WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Wednesday, 9 September 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 4.00 pm, and read prayers.

D'ENTRECASTEAUX NATIONAL PARK

Petition

Hon Christine Sharp presented a petition, by delivery to the Clerk, from one person requesting that the Legislative Council reconsider its decision to allow land to be excised from the D'Entrecasteaux National Park.

[See paper No 147.]

DEEP WATER PORT AND HEAVY INDUSTRIAL ESTATE AT OAKAJEE

Petition

Hon Giz Watson presented a petition, by delivery to the Clerk, from six persons indicating their concern about the proposed establishment and impact of a deepwater port and heavy industrial estate at Oakajee, north of Geraldton, and praying that the Legislative Council investigate and evaluate the suitability of the proposed development.

[See paper No 149.]

URANIUM MINING INDUSTRY IN WA

Petition

Hon Giz Watson presented a petition, by delivery to the Clerk, from 18 persons praying that the Legislative Council will investigate and evaluate the acceptability of a uranium industry measured against the known health hazards for workers in the uranium and associated industries, and on the residents of Western Australia, arising from the establishment of a large number of uranium mines in this State.

[See paper No 150.]

FINANCIALLY DISADVANTAGED LOCAL GOVERNMENTS

Petition

Hon B.K. Donaldson presented the following petition bearing the signature of one person -

> To the Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> I the undersigned resident of Western Australia call upon the Government of the State of Western Australia to recognise the will of the people of the state who oppose:
>
> a) The decision of the Government to not recognise the financial plight of local Governments in respect to meat inspection services supplied to failed abattoir operations under the Health Act 1991 prior to its amendment on 22 July 1996.
>
> b) The failure of the Government to recognise that such financial losses sustained by Local Governments prior to the 22 July 1996 are directly attributable to the flawed legislation contained within the Health Act 1991.
>
> c) The decision of Government to not compensate Local Governments which have been adversely affected by the flawed legislation particularly where all legal process for recovery of expenses has been exhausted.
>
> Your petitioners, therefore respectfully request that the Legislative Council call on the Government to reverse the decision to not compensate financially disadvantaged Local Governments which in turn impacts financially upon ratepayers of those Local Governments and recognise that this plight has been created by the flawed legislation within the Health Act 1991 prior to its amendment of the 22 July 1996. We ask the Council to support this just cause and your petitioners, as in duty bound, will ever pray.

[See paper No 151.]

SUPPORT FOR MULTICULTURAL SOCIETY

Petition

Hon Ljiljanna Ravlich presented the following petition bearing the signatures of 467 persons -

> To the Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned ask that this Parliament reaffirms its commitment to a multicultural society and condemns the recent racist comments of One Nation Party members towards the Lebanese and Iranian communities.
>
> 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 152.]

WORKSAFE WA INQUIRY

Motion

HON LJILJANNA RAVLICH (East Metropolitan) [4.04 pm]: I move -

> 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.

Over the past day or so I have had moments of great anger. Given the number of times I have spoken about the WorkSafe issue and my concern for the safety of workers in Western Australia I have become increasingly angry at this Government's indifference to the plight of Western Australian workers, particularly their safety.

As members will be aware, the other day a report from the Commissioner for Public Sector Standards was tabled following my request to examine matters at WorkSafe. I lodged a complaint with the Public Sector Standards Commission on 10 July 1997 in which I made a number of allegations. I alleged, first, that WorkSafe WA was not complying with the requirements of the Occupational Safety and Health Act of 1994; secondly, that the WorkSafe WA Commissioner, Mr Neil Bartholomaeus, was acting outside the law when he directed staff not to deal with trade unions for six months; and, thirdly, I asked the Public Sector Standards Commissioner to inquire into an issue which has been hanging around for some time; that is, the allegation of bribery and corruption by some WorkSafe inspectors.

On many occasions people have given scant regard to my concerns. However, I am pleased to report to the House that the findings of the Public Sector Standards Commissioner indicate that the Western Australian community and the Western Australian work force in particular have every reason to be concerned. However, what we have seen since the release of

the report by the Public Sector Standards Commissioner dated 31 August this year is a Government which is trying to cover up.

Hon Peter Foss: Ha!

Hon LJILJANNA RAVLICH: The Attorney General might just say that. When I moved an urgency motion yesterday and I referred to Commissioner Bartholomaeus having breached section 9 of the Public Sector Management Act, the code of ethics and the WorkSafe code of conduct, what did the Attorney General say? He said, "You got it wrong."

Hon Peter Foss: Indeed.

Hon LJILJANNA RAVLICH: We can play games, Attorney General.

Hon Peter Foss: The honourable member is, we know that.

Hon LJILJANNA RAVLICH: The Attorney General will be caught out. He should not worry. I got nothing wrong. There is plenty of evidence in that report to indicate that Commissioner Bartholomaeus has taken the law into his own hands and he should be severely disciplined. I say to the Attorney General that I did not get it wrong.

Hon Peter Foss: The honourable member did.

Hon LJILJANNA RAVLICH: The original draft report had Commissioner Bartholomaeus' name all over it. After input from a WorkSafe legal representative, amendments were made to that report intentionally by the Government.

Hon Peter Foss: We did not make them. We cannot make amendments.

Hon LJILJANNA RAVLICH: The argument that the WorkSafe commissioner is not responsible for what happens in WorkSafe is like saying, "Do not blame Christopher Skase, blame Qintex."

Hon Peter Foss: No. The honourable member has got it wrong.

Hon LJILJANNA RAVLICH: It is like saying, "I did not cause that accident, officer, it was my car." What an absolutely preposterous position to adopt.

Hon Derrick Tomlinson: Is the honourable member saying that the commissioner was compromised by the Government?

Hon LJILJANNA RAVLICH: I am just amazed that the Attorney General expects the Western Australian public to cop that logic.

Hon Derrick Tomlinson: Is the honourable member aware that there is a commission?

Hon LJILJANNA RAVLICH: The public will not cop that logic. They will say that this officer gets $162 000 annually; what he is doing for worker safety; and why he is taking the law into his own hands and breaching the Public Sector Management Act?

Hon Peter Foss: About what? What has happened?

Hon LJILJANNA RAVLICH: There is a cover-up going on, Mr President. There is a conspiracy going on.

Hon Peter Foss: Oh yes!

Hon LJILJANNA RAVLICH: We see members on that side twisting the truth at every opportunity. What this shows is that they have an absolute lack of respect for the law of this State. They have an absolute lack of regard for the workers of this State. They have an absolute lack of respect and almost a contempt for the taxpayers of this State. Do members know why? Because they continue to waste taxpayers' money knowing full well that the WorkSafe commissioner does not have a leg to stand on.

Hon Kim Chance: Hear, hear!

Hon LJILJANNA RAVLICH: Finally, they have an absolute lack of respect for Western Australian workers. This is a tale of mateship gone too far; it is nothing more than that.

Hon Peter Foss: Mateship! He is the honourable member's mate, not ours.

Hon Max Evans: The Opposition put him there.

Hon LJILJANNA RAVLICH: This is the arrogant Industrial Relations Minister with his high-handed approach to industrial relations, who finds himself a buddy who thinks that he can do exactly the same; that is, rise above the law. I ask members opposite: If the former Industrial Relations Minister was doing such a good job, why was he chopped off at the knees? They know he has done a lousy job; they know he got too close to the commissioner; and they know that he is implicated, as is the Premier, in the findings of the report by the Public Sector Standards Commissioner

Hon Peter Foss: What a load of rubbish.

Hon LJILJANNA RAVLICH: They also know that the WorkSafe Commissioner's powers were left unchecked, as were the powers of the former Minister for Labour Relations. The consequences of this action are serious. They have implications for the leadership of the Government. Quite clearly, the Premier is absolutely weak on this issue and is ducking and diving for cover.

Hon Peter Foss: It may be that he does not believe the honourable member's account.

Hon LJILJANNA RAVLICH: I will make sure that there is no doubt of my account.

Hon Peter Foss: The honourable member wants to make sure this committee comes out with the result she likes. She is probably announcing the decision.

Hon Bob Thomas: That is the Attorney General's style.

The PRESIDENT: Order, members! I am trying to listen to Hon Ljiljanna Ravlich.

Hon LJILJANNA RAVLICH: Serious consequences flow from this report. It has serious implications, not only for WorkSafe Commissioner Bartholomaeus but also for the former Minister for Labour Relations, Minister Kierath, and for the Premier himself. It is clear that since that report was received the culprits are running for cover.

Hon Peter Foss: No, they are not.

Hon LJILJANNA RAVLICH: They are desperately trying to protect themselves and they are desperately trying to protect their mates.

Hon Peter Foss: There is nothing to protect. The honourable member misled the House with two allegations and has not apologised for that.

Hon LJILJANNA RAVLICH: They are definitely trying to protect their mates and the Attorney General knows it. If I were the Attorney General, I would just sit here and cop it.

Hon Peter Foss: I am surprised that no-one has moved a censure motion against the honourable member.

Hon LJILJANNA RAVLICH: I want to take the opportunity to go through what the Commissioner for Public Sector Standards found because I do not think people have gone through it. Many members on this side of the Chamber -

Several members interjected.

Hon LJILJANNA RAVLICH: I did not get anything wrong. The Attorney General wants to get into semantics.

Hon Peter Foss: No, only truth.

Hon LJILJANNA RAVLICH: The Attorney General wants to say that the person who is receiving $162 000 annually to look after the safety and welfare of workers in this State -

Hon Peter Foss: And doing it well. Look at the tabled letter. It was tabled twice yesterday.

Hon LJILJANNA RAVLICH: I will go through the letter. The Attorney General says that that person has done the right thing and that it was not he who took the law into his own hands, it was WorkSafe. I put this to the Attorney General given that he is so smart: The decision not to deal with or respond to union calls was never passed by the 12 members of the commission.

Hon Peter Foss: That was not the decision.

Hon LJILJANNA RAVLICH: That policy decision -

Hon Peter Foss: The honourable member is misleading the House.

Hon LJILJANNA RAVLICH: - was made unilaterally by the commissioner and it was condoned by the minister.

Hon Peter Foss: The honourable member is misleading the House and she knows she is misleading the House.

The PRESIDENT: Attorney General, I ask you to stop interjecting and I remind Hon Ljiljanna Ravlich that she is meant to be addressing the House on the reasons why the various issues in her motion should be referred to the Standing Committee on Public Administration. That is what the motion is all about and that is what we are meant to be talking about.

Hon LJILJANNA RAVLICH: Thank you, Mr President. I will take your advice in relation to that.

The PRESIDENT: I am aware that what Hon Ljiljanna Ravlich was discussing is relevant to the issues. However, I am

asking her not to continue to have a discussion with the Attorney General, and deal with the reasons why this matter should be referred to a committee because that is what the House has to vote on.

Hon LJILJANNA RAVLICH: Fundamentally, the reason that this issue should be referred to a committee is that it, together with a range of other matters, needs a thorough investigation. Although it has taken 13 months to report on the matter from the time I lodged my inquiry with the Commissioner for Public Sector Standards, the bottom line is there is still a great deal of confusion and a reluctance on the Government's part to accept the findings of the Commissioner for Public Sector Standards.

The reason that the Government will not accept those findings, even though it created the office of the Commissioner for Public Sector Standards, is that it did not like the ruling. At the end of the day one cannot and should not establish government agencies, give them functions and support them using taxpayers' money then, when one does not like their ruling -

Hon Peter Foss: We have no problems with the ruling. We accept it.

Hon LJILJANNA RAVLICH: I want to go through my concerns, outline where a greater degree of analysis should occur, and set out the areas the inquiry should cover. The covering letter sent to me by the Commissioner for Public Sector Standards clearly outlines that, after carefully considering the matter, he formed the view that WorkSafe Western Australia had not complied with section 9 of the Public Sector Management Act 1994, the Western Australian public sector code of ethics and WorkSafe's own code of conduct.

If it is not the responsibility of the WorkSafe Western Australia Commissioner who made the judgments, I would like to know who the Commissioner for Public Sector Standards is referring to when he refers to WorkSafe. I hear from the government benches that the WorkSafe WA Commissioner cannot be accountable and, given that the commission, which consists of 12 members, was not consulted in relation to this matter and it was never formalised at any meeting - it probably was not discussed with three-quarters of the members - I want to know, as does the Western Australian public, who is this mysterious body known as WorkSafe, and who made the decision. Somebody must have told it to do it.

In view of the fact that this relates to one of the terms of reference outlined in my motion, a more thorough analysis is needed to find out, on behalf of all Western Australian taxpayers, just who or what WorkSafe is. If members opposite are telling me that the accountable officer and the accountable minister have nothing to answer for, it appears, regrettably, that the Attorney General has a very poor understanding of the Westminster system of government and the findings of the Burt Commission on Accountability. There is much work for this committee to do and I am concentrating on only one term of reference, although the motion contains nine terms of reference. Much needs to be done to get an accurate reflection of what is happening in occupational safety and health. I have heard horror stories, and on many occasions I have brought those stories to this House, about the strategies and tactics used because some employers know they can get away with very bad occupational safety and health practices which result from their cost cutting activities. The only victims that emerge from the process are the poor workers. I give the House my assurance that I will not rest until such time as the occupational health, safety and welfare of Western Australian workers is improved significantly.

A further very important issue must be scrutinised by this committee. It relates to a discussion between the Premier and the Commissioner for Public Sector Standards at a meeting in Parliament House on 17 September last year. The Commissioner for Public Sector Standards states at page 1 of his report -

> During a meeting with the Premier at Parliament House on September 17, 1997 to discuss other matters, I raised the complaint made by Ms Ravlich. At both meetings I drew attention to the ethical situation that could ensue if an accident were to occur at a workplace at some point after WorkSafe had received a written complaint from a trade union which had been ignored under WorkSafe's policy.

Quite clearly there is the question of the State's liability in the event that an accident or death had occurred. It is of grave concern to me that the Premier, by all accounts, did not seek any legal opinion about what might happen in that situation. The other matter that concerns me is that had there been a death, and had it been necessary for the Government to defend WorkSafe's policy at that time, there is no doubt that the Government would have used taxpayers' money to defend its position. This inquiry needs to carefully look at the role of the Premier in this matter. Although it is quite clear that he did not understand the provisions of the Public Sector Management Act and he should have -

Hon Kim Chance: He did not even know he was the minister responsible.

Hon LJILJANNA RAVLICH: That is true. Although the Premier should have known there was a strong possibility of a breach of at least the Public Sector Management Act, and possibly the Occupational Safety and Health Act, and the codes of ethics and conduct, he did not recognise that something was wrong and he did nothing. He sought no legal advice and he showed a total disregard for a whole class of people in Western Australia. Do members know why he showed that total lack of regard and respect for this group? It is because they are unionists and he is ideologically opposed to unions. Therefore, the Premier did not bother to seek a second opinion about the consequences of WorkSafe's actions.

I would like the Standing Committee on Public Administration to pursue that matter further and also the report from the Premier's office about this matter. The Premier's response to the Commissioner for Public Sector Standards included a report by the Director General of the Ministry of the Premier and Cabinet, which stated that the allegations against Mr Bartholomaeus were not sufficiently serious to support disciplinary action under the Public Sector Management Act. Quite clearly the Premier is not familiar with the Act for which he has responsibility. Either the Premier, who is accountable for public sector management, does not know the provisions of the Act or the Commissioner for Public Sector Standards does not know them. Quite clearly somebody does not. In either case, it is a very bad state of affairs. What confidence can people have in senior government officials if they do not know the fundamentals of the legislation which they are charged to manage and administer? It is an appalling state of affairs. The report by the Director General of the Ministry of the Premier and Cabinet states that there was no evidence that Mr Bartholomaeus failed to comply with any obligation or duty under the Occupational Safety and Health Act.

I do not want to comment on that, apart from saying that the motion before the House currently will give the Standing Committee on Public Administration the opportunity to analyse, closely scrutinise and make a judgment about the actions of Commissioner Bartholomaeus and whether he failed to comply with the provisions of the Occupational Safety and Health Act. It can be seen that there is much work to be done by the Standing Committee on Public Administration in this area.

I will take members through the facts of the case because I am somewhat concerned that people are ill-informed and are being very selective about the information they use for their own purposes. These are the facts, according to the report of the Commissioner for Public Sector Standards -

> The unionists were alleged to have behaved badly during the episode.

The WorkSafe Western Australia Commissioner obviously made a determination that the unionists behaved badly. Who is the commissioner to make such a judgment? The report states -

> Mr Bartholomaeus expressed anger about the entry. He promptly announced that WorkSafe would ". . .have nothing to do with union representatives for the next six months . . .".

It is absolutely and totally preposterous for any responsible member of this place or any other place to tell me and the Western Australian public, as have both the Premier and the Attorney General, that Mr Bartholomaeus can be distanced from the actions of WorkSafe.

Hon Ken Travers: The Westminster rules go out the door.

Hon LJILJANNA RAVLICH: We may as well take the whole lot and throw them out of the door!

Mr Bartholomaeus stated that he would have nothing to do with unions for the next six months. He confirmed WorkSafe's position in a letter dated 23 July 1997 to Mr John Kobelke, the member for Nollamara. He told Mr Kobelke that in the event that a union official or representative contacted WorkSafe about any safety issue, WorkSafe officers were instructed to advise the caller to encourage either a safety or health representative or an employee to notify an inspector in accordance with the requirements of section 25 of the Act. It is clear that Mr Bartholomaeus would not deal with unions direct. The WorkSafe Commissioner said that he would not deal with a safety complaint that came to WorkSafe through a union.

Hon Peter Foss: That is nonsense.

Hon LJILJANNA RAVLICH: I will give the Attorney General some nonsense; it is contained in the letter and the report. The Attorney General does not like this. Can he not read English?

Hon Peter Foss interjected.

The PRESIDENT: Order! The Attorney General will cease interjecting. I am trying to listen to Hon Ljiljanna Ravlich and every time I get interested someone interjects.

Hon LJILJANNA RAVLICH: I am heartened to hear that you are interested, Mr President.

On a number of occasions I have heard the Attorney General say that was not said, and that Commissioner Bartholomaeus did not say that he would not deal with unions. I have it here in black and white. However, as a backup, so that we do not have any misinterpretation of the facts, I will read from a letter from Amanda Wright, a health and safety coordinator with the Australian Liquor, Hospitality and Miscellaneous Workers Union who wrote to Hon Graham Kierath on 7 August 1997 about radiation exposure from X-rays in hospitals. I will pull the eyes out of this letter. I am happy to table it because it is one of the many letters which not only the Minister but also WorkSafe has received which indicate that a ban was put in place by the WorkSafe Commissioner. The letter reads -

> I have recently encountered a most extraordinary situation where a public servant has failed to perform his duty as an Inspector in accordance with the Occupational Safety & Health Act 1984.

> On Thursday 24 July 1997, Dr. K.C. Wan a Worksafe WA inspector contacted me to provide me with an update on progress regarding radiation exposure at Kununurra Hospital and related work practices. This is a matter which has already received some attention from Worksafe. It has previously been dealt with by Worksafe W.A. Inspector, Andrea Callagher.
>
> The issue at Kununurra Hospital was first raised with Worksafe in early June 1997.

She goes on to say -

> The Union repeated its request to Worksafe to pursue this matter in accordance with Section 25 of the Occupational Safety and Health Act 1984 . . . I was advised by Inspector Callagher that she was to take extended leave and Inspector Wan would follow up. Further that he had been briefed on the case and was very interested and concerned about the health risks. The file had been handed over to Inspector Wan before Inspector Callagher went on leave.

The letter continues-

> The advice that I received from Inspector Wan on Thursday 24 July 1997, was that he had no jurisdiction to cover this matter and would be handing it over to the Radiological Council -

That was after some intervening action. To continue -

> This was inconsistent with the advice previously received from the other two Inspectors who had been dealing with this matter.

This is the crux, Mr President -

> I asked Inspector Wan why he was being unco-operative. He responded that he had a directive from the Commissioner Neil Bartholomaeus not to deal with union officials.

Hon Kim Chance: Oops!

Hon Peter Foss interjected.

Hon LJILJANNA RAVLICH: The Attorney General should just sit in his seat.

Hon Peter Foss: You are proving yourself wrong.

Hon LJILJANNA RAVLICH: The Attorney General is starting to sound pathetic.

Hon Peter Foss interjected.

The PRESIDENT: Order!

Hon LJILJANNA RAVLICH: The letter continues -

> I reminded Inspector Wan that he had a duty as a public servant to serve the public as an inspector to ensure that people are protected from hazards at work. I asked again if he would deal with the matter, he again refused.

How pathetic is that? He is a public officer funded by the public purse to protect the public worker and he has been instructed by the WorkSafe Commissioner to not only not respond to unions but not talk to them! Who on earth does this bloke think he is?

Hon Peter Foss: You have just changed it again.

The PRESIDENT: Order!

Hon LJILJANNA RAVLICH: The Attorney General sounds pathetic; we can all see how pathetic he is. He should sit quietly. Amanda Wright said that she reminded Inspector Wan that he had a duty as a public servant to serve the public as an inspector and to ensure that people were protected from hazards at work. That is concrete proof of that. There are plenty of other letters like it and a report by the Commissioner for Public Sector Standards. It is strange for the Attorney General to say that WorkSafe - which we cannot even define - and not the commissioner is responsible. We know that the commission cannot be responsible because the issue was never taken to the 12 members of the commission. Can the Attorney General tell me who is responsible, since he is so smart? Was it the Attorney General? Is he not doing enough damage in Justice, now he would pop over to Occupational Health, Safety and Welfare?

The PRESIDENT: Order! Hon Ljiljanna Ravlich will address the Chair and not invite interjections.

Hon LJILJANNA RAVLICH: That concerns me as a taxpayer. I would like to see the money that I pay in taxes used in an effective manner for the purposes intended.

Hon Peter Foss: It is.

Hon LJILJANNA RAVLICH: It is not for the purpose of paying the wages of a WorkSafe Commissioner who chooses not to deal with certain classes of people because his Minister happens to be ideologically opposed to them. What an insult that is.

Hon Peter Foss: You are getting more accurate.

Hon LJILJANNA RAVLICH: This is one issue on which the committee can do some excellent work, and see the extent of this problem. Clearly there has been a breach of section 9 of the Public Sector Management Act. I will not get into semantics. Mr Bartholomaeus is the commissioner; he is the responsible officer. There is no doubt that the former Minister for Labour Relations is also responsible, and the Premier has some accounting to do because he should have known the provisions of the Act.

I will quickly move on to the code of ethics.

Hon Ken Travers: They were breached too.

Hon LJILJANNA RAVLICH: Mr President, can I refer to you in this debate?

The PRESIDENT: You cannot bring me into the debate as Chair but you can refer to my former life.

Hon LJILJANNA RAVLICH: On Tuesday 14 June 1994 Hon George Cash, as Minister assisting the Minister for Public Sector Management, delivered a speech to this place. A critical part of that speech was the establishment of not only a new Act but also the office of Commissioner for Public Sector Standards. An independent statutory office of the Commissioner for Public Sector Standards would be responsible to establish sector-wide codes of ethics, setting 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. The speech reads -

> The unacceptable behaviour of some people in Government in the 1980s and early 1990s underscores the need for these measures. 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.

If that is what this Act was set up for, some of the key goal keepers of this Act are letting down their side badly. The Commissioner for Public Sector Standards found that -

> The Code of Ethics, which is binding on all public sector bodies and employees, imposes responsibilities, under the principle of justice, to develop and maintain an environment that is free of fear or favour and is impartial and, under the principle of respect for persons, to avoid making commitments that may compromise the performance of public duties.

Not only did Commissioner Bartholomaeus decide unilaterally that he would not respond to a class of persons because he was ideologically opposed to them and his minister was ideologically opposed to them but, far worse than that in many respects, he instructed his officers to not deal with or respond to that class of persons and thereby to compromise their performance of public duties. That is an appalling breach of the Public Sector Management Act. It is a bit like the hospital system saying it will not deal with clients from a certain ethnic group, or the teaching profession saying it will not teach a certain class of children in schools. I do not know of any law in this State that would give the WorkSafe Commissioner the right to make such a decision. Commissioner Bartholomaeus has well and truly breached the public sector code of ethics, the WorkSafe WA code of conduct, and the Public Sector Management Act. Not only that, he has overstepped the mark in also instructing his officers to compromise their performance of public duties. I would like that matter to be dealt with so that we can see the full extent of that breach, and particularly the link between Commissioner Bartholomaeus and the instruction that he issued to the workers in his department.

There has been a clear breach of WorkSafe WA's code of conduct. One of the key aspects of Commissioner Bartholomaeus' employment contract is that he adhere not only to the code of ethics of the Public Sector Management Act and the Act itself, but also to WorkSafe WA's code of conduct. That is stated in the performance agreement that was signed by the Premier in March this year. Point 12 of Commissioner Bartholomaeus' contract of employment states clearly that the WorkSafe Commissioner must meet the public sector management code of ethics and WorkSafe WA's code of conduct. However, Commissioner Bartholomaeus has breached those codes. The Premier is saying that certain people are allowed to do whatever they want. Why have codes of conduct, codes of ethics and Acts of Parliament if certain people can do what they like?

Hon Peter Foss: You should be Crown Counsel! You obviously know more about it than does Robert Cock QC.

Hon LJILJANNA RAVLICH: I and many other people would like to know why the WorkSafe Commissioner is above the law. I certainly have my suspicions, because clearly there are serious implications for both the Premier and the former

Minister for Labour Relations as a consequence of their being a party to the actions of Commissioner Bartholomaeus. The list of concerns goes on and on.

I turn now to the responses given by Commissioner Bartholomaeus. These must be looked at very carefully by the inquiry, and much work remains to be done in this area. Commissioner Bartholomaeus said that he gave the responses on behalf of WorkSafe. However, in the final report he said it had nothing to do with him; it was WorkSafe WA. I am still very confused about this fundamental matter, and I cannot wait to hear someone explain it. It is very clear in the report of the Commissioner for Public Sector Standards that Commissioner Bartholomaeus changed his line five times, depending on the heat of the moment. Page 5 of that report states -

> On behalf of WorkSafe, Mr Bartholomaeus has made several statements on the issue which have not been uniform:
>
> . On 26 June 1997 he announced that his officers would not deal with unionists because of the events of that day . . .

Hon Kim Chance: Is that not what the Attorney General said he did not say?

Hon LJILJANNA RAVLICH: That is exactly what the Attorney General said he did not say. The report continues -

> . On 23 July 1997 he advised the Parliamentary Commissioner for Administrative Investigations that, because of the unlawful entry by unionists, WorkSafe's relationships with unions "will be strictly in accordance with the *Occupational Safety and Health Act 1995"*.

The Commissioner for Public Sector Standards concluded as follows -

> Those statements by Mr Bartholomaeus left little doubt that the policy was essentially punitive. It clearly had nothing to do with the question whether WorkSafe officers had the statutory power to deal with union representatives, both because the statements expressed refer to events of 26 June as the cause and because the policy included possible resumption of involvement by union representatives after six months.

Hon Kim Chance: Are you quoting from Commissioner Saunders' report?

Hon LJILJANNA RAVLICH: Yes, and that is why when the Attorney General says to me that Commissioner Bartholomaeus did not say this, I want it on record what this commissioner did say. I want it said in Parliament. I want everyone to be able to read it. The report continues -

> . On 3 October 1997, Mr Bartholomaeus 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 safety and health issues at the workplace when neither the Parliament nor the Tripartite Commission recognises that role for unions".

If a complaint is made by a union inspector or organiser about an occupational safety and health issue anywhere in this State, it should be dealt with; and where that complaint stems from or by whom it is delivered is irrelevant. To say that he does not recognise the role of unions -

Hon Peter Foss: You are reading into that an intent that has not been found by anyone.

Hon LJILJANNA RAVLICH: I am not reading anything into it. I am putting on record what is stated in the report. The report continues -

> . On 14 October 1997, he advised Dr Schapper (the head of the Public Sector Management Office) that to respond to unions as his department had previously done "would be ultra vires the *Occupational Safety and Health Act* . . .",

We must believe in humour if we believe in this! That means that if a complaint happened to be from a union official -

Hon Peter Foss: You are doing it again!

The PRESIDENT: Order, Attorney General! I do not need a running commentary as to what is right or wrong. In due course, the Attorney will have an opportunity to state his case.

Hon LJILJANNA RAVLICH: Thank you, Mr President. Commissioner Bartholomaeus is saying that if the department was alerted to an occupational safety and health matter by a union official, that would be ultra vires the Occupational Safety and Health Act. I have never heard anything so preposterous in my life! Commissioner Bartholomaeus said also, as stated in the report, that the unions' involvement would circumvent the statutory provisions and that union involvement, if tolerated by WorkSafe Western Australia, would disrupt efficient and effective operation of the Act. I cannot for the life of me see -

Hon Peter Foss: There you go again.

Hon LJILJANNA RAVLICH: - how responding to union organisers who have concerns about occupational health and safety issues would in any way be ultra vires of any Act or would in any way disrupt the effective and efficient operation of the Act, I do not know. It is an absolute nonsense!

An interesting course of events has taken place since the report was released. The construction and engineering branch of WorkSafe WA has failed to deal with the Construction, Forestry, Mining and Energy Workers Union of Australia and the Builders Labourers, Painters and Plasterers Union of this State for about two years. It has failed to meet or to have any contact with them. Now, all of a sudden, since the report of the Commissioner for Public Sector Standards has come to light, Frank Keough, the chief inspector of the construction and engineering branch of WorkSafe WA - who had refused to have anything to do with the building unions for two years - writes a letter to Kevin Reynolds, the Secretary of the BLPPU. One must wonder what is being done with taxpayers' money.

Hon Peter Foss: I think we saw him here at some stage.

Hon LJILJANNA RAVLICH: In that letter Mr Keough states -

> I am keen for your officials and inspectors from the Construction and Engineering Branch to meet again informally as we have in previous years.

They did not do it for the past two years. The letter continues -

> To that end I would be pleased to come to your premises with a number of inspectors . . .

Not just one, suddenly -

Hon Peter Foss: Are you complaining?

Hon Simon O'Brien: What are you complaining about?

Hon LJILJANNA RAVLICH: The Government's agencies should be doing their jobs, as should its ministers. They have not been doing their jobs.

Hon Peter Foss: There is no satisfying you.

The PRESIDENT: Order, Attorney General!

Hon LJILJANNA RAVLICH: It has taken this report to get this response. Government members wonder why I get angry. The arrogance of them.

Hon Peter Foss: Nonsense!

Hon LJILJANNA RAVLICH: The letter reads -

> To that end I would be pleased to come to your premises with a number of inspectors . . .

Not one, we have the whole crew now. To continue -

> . . . to firstly give a brief presentation on the Team's strategies and achievements over the last 12 months and our plans for the immediate future. Secondly, so that the new recruits to the inspectorate get to meet informally with your officials who may also have changed since we last met.
>
> I believe that these meetings are beneficial to both organisations . . .

It is funny how a meeting can suddenly be so beneficial to both organisations, when the unions were totally irrelevant for two years. I am amazed that something can become so relevant so quickly.

Hon Peter Foss: If that letter had not been written, you would be complaining about it not being written. There is no satisfying you.

Hon LJILJANNA RAVLICH: The letter continues-

> My preferred times are early afternoon, say after 3 pm . . .

There is something strange about this. It has taken a report from the Commissioner for Public Sector Standards to get some dialogue from WorkSafe WA. We should be asking questions. I am running out of time but I assure the House that I will pursue this matter tomorrow.

Hon N.F. Moore: And the day after that.

Hon LJILJANNA RAVLICH: The committee can look at much more.

Hon N.F. Moore: I think you might have said it all.

Hon LJILJANNA RAVLICH: The Premier made a statement today on this matter. Clearly the Premier must come clean and answer many questions. Presumably the response given in the other place is directed at the people of Western Australia. The Premier, referring to the findings from the report of the Commissioner for Public Sector Standards, stated -

> I advised I took the findings seriously and had sought assurances from Mr Bartholomaeus that workplace safety had not been compromised.

All the Premier sought was an assurance. This commissioner does whatever he wants and the Premier seeks an assurance. It would be nice if we could all do what we like and just give a little assurance. The Premier continued -

> However, I also advised I was concerned that the report did not provide sufficient basis for a "suspicion" that Mr Bartholomaeus had breached a code of ethics or a code of conduct or a standard that would justify commencing disciplinary proceedings . . .

It was only a suspicion, according to the Premier; there were no findings in this report. It was all about suspicion and has nothing to do with the findings.

Hon Peter Foss interjected.

Hon LJILJANNA RAVLICH: The Premier's statement continued -

> In January 1996 the then Public Sector Management Office published a booklet called "A Practical Guide to Discipline" which was intended to serve as a comprehensive working guide for human resource practitioners and managers. At page 8 it states that the principles that apply to the disciplinary process are set out in sections 8 and 9 of the act. In particular under 8(1)(c), it states -
>
> > All employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts.

If we are to behave in accordance with this Act regarding Commissioner Bartholomaeus, why was the same courtesy not extended to all Western Australian workers who were affected by Commissioner Bartholomaeus' decision not to deal with unions? That decision subsequently placed hundreds of thousands of workers in Western Australia at risk. All taxpayers and workers should be treated the same. Suddenly, the WorkSafe Commissioner is somebody who needs to be treated in a special manner. The only reason that the Premier is grasping at this straw is that he knows more findings against Commissioner Bartholomaeus will have grave implications for the Premier. It is important that we have a thorough investigation of this matter. The Premier goes on to say -

> The difficulty that has arisen is that we have legal advice that while the report makes findings it does not contain any evidence that could be used to justify disciplinary proceedings against Mr Bartholomaeus.

I will ensure I set the record straight. I have already outlined the commissioner's position and I am not halfway through; much more remains to be told. I am advised - and I would like the Premier to respond - that an early draft of a report made much more direct reference to Commissioner Bartholomaeus but legal advice was given to him. As a result of that legal advice and his submission to the Public Sector Standards Commissioner, an alteration was made between the draft and the final report. That alteration would have been quite substantial.

Hon Peter Foss: Have you heard of natural justice?

Hon LJILJANNA RAVLICH: The Attorney General should not talk to me about natural justice. The WorkSafe Commissioner put the lives of hundreds of thousands of Western Australian workers -

Hon Peter Foss: That is nonsense!

Hon LJILJANNA RAVLICH: That is not nonsense. He put the lives of thousands of Western Australian workers at risk and the Attorney General talks about natural justice. He does not know the meaning of the words. He has no idea what the words stand for.

Hon Peter Foss interjected.

Hon Tom Stephens: You would not know it if you fell over it, Attorney General.

Hon LJILJANNA RAVLICH: This inquiry could take a close look at the legal opinion provided to Commissioner Bartholomaeus. I understand that it led to substantial changes being made to the report.

Hon Peter Foss interjected.

Hon LJILJANNA RAVLICH: That report has now been made public. The Government is using it to argue that it was not

WorkSafe Commissioner Bartholomaeus but rather WorkSafe that made the decision which led to the refusal to deal with unions. The Premier continued -

> However I have not left the matter there. Yesterday I wrote to the Public Sector Standards Commissioner advising him of the difficulty and asking if he has any evidence that could be taken into account in determining whether Mr Bartholomaeus has committed a breach of discipline.

If this is not evidence enough of a waste of taxpayers money -

Hon Peter Foss: It started with the two claims by you, which were dismissed.

Hon LJILJANNA RAVLICH: It took 13 months, accumulated files two inches thick, and involved legal opinions which cost tens of thousands, if not hundreds of thousands, of dollars. This was all because the Premier did not like the ruling of the umpire because it has grave consequences -

Hon Peter Foss: You do not like the ruling of the umpire!

Hon LJILJANNA RAVLICH: Sit there and shut up!

Point of Order

Hon RAY HALLIGAN: I bring to your attention, Mr President, Standing Order No 97. An imputation of improper motives has certainly been made in the comments about the Premier.

Hon Tom Stephens: That would be right then, wouldn't it?

The PRESIDENT: Order! A point of order has been raised, and it is proper that it be dealt with. Standing Order No 97 refers to offensive words against members. I will not read the entire standing order as members have the standing orders book before them. If they read the standing order, and have regard to previous decisions of the Chair, it is clear that the words used by Hon Ljiljanna Ravlich do not constitute a breach of this standing order. However, it would be a very good idea if all members read Standing Order No 97 to understand why it exists and why it should be observed.

Debate Resumed

Debate adjourned, pursuant to standing orders.

[Questions without notice taken.]

ROAD TRAFFIC AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon M.J. Criddle (Minister for Transport), and read a first time.

Second Reading

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [5.33 pm]: I move -

> That the Bill be now read a second time.

Safer WA is a multifaceted program that we are developing to restore safety and confidence in our community following the rise of crimes of violence and home invasion. The police, state government agencies, local governments and the community are all being asked to become involved as the Safer WA program unfolds. The first major initiative of the Safer WA program is the community security program announced by the Premier at the opening of Local Government Week. This involves a partnership agreement with the Western Australian Municipal Association and the provision of funding to assist local government to conduct an audit of crime at the community level and to develop local solutions for local problems. Crime is a shared problem and a shared responsibility. The extension of the vehicle immobiliser scheme is another major initiative in the Safer WA program and it is one which will ask vehicle owners to take a greater share of the responsibility.

Let me turn now to some of the specific provisions of the Bill.

This Bill will provide for the making of regulations to require all passenger cars and motor wagons registered or transferred after the date on which the regulations come into operation to be fitted with an approved vehicle immobiliser. However, the regulations will exempt vintage, post vintage and similar vehicles from the requirement to fit immobilisers. This is considered necessary due to the intrinsic design of these vehicles and the value they derive from being retained in their original condition. An approved immobiliser will be one which is either fitted or provided by the manufacturer of the vehicle, or meets agreed standards. The applicant for the issue or transfer of a vehicle licence will be required to sign a declaration on their application that the vehicle is fitted with an approved immobiliser which is operational. When a person fails to sign the declaration, the director general will be empowered to refuse the application.

These amendments are intended to reduce the level of vehicle theft in Western Australia and form a key plank of the Safer WA initiative recently initiated by this Government. I commend this Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

ADDRESS-IN-REPLY

Amendment to Motion

Resumed from 8 September on the following amendment -

> 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 system including prison planning and deaths in custody; and
>
> (4) issues of public safety generally.

HON HELEN HODGSON (North Metropolitan) [5.35 pm]: When the House adjourned last night I was talking about the way in which I found the amendment a little confusing because it mixes up a number of concepts about which people working in the area of justice often feel differently. I have reviewed the draft *Hansard* from last night and I think the tenor of the addresses given last night suggest that even members in this place find the issue confusing because people from the same side of the Chamber were giving differing views on the implications of the law and order debate.

Hon Simon O'Brien interjected.

Hon HELEN HODGSON: I refer to the Opposition side of the Chamber. On the one hand we heard quite a lot from Hon Tom Helm about good moves being made in certain areas regarding juvenile justice and about the importance of rehabilitation, yet on the other hand, other speakers were referring to some of the public perception issues in respect of the extent of law and order problems in the community. While I do not say that either of those views is wrong, it shows the complexity of the debate and the contradictions that will emerge if this debate is conducted in the heat of the moment.

I have also had the advantage since the adjournment to note another item of news that was published in the newspapers this morning regarding this subject in New South Wales. Most members will have heard some discussion on the radio about moves being introduced into the New South Wales Parliament regarding home invasions and the right to self-defence. I have no problem with the right to self-defence as it presently exists. A person has the right to use reasonable force in a situation when an act of home invasion or violent crime takes place. I note in the comment that I heard this morning from the Minister for Police, and I believe that the Attorney General has also commented on it, although I did not hear that personally, that some agreement has been reached that the situation in Western Australia is probably different from that in New South Wales. The debate in New South Wales concerned me because it is worrying if people are to be permitted to use the right of self-defence, even to the extent of using firearms. That really worries me.

Hon Tom Stephens: You are reported in the media as saying home invasion in Western Australia is not a problem, or it is not a significant problem.

Hon HELEN HODGSON: That is certainly an oversimplification of what I said.

Hon Tom Stephens: Is there a problem in your view?

Hon HELEN HODGSON: I believe instances exist in which people have been affected by home invasion. However, I believe that those instances are not as dramatic and significant as is the public perception. It is not the case that people are being invaded every night. It is the case that in some instances much is made of it in the media, and what I am saying now is consistent with what I said in this place last night, although the member could have been absent at that time. Western Australia has always had a fairly good record in the regulation of firearms, with strong regulatory powers in this State going far back beyond the 1996 uniform gun legislation. However, we are seeing a move in some States - this latest move in New South Wales is a part of it - to peg back the changes and to start to say that it is all right to use firearms in certain situations. I have serious problems with that. At this stage, it is appropriate for us to introduce into the debate a matter which the Australian Democrats think should become a national initiative. We think not only should people have to keep firearms secure in their homes, but we should also introduce a system of banning firearms being kept in people's home in urban areas. There is no need for most people to have a firearm in their homes. If they need a firearm for the circumstances that are currently allowed under the legislation - it may be employment related or occupation related, or for a sporting shooter - provisions should be made for firearms to be secured at a central repository with access to them as and when they are needed, rather than having them at home. Evidence from other countries shows that where firearms are kept in the home, they are

more likely to be used against people living in that home, rather than in a home invasion or an act of self-defence. That may be the official reason given for requiring a firearm, but that is not usually the way the firearm is used. We have severe concerns with any moves to peg back gun control measures in this State.

I return to matters on the legislative agenda of this State. A couple of Bills have been mooted in the Governor's speech and beyond that. We have concerns about the implications of some of these Bills. In particular, I refer to the graffiti implements Bill and the Weapons Bill. We will be dealing with those at the appropriate time in this Chamber, but at this point I signal that we will look very carefully at balancing people's rights against the issues raised in those Bills.

The PRESIDENT: Order! I am sure it is only a fleeting comment on a Bill that is already on the Notice Paper. However, the member will understand that if she were to do more than make a fleeting comment, she would be breeching the standing orders by anticipating debate. As I say, I am sure it was only a fleeting comment.

Hon HELEN HODGSON: It was. The point is this: When looking at matters such as this, we must consider whether they will impact on those in our society who are already marginalised and underprivileged and whether legislation that impacts on civil rights will hit the target that is intended or whether it will impinge on the rights of those who are already in a difficult situation. We will look closely at those Bills in due course.

I also raise a couple of issues in the law and order debate. I have been meeting with people in respect of prisons and the prison system and problems in place there. I understand there is a deficit of research in connecting the violent crime rate to drug usage. My contact attempted to get research from both the Western Australian authorities and the National Crime Institute to see whether any hard data had been obtained on this matter. We found there was no research examining the rate of violent crime as it corresponds to the rate of drug use. At the moment, what we have is largely anecdotal, or based on research that is unreliable, to say the least. There are suggestions that we must do some research into the link between drug usage and violent crime. Once we understand the causes of the incidence of violent crime, we may be able to deal with them in a way that will prevent the crime from occurring, rather than reacting and saying that a crime has been committed and that we must lock up the person for a prescribed period. We must be able to say what is the cause of crime and how we can treat the root causes.

Last week I spoke in the debate on the state of the prison system, and I will not review that, except to say that is obvious from the tenor of my comments at this time that I agree that some serious matters within our prison system must be addressed. Today, in response to my question without notice, I note a gap of about two months in the delivery of pre-release programs because the Ministry of Justice is reviewing those programs. I appreciate the need to review these programs from time to time but, when these programs are not available to prisoners who are being released, two months is a serious delay which must be looked at.

The problem with the prison system will be aggravated if we adopt a stricter system of penalties and start to follow the thrust of the "lock 'em up and throw away the key" movement. The only answer is to build a bigger prison system, whether it is privatised or public. If more people are to be incarcerated, we must build bigger prisons. I do not think that is the answer. Within the prison system, a culture develops on the part of the prisoners and the prison officers. Prisons are violent places. No matter how good the person who goes into a prison is, by its very environment, a prison is a violent place. We cannot expect people to come out of a prison unharmed and unchanged in some way psychologically. We must look at the ways in which we deal with prisoners. We must make sure the punishment fits the crime, that the right people are locked away for the appropriate period and that they receive the appropriate help while there.

I digress a little. The "Insight" program shown on SBS Television last Thursday night dealt with a prisoner rehabilitation program being run at Canning Vale Prison. It looked at both sides of the question; at the people who thought the program was working and also at those who said that they thought it was not. It shows there is room for these programs to happen. What works for one prisoner will not work for all, and we must address that here.

If we are looking at bigger and private prisons, we must look carefully at the accountability of our prison system, to make sure someone can speak as a friend of the prisoners, someone who is not part of the system, someone to whom prisoners can go to feel safe and say, "I have a complaint; I have an issue; I have a problem; I have a domestic problem." At the moment much of this is left to the non-government organisations working within prisons, and they do a very good job. As our prison system grows and, particularly if we look at any form of privatisation, we must ensure there is a formal method of allowing prisoners to have access to a means of addressing their problems.

Hon Barry House: What about the little old lady who gets bashed up?

Hon HELEN HODGSON: There are quite a few programs in place that deal with victims' rights. They have the right to have their say in court. I do not say there is not a problem. I feel for the poor little old lady who has been bashed up. I am saying that we are not yet living in a society in which people must lock themselves in their homes.

Hon Barry House: Some people would disagree with that.

Hon HELEN HODGSON: That happens in some societies, but we are not yet at that stage.

Hon Muriel Patterson: We are.

Hon HELEN HODGSON: The perception being built up is that we are at that stage. I will address one further issue in the amendment to the motion; that is, legal aid funding. I agree with the comments made in the past about the cuts to legal aid and the impact of that on justice in this State. I appreciate it is a problem of state-federal funding and allocation between the two. In the debate yesterday, Hon Nick Griffiths referred to a motion moved six months ago. I dug out my notes which I never used in the debate on that motion. I do not think things have changed significantly in that time. Essentially, we have cuts to legal aid at the federal level which has put pressure on the state legal aid funding.

We have not been able to pick up the slack caused by those cuts. The people who are being hurt by this are those who are marginalised. Recent changes have occurred to ensure that children get adequate representation. That was reported in a recent edition of *Brief*. Generally the people who are hurt by this are involved in Family Court cases. An article published in October last year states that the legal aid squeeze puts children at risk. That was a comment made by the Chief Judge of the Family Court. An article published in March 1997 is headed "Legal aid cutbacks put justice at risk". An article in February 1997 is headed "Legal aid cuts hurt women most, lawyers say". Another article is headed "Disabled lose in legal cuts". Another article states that legal aid cuts leave Aborigines lawyerless. The cuts are hurting those people who most need assistance to find their way through the legal system.

Most of these issues have been addressed in report after report. They are addressed in reports dealing with women in the courts and Aboriginal issues. They all say that we must ensure that people are properly represented in the judicial system. Significant cuts in legal aid funding are impacting on the administration of justice in this State.

I have addressed the main issues that have been raised in the debate. I appreciate that people approach this issue from different perspectives. It is only fair that all of those perspectives are represented in this place. I feel for victims of crime. I do not say that victims of crime are not hurting. However, we need to address the root causes of crime. We must not respond by simply saying that we must sentence the offenders to longer terms of imprisonment, locking them up and putting them away. At the moment the community is overreacting. People are causing themselves anguish, largely because those in public positions are prepared to use law and order as an issue to stir up the emotions. We need to sit back and ask how we can address this issue in an objective manner. We need statistics and we need to look at the root causes of the problem. I am pleased to see that a cabinet subcommittee has this issue on board. It will be interesting to see what the committee comes up with.

Debate adjourned, on motion by Hon N.F. Moore (Leader of the House).

ORDERS OF THE DAY

Discharge and Referral to Standing Committees

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.54 pm]: I move in respect of Orders of the Day 11, 12, 13 and 14 -

That the Orders of the Day for the following Bills -

Acts Amendment (Sexuality Discrimination) Bill;
Constitution of Western Australia Bill;
Electoral Amendment (Constitutional Provisions) Bill; and
Labour Relations Legislation Amendment Bill (No 2)

be discharged and the -

Acts Amendment (Sexuality Discrimination) Bill;
Constitution of Western Australia Bill; and
Electoral Amendment (Constitutional Provisions) Bill

be referred to the Standing Committee on Legislation; and the -

Labour Relations Legislation Amendment Bill (No 2)

be referred to the Standing Committee on Public Administration.

Basically this motion seeks to refer those four Bills to committees where they were lodged prior to prorogation. I have agreed to the request from the Labor Party and the Democrats for the reinstatement of those Bills in the committees to which they were previously referred. I commend the motion to the House.

Question put and passed.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL

Second Reading

Resumed from 30 June.

HON BOB THOMAS (South West) [5.55 pm]: The Opposition supports the Bill. It is long overdue and makes some welcome improvements to the legislation. However, it does not go far enough and some loose ends need to be tidied up. The Opposition will be introducing some amendments to various clauses of the Bill.

The basic tenet of the Labor Party's approach to the Bill is that it is concerned about the disparity in bargaining power between the property owners as lessors and small businesses as lessees. We opposition members want to see some equity introduced into those negotiations. However, we do not want to prescribe the outcome of every one of those negotiations. We simply want them to be fair and not end up being harsh and unjust, as is happening in many cases now. I qualify that remark by saying that many property owners are fair in their treatment of their lessees but some voracious owners are finding ways around the existing Act and are not acting in the best interests of their retail tenants.

This is one of the most important Bills that we will deal with in this term of government. It is an enormously important Bill. Many major reports have been compiled on the issue over the past few years. The Federal Parliament in May 1997 produced a report called "Finding a balance towards fair trading in Australia". The report was prepared by the House of Representatives Standing Committee on Industry, Science and Technology. Its members travelled all over Australia and took evidence in every capital city and some major regional centres. They took evidence from thousands of retailers and representatives of owners of properties. They made a significant number of recommendations on issues relating to the relationship between lessors and lessees.

The South Australian Parliament also investigated this issue. A joint committee on retail shop tenancies considered it in 1996. It made recommendations similar to those contained in the House of Representatives report. A group of business interests have also looked at the issue. The microbusiness consultative report was produced in February of this year for Hon Peter Reith, the Minister for Workplace Relations and Small Business. The report is headed "Under the microscope: Microbusinesses in Australia". One of the chapters of that report refers specifically to the relationships and the imbalance in negotiated outcomes between lessors and lessees. This important issue has been considered at all levels of government. It impacts on thousands of businesses throughout Australia. Many small businesses throughout Australia are losing their viability as a result of the outcome of lease negotiations. Some business people are going bankrupt as a result of their interaction with lessors. This Parliament needs to deal with this very important issue. I am glad that the Government has brought the Bill forward.

Sitting suspended from 6.00 to 7.30 pm

Hon BOB THOMAS: As I was saying before the dinner adjournment, the Labor Party's support for this Bill is based on its desire to ensure negotiations are fair between lessors - the property owners - and lessees - small businesses. We are trying to overcome the disparity between the powerful property owners and the much less powerful small businesses. However, we are not trying to prescribe the outcome of those negotiations. We are trying to ensure that negotiations over rents and leases are fair and not harsh and unjust, as some are.

Much has been written on this subject. An article written by Lisa Edwards on 13 August in the *South Western Times* succinctly sums up many of the issues involved in this debate. The article refers to a small businessman, Mr Bello, a hairdresser, who was one of a number of people who wanted to move into another shopping complex in Bunbury. The owners of the shopping complex are seeking rezoning of their precinct because it is now zoned light industrial, which means that the only retail activities it can allow are showroom-type activities. The article reads -

> Mr Bello told the council committee on Tuesday that he wanted to move out of Centrepoint Shopping Centre because his rents had trebled.
>
> Mr Bello said the shopping centre owners had also told him he would have to move his salon to a different part of the centre.
>
> Deciding to move out of the centre was not easy, but he could not afford the extra rent or the cost of fitting out a new shop.
>
> He did not want to open in the Central Business District because it had an oversupply of hairdressers.
>
> Cr Steve Hill said he felt sorry for Mr Bello, but the issue was the orderly development of Bunbury, not individual circumstances.

That sums up many of the issues involved in this debate. It describes the plight of a small retailer whose rent has trebled over an unspecified time. I imagine that trebling of the rent occurred over a couple of years. His rent may have even more than trebled during the five-year lease. He had also been asked by the centre management to shift to another premise, but

he found that he would be less viable there and would be burdened with the additional cost of refitting his salon. Given the fact that he was part way through his lease, it would be very difficult for him to amortise that cost over the remainder of his lease.

The real pity for this gentleman is that he is trying to move out of a large shopping centre in Bunbury, Centrepoint, which is obviously owned by the Lend Lease Group, Westfield or one of the other larger organisations, into the Prosser complex. This poor bloke is wanting to jump out of the frying pan into the fire. The article succinctly sums up many of the arguments put by small businesses for the need to change this legislation.

Hon Barry House: What was Councillor Hill proposing to do about it?

Hon BOB THOMAS: Councillor Hill was not talking about this legislation. He was opposed to the rezoning of lot 100 Blair Street, a complex owned by Prosser. Steve Hill was one of the councillors who successfully opposed the rezoning.

Hon Barry House: Which is not surprising given that he used to be the President of the Labor Party in Mitchell.

Hon BOB THOMAS: The issue that the member has raised is irrelevant to this debate. Councillor Hill was doing the right thing because this area was zoned for display-room trading. It is a long way from the CBD and Bunbury should not have two CBDs. If Hon Barry House thinks differently he should let the people of Bunbury know that.

Hon Barry House: How many vacant lots are in that centre?

Hon BOB THOMAS: I am not trying to avoid the interjection by Hon Barry House, but it is not germane to this debate.

Hon Barry House: I think Prosser has picked the market very well.

Hon BOB THOMAS: I invite the member to say that publicly in Bunbury and I will take an entirely different position from him.

The article in the *South Western Times* summed up many of the arguments in this debate. I am therefore glad that this legislation has come forward now as it will make some of those amendments which I think are vital for small business. The Labor Party will support most of the amendments in this Bill.

We are pleased to see the change to the definitions of key money and lettable area in the Bill. Members would be aware that key money has been a major problem for small businesses for a long time because it involves the payment of some benefit to the centre managers for the letting or renewal of a lease after the completion of that lease. The 1985 Act attempted to stop that; however, the property owners have managed to find ways around it. This amendment, we hope, will stop that activity once and for all.

We are pleased to see the definition of outgoings changed to exclude management fees. Everybody understands that a lessee pays rent plus variable outgoings; that is, council rates, electricity, water, refuse collection, gardening, promotional activities and so on. They are variable costs and are apportioned usually across all tenants, although some larger, anchor tenants are excluded. In many cases centre managers - property owners - have included the management costs in variable outgoings. We do not think that is right and, fortunately, the Government does not think it is right because this amendment will void those costs as part of variable outgoings.

The definition of retail shopping centre has been improved to encompass the strata title changes which have occurred over the past few years. They are good changes and we are prepared to support them. The definition of a retail shop should be amended and I have placed an amendment on the Notice Paper. We believe the definition of retail shop means shops up to 2 000 square metres.

Hon Max Evans: That is pretty big.

Hon BOB THOMAS: In some cases those retailers which are publicly listed companies should also be covered by this Act. I have also put an amendment on the Notice Paper to ensure that some of the small chains like Jeans West come under the purview of this Act.

Hon Max Evans: Will the Act cover shops of 2 000 square metres - half an acre?

Hon BOB THOMAS: That is right, half an acre. The reason is that many retailers such as small supermarkets like SupaValu are exclusively retail; they are franchisees and do not have the professional expertise on their staff to deal with property matters, leases and those sorts of things. They might employ a few more people but essentially they are usually family-owned, small, franchisee businesses. They should be covered by this Act because they do not have the skills and expertise that large retailers have, such as Coles, Woolworths and Foodland. Therefore, we intend to test the will of the House on an amendment to increase the size from 1 000 square metres to 2 000 square metres of a premise covered by this Act; that is, a supermarket twice the size of the average family home. We will deal with that amendment later.

We are also pleased to see that the Government is introducing a tenant guide. It is a plain English language explanation of

the key principles in the amended Act such as tenants' rights, clauses which are void, recourse to the Commercial Tribunal for dispute settlement and also tenants' responsibilities. We think that is a good thing because many people go into retail because they see it as a way of providing themselves with an income; they just buy themselves a job. Many other people are creative and hard workers and want to provide for themselves in their retirement. They see retailing as an excellent way of providing for that retirement. However, many of them do not have the expertise to understand a lease when it is presented to them by the lessors. Providing them with a plain English language explanation of the key points of the lease that they are about to sign may help solve some of the problems that may occur further down the track when their businesses may start to go sour. We think this amendment in the Bill can be improved if a standard lease is developed similar to a standard residential lease. We are keen to see the key players in this matter - the Ministry of Fair Trading, the Property Council of Australia and small business organisations - get together and develop a standard lease.

Hon Max Evans: Has the member talked to the industry about this?

Hon BOB THOMAS: Yes.

Hon Max Evans: I wonder what the views are of both the lessor and lessee.

Hon BOB THOMAS: Some people are opposed to that. Many people believe they should be able to develop their own lease, that it is their intellectual property right and they should be able to do that. I believe we need some standardisation across Australia. I have put an amendment on the Notice Paper so that we can explore that issue later.

Hon Max Evans: This will put half of the lawyers writing unique leases out of business.

Hon Norm Kelly: Therefore, will the Government support it?

Hon BOB THOMAS: Mr President, if we put half of the lawyers out of business because they will not be able to write unique leases, they may have to move into accounting because there will be plenty of work for accountants once the goods and services tax is introduced, if it is introduced.

Hon Max Evans: Lawyers do not even know that the debit side is the closed side of the window.

Hon BOB THOMAS: They know how to get their hand in one's pocket though.

Hon Barry House: It sounds like the member has just conceded the federal election.

Hon BOB THOMAS: I qualified that by saying "if it is introduced". There is a certain amount of uncertainty about whether the GST will be introduced.

Hon Max Evans: Because the Opposition will not introduce it.

Hon BOB THOMAS: If the minister comes doorknocking with me he will get a rude shock.

We also welcome the change to laws covering assignors which is included in the Bill. In the past some people have assigned their lease to the purchaser of their business but the new owner has not been as good as the assignor at retailing and when the business has folded, recourse has been taken against the original owner; that is, the assignor. That is wrong and we are glad this Bill amends that. In some cases good property owners write new five-year leases for the assignees; therefore, it is a new lease altogether. However, some are unscrupulous and pursue the assignor for debts which have been accumulated by the assignors.

The Opposition also thinks there is some improvement in the way rent reviews may take place. In the past the lessor was able to determine what sort of rent review he or she wished to use. If the property market was booming, they would automatically use market rents, but if business was depressed, they would use the 10 per cent clause. Under this amendment, it will be mandatory for the lessor and the lessee to negotiate in advance how rent reviews will take place. That will make the process fairer. I understand the Bill will prohibit the ratcheting-up of rents when a new lease is signed.

Hon Max Evans: The rent can be reviewed in only one form - market, CPI or percentage - but it cannot be best of or worst of.

Hon BOB THOMAS: Is it possible, when a lease is renewed for another five-year term, for the rent to fall on the basis of a market review?

Hon Max Evans: It depends on what the lease states.

Hon BOB THOMAS: I will find out later when I look further at the Bill. Another aspect which, as a representative of a country area, I find laudable is that provisions in leases which specify the times at which a retailer must open will be void.

Hon Max Evans: I agree.

Hon BOB THOMAS: This is important, because many shopping centres require the specialty stores to stay open at the same time as the anchor tenants, and basically this reduces the amount of trade of those specialty stores during core hours. It dilutes their total trade over longer hours, the traders incur increased costs, and their quality of life is destroyed. In the past lessors have been able to stipulate the opening times of those small traders, and have even had the right to terminate the lease if the small trader did not comply with those conditions within the lease. Fortunately, this Bill will prevent that from happening. I am not one of those people who agree with deregulation of trading hours, and I will oppose a general deregulation, because the people who are hurt most are the small businesses, especially those in country towns. I therefore applaud the Government for those changes.

Some other issues need to be addressed. The lessees of small businesses should have more security of tenure. In Western Australia at present a lease must be for at least five years. Quite often a sitting tenant will endeavour to renew their lease at the end of five years, only to find they have no right to renew that lease. Therefore, that tenant has no rights whatsoever. They must close their business down, lose their income and move out. Preference should be given to sitting tenants so that they have an option of another five-year lease at the end of their first five-year lease. After that, they should have first right of refusal for a further five-year lease. Therefore, that is a preference given to sitting tenants.

If a small business were required to close down after the expiration of its five-year lease, it would have no goodwill whatsoever. If it were lucky enough to have been trading during five years when economic and retail conditions were buoyant, it may have been able to amortise the cost of purchasing the business and any cost of fit-out over those five years, and its capital may be intact at the end of that five years. However, if economic conditions have been adverse, in many cases it will have lost money. There needs to be more security of tenure for small businesses, and the way to do that is to give them some preference at the expiration of their five-year lease, initially by way of an option, followed by a first right of refusal.

I have already mentioned that a major issue for small business is the way rent has been calculated. We can empathise with small business, because property managers have been voracious in their approach to rent reviews, taking the best formula to increase rents. Every one of us in this Chamber would have spoken to a small businessman in a shopping centre in our electorate who has been savaged by rent increases. The gravity of this was brought home to me in about 1990 or 1991 in the Plaza Shopping Centre in Albany. Martin Brock and his wife had a very successful curtain manufacturing business there, but it had closed down. A big sign on their window said that the business was moving to other premises because the rent had been increased by 85 per cent. WA experienced quite buoyant economic conditions for a number of years leading up to 1990. However, despite the fact that they were good years, I am sure the turnover of small businesses in the Plaza Shopping Centre in Albany would not have increased by 85 per cent in any one of those years. Therefore, it struck me that that was far too high an impost for a small business like that to accommodate, even though it was successful.

It is very interesting speaking to small business people. They tell me that in some cases up to 48 per cent of their total turnover goes on rent, and most of them say that they spend as much as three times more on rent and outgoings than they do on wages. They tell me that a lot of this deregulation argument about the labour market is just a furphy. Their biggest problem is not wages, award increases and so on; it is the never-ending increase in rents. The Opposition is glad that some attempt is being made to make rent reviews fairer.

Some work also needs to be done on a standard lease and on a tenants' guide to prevent a practice which is fairly common among shopping centres throughout Australia; that is, people are given misleading information, and some information is not disclosed to them. Misleading information might, for example, relate to the amount of foot traffic passing the shop or the anticipated impact of increased trade as a result of developments taking place in the shopping centre. For example, many lessors will increase the rent on shops around food court developments, because they say food courts are popular as they provide cheap meals and they provide much more traffic, with the effect that shops adjacent to those food court areas can sustain higher rents.

Quite often the projection which is done by the centre management is wide of the mark and excessive. Many people are paying much higher rents as a result of those incorrect projections. There are many documented cases of people purchasing small businesses in shopping centres on the strength of guaranteed traffic of customers through that shopping centre because of the presence of a major retailer - an anchor tenant - such as Coles, Woolworths or a departmental discount store. There are many instances in which people have purchased a shop, have been assigned the lease and have not been advised that the major tenant is moving out and the traffic through that area will be reduced. In many cases, people have set up new shops in those shopping centres on the strength of those anchor tenants attracting a certain level of clientele. It is incumbent on property managers to ensure that people enter these leases with their eyes open and are aware of all the circumstances which may affect the retail pattern in that shopping centre. We would like to see that covered in the tenant guide or the standard lease.

We are also concerned about the way rents are calculated. Most rents are based on either a certain dollar figure per square metre of lettable area or a percentage of the turnover. We are concerned that the information which is provided to the lessors by having the turnover as one of the options for calculating rent is working against the best interests of the lessee. In many

cases, the property managers identify which tenant is performing best. They have the turnover figures and when it is time to review the rent, a new rent is negotiated and when they go to any subsequent tenant, they can say that the market rent is this amount because they know it is already being paid by another tenant. If a lease specifies turnover as a formula for calculating rent, we must ensure that that is the only way that rent is calculated for the tenant. Obviously, some people who have been given incentives to start new businesses in those shopping centres will be excluded. We want an amendment which accommodates that. We do not want to preclude tenants from being given rent holidays or assistance towards their rent. To make this fairer, there must be a way to amend this Bill to ensure that when a lease specifies turnover as a means of calculating rent, it is only turnover that is used to calculate that rent.

We are also concerned about the absolute discretion that lessors have in redeveloping shopping centres and relocating small businesses within shopping centres. Sometimes it costs $75 000 to $150 000 for a fit-out for a shop which has been relocated from one section of the shopping centre to another. Some restrictions should be placed on the way in which that occurs. It is done capriciously by some managers; not all, but a few. In some cases it is done capriciously because they want to remove that tenant from the shopping centre or the managers believe that another tenant will pay a higher rent for that prime site. This is very expensive and many of these small businesses are paying up to 48 per cent of their turnover in rent and outgoings already. For them to be forced with a move to a less viable site and then to have to amortise the cost of the refit over a much shorter period, could be the straw that breaks the camel's back and sends that business broke. There are many documented examples; the House of Representatives' committee took a lot of evidence which gave examples of this. We would like to see some restriction on the lessors' discretion. We do not want to stop them having the right to structure their shopping centre in the way they think is necessary to improve its overall viability. However, it must be done in a way that does not affect the viability of those people involved.

There must also be compensation for some small retailers who have been affected by major developments. I have seen examples in which small businesses have had major redevelopments take place in their wings of the shopping centre. On some occasions, whole car parks have been developed into new wings. Those people who are dependent on passing customers have found that the viability of their shop has been destroyed because very little traffic passes while the development is taking place. In many cases, those businesses just collapse; therefore they should be compensated. Retailers must be provided with protection from the disadvantage they suffer when the tenancy mix within their shopping centre is changed. There are many examples. I am sure that members can think of shopping centres in which the centre management has found that a particular form of retailing has been very successful and have encouraged similar retailers to come in. The market share for the original retailer has been significantly reduced and that retailer's viability has been destroyed. Instead of having one viable retailer, there are three or four unviable retailers. That is not in the best interests of small business and there must be a way to accommodate that.

A suggestion has been made for tenants' associations which can negotiate retail mix, outgoings, the apportionment of outgoings and those sorts of issues with the centre management. That is worth looking at. Many good people have been badly affected by centre management decisions to change the tenancy mix in their shopping centre.

I indicated earlier that the Opposition proposes to change the area of the stores covered by this Bill from 1 000 square metres to 2 000 square metres. It is important to bring in some of the smaller supermarkets that are not covered by the Act to give them some redress. It will ensure that negotiations with the larger lessors will be fairer. Usually those supermarkets are small, family-owned businesses except that they may employ a few more people than some other businesses. However, they do not have the sort of skill or expertise on their staff to deal with property and lease matters. We will also look at changing the definition of retailer to include some of those smaller publicly listed companies.

The Opposition would like to ensure that where a retail lease includes provision for turnover to determine the level of rent, that should be the only determinant. We also want to see changes to the way in which retail figures are used by shopping centre managers. Many shopping centre managers say that they need the turnover figures to ascertain which business and tenant mix is working in their area and then use those figures to change the mix so they can get more winners into the shopping centre and therefore increase the turnover of everybody. They say that everybody will benefit because more people come into the shopping centre because it has a greater number of successful businesses. That is a furphy. The shopping centre managers simply want those turnover figures, so they can have absolute control to determine the market rent.

Some shopping centre managers impose restrictions on the ability of lessees to disclose the level of rent. The Opposition has proposed an amendment to ensure that clauses containing any prohibition on the disclosure of rents will be void. We do not think that those sorts of provisions should be in this Bill.

The Opposition also wants to bring into this Bill the unconscionable conduct sections of Trade Practices Act. I have been advised that the Ministry of Fair Trading has allocated $100 000 to a review of a range of issues, including unconscionable conditions within retail or commercial leases. That review will take some time and will not be included in this legislation for a long time. The Opposition's amendment mirrors the provisions on unconscionable conditions contained in the Trade Practices Act. Some people may say that it will be difficult to marry those sections of the Trade Practices Act into this Bill. It may be, but with all of the expert advice that the Minister has at his disposal, it should not be too difficult for him to adapt

those sections of the Trade Practices Act to ensure that they are consistent with the Commercial Tenancy (Retail Shops) Agreements Act so that small retailers can have some protection.

It has taken several years for this Bill to come to this House. I appreciate that the Government has gone through the Green Bill stage and extensive consultation. However, I guess that it will be at least five years, and probably 10 years, before we get another chance to deal with a Bill of this nature. That is too long for small business to wait for that protection. I am keen for the Minister to talk to his department and maybe the parliamentary counsel about including those important sections of the Trade Practices Act.

Hon Ken Travers is keen to represent the interests of many of his constituents in the northern suburbs and has placed a number of amendments on the Notice Paper.

Hon Max Evans: Whose proposed 13(c) amendment will get preference?

Hon BOB THOMAS: We can negotiate, and perhaps the collective wisdom of the House will come up with a suitable amendment. I have already spoken about relocations and the free association of tenants.

The issue of the disparity of bargaining power between big business - that is, the property owners - and small business, the lessees, is a can of worms. Many of the things that are occurring are disadvantageous to small businesses because they do not have the bargaining power to get a better deal. The Labor Party believes very much in equity. We want to see improved negotiations between those two disparately powerful and powerless groups, so that they are fairer. We will not try to prescribe the outcome of every negotiation between every lessor and lessee; that would not be right. However, we would like to see changed those practices which have been harsh and unjust for small business, and have destroyed many good people's lives. We want small business to get on doing what it does best - that is, providing a service to the general public, making a profit and, hopefully, creating employment at the same time.

The Opposition supports this Bill. It supports most of the amendments that have been put forward by the Government. However, we will try to improve the Bill so that it is more equitable for small business by moving those amendments that I have spoken to briefly tonight. I commend the Bill to the House.

HON NORM KELLY (East Metropolitan) [8.18 pm]: Like Hon Bob Thomas, I welcome being able, finally, to debate this Bill that the small business community in this State has been waiting for years to see properly debated in this Parliament. The Australian Democrats support the general thrust of the Bill because it contains many positive amendments to an Act which is in urgent need of major amendment. Unfortunately, this urgency has been lost on the Court Government in that it has been so slow-moving to initiate some positive changes to the Commercial Tenancy (Retail Shops) Agreements Act in the past five years. Although we support the general intent of the Bill, we do not support all of the detail in it. We believe the Bill does not come close to addressing the major degree of imbalance or unfairness that exists in the Act when it comes to landlord-tenant relationships. For that reason, we will move a number of amendments that we believe will realistically achieve the degree of fairness that is required in such relationships.

As the recent Senate committee report, known as the Reid report, stated last year, it is all about finding a balance. I will go into more detail about the major sticking points and issues that have created that imbalance in the current legislation, and why this Bill does not sufficiently change that imbalance, but I will firstly make a few comments about the need to hasten this change to the legislation. Unfortunately, for many small businesses in the retail sector in this State, this Bill will be too late. They have been waiting for too long. In the commercial environment, they cannot tell their landlord that they want to wait a year or two for the legislation to go through before they will sign a new lease. They are living in the real world, unlike some members of this place, and need to act to ensure their survival. The Government has agreed that the Act does need to be changed, but unfortunately it has not acted quickly enough. Although I am being critical of the current Government, I am also being critical of the previous Australian Labor Party Government.

This Bill was brought about by a statutory review which was required in 1990, eight years ago. That review was conducted by the Small Business Development Corporation, and a report was tabled in the Parliament in December 1991. Nothing happened in the final year of that Labor Party Government, and after the coalition came to power in 1993, a further review of the Act was conducted in 1993-94, and some drafting work was done towards a new Bill, firstly by the SBDC, and then by Fair Trading. However, it was not until the dying days of the Court Government's first term, in October 1996, that a Green Bill was tabled in the Parliament. During the state election campaign in late 1996, the coalition promised to introduce a Bill in its first year in government. It achieved that by introducing the Bill that is before us in the final sitting week, or it might even have been on the final sitting day, of 1997. It is only now, nine months later, that we are starting to give this Bill proper consideration in this place.

Hon Simon O'Brien: So let us move quickly to the committee stage and not delay it any longer!

Hon NORM KELLY: I assure Hon Simon O'Brien that I will not speak for any longer than I need to. The Government's reason for the most recent delay, which occurred last year, was the need to continue consultation with the various interest groups - the Property Council of Australia, the Western Australian Retailers Association, and the Council of Retail

Associations. That has been very important, because these groups are historically totally opposed to each other. I believe that the Government has been working quite hard to try to find some common ground. Unfortunately, the Bill that it has produced has definitely come down on the side of the landlord.

For the past seven years, landlords and tenants have had to deal with an inadequate Act. After being promised a review of the legislation, they had a reasonable expectation that amending legislation would follow quickly from such a review. Of course, that would have required reasonably swift parliamentary action, which seems to be absent from this place much of the time. Although I realise that, even after a year or so, I am a relatively new member of this place, it appears to me that the pace at which this place operates is appalling for much of the time. The debates over the past couple of weeks have highlighted that slowness and the abuse of some of the rules of this place.

Hon Derrick Tomlinson: I hope you will object to further amendments to the Address-in-Reply.

Hon NORM KELLY: I have not supported any so far.

Hon Derrick Tomlinson: Excellent!

Hon Simon O'Brien: I congratulate you on that.

The PRESIDENT: Order!

Hon NORM KELLY: What is compounding the situation is that the small business sector has had to suffer because of the inability of the Government and the Parliament to act quickly to correct what are agreed to be obvious flaws in the legislation. It seems absurd that the Government is telling the retail sector, particularly small businesses, that it needs to become more efficient, better educated and more professional, yet when it comes to instituting these much needed changes, the Government and the Parliament have acted with such slowness and lethargy that it makes one seriously consider whether such inaction is due to incompetence or whether the Government has the ulterior motive of wanting to win or keep favour with its political patrons.

Hon Derrick Tomlinson: It is also the principle of legislate in haste and repent at leisure.

Hon NORM KELLY: The small business sector would appreciate legislative change at a fair pace. I am not talking about our being hasty in making these changes. This legislation has undergone a long process of review. Early on in that process, it became obvious that certain changes were needed. However, those changes have been caught up with prolonged consultation about other areas as well, which has slowed down the whole process.

Fortunately, some positive changes are proposed to be made to the Act, and the Government is to be applauded on those changes. Those changes include a greater emphasis on the need for both landlords and tenants to disclose conditions and obligations with regard to areas such as variable outgoings. Variable outgoings are a regular bone of contention when it comes to commercial tenancies. I applaud the introduction of a tenants guide. Ideally, and as was indicated in the Reid report, we should have a uniform retail tenancy code for all of Australia, but, once again, because of the difficulty in trying to get the various States to agree, that may be some time off. However, that does not mean we should not continue fighting for such a code.

The Bill also requires clear disclosure of the basis on which rent reviews will be determined, rather than the current common practice of being able to choose the best of various methods, such as the consumer price index, market value, or a specified percentage increase. Another positive change that is contained in the Bill and for which retailers have been crying out is the abolition, or technically the prohibition, of ratchet clauses which ensure that the rent can go in only one direction irrespective of what may be the market value for that shop.

Hon Bob Thomas: Is that in the Bill?

Hon NORM KELLY: Yes. It still does not go far enough towards what is really needed.

Hon Barry House: Did you say ratshit clauses?

Hon NORM KELLY: Absolutely!

Several members interjected.

Hon NORM KELLY: Hansard can check with me later for the correct spelling.

Rent reviews will take on increased importance. The Bill will strengthen section 11 of the Act to provide a better way of determining and resolving such rent reviews. The prohibition on tenants paying property owners' management fees is also to be applauded. It is commonsense to expect that the responsibility should lie with the property owner to pay for his own management fee as the owner derives benefit from the incomes, good management and the appreciation on the property value from the payment of such fees.

Again, we must look at why the anomaly has continued in law for so long. One can be led to believe only that it is due to the power and influence that property owners in this country can exert. It is discouraging to see the response of bodies like the Property Council of Australia to this measure. It appears that it proposes to thumb its nose at the new property laws. I refer to a news article of June 1997, when the Property Council was expecting the Bill to be introduced into Parliament. It states -

> Landlords will increasingly charge tenants gross rentals, which include management fees and outgoings, if the proposed amendments to the Commercial Tenancy (Retail Shops) Agreements Act are adopted, according to the Property Council.

The council states that transparency will not be found in the rent process. It fully intends to hide management feels in the gross rental. In no way will the council accept that the law stipulates that the owner should pay the management fee. It is looking at new ways of making the tenants pay. A news article in October of last year read -

> Property owners and retailers are unhappy with the long-awaited changes. Both agree that scrapping the management fee provision in leases will result in higher rents.
>
> Tenants are angry that the amendments do not protect retailers stuck in long leases on unfavourable terms.

This is a problem. We must ensure that we achieve full and open disclosure of all costs associated with payment, and do not include it in gross rent as a variable outgoing.

Clause 6 of the Bill clarifies the situation of the obligation of an original tenant when the tenant signs the lease. The intent when the Act was amended in 1990 was to ensure that the original tenant would not be liable for costs after signing the lease to a new tenant. That proposal was agreed to by all parties. Unfortunately, the wording of that change did not match the intent, and this Bill contains a correction. Again, it will apply only to new leases. Although we have known for years about this unfair provision containing a loophole, the Government has failed to act fully.

Although some points commend what the Government proposes in the Bill, just as many matters of concern arise. The Democrats support the general thrust of the Bill; however, we do not believe it addresses the imbalance. The Bill has taken a long time to reach Parliament. In the interim, hundreds, if not thousands, of new commercial agreements were signed under the outdated provision of the principal Act. Although the Democrats are happy to see the improvements proposed, amendments will be moved to achieve balance. Unfortunately, as a result of problems in drafting, the Democrats' amendments are not on the Notice Paper. I have copies of the general thrust of the amendments for members who want an idea of where the Democrats stand on the Bill.

I now outline the proposed changes to the Bill in more detail. The most significant downside of the Bill is contained in its transitional provision. Apart from a few technical matters, the Bill will apply only to new retail leases signed after the Bill is proclaimed. During the past couple of years all industry groups, including property owners and landlords, have been well aware of the proposed changes of this amending Bill. However, property owners and landlords have been able to sign up tenants under the principal Act.

Tenants are not in a position to wait until new legislation is passed to continue businesses under fairer legislation. They faced a predicament. Their leases may have contained ongoing options and the landlord would have been keen to have the options taken up, rather than offering a new lease containing the safeguards contained in this Bill. It is common knowledge within the retail sector that such activity is taking place. Tenants are being forced to sign up long lease options. One need only talk to tenants in that situation. Clearly, landlords will act in that way. They will not offer new leases unless they must provide one. If it is possible to have an option taken up, it will be done to favour landlords and owners.

Faced with that situation, the tenant is very much caught out. As a result of our urban planning laws, tenants often do not have an option to relocate. The way urban planning has panned out aggregates retailers into huge regional shopping centres. This is an environmental disaster as well as a commercial disaster for many people. Therefore, it is not a viable option for a tenant to relocate to a smaller centre. In the region I represent, the Carousel Shopping Centre, which is already huge, will double in size to increase its catchment area by about fourfold. This will have a tremendous impact on smaller shopping centres in the drawing area. Tenants are forced to try to obtain a site in the major centre. This planning matter should be addressed.

It is clear that the provisions in the Bill, as they apply only to new leases, will make the Bill impotent. Therefore, I will move amendments to clause 14, the transition provision clause, to ensure that the provisions apply to not only new leases, but also existing leases from one year after the Bill is proclaimed. Opponents to this line of thinking may believe that one should not interfere with commercial contracts already entered into. The Democrats argue it would be a greater travesty of justice to allow biased contracts to operate longer than is necessary.

The same argument could apply regarding the current tax debate and the proposed goods and services tax. The GST will place an increased burden on small businesses to collect the tax. Would we say that the existing businesses should continue

to pay the wholesale sales tax and only new businesses pay the GST? It would be absurd. Nevertheless, the changes in this legislation have the same effect, yet businesses are expected to cope as any hint of retrospectivity goes out the window.

Parliament must legislate for fairer business dealings, and that is what we will propose.

Hon Ray Halligan: That is not a rational argument.

Hon NORM KELLY: It is when one considers it.

Hon B.M. Scott interjected.

Hon NORM KELLY: Does the member not understand the impact that the GST can have on small businesses?

Hon B.M. Scott: Yes, I do.

Hon NORM KELLY: Changes in legislation have a severe impact on business, and small businesses must cope with that. If we introduce a new taxing regime and say to every small business, "You are now a collector of taxes," we will have to make sure that we also compensate those small businesses for the extra burden. It is not as though, like a large multinational shopping chain, they can have a team of accountants doing that on a computerised system throughout the country. Although a small retailer with one shop might suddenly need to introduce a new taxing regime and the extra work involved might take only an extra 10 to 15 minutes a day, it all adds up. I have been in small retailing situations and I know how such changes can add up.

Several members interjected.

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Order! Hon Norm Kelly might like to address his comments to the Chair rather than to various unruly members who are trying to provoke him.

Hon NORM KELLY: I had not noticed, Mr Deputy President.

Hon Bob Thomas: "GST" equals "goodbye second term Johnny".

The DEPUTY PRESIDENT: Order!

Hon NORM KELLY: One issue is the influence that anchor tenants can have on smaller retailers in a shopping centre. Because of their size they can exert both positive and negative influences over other shops in a centre. Also, because of their size, they can exert influence over landlords themselves. A few weeks ago, Australia's largest retailer announced that its sales in the previous financial year were more than $20b. That is absolutely massive. In a normal sized shopping centre in a suburban area there might be a Myer department store and a Coles supermarket for groceries. For a discount option there might be K-Mart or Target. For women's clothes there might be Katies or Fosseys. For liquor, Liquorland will be in there somewhere.

Hon Max Evans: Your friends.

Hon NORM KELLY: For takeaways, there might be a Red Rooster. For toys one might go to World 4 Kids. The punchline is that they are all owned by the one company - Coles-Myer. One can see the influence that such a company can have. It can also be a positive influence, as I have said, because large, well-known shops, can attract customers, and that has obvious flow-on benefits for smaller retailers. It works both ways. It is important to ensure that such influences are not used negatively.

When we consider the influence that such large retailers can exert, it is important to take into account the situation in the United States of America, which has much stronger anti-trust laws than this country has. In the USA the top 10 retail groups in the country control only 12 per cent of that country's retail trade. The largest retailer in America, Wal-mart, controls only 2.4 per cent of retail trade. In comparison, Australia's two largest retailers control more than 31 per cent of the retail market. That becomes even more marked when we consider the retail food sector, in which the three largest retailers control 71 per cent of the market. Ten years ago, it was only 64 per cent. If that rate were to continue, those retailers would have total domination within the next 30 years. We can see why it is necessary for legislators to act before it is too late.

We must consider also the employment impact of small business retailing. When we compare small and large retailers we can see the benefits of encouraging small business. Major retailers employ seven employees for every $1m of turnover. By comparison, smaller retailers employ 12.2 employees per $1m of turnover. Members will understand that point when they want service in a major store. In the supermarket sector the trend is increasingly for larger retailers to dominate. Every 1 per cent shift from independent small retailers to the major chains can represent a loss of almost 2 000 jobs Australia-wide. That equates to roughly 200 jobs in Western Australia being lost each year by allowing the existing laws to continue, which allows larger corporations increasingly to dominate the sector.

Although the Bill does not deal with trading hours to any great extent, I will deal with that subject because it impacts on the viability of small business retailers. The National Competition Council is conducting a review of trading hours legislation

in this State. After what I heard at a forum at the Superdrome a couple of months ago, I am not confident about what might happen to our trading hours legislation, even though the minister supports existing structures. The influences of a Federal Government could be outweighed. Even so, it could be argued that we are not relaxing trading hours legislation. There was a severe impact a few years ago when it was deemed that a small business could trade from 8.00 am to 8.00 pm seven days a week. That meant a business of five or fewer workers. The regulation was changed to 10 workers or fewer. What may have seemed to have been a simple change has had a devastating effect on small grocery retailers, particularly in urban areas. It has allowed larger companies to overtake smaller retailers and force them out of business. It was a crazy decision to go from five to 10 workers. What made it even crazier was that there was no fortitude by the Government to back it up with proper inspection resources to ensure that certain retailers limited their workers to 10. Numerous small grocery retailers have contacted me stating that they know of a slightly larger grocery store 1 or 2 kilometres away which is meant to have only 10 or fewer workers but which in fact has 11, 12 or 13 workers. They have contacted the Ministry of Fair Trading and, if they are lucky, an inspector has gone out there. Retailers know the tricks. The moment the manager eyes an inspector, the people stacking the shelves suddenly turn into shoppers. A grocery store in the southern suburbs is connected to a liquor store, and people are signed up to work in the liquor store on Sundays. The liquor store is not open but the people are signed on by the liquor store, and that allows the grocery store to have 12 or so workers. If the Government is to change the law it must ensure that it provides adequate inspection resources.

By extending trading hours, we enable larger chains increasingly to dominate and force out smaller competitors. It is not about competition; it is about anticompetition, because that is the effect of such changes. As the smaller centres and strip-style shops diminish, the flow goes to the larger centres and competition decreases.

Another major issue is security of tenure. Although the ALP has addressed this with a proposed amendment about the right of renewal, that amendment will not adequately address the problem of the short-term, five-year leases currently provided for in the legislation. The short-term leases mean that retailers must recoup all their expenses and earn any profit within that five-year period. Often retailers have no guarantee of being able to recoup costs beyond that term. That gives them a decided disadvantage as opposed to larger retailers, which, because of their size, can negotiate longer term leases.

The Reid report lists some of the difficulties of a short-term, five-year lease, including having to recoup the investment over such a short period when the investment can include large start-up costs with the purchase of machinery and shop fittings. It also mentions the tenant's vulnerability in rent negotiations after establishing a business and then being able to recover the goodwill earned. They are some of the difficulties encountered in trying to provide security of tenure through a right of renewal. It puts pressure on the tenant when the lease must be renewed and thus increases the power of the landlord over the tenant.

I will refer to the Reid report to provide members with an idea of the way in which landlords can aggressively force out tenants. I will use a couple of examples based in Western Australia. The first relates to the Glasshouse store, a retail tenant in the Garden City shopping centre at Booragoon. This store had a dispute free tenancy for 13 years that was terminated at the absolute discretion of the property manager. In Glasshouse's submission to the Senate committee the proprietor states -

> *On March 12th 1996 I received Notice from AMP to terminate my business. I could not believe this had happened. . . . I was told there was no reason as to why my lease would not be renewed except I was to make way for new tenants coming in from the Eastern States. . . . I proposed a 20% rent increase and new fit out and change of merchandise to suit their ideas. They admitted that there would be a void in giftware with Glasshouse going and finally offered me another shop in the centre, but would not allow me to stay in Shop 73. I could not accept their offer to move to the other shop because it was just not a good position. . . . I was evicted on May 31st 1996 and sadly this shop is still vacant today, 30th August 1996.*

This tenant had an established business and was willing to take on a 20 per cent rent increase just to stay in that shop. However, the landlord forced him out and did not have a new tenant to come into the shop.

The second case also involves a tenant at Garden City - Garden City News. Its submission states -

> *It is about time something was done to protect the small businesses in shopping centres. We live in constant fear that if we don't toe the line our lease will not be renewed, and as a result they can move you when your lease comes up, because they know that without a lease your investment is zero. We have been in a situation where we were told by the centre manager our investment of $1.2 million is worth zero and we should have recouped it in the five years that we were trading. . . . We have a very good business, but we are on a one month lease and to be told that your investment is worth "0" I find a bit rich.*

A $1.2m investment must be recouped in five years! We must extend that period. I will move an amendment establishing a 10-year minimum.

Hon Max Evans: Not everyone might want a 10-year minimum. If it does not go well, they are stuck with it.

Hon NORM KELLY: The current Act provides that it is not necessarily fixed; it allows for options but it must guarantee a 10-year lease if the tenant wants it.

Hon Ken Travers: Security of tenure that is the key.

Hon NORM KELLY: It will mean that landlords will be more demanding prior to agreeing to a lease. However, that will be better not only for the tenant but also for the landlord. It means tenants must be up to speed on what will make a viable lease; they must be more professional. If that occurs we should decrease the number of bankruptcies of shop tenancies. Ensuring that the tenant is more viable gives the landlord more security. If the tenancy is in a shopping centre, the benefit should flow on because it will have more viable tenants for longer periods.

Part of this process involves tenant education. The Reid report stated that the committee considers it is still important for retail associations and other groups educating merchants to ensure that tenants understand there is no goodwill beyond their secured tenure. We must ensure that tenants are well aware of the agreements into which they are entering. Many small business people go into business wearing rose coloured glasses and looking at the figures in the most favourable terms. People must be realistic.

I briefly mentioned the right of renewal. We must ensure that the arrangement is tight and that there is no opportunity for landlords to force out a tenant despite the laws. It is pleasing to see that the ALP has proposed amendments lifted from South Australian legislation that was enacted as a result of the actions of Australian Democrat members of that State's Legislative Council to correct the imbalance in the relationship between landlords and tenants. It is reassuring to see the ALP taking up Democrat ideas of years ago and finally coming to the party.

Hon Ken Travers: We have been fighting for small business since the turn of the century.

Hon NORM KELLY: Perhaps small business is only now hearing about it.

Another case involves a small shopping centre with a struggling but surviving fresh fish shop. The major grocery retailer Coles next door decided to open its own fresh fish section and there was nothing in the tenancy agreement to prevent that change in the tenancy mix. The tenant went to the landlord pleading for a better deal given that Coles had moved into his market, but the landlord refused any relaxation of the tenancy agreement. Eventually, that small retailer went under. The shop was vacant for a few months and a new fresh fish shop went into that same location at half the rental.

With a right of renewal it is very easy for a landlord to twist the situation to offer unrealistic terms and conditions to an existing tenant to force them to the point where they cannot recover, and even if the landlord were to offer more agreeable terms, it would be too late - the business would have already gone under and another small business would have bitten the dust.

Hon Bob Thomas mentioned unconscionable conduct. This legislation must deal with that issue, although some might argue that it is more appropriately dealt with in the Trade Practices Act. I agree with the Minister for Fair Trading, who stated in debate in the other place that it would be of benefit to have some form of regulation in a state Act rather than a federal Act. We believe an unconscionable conduct clause is needed in this Act, and access to mediation and processes which are cheaper and more accessible than the federal version. We support the intent of what the ALP has proposed and will be supporting these amendments, although maybe not in their exact form.

Land tax is another issue on which the Government has failed to come to the party, even though it has proposed a change to adjust payments to make tenants pay only the notional value of the land tax. This is very much another example of tinkering at the edges of proper reform. I will briefly quote from a booklet entitled "Leases, Landlords and Tenants" which was recently published by Senator Andrew Murray, who has had experience in negotiating hundreds of commercial tenancy agreements. This booklet extensively outlines the relationships between tenants and landlords on land tax. It states -

> The value of private land is enhanced by the infrastructural investment of general community put into it, through their taxes, in the form of communications, power, water and sewerage services, roads and public amenities, government and local government institutions and service. These are benefits which accrue to the landowner and raise the value of his or her land. The landlord benefits from that added value when the land is sold. Land Tax is a tax on the landowners asset, a charge for these benefits which are provided by the community at large. It is a charge on ownership of the land and not on its use. It is extraordinary therefore, that tenants are almost universally paying the landlords' land tax.
>
> The WA Land Tax Assessment Act 1976 specifically states that the owner of the land is libel for the payment of land tax. This Act's definition of owner effectively excludes a lessee from being an owner.

Yet the Government still wants to include land tax payments for tenants. It further states -

> Land Tax should be included in all the other calculations the landlord has to arrive at to determine his net rent rate - items such as amortisation, depreciation, finance charges, and other capital costs.

This Bill is noticeably silent on the issue of turnover-based rent, which is another means whereby landlords can manipulate a tenancy situation.

Hon Ken Travers: Our amendments are not silent.

Hon NORM KELLY: That is right. If turnover-based rent were turnover based entirely, rather than turnover being a component of the rent calculation, some degree of fairness might be reached. In that way it would accurately reflect the success or otherwise of a centre. We have seen what has happened with the busport on the foreshore: Customer flow is far lower than was anticipated. A huge problem was experienced with tenants in that centre because they could not get relief from their tenancy agreements.

I will make a final comment about the repayment of adjusted rent after a rent review. I will be proposing that that repayment be paid back at the same rate as it accrued. This would relieve tenants, and possibly the landlord, of an unfair burden. It would be a one-off payment once a determination was made. I will make further comments throughout the committee stage of this Bill.

HON J.A. SCOTT (South Metropolitan) [9.04 pm]: The Greens (WA) will be supporting this Bill. Along with the previous speakers, we think a little more balance should be achieved for tenants. The Government has moved a considerable amount to even the imbalance that has been evident thus far in the dealings with tenants and landlords in the large shopping centres. Probably the most surprising thing about this Bill is that it has taken so long to get here, because all members in this place would be well aware of the myriad stories that abound about the skulduggery that has occurred in some shopping centres.

I know quite a few amendments have been prepared by various members that we will be looking at closely, including one which deals with the very first paragraph of the Bill regarding the size of the retail premises that will be under the auspices of this Act. We have received information which suggests that that could need tightening up and we will be looking at the amendments that have been proposed and listening carefully to what is proposed by the movers of these amendments.

I would like to pose a question to the minister concerning the time of the review period. I note this is the same review period as in the 1985 Act.

Hon Max Evans: Are you talking about the time of the next review?

Hon J.A. SCOTT: Yes. It seems from my reading of it that the minister has basically picked up the same period and I wonder whether it will need a little tweak to get things right a bit earlier than this, because looking at the raft of amendments that have been put forward, some people think improvements can be made to the Bill. We will see as the debate proceeds whether that is justified, but it will probably need some looking at before five years. It is a long time if any problems exist. I have no doubt that both sides of the argument will quickly contact the Government if problems occur. I think it might be better to look at it in two years' time.

Hon Max Evans: Given the history of the Bill.

Hon J.A. SCOTT: Yes. We must realise that we are dealing with an area in which changes might be made by the big shopping centre landlords, who might find new ways to change the balance that exists between tenants and landlords.

Hon Ken Travers: They have already started.

Hon J.A. SCOTT: I feel five years is too long. If it is a review after five years, it will probably be seven, eight, nine or 10 years before changes are made.

I have a few other concerns but I will leave those to the specific clauses and seek information from the minister then. We will be supporting the Bill. It is a significant move in the right direction and we must always accept improvements when we can get them.

HON KEN TRAVERS (North Metropolitan) [9.08 pm]: I have listened with interest to the comments of members, particularly Hon Norm Kelly's comments. It is great to see the Democrats as the great defenders of small business, and their concern about not only the impact of rents, but also of a goods and services tax on small business, and I look forward to hearing them explain their position on a GST once they -

Hon Barbara Scott interjected.

Hon KEN TRAVERS: For once we agree with members on the other side of the House. It will also be interesting to see where the Democrats direct their preferences if they decide to oppose a GST. Will their preferences support candidates who support the GST? That is not the major point of this debate.

Hon N.F. Moore: It is not vaguely close to it.

Hon KEN TRAVERS: If the Leader of the House had been listening, he would have heard Hon Norm Kelly tying those two

aspects together quite well. He pointed out what is happening with rents and how the goods and services tax will affect small businesses. The combined effect would be quite dramatic on them. Those things are very much related. Of course, the Leader of the House would not care. I must confess that this is not an area in which normally I would be interested. The Labor Party shadow spokesperson for small business, the member for Bassendean, has done an extraordinarily good job of consulting on this piece of legislation. He organised a number of meetings with small businesses in the North Metropolitan Region and invited me to come along to them.

Hon Simon O'Brien: Was that a new experience for you?

Hon KEN TRAVERS: It was. As I have said before, I had not spent a great deal of time with small businesses before I came into this place.

Hon Simon O'Brien: You must be full-bottle on it now.

Hon KEN TRAVERS: Absolutely. The member will be pleased to know that my father has a background in this area as well. I remember that during my childhood he talked about many of the problems faced by small businesses. For many years he was an accountant for a major butchering chain in Western Australia. He talked about the difficulties it faced with tenancies and the processes that chain went through to avoid those difficulties.

When attending at some of these meetings with the member for Bassendean I listened to retailers relate tales of woe about the way they have been treated by some shopping centre owners. I noticed a similarity between the way big business treats a small tenant in a shopping centre and the way employers treat employees; between the inequality in the negotiating positions of those parties. I started to realise that people who were subjected to workplace agreements in some cases were probably better off than some small retailers in their treatment by landlords.

Since I have taken an interest in this Bill and have talked to some small retailers, I have found that they have agreed with me. Not so long ago I spoke to a small retailer in a local shopping centre. I suggested that analogy to the retailer because of the way small businesses were being treated by some of the large shopping centre owners and the lack of negotiating power of small businesses. This retailer agreed with me and said, "If you think when people come in to get a job with me they are in an equal negotiating position with me, you are wrong. They do not have a strong bargaining position." He recognised the similarities in my analogy. The way we resolve those problems is very similar. The tenants also told me that they wanted a low-cost tribunal to which they could have easy access, where they could get some fairness and justice. I thought it sounded like the industrial relations tribunal model, until members on the other side destroyed that protection for workers.

The most important form of protection needed by these small businesses is a form of security of tenure. Again, that is similar to employees not being able to be sacked unfairly by an employer. If all else fails - we have some good amendments which will improve this legislation - in passing this legislation we must provide some mechanism for giving small tenants security of tenure. When debating this legislation we must also consider the type of society we want and look at the path down which Australian society is heading and the changes that are occurring.

The issue of commercial tenancies and the relationship between landlord and tenant, particularly in shopping centres, is a classic example where we must make some choices between what has been a traditional Australian way of life and an American system. American shopping centres are very heavily dominated by large multinational chains and franchises. They are not dominated, as has been the case in Australian society in the past, by small family-owned businesses. One might argue that some of these franchises are small family-owned businesses. The reality is that most of these franchisees are merely employees of the operator. They are very tightly controlled. Much of their profits, the way they operate and what they must do are also tightly controlled. All they have is a bit of an investment in their own job. It is not that different from having a few shares in a company because they are so heavily controlled. That is the path America has gone down. It is all about big business, control and domination.

In Australia we have a history of small businesses and the opportunity for people to have a go and make a difference, to take a few risks and make a bit of a profit. If people are successful, they look after themselves. Members who represent rural constituencies will understand the points I am making because a similar situation is occurring within our farming communities. We are seeing a movement away from family-owned businesses to large corporations. That has the potential to have some real effects on the general nature of our society and the type of society we want for our children.

In that sense the Bill is dealing with a big issue that we as a nation must face up to and make a choice about. All large businesses are not bad. Many of them are unionised. That is a good sign. We need to be careful about ensuring that we get the right mix.

Hon Simon O'Brien: Unionised small business is a good sign.

Hon E.R.J. Dermer: It is certainly a good union.

Hon Simon O'Brien: Where did you get those small businesses? Did you start with a big one perhaps?

Hon KEN TRAVERS: Under the present Government that is exactly what is happening. We have been watching Broken Hill Proprietary Co Ltd do well under this Government! It is interesting to see the number of bankruptcies of late. That is a story for another day. In this debate the Westfield organisation would be one of the ogres, a nasty for many of the small retail shop owners. In an address to the Property Council of Australian congress "Success '97" in September of last year Steven Lowy, the Managing Director of Westfield Australia, made some interesting comments which, to a degree, probably sum up the direction that we see being taken in Australia. He said -

> At the same time we're operating in an active political environment. In May the fair trading report came out and was soon embroiled in political controversy. While that simmered, state governments in Western Australia, Victoria and New South Wales were all considering changes to their tenancy law.

This has been a long time coming in the west. It continues -

> The small business lobby, with new political leverage, has seized the opportunity to push its agenda.
>
> But just who is the small business lobby? Certainly it covers many genuine small businesses. But what we have seen more and more in this debate is big businesses which just happen to have hundreds of small outlets or national, franchised operations masquerading as small business.

I agree with Steven Lowy's comment. That is all we will find in our major shopping centres in a few years if we are not very careful. It will not be small business but major chains dominating shopping centres. One has only to look at America to see that trend.

When conducting this debate, we must also keep in perspective who is on which side and who has the bargaining power. Last year, before I was really interested in this Bill, I remember reading the *Business Review Weekly* top 200 of the richest people. What struck me vividly was the number of shopping centre owners who featured in that article. I was checking something the other day and found that two of the largest shopping centre owners are the Lowy family, whom I mentioned earlier, and John Gandel. Lowy is ranked as the second richest man in Australia and John Gandel comes in at No 9 - he also owns a string of shopping centres. We are dealing with some groups with enormous might.

Hon Max Evans: John Gandel started off as a small business man when he started with Sussans Fashions and built that up.

Hon KEN TRAVERS: That is right. We must be sure to get in place the right legislation so that the next John Gandel will have the same opportunity as the first. We need to keep in perspective the amount of wealth tied up in shopping centres and remember that their owners are in powerful positions.

At this point I want to congratulate the Government. It has always claimed to be a Government for small business but I have found that in reality it has been more of a Government for big business. However, a number of the amendments it has put in place in this legislation are to be supported. I congratulate the Government for coming as far as it has. Hopefully the will of the House will push the Government a little further than it would like.

Hon Max Evans: You may push a little too far and it may stop.

Hon KEN TRAVERS: I am sure it has been a difficult time for the Government. One of my colleagues in the Federal Parliament, Hon Stephen Martin, made similar comments as shadow Minister for Small Business. He congratulated Hon Peter Reith. He suggested that the reason Hon Peter Reith had been so successful is that P1, as he refers to the federal Treasurer, was out of the country when the legislation was pushed through the Cabinet. We understand how difficult it would have been for members on the other side.

I accept that the Bill has come a long way and taken a long time to get to this place. Staff from the Ministry of Fair Trading and constituent lobby groups have put in a lot of work. I will quote from an article in *The West Australian* of 29 December 1997 because it sums up the two sides of this debate and highlights that this is a contentious area. It is obviously referring to the legislation we are dealing with tonight. It reads -

> Property Council executive director John Lenzo says the Bill, if proclaimed in its current form, will be just another layer of regulation in an already over-regulated area.

On the other side of the debate is the WA Council of Retailers. The next line reads -

> The WA Council of Retailers' Nick Catania believes it does not go far enough to protect the State's 30,000-odd shop-owners.
>
> Even Freehill Hollingdale & Page partner John Symington, who holds something resembling the middle ground, is not confident the Bill is the complete solution - though he argues governments should not attempt to completely regulate an area as complex as commercial leases.

That gives us a pretty good mix of the sorts of views we are dealing with in this debate.

We support the Bill but believe that a number of amendments need to be made to it. The vast majority of amendments we would seek to have put into this Bill stem from a report of the House of Representatives Standing Committee on Industry, Science and Technology. The report is called "Finding a Balance" and is sometimes referred to as the Reid report. It makes fascinating reading. I will take the opportunity to quote some of the recommendations so that when we get to the committee stage of the Bill members can then reflect on the recommendations. The committee was bipartisan, with members from both sides of the Federal Parliament. Some of the recommendations we need to note in this debate include recommendation 2.4, security of tenure. The committee recommends that the uniform tenancy code provide for minimum lease terms of five years, for sitting tenants to have the option of lease renewal for a further five-year term, for sitting tenants to have a right of first refusal of the lease for subsequent five-year periods, and for the option of casual leasing in clearly defined circumstances but only at the request of the lessee.

We have not taken up those issues directly in our amendments but, recognising that the Government has some role to play as the group with the majority in the lower House, we have sought at least to get some compromise into this legislation that goes some way to meeting those sorts of protections for small businesses. We would probably have gone further but our amendments would at least take the legislation closer to the recommendations outlined by the Federal Parliament.

Recommendation 2.8 of the committee's report is on outgoings and promotions. It reads -

> The Committee recommends that the Uniform Retail Tenancy Code provide:
>
> (a) for the establishment of merchants' associations in shopping centres;
>
> (b) that all tenants in a shopping centre belong to the merchants' association in that centre . . .
>
> (d) for the merchants' association to approve the annual budget of variable outgoings and promotions levies at an annual general meeting . . .

Members will see when we come to the committee stage that we have modified our amendment to try to pick up that recommendation to try to come to a compromise.

Recommendation 2.9 refers to leases and disclosure statements. It reads -

> The Committee recommends that the Uniform Retail Tenancy Code provide:
>
> (a) for a standard form 'plain English' retail lease; also published in community languages; and
>
> (b) for mandatory pre-contract disclosure of all factors likely to affect the viability of lessees - including all items currently required to be included in a statutory disclosure statement under the NSW *Retail Leases Act 1994.*

Paragraph (b) is picked up reasonably well in the Government's legislation. We will deal with paragraph (a) when we get to some of the amendments.

Recommendation 2.10 is on tenancy mix. It reads -

> The Committee recommends that the Uniform Retail Tenancy Code provide:
>
> (a) for the merchants' association in a shopping centre to be consulted in relation to changes in tenancy mix; and
>
> (b) for lessors to include in disclosure statements provided prior to the signing of a retail lease the tenancy mix of the shopping centre and whether or not there are any provisions for rent reduction to apply if the turnover the lessee falls owing to the introduction of a new competitor, or new competitors.

Those are just some of the recommendations. There were about 12 in all. I recommend that before we get to the committee stage members have a look at those recommendations. The report is excellent and will give members an insight into the issue. "Finding a Balance" is a good title for the report. I urge members to look at it because they will gain inspiration from it.

It is unfortunate that although the Federal Government does not have a great deal of opportunity to legislate in this area, it did not really pick up on the issues at hand when it had the opportunity to respond to that report. They responded only because of the pressure placed on them by the Federal Opposition, the small business community and a number of their own coalition backbenchers, some of whom participated in getting that report up and running in the first place. It is a shame that they have only tended to tinker around the edges. I wanted to briefly go through some of the key points in the legislation. I will leave some time for my colleague Hon Tom Helm. I am not sure how long he needs to speak tonight.

Hon Max Evans: Normally 45 minutes is a short one.

Hon KEN TRAVERS: I am sure he will not speak for that long.

Hon Tom Helm: Only if pressed.

Hon Simon O'Brien: We had better get to him pretty quickly.

Hon KEN TRAVERS: We are moving a lot quicker than the Government on this legislation. The Government probably started on this legislation before Hon Simon O'Brien and I entered this place. It has been a long time coming, but I am sure members will agree that the speech has been worth waiting for.

Hon E.R.J. Dermer: To go any slower would be a real challenge.

Hon KEN TRAVERS: It is just as a sideline. We have been dealing with many issues involving former members of the Labor Party and this legislation is another one that comes from a former member of the Labor Party, who was a minister in the other place. It must be the day for mentioning former members of the Labor Party during debate. I am sure we will be accused of attacking him on this legislation because he is a former member of the Labor Party. I am sure our shadow in this area would say, "Good riddance. You are welcome to him." However, I suspect the Premier will want to give him back to us shortly.

Hon E.R.J. Dermer: He must have been too slow for the Labor Party.

Hon KEN TRAVERS: I understand he is catching up to the Premier.

Hon Max Evans: Come on, let us get back to the Bill.

Hon KEN TRAVERS: I want to highlight some of the concerns that retailers have had about the processes. For the benefit of Hon Norm Kelly, if he is listening somewhere, one issue relates to a shopkeeper who has a shop in the North Metropolitan Region and another in the East Metropolitan Region. At least one shop owner from the East Metropolitan Region will have his concerns raised tonight. I am raising this because this shopkeeper has a store in the North Metropolitan Region. He was faced with a situation in which the landlord came to him with a significant rent increase that bore no relation to the inflation rate. When I spoke to small shopkeepers with Clive Brown, one matter that stood out was the ability for shopping centre owners to demand their monthly turnover figures. It jumped out at me as an outrageous act that allowed people to see how well shopkeepers were doing to try to set the rent based on how well they were doing in their businesses. This particular shop owner had set up a new concept, had done a good job to have the business up and running and had put a manager into the initial store. He was starting to make a bit of a go of it, so he opened a second store in another shopping centre. He started to think that he could start a chain and perhaps become the next John Gandel. The shopkeeper's rent came up for review. I cannot remember the exact percentage, but it was a significant proportion; something like a 40 per cent increase. We have not seen the inflation rate around those levels for a long time. The shopkeeper negotiated the rent and had a bit of an argy-bargy with the shopping centre management and eventually settled on a rent increase of 20 per cent. He thought that he could keep the manager in place, keep going as he had in the past, set up a second store and still be able to survive. However, in reality, his profits would not be as high. The shopkeeper put in a lot of hard time, but the shopping centre would receive half of the hard work he put in. Nonetheless, he would still receive some return on it. He eventually signed off on the lease. A couple of weeks later, the shopping centre opened an identical shop in competition. One does not have to be too bright to work out what that does to a business. The shopkeeper had absolutely no control over it. All of a sudden he had to get rid of the manager, his wife went into one of the businesses and he went into the other just to keep afloat - that business was struggling. Members cannot tell me that the shopkeeper was not feeling bitter and twisted at that point. He felt that the hard work he and his wife had put in to build up their business was creamed straight off them and into the pockets of the landlords. I agree with them.

I will refer now to another shopping centre in the North Metropolitan Region. I do not want to mention it by name because many people there are working very hard. It is facing major difficulties and it has enough on its plate without my mentioning it tonight. No work has been put into that shopping centre, the car park is in an appalling state, the management has been dreadful, there has been no redevelopment and a number of shop owners are struggling. In this case, the problem is overlaid by the fact that the major shop - I think it is Coles - has a fairly predatory pricing policy in terms of competition. If a bakery opens, all of a sudden Coles opens a bakery and starts dropping its bread prices until it drives out that business. If someone opens a florist, out go the buckets of flowers in front of Coles. That is fair business in one sense, but equally those businesses must have some sort of protection so that they have some control and know that the shopping centre they went into is the shopping centre that they remain in and are not forced out by people with better bargaining power.

Clause 4 deals with definitions. Some good amendments have been made in that regard, particularly in the jurisdiction of the Commercial Tribunal. We have some concerns about the definition of "retail floor area". I am sure most members have read the letter I received today about the problems that a person could face if he were running a petrol station in which the tarmac area could suddenly be extended so that the business falls outside the terms of this piece of legislation. Hon Bob Thomas made some comments on that matter.

I say well done on the tenant guide that will be required. It picks up one of the recommendations made by the select committee. Most retailers will appreciate the matter of assignments. In the past, many businesses were expected to

guarantee the person to whom they sold their lease until the lease ran out. It was a harsh situation, so the ability to sign over a lease to people when they buy a business is a good one. An unconscionable part of what was happening in this industry concerned rent reviews and the need to remove ratchet clauses. The rents were increasing massively and there was no ability to bring them down if the market fell away. The rent was stuck at the top and was causing a major problem. There have also been a number of good changes in the area of outgoings.

The changes to allow for arbitration on market rents go some way towards allaying some of the concerns. When we deal with operating expenses I look forward to hearing comments from the minister regarding land taxes. I understand that in South Australia land tax is exempt and should not be passed on; it should be paid by the landlord.

I congratulate the Government on the provisions in the Bill on the hours of operation. My father used to talk about the problems faced by small businesses in shopping centres. He often said that hours operated in shopping centres were determined by the Coles-Myers of this world. Small businesses were required to open when it suited Coles-Myer, not when it suited small businesses. His view was that quite a few small businesses would not necessarily want to open all the time. Coles-Myer, as the lead tenant, insisted that the shopping centre owners include in their contracts a requirement that all shops be open during the hours of the shopping centre. The hours were those desired by the large tenants.

The area in which we must be vigilant is the review of retail trading hours. Although the amendment appears to be a good move, I wonder whether the motivation behind that clause is to avoid some of the problems we will face when the retail trading hours review is completed.

The Opposition will move a number of amendments during Committee. I hope we will be successful and be able to move closer to finding a balance that is not determined solely by the Australian Labor Party but one contained in a report that I emphasise was an all-party report of the Federal Parliament. Its input was from not only the Labor Party, but also the Liberal Party and, I assume, some of the minor parties represented here. Well done to the Government for bringing the legislation this far. I hope we can take it further in this process to find the balance and some surety for small businesses in this State. When we finally pass this Bill the key to its success will be that we have gone some way to providing small businesses with a sense of security of tenure and the feeling that if they work hard, do the right thing and are prepared to pay the market rent for their site, they will know that they can continue to build on and reap the benefits of their hard work.

HON RAY HALLIGAN (North Metropolitan) [9.43 pm]: I do not propose to speak for too long on this Bill. First, it is pleasing to see that the Bill is supported by the Labor Party as well as the Democrats and the Greens WA. It is wonderful to see everyone trying to work together to assist small business in this way.

Unfortunately I am not all that happy with a number of the proposed amendments. I understand what is being said about security of tenure. However, what must be understood by a small business person is that a fixed-term lease - we heard tonight about a five-year lease - can be increased more often than not with an option of five years, which provides a five-year fixed lease, plus a five-year option.

Hon Bob Thomas suggested that there be a further period after the five by five of first refusal. In effect that becomes another option. If it is left with a small business person to decide whether he wants another lease, that is another option. That is all well and good as long as the option favours the small business person. A fixed-term lease can become a double-edged sword.

A five-year lease is fine when things are going along nicely. At the end of the five years, depending on turnover and profit, the lessee may have recouped his $1.2m; yet it may take 10 years. If a retailer has done his sums, undertaken market research and completed a business plan, he will know how long it will take to recoup his capital outlay.

Getting back to the double-edged sword, I suggest to members opposite that a great number of people who are contemplating small business will not necessarily opt for a five-by-five lease if offered other options. People experienced in small business may want to go down that path because they know where they are going. They know their market and how they can compete with others. They believe that, if they make that commitment, five years is a reasonable term for them.

Over 12 years, I have helped a number of people at least explore self-employment, although I have never put them into business. The great majority said that if they could take a 12-month term to see how their business went, they would love an option of four years in their favour. However, they were concerned about having to sign on the dotted line for a five-year commitment. They knew full well that unless they could on-sell the unused portion of the lease they would have to pay for it. It is all well and good to talk about security of tenure, but it must be remembered that it can be a noose around one's neck.

Hon Norm Kelly: I am proposing that a 10-year security of tenure can be made up of any amount of fixed years plus options, as is currently the case with five-year security of tenure. It can be made up of a fixed two years plus a three-year option.

Hon RAY HALLIGAN: Hon Norm Kelly must be careful with the wording. He may be putting a millstone around someone's neck. He might think he is doing the right thing by small businesses but he is not.

My concern is, as others have expressed, that any number of people going into small business do not know what path they

are treading. That is a great pity and why we have so many bankruptcies. They do not have the training even though training is available. They often do not realise that they need training. Often people say to me that they are competent at their trade, whether it be as a motor mechanic or any other trade. They say, "I have worked for someone else and that person gets in a lot of business and they give it to me to complete for them, and because I am so good I want to go out on my own." They may very well be competent in what they do. However, being competent in a trade does not make one a business person. Often they do not know where the work is coming from, they do not know how to price the work, and when they go into business they have enormous difficulties, which is a great pity. Of course, there are organisations that can help, some in private enterprise, such as accountants and banks. I know we look down at our nose at accountants and quite often banks.

Hon Max Evans: You had better not!

Hon RAY HALLIGAN: I will leave accountants out of it! I know it is often difficult finding a bank manager nowadays as quite a number of branches have been closed, whereas in the old days one could whip down to the local branch and have a talk to the manager. They had experience, would look at one's figures and could give some guidance.

A few organisations can offer help, such as the Small Business Development Corporation and the business enterprise centres funded through the SBDC. They do a very good job. The point is that a lot of advice and guidance that comes from the BECs and the SBDC costs people absolutely nothing. As I said before, the difficulty is convincing people that they need guidance, counselling and direction, and this is where they may find it. Quite often people who go into business have enormous difficulties prior to putting up their hand and saying, "I am going down for the third time; can someone please help." Again, that is a great pity. I would not like to see legislation that increases the size of the millstone that they are carrying. We must be careful with the wording.

Hon Norm Kelly is concerned about the speed at which this legislation has been passing through the House. I am sure he is aware that there was a five-month period when public submissions were received. There were discussions after that. The Bill we have before us has had a number of refinements, additions and deletions. In addition, it has gone through the other place. Those members with experience in these matters would understand that legislation takes some time to move through the Parliament.

I am a great believer in market forces; I am a great believer in private enterprise; I am a great believer in seeing people have opportunities to make something of themselves.

Hon Simon O'Brien: Hear, hear!

Hon RAY HALLIGAN: I do not agree with a Big Brother mentality which says that the Government must look over everybody's shoulder. People can make informed decisions on which way to turn, whether it be the type of employment, including self-employment or any other way of generating income. That is what it all amounts to.

There has been talk of the Carousel Shopping Centre and the growth of many other large shopping centres around the metropolitan area, and that that appears to put the small business person at a disadvantage. The only reason these shopping centres grow is demand. The investors in these shopping centres will not outlay tens of millions of dollars to see all the shops remain empty. They also do their homework. They complete their business plan to find out who wants accommodation and who wants retail space; and if the demand is there, they are prepared to invest.

I am not denying that some landlords have done certain things that I most definitely do not agree with, and something must be done about that. However, I believe that is exactly what is being done currently. It is always wonderful to use hindsight to suggest that it should have been done six months ago or six years ago. However, it is never too late to make the right changes.

There has been mention also of the goods and services tax and how that will impact on small business. However, what was not said is that there will be many positives associated with the GST and small business. For a start, the small business person will not be paying provisional tax. In addition, he will be able to hold moneys for a three month period, so he will be in front. There is no doubt that all people expect any lease they enter into to be fair and reasonable; that is not too much to ask. To that extent, it is incumbent upon the Government, and certainly this Parliament, to try to ensure that certain parameters are implemented so that individuals wishing to take up a lease, whether it be with a large organisation or company that owns a large shopping centre or even smaller ones, will not place themselves in an untenable situation. It comes down to control. We must be careful of overgoverning and overcontrolling these people, whether it be the small business or the large business.

I can understand why people have spoken as they have and why they have tried to place these small business people in a position where they can, as someone said, make a go of it. Again, we must be careful of the control. We must be careful of the Big Brother mentality. We must be careful of placing ourselves in a position where we are in fact controlling the economy. I am sure that is not what was meant. However, to the uninitiated - to those who have not been in this place - hearing those words for the first time, that may well be the message that was received.

There has been talk also of land tax and other costs, such as management fees and the like. I believe all of us are aware of what has happened with management fees in the past. Often the unscrupulous have used them as a balancing figure for themselves; as an additional cost that they tried to justify and pass on to the tenant. Of course, there are amendments in the Bill that will stop that. However, the way our financial system is structured, land tax is a legitimate cost. It is a cost imposed on the land owner and, therefore, the landlord. If landlords are to make a profit, they have no option but to pass on that cost, just as they pass on other costs associated with maintaining the building and amortising the total cost of it over a reasonable period. All those costs will be passed on, including, of course, the profit they wish to make. I will be interested to hear whether there is any further argument about land tax and why it should not be passed on.

We have also heard argument that the shopping centre should remain as it begins for some considerable time. The example given was of a small business person who rented part of a shopping centre and found one of the larger organisations had started up in competition.

Debate adjourned, pursuant to standing orders.

House adjourned at 10.00 pm

QUESTIONS ON NOTICE

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

GOVERNMENT DEPARTMENTS AND AGENCIES

Expenditure Estimates

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

Will the Minister for Primary Industry provide for each agency and department, within the Minister's portfolio responsibilities, the estimated current expenditure levels to date, and over the forward estimate period of the current budget statements for -

(a) testing both equipment and procedures for Millennium Bug policy compliance;

(b) replacing or purchasing equipment as part of agency strategies to avoid or control the Millennium Bug issue; and

(c) adjusting or developing new procedures for the delivery of existing services?

Hon M.J. CRIDDLE replied:

AGRICULTURE WESTERN AUSTRALIA

(a) $30,000.

(b)-(c) Up to $1 million.

FISHERIES WESTERN AUSTRALIA

(a) $58,000.

(b)-(c) $380,000.

GOLDEN EGG FARMS

(a) $2,000.

(b)-(c) $18,500.

THE GRAIN POOL OF WA

(a) $6,000.

(b)-(c) $36,000.

MEAT INDUSTRY AUTHORITY

(a) Nil.

(b)-(c) $20,000.

PERTH MARKET AUTHORITY

(a) $4,500.

(b)-(c) $10,000.

POTATO MARKETING AUTHORITY

(a) Testing to be completed by December 1998.

(b)-(c) At this stage no funds have been expended and until the audit is completed, we do not have an estimate on the installation of corrective measures.

WA MEAT MARKETING CORPORATION

(a) $5,000.

(b)-(c) $20,000 to $30,000.

FISHERIES

Line Fishing in Kimberley Waters

51. Hon KIM CHANCE to the Minister for Transport representing the Minister for Fisheries:

(1) Is it correct that in a letter to the Kimberley Trap Fishermen's Association, dated March 13, 1995, the Executive Director of Fisheries WA stated that line fishing will not be allowed in the Kimberley waters without an appropriate endorsement on the WA Fishing Boat Licence?

(2) Did the Fisheries Department issue line endorsements to the vessels *Patricia II*, B130, and *San Pascal*, G406, prior to August 1995?

(3) If B130 and/or G406 did fish by line prior to August 1995, would they have been in contravention of the statement contained in (1) above?

(4) If not, why not?

Hon M.J. CRIDDLE replied:

(1) Yes. Interim management arrangements were put in place for the line fishery in September 1995.

(2)-(3) No.

(4) The Western Australian management arrangements restricting fishing by line in Kimberley waters did not come into effect until September 1995.

FISHERIES

Northern Demersal Fishery Total Sustainable Catch

52. Hon KIM CHANCE to the Minister for Transport representing the Minister for Fisheries:

(1) Can the Minister for Fisheries confirm that the Fisheries Department's determination of the total sustainable catch for the Northern Demersal Fishery, an area lying between Longitude 120 degrees East, the Northern Territory border, the Kimberley coastline, and the limit of the Australian Fishing Zone, is 800 tonnes per annum of demersal species, and that this amount of fish is already fully committed under an interim management plan?

(2) Is the Minister aware of a research project proposal for the area which is, in part at least, predicted on the exploitation of the "deep slope" portion of this fishery by trawlers, which, if it occurred, would result in a catch greatly in excess of the determined total sustainable catch?

(3) If so, does the Minister support this form of research when so little is known about the existing trap and line fishery and research of the already exploited area is acknowledged to be needed urgently?

(4) Does the residual Commonwealth control of trawling for demersal species in the deep slope area need to be ceded to the State in the interests of consistent management of fish stocks in the Kimberley?

Hon M.J. CRIDDLE replied:

(1) Yes. For the first year of operation of the fishery a total allowable catch of 8000 tonnes has been set for the Northern Demersal Scalefish Fishery, based on the target species in the shelf fishery.

(2)-(3) Yes. However, the proposal was reviewed in consultation with the Commonwealth, and the proposal is progressing, excluding trawlers east of 120 degrees East.

(4) Yes. Initial discussions between WA and the Commonwealth concerning jurisdiction over the deepslope fishery have already been undertaken.

HERITAGE COUNCIL

Trip to Broome

117. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Heritage:

(1) Did some board members, senior employees and staff of Heritage Council travel to Broome in September 1997 at Government expense?

(2) If yes, will the Minister for Heritage list the names of board members, senior employees and staff of Heritage Council involved?

(3) What was the purpose of the trip?

(4) Where and for how long did they stay in Broome?

(5) What was the total Government cost for the trip?

Hon PETER FOSS replied:

(1) Members and some staff of the Heritage Council travelled to Broome in July 1997.

(2) Heritage Council Members:

- Maurice Owen, Chairman
- Michal Bosworth
- Antony Ednie-Brown
- Ainslie Evans
- Gerald Gauntlett
- Philip Griffiths
- Bruce James
- David Dolan

Heritage Council staff:

- Ian Baxter, Director
- Stephen Carrick, Manager Conservation and Assessment
- Alison Maggs, Corporate PR Manager

(3) The Heritage Council had not visited this area in its 7 years of operation and it was considered important to assess first-hand the extensive heritage that is evident in the region.

During the visit, the Heritage Council met with members of the local community, including local authorities, owners of places being considered for registration, the WA Tourism Commission, Department of Contract and Management Services, and Historical Society to discuss areas of mutual concern with respect to the conservation of the area's heritage.

In addition, the opportunity was taken to evaluate places that were under consideration for registration as places of cultural heritage significance to the State.

Site visits and inspections included the following places:

- Chinatown Conservation Area
- Streeters Jetty/Male Sheds and Jetty (Paspaley's)
- Old Police Lockup
- Matso's/Captain Gregory's House
- Paspaley Pearls Storage (Borner-English Shed)
- Original State School
- McDaniel Homestead
- Beagle Bay Mission (Sacred Heart Church)
- Lombadina Mission
- Cape Leveque Lighthouse
- One Arm Point
- Japanese Section Broome Cemetery
- Quarantine Station Houses
- Broome Bowling Club
- Broome Pioneer Cemetery
- Broome Historical Museum
- HMAS Broome
- Dampier Memorial
- Uniting Church and Manse
- Maurice Lyon's House
- Durack Gallery
- St John of God Convent
- Broome Court House

(4) (a) Broome Beach Resort (shared facilities)

- 11-13 July 7 members/3 staff
- 11-14 July 2 members/1 staff

(b) Private residence

- 11-13 July 1 member

(5) $11,119.

LIVING IN HARMONY PROGRAM

Youth Forums

121. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Citizenship and Multicultural Interests:

(1) Have any youth forums or workshops as outlined in "Living in Harmony" taken place?

(2) If yes, how many have occurred, where were they held and what were the outcomes?

(3) Will the community relations material be updated on the key issues and strategies identified by youth within these forums and workshops?

(4) If the forums or workshops have not taken place, can the Minister for Multicultural Affairs advise how many are planned, where they will be held and what are the expected outcomes?

Hon MAX EVANS replied:

I am advised:

(1)-(2) The Office of Youth Affairs has conducted 36 youth forums around Western Australia.

(3)-(4) These youth forums have led to the establishment of thirty two Youth Advisory Councils in country and metropolitan areas of the state. More than seventy local government authorities have indicated their support for the establishment of a Youth Advisory Council in their area.

Through the Youth Advisory Councils young people have a direct line of communication with the Minister for Youth and to Cabinet, ensuring that the opinions, ideas and needs of our young people are fully taken into account in policy and program development.

Part of the Youth Advisory Council's role is to bring together a group of people from diverse backgrounds - culturally, socio-economically, religious - to discuss a variety of issues confronting them. An area of priority has been to identify key issues relating to multiculturalism and strategies to deal with them effectively. Young people were consulted extensively in the preparation of the *Living in Harmony* strategy and have an ongoing role in the development of that project and others.

TELSTRA

North West Corridor Structure Plan and Wanneroo Town Planning Scheme

161. Hon E.R.J. DERMER to the Attorney General representing the Minister for Planning:

(1) Has Telstra had any input into the development of the North West corridor Structure Plan and Wanneroo Town Planning Scheme No 1 Amendment No 801?

(2) If so, what was that input?

(3) Has the Minister for Planning or his officers met with Telstra to discuss either the North West Corridor Structure Plan or Wanneroo Town Planning Scheme No 1 Amendment No 801?

(4) If yes, what was the nature of those meetings?

(5) Has the Minister visited the Telstra telecommunications facility in Landsdale?

(6) Can the Minister confirm that he refused to meet with local residents to discuss Wanneroo Town Planning Scheme No 1 Amendment 801?

(7) If so, why?

(8) When will the area, subject to Amendment No 801 of the Wanneroo Town Planning Scheme No 1, be designated a Landscape Protection Zone?

(9) What is the difference between the Landscape Protection Zone and the current zoning?

(10) What specifically is the Landscape Protection Zone designed to protect in this area?

(11) Will the Minister confirm the land, subject to Wanneroo Town Planning Scheme No 1 Amendment 801, was classified in 1990 for Urban Development (Category B)?

(12) When was this proposed zoning amended to rural and why was it amended?

(13) Has the Minister's department conclusively examined the need for the establishment of a buffer zone adjacent to the Telstra telecommunications facility in Landsdale?

(14) If yes, what was that conclusion?

(15) Did this examination require Telstra to justify the need for the establishment of this buffer zone?

(16) If not, why not?

(17) If yes, what was the substance of this justification?

(18) To whom did Telstra make the justification?

(19) Does the classification Landscape Protection Zone negate the need to establish a buffer zone adjacent to the Telstra telecommunications facility in Landsdale?

(20) Have the residents, adjacent to the Telstra telecommunications facility in Landsdale, been given any opportunity to comment on the requirement for a buffer zone adjacent to that facility?

(21) I refer to the Minister's advice to the House on April 29 "that there is an adequate supply of land zoned urban and urban deferred...". Why is land to the immediate north and west of land subject to Wanneroo Town Planning Scheme No 1 Amendment 801 being rezoned from rural to urban?

Hon PETER FOSS replied:

(1) Yes.

(2) The North-West Corridor Structure Plan was released for public comment between 14th February and 26th July 1991. Telstra (formerly OTC) made a submission on the draft North-West Corridor Structure Plans.

Telstra wrote a letter to the Ministry for Planning on 15 December 1997 detailing its concerns with respect to the proposed Amendment No.801 to the City of Wanneroo Town Planning Scheme No.1.

(3) Yes. The Minister for Planning and officers of the Ministry for Planning (former Department of Planning and Urban Development) have met with representatives from Telstra on several occasions since 1991. The most recent meeting between consultants acting on behalf of Telstra and officers of the Ministry for Planning was held on 5 December 1997.

(4) At the 5 December 1997 meeting, consultants acting on behalf of Telstra outlined the nature of Telstra's operations at Landsdale and Telstra's concerns regarding proposed Amendment No.801 to the City of Wanneroo Town Planning Scheme No.1. It was agreed at this meeting that Telstra should forward a letter to the Ministry for Planning detailing its concerns with regard to proposed Amendment No.801 to the City of Wanneroo Town Planning Scheme No.1.

(5) Yes.

(6) No.

(7) Not applicable.

(8) The North-West Corridor Structure Plan was finalised and released for public information in March 1992 and designates the land included in Amendment No.801 for Landscape Protection. The land is zoned Rural in both the Metropolitan Region Scheme and Shire of Wanneroo Town Planning Scheme No.1. The Shire of Wanneroo is currently preparing a draft Local Rural Strategy which will make recommendations specific to this area for future zoning, development and subdivision.

(9) The Landscape Protection designation of the land in the North-West Corridor Structure Plan is not a statutory zone but acts as a guide to promote land uses and developments which maintain the area's rural characteristics and discourage the fragmentation of rural land thereby maintaining its character. The statutory permissibility of uses in the Rural Zone is included in the Shire of Wanneroo's Town Planning Scheme No.1.

(10) The purpose of the Landscape Protection designation of the land in the North-West Corridor Structure Plan is to promote the natural character of the area being conserved and enhanced through sensitive subdivision and development which recognises existing landscape systems and natural features.

(11) The former Department of Planning and Urban Development's Urban Expansion Policy Statement (1990), which is now superseded by the North-West Corridor Structure Plan (1992), identified the subject land as Category 'B' - Constraints to Development. This category broadly identified areas which might be suitable for urban development in most respects, but which were subject to identified major constraints. The Policy Statement stated that '. . . there

is no guarantee that all of the land, particularly areas within Category B, will be urbanised within the next 10 years.' The development of Category B areas was to be dependent on the constraints over that land being overcome.

(12) The land included in Amendment No.801 has been zoned Rural in the Metropolitan Region Scheme since its inception in 1963.

The Urban Expansion Policy Statement (1990) is now superseded by the North-West Corridor Structure Plan (1992). The draft North-West Corridor Structure Plan did indicate that part of the area might be suitable for urban use. The extent of urbanisation was defined by the then proposed six lane Eastern Perimeter Arterial Road shown in the draft Plan. Due to the significant local community opposition to this road and the urbanisation of land within East Wanneroo, this road was deleted and the extent of urbanisation was reduced by 25% in the final Structure Plan of March 1992.

(13) No.

(14)-(18)
Not applicable.

(19) No.

(20) Not applicable.

(21) The City of Wanneroo has initiated Amendment No.773 to its Town Planning Scheme No.1 to rezone the southern portion of East Wanneroo Structure Planning Cell No.5 from Rural to Urban Development Zone to be consistent with the Urban zoning of the land in the Metropolitan Region Scheme. Amendment No.773 has yet to be considered for consent to advertise by the Western Australian Planning Commission.

GNANGARA LAND USE AND WATER MANAGEMENT STRATEGY

261. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:

(1) Did the Select Committee on Groundwater Supplies and Metropolitan Development recommend that a Gnangara Land Use and Water Management Strategy be undertaken?

(2) When did work commence on this strategy?

(3) Has the strategy been published?

(4) If not, why not?

(5) When will this strategy be released for public comment?

(6) Does the Minister intend to introduce amendments to the Metropolitan Region Scheme to protect the Gnangara Mound similar to those recently adopted for the Jandakot mound?

(7) If yes, when?

(8) If not, why not?

Hon PETER FOSS replied:

(1) Yes.

(2) Work commenced on the Gnangara Land Use and Water Management Strategy (GLUWMS) in September 1995.

(3) No.

(4) The Strategy has not been published because there has been extensive groundwater modelling work which has only recently been completed.

(5) A draft GLUWMS is proposed to be released for a three month public comment period in late 1998.

(6) Yes.

(7) The MRS Amendments would proceed after the public consultation period and the release of a final GLUWMS. The MRS Amendment may commence in the latter part of 1999, subject to the finalisation of the GLUWMS.

(8) Not applicable.

BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND

Grants to Architects Groups

271. Hon MARK NEVILL to the Leader of the House representing the Minister for Employment and Training:

(1) In the 1996/97 and 1997/98 financial years, what funds from the Building and Construction Industry Training Fund have been granted to architects groups?

(2) For what purpose were these funds granted and spent?

Hon N.F. MOORE replied:

(1) None.

(2) Not applicable.

Additional Information.

(1) In answering this question a distinction has been made between "architects groups" as described in the question.

Persons from individual architectural practices have attended accredited training courses and have received skills enhancement training subsidy in this period. The total funds provided to architects via skills training subsidy in the period 1 July 1996 to 30 June 1998 was $478.

(2) Accredited training courses attended by architects in the period for which BCITF training subsidy was paid were:

Understanding Building and Construction Contracts
Basic AutoCAD

FISHERIES OFFICERS

277. Hon BOB THOMAS to the Minister for Transport representing the Minister for Fisheries:

(1) Which Fisheries Officers have been appointed since January 1, 1998?

(2) What is their position and on what date were they appointed?

(3) What positions in Fisheries WA have been vacant since January 1, 1998, and during what period were they vacant?

(4) What was the reason for the vacancies?

(5) What advertisements have been lodged for positions of Fisheries Officers since January 1, 1998?

Hon M.J. CRIDDLE replied:

(1) Three people have been employed as Fisheries Officers since 1 January 1998.

(2) Their positions and appointment dates are:

(i) Rock Lobster Factory Monitoring Officer appointed from 12 January 1998 to 30 June 1998 (Temporary Base Level Contract appointment) and then as a Recreational Fisheries Officer appointed from 3 August 1998 to 31 October 1998 (Temporary Base Level Contract appointment)

(ii) Rock Lobster Factory Monitoring Officer appointed from 16 March 1998 to 4 July 1998 (Temporary Base Level Contract appointment) and then as a Temporary Fisheries Officer appointed from 4 August 1998 to 16 October 1998 (Temporary Base Level Contract appointment).

(iii) Recreational Fisheries Officer appointed from 3 August 1998 to 31 October 1998 (Temporary Base Level Contract appointment).

(3) The following positions have been vacant since 1 January 1998:

(a) Supervising Fisheries Officer, Southern Region, Level 4. Vacant from 24 December 1996 to present.

(b) Senior Fisheries Officer, Master Patrol Vessel, PV McLaughlan, Level 4. Vacant from 29 December 1997 to 1 February 1998.

(c) Fisheries Officer, Broome, Level 2. Vacant from 2 February 1998 to present.

(d) Senior Fisheries Officer, Karratha, Level 3. Vacant from 3 March 1998 to present.

(e) Supervising Fisheries Officer, Training, Level 4. Vacant from 14 April 1998 to present.

(f) Senior Fisheries Officer, Master Patrol Vessel, PV Dirk Hartog, Level 4. Vacant from 24 April 1997 to 13 April 1998.

(g) Fisheries Officer, PV Dirk Hartog, Level 2. Vacant from 15 December 1997 to 24 May 1998.

(4) The reasons for the vacancies are as follows:

(a) This is a new position which has been advertised once and is to be re-advertised.

(b) Transfer.

(c) Promotion.

(d) Resignation.

(e)-(g) Transfers.

(5) One advertisement has been placed since January 1998 for the position of Senior Fisheries Officer, Karratha.

QUESTIONS WITHOUT NOTICE

MAIN ROADS - INTERNATIONAL INVESTIGATION AGENCY INQUIRY

135. Hon TOM STEPHENS to the Minister for Transport:

I refer the minister to the answer he gave to this House yesterday that he did not yet have certain information on the leaked documents investigation. Can the minister now provide information on the following matters -

(1) How much has been paid to date to International Investigation Agency for work it performed for Main Roads WA?

(2) In addition, are there any accounts outstanding; if so, what amounts?

(3) Has International Investigation Agency now completed the works it was contracted to perform?

(4) When was the contract between International Investigation Agency and Main Roads formally signed?

(5) In addition to the money paid to the agency, what other costs were incurred by Main Roads in this investigation?

Hon M.J. CRIDDLE replied:

(1) An amount of $76 670.

(2)-(3) I am advised by Main Roads that it has met all International Investigation Agency's costs associated with the investigation in accordance with the company's bill dated 3 June. International Investigation Agency has sent a further account for $65 850, of which $400 has already been paid by Main Roads for meeting with the company's solicitors, with $12 700 being a duplicate claim already paid by Main Roads. The balance of $52 750 is rejected by Main Roads.

(4) Yes. The investigation is complete.

(5) International Investigation Agency accepted Main Roads' offer to carry out the investigation in a letter dated 8 January 1998.

As the minister responsible for Main Roads, I have serious concerns about the handling of this issue. I have requested that the Ministry of the Premier and Cabinet investigate the processes surrounding the contract, including associated payments. This investigation will work with the State Supply Commission to identify any deficiencies in the contracting process followed by Main Roads WA. I seek leave to table the two letters concerned.

[See paper No 153.]

GOODS AND SERVICES TAX - GOVERNMENT ANALYSIS

136. Hon TOM STEPHENS to the Minister for Finance:

Some notice of this question has been given. I refer to the Government's analysis of the impact of Prime Minister Howard's GST package on Western Australia.

(1) What involvement did the State Revenue Department have in the preparation of the analysis?

(2) Does the minister stand by the forward estimates contained in the analysis?

(3) If not, with which forward estimate does he agree?

Hon MAX EVANS replied:

(1) None. All of those factors are prepared by Treasury, not State Revenue, which adds them all up.

(2) Yes. These are forward estimates. One certainty in this world is that forward estimates will never have outcomes exactly as predicted. Pluses and minuses occur because of the nature of forward estimates. I stand by the bases on which they were prepared, applying for the next four years, not 12 years.

(3) Not applicable.

GOODS AND SERVICES TAX - GOVERNMENT WORKING PARTY

137. Hon N.D. GRIFFITHS to the Leader of the House representing the Premier:

Some notice of this question has been given. I refer to the Government's analysis of the impact of the Howard GST package on Western Australia and the Premier's comments yesterday that the analysis was undertaken by a working party established by Treasury.

(1) Who were the members of the working party and from which departments were they drawn?

(2) How many drafts of the Treasury analysis were submitted to the Premier's Office from the Treasury Department?

(3) What role did the Office of Seniors' Interests play in the process of analysing the impact of the Howard GST package on Western Australia?

Hon N.F. MOORE replied:

(1) The Premier does not believe it to be appropriate to individually name members of the working party. However, I can assure the House that all members of the working party were from the Treasury Department.

(2) The analysis which was released was a Treasury analysis. Therefore, the member's question is not relevant.

(3) Treasury consulted a number of agencies. However, the analysis was done by Treasury.

OAKAJEE - WORKS APPROVAL BREACH

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

In regard to the Oakajee site earthworks and a possible breach of works approval conditions which occurred last Sunday, I ask -

(1) Was work halted when the dust standard was exceeded?

(2) If not, why not?

(3) What stabilising agents have been used to treat the site?

(4) How many times has the site been treated with these agents?

(5) Why has it taken so long for the Department of Environmental Protection to determine an appropriate monitoring system for the western boundary of the site, given that earth works have already proceeded for a number of months?

Hon MAX EVANS replied:

(1) No work was being undertaken on the site at the time.

(2) Not applicable.

(3) A starch-based soil binding agent has been used.

(4) The site was treated once when it was located.

(5) The establishment of the overall site dust monitoring program was aimed at the protection of nearby residences. There are no residents beyond the western boundary and it was not considered necessary to use the sophisticated monitoring systems to determine dust emissions to the west. However, the Department of Environmental Protection is presently reviewing the adequacy of the dust control measure.

PORT BEACH - EROSION

139. Hon GIZ WATSON to the Minister for Transport:

For the minister's clarification, I ask the question I posed yesterday to which the minister gave me the answer to another question. I refer to the beach erosion at Port Beach, Fremantle.

(1) Is the minister aware of the Fremantle Port Authority receiving any opinions into the coastal erosion of Port Beach other than that provided by Halpern Glick Maunsell?

(2) If yes, what is the source of this opinion and what is its reference number?

(3) Is the minister aware of the existence of a review by Halpern Glick Maunsell on the Port and Leighton Beach coastal study provided by the University of Western Australia's Centre for Water Research?

(4) If so, will the minister table this review?

(5) If not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) (a) The Port and Harbour Consultant Report, which was submitted on 29 May 1997.

(b) G. Masselink and C.B. Pattiartatchie of the Centre for Water Research at the University of Western Australia. This report was submitted in May 1997.

(c) Dr John Hsu, report submitted October 1997.

(3) Yes.

(4) The report is a public document and a copy has been obtained from the Fremantle Port Authority.

(5) Not applicable.

CAPITAL GAINS TAX - CHANGE UNDER GOODS AND SERVICES TAX

140. Hon MURIEL PATTERSON to the Minister for Finance:

(1) What is the capital gains tax now on the sale of -

(a) farming property;

(b) investment house or units; and

(c) sale of business?

(2) How much, if at all, will capital gains tax change under a GST?

(3) How much, if at all, will capital gains tax change under the ALP tax package?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) All assets, including farms, investment properties and businesses, acquired before 20 September 1985 are exempt from capital gains tax. In general, assets acquired after this date are subject to capital gains tax upon disposal. As part of its 1996-97 budget, the federal coalition provided capital gains tax rollover relief for small business owners who sell assets in their business and reinvest the proceeds in another like business. Further relief was provided by way of a capital gains tax exemption on the sale of a small business for retirement.

(2) Under the federal coalition's proposed tax reforms, the capital gains tax exemption for assets acquired prior to 20 September 1985 will be maintained. In addition, capital gains tax liabilities will be reduced in line with the proposed income tax cuts. The coalition has also announced that it will examine, as part of its post-election consultation process, a number of specific capital gains tax reforms, including capping the tax rate applying to capital gains for individuals at 30 per cent, and introducing a $1 000 per annum capital gains tax-free threshold for individual taxpayers.

Hon N.D. Griffiths: What has that got to do with your portfolio?

Hon MAX EVANS: As members who invest in property and shares will probably realise, that is a big improvement, because the present marginal tax rate is 48.7 per cent. The benefit will come from the GST.

(3) The ALP has proposed removing the capital gains tax exemption for assets acquired before 20 September 1985. Gains made on such assets from 1 January 1999 would be fully taxable. Taxpayers would need to incur the expense of having their pre-capital gains tax assets valued as at 1 January 1999, otherwise they could be paying considerable tax. That is the difference between the two, and the GST will be of great benefit.

Hon N.D. Griffiths: What a load of rubbish.

COMMUNITY FAMILY CENTRES - NUMBER AND FUNDING

141. Hon CHRISTINE SHARP to the minister representing the Minister for Family and Children's Services:

(1) How many community family centres are there in Western Australia?

(2) What percentage of them are funded either fully or partially?

(3) In what geographical locations are the centres that receive funding?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) There are 34 Family and Children's Services' purpose-built family centres funded by the department under the Family Centre program.

(2) All of these family centres are funded by Family and Children's Services under the Family Centre program.

(3) There are purpose-built Family and Children's Services' family centres in the following locations -

Armadale	Ballajura	Bayswater
Beechboro	Bunbury	Busselton
East Victoria Park	Eaton	Falcon
Forrestfield	Geraldton	Greenfields
High Wycombe	Joondalup	Kalgoorlie
Kardinya	Karratha	Kingsley
Kwinana	Leeming	Marangaroo
Mirrabooka	Noranda	Rockingham
Roleystone	South Lake	Swan View
Thornlie	Waikiki	Warnbro
Whitfords	Willetton	Woodvale
Yangebup		

PRISONS - PRE-RELEASE PROGRAMS

142. Hon HELEN HODGSON to the Attorney General:

(1) When was a pre-release program last held at the following prisons -

(a) Casuarina;
(b) Canning Vale;
(c) Karnet;
(d) Wooroloo; and
(e) Bandyup?

(2) What was the duration of each of these programs and who or what organisations conducted them?

(3) What was the cost of each of these programs?

(4) What are the performance indicators monitored by the Ministry of Justice in relation to these programs?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Pre-release programs were funded to run until the end of June 1998 financial year. The program has now been reviewed and curriculum modules revised and delivery is now recommencing in prisons.

(2) Programs were run as workshops, with a high emphasis placed on the use of specialist community agencies to deliver appropriate modules - Centrelink, Homeswest, etc. These modules ranged from free delivery through to

funded delivery from pre-release expenditure. The modules ran from half-day up to two-day sessions, covering approximately 10 topic areas. The main providers in the metropolitan area were Prisoners Advisory Support Service - PASS - Kindred and Outcare. PASS was involved in delivery at Casuarina, Karnet, Canning Vale and Bandyup. Outcare was involved in delivery at Casuarina, Karnet, Canning Vale and Wooroloo. Kindred was involved in delivery at Bandyup.

(3) Wherever possible "fee for service" delivery was set at $27.16 per hour for non-accredited delivery and $38.48 per hour for accredited delivery. During the pilot period of 12 months the cost per participant accessing the program ranged from prison to prison depending on module delivery styles; for example, $112 per participant at Canning Vale to $400 per participant at Karnet. Canning Vale had workshop-style module delivery where offenders could pick and choose modules of interest and so more offenders accessed a variety of modules and at Karnet prison there were fewer offenders accessing but a more intensive delivery.

(4) Number of offenders accessing each module.
Number of modules run throughout the financial year.
Successful completions.
Offender anecdotal feedback.
Course deliverer anecdotal feedback.
Post-release offender feedback.
Full formal review report.
Effective and efficient financial management.

WORKSAFE WA

Workplace Health and Safety Matters - Findings of Public Sector Standards Commissioner

143. Hon KIM CHANCE to the Leader of the House representing the Premier:

I refer to the answer given on behalf of the Minister for Labour Relations yesterday in the House that WorkSafe WA "never implemented" such a policy of not responding to unions' approaches on workplace health and safety matters, and the Leader's answers that the findings of the report by the Commissioner for Public Sector Standards related to "the policy that WorkSafe WA found to have committed itself" and ask:

(1) To what policy was the minister referring in his answer yesterday?

(2) Was this policy, to which WorkSafe found itself committed, initiated by the WorkSafe WA Commissioner?

(3) If WorkSafe WA did "find itself" committed to such a policy due to the actions of the commissioner, is it not an accurate assessment of those findings to say that those findings therefore apply to the WorkSafe WA Commissioner?

(4) If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) I regret that yesterday's answer contained a typographical error and should have referred to "the policy that WorkSafe WA was found to have committed itself". This was, of course, a reference to the finding by the Commissioner for Public Sector Standards.

(2)-(4) The Premier has now obtained from the Commissioner for Public Sector Standards further information relating to this matter. This information will be examined over the next few days to determine whether there is sufficient evidence to support a suspicion that Mr Bartholomaeus has committed a breach of discipline. This is an essential pre-condition to commencing any disciplinary proceedings under the Public Sector Management Act. One should never cross the Labor Party if one is a member of it. Opposition members are vicious - absolutely vicious.

Several members interjected.

Hon N.F. MOORE: We do not want him any more than opposition members do.

The PRESIDENT: Order! The more that members interject, the more the clock ticks away and the fewer the questions that will be asked. I ask members to do other members a favour and cease interjecting.

Hon N.F. MOORE: While the Commissioner for Public Sector Standards' findings relate to WorkSafe WA and Mr Bartholomaeus is the WorkSafe Western Australia Commissioner and is the chief executive officer of WorkSafe Western Australia, it is a requirement that the disciplinary processes under the Act be followed in relation to Mr Bartholomaeus.

MAIN ROADS WA

International Investigation Agency Pty Ltd - Check of Credentials

144. Hon TOM HELM to the Minister for Transport:

(1) Can the minister explain why no search or checking was undertaken of the credentials and licensing of the International Investigation Agency until 12 January 1998, when it had already been appointed by the Commissioner for Main Roads?

(2) Can the minister confirm that the question of the status of IIA - International Investigation Agency - and its personnel as licensed investigators was not checked until queries were made of the department by a journalist?

Hon M.J. CRIDDLE replied:

I have no indication of that question. Perhaps the member will put it on notice.

WORKSAFE WA - COMMISSIONER'S CONTRACT

145. Hon BOB THOMAS to the Leader of the House representing the Premier:

My question was to be asked by Hon John Cowdell who is absent on urgent parliamentary business.

Hon N.F. Moore: Urgent federal election business.

Several members interjected.

The PRESIDENT: Order! Let us have the question.

Hon BOB THOMAS:

(1) Did the Premier as Minister for Public Sector Management enter a contract with Mr Neil Bartholomaeus appointing him CEO of WorkSafe and WorkSafe WA Commissioner in September 1996?

(2) Did the contract require the completion of a performance agreement by the parties by 24 November 1996?

(3) Was the agreement completed by that date?

(4) If not, when was the agreement completed?

(5) Has the Premier received any assessments of how Mr Bartholomaeus is meeting the performance criteria in any performance agreements to which he is a party?

(6) If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) Yes.

(3)-(4) A 1996-97 performance agreement was submitted. However, assessment measures against the collective interests portion of the agreement were not finalised.

(5) The Premier has approved Mr Bartholomaeus' 1997-98 performance agreement. Performance measures have been identified in the agreement and an assessment of these is due by 30 September 1998.

(6) Not applicable.

SPEED LIMITS - TRIAL INCREASE

146. Hon MARK NEVILL to the Minister for Transport:

(1) What action has the minister taken to begin a process of implementing a trial of increased speed limits on remote roads?

(2) Is he proposing to take a proposition to Cabinet; and, if so, when?

Hon M.J. CRIDDLE replied:

(1)-(2) I request that the member put the question on notice.

COTTESLOE TOWN COUNCIL

147. Hon J.A. SCOTT to the minister representing the Minister for Local Government:

(1) For what purpose was an inspector sent to investigate the Cottesloe Town Council and -

(a) what are the terms of reference; and

(b) what is the term of the appointment?

(2) Was the investigation a result of complaints sent to the minister?

(a) If so, was one of the complainants the member for Cottesloe, Hon Colin Barnett?

(b) If yes, what was his complaint?

(3) Did the inspector have an official brief or directive from the Department of Local Government?

(4) When will the inspector's report be presented and will the report be made public?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) An officer of the Department of Local Government was directed to undertake an assessment of the Town of Cottesloe in response to the resignation of four elected members and the absence of another on sick leave. This action was not an investigation, but rather an assessment to determine if a formal inquiry was warranted.

(2) No. The assessment was undertaken on the recommendation of the Executive Director of the Department of Local Government.

(3) The officer was given a brief from the Department of Local Government.

(4) A copy of the departmental report will be provided to the mayor for presentation to the council on completion of the assessment. It is a matter for the council to determine whether the report will be made public.

WOODWARD CLYDE REPORT ON DAMAGE TO HOMES

148. Hon KEN TRAVERS to the Minister for Transport:

(1) Can the minister confirm that the Woodward Clyde report into the damage at homes in Moir and Brookman Streets, Northbridge, has been completed and delivered to Main Roads?

(2) If so, when will the minister release the report?

(3) What conclusions have been made concerning the cause of the damage?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The final report is expected to be completed and delivered to Main Roads shortly.

(2) The report will be provided to the resident action group within two weeks of its receipt by Main Roads, as previously agreed with the resident action group.

(3) Not applicable.

MAIN ROADS - ADDITIONAL COSTS OF LEAK INQUIRY

149. Hon CHERYL DAVENPORT to the Minister for Transport:

(1) What costs were incurred by Main Roads in undertaking the investigation into the leaking of Main Roads' documents, over and above those sums paid to International Investigation Agency?

(2) What legal costs have been incurred?

(3) Was any money spent on purchasing equipment to facilitate electronic mail searches?

Hon M.J. CRIDDLE replied:

I saw this question and answer earlier, but I do not have it with me. I will provide it to the member as soon as possible after question time.

HEALTH DEPARTMENT - LOCAL AREA NETWORK SWITCHES TENDER

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

I refer to the minister's advice of 8 September 1998 that a major consideration in the decision to restrict the Health Department tender for local area network switches to a single vendor was the requirement for a short implementation schedule.

(1) How did the circumstances develop which were so urgent as to require this short implementation schedule?

(2) Does the development of these circumstances demonstrate serious weakness in the department's planning for the acquisition of communication services?

(3) If yes, what steps will the minister take to address this weakness?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The short implementation schedule arose from the need to incorporate information on a range of complex technical and procedural considerations into the determination of network requirements, and at the same time avoid compromising the timetable for a major system implementation. A decision on the network infrastructure could not have been sensibly taken until all relevant information was available, and advice from independent telecommunications consultants obtained.

(2) No. On the contrary, it demonstrates sound planning by ensuring all relevant information was incorporated in determining equipment requirements. Delays would have involved additional costs of at least $200 000 a month and compromised the timetable for Health's Year 2000 program.

(3) Not applicable.

WORKSAFE WA - LEGAL ADVICE

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

In his report tabled yesterday the Commissioner for Public Sector Standards noted he met with the Premier on 17 September 1997 to draw to the Premier's attention the ethical and legal situation that could occur if an accident were to occur at a workplace at some point after WorkSafe Western Australia had received a written complaint from a trade union which had been ignored under WorkSafe's policy.

(1) Did the Premier take legal advice on the possible legal liability of the Government or WorkSafe if employees were exposed to workplace hazards as a result of this policy?

(2) If yes, from whom and when did he obtain that advice?

(3) If no, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(3) As the report states, that meeting was to discuss other matters. The Premier did not see the need to seek legal advice at that time.

NARRIKUP ABATTOIR

152. Hon KIM CHANCE to the Leader of the House representing the Minister for Commerce and Trade:

In relation to the Government's assistance to the Narrikup abattoir -

(1) On what date did the proponent make application for assistance?

(2) What was the date of approval for that assistance?

(3) What are the time frames for the various milestones which must be reached by the proponents in order either to qualify for assistance or to have loans converted to grants?

(4) What amount of funds will be attached to each milestone?

(5) On what approximate date was the matter of possible government assistance first discussed by the Government or its agencies with the proponents?

(6) Were any undertakings given which relate to assistance that might be granted by the Government to the proponents in the event that they locate a new abattoir in Western Australia?

If so -

(7) What were those undertakings?

(8) Who gave those undertakings?

(9) On what approximate date were those undertakings given?

Hon N.F. MOORE replied:

(1) 22 May 1997.

(2) Cabinet approval on 27 January 1998.

(3)-(4) The loan component of assistance - $2.5m - converts to grant after five years subject to performance milestones and conditions based on planned capital expenditure of $46m and the level of net revenue returned to the State. The grant component - $2.7m - is paid over two years subject to infrastructure spending on water, power, effluent and gas of $3.6m being undertaken with the amount of the grant based on 75 per cent of infrastructure spending.

(5) Informal discussions were held between the Government and the company in late 1993. Formal discussions between the company and the Department of Commerce and Trade regarding possible financial assistance first took place in March 1997.

(6) The Department of Commerce and Trade is unable to give undertakings that the Government will provide assistance of the nature offered to the Narrikup facility. At the time, the department advised the company of the need for a formal application and submission for assistance and of the broad procedure for assessing the request and the approval process, which includes the requirement for Cabinet to approve assistance.

(7)-(9) Not applicable.

ALBANY SCHEME WATER

153. Hon MURIEL PATTERSON to the minister representing the Minister for Water Resources:

(1) From where does the Albany scheme water supply originate?

(2) How does this water supply compare to the metropolitan supply in quality?

(3) Is this supply sufficient to service the town's needs in the foreseeable future?

(4) If not, what plans exist for upgrading this supply and will any upgrade affect the quality of water?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The water from the scheme originates from ground water from the South Coast Peninsula; surface water from Two Peoples Bay; surface water from Limeburners Creek, on the South Coast Peninsula; and surface water from Bolganup Dam in the Porongurup Range.

(2) The quality of the water supply in Albany complies with National Health and Medical Research Council Drinking Water Guidelines. When compared to Perth metropolitan water supplies, Albany's water is generally harder.

(3) The existing sources of the lower great southern towns water supply are approaching capacity and may need to be supplemented by additional sources within the next one to two years.

(4) The corporation is currently planning for new, additional, water sources to meet future water requirements for Albany. Water quality of the additional sources will be dependent on whether surface or ground water is used.

WATER SUPPLIES - QUALITY TESTING

154. Hon TOM STEPHENS to the minister representing the Minister for Water Resources:

I ask this question on behalf of Hon Ken Travers.

(1) What are the current guidelines for water quality testing in Western Australia?

(2) Are these the most recent guidelines; and, if not, why not?

(3) What level of sampling is tested for giardia and cryptosporidium?

(4) How does this compare to the level of testing conducted for these organisms by Sydney Water?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The current guidelines are a combination of the 1987 National Guidelines, parts of the 1996 National Guidelines and other requirements as specified by the Health Department of Western Australia.

(2) The latest guidelines in Australia are the 1996 guidelines and these are being phased in as required by the Health Department of Western Australia.

(3) Five samples a week are currently taken and sent to Adelaide for analysis.

(4) The level of testing by Sydney Water is not known.

FORESTS - HILLIGER BLOCK

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

For the purposes of the regional forest agreement process, dieback affected areas are regarded as being significantly disturbed.

(1) Will the minister table the dieback interpretation map for the entire Hilliger forest block?

(2) If not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Yes. A map will be produced and tabled as soon as possible.

(2) Not applicable.