. BHP Titanium Minerals is working to overcome some technical difficulties at the Beenup minesite.

(2) Yes.

(3) BHPTM has in place a program to manage acid sulphate soils at the Beenup minesite.

SPEED LIMIT INCREASES

165. Hon MARK NEVILL to the Minister for Transport:

(1) When is the minister proposing to take to Cabinet a proposition to increase speed limits on remote roads?

(2) What action has he taken to date to implement that policy?

Hon M.J. CRIDDLE replied:

(1)-(2) I am not sure that it is policy. I understand that on some roads in the north speeds have been measured between 118 and 128 kilometres an hour. A capacity probably exists on those roads to conduct a trial. However, as I said recently, a debate will be held in this House and publicly on this matter. The Road Safety Council will take on board those issues. The member is well aware that the Road Safety Council has recommended that speed limits not be lifted. Therefore, it should reconsider that position before the ministerial council considers the issue. There is no immediate intention to raise speed limits.

NORTHBRIDGE TUNNEL DAMAGE

166. Hon CHERYL DAVENPORT to the Minister for Transport:

The minister said yesterday that the report from Woodward-Clyde on Northbridge tunnel damage is expected to be completed and delivered to Main Roads shortly.

(1) Will the minister confirm that Woodward-Clyde delivered a report to Main Roads in mid-August?

(2) Has Main Roads now returned that report to the independent engineers?

(3) Has Main Roads sought to have the report presented to Main Roads in mid-August amended?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) This was a draft report and not the final report.

Hon Tom Stephens: This was a draft commissioner's report!

Several members interjected.

The PRESIDENT: Order! Let us listen to the answer.

Hon M.J. CRIDDLE: This was not the final report, which I have indicated will be available shortly.

(2) Yes.

(3) No. Main Roads has made certain observations to Woodward-Clyde and will not be aware of the outcome until the final report is received. I have arranged that Northbridge people be provided with a copy of the draft report, as well as the final report, if they so wish.

GOODS AND SERVICES TAX

167. Hon KEN TRAVERS to the Minister for Finance:

I refer to the Minister's answer that he stands by the forward estimate for four years, but not 12 years, contained in the Government's analysis of the impact of Howard's GST package on WA.

(1) Why does the minister not stand by the basis on which the estimates were prepared applying for 12 years?

(2) Does the minister's department provide or have estimates applying for 12 years in advance?

(3) If not, is the Treasury analysis based on information that is within the province of the minister's department but which was not provided by the minister's department?

Hon MAX EVANS replied:

(1)-(2) If that is a question on notice, I do not have it. To answer part of the question, the member may not know that the Government for the last four years produced four-year estimates on everything done, and on revenue. The member might not have woken up to that. They are printed every year, covering four years.

Hon Ken Travers: What about the 12-year analysis? Your Government did the 12-year analysis of the GST package.

Hon MAX EVANS: I do not know who is answering the question, sir.

The PRESIDENT: Order! The minister is meant to be answering the question.

Hon MAX EVANS: We have estimates worked out for four years without any allowance for CPI increases. We projected those for eight years the best we could. No-one can work out precisely what will happen in 12 years. As I said yesterday, it is a good estimate guess. The previous Labor Government went $3b into debt in its last three years in office. Who could have projected that over further years? The State would have been bankrupt! We came to government, changed it and cleared that debt. Things can turn around for the better.

WORKSAFE WA'S OPERATIONAL PROCEDURE

168. Hon LJILJANNA RAVLICH to the Leader of the House representing the Premier:

Some notice of this question has been given. I refer to the opinion of Mr Robert Cock, QC, that there was never a policy or operational procedure applied by WorkSafe WA that it would not take information or complaints from union representatives.

(1) Was Mr Robert Cock, QC, provided with a copy of the press release prepared by WorkSafe WA, dated 26 June 1997, and attached to the report of the Commissioner for Public Sector Standards? I refer to that in which Mr Bartholomaeus clearly stated -

> "We will have nothing to do with union representatives for the next six months and will review our policy after that," . . .

(2) What action, if any, will the Premier take to ensure that all available information was provided by the WorkSafe Commissioner to Mr Robert Cock, QC?

Hon N.F. MOORE replied:

(1)-(2) Mr Robert Cock, QC, did not provide the opinion incorrectly as alleged by the member in this question.

MINISTRY OF JUSTICE REPORT "FUTURE DIRECTIONS"

169. Hon HELEN HODGSON to the Attorney General:

(1) Has a consultant been briefed to examine, or conduct an inquiry into, the implementation of the Ministry of Justice report of 1996 entitled "Future Directions"; if so, who is the consultant and when was he or she briefed?

(2) What are the terms of reference of this inquiry?

(3) Has a preliminary report been made to the ministry by the consultant?

(4) Will a written report of the consultant's findings be made, and what is the final reporting date?

(5) When the report has been completed and considered by Cabinet, will the minister table the report?

(6) If no to (5), why not?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No.

(2)-(6) Not applicable.

GOODS AND SERVICES TAX

Impact on Western Australia

170. Hon TOM STEPHENS to the Minister for Finance:

I refer to the minister's answer that he stands by the forward estimates contained in the Government's analysis of the impact on Western Australia of Howard's GST package and ask -

(1) Can the minister confirm that all the figures in the analysis are nominal; that is, that none of them has been adjusted to remove the distorting effect of inflation?

(2) If not all the figures, which of the figures have been adjusted to remove the distorting effect of inflation?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I do not know whether I would have used the word "nominal".

(1) Yes. In other words, they have not been adjusted to remove the distorting effect of inflation.

(2) Not applicable.

HEALTH DEPARTMENT

Single Vendor Tender for Local Area Network Switches

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

I refer to the Health Department's decision to issue a single vendor tender for local area network switches and the reported comment in *The Australian* of 1 September with respect to the decision by the department's infrastructure services manager, Frank Gaglio, that -

> The Department, in this instance, may have locked itself out of a potentially better solution.

How does the minister reconcile that reported comment with the decision to restrict to a single vendor?

Hon MAX EVANS replied:

I thank the member for some notice of this question. As set out in my answer to a previous question from Hon Ed Dermer, the decision involved a number of considerations. Although an unrestricted tender may have produced a better technical solution, as previously advised it would have put at risk a major systems implementation schedule and would have potentially involved significant cost penalties to Health. I am satisfied, on balance, that the appropriate judgment was made.

BHP

Mining Area C East - Archaeological Stone Arrangements

172. Hon GIZ WATSON to the minister representing the Minister for Aboriginal Affairs:

With respect to the unique archaeological stone arrangements contained within BHP's mining area C east in the Pilbara -

(1) With whom from the Bunjima people has BHP been consulting in respect to the archaeological stone arrangements?

(2) Have those people or a person given permission for the archaeological stone arrangements to be moved?

(3) Has any carbon dating been carried out on the archaeological stone arrangements to ascertain their age?

(4) How old are the archaeological stone arrangements?

(5) Do the arrangements have significant national heritage implications in terms of their age and arrangement?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(2) A section 18 application has not been received by the Aboriginal Affairs Department from BHP in regard to moving or disturbing stone arrangements in BHP's mining area C east in the Pilbara.

(3)-(4) Not known.

(5) No formal assessment for national heritage significance has been made by the Aboriginal Affairs Department.

YEAR 2000 COMPUTER BUG

Local Government

173. Hon E.R.J. DERMER to the minister representing the Minister for Local Government:

What action has the minister taken to ensure that services provided by municipalities in Western Australia will not be adversely affected by the year 2000 computer problem?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. I request that the member put the question on notice.

TAXI INDUSTRY

Intrusion of Charter Operators

174. Hon TOM STEPHENS to the Minister for Transport:

What action has the minister taken in reference to the reported damage that is being done to the taxi industry by the intrusion of charter operators in an area that traditionally has been the domain of taxis?

Hon M.J. CRIDDLE replied:

Some work is being done with that group; it has got a committee together. There are charges that taxis must abide by. I would have to obtain the detail of that for Hon Tom Stephens.

MAIN ROADS WESTERN AUSTRALIA

International Investigations Agency - Duplicate Claim

175. Hon N.D. GRIFFITHS to the Minister for Transport:

With respect to the $12 700 duplicate claim made by International Investigations Agency against Main Roads, to what specifically did that duplicate claim relate? Does International Investigations Agency dispute that the claim is in fact a duplicated claim? If yes, has legal advice been sought with respect to the presentation of that duplicate account? What further action, if any, does the minister intend to take with respect to the presentation of that duplicate claim?

Hon M.J. CRIDDLE replied:

As I indicated earlier, an investigation is in process and I intend to ensure that it is carried out.

WORKSAFE WA COMMISSIONER

Policy of Not Dealing with Unions

176. Hon LJILJANNA RAVLICH to the minister representing the Minister for Labour Relations:

(1) When did WorkSafe Commissioner Neil Bartholomaeus advise the Minister for Labour Relations of the policy not to have anything to do with unions?

(2) How did the commissioner notify the minister?

(3) Did the minister respond to the commissioner's notification of the policy?

(4) If yes, when and how did the minister respond?

Hon PETER FOSS replied:

Before answering that question, I should make it clear that we have some differences as to exactly what Mr Bartholomaeus has said about his actions. I keep that reservation without bothering to go into what it is at the moment, but I think that I should have cleared it, because sometimes Hon Ljiljanna Ravlich puts it rather stronger than I believe it is capable of being put. Assuming that we are talking about the same event, but not necessarily the same interpretation of that event, my answer is as follows -

(1)-(2) I understand the Commissioner for WorkSafe Western Australia provided a copy of a draft media statement during the afternoon of 26 June 1997.

(3)-(4) The media secretary provided feedback on the media statement to the commissioner.

MAIN ROADS WESTERN AUSTRALIA

International Investigations Agency - Fees

177. Hon TOM STEPHENS to the Minister for Transport:

Has the minister been given any indication of when the inquiry will be completed in reference to the agency's fees to Main Roads?

Hon M.J. CRIDDLE replied:

As I have said, I have asked the Minister for Public Sector Management to consider the issue. If I put a time line on it of two weeks, the next question that Hon Tom Stephens would ask is "Why is it not here?"

Hon Tom Stephens: Where is the report? Are you just hedging? Are you just fobbing?

Hon M.J. CRIDDLE: It will be as soon as possible. It is something that we must get off the agenda. I am concerned about it, and I have said that time and again. The sooner it is completed, the better it will be for everybody.

AMPOL FUEL STORAGE DEPOT

Threatened Contamination of Port Beach

178. Hon GIZ WATSON to the minister representing the Minister for the Environment:

In relation to the Ampol fuel storage and blending site, Fremantle Port Authority Lot 50a, upon what evidence does the Department of Environmental Protection base its opinion that Port Beach is not threatened by the westward migration of hydrocarbons?

Hon MAX EVANS replied:

I thank the member for some notice of this question. The evidence upon which the DEP has based its opinion is the reports prepared by environmental consultants Woodward-Clyde, dated January 1995, and a subsequent report by Fluor Daniel GTI, dated December 1997.

CITY OF JOONDALUP

Eddystone Bridge

179. Hon KEN TRAVERS to the Minister for Transport:

(1) Is the minister aware of comments by the Minister for Local Government that the city of Joondalup should contribute to the cost of the Eddystone Bridge if local residents want that?

(2) Does he support that impost being placed on local government ratepayers?

Hon M.J. CRIDDLE replied:

I am not aware of the exact statement that the Minister for Local Government made. I have learned in the past couple of days that I should not assume what anybody says or make assumptions about some of the information that I have been given.

Hon N.D. Griffiths: Particularly your ministerial colleagues.

Hon M.J. CRIDDLE: I ask Hon Ken Travers to put the question on notice.

TAXIS

Registration Fee Increase

180. Hon TOM STEPHENS to the Minister for Transport:

In a recent edition of the "New Era" taxi magazine the minister spoke of enhancing the public image of taxis as a safe, reliable and affordable form of transport. I ask -

(1) How does the increase in annual taxi registration and insurance fees by more than $300 a year improve the affordability of taxis?

(2) Does the minister expect taxi operators to absorb that massive increase when their incomes have been diminishing?

The SPEAKER: Order! The way in which that question has been framed opens it to speculation. However, the way in which it has been framed probably also means that it just gets by.

Hon M.J. CRIDDLE replied:

There are several issues in that question. Early next year there will be a review with which the industry must comply. The big issue for the taxi industry is the way in which it supplies its service to people in order to get more people in its taxis. We will shortly announce a new range of measures that will enable the taxi industry to enhance its opportunity to deliver its service to people. I look forward to that happening. While some charges may go up, the opportunity for them to carry many more passengers will enhance their chances.

WORKSAFE WA POLICY

181. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Labour Relations:

Some notice of this question has been given.

I refer to the report in which the Commissioner for Public Sector Standards found that WorkSafe policy was self-imposed and it was approved by, but not a directive from, the responsible minister.

(1) In what form did the then Minister for Labour Relations approve the WorkSafe policy?

(2) If in written form, will the minister table that document?

Hon PETER FOSS replied:

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

(1) I understand a media statement issued by the Commissioner of WorkSafe WA on 26 June 1997 was provided to the Minister for Labour Relations' office prior to release. No policy was approved as such.

(2) Not applicable.

MAIN ROADS WA, LEAKED DOCUMENT INQUIRY

182. Hon TOM STEPHENS to the Minister for Transport:

Will the minister assure the House that the inquiry he has asked to be conducted by the Premier will not simply be an effort on the part of the Government to protect the already destroyed reputation of his ministerial predecessor, and that he is not trying to protect ex-Minister Charlton from any directions he gave to the department about this agency and its fees?

The PRESIDENT: I ask the Leader of the Opposition to look at Standing Order 140, which deals with questions involving inferences, imputations or unnecessary epithets, and to try to frame his questions to avoid those problems.

Hon M.J. CRIDDLE replied:

I do not think that question deserves an answer.
