WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE ASSEMBLY

Wednesday, 28 October 1998

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

ROCKINGHAM-KWINANA DISTRICT HOSPITAL

Petition

Mr McGowan presented the following petition bearing the signatures of 404 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, wish to express our opposition to any reduction of services to the Rockingham/Kwinana District Hospital. As Rockingham/Kwinana is one of the fastest growing areas in Western Australia, we believe that there should be an upgrade to existing facilities for this hospital instead of any reductions to nursing staff and specialist services.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 67.]

ROCKINGHAM LOCUM SERVICE

Petition

Mr McGowan presented the following petition bearing the signatures of 41 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, request that the Department of Health urgently assign priority to a locum service in the Rockingham area. The Rockingham area is a rapidly growing area of approximately 70 000 people with a great demand for a locum service to service people who are unable to get out of home to get to the Doctor. This service would be necessary for people of all ages, from children through to the elderly.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 68.]

JOONDALUP POLICE ACADEMY

Statement by Minister for Police

MR PRINCE (Albany - Minister for Police) [11.05 am]: As many people in this place would be aware, the State Government has given a commitment to build a new Western Australia Police Training Academy at Joondalup. The current facility at Maylands is unable to adequately accommodate recruit training or those officers who require in-service or specialist training, and is essentially in need of replacement. Planning for the new academy began in 1996 with the establishment of a project steering committee to determine the requirements of a new facility. Since that time, a lot of work has been done to finalise a project brief on the new academy which will incorporate a range of traditional teaching facilities and other facilities unique to police services such as tactical weapons training areas and scenario and simulation training requirements.

Earlier this year, after committing $35m to the project over four years to 2000-01, the Premier announced that the new academy would be collocated with Edith Cowan University and the West Coast College of TAFE. Since the announcement by the Premier, a rigorous process has been undertaken to select architectural consultants to provide site master planning, design and documentation services to develop the new academy. I am pleased to announce today that the Department of Contract and Management Services, on behalf of the Western Australia Police Service, has appointed the joint venture of Peter Hunt Architects and Daryl Jackson Pty Ltd to provide the services I have mentioned. The contract will entail the master planning of the academy site and design and development of facilities which include teaching areas, simulation and scenario facilities, physical and tactical training areas, chapel and counselling areas, a parade ground, administration areas, residential accommodation for in-service training, and catering and dining facilities. The process of detailed planning and documentation will commence immediately to enable construction work on the academy to get under way in late 1999. It is anticipated that the academy will be completed by the end of 2000. I am certain the new academy will be a first-class

facility for our Police Service. It will provide state-of-the-art equipment, facilities and training programs to ensure officers in this State remain at the forefront of policing in Australia.

I have in the Chamber, but do not seek to table because of their nature, the concept displays from the winning architects who have been selected to take the matter forward. It is not intended that this is what the new police academy will look like; it is simply a concept which I would like to lay on the Table for the balance of the day's sitting for the information of members.

[The paper was tabled for the information of members.]

GOLDEN PIPELINE PROJECT

Statement by Minister for Water Resources

DR HAMES (Yokine - Minister for Water Resources) [11.08 am]: One hundred years ago today, Sir Alexander Onslow, the Governor's Deputy and Chief Justice, gave assent to the Act of Parliament which authorised the construction of one of the world's greatest water supply engineering achievements, the goldfields water supply scheme. Today I am pleased to advise the House of another important event in the colourful history of a scheme which no doubt exceeds the dreams of its creators. I refer to the Golden Pipeline, a project which will ensure the conservation, management and interpretation of the original components of the scheme. As members know, the concept of the goldfields water supply scheme was vigorously attacked from some quarters to the point, as history relates, that O'Connor was driven to suicide just as the scheme was on the verge of completion. The scheme represented the spirit of enterprise and innovation which characterised the building of Western Australia and which helps to make us the leading exporting State in Australia today.

The Golden Pipeline project will live up to the grand scale of the goldfields water supply scheme by becoming one of the biggest heritage projects of its kind in the world. It will cover the 550 kilometre length of the pipeline and the infrastructure at either end in Mundaring and Kalgoorlie. It will be a community effort, linking people in towns and settlements along the way in a common objective. It will involve a range of activities including a contribution by Aboriginal communities. Of particular importance are the practical benefits including employment in areas of scarce opportunity both during its development and in its future role as a tourist attraction. The project will include sites which few people know exist, among them the original wells sunk for prospectors before the scheme was thought of and remnants of the original pipes and construction workers' camps. There are also eight pumping stations along the route. The Golden Pipeline project will ensure these sites, which are such important and irreplaceable parts of our heritage, are not neglected, forgotten or lost forever. All of the scheme's heritage assets will be vested in a foundation established under the auspices of the National Trust. The project is expected to take between five and 10 years to complete, at an estimated cost of $10m. The Water Corporation has already pledged $1.3m and the Commonwealth a further $1m under the Federation Cultural and Heritage Projects Program. A Golden Pipeline Council has been formed to coordinate the project. Most of the members of that council are in the Speaker's Gallery today. The council had its first meeting today in the select committee room. The council is chaired by Harry Perkins, who is Chairman of Wesfarmers, Chancellor of Curtin University of Technology, and a wheatbelt farmer. Its members comprise members of Parliament June van de Klashorst, Bruce Donaldson, Kim Chance and Julian Grill, and representatives of business and industry and the engineering profession; namely, Michael Keegan, Ken Kelsall, Dr John Reid and Mrs Ruth Reid. One of the council's tasks is to seek additional funding through grants and sponsorship, and I wish it well in its important work.

BILLS - INTRODUCTION AND FIRST READING

1. Mutual Recognition (Western Australia) Amendment Bill.

2. Revenue Laws Amendment (Assessment) Bill (No 2).

Bills introduced, on motions by Mr Barnett (Leader of the House), and read a first time.

3. Sentence Administration Bill.

4. Sentencing Legislation Amendment and Repeal Bill.

Bills introduced, on motions by Mr Prince (Minister for Police), and read a first time.

BUSINESS OF THE HOUSE

Order of the Day No 2

MR BARNETT (Cottesloe - Leader of the House) [11.14 am]: I move -

That Order of the Day No 2 be now taken.

MR RIPPER (Belmont - Deputy Leader of the Opposition) [11.15 am]: While the Opposition is prepared to move onto this matter, I am a bit surprised, because I understood that we would deal first with the Occupational Safety and Health (Validation) Bill. That is clearly the understanding of the manager of opposition business, because that is the order of the program which she has given us, and it is also the order of the Notice Paper. Has there been some last-minute change?

Mr Barnett: The last-minute change is that the Minister for Labour Relations is not here but will be here shortly, and we will then go onto that Bill.

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from 22 October.

MR RIEBELING (Burrup) [11.16 am]: I am positive that members opposite will have forgotten what I said when this Bill was last before the House, and it is vital that when they vote on this Bill they know what I said. This Bill is basically designed to make legal what has been illegal. This Government decided to enact native title legislation which was deemed by the High Court to be illegal. However, between the passing of that legislation and that High Court decision, some 10 000 titles were issued under that legislation. Clearly the Government and 90 per cent of the lawyers in this State knew that that legislation would be overturned; therefore, the Government should have known that the validation of those 10 000 titles was illegal. This legislation seeks to validate those actions that have been deemed to be illegal and will, therefore, expunge the rights of Aboriginal people.

The conservative side of this Parliament decided when the native title issue arose originally that it was a clear opportunity to create division in our community. This Government also took the opportunity in a number of areas to use native title as a reason for not managing land in any manner, shape or form. The last time I spoke on this issue, I referred to an area in Karratha that had been permitted to be developed without native title clearance and said that it is named Rouse Court. I have since found out that it is named Jennifer Court. I apologise for incorrectly naming that place in Karratha. The fortunate thing about my beginning a speech in one week and continuing it in the next, is that I was able to check the name of the property to which I referred. It is a mystery to me that clearance of native title occurred when there was no agreement on that property. I hope that the Government will indicate why certain areas can go through the native title process without any great problem, yet it is not possible to shift the native title claims on other large tracts of land, such as that in Karratha.

Mr Prince: It varies enormously from group to group.

Mr RIEBELING: I am talking about one group. There is a claim over all Karratha residential land, but approval has been given for development of one parcel to go ahead.

Mr Prince: Because they were prepared to agree.

Mr RIEBELING: Many people in Karratha want to know why it is possible for Jennifer Court but not for other tracts of land.

Mr Prince: If I can answer that question I will, but I cannot answer it at the moment. Many of the questions raised in this debate so far by members of the Opposition have already been answered in writing.

Mr RIEBELING: One of the issues I raised, to which I hope the minister is referring, is that approximately 10 000 titles are involved in this legislation. I am interested in knowing how many were issued after the High Court decision knocked out the Government's legislation. I understand that most of the processes changed so that this Bill is not necessary for the vast majority of titles issued since then.

Mr Prince: That is right.

Mr RIEBELING: However, this legislation refers to a number that were still processed illegally as such.

Mr Prince: Not necessarily.

Mr RIEBELING: They were not in compliance with the rules. That is the purpose of the legislation.

Mr Prince: Some have been issued for particular matters and they are considered one-off cases. The extraordinarily cumbersome Native Title Tribunal process has been an issue.

Mr RIEBELING: The minister is not saying that in Karratha the Department of Land Administration went to extraordinary lengths to negotiate a settlement?

Mr Prince: I am not sure but I will endeavour to answer the member's question.

Mr RIEBELING: I understand DOLA was instructed not to negotiate for any settlement, although its officers were allowed to talk to the parties.

Mr Prince: I cannot give an answer now, but I will. I can say that two claims were made in Albany across the foreshore and, after DOLA negotiated, they were withdrawn. To my certain knowledge, DOLA has been negotiating in many places.

Mr RIEBELING: DOLA has been negotiating but not for any cash or settlement amount. If an Aboriginal claimant decides

to withdraw with no benefit, DOLA has achieved something. However, in relation to claims in my area, which I know more about, with certain land - Jennifer Court is an example - for some inexplicable reason, DOLA saw fit to go against the prevailing rules and issue title. No doubt that is now claimable, but it is different from the rest of the land.

Mr Prince: I will endeavour to get the information to answer the question.

Mr RIEBELING: I would appreciate that, because it perplexes many other people in my area in relation to land they wish to develop but cannot. DOLA is apparently charged with the management of land in Western Australia, but it cannot manage land. I remind the Government that part of its election platform was that it would be a better manager, and would be able to manage the State's assets and the like. The Government has not been able to manage land in my area since it was elected. I think it is a deliberate act on the part of the Government to create problems, especially in relation to Aboriginal people, and to gain some political advantage. Unfortunately for the Government, that will backfire. This is not proper management. The people of this State gave their trust to the Government and wanted it to create certainty, and this legislation provides minimum protection for Aboriginal people. If this legislation is challenged in the High Court, because of the minimalist approach taken, it will once again be knocked over. Once again, there will be uncertainty.

Mr Prince: Last time the legislation was not minimalist and this piece is, and you say they will both be knocked out.

Mr RIEBELING: I am talking about minimalist rights for Aboriginal people. The minister knows exactly what I am talking about.

Mr Prince: This flows on from the amendments.

Mr RIEBELING: It flows on from the amendments, but it is a minimalist approach. The minister knows that is the case. The Government's last attempt to solve the problem failed and created more problems than it solved. This Bill has the same potential because of the Government's desire to pander to interests that do not benefit the Aboriginal people and the native title holders.

MR THOMAS (Cockburn) [11.26 am]: As my colleague has just indicated, the Opposition will support this legislation, but with a heavy heart. In supporting the legislation, the Opposition draws attention to the fact that the legislation is necessary and is before the House because the Government continued its traditional position towards Aboriginal rights and land tenure, which is basically denial. The Government is continuing a tradition which has been followed in the white communities of Australia since European settlement, in 1829 in Western Australia.

Mr Prince: For Western Australia it was 1826.

Mr THOMAS: The minister correctly points out that it was 1826. In particular, the conservative side of politics - the Liberal Party and the National Party - has been practising denial of Aboriginal rights in recent years. The Labor Party does not have a particularly proud tradition in this area for a substantial part of its history. Until the 1960s, one plank of the so-called socialist objective of the Labor Party's platform was white Australia. We, as a party, must stand condemned, along with all sections of European Australia, for the way we have denied the rights and pre-existence of Aboriginal culture and settlement in Australia. The original decision on Mabo, which established the existence of native title, was a watershed in Australian history in recognising the rights of Aboriginal people and the rights of Aboriginal people to land in Australia. We, as legislators, should hang our heads in shame because we had not acknowledged for two centuries a common law right later recognised by the High Court. After the decision was made, this Government did not accept it with good grace.

Rather than accepting that these were the nineties, as at least people on this side of the House were doing, the Government continued to deny the existence of what had been discovered by the High Court. It passed legislation which everybody said would not stand a test in the High Court. It continued to deny the existence of Aboriginal rights, defined by the Mabo decision, and continued to issue titles until the Wik decision. It is now necessary for us to pass this retrospective legislation to validate acts undertaken by the Government which it should not have undertaken.

We must place this matter in some context. Australia alone, as far as I understand it, among the white colonial settler states made no recognition of the fact that people had pre-existing ownership of the land. As we will be aware, in North America by various means, very often as a result of bloodshed, treaties were entered into and recognition given to the pre-existing owners of the land. In New Zealand a treaty was reached with the pre-existing owners of the land and in South Africa arrangements were reached which recognised that pre-existing people lived in that country.

Mr Prince: Not South Africa. You are right about North America and New Zealand, both of which fought wars that led to treaties. Australia was settled. It is different in South Africa. The European colonisation of Cape Province came at the same time as the Bantu races came in from the north. The indigenous people, the Bushmen of the Kalahari, who were the remnants, were basically wiped out.

Mr THOMAS: The minister may be correct. Among the white colonial settler states, Australia lived a lie because it denied that pre-existing people were in this country and had any ownership of the land. It was a cruel lie because the Aboriginal people have a profound relationship with the land. It is characterised by the fact that our words "ownership of land" are not

able to be adequately translated into Aboriginal language because they do not have words that mean ownership of land in the same sense that we own land. Anthropologists who study this matter often try to characterise it in the English language by saying people are owned by the land as much as it is owned by them. To deny there were any rights or any associations between Aboriginal people and the land was a particularly cruel lie.

That was the case universally accepted by all European settlers and descendants in Australia until the 1960s. The Labor Party at least took the obscenity of "White Australia" out of its platform in the 1960s and in the late 1960s the Aboriginal land rights movement began. The first public step in that direction was by the Gurindji people at Wave Hill Station in the Northern Territory. In some sections of the community it was accepted that there should be some form of Aboriginal land rights. The Australian Labor Party incorporated recognition of Aboriginal land rights in its platform. It became a political issue recognised by at least some of the mainstream parties.

The conservative side of politics, particularly in Western Australia, continued to deny it. One of the most shocking experiences I have had since being in politics was to be a candidate at the 1986 election. It was the first election that I contested and at which I was elected as the member for Welshpool. Certainly at Welshpool, and I understand at every other polling booth in Western Australia, posters were put up saying "Stop Aboriginal land rights, vote Liberal". The then leader of the Liberal Party, Mr Hassell, led one of the most divisive, vicious and racist campaigns it has been my experience to see.

Mr McGowan: It did not do them any good.

Mr THOMAS: That is right. All members of the Liberal Party involved in that election should be ashamed that they ran a campaign in which the central plank was to stop Aboriginal land rights. However, it backfired.

The Legislatures of Australia had not acknowledged that Aboriginal people had a pre-existing relationship with the land that should be recognised in law. The judiciary had to do it. The courts are influenced by fashion and public opinion. The High Court, in its decision on Mabo, was reflecting prevailing views in Australia and internationally that Australia, particularly Western Australia, alone among the white colonial settler states - I stand to be corrected by the Minister for Police about South Africa - had made no acknowledgment of Aboriginal land rights.

Mr Prince: You are correct; the High Court was influenced in that way.

Mr THOMAS: It came to that decision because of a policy vacuum over one-third of Australia. The Western Australian Legislature had rejected a reasonable proposal that would have established Aboriginal land rights in this country. I am referring to the Bill introduced by the Burke Government in, I think, 1985. It was rejected by the Liberal and National Parties in the Legislative Council, which rejection was confirmed when the Liberal Party's most prominent policy at the subsequent election was to stop Aboriginal land rights. The slogan was quite clear.

I do not think you were a candidate during that election, Mr Speaker. As a Liberal member you should be proud that you were not a candidate during that election. If you were a candidate you would be ashamed that the Liberal campaign was run on such a divisive and awful policy of denying people rights to which it is now acknowledged they are entitled. Members might recall that advertisements were run which showed a white family wandering through the bush with picnic baskets, but stopping in horror because they saw a sign that said "Aboriginal land, keep out!". The people were frightened that if Aboriginal land rights were recognised in any sense they would be excluded from going onto land that was owned by Aboriginal people. Fear and division were deliberately created in the community to advance the Liberal Party's cause politically; it wanted to divide people and deny that Aboriginal people had rights to land.

By then, under federal law, Aboriginal land rights had been legislated for in the Northern Territory and in other States. However, as you will be aware, Mr Speaker, in those other States, for the most part at least, it is not a matter of such significance because the areas of land and numbers of people are much smaller, with the exception of Queensland where a reasonable deal was arranged under local government legislation by which people had practical possession of the land. As the Burke Government's Aboriginal land rights legislation was rejected, it had to operate under the Land Act. Significant tracts of land were assigned to Aboriginal people through leasehold under that Act. It was not possible to assign land for those people to occupy under special legislation, as the Government wanted, because it had been rejected by the Liberal and National Parties in the Legislative Council. Aboriginal people were not prepared to accept that; nor should they have accepted that. Eventually that case succeeded and native title was recognised to exist in the Australian legal system at common law. Neither the Mabo case nor the High Court's discovery of native title would have been necessary if Legislatures had faced up to their responsibilities and recognised that the rights of Aboriginal people should be recognised and legislative frameworks put in place to acknowledge those rights. It would not have been necessary for the judiciary to discover rights by making law if in the previous 200 years Legislatures had done their job properly and created rights of Aboriginal people to land. That could have been done by the Commonwealth Government at any time after 1967, and by this Legislature at any time since 1890. However, that was not done. Members opposite, particularly Liberal Party members, should hang their heads in shame because they had the opportunity to do that in 1985 when the Burke Government introduced an Aboriginal land rights Bill. However, not only did they reject that Bill, but also they used it as an election issue to campaign and exacerbate any divisions that might exist in the community between indigenous people and others. Mr Hassell and any

Liberals who were candidates or members of Parliament at that time should hang their heads in shame for having been associated with such an awful campaign.

Members opposite did not learn their lesson. The High Court discovered native title in the Mabo decision in 1992, but members opposite went into denial. They sought to head that off by passing the Land (Titles and Traditional Usage) Act which was enacted by the Liberal Government in this House in 1993 as a way of heading off the High Court and the native title decision which had been made in relation to the Mabo case. At that stage everybody who was interested in this matter, or was in any sense informed about this matter, knew that was contrary to the law and it was a vain attempt by a mickey mouse Government and Legislature to head off what had been discovered by the High Court as a profound right which should be attached to the indigenous people of this country. At the time that Bill was enacted, the Opposition said it was in vain; that the Premier was like Canute trying to hold back the tides of enlightenment and public opinion, and that the High Court would not allow it to occur. Nonetheless, the Premier acted like Canute. He used the numbers in this House and the Legislative Council to pass that Bill through the Parliament. As was predicted by the Opposition and people throughout Australia, the Bill was challenged in the High Court and it was rejected 7-0.

It was an expensive exercise for the State to conduct that litigation. However, the expense is really only a small part of it. It was yet another example of this Parliament acting to deny the rights of Aboriginal people. This Parliament has for 100 years been acting to deny the rights of Aboriginal people to land and to other things. It is something about which we should be ashamed. We should be seeking to make good the past, and to acknowledge rights and to legislate to create rights rather than to take them away. However, in a vain attempt the Government passed the mickey mouse Land (Titles and Traditional Usage) Act, and it had to be taken to the High Court. Yet again, the High Court said that it is not acceptable to the law of Australia and it was overruled.

This Government continued to issue titles in spite of everybody saying that it should comply with the Commonwealth's Native Title Act. It is now necessary for this Parliament to patch up its mistakes in issuing titles under mining and land legislation which is contrary to what ultimately has been discovered to be the case in the Wik legislation. It is necessary for us to correct yet another error which has been made by the Government. During the period between 1992 and 1994, a number of titles were issued that purported to create rights, and gave people expectations that they had certain rights in accordance with those titles, and it is necessary for us to confirm that is the case. It is necessary for us to pass this legislation because the Government - the Liberals for the most part, but also the Nationals - acted to deny that Aboriginal people have rights and that those rights had been discovered by the High Court of Australia and then confirmed to exist by the High Court. Why is it necessary for the Government to continue to do this?

Throughout Australia there is an acceptance that native title exists and Aboriginal people have rights in land. I hold the shadow portfolio of Energy, so I have dealings with mining companies. When I speak with the mining companies which operate in more than one country they are amazed that people in Australia are still arguing about the rights of indigenous people to land and whether people who are conducting mining operations should deal with indigenous people and reconcile their aspirations with the aspirations of those who seek to develop the land and use it for mining and other purposes. Companies like Esso which operate in North America are amazed that we are still having these arguments and discussions, because they were conducted in the United States in the nineteenth century. Quite often they were held at the point of a gun and most often the issues were not settled to the satisfaction of indigenous people. Nonetheless, the discussions were held and the issues were determined, and it was accepted that indigenous people had some rights.

Mr Prince: The legal basis there is quite different from Australia because it was an act of conquest and there were treaties.

Mr THOMAS: It was also an act of conquest in Australia, but no treaties were signed.

Mr Prince: One was a matter of law at the time, and our situation was not.

Mr THOMAS: That is right.

Mr Prince: The High Court has made this law and said that there can be a form of native title that exists through possession by settlement. That has never been found anywhere else.

Mr THOMAS: Why was it necessary for the High Court to find that?

Mr Prince: The member for Cockburn would have to read the judgments in Mabo, which I have read.

Mr THOMAS: I have read books about them, which is probably better.

Mr Prince: I suggest the member read them all as they are interesting - including those on the section 108 case and Wik - to understand their full nature. I think the member would be somewhat surprised.

Mr THOMAS: I have read a textbook on it and I am not totally ignorant about the issue. A vacuum in public opinion and fashion was created by the fact that in one-third of Australia no land rights were afforded to Aboriginal people. That was the case because the Liberal Government - I acknowledge that the minister was not a member -

Mr Prince: I administered the Land (Titles and Traditional Usage) Act.

Mr THOMAS: I go back a decade before that.

Mr Prince: The entire State of Victoria is freehold, so there is no problem. New South Wales is predominantly freehold, although some land is under pastoral lease with no right of access, and Queensland is the same. It has never been an issue they have had to deal with in a land management sense.

Mr THOMAS: Except Murray Island.

Mr Prince: Yes.

Mr THOMAS: The minister's Government - although he was not a member at the time - rejected very reasonable land rights legislation advanced by the Burke Government in the 1980s. It then ran a campaign with the slogan "Stop Aboriginal land rights". Members opposite should hang their heads in shame that as recently as the 1980s their party was prepared to run a campaign with such a slogan.

Mr Prince: Where were the Labor Governments of the 1980s?

Mr THOMAS: I will pay credit to the role that Brian Burke played in this matter.

Mr Prince: I understand that.

Mr THOMAS: The Government's aspirations were in advance of public opinion in this State. Powerful and rich bodies - such as the pastoralists and graziers and mining companies - had an interest in preventing those aspirations being realised. They were capable of running a well-funded and well-resourced campaign to oppose Aboriginal land rights. Brian Burke was a great conciliator and his role should be acknowledged. He brought together the mining, pastoral and Aboriginal interests. I was involved in a number of the meetings, which went over and over the subject matter. That process resulted in a Bill that had the support of the mining industry, the pastoral industry and the Aboriginal interests. It was introduced into this place, passed and transmitted to the Legislative Council. Mr Hassell, of the Liberal Party, went to the mining industry and told those involved that the legislation could be knocked off, and that they would be better off without it. He induced them to oppose the legislation and it was rejected in the Legislative Council. Then, just to cement the situation and not content with having knocked out the legislation, the Liberal Party fought an election campaign with the slogan "Stop Aboriginal land rights". It used awful advertisements showing people walking through the bush and recoiling in horror when they saw signs saying "Aboriginal land - keep out". It tried to scare people into believing that they would be denied access to that land if land rights were introduced. It was an awful campaign. None of the members in the Chamber at present was in Parliament at the time. However, anyone in the Liberal Party at that time and active in that campaign should hang his head in shame for having been associated with it. That was only a little over a decade ago, and all members would have been active in politics in some capacity at that time.

Having done that, the Liberal Party left a vacuum. The High Court had to ensure that justice was done by creating law to give to Aboriginals the land rights that exist in most parts of the world. The High Court's having done that, members opposite continued to deny rights by passing the legislation the minister has acknowledged was his responsibility. That also went to the High Court and was rejected.

We are now in the process of yet again patching up the coalition's errors. It has possibly invalidly issued titles and once again we must validate the denial of the rights of Aboriginal people to their land. I hope this is the last time -

Mr Prince: It will not be.

Mr THOMAS: I am sorry to hear that. I hope this is the last time that we as a Legislature must either deny Aboriginal people their rights or patch up errors resulting from that denial.

Mr Prince: I misunderstood what you were about to say.

Mr THOMAS: Members of this Parliament should hang their heads in shame for the way in which Aboriginal people in this State have been treated. One power we certainly have is to legislate for land tenure. For most of the history of this Parliament we have acted in a way that should bring us into international disrepute. I hope this is the last time that we must correct these errors.

Mr Prince: It will not be the last time we must deal with this subject. It is evolving as we go. It will be before us for the next 50 years.

Mr THOMAS: Just for once, let us try to get ahead of the game. Let us act with good grace and acknowledge the fact that people have rights, and legislate to accommodate those rights rather than to deny them.

MR KOBELKE (Nollamara) [11.57 am]: The stated purpose of this Bill is to validate certain titles to land and waters in Western Australia that were granted in what is now termed the "intermediate period" - from 1 January 1994 to 23 December

1996, when the High Court handed down the Wik decision. This Bill will also confirm the effect of native title on previous land grants and public works. During that period from January 1994 to December 1996, the State Government granted titles over pastoral leasehold land without complying with the requirements of the Native Title Act because it believed that native title had been extinguished on pastoral leases. The Wik decision indicated that that was not necessarily the case and that native title could coexist with some forms of pastoral leases. Of course, that creates a degree of uncertainty and it is right that that be resolved.

Members on this side have grave concerns about the mechanism the Government is adopting to resolve that and other matters relating to native title. I am particularly concerned about the fact that by extinguishing native title - to the extent that this Bill will do that - the State Government will be liable for any compensation. The State Government is writing a blank cheque. I know it is hopeful that the cost to the State will be minimal and that 75 per cent of it will be picked up by the Commonwealth Government, but a large number of questions remain unanswered; it is not clear cut. The compensation could be far in excess of that which the Government currently estimates. In addition, a range of the settlements might not comply with the commonwealth requirements and therefore would not be eligible for the 75 per cent payment from the Commonwealth. I will make some comments in committee about the details involved in those processes.

I will now make some general comments about the approach taken by the Court Government and difficulties that the Labor Party has with the way in which the Government has dealt with the issue of native title, and that is again reflected in this Bill. The Opposition is very clearly committed to assisting in the resolution of a range of very complex matters that have arisen as a result of the Mabo decision and the recognition of native title. The resolution is not easy. It is even more difficult for the Opposition because we do not have ready access to the resources which the Government has in order to try to get advice and determine the ways out of various problems that arise through recognising competing interests in trying to meet the valid rights of people and not take away the rights of Aboriginal people which were established under native title. However, we must have certainty in our land management system. This Government has failed abysmally to provide that certainty. It has spoken often and at great length about the importance of certainty but it has failed totally to deliver that certainty. The Government has not been able to find a way forward. It has been more involved in advancing rhetoric of its political position on native title and the High Court decisions rather than sitting down and recognising the genuine rights of Aboriginal people and trying to accommodate those rights to the fullest possible extent in a fabric of law which is workable and provides certainty in this State.

The Opposition wants to see justice given to Aboriginal people within a framework of legislation that is workable. The key approach is one of negotiation between the various interest groups which seeks to accommodate the genuine interests without undermining the rights of Aboriginal people. Although that is a simple statement, it has not been the approach of this Government. This Government has sought to turn a blind eye to the rights of Aboriginal people. In a little while I will give some evidence of the Government's behaviour, which has been deplorable with respect to the whole issue of native title. I will go through a little of the history before I turn to some of the key elements in the amending Bill before us which need to be considered.

The first point I would like to raise is the incredible complexity of the whole matter. This Bill is fairly complex but is nowhere near as difficult to understand and come to grips with as another piece of legislation which is before the House and which we will be debating in a day or two. The complexity arises through a number of sources. The area is one in which the Commonwealth, through the referendum of 1967, has primary legal responsibility. The Commonwealth has put in place the Native Title Act which has sought to find a legislative means of speeding up the resolution of a whole range of important matters which arise through the establishment of native title. Of course, it was open to the Commonwealth Government to simply leave the matter in the jurisdiction of common law and allow a range of cases to proceed through the High Court and, by that means, resolve a range of competing interests and problems.

It soon became evident to everyone that that was not a real solution. The Mabo decisions took about 10 years to find their way through the legal system before determinations were made by the High Court. To simply leave the various players - whether they be industry groups, Aboriginal people or State and Federal Governments - to resolve the matter through common law decisions in the High Court was not going to be workable for Australia or Western Australia. Therefore, there was clearly a need to try to put mechanisms into legislation to speed up the process and lead to just resolution of the problems in an expeditious way. That expeditious way to try to settle a range of important issues is clearly frustrating because it is taking far longer than most people would like. Many of these matters can still find their way back into the court system. In fact, they must go back to the court system. However, they lead to long and litigious processes through to the High Court when one of the parties feels that it is not being given due recognition and its rights are being taken away.

Therefore, the whole legal process of trying to resolve the High Court decisions arising from Mabo has been very complex. The Native Title Act is a large Act. The Howard Government brought forward, in its 10-point plan, a range of amendments to the Native Title Act so that there were another 200 to 300 pages of amendments on top of the Native Title Act. With this Bill we will be putting in place part of a legislative framework in state law which must fit under and comply with that complex commonwealth legislation. Therefore, we find what up until now has been a very rare occurrence; namely, the printing of this Bill reflecting the style of commonwealth law and, more importantly, adopting a range of definitions directly

from the commonwealth Native Title Act. Again, that adds to the complexity of the whole legal structure which we are seeking to amend and, in some new respects, put in place.

The complexity of the law is only one aspect of the whole range of issues that makes this matter so difficult. The member for Cockburn has already spoken about our history of dealing with land issues relating to Aboriginal people. That in itself is incredibly complex. I have not seen any figure but the State Government has had to commit very large amounts of money and the resources of staff to going through the history of land titles in this State to try to establish which particular forms of title may be under challenge or which may be contentious in claims of native title. Therefore, there is a long history of land titles in this State which has failed to recognise Aboriginal right to land. There is a whole structure of land titles which has fundamental flaws, not as of 1992 with the Mabo decision, but which reflect right back through that history of 100 years or more of land titles. Therefore, that adds to the complexity of the whole issue.

Mr Prince: I think you are wrong there because under the Transfer of Land Act there was indefeasibility of title around about 1893. That was an Australian invention. It had a South Australian Torrens title system. Western Australia's legislation only relates to the pastoral areas, hence the nature of the particular pastoral leases, most of which - not all - had a reservation for Aboriginal use over the years, and since 1933 a statutory right of use. Therefore, the historical work done was of interest to see where there had been a negation of native title at some earlier stage but that is all.

Mr KOBELKE: If the minister took what I was saying to apply to only freehold title, he is totally right. However, I was talking about the whole title system in general. I appreciate that his comment helps to clarify the point I am making. However, there is that degree of uncertainty on a range of leasehold titles because there is not just one simple form of leasehold title when it comes to fitting in potential claims under native title. Therefore, there is that complexity in the nature of our land system, even though it may apply to only a small part of the whole titling system.

Mr Prince: Only about 11 per cent of this State is covered by freehold titles. The rest of it in origin has some form of pastoral lease or crown lease on it and consequently is subject to native title claim. Whether the claim is successful, of course, is debatable.

Mr KOBELKE: Another aspect of that complexity on which I wish to comment, in addition to the historical legacy that the legislation has provided, is that the Aboriginal people have not been able to organise themselves to take advantage of their rights to land. That itself means that a great deal of time must be taken up in trying to allow them to sort out their competing claims to land between different Aboriginal groups because, as we are all well aware, the principle of terra nullius, which applied up until the Mabo decision, simply meant that there was no recognition of Aboriginal right to land.

As the member for Cockburn said, in the 1980s the Burke Government tried to establish a system of land rights. Had that been successful and not thwarted by the conservative parties in the upper House, a good deal of the complexity would have been sorted out and a state process would have been in place. It may not necessarily have fitted exactly or fully into the native title system that has now been established, but we would have had a land rights process which would have enabled Aboriginal people to establish rights to land. During that process they would have needed to negotiate and make resolutions among themselves; therefore, many of the competing and overlapping claims we now have would simply not have arisen. I do not say that the Burke Government's land rights legislation of the 1980s would have solved the problems, but the recognition of the Aboriginal right to land and giving a form of title would have set up a range of processes to register interests in land which would have required various Aboriginal groups to work out their rights and claims to land; thus some accommodation would already be taking place. Instead of it taking months or even years for people to work out their claims and resolve their competing interests, some, although not all, of that would have been done and we would not now have 10 or 12 Aboriginal claims in competition over the same land. The conservative Opposition, in defeating the Burke Government's land rights Bill, not only did great injustice to Aboriginal people but also put back the State's ability to look after land title in a total way. We now have a range of complex issues that we must resolve within the framework of native title.

There will always be different groups which wish to maintain their interests in land and uphold to the maximum their rights to it, but we need to give special consideration to Aboriginal people whose rights, until 1992, were totally disregarded. The claim by some people that their rights to land override those of Aboriginal people totally flies in the face of what is just and what has been clearly established through the High Court's decisions. It seems that the Government is taking a long while to reorientate itself to accept that basic proposition. The Government is still about trying to see how much it can take from Aboriginal people rather than having a just and workable system. The two matters go together. If we are to have a workable system of land titles in respect of native title, it must be founded on justice and respect for the interests of Aboriginal people. If it is simply a way of trying to fix the loudest lobby group, it will not be a solution, and not even a conservative Howard Government will be made to override the Racial Discrimination Act. Aboriginal people have a right to be treated equally before the law with respect to their rights to land. That is a basic fact that cannot be got around.

Mr Prince: I couldn't agree with you more. The Land (Titles and Traditional Usage) Act does just that; the Native Title Act does not, because it is claims-based.

Mr KOBELKE: I do not accept the minister's comment. I shall refer to some facts which underline how the Government has got it so wrong. The minister's interjection confirms that the Government simply has not faced up to the reality of the issue. It is working within its own narrow ideological framework and it cannot face up to the fundamental issue of recognising the just rights of Aboriginal people. That causes the Opposition great concern. We want the legislation to work, we want certainty and we want a resolution of the issues. The issues are so complex that, in opposition, we cannot just tinker here or make a change there to solve the problem. We can seek to improve matters to overcome glaring deficiencies in the Government's Bill, but the issues are so complex that we must give the Government some rein to try to resolve them. As opposition members have already said, there is grave disquiet that the Government's approach is wrong-footed. Because of that, we suspect that it will come undone.

The original Mabo decisions offered very little to most Aboriginal people. There has been a false beating-up of the rights of Aboriginal people, and that has done injustices to many parties in respect of the public's perception, with the Premier holding up a map and the Prime Minister saying, "Your land could be under claim." They were misrepresentations of the facts. For Aboriginal people, that built an unjustifiable expectation of what many of them might receive from a claim under native title. Although the Mabo decisions were incredibly important with respect to the principle of Aboriginal rights to land, the actual delivery of a form of land rights and entitlement to land is quite minimal. The Keating package, including the Native Title Act and other initiatives, responded to that by trying to offer a range of compensations or programs to provide benefits for Aboriginal people who are likely to receive little or nothing out of a native title claim.

The last major issue to which I shall refer - it is also the most important - is that this and the other piece of legislation that comprise the Government's package on native title must be based on good faith because of the complexity of the matter. I have tried to touch on some aspects. The complexity is such that we cannot have just one or two pieces of legislation which establish a framework to resolve all land management problems in respect of native title. By way of interjection, the minister said that legislation will be introduced in this place year in and year out to try to make this process work. That is likely to be true while the Government continues its current approach. It has not been able to establish that it is acting in good faith for Aboriginal people. Without that, we will have compounding problems. If it is not too late, the Government should establish its credentials with Aboriginal people and show that it is acting in good faith. Unfortunately, the Court Government's record in this area is very different.

I refer to some of the Premier's statements which show that he has failed to acknowledge the rights of Aboriginal people; that he has railed against the Mabo decisions of the High Court; and that he has wasted the time of Parliament and large amounts of money pursuing approaches which were not workable and which he was told at the time were not workable. Some years later, we are back at the starting point, trying to deal with the issue. The Premier took office in 1993. The Mabo decision of 1992 was not discussed a great deal prior to the election of the Court Government. It seemed to contain many problems, but people had not got their minds around the issues, and prior to 1993 there was not much public debate on how the issues would be addressed.

Mr Prince: As I recall it, nothing was said by your side either.

Mr KOBELKE: I accept that. I am simply making the point that the issue had not been properly addressed by either side before 1993. Obviously, it fell to the Court Government to consider the State's interests because it had primary responsibility for the management of land and to try to work with the Commonwealth Government to find a workable solution to a range of issues. We found that the Court Government was not willing to address those issues in an honest way. On 10 March 1993 the Premier said -

> We want to move in quickly to see if we can't have legislation between the State and Federal governments to remove those uncertainties.

That is a statement I support. We need to look at some form of legislation. The Premier was indicating that both State and Commonwealth Governments must work on that. The Premier is quoted as saying on 29 March 1993 -

> The uncertainty could be removed with Federal legislation complemented by State legislation, particularly in relation to the racial discrimination legislation.

The Premier was thinking at that time that the way the State Government could do this jointly with the Commonwealth was to take away the rights of Aboriginal people, to remove the Racial Discrimination Act. It would mean that they could act in a way towards Aboriginal people in which they cannot act towards the rest of the community. While all other Australians will have the right to land which would be upheld in the Commonwealth Constitution, not in the State Constitution, he thought that for Aboriginal people they would change the Racial Discrimination Act so that they would not have those rights. That approach was clearly envisaged by the Premier in March 1993. There is a quote from *The West Australian* of 10 May 1993 in which he was even more extreme in supporting the statements made by Bill Hassell. It reads -

> After a mining seminar in Canberra on Thursday Mr Court endorsed WA Liberal President Bill Hassell's comments about Mabo - that the High Court decision was illegitimate, illogical and racist.

From the outset, the Premier showed a total unwillingness to accept the High Court decision. The decision was not out of the ordinary. It followed a range of common law decisions on indigenous people's rights to land, from United States decisions in the 1850s through Canada, parts of Africa and New Zealand. Australia has the unfortunate record of being about the last place in the world under a British legal system that refuses to acknowledge the right of indigenous people to land.

Mr Prince: You are wrong. The High Court ruled in 1975 that there were no such rights. It reversed that decision in 1992.

Mr KOBELKE: The minister is good at trying to pick on little technicalities. The fact is that the statement I made was that in a range of nations that operated under the British legal system, there was clear legal precedence for the establishment of land rights for indigenous people. That is a fact. Australia in overturning the policy of terra nullius had to wait until 1992 to enter the mainstream of British legal opinion. On 21 June 1993, the Premier was reported in *The West Australian* as saying -

> Mr Court said there was not any practical solution to problems arising from Mabo other than overturning the High Court's ruling through national legislation.

He was continuing to attack the High Court decision and reject the reality of the rights of Aboriginal people. At about that time he went on television holding up a map suggesting that people in Quinns Rocks could have their homes subject to native title. He conducted a scare campaign that flew totally in the face of the truth of the matter. On 22 July 1993 *The West Australian* reads -

> Armed with advice from constitutional lawyer Colin Howard, Mr Court said that if the States tried to validate land titles, their legislation was likely to be contrary to the Federal Racial Discrimination Act, and therefore invalid.

I agree with that statement. Not long after that, on 20 August 1993, *The West Australian* reads -

> Mr Court said there was a way for the State to validate land titles without running up against Federal racial discrimination laws.

I do not have time to go through them, but I could give example after example of how the Premier led us to believe that the Land (Titles and Traditional Usage) Bill would be a practical way of resolving the problem. We know, some $10m later, that the High Court gave a 7-0 ruling that the then Act was contrary to the Racial Discrimination Act. It overturned it as racial legislation. Very clearly that decision and the reasons for it show that the Bill from the Western Australian Parliament contravened the Racial Discrimination Act. In ordinary language that means that it was racist. When we pointed that out to the Premier, he would not accept the advice that we gave him from this side of the House.

On 17 November 1993, when speaking in this Chamber, the Premier said -

> They -

Meaning the Opposition -

> talk about incompetently drafted legislation. I assure them that the consensus of opinion in Canberra is that this legislation is extremely well drafted and that the Federal legislation is an absolute nightmare. I want to draw the House's attention to what *The Australian Financial Review* said in its editorial.

Clearly the Premier refused to accept the advice of experts in this area and of the Opposition, which had sought advice from as wide a range of sources as possible. He proceeded with legislation which had the effect of not only costing a lot of time in this Parliament and about $10m of taxpayers' money, but also delaying the whole process for two years which could have been used productively to try to resolve the real problems that this State must face up to with respect to native title. The Premier simply said that he was responding to the High Court decision on Mabo by trying to wipe away those rights of Aboriginal people. That is not possible. We want to see a resolution of the issue through this validation Bill. We have great concerns that this approach will come unstuck; that it is not just, in the fullest sense of the word; that it is not workable. We will look closely at improving the legislation but we have grave misgivings about its effectiveness. We certainly do not accept that it is the proper and just way to approach this very complex issue.

MR McGOWAN (Rockingham) [12.26 pm]: I have listened to the remarks of my colleagues, the member for Nollamara and the member for Cockburn. The Minister for Police said to the member for Nollamara that the High Court had expressly rejected native title in 1975, prior to its decision in 1991 in the Mabo case that recognised native title. I think the minister is incorrect. The decision to which he referred in 1975 was the Milirrpum v Nabalco case which was decided by Justice Blackburn in the Northern Territory Supreme Court. That decision found in relation to three points that there was such a thing as terra nullius in this country and that there was no pre-existing native title.

Mr Prince: Thank you for correcting that.

Mr McGOWAN: The High Court made no pronouncements on that point until 1991.

Mr Prince: It overturned that pronouncement.

Mr McGOWAN: Yes, it overturned the decision of Justice Blackburn. The reason it took so long to get to the High Court was that certain groups, individuals and Governments in this country took a great deal of preventive legal action.

Mr Prince: It took 10 years to get there.

Mr McGOWAN: That is correct. Even the time from the 1975 decision to the decision of the High Court was 16 years. A lot of action was taken to prevent the matter getting to the High Court so that the High Court could rule on it. I suspect that the High Court under the stewardship of Sir Garfield Barwick or under Chief Justice Harry Gibbs would not have found that there was any concept of native title in any event. In a way it is fortunate that the issue did not get there because even when Chief Justice Mason became Chief Justice of the Supreme Court in the late 1980s, he probably would have been bound by the doctrine of stare decisis to have found native title not to be existing.

There seems to be a great deal of consternation amongst certain circles in this country about the length of time it has taken to resolve this issue since the original native title Bill was passed on Christmas Eve 1993, five years ago. I want to place this debate in an international context. Canada originally passed its equivalent of our native title Bill in something like 1973. Since then it has had a great deal of trouble in coming up with a workable system. It has taken 25 years to reach a stage at which a workable system is still not in place. That has been repeated around the world. These matters take time to resolve. In a historical context, four to five years is not a long time in which to sort out these things.

Mr Prince: It is a matter of great importance to people whose lifespans are not 200 years, to resolve these things.

Mr McGOWAN: It is important to resolve them; however, I am just saying that we must acknowledge that five years is not a significant period in a western history which goes for 210 years and a pre-existing history which goes for between 80 000 years and 100 000 years. The other day I read a text on this issue which indicated that the United Nations, if it has not already, will come up with a treaty for indigenous people. A number of commentators disagree with that concept. They think it is a furphy and should not take place. In my view, on balance, it would be a good thing. Over the last century and during this one, around the world we have seen the treatment of a range of peoples that has been quite appalling. One does not have to go far to find countries in which that has taken place. Most of these histories are not well known by people in this place. It has happened all over Asia, North America and South America.

Mr Prince: What do you think of the treatment by the Japanese of the Ainu and the Bumiputra policy of the Malays in Malaysia?

Mr McGOWAN: The minister has got me there. I am not familiar with either of those; however, I am familiar with the Japanese treatment of the indigenous people of Formosa - currently called Taiwan - when they took control of that island, which I think occurred as part of the Manchurian expedition in 1931. When the Japanese were doing army manoeuvres, they used the indigenous people who occupied the central part of the island of Formosa for target and bayonet practice.

Mr Prince: You will find the Ainu in Japan presently are not recognised as citizens. They are from the northern islands.

Mr Osborne: You see them begging on the streets in Tokyo.

Mr Prince: Yet they have been there for far longer than the Japanese.

Mr McGOWAN: There has been a history of these sorts of things in the past century. We have similar problems and there have been instances -

Mr Prince: How many generations have to live in a country before they become indigenous? I am not looking for a technological answer; I am only posing the question.

Mr McGOWAN: I am not sure of the answer to that question. I am just saying that there have been many problems for indigenous people around the world and that I support the concept of a United Nations treaty covering them. There must be some recognition of the rights of indigenous people, and that should be an international concept.

In this country we have a very poor history. I grew up in a country town. My father was a friend of a number of stockmen. I recall that when I was a boy, one night at a barbeque one of these blokes told us that in the 1950s and 1960s if there was a troublesome Aborigine at the station on which he was working as a young stockman, the Aborigine would be taken out and done away with.

Mr Prince: Was this in New South Wales?

Mr McGOWAN: It was in Queensland. I was amazed that that went on. It shows the historical legacy we have, in addition to Aboriginal children being taken from their families. These things did not occur in the dim, distant past, but far more recently than in the last century and the one before, when the Aboriginal people lost their land. Aboriginal people were recognised as people and citizens only following the referendum in 1967, the year in which I was born.

Mr Osborne: The same year you were recognised as a citizen.

Mr McGOWAN: Yes, although I could not vote at that time. We must recognise that these things took place only recently. It is a credit to Prime Minister Harold Holt that he put that referendum through, and to the Australian people who voted about 95 per cent in favour of the questions raised in it. It would be good if we voted like that in referendums more often. We must answer the historical questions in relation to Aboriginal people, and it is important to do so. I recently visited the community at Beagle Bay, just north of Broome.

Mr Prince: A great place.

Mr McGOWAN: Yes. I have not visited an Aboriginal community since I was about 15 years of age, about half my life ago. I went to school with a number of Aboriginal kids and I used to go out to their community near the town I grew up in. I found the community at Beagle Bay to be great people. Compared with the stereotypes we hear about, they are refreshingly different from how many people in our society attempt to portray them. They were very concerned about native title. Prior to the federal election they were very hostile to the Prime Minister. It is no secret that, in large part, Aboriginal people vote for the Australian Labor Party. Their hostility was exacerbated by the Pauline Hanson issue. She aroused a great deal of emotion among these people at Beagle Bay. They were very upset that every night in the news on television she was portraying them in a negative light. I suppose they were more disappointed by the reaction of the Prime Minister. I have discussed the issue before -

Mr Barnett: Hopefully she has been consigned to her rightful place in history.

Mr McGOWAN: She has. Unfortunately, the Prime Minister was not part of her consignment to that final resting place. When the history of the late twentieth century is discussed - we have had probably 10 Prime Ministers since the war - John Howard will suffer for that.

Mr Prince: Not as much as Keating and Whitlam. They will go down as the most disliked and worst Prime Ministers in the whole history of Australia.

Mr McGOWAN: To be fair to those Prime Ministers, I can never imagine that they would ever have responded to the Hanson threat as the current Prime Minister did. It swept across Australia like wildfire. The Leader of the House has said that Pauline Hanson has been consigned to history, and I hope she has been. Her party received more votes than the National Party, the Australian Democrats and the Greens (WA). In fact, One Nation received about the same vote as the Australian Democrats and the National Party combined, which indicates its level of support. A big factor in that phenomenon was that the Prime Minister did not step on One Nation at the beginning, although that is probably the wrong term.

Mr Prince: We are talking about titles validation.

Mr McGOWAN: I am about to re-address that matter.

Mr Prince: You're about to start, and you have seven minutes to go.

Mr McGOWAN: I had to rectify the minister's lack of legal knowledge.

Mr Prince: I appreciate that.

Mr McGOWAN: If the minister does not want a law lecture, I will turn to the Bill. Lord Denning sits on the government backbench in the member for Joondalup; I am sure he will give the minister an explanation.

Mr Prince: I would be obliged if you did not take Denning's name in vain.

Mr McGOWAN: I could create a diplomatic incident with the United Kingdom over that description! I am sure Lord Denning will sort out the minister on Milirrpum v Nabalco.

This Bill deals with the validation of acts which took place in what was known as the "intermediate period" between 1 January 1994 and 23 December 1996, when the High Court handed down the Wik decision. This principally relates to the grant of titles to pastoral leasehold land in Western Australia. The legislation attempts to validate the grants made by the Government of Western Australia of pastoral leases during that period.

I could address all the Bill, but I shall focus on proposed section 12G, which deals with the entitlement of native title holders to compensation for validation. The second reading speech outlined -

> Under the Titles Validation Amendment Bill, the State Government is liable for all compensation, which is to be determined in accordance with the principles established in the Native Title Act.

The fact that titles were granted over the three-year period has rendered the State Government and the taxpayers of Western Australia liable to significant amounts of compensation.

Mr Prince: It was always going to be the case.

Mr McGOWAN: The minister should just listen to my comments. The State is liable for compensation for the granting of private interests in which individuals benefited. I do not know how much compensation will be involved. I would be pleased if the minister has an estimate in that regard, as I do not recall anything to that effect outlined in the state budget.

Mr Prince: It is not possible to estimate the compensation liability. I have distributed around the Chamber answers to the questions from your leader and his deputy. Nobody knows the amount to be involved. First, one must prove native title.

Mr McGOWAN: The minister should hear me out. When the High Court discussed these matters, a range of justices indicated that compensation in these matters may not be determined purely on the valuation of the land. It may be determined on the loss of enjoyment or spiritual enjoyment -

Mr Prince: The Commonwealth Constitution refers to "just terms".

Mr McGOWAN: Those "just terms" could render the State liable for an enormous compensation package, resulting from what could be seen to be a big mistake in the granting of these titles over those three years. We will see battlers in my electorate liable for the minister's granting title to a few pastoralists in Western Australia.

Mr Prince: It was 4 934 mining titles and 4 494 land titles, which is over 9 000 titles - to pastoralists? Get off it.

Mr McGOWAN: I did not have that figure. The second reading speech indicates that the Bill will deal with pastoral leases.

Mr Prince: Pastoral leases are no problem.

Mr Barnett: It is inferior title.

Mr Prince: It has reservation for Aboriginal use.

Mr McGOWAN: That is true.

Mr Prince: The member does not make sense.

Mr McGOWAN: The point remains that there will be a groundswell of compensation.

Mr Prince: Yes, and three-quarters of it will be paid by the Commonwealth, and a quarter by the State.

Mr Kobelke: Might be!

Mr Prince: It is. I have correspondence, which I will table.

Mr McGOWAN: Why does the legislation say that the State will pay it?

Mr Prince: It is state legislation, and the agreement with the Commonwealth is that it will pay three-quarters.

Mr McGOWAN: Does the minister have evidence of that?

Mr Prince: Yes. I have correspondence between the PM and the Premier which I will table. It is no secret. The amount of compensation will depend first on the proof of native title - as has always been the case; the nature of the title proven, if any; the effect on the title by the grant; and then talk will ensue about just terms.

Mr McGOWAN: Is there any mechanism for the minister to recover compensation from individuals who benefited from the grants?

Mr Prince: There is through the amendments we made to the Public Works Act in recent years - I am not sure whether the member was here at the time - whereby when a grant is made to a third party, one can pass on the compensation. That is mainly in relation to public works.

Mr McGOWAN: I will be interested to see how much this matter will end up costing the taxpayers of this State.

Debate adjourned until a later stage, on motion by Dr Edwards.

[Continued on page 2789.]

OCCUPATIONAL SAFETY AND HEALTH (VALIDATION) BILL

Second Reading

Resumed from 17 September.

MR KOBELKE (Nollamara) [12.47 pm]: The Opposition supports this validation Bill. It is interesting that we have moved from one validation Bill to another. This Bill is an unusual piece of legislation as it is not common for Governments to introduce special legislation to retrospectively approve the actions of a government agency.

The Bill's aim is to ensure the proper administration of the occupational safety and health laws in Western Australia, and to prevent certain prosecutions falling over on a technicality. It validates the past action of the WorkSafe Commissioner at the time he was not officially appointed to the position. The department then functioned under a delegated authority. The Bill will remove legal uncertainty about a number of prosecutions initiated under the delegation made by the commissioner when a deficiency existed in his appointment. This was prior to 8 October 1996.

I suppose it is not unexpected that a major problem should surround the commissioner, who has faced controversy on a range of issues. Mr Neil Bartholomaeus is the individual specifically mentioned in the Bill to validate his actions as commissioner. I now quote part of this very short Bill -

> (2) No act, matter or thing done before 8 October 1996 -
>
> (a) by or in respect of William Neil Bartholomaeus
>
> (b) under the direction, authority or control or purported direction, authority or control of, or pursuant to a delegation or purported delegation made by, William Neil Bartholomaeus,
>
> in his capacity or purported capacity as Commissioner is, or ever has been, invalid by reason that there was a defect in his appointment as Commissioner, or that he had not been appointed at all.
>
> (3) Each act, matter or thing referred to in subsection (2) is, and always has been, as valid, effective and authorized by the Act as it would have been if William Neil Bartholomaeus had been duly appointed as Commissioner at the time the act, matter or thing was done, the direction, authority or control exercised or the delegation made.

In my nearly 10 years in this place I cannot remember a Bill before the House which has involved a specific person. There may have been such a Bill but I cannot recall it. As that quote indicates, this Bill specifically addresses the fact that Mr William Neil Bartholomaeus performed certain actions which are now under a cloud or being challenged. This Bill will retrospectively approve or regularise his appointment so other matters are not undone by challenge on the basis that delegation was given when Mr Bartholomaeus was not properly appointed. It is unusual for the Parliament to have a Bill of this nature before it. The Opposition supports the Bill and I will put on the record why it is important that this legislation be passed without undue delay.

That the Government needed to bring this legislation before the Parliament is an indictment of the Court Government's mismanagement. The mismanagement issues concerning WorkSafe and Mr Bartholomaeus are numerous. However, the Government itself cannot walk away from its responsibility in the appointment of Mr Bartholomaeus. In the past few months, a range of statements have been made by ministers of this Government and Mr Bartholomaeus, over other matters. They have sought to pass the buck and allocate blame to other people. At the end of the day, the Government must accept responsibility for this major mismanagement in WorkSafe Western Australia. This Bill addresses only one aspect of that, the challenges from the hiatus in the appointment of the WorkSafe Western Australia Commissioner. However, the problems in WorkSafe go far beyond that. That the Government needed to admit this embarrassment and introduce this legislation is indicative of the major problems in WorkSafe.

The WorkSafe WA Commissioner may issue a delegation in respect of prosecutions under section 52 of the Occupational Safety and Health Act. That has led to this Bill being brought before the House. The commissioner also has delegation powers with respect to other provisions in the Act such as improvement notices and exemptions. I understand that no threat has been made to the legality of those matters and no problem is currently envisaged in those areas. The wording of this Bill ensures that any problems which arise through the lack of proper delegation powers will be addressed. The problem with the appropriate delegation does not apply only to one period. It covers four separate periods which related in most part to the fact that Mr Bartholomaeus' appointment as commissioner had lapsed and there was a delay in his reappointment. The minister has explained to the House that previously this was not seen as a problem because legal advice had suggested that the "doctrine of de facto officers" would answer any challenge to the problems with the appointment of Mr Bartholomaeus. That legal advice did not stand up in every case. It may still be possible to use the doctrine of de facto officers in some cases but, quite rightly, the Government does not want to leave the matter in doubt. In one case, a challenge to a prosecution was successfully mounted on the basis that the delegation was made when Mr Bartholomaeus was not correctly installed as a commissioner. The doctrine of de facto officers did not provide the necessary protection.

The case which opened this matter was the tragedy of the death of Andrew Cox at the Karratha Shopping Centre. Andrew Cox was a young man working collecting shopping trolleys when he was killed in an accident with an occy strap. It was a freak accident and a tragedy for his family and friends. WorkSafe WA prosecuted Coles Supermarkets, K Mart Australia and Rosalie's Trolleys believing there was some culpability in this accident on the part of the employers which resulted in the death of this employee. The case was brought to court and the charges were dismissed on the technicality that they had been laid under delegated authority when the term of office of Commissioner Bartholomaeus had expired and had not been properly renewed. The Opposition does not believe that the proper process of prosecution cases should be put aside because

of a technical problem in the appointment of Mr Bartholomaeus. It wishes this legislation to be expedited through the Parliament so the proper course of prosecutions can be pursued and people can have their day in court.

Part of the confusion may be attributed to the fact that Mr Bartholomaeus has worn two hats. He has been the chief executive officer of WorkSafe WA while he was the WorkSafe Western Australia Commissioner. Different appointment processes are needed for those positions. He may have been appointed for different periods which may have contributed to this hiatus when he was not officially appointed as the commissioner and was unable to delegate powers for prosecutions and other provisions as required in the Act. Mr Bartholomaeus was supposedly on the job. The officers of WorkSafe went about their duty and in doing so required powers to be delegated to them by the commissioner. It is not suggested that the cases being challenged relate to matters of substance in the operation of WorkSafe. If it was, we might have a different view. The Opposition believes that it is only the technicality relating to Mr Bartholomaeus not being correctly installed as the commissioner at the time he delegated his powers to officers in the WorkSafe which is being rectified. Those officers were involved in a range of investigations, some of which have led to prosecutions.

The case of Andrew Cox is not the only fatality which has led to a prosecution. A case which many members on this side are aware of is that of Mr Mark Allen, a union organiser who was killed on a demolition site. Many of us knew Mark Allen and his family and we are concerned that any hold-up in the prosecution adds to the burden on that family. When a member of a family is killed in tragic circumstances, it is hard to settle the matter in one's mind and heart when one must return to court. The drawing out of these matters places a great burden on a family. The Allen case has been put aside because of the threat to the prosecution caused by the problems with the delegation of powers. The Opposition wants to see this legislation passed quickly so the prosecutions which followed this tragedy can proceed without further delay. There has been enough delay in the process already.

I am thankful to the minister for providing briefings and advice. The advice from her office is that 25 prosecutions initiated when this delegation which is potentially under challenge was given are currently outstanding. A larger number of prosecutions arose from those periods when Mr Bartholomaeus was not installed properly, but I understand that only 25 prosecutions are outstanding, the remainder having been resolved in one way or another. Five of those 25 prosecutions are under appeal on the basis of the hiatus in the commissioner's appointment at the time of the delegation of authority to prosecute. In two of those five cases, the Crown won the initial case, and the defendants are appealing on the basis of the hiatus in the commissioner's appointment. In the three remaining cases, the prosecutions are under appeal by the Crown, which lost the initial prosecutions because of the problem with the commissioner's appointment. Eighteen cases have been adjourned pending the outcome of those appeals; and I am advised that in another two cases, the commissioner's appointment has not been raised as an issue in the prosecution. Twenty-five prosecutions is quite a sizeable number, and we would not want to see the whole system grind to a halt because of the technical problem that we are addressing with this Bill. A problem may also arise with regard to prohibition notices, exemptions and various things which WorkSafe has the power to undertake and which officers carry out under delegation. However, I am sure that if a problem does arise, the provisions of this amending Bill will take care of that. Therefore, I do not propose to say anything further about that aspect.

The problem arose due to the delegations by Mr Bartholomaeus prior to 8 October 1996. There is no suggestion that after 8 October 1996 there is any basis for cases to run into technical difficulties. Prior to that date, Mr Bartholomaeus was not correctly installed as the commissioner for four periods of time. From 10 to 18 July 1994 - some eight days - Mr Bartholomaeus was not correctly installed as commissioner. The minister may correct me later, but I understand that was due to an administrative hold-up. Mr Bartholomaeus' term of appointment as commissioner had expired, and the processes were initiated, but their was a delay before the Governor signed off and when Mr Bartholomaeus was formally back in the position of commissioner creating a hiatus from 10 to 18 July 1994.

The second period was from 1 April to 25 September 1995, a period of almost six months. I understand that the reason for that lapse was the delay in getting amending legislation through the Parliament. The Occupational Safety and Health Act was amended during 1995 to provide that the commissioner was not also to be the Chairman of the WorkSafe Western Australia Commission, and that created the potential for the commissioner to be a different person from the chief executive officer of WorkSafe WA. Some matters which related to those issues had to await the passage of that legislation, and that created a delay in the ability of the Government to act. However, the Government could have, and should have, as we realise now, reaffirmed Mr Bartholomaeus' appointment for an interim period or periods while that legislation was put in place. That decision was not made, because the Government was hopeful, as are all Governments, that the Bill would go through the Parliament in the shortest possible time and that the decision could then be made to install Mr Bartholomaeus, or whomever, in the appropriate positions. I am not sure whether the minister of the day had received advice that the doctrine of de facto officers would provide adequate coverage, and whether, on the basis of that doctrine, the Government did not seek to appoint Mr Bartholomaeus for an interim period. Nonetheless, that led to a period of nearly six months where Commissioner Bartholomaeus was performing the duties but was not installed as the commissioner correctly and legally.

The third gap in his appointment was from 1 July to 29 July 1996 - 29 days - when Mr Bartholomaeus was not appointed because of a hold-up in the appointment process. It seems to be about that time when Mr Bartholomaeus was appointed more than once for short periods. I do not know what changes were taking place in government at that time - the minister

may be able to explain later - but the Government may have been envisaging the restructure of departments and believed it was not appropriate to reappoint Commissioner Bartholomaeus for a long period. However, for whatever administrative reason, for about one month Mr Bartholomaeus was reappointed for short periods and his appointment was not official. I hope that would not be the usual situation. The fourth hiatus in his appointment was from 1 to 7 October 1996 - seven days - when Mr Bartholomaeus' term had expired and there was a delay in his reappointment.

I am not in a position to apportion blame for this matter. However, regardless of whether the blame can be apportioned to the then Minister for Labour Relations as the minister responsible for this area of government, the Premier as the Minister for Public Sector Management, or Mr Bartholomaeus as an experienced public servant who should have realised the requirements of the Act, it is clearly a major issue of mismanagement. A totally unacceptable situation arose where Mr Bartholomaeus was not correctly installed as the commissioner and, therefore, his delegation was found to not have effect, which left open to challenge prosecutions taken under delegations given at that time. Section 9 of the Occupational Safety and Health Act provides that the Governor shall appoint a person to be WorkSafe Western Australia Commissioner, and the commissioner is to be appointed for a term not exceeding five years, as is specified in the instrument of his appointment. Therefore, it does seem a bit strange that Mr Bartholomaeus was regularly reappointed for periods of less than five years.

The Occupational Safety and Health Act requires a person to be appointed as commissioner at all times. The Act makes no provision for the appointment of an acting commissioner. The problem arose because Mr Bartholomaeus was not formally appointed as commissioner under the Act for those four periods, yet during that time he continued to act as the chief executive officer of WorkSafe under the Public Sector Management Act. I have alluded to the fact that there may be a basis for some confusion between the fact that he was the chief executive officer and also the commissioner. However, any senior public servant who is required to administer an Act, as Mr Bartholomaeus clearly was, as stated in the Occupational Safety and Health Act, should have been aware that as commissioner he must be appointed, and that there must be a commissioner at all times. I do not know whether he tried regularly to get the Government to make sure that things were done in accordance with the Act. He may have harped regularly to his minister and the Premier and it is totally their fault that we are in this situation. Nonetheless, we must now remedy in this Bill the total mismanagement by this Government of the appointment of the commissioner. It is not acceptable to leave this matter unclear. It must be resolved expeditiously. The proper administration and enforcement of occupational safety and health laws is a matter of concern to us; and we cannot accept the mismanagement that has led to these prosecutions being challenged and possibly overturned. The responsibility must lie with Mr Bartholomaeus; the then Minister for Labour Relations, the member for Riverton; and the Premier. The Attorney General, Hon Peter Foss, certainly made clear who he thought was responsible under the law. In April this year he was asked the following question -

> Will the Minister advise whose responsibility it was to ensure that Mr Bartholomaeus was properly authorised?

The Attorney General replied -

> Responsibility for appointment of the Commissioner and Chief Executive Officer of WorkSafe Western Australia lies with the Minister for Public Sector Management.

The Attorney General has placed on the record that the Premier, as Minister for Public Sector Management, must accept responsibility for this major mismanagement in WorkSafe. The minister said in her second reading speech -

> The State Government is committed to firm but fair enforcement of the Occupational Safety and Health Act as an important component of its WorkSafe WA 2000 vision and plan for achieving the safest workplaces in the world by 2000.

I obviously want to take issue with that statement. There is much rhetoric and many advertising programs about WorkSafe which try to create an image, but that image is not reflected in the reality. The minister is new to the portfolio and perhaps has not got through the rhetoric and reached the reality yet, but WorkSafe has major problems. It should not be necessary to go further than to say that this Bill is clear evidence of the major problems in WorkSafe, but I will place on the record some of the problems, of which this Bill is one symptom.

It is not reasonable to advance the theory that Western Australia will have the safest workplaces in the world when in many areas safety standards in WA have deteriorated. The figures provided are highly suspect; for example, WorkSafe's figures relating to fatalities do not stack up. I cite, for instance, the Gracetown tragedy in which eight people were killed. Only one death is recorded as a workplace fatality. The department is playing with definitions. Eight people were killed in one incident at one time, and only one was recorded as a workplace death. If all the deaths had been included the department's figures would look bad. A personal friend of mine died while at work, and his death is not included in the fatality figures. I am currently dealing with a family whose son died 18 months ago in the workplace, and his death is not included in the figures. The collection of data is such as to present a good image and not to address health and safety in the workplace. Changing the definitions means that certain deaths are not included. A range of figures which indicate a decline in lost time due to injuries are a misrepresentation. Complex issues are involved in the real picture. If a department is simply concerned with presenting an image and not with addressing the fundamental requirements of the Act, it leads to that kind of approach.

A simple approach, emphasising image and not substance, clearly leads to the mismanagement which is addressed in this Bill. It also leads to no respect for the truth, so that the facts can be changed to create the image. Plenty of examples of that have surrounded Mr Bartholomaeus.

It also means that good faith is not established between the people who have a real interest in and reliance on WorkSafe. People do not feel that it is doing its job well and offering workers protection. Therefore, bad faith develops. If the Government does not encourage people to work together cooperatively on health and safety issues, it will not improve health and safety in the workplace. For some years WorkSafe has operated on an "us" and "them" basis. The public has much evidence of that. WorkSafe has not been working cooperatively and, while being strict, enforcing provisions, where necessary, in a fair and uniform way. So many different and diverse groups are totally offside. As a result of the Thorpe prosecution in Esperance, the farmers are totally offside. Health and safety in primary production is a huge concern. That area has a very high accident and death rate. The need to get the farming community onside does not mean prosecutions should not be started, but it should be done in a way that people think is fair and reasonable. As a result of the Thorpe prosecution the farming community was offside. In my view WorkSafe should not have embarked on that prosecution. Again, it reflects the mismanagement which this Bill seeks to address.

WorkSafe has all the hallmarks of maladministration, and no attempt was made by the previous minister or the Premier, as Minister for Public Sector Management, to do anything about it. The Government has the embarrassment of being forced to introduce this Bill because many cases in the courts would fall over without it. I do not mean to be negative towards the new minister. I accept that the current Minister for Labour Relations is new to this portfolio, and has introduced this Bill for all the best reasons relating to good administration to ensure the proper process is followed. This legislation does not fit in with the general trend of this Government. The approach of this Government with respect to Mr Bartholomaeus, the previous Minister for Labour Relations and WorkSafe is to sweep it all under the carpet, and not deal with fundamental issues of mismanagement and breaches of appropriate standards by WorkSafe.

For some considerable time a range of serious complaints have been made by the union movement. I am not suggesting that every complaint from unions on health and safety are totally valid or that they require the department to do something about them. Unions represent workers, many of whom will not raise health and safety issues in the workplace for fear of victimisation. They require an intermediary, such as the union, to put forward such matters and have them resolved. An agency that is at loggerheads with unions cannot promote health and safety in the workplace. Without going into some of the fundamental modern principles of how to improve health and safety in the workplace, it should be evident that a cooperative approach is needed. The us and them approach clearly cannot work, and Mr Bartholomaeus and WorkSafe have established that approach in their dealings with unions. That move may have fitted in with the approach of the previous Minister for Labour Relations who had, and still has, a very strong anti-union stance. Mr Bartholomaeus may have adopted that approach because he thought it reflected the requirements of the minister of the day. In taking that action, the whole management of WorkSafe has been brought into disrepute and it has led to increasing problems rather than an improvement in health and safety in the workplace.

I will give two examples of the type of management in WorkSafe and particularly the way in which Mr Bartholomaeus was working so closely with the member for Riverton when he was minister. I was driving home from Parliament one Thursday evening, just after six o'clock, and I drove through part of the construction area for the Northbridge Tunnel. There was a large crane on the site carrying a very long pipe that was swinging into position in order to be hooked into some stirrups. A workman standing underneath the crane had a long pole with which he was pushing the pipe into place, and he was not wearing a hard hat. The signs around the site stated that personnel must wear hard hats; therefore, that person was contravening a standard requirement of that workplace. I wrote to Mr Bartholomaeus on 25 June, pointing this out, and suggested that officers look to the health and safety practices on that site and make sure that did not happen again. Mr Bartholomaeus did not reply to my letter. The then minister, the member for Riverton, responded in a very offhanded way. He suggested that if I would like to be a witness, WorkSafe would prosecute the worker.

That was the approach of the minister. I wrote back saying I was happy to be a witness if that helped to improve health and safety. I did not think it was a good approach, but if that were the only way he wanted to address the issues, I would cooperate. I did not hear back from the then minister. As long as WorkSafe deals with issues in that manner, many people will continue to have contempt for it. It also shows the close relationship between Commissioner Bartholomaeus and the then minister. On a simple matter like that the commissioner could not indicate that he had sent investigators to examine the situation to ensure proper standards were upheld. However, the onus had to be put on me to decide whether we would proceed with prosecution.

Another example was in November 1997 when I was driving along Riverside Drive to a function at the Hyatt Hotel in the middle of the day. Scaffolding was being erected for Rally Australia and I could see people putting up the initial stages 3 to 5 metres from the ground. People were walking underneath the scaffolding without wearing hard hats. Within five or 10 minutes of my returning to my office after the function I had a message typed up and faxed through to WorkSafe. I was not happy with WorkSafe's response. I was not seeking a heavy-handed approach, but some acknowledgment that the matter was being addressed and monitored to ensure standards were being maintained. Again the minister replied, not

Commissioner Bartholomaeus. That is clear evidence of Mr Bartholomaeus' wanting to be seen to be doing everything according to what the minister wanted.

That shows that at times the approach has been petty rather than a willingness to address these issues in the right way. Far more serious breaches of standards have been made by WorkSafe. Allegations of corruption have been raised in the Parliament. Although they have not been dealt with adequately, I will not go over them. Neither the minister nor the Premier have taken those matters seriously. They may have been without sufficient evidence to proceed further. However, the response from the Government does not give me confidence that allegations of corruption by one or more officers in WorkSafe were investigated properly.

Another example is Mr Bartholomaeus' breach of standards when he entered into political criticism of the member for Armadale. That led to complaints which were not adequately resolved. In his attempt to duck the issue, the Premier used fancy words and played semantics. We also have evidence that Mr Bartholomaeus made conflicting statements. He said in his first response to the Premier that the code requiring him not to enter into political debate no longer existed, so his action was legitimate. When it was pointed out that he was wrong and that a code was in place, he changed his tune and said he did not mean it and did not do it. That was a senior public servant making conflicting statements in response to criticism about his public behaviour. It does not give one confidence that truth is respected by Mr Bartholomaeus nor does it give one confidence in the Premier's handling of the complaint.

I refer to the tragic death of Mark Allen and a statement by Mr Bartholomaeus attributing some, if not all, of the blame to the deceased. Again, a public statement by someone in charge of a department trying to apportion blame to the victim of the accident was improper and contrary to the standards we expect from the WorkSafe Western Australia Commissioner, when clearly investigation was necessary from which prosecutions could eventuate. That has now occurred. Again, no action was taken on that matter by either the minister or the Premier.

Then arose the situation in which Mr Bartholomaeus banned WorkSafe from dealing with unions in an edict he issued on 26 June 1997. It has been canvassed in this place and I suspect it will be a matter of ongoing debate because the Government has failed to address the issues. It has continually tried to sweep them under the carpet. A report from Mr Saunders, the Commissioner for Public Sector Standards, found there were problems. His report and letter to the Premier indicated that the actions of WorkSafe, which are totally the responsibility of Mr Bartholomaeus - the report did not say that, but the facts show it - meant the action was unlawful and breached the Government's code of ethics and WorkSafe's code of conduct. Sixteen months later the Premier is still trying to shift the heat. He is not trying to address the issue; he is trying to push it aside in the hope that it will go away.

If the matter had been addressed promptly in July 1997 with a minor reprimand and the policy aborted, WorkSafe's dealing with unions would have been back on track and the problem resolved. However, the approach of the minister and the Premier has compounded the problem. Now Mr Bartholomaeus is saying things contrary to what he said earlier. People are asking what information is true and what is false. Mr Bartholomaeus is saying one thing regarding clearance of a press release and the member for Riverton is saying the opposite. Who is telling the truth? The Premier has made the nonsensical statement that Mr Bartholomaeus does not have anything to answer for because the anti-union policy did not work. He was so inefficient and useless in pursuing the policy he stated time and time again that it did not work. The Premier is saying that as he was disobeyed by the officers who were supposed to accept his direction, the matter is all right. It makes a joke of the Premier's attitude. The Government's unwillingness to ensure that WorkSafe operates under the standards expected of it has led to an ongoing range of issues with which the Government must deal.

We even reached the stage yesterday when the Premier was not willing to indicate what Wayne Martin, QC, has been asked to examine. It was a simple question requiring a straightforward and concise answer. I gave the Premier prior notice of the question so that he could read out in one sentence what were the terms of reference regarding this inquiry into the Saunders report or into part of it. It may relate to the fact that Mr Bartholomaeus made statements conflicting with the minister and to find out whether someone was telling lies and, if so, whether the Premier should take action. It could be an inquiry into the whole of Mr Bartholomaeus' administration of WorkSafe, although I do not think so. The Premier was not willing to say yesterday why he has engaged Wayne Martin, QC, to undertake an investigation, which he has the right to do.

The Premier is the minister responsible under the Public Sector Management Act. He must make the decision. He took approximately 15 months to invoke section 81 of the Public Sector Management Act. He is letting the inquiry process drag out further. We must wait and see what action he might take. The action he has taken under section 81 could have been initiated 16 months ago. The Saunders inquiry was delayed time after time by the Premier's office. From the documents available on the public record, we have evidence that Mr Saunders had to approach the Premier and his department time and time again to ask them to play their role in his investigation into the WorkSafe policy banning unions. The Premier, who has been centrally involved in this issue, has delayed the process. By his thwarting the proper process, he is not ensuring WorkSafe is operating effectively and properly. The Premier has been more concerned about protecting the back of the minister who was involved in this matter with Mr Bartholomaeus than about addressing the problems with WorkSafe. The Bill is clear evidence of the problems with WorkSafe. It is highly unusual that the Government must introduce a Bill to

validate the actions of an individual commissioner due to the problems that have arisen with prosecutions due to a hiatus in his appointment. I will not make a judgment on whether that hiatus was the fault of all of the players or one of the players. I do not have the facts to apportion blame. However, it a clear signal that WorkSafe has major problems, and the Premier does not want to be involved.

If the minister can cover the issues I raise in debate as comprehensively as possible, I will not need to go into committee because it is a fairly short Bill. I will use this opportunity to go over two aspects of the Bill, so as not to waste the time of the House. The Bill takes up the fact that the title of the commissioner was changed in amending legislation which took effect from October 1995. Prior to that, the Act specified the commissioner's title as the commissioner for occupational health, safety and welfare. The Occupational Safety and Health Legislation Amendment Act was proclaimed on 1 October 1995 and gave effect to a number of changes to the 1994 Act. This included amending the title of the Act to Occupational Safety and Health Act and changing the commissioner's title to WorkSafe Western Australia Commissioner. The Opposition would not want a minor technicality like referring to the commissioner by one title or another to be a basis for a challenge to any prosecution. Clause 3 will rectify that situation. It states that the commissioner under either title is to be taken to be the commissioner. I am not sure why the title was changed in 1995, and I suppose that all Governments must accept some blame for changing names. This Government has had a fixation with name changes, as it has changed the name of almost every government agency in the State. I am not sure why the Government has done that. It may be the simplistic view that if it changes the name of something people will think it is doing something, when it is doing nothing at all. It has created problems. Why change the name in such a minor way and open up the potential for legal challenges based on the argument that the commissioner was not the commissioner as required in the specific wording of the Act. That is a nonsense, and I hope the minister will explain why that change in the title of the commissioner was necessary in 1995.

The second part of the Bill uses the name of Mr William Neil Bartholomaeus in three different places - which, as I have already indicated, is rather unusual - so that whatever actions were taken by Mr Batholomaeus when he was supposedly acting as commissioner are to be taken to have full legal status, as though he was formally the commissioner, despite there being problems in allowing his term to expire and not immediately reappointing him to the role of commissioner. The wording indicates that all actions taken by Mr Bartholomaeus in the capacity of commissioner are not to be invalid because of a defect in his appointment. Although the situation opens up a fairly broad range of potential areas in which things could come unstuck, it is not likely there will be a problem. I ask the minister to correct me if there are other areas of concern. I am working on the basis that the 25 prosecutions instituted by delegation while Mr Bartholomaeus was not the commissioner are matters of urgency and concern. The broad application of that means that any other area from which legal actions might flow cannot be undone on the technicality that the delegation power was not there because Mr Bartholomaeus was not the commissioner. The Opposition would be concerned if this validation Act in any way validated other actions by Mr Bartholomaeus. It is my reading that it does not. However, because of the total distrust that many people have of Mr Bartholomaeus, the Opposition would not wish to support legislation which in some way made right many of the things he has done which we believe are wrong or improper. We will continue to pursue those matters at other times in this place.

The Opposition supports the legislation. We do not wish prosecutions to fall over on this technicality. The Government must accept full responsibility for this embarrassing problem. The minister may argue it is the sort of problem which could creep up on any Government. However, it is a major embarrassment to the Government that prosecutions can possibly fall over because the commissioner, a public servant of long standing who was supposedly on top of his job and aware of the requirements for there to be a commissioner at all times, was continually reappointed for short periods, and held the job for periods when that appointment lapsed. The Government is embarrassed because that has led to a problem where important cases in our courts are likely to be challenged and the whole prosecution likely to fail simply on that technicality. We trust that the Bill will have a speedy passage through Parliament and that the prosecutions which are on hold because of this problem can proceed through due process and, where the cases are made, that the prosecution will be successful.

MS MacTIERNAN (Armadale) [1.37 pm]: I endorse the comments made by the member for Nollamara. The Government is taking the correct action. However, the Opposition expresses its concern that the administration of WorkSafe has been so woeful that it has been necessary for this action to be taken. The Opposition believes that this reflects on the quality of advice that the Government was getting on this matter. One would think that the commissioner, who would have been most familiar with the requirements of the legislation, would have taken steps to ensure that this unusual course of action was not necessary.

This is retrospective legislation. It falls within one of the circumstances that can legitimise retrospective legislation. It is important for the Opposition to acknowledge that it is retrospective legislation. However, that can be justified if it is to correct past flaws in the administration of the legislation where, to do other than to legislate retrospectively, would perpetrate a great injustice. I will use this opportunity to reflect on a couple of matters; first, claims made by Mr Bartholomaeus and reported in *The West Australian* this morning that the Labor Party is out to get him because he would not roll over and give a grant to the Trades and Labor Council immediately prior to the election. I was not aware of those circumstances.

Mr Kobelke: Nor was I.

Ms MacTIERNAN: Nor was the current Labor Party spokesperson on industrial relations.

Mr Osborne interjected.

Ms MacTIERNAN: The issue is why the Labor Party has been pursuing its concerns about WorkSafe. Mr Bartholomaeus alleges that because he would not be party to a payment to the TLC, the Labor Party has it in for him. That is complete nonsense. Members of the Labor Party were not aware that he had made such a decision and its critique of him stands independently of that.

The alarm bells about Mr Bartholomaeus began ringing very soon after the election of the new Government in 1993. One of his first acts was to go to the then Minister for Labour Relations and suggest that the manual handling and auditory regulations be repealed. They were legitimate regulations that had been gazetted after a great deal of tripartite discussion and negotiation. From day one, Mr Bartholomaeus was very keen to ingratiate himself with the new minister. It would appear he wanted to show that he was no apparatchik of the Labor Party. The Labor Party was always aware that he was an apparatchik. It was well aware that he was someone who liked to move around in a political sense and that he started his political life with the Liberal Party. He then had a brief stint with the Greens and later joined the Labor Party. It was therefore no surprise to members on this side that Mr Bartholomaeus had moved again.

Mr McGowan: Like Billy Hughes.

Ms MacTIERNAN: He is a bit more complex than Mr Hughes. One might argue that he has done the full circle. There was a degree of acceptance that this was a display of atavism.

The Labor Party was concerned about Mr Bartholomaeus' decisions, but not out of vengeance. Many people appointed by the Labor Government have served loyally under the Liberal Government, and members on this side have no difficulty with that. We have never targeted them because we recognise that public servants serve the Government of the day, not those who appointed them. If there is a change in Government, those officers are required to implement the current departmental policy. Many people in the Department of Productivity and Labour Relations were appointed during the Labor Government's term in office, and I am sure their political leanings were more akin to those of the Labor Party. However, when the conservative Government came into office and the member for Riverton clarified his agenda, they were not guided by their political aspirations or personal political philosophies; they worked hard to implement the minister's agenda. No-one on this side of the House takes any umbrage with those public servants who have been forced to implement a policy that they personally might find repugnant.

However, with Mr Bartholomaeus we are talking about a totally different order; we are talking about a person who has deliberately played the political game and who has taken a direction in WorkSafe and the administration of occupational health and safety that makes him a legitimate target. Mr Bartholomaeus has been so persuaded to the view that the Labor Party is out to get him for not doing something it wanted him to do because that is how he works. I will quote a letter that he wrote to Kevin Reynolds. It is important to get the measure of his psyche and style of administration. The letter opens by referring to Mr Reynold's correspondence of 15 August 1994 requesting that this department fund the salary of a union officer, Mr Bob Bryant, for the balance of 1994 to enable him to participate on a full-time basis on behalf of the Trades and Labor Council in a review of the occupational health and safety regulations. Mr Batholomaeus informed Mr Reynolds that his submission arrived on his desk at essentially the same time as construction unions were rallying at Parliament House and outside his office criticising the Government and the department about construction safety. Mr Batholomaeus pointed out that statements were made to the media by construction unions that there was blood on the hands of Government and that he was the minister's pussycat. Given that he believe the allegations that the minister had directed department to go soft on enforcement were entirely untrue, the circumstances did not encourage him to support the submission.

The exercise mentioned involved taking 80 years of regulations that had built up under a plethora of legislation, reviewing them and putting them into a single, modern form. That was an enormous task requiring the employment of a full-time officer doing nothing else. It was beyond the union movement's financial capacity to do that. Because it was obviously a job that needed to be done for the Government - as part of a government process - it was proper that funding assistance be sought, just as the Chamber of Commerce and Industry of Western Australia has been the beneficiary of many a grant to enable it to do things such as providing training. There is nothing unusual in that. Mr Bryant had been funded for a period and had worked well.

Mr Bartholomaeus then stated that he wanted written submissions and they had been received. He had allowed some time to pass to see whether his initial view with regard to the cynicism of the union's submission had changed. He stated that the recent publication of the *WA Construction Worker,* with its outrageous comment, only served to reenforce his views formed in August. He believed that the publication was loaded with offensive statements and untruths, and that it maligned and vilified the department's inspectorate and individual officers. He then pointed out that he did not reach that conclusion without some regret or bitterness.

A major review needing tripartite support and the engagement of the union movement was being undertaken. A perfectly

reasonable application was submitted to the commissioner that he fund a TLC staff member to enable the council to devote its resources fully to this momentous task. What did Mr Bartholomaeus say? He said that those involved exercised their democratic right and rallied outside Parliament House against changes to the occupational health and safety legislation and expressed their concern because their comrades were dying in the construction industry. He said, "You went up to Parliament House and called me a tame pussy cat, so you are not getting any money. I might have changed your mind except you repeated all the stuff in the publication *The WA Construction Worker*."

This is a classic example of what we saw later with the incident of banning contact with the union movement; banning the unions from being funded for the provision of safety services; banning occupational health and safety inspectors giving talks at meetings prepared by the union movement; and refusing to receive complaints from the union movement of occupational health and safety breaches. This is not something new. Mr Bartholomaeus has clearly taken the view that in the exercise of his discretion on whether to assist with the provision of funds or services, the unions must keep their mouths shut. They cannot criticise the Government and they cannot criticise him otherwise he will be a person who is guided, as he put it, by bitterness and regret and take out that vengeance on them.

When we see letters like this in 1994 we have every right to express our concern about the calibre of this man and whether he is temperamentally suited to exercising power. As I said, he is not accused of having ratted on the Labor Party. We understand the position of public servants. We have the greatest respect for many people who have been appointed under a Labor Government but have gone on to serve the Liberal Government, even in highly controversial areas, and have acquitted themselves with dignity. However, not so Mr Bartholomaeus.

Reference was made by the member for Nollamara to the personal attacks that were made by Mr Bartholomaeus on me as the opposition spokesperson on labour relations. Mr Bartholomaeus made various statements to the media that the only reason we were opposing the occupational health and safety regulations was that we were playing politics in the Legislative Council. That was absolutely untrue. We were receiving representations from a broad number of people expressing concerns about certain of those regulations. Obviously, we had an obligation to take those concerns seriously. At that time the only mechanism to enable debate to occur was for us to move a disallowance motion. As a very senior public servant, Mr Bartholomaeus would have been aware that if we wanted to debate this issue the only mechanism available to us was by way of a disallowance motion. Therefore, it was an ingenuous comment on his part in the first instance.

Subsequently, I made a complaint to the Commissioner for Public Sector Standards. I pointed out to him that administrative instruction No 728 makes it quite clear that public servants are not to engage in political debate. If a member of the Opposition makes a statement that a public servant believes is factually incorrect, the person can say that from the department's point of view the facts are X, Y and Z. However, to make statements such as, "The Opposition has only moved this because it is seeking to score political points" is well beyond the brief and well beyond the proper conduct of a senor public servant. That issue was then taken by the Commissioner for Public Sector Standards to Mr Bartholomaeus. Mr Bartholomaeus' first answer to the commissioner was, "Yes, I said it, but so what? I am entitled to say it." When it was then pointed out to him that administrative instruction No 728 still applied, Mr Bartholomaeus changed his story. He gave a totally different story to the Commissioner for Public Sector Standards. This time his story is, "I never said it. I was misreported." How can we have confidence in this man when we find through freedom of information applications that he has systematically lied. He tells one story, "Yes, I said it and I will continue to say it" and when pointed out to him that that was a breach of administrative instruction No 728, he changes his story and says, "Oh no, I never said it. I was misreported."

He then wrote me a letter, purportedly an apology, in which he says that he found it difficult at the time to address the matter directly with me. However, he did not wish the matter to be of continuing aggravation to me and any other member of Parliament, that he has a high regard for the Parliament and members. The statement he issued to the *Sunday Times,* which was in part the basis of the article, was attached. He said that he made no reference to political opportunism in the attached media statement. He could not recall in his discussion with the journalist of the *Sunday Times* making any specific reference to myself in the context of political opportunism. He acknowledged the risk associated with press reports based upon telephone dialogue and he regretted any offence. I spoke to the journalist, Mr Kelly, and he got out his notes. It was absolutely crystal clear that Mr Bartholomaeus once again has been not prepared to face up to the truth, not been prepared to say, "Yes, I did say it" because the records show clearly that the statement was reported verbatim, that Mr Bartholomaeus made these statements to the journalist but was not prepared to own up to it.

The first case we set out was one in which Mr Bartholomaeus was quite unashamedly making it known that the union movement was to be penalised if it ever displayed any dissent. In the instance that I have set out here, Mr Bartholomaeus has been less than truthful in that in the first instance he admitted making these claims against me, he changed his story when it was demonstrated to him that such conduct is a breach of public sector standards, and then went out and denied having done something where there is clear evidence to the contrary that he has in fact done it. The stories could go on. Mr Bartholomaeus can rest assured this is not a political attack on him. Rather, it is a very grave concern that a man who was capable of those things that we have set out today is in charge of this very important area of the administration of occupational health and safety. I add that he would not have got away with any of this conduct if his minister at the time was himself a person of any decency and probity.

One further issue I will raise is that of the overseas activities of the then Occupational Health, Safety and Welfare Commission. I have before me a series of press releases published by the then Minister for Labour Relations. They came thick and fast in 1994. In 1995 there was an absolute frenzy of activity as the commission moved into Asia. The peak intensity was 1995. The press releases thinned out a bit in 1996 and virtually disappeared in 1997. The exact cost of this activity has never been explained to us. The last financial report of 1996-97 shows a total income from these activities of about $54 000. However, there is no proper accounting in the records. The minister may be interested to provide us with some information. The minister might at least make some attempt to listen to the comments that we are making.

The most recently published annual report shows that income earned as a result of WorkSafe's overseas activities was about $52 000. There is no analysis in that annual report of how much it has cost us. We note that overseas activities have now been incorporated with the industry and community awareness program. It is important that there be an effort not to compare income that has been obtained over the past couple of years with costs that have been generated. Because of the inadequacy of the annual report, if we refer back through the press releases and see the number of trips taken by the minister, the commissioner and a variety of senior staff, we will see an enormous outlay in Asia. We have had promises of vast financial returns, but all that we can see in the last published report is about $52 000. That must be brought to account. There has been no attempt to investigate it as a separate cost centre. Perhaps there is the good argument that we are fulfilling a community service obligation to our Asian neighbours - if so, so be it - but we do not want great effort to be diverted from the activities of WorkSafe, which is understaffed, into activities which are supposed to be financially beneficial but apparently are not.

[Questions without notice taken.]

Ms MacTIERNAN: Before question time I lamented that WorkSafe's overseas adventures had promised income and job provision for the State in service provision, yet these outcomes had never been documented. I now refer to some aspects of these adventures undertaken by the then Minister for Labour Relations as part of WorkSafe's overseas jaunts. In September 1994, the then Minister for Labour Relations, the member for Riverton, announced that he was to take a trip with 30 Western Australian private sector people throughout South East Asia.

That was the first trip in 1994. The aim of the trip was to sell the new standard of national certification. Shortly after, Mr Kierath made a 36-hour lightning visit to Singapore and Indonesia to clinch the deal. Mr Kierath then took 30 people to Malaysia on 5 April 1995. When he returned, he started a program and two months later, in July 1995, he was off to Malaysia and Singapore to promote occupational health and safety and the sale of Western Australian services. I have a range of press releases from that trip, which was obviously very productive, at least for the people who sell Mr Kierath paper. The next trip Mr Kierath took was to Jakarta; he had come back, changed his underwear and taken off to open another exhibition. The next month a delegation from Malaysia was here and he provided for that. He did not stop there. Come the 1996 new year, he went to Bangkok to sign a memorandum of understanding between Western Australia and Thailand. When he returned, he started preparing for his next trip, which was to China and Vietnam. This was only Mr Kierath and not all the other officials. Mr Kierath made about 10 overseas trips, supposedly to generate revenue for occupational health and safety services in Western Australia. We have no evidence of any report being prepared which gives us any idea of the costs incurred by the Department of Productivity and Labour Relations and the taxpayers of Western Australia for this foray into Asia.

We note that the hype generated in 1994, 1995 and 1996 has dried up and that a lower key approach is taken by the Government to its Asian foray. That seemed to precede the Asian economic crisis. Perhaps the growing concern in the community about the failures of WorkSafe meant that the community was less likely to be receptive to the great claims being made by the then Minister for Labour Relations that we were doing really well at selling our services in Asia. The general view around the place was that if it was charity, charity begins at home. When we have seen problems of the sort experienced in the mining, construction and demolition industries, we should devote the resources of government offices to provide a more adequate level of protection in Western Australia before spending large amounts of taxpayers' money sending ministers and senior personnel to travel Asia extensively promoting our success in occupational health and safety in this State. I am interested in knowing whether the current minister - who has only recently taken over this portfolio - will reassess the overseas adventures of WorkSafe Western Australia and whether it is her intention to prepare any reports about the cost effectiveness of these ventures.

MRS EDWARDES (Kingsley - Minister for Labour Relations) [2.44 pm]: I thank members opposite for their support of this legislation and their comments. I do not have much to add in response to the questions raised by the member for Nollamara. His interpretation of the briefings is what I know; I do not have information to explain why certain events occurred and why the commissioner's name was changed.

The problem of the delegations was brought to our attention earlier this year. Previously, we felt that the doctrine of de facto officers would apply. As soon as we were told that that was not the case and that prosecutions were likely to fall over - which neither the member for Nollamara nor I want to see happen - we realised this legislation was needed. Responsibility for the problem is accepted. Obviously, we both recognise the need to get this legislation through the Parliament as quickly

as possible in an endeavour to get the prosecutions - which are currently adjourned - back on track. It was a technicality. As has been explained to the member in the briefing, the issuing of the delegation to prosecute and perform a number of other functions under the Act and the regulations occurred at a time of hiatus in the commissioner's appointment. We are not aware of any problems which I could bring to the attention of the House other than the specific problems with those prosecutions.

Mr Kobelke: Can you say who is now officially in the position of commissioner?

Mrs EDWARDES: Mr Bartholomaeus is still the commissioner. He has delegated all bar two of his functions to respective officers at WorkSafe. His two remaining functions are ones that he cannot delegate. That is presently being worked through. Mr Brian Bradley is the acting chief executive officer and the person essentially responsible for the operation and management of WorkSafe.

Mr Kobelke: We do not want the same hiatus causing further problems. What steps are being taken or will be taken to ensure the appropriate transition to a new commissioner and when might that be effected?

Mrs EDWARDES: I do not have the answer to that. We are conscious of the problems which have arisen in the past, and we will ensure along every step of the way that those problems do not recur.

The member for Armadale is concerned about the benefits of overseas visits. I will refer the issues she has raised back to the department. Many benefits can be achieved by visiting places overseas. I will be visiting China on Saturday, where two memorandums of understanding will be signed. I will be leading a delegation of providers. This was initially spoken about when the Deputy Premier was in our sister city last year. I will be following through on the commitment given previously. I will provide a report of the benefits of the visit and the activities undertaken.

I thank the members opposite for their comments. The Government appreciates their recognition of the seriousness of this issue and their support.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from an earlier stage of the sitting.

DR EDWARDS (Maylands) [2.50 pm]: This Bill is designed to validate certain titles to land and waters in Western Australia and to confirm the effect on native title of previous land grants and public works. A number of members on my side of the House have dealt with the Bill in considerable detail. I will make some general comments about the plight of Aboriginal people and some of the difficulties that they face, and link that to their need for access to land and self determination in order to improve their plight. I will refer firstly to some recent health statistics which compare the plight of Aboriginal people to the health of the community in general. During 1989 and 1993, various studies were done of the life expectancy at birth of Aboriginal people and the community in general. The life expectancy of male Aboriginal people in those years was 18 years less than for any other Australian person looked at; and the same was true for females. It is distressing that Aboriginal people are dying off in their early middle age - at my age, and at the age of a number of my colleagues in the Parliament - which is causing this reduction in their life expectancy. The mortality rate of Aboriginal people is 2.5 to three times greater than for non-indigenous Australians; for circulatory diseases it is 2.5 times higher; for diabetes, and for endocrine or glandular diseases, it is 11.5 times higher for Aboriginal women than for other women in the community; for injuries and poisoning it is 3.5 times greater; and for infectious diseases it is 8.5 times greater.

One matter that is of grave concern, as picked up earlier this week on the *Four Corners* program, is the high rate of mental disorders among Aboriginal people. The studies done in 1990 and 1994 showed that Aboriginal males are 7.5 times more likely to have mental disorders than Australian males. Similarly, the hospitalisation rate is between 2.5 and 6.5 times higher for Aboriginal people than for the general population. The reasons for that need to be looked at, and include overcrowding, lifestyle issues, poor water, poor housing and inadequate sanitation.

Similarly, in 1994, the infant mortality rate for Aboriginal babies was 4.5 times higher than for non-indigenous babies. I found it awful to think when I had my son that he would live 20 years longer statistically than an Aboriginal child who was born on the same day; and that an Aboriginal child was 4.5 times more likely to die in the month around birth and twice as likely to have a low birth weight. This is an indication of what is happening in the Aboriginal community and of the measures that we all need to take as Australian people to try to improve their lot. The World Health Organisation has commented that efforts in the health sector alone are not enough to bring about significant improvements in the health of Aboriginal people and that factors such as economic development, access to land, access to Aboriginal services and the

ability to get an education have an even greater potential to lead to good health outcomes. I believe we all know that, but action is yet to flow to truly address that matter.

I grew up in a country area and got to know the Aboriginal people in that area; and when I was at school, I had Aboriginal children in my classroom. I am not sure of the right words, but I "took away" a fantastic painting that had been done by an Aboriginal boy.

Mr Prince: Stole it!

Dr EDWARDS: Borrowed it, with his consent.

Mr Prince: I think the word is "liberated"!

Dr EDWARDS: I am sure members can imagine how I was teased for doing that!

I found it very sad that before I had reached the age of 30, this man had died in custody from a medical condition that one would not expect a person of his age to contract. In later years when I made contact with his family again, I found that another sibling had died, and not long afterwards the father of the family died, at an age when he was much younger than my father. Therefore, I can understand those connections. We need to do a lot more to make sure that Aboriginal people re-establish their links to their culture, land and beliefs. We all know that it is only when people have a measure of self esteem that they can improve their health, education and the way in which they function in society. It worries me that this Bill and other Bills that have been introduced do not take account of that fact. A lot of lip service is paid to what Governments are doing, and attempts are made at some levels, but there is no truly intergovernmental cooperation to bring about the magnitude of change that is needed to address, for example, the health statistics to which I have just referred.

I was very distressed to read last week that an agreement had been reached between the Jawoyn Aboriginal Association and the Northern Territory Government that the association would withdraw a native title claim and extinguish its native title rights over 1 000 hectares of land in exchange for a renal dialysis service and an alcohol rehabilitation centre. That is extremely sad, and it is an indictment on the law as it is practised. I had assumed that all Australians have a basic right to access health services. I had assumed that in that part of the Northern Territory, where the need for renal dialysis is 60 times greater than in the community in general, the Government would attempt to provide those services rather than use what I regard as a form of blackmail by saying that if those Aboriginal people lift their native title claim and give up what they want with regard to access to that land, it will provide those services.

Mr Prince: I agree that they have the right to access those services, but the question is where.

Dr EDWARDS: It sets a dangerous precedent. Will we start to do this to other sectors of the community? I do not think we will. Will we start to tell pastoralists that if they want any sort of health service in their area, they must give up some of their land or some of their rights? It is sad that because these Aboriginal people have seen their friends and relatives die and find it so difficult to access these basic services, they feel so disempowered and believe they have no option other than to give up their land and their rights. That will not do anything to improve the quality of life of these people.

Mr Baker: Their duly elected representative in the Northern Territory Legislative Assembly has indicated that he is very happy with the proposal.

Dr EDWARDS: I do not care what anyone says. I believe as a medical practitioner and as a person whose Aboriginal friends have died before the age of 30 that it is totally unacceptable. The member for Joondalup should be ashamed of himself for trying to support it. He should go away and examine his conscience. How can he live with a situation like that? I dread the day when this Government will go down that track. It is an absolute and utter disgrace. It is setting an extremely dangerous precedent. What will other people in this State be forced to give up? Will farmers be forced to give up their rights to certain things because they live a long way from health services? It is atrocious. Similarly with alcohol rehabilitation services, when alcohol wreaks such havoc in the Aboriginal community and the violence, deaths and alcohol related diseases are so obvious, why must they give up something that is so fundamental in their culture in order to access an Aboriginal rehabilitation centre? To her credit, a young woman called Ellen Credlin wrote to *The Australian* newspaper last week and said how shocked and saddened she was by what had happened in the Northern Territory. She put it very succinctly when she said that they were forced to surrender their native title rights in return for a kidney dialysis machine.

It goes back to the days of cargo cult and all the worst things that happened in New Guinea. I feel very strongly about this. When I was a young student, I went to New Guinea and I saw then that as the people moved towards independence money came to their communities for the first time. People who previously worked together, shared food and looked after each other, started asking for payment. I knew that was the beginning of the breakdown of their society. I have learnt since that it has happened. It seems some people have great difficulty learning from history and picking up the lessons that should be apparent. They have difficulty caring for people who were in this land before European settlers arrived. It makes me wonder what might happen next and where else this will happen. Justice French of the National Native Title Tribunal said that rather than being perceived as a threat, native title should be looked upon as an opportunity to address the fundamental relationship

between indigenous and non-indigenous Australians as that is the only path to the certainty and mutual recognition of rights that all parties seek.

[Leave granted for speech to be continued.]

Debate thus adjourned.

ACADEMIC TALENT PROGRAM

Grievance

MR McGINTY (Fremantle) [3.02 pm]: My grievance is directed to the Minister for Education. Educational opportunities for children in the south west metropolitan suburbs are presently under threat, and in the interests of equity and to ensure all children are able to access an education to fully develop their abilities, I urge the minister to reject plans to move the academic talent program from South Fremantle Senior High School. Two high schools in the Fremantle education district have academic talent programs, namely, John Curtin Senior High School, whose program is based on humanities, and South Fremantle Senior High School whose program is based on mathematics and science. The Education Department has decided to amalgamate these two programs and to locate a single program at a school other than South Fremantle Senior High School. In a letter dated 13 October, the district directors for the Fremantle education district advised all schools in the area that three schools had been short-listed to receive the one academic talent program south of the river in the Fremantle education district; namely, Applecross Senior High School, Rossmoyne Senior High School and John Curtin Senior High School.

Of the short-listed schools, Rossmoyne has 1 547 students, and it is also the beneficiary of another secondary special placement program - LOTE, or languages other than English. Applecross has 1 342 students, and also has another secondary special placement program, namely, visual arts. John Curtin has 1 119 students and it has two secondary special placement programs, namely, humanities, and dance and theatre arts. That is a magnificent program, and I attended its annual production two weeks ago. The professionalism in this school is profound. The South Fremantle Senior High School has no other secondary special placement program to fall back on. If the academic talent program is removed from the school, it will be relatively deprived compared with the schools short-listed. Those schools have high enrolments and high performance profiles. They are schools of high demand and each has another secondary special placement program. In other words, to add the academic talent program to the programs offered at the three short-listed schools will add nothing whatsoever to them and nor will it enhance the educational opportunities for students attending those schools. However, it will have a diabolical effect on the delivery of education services to students at South Fremantle Senior High School. It is a former priority school which caters for students from an array of ethnic backgrounds, generally from lower income families.

The students attending the academic talent program come overwhelmingly from the suburbs of Fremantle and the suburbs to the south and south east, such as Hamilton Hill, Coolbellup, Willagee, Yangebup, Spearwood and as far south as Rockingham and Mandurah. Most students attending the school use public transport, especially those attending a special program, such as the academic talent program. South Fremantle Senior High School is the most accessible school for children using public transport from the catchment area I have described, because the buses from the south west come into Fremantle and radiate from there. The buses do not cut across the region from Rockingham to Rossmoyne or Applecross. The buses go to Fremantle, past the South Fremantle Senior High School, and head to the other schools. The public transport system uses Fremantle as the hub for its services. If South Fremantle Senior High School loses the academic talent program, the students attending that program will travel past the South Fremantle Senior High School in order to catch a connecting bus in Fremantle to either Applecross, Rossmoyne or John Curtin. If the minister ends the academic talent program at South Fremantle, he will demand of these students who travel from as far as Rockingham and Mandurah, that they spend significantly longer on buses each day and have the disruption of catching connecting buses in Fremantle to the school to which the program is relocated.

I refer in particular to students in the Peel education district in Rockingham and Mandurah. Currently no academic talent program is available in that education district. I understand it is being discussed and no decision has been made, but I am told it is unlikely in the short term that such a program will be based in either Rockingham or Mandurah. I urge the minister to look at the needs of those students who travel great distances on public transport, and who may be required to travel for even longer each day and to catch connecting buses in order to reach a school that has the academic talent program. It should be avoided. Already they are travelling long distances, and I urge the minister not to increase the distance they must travel in order to attend a school where they can properly develop their full academic talent. Of the short-listed schools, Rossmoyne Senior High School is the poorest served by public transport; Applecross Senior High School requires children to catch a connecting bus to the Booragoon shopping centre and walk from there; and John Curtin Senior High School is no better served by public transport than is the South Fremantle Senior High School. A district director of education was quoted in the local newspaper *The Fremantle Herald* as saying that public transport was the biggest factor against the South Fremantle Senior High School retaining the program. If she was correctly quoted, I urge her to reconsider because it is the best served by public transport.

The most compelling argument is that the effect on South Fremantle Senior High School will be something none of us would want to contemplate. Compared with the other schools, South Fremantle has a relatively lower enrolment and, most importantly, a higher non-academic stream within the school. This makes the retention of the academic talent program vital to the ability of the school to continue to offer a balanced general education to local students. Without the ATP, the message to parents will be clear; that is, if their child has any ability, he or she should not be sent to South Fremantle Senior High School. The school will become nothing more than a TAFE feeder school. Although it is important to cater for the needs of TAFE entry students, that should not be the sole or primary focus of a school. The community does not want that, and neither should anyone who is concerned with equality of educational opportunity for all, particularly those from the battler or working class suburbs to which I have referred. About half the year 12 tertiary entrance examination subject classes at South Fremantle Senior High School are former academic talent program students. If these students are taken away the viability of those subjects and the school's offering any academic subjects will be jeopardised. The music program is a good one, but is dominated by academic talent program students. Music at SFSHC will suffer and perhaps decline and finish. This proposal is a direct threat to the education of thousands of children in Fremantle and areas to the south. They will be the losers; we will all be the losers. I urge the minister to reject the proposal.

MR BARNETT (Cottesloe - Leader of the House) [3.10 pm]: I thank the member for Fremantle for raising this issue. I can well understand his strong advocacy for South Fremantle Senior High School and his case for the retention of the academic talent program. Changes are occurring within our education system. Indeed, the Education Bill sets out a new structure for education which, if it is approved by this Parliament, will see students afforded a wider choice. We will see an acceleration of differences between schools. For example, John Curtin Senior High School, in the member's electorate, is keen to develop its already high status as a performing arts high school and to draw extensively from outside its boundary. Similarly, the proposed new school in Cannington will have an office technology base, the success or otherwise of which will depend on its ability to draw widely. The new western suburbs school will have a strong academic base and links with the University of Western Australia. I agree with proposals I heard of this morning to develop a science base at Kwinana Senior High School. We need to free up government education and allow it to flourish and be competitive with non-government schools. It involves an important point of not only philosophy but also practical management.

The Education Department provides two types of academic talent programs: Those based in all schools to extend gifted and talented students, and the supplementary or more specialised programs such as that at South Fremantle. The supplementary provision enables gifted and talented students to interact with peers from other schools and to bring together a viable group of talented young people. About 2.5 per cent of the school population generally participates in ATPs. South Fremantle offers an academic talent program course for students gifted in math and science. The numbers are: Year 8, 20; year 9, 18; and year 10, 29 students. The Education Department conducted a review of secondary education in the gifted and talented area in May 1998. Some of the recommendations were included within the local area education planning process. The review recommended that science and math programs be combined with humanities ATPs. The reason for that, with which members may not agree, is that roughly 60 per cent of students who were talented in math and science were equally talented in the humanities. Students are bright irrespective of their focus. It was recognised that if the courses were offered in one centre students would be able to participate in both areas of study, hence the recommendation that only one school within an education district provide these specialised academic talent programs.

The proposal was to combine courses to commence in 2000. Within the Fremantle district eight schools expressed their interest. Their submissions were analysed by the district directors who identified three as best meeting the criteria. As the member said, they are John Curtin, Applecross and Rossmoyne Senior High Schools. South Fremantle and Willetton Senior High Schools have been added to the short list. The member may not be aware of that and I understand that that follows some of the concerns similar to those raised today. The five short-listed schools will be asked to address the criteria. I have been advised by the Education Department that South Fremantle Senior High School faced two difficulties: One was cited as access to public transport, although I note the member raised the issue of transport for children living in the Rockingham area. That is a good point, and I will ensure it is taken into account. The other is the reality that in the program offered at South Fremantle Senior High School only about two-thirds of the places were taken up. I have a similar problem with Swanbourne Senior High School in my electorate, which has an academic performance program for which only about a quarter of the places were taken up. I do not know the reason for that. There is an issue of not only making the spaces available but also of making sure the students participate in them. It is proposed that a final decision will be made in December this year. If the program were moved from South Fremantle it would be phased out and students would be able to continue their participation. I cannot advise the member of the final outcome. Although there is merit in having the programs located in one school and that might be a win for one school and it could be a loss for the other.

I assure the member that his views will be taken into account. He has raised a number of additional issues among which the point about access to Rockingham students is valid. The situation is difficult. I do not want to see South Fremantle Senior High School in any sense marginalised by the loss of this program. It is not a unique issue. Similar issues were faced in the south eastern suburbs and, as the member for Bunbury knows, in his area. If we are to have diversity within the school system, schools must follow different programs. I am concerned that, while some schools become strong academically, which is fine for them, other schools are seen to be offering less and are stigmatised.

Mr McGinty: That is a real problem.

Mr BARNETT: Yes. I hope we will go beyond that. The community sees vocational programs as valid. They are becoming popular. Even if a school is seen as more vocationally than academically based, it is still important to have a strong academic program, although perhaps not as wide. I understand the member's concerns for schooling in his electorate. I do not think I have visited SFSHC, but I may do so. What is the enrolment?

Mr McGinty: Just over 800.

Mr BARNETT: That is a viable student number. I thank the member for raising the issue. It is a difficult issue and I assure him the points he made will be considered.

WORKERS COMPENSATION INSURANCE, OWNER BUILDERS

Grievance

MR WIESE (Wagin) [3.17 pm]: My grievance is to the Minister for Labour Relations concerning workers compensation insurance taken out by owner-builders. Early in 1997 a couple in my electorate decided to build their own home on a three hectare block a short way out of Narrogin. They obtained all the appropriate approvals and licences and began building. In the process of obtaining those approvals they took out insurances to cover liabilities that could arise during the building process. They took out a construction insurance policy at a cost of $272.50, public liability insurance for $157, and workers compensation insurance for $154 to cover casual workers or employees employed to assist in the project. The estimated cost of the house was about $100 000. The building process began.

On 8 November last year a casual employee working on the building site injured himself when he cut the tendons of a finger on his right hand. That necessitated several visits to a doctor and a hospital and eventually microsurgery to repair the finger. The owner-builders submitted their claim, I think on 12 December, to NZI Insurance, the company with which they had taken out the workers compensation insurance policy. The insurance company acknowledged receipt of the claim documents, requested a medical report and said it had appointed an independent assessor to examine and report back on the claim.

The insurance company wrote again on 22 December 1997 stating that it could not finalise the claim within the time required by the legislation and hence the notification. The insurance company's reason for not making a decision was that it was still awaiting the assessor's report. On 16 January 1998 the insurance company wrote to the owner-builder stating -

> In respect of the above claim you are notified that liability is disputed in respect of:
>
> > All weekly payments and medical expenses claimed by . . .

I will not name the injured worker. The letter continues -

> The reason being the claimant is not a "worker" within the meaning of the Workers' Compensation and Rehabilitation Act 1981 (as amended), in that he was not engaged to work for the purpose of . . . trade or business.

I will not use the owner-builder's name.

It is extraordinary that the insurance company is able to decline to make a payment on a claim for an injured worker where the insurance company had issued a policy to cover the house that was being built by the owner-builder. The definition of "worker" in the Workers' Compensation and Rehabilitation Act reads -

> **"worker"** does not include a person whose employment is of a casual nature and is not for the purpose of the employer's trade or business . . .

The insurance company is using that definition to refuse to accept liability. In this case the matter has turned out reasonably okay, because the worker was able to pay his own doctors' bills and to go to Medicare to get his hospital bills paid, and the house has been finalised and the matter is resting at that stage. However, if that person had not cut his finger but had fallen from a roof and become a paraplegic what would be the situation, firstly, in relation to that worker and, secondly, in relation to the owner-builder who was employing him? The owner-builder and the worker could have both been devastated by having no insurance cover. It is a totally unacceptable situation.

When the matter was taken up with the insurance company along the lines that the owner-builder believed he had taken out a valid policy and he would take the insurer to court to ensure that the insurance company met its liabilities as it had accepted the premiums for this cover, the insurance company's response was that it would be happy with that because no owner-builder had ever won a case against an insurance company! Obviously this is not an isolated example. It makes one wonder how many thousands of owner-builders have been in this situation and have thought they had a valid workers compensation insurance policy to cover them for any liability, when in fact they did not. It makes one wonder how many insurance companies accept premiums of $150 to $200 knowing full well they would not pay out on any claim by an owner-builder in the event of a worker being injured.

I raise this matter in the Parliament to bring it to the attention of all members of Parliament, because it is a serious situation that needs to be addressed. I raise it with the minister as a matter of huge concern to me, as I am sure it is to her and to everyone in the community, especially anybody who is contemplating being an owner-builder and taking out the required insurance to cover any liability.

MRS EDWARDES (Kingsley - Minister for Labour Relations) [3.24 pm]: I thank the member for Wagin for raising this matter in the House, and for bringing it to my attention earlier. The member's concerns relate to the ability of owner-builders to take out workers compensation insurance to cover a possible liability in the event of a claim being lodged against them, and also the plight of a worker who may be injured on site should the owner-builder not hold a valid workers compensation policy. I also note the concern raised by the member that the insurer involved in this case may have accepted a premium for a workers compensation insurance policy with no intention of honouring that policy. The member should raise that with the Insurance Council of Australia as well as the Insurance Ombudsman. The document which I have sighted indicates that the insurance company knew it was insuring an owner-builder, and also the purpose of that insurance.

The Workers' Compensation and Rehabilitation Act provides that owner-builders have no legislative requirement, if their normal trade for business is not that of a builder, to cover tradespeople they might employ to build their home. If the owner-builder's trade or business is that of a builder, he or she would be required to obtain the appropriate workers compensation insurance in accordance with the legislation. It is the responsibility of contractors or subcontractors who employ workers to work on the owner-builder's site to ensure they have the appropriate insurance coverage, including workers compensation and/or personal injury. The member's understanding of the definition of "worker" in the Act is correct, and there is no liability to pay compensation to a person whose employment is of a casual nature and is not for the purpose of the employer's trade for business. As a result, an owner-builder may not be liable for workers compensation, although that may not necessarily prevent their incurring legal costs.

Mr Wiese: Surely, any person who employs a worker has a responsibility to take out a workers compensation policy.

Mrs EDWARDES: The Act is clear. There is no liability to pay compensation to a person whose employment is of a casual nature and is not for the purpose of the employer's trade or business. Given the member's concern I intend to refer the matter to the Workers' Compensation and Rehabilitation Commission to consider whether legislative amendments relating to owner-builders are required. Many people would not be aware of this, and given that a particular instance has been brought to my attention, it is appropriate that the commission consider that and come back to me with advice.

I suggest that the member take his concern about the insurance company further. If it is the case that the insurance company was aware of the circumstances of the owner-builder and the purpose for which the owner-builder was taking out a workers compensation policy, that matter should be brought to the attention of the Insurance Council of Australia and to the Insurance Ombudsman.

MIDLAND WORKSHOPS

Grievance

MRS ROBERTS (Midland) [3.28 pm]: I grieve today about the Midland Workshops site to the Deputy Premier, who will take the grievance in the Premier's absence. The Midland Workshops are one of the greatest shames of the Court Government. In 1993 the coalition promised big things for the Midland region, including an expansion of the Midland Workshops - in fact, that a world-class engineering workshop would be developed on the site. History records that within weeks of the election being concluded the coalition Government announced the closure of the workshops and sacked hundreds of workers.

In November 1996, immediately before the December election, it again had a bells- and-whistles launch and claimed it would provide a university at the Midland site. That presentation included huge artists' impressions of the site. That was later exposed as a sham. There was no Federal Government commitment to establish a university, nor did the State Government give such a development any priority. Six sorry years later it lies there largely as a wasteland and a pathetic monument to the Court Government's broken promises. For six long years it has been procrastinating - month after month, year after year. It has fobbed people off with excuses - committees are meeting, people are looking at it or something is in the pipeline. No-one in Government will take responsibility for this site. The saga involves six long years of deceit, inactivity, ineptitude and blame shifting.

I will highlight some key points for the Deputy Premier. Last year the Shire of Swan held a planning charrette with enormous community support and involvement. Last year I called for a redevelopment authority for Midland - a call I have repeated on numerous occasions. I know that the Shire of Swan and the Midland Chamber of Commerce and Industry have put a strong case to Government for the establishment of a redevelopment authority. The Midland Society, the Labour History Group, the National Trust and the Heritage Council have all expressed alarm at the total lack of priority given to the preservation of some of the best heritage in this State. Only recently Westrail has removed - without the permission of the Heritage Council that it should have obtained - patterns, moulds and castings and stored them, supposedly in Forrestfield.

As the local member I want an acknowledgement of the importance of Midland as a regional centre and a commitment to remove the pollution at the workshop site as soon as possible. The Government should establish a redevelopment authority, or similar, for the workshop site with strong community involvement, and all heritage on the site should be protected.

I also want an end to this Government's closed-door approach. Community members with a legitimate interest in the site are fobbed off by bureaucrats. I would like the Premier, or a minister deputised by him, finally to take responsibility for the site. I also want a commitment to redevelopment of the site backed by funding. My preference still remains for a university on the site, something which the federal member for Perth and I have been promoting for some time. At the very least we should have a significant satellite campus of an existing university. It would be a great shame not to utilise the site for such a campus in the eastern region, which is growing at an enormous pace. The electorate of Midland is now the second largest electorate in the State, with nearly 30 000 electors, and it is growing. Neighbouring electorates, such as Swan Hills, are also growing at a great rate. The demand is there for students to be accommodated at a regional site. No site would be more ideal given its proximity to a town centre and public transport, including the rail station.

Another whisper is circulating about what might be happening at the site. It is yet another whisper in a long campaign over the past six years. The new rumour is that some change will take place soon; that someone or something will be given charge of what is happening at the site. While that may appear to be a positive move, unless it involves the community and community representatives, it will not be acceptable. It will not be acceptable to have some bureaucrat appointed or some department that is unelected taking control. It is important that the community's interests be accommodated. We need a whole-of-government approach to sorting out the workshop site. Six years has been far too long for the community to wait. We need either the Premier or a minister, such as the Deputy Premier - someone within Cabinet who has some clout - finally to take charge of the site and to take responsibility for what is happening there. Someone should be preserving our heritage, getting rid of the pollution and providing access to the site for the community of Midland. The site should be redeveloped to enhance Midland as an important regional centre.

MR COWAN (Merredin - Deputy Premier) [3.37 pm]: There is no doubt that when the Midland workshop issue arose the Government's original intention was not to close the site but to provide an opportunity for those employed there to implement some very necessary changes in their work practices to make them more efficient and able to compete with the private sector. They chose not to do that and left the Government with no alternative but to close the workshops.

The member for Midland is correct: Since that time the workshops and the buildings associated with it have been used in a number of ways. However, she is also correct in saying that there has not been an integrated plan in respect of the utilisation of that area. Again, she is correct in saying that the Shire of Swan, the Midland Chamber of Commerce and Industry and other players involved in the charrette made recommendations that included the establishment of a Midland redevelopment authority, somewhat along the lines of the East Perth Redevelopment Authority or the Subiaco Redevelopment Authority. The member should understand that those redevelopment authorities must be highly cashed up. The funds for the East Perth Redevelopment Authority came from the Federal Government's Better Cities program. As much as I wanted to see that program continue, it has been scrapped. It is highly unlikely that a fund will be made available to the State for redevelopment purposes in any specific area. However, that does not mean that there are no plans or proposals.

Mrs Roberts: Another possibility would be a Midland corporation along the lines of the Joondalup corporation.

Mr COWAN: I assure the member that that will not occur. Nevertheless, as she has correctly pointed out, we must deal with this very valuable and substantial parcel of land. Many issues must be addressed, including the remediation of contaminated sites. That work must be done.

At the risk of again being accused of saying that the Government is looking into something, I advise the member that the Government Property Office is preparing an integrated land use master plan for that region. Fundamental to that plan is accommodating some of the requirements of the Police Service.

Mrs Roberts: That is a small pocket of the site at the Hazelmere end.

Mr COWAN: To give an indication of the importance of the funding for such a program, while that might be a small portion of the site - if my memory serves me correctly it is only six hectares - the cost of implementing that proposal -

Mrs Roberts: It is called the operations centre.

Mr COWAN: Yes. It will cost $40m to deal with only six hectares of the site. Therefore, there is significant associated funding. Nevertheless, that will be the first new development to occur on that site. A number of other issues must be dealt with. The first is the planning associated with connecting the site to the Midland central business area. As the member for Midland knows, some of the planning associated with Midland, particularly its road planning, has been -

Mrs Roberts: Terrible.

Mr COWAN: "Terrible" is the correct word. I was looking for the word and that is the best one to use. Therefore, some work needs to be done outside the Midland site to ensure the integration of the railway workshop complex land with the

major Midland region. I understand the Swan Shire Council has acknowledged that must be done and it will occur soon. In addition to the purpose-built police operations support facility, a number of other parts of the complex are being used. The member for Midland commented that she preferred one of the original suggestions which was to establish a university campus at that site. That suggestion has not been taken up with any great enthusiasm by the universities. I do not take away from the fact that Edith Cowan University and TAFE colleges currently provide training for 500 students at the site. There are a number of other site users including the Royal Western Australian Historical Society, the Machinery Preservation Society, The National Trust of Australia (WA), and the WA Opera Company. Most of those bodies use the site for storage. That does not engender much enthusiasm for the future of the area. However, the member for Midland is right in saying that a plan should be developed for the future use of the site. That task is being undertaken by the Government Property Office.

Mrs Roberts: It has not consulted the community, though.

Mr COWAN: In order to satisfy the member for Midland that there is some public involvement, I point out that I also instructed the regional division of the Department of Commerce and Trade on this matter, even though, under the Regional Development Commissions Act, Midland does not constitute a region. However, funds for regional programs can be made available. Those programs are not significant, but a request was made and approval given for funding to enable the Midland Chamber of Commerce and the body that developed the charrette to proceed with further regional planning. I think that will satisfy the community that it is being involved in a plan for the redevelopment of the Midland area. However, I cannot give an undertaking that a redevelopment authority will be established because the Government does not have the funds to do that. We prefer our funding to target specific projects, such as the police operations support centre. That is being done. Integration with the Midland business district is necessary and the member for Midland can confidently look forward to a great deal of work being undertaken to achieve that objective.

JOONDALUP TRAIN STATION CAR PARK

Grievance

MR BAKER (Joondalup) [3.45 pm]: My grievance is directed to the Minister for Local Government representing the Minister for Transport. It relates to the need to convert the Joondalup train station from a "kiss 'n ride" station to a "Park 'n Ride" station. The minister may be aware that on 17 September 1997 I presented a similar grievance on the same issue to the Minister for Lands responsible for LandCorp in which I set out in detail the key issues of this matter and also some strategies which could be of some assistance in remedying the problem.

In quick summary, the gist of the problem is there is a need for a Park 'n Ride facility at the train station. There are three possible sites: One is to the east of the train station, another is to the west of the train station, and the third is to the south of the train station on a large verge alongside Collier Pass connector road. When I presented that grievance, the Minister for Lands gave a fairly detailed response and undertook on behalf of LandCorp to ensure that LandCorp became actively involved in negotiations with the various stakeholders to try to resolve this dispute. The key stakeholders were LandCorp, Westrail, the Department of Transport and the City of Joondalup. I quote from *Hansard* the Minister for Lands' concluding remarks on the day that I presented the initial grievance -

> The Government has been working on the issue with LandCorp and the Department of Transport. We will be able to provide that facility, and I look forward to the member's informing the people in the area that the Government is concerned about their welfare and about the availability of satisfactory parking.

I waited for a week or so before following up the matter to make sure that things were happening. My first port of call was the owners of Lakeside Joondalup Shopping City who own the land to the west of the train station, the owners being LandCorp and Armstrong Jones Management Ltd. I had a discussion with one of the directors of Armstrong Jones. As a result of that discussion, he sent a memo to Mr Chris Carman of LandCorp, representing the other joint venture owner. In that memo, dated 22 October 1997, the proposal was that the joint venture owners - in other words the Lakeside owners - must approve the location and development plans for the proposed eastern site and generally that the site itself should be as close as possible to the eastern boundary of the bus/rail station interchange. There was also a requirement that the land would be restricted for use as a car park to commuters using the train station. There was another requirement that the construction cost and the day-to-day management of the proposed car park would have to be borne in full by the Department of Transport, which I thought was perfectly reasonable.

Following that, I understand a letter was written to one of the then key stakeholders, the former City of Wanneroo, setting out the proposal and seeking its input. In a letter dated 6 November 1997 from the City of Wanneroo to the chief executive officer of LandCorp and signed by the CEO of the development services section, the City of Wanneroo basically agreed that the proposal was satisfactory from its point of view. Following that, further discussions were conducted with the Department of Transport. The Department of Transport responded to a letter from Mr Ross Holt on behalf of LandCorp on 25 August last year. It basically said that the Department of Transport was generally not in favour of Park 'n Ride facilities at major centres such as Joondalup. However, it went on to say that the department was prepared to accept the provision of parking

for up to 200 cars. It then went on to attach some other conditions, the most important one relating to who would bear the cost of construction and maintenance and who would be responsible for the day-to-day management of the car park.

Following that letter, on 18 November last year, Mr Ross Holt wrote to Mr Greg Martin, the executive director of the metropolitan transport division of the Department of Transport further narrowing the issues that needed to be resolved. Of course, it was acknowledged that the financial arrangements still needed to be put to bed. I would have thought that at that point the only matter outstanding was the dollar issue.

Beyond that, the Department of Transport responded to the letter from the CEO of LandCorp on 22 January 1998. Once again, as expected, it raised the financial contribution issue. On 18 March this year, the CEO of LandCorp wrote to me confirming that these negotiations were still taking place, bearing in mind this was four months after I had raised the grievance in this House. He indicated that basically everyone was in agreement - LandCorp and the then City of Wanneroo were in agreement - and the third party which was dragging the chain was the Department of Transport. I then wrote to the Minister for Transport asking whether he could shake up his department and squeeze the requisite funding from it to facilitate the construction costs, etc. In response to that letter, I received a letter from the former Minister for Transport on 16 May this year which basically said once again that the dollar issue was still a problem. However, the minister went on to acknowledge an alternative proposal that I put to him, namely that perhaps it would not be a bad idea to simply redevelop the verge area along Collier Pass in such a way as to provide temporary parking for train station commuters.

That, by way of interest, was the first proposal that I put to the Department of Transport many months ago - in fact, well over a year ago. When I considered the issues, I noted that the dollar funding issue would become very important, and I suggested a low-cost alternative option that might satisfy all parties. In short, the issue is now somewhat pressing because there have been many further developments. The new residential subdivisions of Currambine and Iluka are filling up. The number of commuters using the train station has gone through the roof. There is a need for the Park 'n Ride facility. The Park 'n Ride facilities at Currambine and Edgewater are being used and the car parks at those two stations are very full during the day.

Ms MacTiernan: Do you think that it is fair that we do not have any in the southern suburbs?

Mr BAKER: That is a matter for local members to address, using their powers of persuasion with the relevant ministers. I ask the minister to advise whether the issue can finally be put to bed, particularly in light of the response by the Minister for Lands last year.

MR OMODEI (Warren-Blackwood - Minister for Local Government) [3.50 pm]: I seek your indulgence, Mr Deputy Speaker, to refer to the notes that were provided to me by the Department of Transport.

The DEPUTY SPEAKER: That is understandable; the minister is speaking on behalf of the Minister for Transport. He most certainly may refer to the notes.

Mr OMODEI: I know that the member for Joondalup has been most persistent on the issue and has come up with several options where Park 'n' Ride facilities could be built. According to the notes provided to me, the issue of providing commuter parking at Joondalup train station has been considered over an extensive period with interaction involving stakeholders including Transport, the City of Joondalup, and formerly with the City of Wanneroo, LandCorp and the Lakeside Joondalup shopping centre. The result of those deliberations is that there is no scope for commuter parking to be provided at Joondalup. The extensive plans for development and growth of Joondalup as a regional centre, particularly in the area of the Lakeside shopping centre and Joondalup train station, mean that land is simply not available for a viable Park 'n' Ride facility.

The Department of Transport considered developing an interim facility on land near the station. I presume that that is the verge land that the member for Joondalup talked about. However LandCorp was unable to offer a reasonable length of lease tenure on the land on the basis that it is due for development in the short to medium term. Further, beyond the issue of provision of land, no other stakeholders were willing to contribute to any capital or leasing costs with regard to establishing the Park 'n' Ride. Indeed, the City of Joondalup recently confirmed with Transport that it does not want a Park 'n' Ride facility developed in the city centre.

In principle, Transport does not generally support the establishment of Park 'n' Ride facilities at regional centres. Parking cars at such centres in order to travel to the Perth central business district does little for the development of regional centres and it contributes to congestion at regional centres. Transport prefers to establish Park 'n' Ride facilities at train stations away from regional centres. In the case of Joondalup, Park 'n' Ride options are provided at the train stations immediately north and south; at Currambine and Edgewater respectively. Joondalup has been developed as a major bus-train interchange. Therefore, commuters can travel to the train station using a feeder bus service. That is the concept which is planned and promoted. Such use of buses relieves potential traffic congestion caused by excess cars parking at a regional centre and it has obvious economic and environmental benefits.

The City of Joondalup has confirmed that it shares that view. The Lakeside shopping centre and the City of Joondalup in recent times have determined a need to protect the requirements of car parking for shopping and business purposes, and have

imposed time limits for parking. From Joondalup's perspective, there is very limited benefit in having valuable land within its immediate city centre utilised for Park 'n' Ride purposes. In light of that, a Park 'n' Ride facility is not considered viable at Joondalup. There is an obvious option for commuters to utilise the facilities provided at Edgewater or Currambine, depending on where they reside, or alternatively to use the bus network to travel to the train station.

I do not think that there is much joy for the member for Joondalup in the response from Transport. I acknowledge that the former minister said in his letter of 16 May that issues needed to be resolved and that dollar funding and parking on the verge was one option. However, I will endeavour to make sure that the present minister reads the member's grievance and determines what action we can promote. Obviously, there are some relevant reasons. Joondalup does not want the Park 'n' Ride facility adjacent to its regional centre.

Mr Baker: It is interesting to note that in the correspondence that I quoted, the former City of Wanneroo said that it did support the LandCorp proposal. Since then there has been a split. However, I assume that the same bureaucrats are employed by the city. It is interesting also to note the change of heart in less than 12 months.

Mr OMODEI: That is exactly right, and I found it strange, having been involved in previous grievance debates. The member's constituents should be impressed with his persistence. He will need to revisit the matter. Obviously, the minister will be made aware of today's debate. All is not lost. I dare say that the member will continue in the same vein. I understand that the last meeting of the old City of Wanneroo was held last night. The new chief executive officer takes over today. The member is right; the same bureaucrats still exist, but there have been some changes at senior bureaucratic level. It is important for people to be able to reach their destination and places of work efficiently and with some convenience. It is the role of members of Parliament to raise issues with ministers and with government bodies; for example, I refer to the Department of Transport and local government. I will endeavour to ensure that the debate is brought to the minister's attention and that the member's concerns are articulated to him so that he can continue to address the matter.

The DEPUTY SPEAKER: Grievances noted.

FIDELITY GUARANTEE FUND

Motion

MS MacTIERNAN (Armadale) [3.57 pm]: I move -

> That this House recognises the plight of around 50 victims of alleged real estate fraud who have been unable to obtain any relief from the fidelity guarantee fund which now holds over $30 million and call upon the Minister for Fair Trading to take urgent action to address this travesty.

Since I prepared the motion, it has come to my attention that the figures are much higher and that the 50 cases are cases that I knew of directly. It appears that we are talking about more than 100 people who have current claims that have not been dealt with. I would like to be able to set out a full picture.

Mr Shave: That is not true. You have said that there are 100 claims that have not been dealt with. You know they are being dealt with. The claims have been put in, otherwise they would not be claims.

Ms MacTIERNAN: That is an interesting interjection and it shows the power of the minister's logical capacity. We have from the minister the modus operandi that we have had from his ministry for the past three or four years. When we complain about a matter not being brought to conclusion, about people not being prosecuted, and about not being given access to the fidelity funds, the Government says, "We are still investigating." It never closes a file, it keeps on investigating and investigating and it never brings a matter to conclusion. Of course, it might say, "It's not that we rejected all these claims; we are still investigating them." Frankly, the minister will be aware of the old adage that justice delayed is justice denied. The situation in the ministry is an absolute farce.

I was about to say that I would like to be able to set out comprehensively the factual circumstances of the fidelity fund, but of course that is not possible because we do not have proper reporting of the fidelity fund.

Mr Shave: Some of the matters are confidential. People have a right to have their privacy respected.

Ms MacTIERNAN: I will deal with the question of confidence because it is one of the great confidence tricks of the ministry. The important point is that we have seen a change in the reporting of the circumstances of the real estate and business agents fidelity guarantee fund since we commenced asking questions about it. The reports of the Real Estate and Business Agents Supervisory Board and of the Settlement Agents Supervisory Board no longer have a separate statement of account for that trust fund. The fund has been mixed into a blancmange with all the other activities of the boards. It is quite obviously a deliberate attempt to conceal what is happening.

Mr Shave: That is very unkind.

Ms MacTIERNAN: It might be unkind. It is certainly very unkind to the real estate consumers of this State for the minister to have done that and for him to have allowed his ministry to do that.

Mr Shave: Are you saying that I am running the direct affairs of the board?

Ms MacTIERNAN: I would certainly never accuse the minister of having anything whatsoever to do with his ministry. We all know that he is asleep on the job and that he takes his salary under false pretences. Whenever we ask this minister to be called to account, he says that it is all an operational matter. We need some remedial classes in the Westminster system of government for this minister. We need to take him to a class and point out to him that the way in which the operation of his ministry and the real estate board and the settlement agents board are brought to account is through him. When we ask questions of him we are asking what he has done. His defence, as he has extraordinarily said once again today, is that it is not his problem and he does not direct operations.

Mr Shave: I did not say that. You are putting words in my mouth.

Ms MacTIERNAN: I am trying to make sense of them, that is true. I am grappling to make sense of them.

Mr Shave: You certainly are. That is the truth.

Ms MacTIERNAN: I am grappling to make sense of his statements. Is the minister familiar with section 12A of the Real Estate and Business Agents Act?

Mr Shave: I do not have it in front of me, but you cite it; you are the solicitor.

Ms MacTIERNAN: He is the minister, and he is the one getting the salary.

Mr Shave: Obviously I have read it but I do not have a photographic memory.

Ms MacTIERNAN: Okay. If I were the minister, I would know about this section. The minister is telling us that it is not his problem but somebody else's. Section 12A reads -

> The Minister may give directions in writing to the Board with respect to the exercise of its powers and functions, either generally or in relation to a particular matter, and the Board shall give effect to any such direction.

If the minister decides to sit on his hands, that is his decision. He has the power to do it.

Mr Shave: Are you suggesting that I should become directly involved in the deliberations of the various cases undertaken by the board?

Ms MacTIERNAN: No.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr Shave interjected.

The DEPUTY SPEAKER: Order! The Minister for Fair Trading will come to order.

Ms MacTIERNAN: The statements made by the Leader of the Opposition, who has the absolute confidence of every member of this Opposition, unlike the minister's counterpart -

Mr Cowan: You cannot say that.

Ms MacTIERNAN: I can say it absolutely. I can assure members opposite that the Leader of the Opposition has broad support within our party. We do not have a fifth column being organised by a member of our front bench to destabilise our leader. We are very content with our leadership. We believe that the instability within the Liberal Party -

Mr Shave: You are very insensitive to the poll.

Ms MacTIERNAN: We have seen the polls.

The DEPUTY SPEAKER: Members, let us get back to the Bill, please.

Ms MacTIERNAN: I will return to the principal point I was raising, which is the question of concern that all of a sudden since we have been raising questions about the fidelity fund, we have seen a radical change.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr Shave interjected.

The DEPUTY SPEAKER: The Minister for Fair Trading will come to order. Interjections across the floor are totally disorderly. They will not be tolerated. Members will be called formally to order at the next bout of them.

Ms MacTIERNAN: It is important that we understand what this minister said. I was pointing out this radical change in practice relating to the reporting of the financial circumstances of the fidelity fund. We find in the current year that the fidelity fund has no longer been separated out. The fidelity fund account no longer appears separately in the reports of the two boards. As I have said, it is all intermingled like a blancmange. What is the minister's response? It is to ask if it is his fault and are we expecting him to interfere with the operations of the board. The answer is absolutely, yes. The minister is the one who must be called to account for the appalling standard of the documents.

Mr Shave: Will you take an interjection? You are concerned with the documents and the way it has been reported. When did you previously raise that concern with me?

Ms MacTIERNAN: We have raised with the minister on numerous occasions every aspect of the fidelity fund.

Mr Shave: When did you raise that issue?

Ms MacTIERNAN: We are raising it with him now.

Mr Shave: I see; it is johnny-come-lately.

Ms MacTIERNAN: One of the reasons we have not raised it is that the minister has changed the record. We will go into that later. It is suggested that the minister changed it between the time the document was tabled and it was published.

Mr Shave: It was rectified through good management.

Ms MacTIERNAN: Okay. We are being blamed because we relied on documents that were tabled and turned out to be wrong. We are on the minister's case. The minister must listen to his argument. When we point out what is wrong with the way in which the accounts are being kept and that there is something massively wrong with no longer telling us how much money is coming into the fidelity fund each year, how much is going out, how many claims have been made against it and how much it has, the minister says that it is not his problem. He says that it is the problem of the ministry. That is not acceptable. The minister gets a salary for taking some responsibility.

Mr Shave: And putting up with you.

Ms MacTIERNAN: The minister must do better than that. The charm is wearing off. Even the long lunches and the bottles of wine that he has fed the members of the media will not insulate him forever.

Mr Shave: Do not talk to me about the media. Your photograph is in the paper every day.

Ms MacTIERNAN: I do not think that is a positive.

In the light of the paucity of those documents we have had to do a lot of research. We have been able to come up with the fact that we now have within the real estate agents fund $24m and in the settlement agents fund $6m.

Mr Shave: Will you take an interjection?

Ms MacTIERNAN: No. I shall not take another one. Give me a minute. I am normally quite happy to take interjections but I have not even got off the basic statistical point because Mr Sleepyhead does not know any of these facts and he does not want to hear them.

I refer first to some the statistical data on costs. These funds have grown at a rate of $2m to $2.5m a year over the past three years; however, as far as we can see, claims totalling less than $100 000 are paid out each year. We know from material compiled from hidden corners of reports that over 100 claimants have outstanding matters and were unable to access money, even though the fund is growing at $2.5m a year. When the issue was taken up with the minister on Monday night, what did he say? It was pointed out to him that a 91-year-old gentleman had had all his money stolen, and that a 74-year-old lady had returned to work to pay a mortgage because her property had been stolen. The minister responded -

> If the board was to pay compensation on every real estate transaction where people lost money then very clearly after a very short time the funds would be gone.

Is the minister telling us that the rate of real estate fraud is in excess of $2.5m a year? Even if it paid out only at the rate at which the funds were accumulating, it would hold its own. Nevertheless, it is not paying out a fraction, not one-tenth or one-twentieth, of the funds, but scores of victims of these transactions - not all - are in very troubled financial circumstances. How does this outfit manage to achieve this result? A major review is needed of the way the board operates in relation to these funds.

Mr Shave: A royal commission!

Ms MacTIERNAN: It would not need a royal commission. It would require someone who knew a little about law to conduct an inquiry to produce a better system.

Mr Shave: I hope, from your performances previously, that they do not have a Labor Party intellect.

Ms MacTIERNAN: Those lines do not work, mate! I know far more about the minister's Act and department than he does, and I am not paid to be minister.

Mr Shave: I must confess that I am not a learned academic.

The DEPUTY SPEAKER: Order! I suggest that the member not answer the interjections.

Ms MacTIERNAN: The minister says, "I am a man of the people; I've not been educated." Ultimately, the community says, "What are we paying this mungbean $150 000 a year for?" If his answer to everything is that he is not educated and does not understand what is going on, people will say, "Go and get a job on the tools then!" The minister should not take a salary on the basis that he will run a department and then claim to be too dumb, as though it were some sort of excuse.

Mr Shave: What is a mungbean?

Ms MacTIERNAN: I will explain it later. I am sure the member for Pilbara will tell the minister about mungbeans.

It is important to go through some of the strategies adopted by the Real Estate and Business Agents Supervisory Board to avoid resolving matters and paying out this money. I am not sure why it is so intent on accumulating the nest egg so it is bigger than a Dodo's egg. One possible theory - I cannot say whether it is true - is that paying out claims would indicate some structural problems in the real estate industry, and we never want to acknowledge that! I have said repeatedly that the vast majority of real estate and settlement agents are honest. These problems do not always arise out of a lack of honesty; however, when they do, the problems involved are huge. As a result of the conflict of interest perpetuated in this State by real estate agents being able to own settlement agencies, and by allowing people to act for vendors and purchasers, notwithstanding any interest in the development in question, we have allowed the bad eggs to get away with taking vast sums of money.

I now outline some cases. The first case is subject to action in criminal courts, so I will not mention the name of the agent.

The DEPUTY SPEAKER: Be very careful.

Ms MacTIERNAN: The agent allegedly cheated 12 elderly people out of their life savings. For example, people were selling their homes to move to a retirement village, and the agent took the proceedings of the sale, supposedly to pay for the retirement unit when completed. However, people found that the money went not into a trust account, but the agent's business account. Ultimately, people were left homeless without any title to their old or new property. This has caused enormous distress to a number of elderly people.

The first ground used by the department not to act on these matters was to say that it was not a real estate issue, as it was an investment. When the department was shamed into action by the publicity generated in 1996 as various stories were told, it changed its tune. It no longer relied on the "It's not real estate" line. The next excuse was that criminal proceedings were taking place, so the department could not possibly make a payout as it would compromise criminal proceedings. That was nonsense! The standard of proof required, as you would know, Mr Deputy Speaker, being somewhat more learned than the minister, is on the balance of probabilities. That is different from the standard of proof required in a criminal trial; namely, beyond reasonable doubt. The fact that a tribunal found on the balance of probability a liability would not prejudice a criminal trial, which requires a higher standard of proof. Indeed, an order could be made that the findings not be published. We know that the Legal Practice Board uses such a strategy: If a case is a criminal matter, that board does not say that it will not deal with it. It resolves it, but places a prohibition order on publication until the criminal proceedings are completed. The excuses dreamt up by this unit are rubbish.

The next excuse is even better! Some of these affected people were to sign confidentiality agreements, so the unit could not use the last excuse I outlined. Therefore, a new excuse was found: "We just found section 116(2) of the Act which states that if the claim is not put in within 12 months of finding out about the defalcation, we can't help you." Members should check out the story of Mrs Waldron, who was given that excuse for non-action. She rang the registrar, Mr Rossi, as soon as the agent told her she had spent her money. Mr Rossi said, on her evidence, "Well that person is a REIWA member, so why don't you contact REIWA and make a complaint?" This agency in charge of investigating these matters handpassed the matter over to the agent's representative body! Of course, Mrs Waldron had little experience in this area and did not know that the Real Estate Institute of Western Australia was not a government body. No attempt was made by the department to tell her that if she went through REIWA and did not file a formal complaint within 12 months, she would have no entitlement. The department simply told Mrs Waldron to go to REIWA. Six months later REIWA wrote back to the ministry stating that this case had real problems, including the way the agent had generally operated. Nevertheless, the department did nothing. It was negligent. It did not telephone Mrs Waldron and say that it would take up her case, or state that she had better put in an application to access the fidelity fund. The average consumer is not expected to know that, first,

there is a fidelity fund, and second, that applications must be made within 12 months. In good faith they ring the ministry, and they are misled and cheated of their rights. It was a highly negligent act. It is extraordinary that the ministry is now seeking to rely on its own negligence to prevent this lady claiming.

Mr Shave: That is most ungracious.

Ms MacTIERNAN: Is it true? I am not here on the chance stakes. I am here to get some justice.

Mr Shave: That is the point; you make allegations and then ask if they are true. If you make these allegations, make sure they are right.

Ms MacTIERNAN: I am confident that these allegations are correct. In the case of the notorious agent X, three different excuses were used. I now move to the Sure Sale saga, which involved around 16 people who have been seeking justice for almost three years. Members know this matter was deferred for 18 months because the minister allowed the disgraceful situation to occur whereby a person heavily implicated in the scam who was a legal adviser to it, was not even asked to stand down from his position as chairman of the Real Estate and Business Agents Supervisory Board. A person against whom serious allegations had been made was in charge of an investigation and a board that was supposed to deliberate on the matter. We all know the ill-fated story that followed the engagement of a self-confessed former corrupt New South Wales investigator. Once that situation was revealed, the work he did could not be used and these people were put back yet again. The excuse used of late in relation to these claims is that the department does not acknowledge that these people have suffered any loss. They entered into a scheme in which they were guaranteed a particular price for their homes. On the basis of that guaranteed price they purchased other properties and their original properties were put up for auction. None sold and none of those people received the guaranteed price. In many instances they had to backtrack on the commitments they had made on the properties they wished to purchase and lost their deposits. They also lost auctioneer, valuation and other fees. On average each person lost $20 000. Some of these cases have been determined by the board and it does not acknowledge that they have lost anything. That makes people very angry. I understand that other cases have been determined but I do not know what the determination is, and neither do the people who are the subject of these claims. It is extraordinary that those who have made a claim against the board are not entitled to make a submission before the board. It is the classic Star Chamber. The board receives advice from the ministry and makes a determination, and no person making a claim has a right to any representations to the board, either in person or through a solicitor, to answer the allegations that have been made or the findings of fact presented by the board or to challenge the legal opinions on which the board is relying. It is a Star Chamber, and people are astounded when they discover that when the board is deliberating on a claim, the person making the claim has no right whatsoever to have any input to the board at all.

The next set of cases involves Bridget Patterson of Ideal Realty. One of the cases involves Mr Cohen, who is 91 years of age. He is certainly not poor and he is not like many of the other victims who have lost everything and have been unable to get justice. Mr Cohen, albeit elderly, obviously has some legal resources. He sought the help of Bridget Patterson of Ideal Realty to manage his various properties. She requested titles to the properties in order to do the job properly. He was obviously very trusting, and he handed the titles to Mrs Patterson. She is now nowhere to be seen and Mr Cohen has discovered that his properties have been mortgaged to their full value. He is paying off mortgages on properties he owned outright because if he does not do so, he will lose the properties to the banks. A recent report of Mrs Patterson involves some friends of the minister. She was seen holidaying with Wayne Bradshaw in the Maldives a few weeks ago, and on last report she was in Iran. It is very difficult to take action against the disappearing Mrs Patterson and her company, which is now liquidated.

Mr Shave: I have not met Mrs Patterson.

Ms MacTIERNAN: I accept that. Mr Cohen, through a solicitor, made a claim against the fund. He had gone to Mrs Patterson and asked her to manage the properties and to do the things that real estate agents do. She said she wanted the titles to make sure everything was kosher, but those titles were inappropriately and fraudulently mortgaged without his knowledge. The department's response in this case was the same as that it initially tried to use with Mr Cohen; that is, it was not part of her real estate business and, therefore, it does not come within the activities that can be compensated within the provisions of the Act. Mr Cohen's solicitor has pointed out to the ministry in great detail the extended definition of a real estate transaction that appears in the legislation; that is, a real estate transaction includes the collection of rents or other payments for use and occupation. That is exactly what was involved. Mrs Patterson was engaged to collect rents for the use and occupation of the properties. Clearly, it falls within that. The ministry, having been presented with that and a forceful argument from Mr Cohen's solicitor, claimed it had legal opinion which said the opposite. Mr Cohen's lawyer asked to see that legal opinion, but his request was refused. Why will the ministry not allow him access to that legal opinion? The normal process in a tribunal deliberating on a matter is for an argument to be put and for the other side to have an opportunity to respond to that legal advice and to questions of fact. The ministry considered it an outrage that it should be called upon to provide that evidence and to say who gave the legal opinion.

The Opposition is very concerned about the quality of advice obtained by the ministry. Given the legal argument, if the ministry wanted a fair outcome, one would expect it to present a copy of the opinion to the claimant's solicitor so that the

solicitor could make submissions in response. How can a determination be made, if the applicant is not allowed to comment on the factual and legal matters? It is extraordinary that the ministry would contemplate doing that. We are not allowed to make submissions, to talk to the tribunal, or to contest its evidence. We must sit at home and hope that those people in the ministry have got it right. That is a Star Chamber. It is interesting that the activities of the Star Chamber led to the formation of the rules of natural justice in our legal system. The first principle of natural justice is the right to be heard. This tribunal makes a final determination on the rights of an individual - on his entitlement to be compensated - and there is no right to be heard. How can that be tolerated? If one does not like the decision, one cannot appeal the matter in the District Court. The 12 faceless men sit on the tribunal and make their decisions without any reference to the applicant or the applicant's solicitor. We do not know what evidence has been brought before them or what legal advice they have received; it may all be manufactured. When one reads the tribunal's cases and the arguments it has presented to the consumers, one would have to say that its members do not know what they are doing.

We have two problems: They are getting the law wrong and are inventing these excuses, and they are not giving the victims and their solicitors a right to be heard. They are making determinations without any reference to those people. That is the reason we have this bizarre situation of funds growing at $2.5m a year and victims remaining unrequited. It is not the Government's money; it is money to compensate those victims. All the Minister for Fair Trading can say when asked to comment is that if the Government paid out everyone who had a claim it would lose its money! That will not happen unless the real estate industry is much worse off than we think. There will not be more than $2.5m worth of claims each year. In any event, the minister cannot say that the Government will not meet these claims; that these people might be injured or have lost money but the Government will not pay them because it might lose all its funds.

Mr Shave: I have not said we will not pay.

Ms MacTIERNAN: The minister's response is that the board cannot pay compensation on every transaction in which people have lost money.

Mr Shave: I will talk about the issue when my turn comes, so that we get a clear understanding of this. The member for Armadale has referred to that about seven times. She would be better off letting it go, because she is not achieving anything.

Ms MacTIERNAN: I am happy to let that go, minister. I want to reiterate what is contained in section 120. It states that if at any time the moneys standing to the credit of the fidelity fund are not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent they are not so satisfied, be charged against the future accumulations of the fidelity fund. It does not say not to pay out these people if there is not enough money. It says if there is not enough money in the pot, to wait until next year and pay them out of that.

The Opposition is concerned that the process is profoundly flawed. The board is operating as a Star Chamber excluding people from making submissions and from having any knowledge of what matters of fact or law are put before it, and the department is using excuses that are wrong at law and unfair. The minister must definitely get someone from the outside - someone who has some competence legally - to review the operations of these boards in relation to the fidelity fund and set down some proper guidelines and policies for the functioning of these outfits. It is a disgrace that the Government is allowing this fund to grow and no-one is being satisfied from it.

MR SHAVE (Alfred Cove - Minister for Fair Trading) [4.35 pm]: Is the member for Armadale the one hitter for the Opposition?

Ms MacTiernan: We wanted to keep it relatively fair.

Mr SHAVE: Because of the relationship between the member for Armadale and me I have chosen to take a similar course. I want to get a couple of points on the record, so members understand how the member for Armadale beats up these issues in this place through the allegations that she makes. When I get down to specifics members will understand that the member for Armadale is merely seeking attention in the media. Unfortunately, until now, some sections of the media have been inclined to believe everything the member for Armadale says is correct, when in fact it is not.

I refer to the issue that the member for Armadale mentioned about seven times - the comments I made in a television interview the other night.

Ms MacTiernan: I hope your numbers for the job of Premier are better than they are in this matter.

Mr SHAVE: I have only just started into the first minute of this debate.

Ms MacTiernan: It was not seven times.

Mr SHAVE: If we do a count we will find it is close to seven.

Ms Brailey wrote to the Premier in a letter dated 27 October and stated -

> After watching the Seven Nightly News Monday 26/10/98 special feature by Yvette Mooney, we are appalled at the apparent lack of knowledge on the part of the Hon. Doug Shave, Minister for Fair Trading.

> The Minister, whose duty it is to administer the Real Estate & Business Agents Act, granted an interview and said "*If the Board was to pay compensation on every real estate transaction where people lost money then very clearly after a short time the funds would be gone."*

Ms Brailey then drew attention, as did the member for Armadale, to section 120 of the Act and spoke about the insufficiency of the fund. The member for Armadale, who was also interviewed by Channel Seven, stated that elderly people were going broke and the Government was sitting on a nest egg of $30m and refusing to make payments. That is very catchy stuff and good for television, but quite untruthful.

Ms MacTiernan: The minister should ask the member for Collie.

Mr SHAVE: The member for Collie will have a few words to say, and I am happy for her to represent her constituent; that is fair and proper. The reality is that one grab was taken out of a 20-minute interview with Yvette Mooney.

Ms MacTiernan: Shock! Horror!

Mr SHAVE: I am not being derogatory of Channel Seven; it has a tight time frame. However, in a 20-minute discussion, I pointed out my concerns for people who were legitimately aggrieved by being defrauded in the real estate industry and for the welfare of elderly people; and my concern that some real estate agents took advantage of people in difficult circumstances and of people who may be uneducated, like I. Yvette Mooney had to interview some other people as well, so in the one grab that was shown on television I said that if the board paid out on every real estate transaction in which people lost money, after a short time the funds would be gone. I do not resile from that comment, because it is true. I was involved with a real estate agent in the development of home units in North Fremantle. I was told that I was going to make a lot of money out of it. I was a little inexperienced and I was in the hotel industry. I had been involved in a few property developments; however, he was the whiz-kid in these developments. I went into a business relationship with him in a company and in time two of the people had gone bankrupt and could not meet their liabilities. I wound up with a company with about $500 000 to $600 000 of losses in it, watering the gardens every week and trying to keep the thing afloat so that I could get rid of those units that I did not like visiting.

Ms MacTiernan interjected.

Mr SHAVE: What I am saying is that I was involved with a real estate agent in those circumstances. I did not even know the fidelity fund existed. The point I am making is that the Act has been set up with clear guidelines for people to claim and under what circumstances. I was in a business deal with a real estate agent. I want to make it clear that he did not do anything unlawful in the circumstances; it was just a bad deal.

Ms MacTiernan interjected.

Mr SHAVE: I will take some interjections in a minute because the member for Armadale gave me one or two. I am quite happy to accommodate her. However, I want to get my line of thought through to members. If I had been involved in that arrangement in which both the real estate agent and I were putting in money and he had defrauded me, one must ask the question: If he is a business partner of mine, should the taxpayer make up my losses in those circumstances? Until now, the previous Labor Governments and the current Government have decided that legislation will be enacted so that when there is a fraudulent act by a real estate agemt and a member of the public has a legitimate claim, it will be paid. Guidelines were set down in the late 1970s. They were not altered by the Labor Party between 1983 and 1993.

Ms MacTiernan interjected.

Mr SHAVE: However, suddenly there is a problem with them. I will leave it for you, Mr Deputy Speaker, to see where we are on the point of credibility.

Ms MacTiernan: They were not accumulating at that rate. You said you would take an interjection.

Mr SHAVE: All right; go on.

Ms MacTiernan: You are not suggesting that any of those cases I have set out are anything other than about real estate? That is not people entering into a dodgy deal. If you ask a real estate agent to manage your property and she runs off with your title deeds, that is not getting into an unsuccessful business deal. Secondly, minister, there is no tax -

Mr SHAVE: The member for Armadale has had her speech. I do not mind her interjecting. However, she is not going to take over my speech because I did not try to take over her speech. Some of the comments the member for Armadale has raised in this place previously have related to the client-principal, agent-purchaser seller relationship and a couple of the cases have been of people who have put in money and the other person has been investing that money, albeit that they thought they had some sort of protection. However, on legal advice they went into syndications, or whatever, and, sadly, lost their money. I am sympathetic to their problems. However, I want to let this Parliament know how this member exaggerates when she gets to her feet. When she spoke about Mrs Waldron, she said that the ministry was not prepared to talk to Mrs Waldron; it was not interested and would not take any action or do anything to assist Mrs Waldron.

Ms MacTiernan: That is not right.

Mr SHAVE: We will go back through *Hansard*. Some of the people who work in the ministry are sitting in this place and I am sure they know more about each case than I do. They have sent me a memo on Mrs Waldron and it says this -

> The phone call from Mrs Waldron allegedly happened several years ago. Officers of the Board have asked that Mrs Waldron provide the board with an affidavit on her conversation. Mrs Waldron has refused -

I am not here to discredit Mrs Waldron. I am just laying down the facts. The note continues -

> - to provide an affidavit on the advice of some other party. Mrs Waldron's solicitor recommended she provide the affidavit. She has still not agreed and is apparently being advised by someone else.

I cannot clarify the situation on that issue any more. However, we need to relate that situation to what my good friend the member for Armadale tried to tell us a few minutes ago.

Ms MacTiernan: What about the letter from the Real Estate Institute of Western Australia?

Mr SHAVE: It is a very different story to that which the member for Armadale has been telling us.

Ms MacTiernan: Minister, you submit it to REIWA.

The DEPUTY SPEAKER: Order!

Mr SHAVE: Let us have a look at another issue that the member for Armadale raised.

Ms MacTiernan interjected.

Mr SHAVE: The member for Armadale's credibility is going down very quickly.

Ms MacTiernan: Minister, show me the letter.

Mr SHAVE: I will have a look at the letter later. I am quite happy for my staff to give the member for Armadale a briefing on all the cases she is raising because I think she needs it.

The next matter relates to the issue raised by Mr Cohen. Mr Cohen is 91 years old. I am sympathetic to the problem. I have said that before. Mr Cohen's solicitor, Mr Solomon, issued actions against the board. I assume that the board has not acted, as Mr Solomon obviously interprets, in a correct manner. If that is so, that will be determined. However, traditionally legal advice has been subject to professional privilege. Therefore, when someone says, "We are going to sue you", what does one do? One gets legal advice.

Ms MacTiernan: You have got it the wrong way around.

Mr SHAVE: No, I have not. That is what the board has done.

Ms MacTiernan: That is not the legal advice they are talking about. You just don't understand, minister.

Mr SHAVE: I understand plenty.

Ms MacTiernan: No. He is taking the action because you won't tell him about the legal advice.

Mr SHAVE: The board is acting on legal advice from the independent bar and, for obvious reasons, if it is being threatened to be sued -

Ms MacTiernan: You are missing it.

Mr SHAVE: I am not missing it. Mr Solomon may have missed it. The board may be right. Mr Solomon may be right.

Ms MacTiernan: Can I explain to you?

Mr SHAVE: Very quickly because I do not want it to take up the whole time.

Ms MacTiernan: The legal advice we are talking about is the legal advice on whether the claim should be paid out. When the department would not give Mr Cohen access to that legal advice and not allow him to make submissions to the board, he took out a writ of certiorari. You have now taken a second set of legal advice. I am not talking about the legal advice on the writ of certiorari; I am talking about the legal advice about whether Mr Cohen had an entitlement to the fund.

Mr SHAVE: I must tell the member for Armadale that if I was a member of the board and a solicitor was suing me, I would go to an independent solicitor and ask what to do. He would say, "We will debate this in court and give him what we have to give him."

Ms MacTiernan: Minister, the legal action came after they refused to allow access to the advice.

Mr SHAVE: The member for Armadale has made her point, not that I agree with her. I refer to the comments that the

member for Armadale made about the accounts of the board. I ask people and sections of the media to go back to her first comments in *Hansard* and read the allegations she made about the members of that board. They should read her allegations on their lack of accountability, that they were trying to muddy the waters, that they were trying to create a situation so that people would not have a proper understanding of the way the board was operating. Once again, what do the people involved, who cannot sit in this place while she tears them down and make accusations about them that are totally unfounded, have to say? They were sitting in this place. They have to sit there because at the end of the day they are the people who are copping this while people in the community, if they are silly enough to believe what the member for Armadale says, make these unfounded allegations. The advice I have been given is that the accounts of the board were consolidated into a single set in accordance with the requirements of the Office of the Auditor General. What does one do with a member like that when she is making these allegations?

Ms MacTiernan: We will talk to the Auditor General about that.

Mr SHAVE: The member for Armadale should talk to the Auditor General. However, at the end of the day the allegations that the member is making against the fund, and particularly about the people who administer the fund, are totally unwarranted. In all the cases which the member for Armadale has raised I have been sympathetic to the position of the people involved. In her television interview, the member for Armadale talked about the Government sitting on a nest egg. The Government is not doing that because the money is not the Government's. It is a separate fund to which the Government does not have access. The snide comment on the television that the Government was -

Ms MacTiernan interjected.

Mr SHAVE: The member for Armadale gave a half hour interview; she said we were a nice, caring, understanding Government, did she not? I will not go over what the member for Armadale said, as I have done that already. However, what she said was a direct attack on the Government, saying the Government had the money and would not give it. She is a lawyer and knows how the fund works. She knows the Government does not have access to that fund, and that it is administered by the board. The fund does not offer compensation for general real estate transactions, as it did not in the unfortunate business deal in which I was involved.

Ms MacTiernan: Do you think Mr Cohen's case didn't come within the definition?

Mr SHAVE: It would be improper for me to even guess at Mr Cohen's rights without having the information in front of me. I am sympathetic to a 91-year-old man who has lost some money, and to a single mother losing some money. I am sympathetic to a lot of people who lose money but I do not have the detail of the case and it would be improper for me to even guess at the facts.

Ms MacTiernan: You didn't receive the letters they sent you?

Mr SHAVE: Of course I received the letters, but when I did, I referred them to the people involved. Until someone can convince me that there is some illegality or that the board is not operating in an appropriate or proper manner, I will not come into this place like the member for Armadale and try to tear down the board members and say they are dishonest and not doing their job. In effect, that is what the member for Armadale does when she comes in here.

Ms MacTiernan: Do you think there is a problem when people write a complaint and you refer it to the person against whom the complaint is made? That does not seem very fair.

Mr SHAVE: I do not do that.

Ms MacTiernan: What do you do with it?

Mr SHAVE: I refer the complaint to the ministry and the ministry assesses it and refers it to the board.

Ms MacTiernan: But they are complaints about the ministry. The letter from Mr Cohen to you was a complaint about the ministry.

Mr SHAVE: If there is a complaint about the ministry, I ask for the file and for the view of the ministry. If I think the person has a valid complaint, I will get crown solicitors' advice.

Ms MacTiernan interjected.

Mr SHAVE: I have not done that with Mr Cohen, but in some instances I have received a view from the crown solicitor on what I can and cannot do. Although I have the power to direct the board, any direction I make must be lawful and I cannot start determining claims on the basis of something that is not prescribed in the Act. The member for Armadale has raised the issue that some people who have made a complaint did not do so within the 12-month period prescribed under the Act for a variety of reasons. The allegation is that they did not get the right advice from the department or their lawyers or they went to their lawyers and by the time they found that the lawyers would not resolve the matter they were past the 12-month period. I have some sympathy with that situation. It was not as a result of the member for Armadale raising the matter here today that I raised the issue with the ministry some time ago. I have sought a view from the ministry and the board about

whether that 12-month period could be varied. I have asked for advice on extending that period because, even though the member for Armadale does not believe me, I am sympathetic to these people's problems. I am advised that I will receive a briefing paper suggesting that the 12-month period should be extended. I might give the board discretion outside that 12-month period. I do not have a problem with that. Some of the people who may legitimately be entitled to claims under the fund do not fall within that time frame.

Ms MacTiernan: You agree with my point on that at least.

Mr SHAVE: The member for Armadale says I agree with her point; it was a point I have raised within the last month at least with my staff and which they have raised with the board. I cannot speak on behalf of the whole Government because Cabinet must make that decision, but if Cabinet makes that decision and the matter comes to the Parliament, I expect the Opposition to support it. I hope it will after the views expressed today by the member for Armadale. That problem exists. There will be a review of the fund and the operations of the board towards the middle of next year as required.

Ms MacTiernan: Who is doing the review?

Mr SHAVE: It will probably be done by the Ministry of Fair Trading.

Ms MacTiernan: That is just a joke!

Mr SHAVE: What is the problem with that? Does the member for Armadale think that the Ministry of Fair Trading wants people saying continually that it is holding on to money? It has no interest in the $22m.

Ms MacTiernan: It does not make sense, I agree.

Mr SHAVE: Why would one not want to be Father Christmas if one could and give all the money away? That review will take place and will doubtless hear submissions from the member for Armadale and from Ms Brailey from the Real Estate Consumer Association. An evaluation will be made, and if the ministry makes a decision for changes to enlarge the ability of the board to make claims in addition to what is being done now, I do not have a problem with that. Nor do I have a problem with a recommendation to change the one-year lodgment time and allow the board to look at the issues which have occurred, and all of the claims on the book today which fall outside the 12-month period.

The Government is sympathetic to the problem and to the fact that people lost money. No-one should take that lightly. Sadly, in many of those circumstances, elderly people lose money. Unfortunately, sharks usually prey on elderly people and people who are not highly educated. That is very sad. In my view, the board is acting appropriately, and within its guidelines. No-one has given me any evidence that the board has not acted within its guidelines. Until that happens, I will not come into this place and make false accusations against people who are doing a good job.

MS MacTIERNAN (Armadale) [4.58 pm]: I do not doubt that the minister has sympathy for the victims of Sure Sale Systems Property Ltd and Richard Patterson, and for Mr Cohen and all the other Sure Sale victims and the victims of Agent X, but the minister is not paid to be an agony aunt. He has been a minister for two years now, during which time the Opposition has been raising the problems. He has not done anything. I am not saying that he is deliberately stopping these people getting their money. His ministerial responsibilities extend further than not directly impeding the delivery of justice to the consumers. He has a positive obligation to drive the direction of the department. Nothing is more galling than when he continues to come into this place and say that the Opposition is criticising the department when it raises these concerns. The minister is being criticised because he has failed to take action.

Mr Shave: You are the only person in this place who does not believe that you have been criticising the people who work in our administrative framework.

Ms MacTIERNAN: I have been criticising the performance of those people, but the buck stops with the minister. He must take responsibility. The Opposition has pointed out the problems time and time again. There is nothing new about this. Section 116(2) of the Real Estate and Business Agents Act has been the subject for some time. The problem with the growing fund and the difficulty that people have in accessing that fund has been raised time and time again. Now the minister tells us he will get the ministry to do a review next year and in the fullness of time it will have a look at it and it might even change it. The minister should come to terms with the problem. Some of these claims date back to 1992-93, according to the information provided to me by his department. How long must people wait? It is now 1998. The review starts in 1998 and he says that in 2000 it might do something about it. It is pathetic.

The problem stops with the minister. He must do something about the structure. He must ask questions about the board; he must ask whether it is proper that the board will not accept submissions; he must ask whether it is proper that a board makes a final determination without giving the person the right of representation at that body; he must ask questions about whether the sorts of excuses and justifications that are being used make sense. He has an obligation to look at these issues independently and not only to listen to the advice of the department, but also do a bit of thinking himself; and he must take some responsibility. He is failing to do that. He is presenting himself as if he were the advocate for the staff and the agency. That is very noble of him. However, he is trying to do the old hospital handpass in pretending to support them. He does

not want to accept responsibility; he wants the department to accept responsibility. That agency has many good people. However, the Opposition is pointing out that the problems may be arising from the quality of the legal advice it is obtaining, if it is obtaining this advice that it keeps telling everybody about, but does not show any evidence of. The minister has not in any way, shape or form answered any of the questions put to him by the Opposition.

Mr Shave: I answered your questions about the account, Mr Cohen, Mrs Waldron and the television interview. Cut it out.

Ms MacTIERNAN: He did not answer the question about Mrs Waldron. I have tabled a letter from the Real Estate Institue of Western Australia to Mr Rossi from the Les Smith report. This letter is dated over three and a half years ago. It expresses the concerns of REIWA about the complaints that were made to it by these various consumers. It appears that no action was taken to advise these consumers at that time that they were required to lodge an application for the fidelity fund if they were to have any opportunity to make a claim. That appears to be prima facie a case of negligence. He cannot say these people did not do it and it is their responsibility. He must investigate whether the department, supposedly a department looking after consumers, has acted pro-actively in that situation to take care of the people that had attempted to make some sort of complaint against the agents. It is an outrageous situation that these people are now being denied that claim because they were never told that they were required to complete the forms for the fidelity fund. I know what it is like to be misquoted in television programs; it happens to all of us. It is a very difficult aspect of this job when members find themselves edited out after a television interview. However, it does not change the basic point. In my view, the minister has refused to accept the evidence that these claims are being improperly or over-zealously disallowed. For that reason we have seen the accumulation of the fund grow exponentially. The minister said to me at the beginning of this debate that I am raising this issue to get attention. I do not know what is the corollary of that. We must return to basics about what a Government and an Opposition are all about.

The minister does not seem to understand that he has the responsibility for the operations of his department. He somehow thinks it is wrong for the Opposition to raise concerns and seek to publicise those concerns. I do not know where this guy has been; I do not know where he was during the Liberal Party's period in opposition; I do not know where he was when George Cash was running around with leaked documents; and I do not know where he was when Hon Eric Charlton was bashing the Aboriginal Legal Service at every possible opportunity. However, I advise the minister that that is the workings of politics. People come to members of the Opposition with grievances and we take them up. It is no answer to our charge that we are seeking attention.

Of course we are seeking to publicise these issues. We do not have any shame about that. That is our job, and his job is to do something about those issues rather than continuing to pretend that we are attacking public servants. The minister is earning a very handsome salary. He has an obligation to take charge and not to flop about like a wet paper bag and say that a review may be done one day. This is a classic: When the minister receives complaints, he gives them to the ministry; but the complaints are about the ministry! It is a joke! The minister needs some lessons. The Leader of the House is a competent minister. There are a couple of others in the Liberal Party. They can show the minister what it is all about. Mr Acting Speaker, we definitely need some remedial classes in the doctrine of ministerial responsibility and the doctrine of Westminster Government because this bloke has missed the boat big time.

Question put and a division taken with the following result -

Ayes (17)

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

Noes (28)

Mr Ainsworth	Mr Cowan	Mr Marshall	Mr Shave
Mr Baker	Mrs Edwardes	Mr Masters	Mr Trenorden
Mr Barnett	Dr Hames	Mr Minson	Mr Tubby
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr Nicholls	Dr Turnbull
Mr Bloffwitch	Mr House	Mr Omodei	Mrs van de Klashorst
Mr Board	Mr Johnson	Mrs Parker	Mr Wiese
Dr Constable	Mr MacLean	Mr Pendal	Mr Osborne *(Teller)*

Pairs

Mr Brown	Mr Court
Ms Anwyl	Mr Kierath

Question thus negatived.

RIGHTS OF TEACHERS AND OTHER PUBLIC SECTOR EMPLOYEES

Motion

MR RIPPER (Belmont - Deputy Leader of the Opposition) [5.11 pm]: I move -

> That this House endorses the rights of teachers and other public sector employees to participate fully in democratic debate and notes that the community benefits from the information provided by the exercise of these rights.

It is a pity that it has become necessary for a motion such as this to be moved in this House. The rights of teachers and other public sector employees to participate in debate in our community should be able to be taken for granted. Unfortunately that is not the case. Recently we have seen the unfortunate emergence of the authoritarian traditions of the Education Department and, regrettably, of conservative Governments. I became aware of that issue earlier in the year when I was moving throughout schools and people told me it was difficult for them to comment on an issue because the words "corporate loyalty" were put up to them on a number of occasions; in other words, they were being asked to refrain from public comment and, perhaps, from talking to politicians because of an obligation of corporate loyalty being placed on them by their superiors in the Education Department. The impression that the Education Department and the Government were tightening up on public comments by teachers was reinforced when a teacher at a school in my electorate was threatened with disciplinary action for writing a letter to the local community newspaper, the *Southern Gazette*. The letter dealt with an issue of considerable local interest; that is, the closure of Kewdale Senior High School. In that letter the teacher criticised the local area education planning process which had resulted in the eventual decision to close the school. I might say that the teacher was not alone in his criticism of the local education area planning process. Even the Minister for Education has indicated publicly that there have been problems with that process.

Mr Graham: Discipline him!

Mr RIPPER: That is an interesting comment. There has been no disciplining of the Minister for Education for his criticism of that policy; however, that was not what happened to the unfortunate teacher at Kewdale Senior High School. The account in *The West Australian* of the incident states -

> Education Department officials reacted by telling Mr Matthews -

That is, Mr Keith Matthews -

> - to take time off to consider an explanation for his actions. His pay was not docked.

I will come to that at a later stage. The article continues -

> A spokeswoman said yesterday that Mr Matthews was relieved of teaching duties because, in accordance with its code of conduct, the department did not expect its employees to speak publicly against their employer.

We see the Education Department code of conduct being used to stifle teachers' participation in democratic debate. We also see an expectation from the department that teachers will not criticise its policy - the policy of the State Government - in educational matters. I have looked up the code of conduct to see whether the department has been following those provisions. I note under section 4, two contradictory elements of the code. The first element states -

> We have the right, as members of the community, to make public comment. However, when doing so, our private views should not be presented or implied as the official view of the Education Department.

Then we come to the next part of section 4 of the code which states -

> We are loyal to the public, the Education Department and to each other and avoid making comments or giving commitments that may bias our judgements or compromise the performance of our public duties.

I remind the House that we are talking about not only the chief executive officer or senior managers within the department, but also every employee of the department, including 20 000 or more teachers being bound by that code.

I am concerned that the code is being interpreted by the Education Department and the minister in the way it is. I do not read that code as preventing teachers from making public comments, except for the part that says "we are loyal to the Education Department". I wonder whether all public sector employees are expected to be loyal to their department and, by extension, to the Government, and also whether that means nearly 100 000 people are excluded from effective participation in our democratic processes.

Mr Barnett: Do you have a copy of Mr Matthews' letter there?

Mr RIPPER: No, I do not; however, I have extracts from the letter. It was published in the local newspaper and I remember seeing it at the time. The minister can quote from the letter if he wants to. What Mr Matthews said is not relevant, but what happened to him as a result of his daring to criticise the Government is.

The Commission on Government has dealt with the institution of codes of conduct in the public sector. On page 150 of Commission on Government Report No 3, produced in April 1996, is a section entitled "Benefits of codes". It summarises what commentators have said are the benefits of these codes. They include the promotion of public trust and confidence in public officials; the avoidance of unethical conduct; the legitimising of the imposition of sanctions for unethical behaviour; the sensitising of public officials to ethical values implicit in their work; the reduction of uncertainty about what constitutes unethical behaviour; the development of skills for the analysis of unethical issues; and the promotion of moral development. Nowhere in that list of benefits is there a reference to the suppression of critical comment. These codes should be about promoting ethical behaviour in the public sector, and about avoiding corruption, impropriety and improper behaviour. In my view and that of the Commission on Government, they are not about suppressing people's right to participate in democratic debate.

The Kewdale example was strange. It was both ham-fisted and sinister. I understand that that teacher was threatened with disciplinary action under section 7C of the Education Act and that although he was initially to be suspended without pay, in the end he was suspended on full pay.

Mr Barnett: The teacher was not suspended.

Mr RIPPER: The teacher certainly did not teach. He was relieved of teaching duties and sent home to think about the perfidy of his action in daring to criticise the policy endorsed by the Minister for Education, but was retained on full pay.

Mr Barnett: A teacher can only be suspended under section 7C, and that did not happen.

Mr RIPPER: The teacher was threatened with section 7C action -

Mr Barnett: But not suspended.

Mr Ripper: Threatened with, but not suspended. That is why I say that the action was ham-fisted. It seems that the Education Department embarked on disciplinary action but thought the better of it; and that teacher ended up in the somewhat strange position of being relieved from teaching duty but still retaining his pay. That may be ham-fisted and somewhat laughable, but that does not diminish the sinister impact of that action upon teachers across the State, because, make no mistake, teachers are well aware of this action that has been taken and that they may be subject to disciplinary action by this Government. Therefore, although the Government cannot be said to have acted in the most draconian fashion possible against Mr Keith Matthews, the teacher at Kewdale Senior High School, the message has gone out to teachers that they must be careful about what they say and not criticise the Education Department or the Government.

Mr Barnett: Are you suggesting that the Government or I as the minister played any role in any action against either Mr Matthews or Ms Elliott?

Mr RIPPER: I will come to the minister's role in a moment, because we offered the minister an opportunity to play a role in this matter, and he muffed that opportunity. I will talk first about the Dalkeith teacher, and I will then come to the minister's role. I have said that the message has gone out to teachers across the State that they should be careful about what they say publicly.

Mr Tubby: It has always been the same.

Mr RIPPER: It has always been the same under Liberal Governments, because Liberal Governments have always resented criticism from teachers. Liberal Governments have always been uneasy about allowing public sector employees to debate the impact of their policies and to criticise them. It is uncomfortable for a minister to be criticised publicly. However, that is part of the lot of a minister. In the light of everything that has happened in this State over the past 15 years, we should not restrict the right of public sector employees to criticise the Government. That is certainly the message that comes out of the Royal Commission into Commercial Activities of Government and Other Matters and of the Commission on Government.

I turn now to the subsequent disciplinary issue. Teachers across the State are aware of the action which has been taken against the Kewdale teacher. A teacher at Dalkeith Primary School, Ms Sue Elliott, took it upon herself to write a letter to the Editor of *The West Australian* criticising the Education Department for the action which it had taken against Mr Keith Matthews. According to *The West Australian*, she received a letter in reply from the Chief Executive Officer of the Education Department, Ms Vardon, who wrote -

> . . . it would be prudent for you not to publicise incorrect and potentially injurious information regarding the business of your Employer. Failure to do so may result in disciplinary action being taken.

I regard that as a fairly threatening communication. It is no wonder that teachers are concerned when they are simply defending their right to make public comments and are not embarking on a debate on educational policy, and they receive a letter like that from the chief executive officer. On how many more occasions in the past few years has the Education Department threatened disciplinary action against teachers for making public comments against the Government?

Mr Tubby: I will give you some cases in a minute.

Mr RIPPER: Has the member for Roleystone been a victim of this?

Mr Tubby: Yes; when you were in government.

Mr RIPPER: Did the member for Roleystone object at that time?

Mr Tubby: No.

Mr RIPPER: If the member for Roleystone did not object and meekly accepted that he should not have made a public comment, why did he make that comment in the first place? Whatever may be the experiences of the member for Roleystone, it is not appropriate for public sector employees, particularly teachers, to be disciplined for daring to debate government policy. I asked the Minister how many more cases could be found like this, and he could not give me an answer.

Mr Barnett: I have absolutely no idea, because I do not interfere in staffing issues within the department, unlike some of my predecessors.

Mr RIPPER: Sometimes the minister should exercise his ministerial responsibility and interfere. If a department is doing the wrong thing, the minister is responsible to this Parliament for its bad administration or policy, and the minister should interfere. I am arguing that in this case, the department is not doing the right thing. I am concerned that there have been many more cases like this, but only a couple of teachers have been prepared to put up their hand and protest against the disciplinary action. Even if there have not been any more cases like this, the impact on teachers across the State is still the same. Teachers now know that they may be in danger if they make comments critical of the department and the Government. This has a particular impact on temporary and contract teachers who do not have permanency.

It also inhibits teachers from making comments in other capacities. Many teachers are parents and their children attend schools at which they do not teach. Those teachers, as parents, have interests in and concerns about the education of their children. However, as a result of this policy, they cannot comment on conditions which are applied at the school which their children attend. I am aware of a woman who is a teacher at one school and the secretary of the P & C association at another school, and who feels inhibited in her role as the P & C president at that school because she is employed by the department, and the department is beginning to take a hard line against people who dare to criticise the Government.

I promised the minister that I would come to the question of his role. I accept that the minister may not be apprised of every disciplinary action undertaken by a department which employs more than 20 000 people.

Mr Barnett: The only cases that have come to me - there have been a number - is where a teacher has been dismissed.

Mr RIPPER: I accept that the minister may not have been aware of this action before it was undertaken. However, the minister has a leadership role with regard to this department, and his attitudes and statements set the tone. Much of what happens in government is done not by the exercise of brute power and the application of particular laws, but by leadership and authority. Public servants will fall into line with the attitudes that are expressed by ministers. If a minister condones or promotes an authoritarian attitude, public servants will take note and they will adopt that authoritarian attitude. That is where the role of the minister is particularly important. When something goes wrong in the department the minister should have the capacity to say that that is not the way he wants the agency for which he is responsible to operate.

Mrs van de Klashorst: You could say the minister is interfering with teachers and they are not allowed to do that under the Public Sector Management Act. You cannot have it both ways.

Mr RIPPER: A minister can certainly say that disciplinary action should not be taken against professionals within his portfolio who speak out on policies related to their professional qualifications and responsibilities; that is the way he wants the agency for which he is responsible to act. The minister might say that he would like to see the code of conduct that will apply in an agency or that he would like to see some amendments to that code of conduct.

Mrs van de Klashorst: That is what he is doing now.

Mr RIPPER: That is the responsibility a minister should be exercising. I am sure that is not contrary to the Public Sector Management Act. If it is contrary to the Act, this Parliament has given up its right to hold the Executive accountable.

I said that we offered the minister a role in this event. On 17 September I asked the following question -

> (1) Does the minister endorse the Education Department's declared policy of instituting disciplinary action against teachers who dare to exercise their democratic right by criticising their employer, the Government?

In reply, the minister said in part -

> I do not expect to see teachers in our education system criticising their employer publicly. I expect a sense of loyalty to the Education Department and the state school system.

The minister muffed the opportunity the Opposition offered him. He could have put a stop to this policy and sent a clear message to teachers that their democratic rights would be protected. He could have said that he respects their role as professionals and sent a message to his senior managers in the Education Department that this action was not acceptable.

Mr Barnett: I was saying to them that I respected them as professionals and that professionals conduct themselves in a proper way.

Mr RIPPER: Apparently the minister does not accept that professionals have a professional obligation to criticise what they regard as professional malpractice in the administration of the area in which they work. This is about the civil rights of teachers and of a significant number of people to participate in democratic debate in our community. It is about the rights of a large number of people. More than 20 000 people are employed as teachers by the Education Department - almost a state electorate. It seems that as a result of this policy that "state electorate" is to be denied the right to participate in democratic debate. This is about their civil rights and about their professionalism. A professional has an obligation to debate issues that arise in the areas in which they exercise their professional responsibilities. To the extent that people refrain from participating in public debate about the activities of their profession they are less than professional. In all the other professions in our community, significant public debate occurs about issues related to the practices in those professions such as institutional arrangements, ethics and codes of practice. If people do not have that debate they are not accepting the full extent of their professional obligations. If people either voluntarily refrain from that public debate or are prevented from engaging in it, their professional standing is compromised.

One of the issues in our education system is that the professional standing of teachers is insufficiently established. Regrettably, it is uncertain and it is this action, among others, that contributes to that professional standing being ambivalent.

What will the minister do about this policy when it comes to industrial campaigns? A situation may occur in which not only union leaders but also rank and file teachers criticise the Government. Will he apply this policy in the context of industrial action? Will he say to a group of teachers who organise a meeting with parents at their school during a teacher union industrial campaign and criticise the Government that they will be subject to disciplinary action? Will he exacerbate an industrial dispute by adopting that draconian attitude towards criticisms of the Government? He cannot have it both ways. He cannot say we will not do this in the context of an industrial campaign but we will do it for those individuals who are acting outside the protection of the union on something that concerns them. I would be surprised if the Government took that attitude. However, if it takes the attitude that this policy will apply in all cases, regrettably, industrial disputes in the Education Department will be exacerbated.

This matter is about not only the democratic rights of teachers or rational behaviour within the context of industrial disputes or the professional standing of teachers, but also the rights of the rest of the community. Education is a significant aspect of the State Government's activities. It consumes about 25 per cent of the state Budget. It is a very important role of the State Government. The community has a right to information about the operations of the education system. Twenty thousand teachers have that information and have the expertise to debate educational issues. The community is the poorer if it cannot hear from the people who have the information and expertise. This is an attack on not only the civil rights of the teachers, but also the right of the public to have information on an important aspect of government activity and on the quality of public debate about an important section of the State Government's responsibilities.

This issue is also about the rights of our students. The morale of teachers is an important determinant of the quality of the educational service offered. I regret to say that according to advice I am receiving the morale of teachers in government schools at present is terrible. One teacher said that if economic conditions improved there would be a mass exodus of teachers from the system. I am constantly receiving reports of people becoming disillusioned, depressed and weary with the obligations placed on them. There is a problem with morale in the education system. The minister's attitude and the department's policy demean the professionalism of teachers and undermine the morale of the workforce in government schools.

That is bad for the teachers concerned because they will suffer all the personal consequences of low morale. It is also bad for their students. Teaching is a performance game and the quality of education is critically dependent on the quality of the interaction between teachers and students. If the morale of teachers is poor, they will not perform as well as they should and the quality of their relationships with students is likely to be compromised. If we do not do something about the morale of teachers, it will have an effect on the quality of education students receive. The attitude which the department has adopted and which the minister has endorsed will serve only to undermine the morale of teachers.

Mr Barnett: Teachers talk more about their low morale than any other group I have come across. That is one of the disappointing things about some teachers.

Mr RIPPER: If a message is heard often enough, perhaps there is some truth in it. If one person said teacher morale was bad, we could say that that was his problem. However, if everyone is saying it, perhaps we should respond. While one messenger can be shot, it is hard to shoot 20 000.

Mr Barnett: In 1995 we saw very vividly what parents and the community thought of teachers telling them how bad things were. There was a strong reaction about what they expected from teachers. Our teachers are damned good and their morale is nowhere near as low as the member suggests. I visit schools almost every week and I see ever-increasing evidence of good teachers doing their job well; they are highly motivated and are doing exciting things. It is only people like you and a few discontented teachers who talk about low morale. The profession is changing.

Mr RIPPER: There is a contradiction here. It is only people like I and a few malcontents who talk about poor morale -

Mr Barnett: The whingers.

Mr RIPPER: - but the minister has never heard members of a profession "whinge" as widely about low morale as those in the teaching profession. I am not sure what line he wants to take. He appears to be groping for a response.

Mr Barnett: Some people in the teaching profession have an ability to talk down the profession in a way that I find unique.

Mr RIPPER: That is a contradiction given the minister's previous interjection.

One other aspect of this is regrettable; that is, the Government's hypocrisy. Teachers are not denied the opportunity to make public comments. They are denied the opportunity to make critical comments about the Education Department and the Government. The Government does not mind teachers participating in public debate if they say what a great job the Education Department, the Minister and the State Government are doing.

Mr Barnett: This is a better speech now.

Mr RIPPER: It is a Pollyanna approach: If teachers behave like Pollyanna about the education system, the minister and the department will be happy.

I will conclude my remarks by referring to what the Commission on Government said about these issues. Chapter 5 of the report delivered in December 1995 refers to whistleblowing in Western Australia. The report quotes the following judgment handed down by Mr Justice Mason -

> It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize Government action . . . The court will not prevent the publication of information which merely throws light on the past workings of government, even if it be not public property, so long as it does not prejudice the community in other respects.

The Commission on Government also reported the views of the Royal Commission into Commercial Activities of Government and Other Matters, which pointed out that secrecy in the conduct of government and public administration provides the veil behind which waste and impropriety can occur. It is clear what the Commission on Government thought about these issues. In fact, it recommended that the Government introduce legislation, which it called the Public Interest Disclosures Bill, to provide for a whistleblowing scheme to encourage public interest disclosures. It is interesting that the Government has taken no action to implement that recommendation. The fact that it has taken no action is indicative of its approach to these issues. The Government does not want to encourage whistleblowing or public sector employees participating in the public democratic debate. There can be no better example of the Government's attitude than the events in Main Roads Western Australia. The Government has spent tens of thousands of dollars in the futile pursuit of someone who leaked an internal report dealing with public safety issues. That matter has been debated at length in this place. All of this is of a piece: The Education Department's policy to stifle public criticism by teachers, which was endorsed by the Minister; the refusal to implement the Commission on Government recommendation regarding the protection of whistleblowers; and the pursuit of the Main Roads officer who leaked a report containing information that should have been made available to the public.

I thought this minister was different from other ministers. He has tried to distance himself from some of the more extreme and erratic members of Cabinet. He has tried to portray himself as moderate and rational in the exercise of his responsibilities. I regret to say that the department's action, which he has endorsed, gives the lie to his attempt to distance himself from people such as the Minister for Planning. The Government can partially correct the situation and it can partially rehabilitate this minister by supporting this motion. I remind the House of the motion -

> That this House endorses the rights of teachers and other public sector employees to participate fully in democratic debate and notes that the community benefits from the information provided by the exercise of these rights.

Can members opposite find it in their hearts to vote against this motion?

MS McHALE (Thornlie) [5.48 pm]: I wholeheartedly endorse the sentiments behind this motion. I will start my contribution by discussing what is at issue and the principles underpinning the motion. Is this case, as the minister suggests, an issue of disloyalty and unprofessional teachers, or is it the systematic gagging of teachers and the preventing of their participating in public debate on education? The Labor Party believes that if this trend continues it will be seen - as it has

already been seen - as a curtailment of freedom of speech that will have very negative consequences for public debate on education or any other issue. In recent weeks we have seen the curtailment of the fundamental right of freedom of speech by the Education Department which has been operating on behalf of the Government. As the member for Belmont indicated, there is a teachers' code of conduct which sets out the parameters of teachers' behaviour. It allows public comment, but on two occasions, for their sins, teachers who have made public comment have been severely reprimanded.

Mr Barnett: What responsibility do you think there should be for a teacher who makes a public comment?

Ms McHALE: I will address that point.

Mr Barnett: It is the one point that was lacking in the Opposition's argument.

Ms McHALE: I will address it, but perhaps not in a way that will answer the minister's concerns. I assume that the minister is not asking us to justify his action. In essence, if teachers are professionals, there is an ethical code behind the label which allows for public comment but not unfettered public comment. In that framework of professionalism there is autonomy and integrity, and that is the judgment that teachers make.

Mr Barnett: So it is not unfettered public comment?

Ms McHALE: I am saying that, as professionals, teachers exercise their judgment about what is important when making public comment. What we have seen in recent weeks is very disturbing, and we would certainly not expect it to happen again.

It is interesting to examine educational institutions and systems elsewhere in the country. What we have is similar to the Victorian system. The Victorian certificate of education was introduced last year. In fact there was a dearth of comment by teachers, principals and the public. Upon analysis, one strongly held view was that teachers in Victoria had been prohibited from making public comment which might be seen to be adverse to the proposed new certificate and therefore public comments which would be critical of the government of the day. As a consequence of that prohibition there was a general lack of discussion throughout the community on a critical innovation. Many people were concerned about the VCE, but there was little comment. It appears that the worrying characteristic of not having any public comment has been explained away by the fact that teachers were unable publicly to take part in the debate.

We certainly wish that to be avoided at all costs in Western Australia, because, for obvious reasons, it would have a very negative effect on changes to our education system, which would suffer from not having proper public debate. Opposition members fear that if such responses continue, we will soon have a situation in which teachers or principals who go to a public forum may need to choose their words extraordinarily carefully to make sure that they do not say anything which subsequently will get them into deep water and cause severe punitive outcomes. Let us hope that we do not reach a situation in which anybody who wishes to go to a public meeting must get the official line before doing so.

State schools are not exclusively government agencies. They are indeed government agencies, but they have a characteristic and a persona which takes them beyond that. In fact, they belong to the local community. As well as being part of the government bureaucracy and the larger network of education institutions, they are part of the local community, and because of their relationship with the local community they have a role in helping to shape views on and attitudes to public issues such as education. Given that, teachers are servants not only of the Government but also of the children, parents and local communities to which they and their schools belong. That dual relationship sets them apart from other government employees, but it certainly reinforces their role, responsibility and obligation to take part in public debate. If teachers are no longer permitted to take part in serious public discussion about education issues, the debate will no longer be properly informed and the community will be less informed than it otherwise should be.

Mr Barnett: When I visited schools in your electorate with you, did you sense that teachers felt stifled in raising issues?

Ms McHALE: No. One or two teachers spoke, and in most of the schools there was a dialogue.

Mr Barnett: They did not feel that they had to hold back, did they?

Ms McHALE: No. The minister invited comment in that instance and the teachers respected that and were grateful for it. He set the context in which they could speak, but there are many situations in which the minister does not encourage debate or freedom of speech.

Mr Barnett: When? Can you name one?

Ms McHALE: Obviously, those two teachers have had their right to speak severely curtailed. That is what we are talking about. There is a difference between the environment that the minister set up in the schools, which was conducive to good dialogue, and situations in which teachers are getting the message that they do not have freedom of speech.

If that continues, teachers will feel further inhibited in commenting on public education. That will ultimately result in a uniformity of attitude and perhaps a uniformity of debate on education issues. Clearly, with so much change facing the education system at the moment, open debate is critical. It is important that teachers feel that they can have input into

debates as local community figures without the fear of subsequent reprisal. There is a certain irony in what has happened to those two teachers and the trend that might be emerging. That is, we ask teachers to teach civics and citizenship and to examine values and attitudes. Among other issues, civics and citizenship is about democratic rights and freedom of speech. What message does it send when teachers feel inhibited and there is the curtailment of public debate?

Mr Barnett: And respect for our institutions as part of civics?

Ms McHALE: That is where we diverge radically. It is not an either/or matter or a situation in which a teacher who speaks out is unprofessional.

Mr Barnett: I never said that.

Ms McHALE: If a teacher speaks out, the teacher does not have disrespect for the institution. One can have criticism which can be heard because teachers have respect for the institutions in which they work, for the children and the subjects they teach. Let us look at this action in the context of citizenship. There is a clear irony and contradiction. It goes back to the question the minister asked earlier. Our view is that teachers are professionals. The minister's comment that he demands professionalism from teachers is quite in order. We want teachers to be professional. Where we have great concern with the minister's analysis of what that means to teachers is that they cannot speak out. If that is not his analysis, that is clearly the interpretation that the Education Department has put on it. We are starting from the point of view that teachers are professionals. As professionals they exercise their discretion and right to make public comment. Their right to do so is definitely not inconsistent with their desire to remain professionals. Perhaps the key to this issue is what is professional behaviour. If one exercises the right of freedom to speak which means also the right to criticise, is that indicative of being unprofessional? We say clearly it is not. If these teachers had written to the Press and said how wonderful the local area education planning was and how great it was that the teacher was suspended, perhaps they would not have got themselves into strife; in other words, we are seeing here not only the suppression of freedom of speech but also the suppression of criticism. Attempts to suppress criticism strike at the heart of freedom to speak. Most of us are subjected to criticism daily in this House and most of us criticise each other. Many of us do not like it. I do not like it when the Minister for Police tells me that I am knocking police officers when clearly that is the last thing I am doing when I talk about the shortage of police officers in Cannington.

We can manage this continuous criticism in two ways. If we look at the boundary between what is and is not acceptable public criticism or public statements, most of our teachers, if not all, would defend their right to speak and also the integrity of their own particular discipline and of the teaching profession, but that requires them to have a degree of autonomy. Once one accepts the need for a certain degree of autonomy, there is a certain degree of greyness about what is and is not acceptable. That almost comes with the job. If we want teachers to be professional and have a sense of integrity to their profession and a sense of autonomy, we must allow them to have that freedom. They might make a mistake sometimes - or in the minister's view they might make a mistake - or they might go a bit overboard. Most of the time they do not. Regardless of what these teachers said, we saw a reaction from the Education Department which was so super-sensitive that it made a very worrying attack on the freedom of speech which, in our view, was unwarranted. It is as if the department's recent actions have drawn a line between what teachers can and cannot say. That is what we are worried about.

Mrs van de Klashorst: Nothing has changed.

Ms McHALE: What has changed is that disciplinary action has been taken. It may be that nothing has altered about teachers speaking publicly. However, we have seen the action that has been taken. Once action of that nature is taken, it creates a different ambience and environment for teachers in which to operate. That is what we are complaining about this afternoon.

In conclusion, I will summarise my remarks. If this continues, our fear is that future debates on education or any other topic will be impoverished by not having the full contribution of teachers. Consultation is not merely about hearing the current government or departmental line. It is about examining different perspectives, some of which we may not like and some of which may be critical. We need to have that debate and we need the key players to be able to participate in it. There are clearly degrees of criticism and degrees to which one responds to it, but the action of the Education Department was totally heavy handed. It has sent an altogether distasteful message to teachers that freedom of speech is no longer a right. This needs to be seen in the context of our desire to teach civics, citizenship, values and attitude. It seems now that acquiescence is the name of the game rather than a full and vigorous debate on educational matters.

MR BARNETT (Cottesloe - Minister for Education) [6.06 pm]: I agree with members opposite that there is perhaps an element of judgment or a grey area between what may be the professional responsibility of a person and his or her responsibility to the employer. It is not always easy to make the distinction. With respect to both of these incidents, the letter by Mr Matthews and the letter by Sue Elliott, I certainly took no part in any actions entered into by the Education Department. I do not say that to distance myself from those actions. I simply make it clear that as a minister I do not play any role in disciplinary, promotional or transfer matters. I became aware of the actions concerning Mr Matthews virtually as they happened. One of my staff members advised me that the director general had taken some action. I did not know the details of it. I was not aware of the situation with Sue Elliott. Quite consciously, it is not something in which I would get involved.

Whether members opposite think the action was excessive or not is a matter of judgment. I might have my own view about that but I will certainly support and stand by the role of the chief executive in exercising disciplinary measures in the department. These were not disciplinary measures as such but cautionary measures. No-one was suspended or disciplined. The teachers were cautioned and reminded by the director general of their responsibilities. I will certainly stand in this House and defend the role, responsibility and right of the director general to exercise those powers.

Mr Ripper: How did all this come to light? Does the Education Department run a monitoring service of the letters to the editor pages? How did it become aware that the teachers had made the criticism?

Mr BARNETT: In the case of the letter by Mr Keith Matthews, it was a topical issue at the time. It would not be too hard for it to draw attention. At the minimum, other teachers in the school would have noticed the letter. The debate centres on the incident this year relating to Kewdale Senior High School, when a teacher was given three days off with pay, following the publication of a letter to the local newspaper. Mr Keith Matthews expressed his views and, among other things, he said -

> Betrayal because the LAEP process was a cynical sham, extinguished by the obstinate shake of a minister's head.

I am not sensitive to that comment. I argue that among Education Ministers I have been more open and more willing for public debate; I have encouraged it and have never shied away from it. I happen to have a view in public life, in politics, that if we cannot win the argument, we are probably not right. We must be able to win the argument and feel confident in doing so.

Mr Graham: Is that why we have a guillotine?

Mr BARNETT: That is right. I always win that argument. The problem with the letter is as much the fact that it was signed "Keith Matthews, Kewdale Senior High School", as anything else. Had he signed it only as Keith Matthews, perhaps this issue would not have arisen. The fact is that he signed it, effectively implicating the school, and to many people that may well have been interpreted as reflecting school policy. He was not entitled to do that. As I understand the process, he can write a letter to the editor and express a view as a teacher or a parent, in whatever capacity he likes; but he cannot implicate the department or the school and purport, intentionally or unintentionally, to represent an official view.

Mr Ripper: It might have been good if you had said that in response to my question. That might have reassured a few people.

Mr BARNETT: Let us go to the letter of Sue Elliott in which she states -

> Not surprisingly, a teacher has already been suspended for three days . . .

That is not true; Mr Matthews was not suspended.

Mr Ripper: That is in the report of *The West Australian* to which she was replying.

Mr BARNETT: I am quoting directly from her letter.

Mr Ripper: She was running off *The West Australian* report which used the term "suspended".

Mr BARNETT: The member has been talking about professionalism. Where is the professionalism in that? The letter continues -

> Such bullying and intimidation must not be tolerated.

She makes her view very clear in her letter when she states -

> As a teacher and human rights activist I would like to ask Education Minister Colin Barnett, who gave him power to remove my freedom of speech?

Again, the director general drew to the attention of Ms Elliott - I had no knowledge of this letter; I read it yesterday for the first time, and it does not worry me particularly - that she was a teacher and had expressed those views. We should note for the public record - I do not know Ms Sue Elliott - that she is an official of the Australian Education Union. The union is currently going through an election campaign. That is of some relevance. The member may not think that is of relevance -

Mr Ripper: I would have thought it was an example of democracy at work.

Mr BARNETT: The member might argue - I do not want to put words into his mouth - that whether she is an official of the union, or not, she can express her view. We are talking about professionalism. In an interview this week between Sue Elliott and Verity James on ABC Radio, Verity James stated -

> . . . well, what's gone wrong here? I mean, if teachers have the right to do it, and we know teachers have the right to do it unless they've signed the paper to say they can't, then why is there such a reaction from the Education Department?

In reply, Sue Elliott said -

> That's a good question, Verity, one that I like the . . . to really know the answer to. You raised the issue about the media police and Big Brother, and the feeling is at the moment, across the public sector, not just in education, that this is happening. I knowingly wrote a letter to the local paper, just to test my theory that this is what would be happening.

Where is the professionalism in that? This teacher identified herself as a teacher in her letter and then she goes on radio and said that she did this just to test the theory.

Mr Ripper: To stand up for the rights of her profession.

Mr BARNETT: She may well chose to do that. She did it as a union official, and that is fine. She also did it as a teacher, and that is fine; but she did it to provoke a response. Where is the professional passion of that teacher? It was not to be seen. In this case, by her own admission, this letter is what we would call in politics a stunt. My golden rule of politics, which I see on both sides of the House, is that stunts never work. In this case, her stunt did not work. It is seen, by her own mouth, to be a stunt.

Mr Ripper: Is that rule engraved in stone?

Mr BARNETT: Yes. It is.

Mr Graham: Is that a core golden rule or a non-core golden rule?

Mr BARNETT: I have fallen on my face every time I have tried a stunt, without exception.

Mr Graham: Absolutely. We remember daylight savings.

Mr BARNETT: It was not a stunt; I believed in it. We have the public sector legislation, a public sector code of ethics and the Education Department code of conduct. I refer to the code of conduct for Education Department employees. Although the code is new, the principles in it are not. It applies to all Education Department employees and it complements the public sector code of ethics. Both of those codes are consistent with the Public Sector Management Act. The code embraces seven general principles with which all aspects of employees' ethical conduct can be associated. The code is structured to be self-regulatory. The code was developed in a consultative way, involving teachers, union representatives and the like. It was not forced on teachers from above; it was developed with the full involvement of teachers. The section relating to the making of public comment by employees, which is covered under the fourth principle, states -

> We have the right, as members of the community, to make public comment.

That right to make public comment is enshrined in that principal. It continues -

> However, when doing so, our private views should not be presented or implied as the official view of the Education Department;

That is the point. The code of conduct of the Education Department makes it clear that teachers can make public comment. Under the code of conduct, negotiated with teachers and agreed to by the union, they have the right, as members of the community, to make public comment. However, that same code states that their private views should not be presented or implied as the official view of the Education Department. There was a transgression by these two teachers, and that is why it was drawn to their attention by the director general. They were not disciplined; they were not suspended. I do not intend to speak for too long on this matter, because I know that some former teachers in the Chamber may well like to make some comments. However, I will make a few other observations about this debate.

Ms McHale: I hope it is not with personal pain.

Mr BARNETT: No, it will not be. I will refer to a couple of public comments that have attached to this debate which I found quite interesting. An article in *The West Australian* of Tuesday, 27 October is headed "Teacher gag attacked" and states -

> Professor says Education Department acting like German secret police.

It is quoting Curtin University Professor Allan Peachment who is described as an expert in public sector ethics. The article continues -

> "The Education Department is obviously wasting time checking letters to newspapers against their employee rolls," Professor Peachment said. "It is almost reminiscent of the East German Stasi, with everyone spying on everyone. It is a very sad development."

I know Allan Peachment. I used to teach with him in the same faculty a long time ago. If that is the level of his contribution, I find it disappointing. As if people in the Education Department are sitting thumbing through newspapers, checking letters

against rolls; as if the Education Department should in any way be compared to the German secret police, by our academics, particularly from someone who regards himself as expert on public sector standards and ethics, and who has a responsibility to make a more intellectual and more constructive contribution than that to public debate!

Mr Osborne: He is *The West Australian* newspaper's go-to man when it wants a critical comment on what the Government is doing.

Mr BARNETT: If that is the case, it should go elsewhere. Yesterday *The West Australian* also decided to give this momentous issue the status of an editorial under the heading "Department stifles free expression". It states -

> The Education Department's attempts to suppress criticism from within have the marks of an authoritarian regime.
>
> In effect, the department wants to stifle dissent by gagging teachers. It continues in another section -
>
> To wipe them out of the public debate on education - as the department seems determined to do - would do a grave disservice to the community.

Talk about an overreaction! This is farcical stuff. I argue that teachers as professionals, as employees have a responsibility to their employer. I wonder how the management and the editor of *The West Australian* would react if a journalist, representing himself as a journalist employed by *The West Australian,* went to another newspaper or onto television and criticised *The West Australian* for poor journalistic standards, for fabricating material as it is inclined to do from time to time, for confusing editorial and factual reporting as it is inclined to do, and criticised the editorial policy of *The West Australian*. Would the editor and management of *The West Australian* say "Good on you guys and gals, that is the way. Get out there and express your freedom of speech".

Mr Graham: Of course they would.

Mr BARNETT: What absolute nonsense! Members of this House may have a view about the journalistic and editorial standards of *The West Australian*. However, I put it to members - and they know it is true - if a journalist from *The West Australian* representing himself or herself as an employee of *The West Australian* publicly bagged the newspaper, would *The West Australian* say "Good on you pals. That is freedom of speech. We are with you"? Get real! That will not happen and we all know it will not happen.

There are some issues here. No clear distinction is made between professional ethics, rights to speak out and responsibility to the employer. However, no-one should be so naive as to believe that sort of garbage which *The West Australian* describes as an editorial.

Mr Ripper: You have attacked *The West Australian* and Allan Peachment. Is there anyone else on your list?

Mr BARNETT: I will probably get to the member for Belmont in a moment.

Mr Carpenter: Anybody who disagrees with you.

Mr BARNETT: No. I go back to what I said. As I have said in this House, as I will say again and as I say frequently at seminars and forums of teachers and principals - it is not a point I make a lot about but I have made the comment three or four times - I expect to see high professional standards among our teachers. I expect teachers to show loyalty to their school, to the department, the profession, the children and the parents who make up our government schools system. That loyalty is certainly present in the non-government sector; the Catholic and independent schools systems. It is not so prevalent in the government school system. I visit lots of schools as I keep boasting in this place. I have been to well over 300 schools throughout the State. It is true that over the past two or three years significant changes have taken place in our education system. We have seen a new curriculum framework come into place, the development of early childhood education which is a huge program, a new education Act hopefully going through the Parliament, devolution in systems of management, technology programs being introduced into schools, merit selection in schools, changes in the structure of schools with middle schooling, senior colleges and the like, and the local area education process. I know it is a lot to absorb at one time. It is a period of change and people often feel uncomfortable with change. However, I challenge anyone here to suggest that I have not actively encouraged public comment and discussion, that I have not spent hours and hours talking to teachers and parents at public venues. I have never told the media not to attend meetings. I am open all the time.

Mr Ripper: Have you changed your mind on any issue?

Mr BARNETT: Yes, I have. I changed my mind on year 10 at Kewdale. The point of Mr Matthews' letter was agreed to.

Mr Graham: So it was a very successful letter then?

Mr BARNETT: I do not think his letter had anything to do with it. However, I listened to the parents and attended a public meeting with 200 or 300 parents which the member for Belmont also attended.

Mr Carpenter: If you are so confident in your performance, why are you so sensitive to this letter of criticism?

Mr BARNETT: I am not sensitive at all to that criticism. After nine years in politics I would be a very frail creature if I got all upset about a letter. I am not sensitive to criticism at all.

Mr Carpenter: I just heard you bagging Allan Peachment. You attacked him.

Mr BARNETT: Yes, I did because Allan Peachment's comment was of poor quality. I have taught with Allan Peachment and I will say it to his face. He is a fine person but that comment let him down. It was a very poor comment and *The West Australian*'s editorial was garbage quality. It is not something that *The West Australian* or any other organisation should do.

There is a fine line between loyalty to the organisation and ability to speak out. The code of conduct makes it clear. Teachers have a right to make public comment. What they cannot do is use the name of the school or purport to represent the views of the department. That is what they cannot do and what was drawn to their attention. They were not suspended and they have not been disciplined. They were not gagged or wiped out of public debate at all. Forum after forum has been held on the curriculum, involvement of teachers, and on the School Education Bill. Public meetings have been held everywhere. Members of the Opposition should have attended more of them and they would have seen that teachers actively took part in them. The teachers' views have been taken into account throughout the debate. If our teachers have a grievance, or a differing point of view I want to see them work within the system. That does not mean they cannot make comment outside but they have opportunities within their school and with the district directors. They can see the district director, they can write to me, and they can come and see me if they want. I am always meeting groups. However, as employees they have a responsibility not to damage the organisation they work for and with. They should be building up confidence and public esteem.

Mr Ripper: Or the Government.

Mr BARNETT: I do not care about them criticising the Government. I am talking about the Education Department, the organisation they work for. I do not care what they say about me, I am in public life, I can wear that but they need to support the government school system. The Education Department has been doing some quantitative and qualitative research on what parents think about government schools.

Mr Ripper: Will you make that available to the Opposition?

Mr BARNETT: I have not been right through it but in due course we probably will. It is an on-going research program but there is nothing secret about it. What has come out of the research so far is that when asked about the government school system compared with the non-government system, people say they see better standards of discipline, a greater sense of loyalty, higher standards of ethics and higher moral values in non-government schools. The research indicates that when asked about the government school system or government schools people say that the school in their locality or the school their children attend is great and they support it but they do not like the system. Why is that? Why do people say they support their government school but are critical of the system? I do not want to single out these two teachers as that would be overstating the matter. However, it is because the teachers' union and parents organisations - the Western Australian Council of State School Organisations in particular in recent times - criticise government schools every time a change is made. Little wonder the parents, whether subconsciously or deliberately, think government schools are not as good. This is what happens. It is why in the last four years we have seen enrolments in non-government schools increase 4 to 5 per cent a year and government school enrolments have generally risen less than 1 per cent a year. Western Australia and Queensland are probably the only States with a growing enrolment in the government school system. Despite all the money being put into government schooling, parents say, at considerable expense, that they will vote with their kids' feet. This research shows that parents see things in non-government schools that they do not see in the government school system. They do not see that sense of loyalty, of tight community, of high values and of ethical standards.

As a Government and a department, we are trying to blow the dust and throw the shackles off our government system so that these schools are not seen as or part of this huge amorphous school system but as schools of excellence serving their community, catering for talented kids, for those with a vocational bent, those learning second languages or whatever it might be. Parents see that variety and choice in the non-government sector; they do not see it in the government sector. Hence the importance of the School Education Bill. It will allow schools like John Curtin Senior High School in the member for Fremantle's electorate to develop into what it wants to be, to be seen as the elite performing arts school in Western Australia. It is a great school and its programs are outstanding. To do that, it must attract students from across the metropolitan area. It must be free to attract the best performing arts students. The Government will spend $14m building a new school in the member for Belmont's electorate, Cannington Senior High School. The Government will bulldoze a school and rebuild it, a school which was identified as likely to be closed. Having listened to the community of the Cannington Senior High School including the teachers - the member for Belmont must concede we did that, he was at some of the meetings - we, as a Government, and a department will build a twenty-first century school based on office skill technologies.

For that school to work, it must attract students from across the metropolitan area as a result of its declining student population. The Government is willing to take a punt in putting $14m into the Deputy Leader of the Opposition's electorate to build arguably the best technical-based school in Australia. To do that, we must promote it as a school of absolute excellence. It will be part of the government school system. The school will have the Chamber of Commerce and Industry and local industry heavily involved, and probably all its students will receive a specialist education and move directly into rewarding careers - even be guaranteed employment. Similarly, a school in Mandurah is being developed as part of a TAFE-university complex, and this must draw students widely. By developing different schools with speciality, we will return to what we should be doing; that is, creating a government school system which can hold its own and compete.

I will tell members a story which may sound boastful but I do not mean it that way. I am told that every Education Minister in history has built a new school in his or her electorate, although I am the only one to be publicly criticised for it. However, I am happy about that. I announced that Hollywood and Swanbourne schools were to close, and that the Government would build a new western suburbs high school, which will probably be a $20m project and arguably be the Perth Modern School of the next century. It will have a strong academic focus tied to the University of Western Australia. Students will start university courses while at school, and work in lecture theatre and tutorial formats, not the traditional school approach. It will be superb and will compete with schools such as Methodist Ladies' College and Scotch College. That resulted directly from listening to parents and teachers, who lobbied hard. An old friend with whom I played football was slamming me in the local press every week.

Mr Ripper: He knew you well then.

Mr BARNETT: We had a few fights on the football field. We implemented what he was advocating. We listened. When it came to the announcement regarding the western suburbs school, one member of the teaching fraternity, who is unlikely to be close to a Liberal Government in philosophy, walked over and gave me a hug and said that for the first time government schooling was fighting back in the western suburbs. Something will be created that can compete.

Part of that process is having teachers fight for their schools, their system and the quality of education. I do not have a heavy-handed approach to dumping on teachers. I am not sensitive to criticism from teachers. However, I continue to appeal to teachers that they be careful in what they say. If they publicly criticise the school and the system, they will drag down government schooling compared to non-government schooling in the public eye. If we believe in a free public education, as I, and I believe all members, do, and in the advancement of government schooling so that it is not left behind, one must in a sense be corporately loyal and say what is good about the system. Sure, people may be aware of difficulties, but they should promote the good parts, as members opposite and government members do for their political parties. Do we hear anyone in Mick Malthouse's team criticise the Eagles publicly? Do the Eagles handball to the opposition to score? It does not happen. It is not seen in the corporate sector, or among clubs, societies or other groups. Therefore, why should it happen in our education system? We should focus on excellence in schooling and on the supportive attitude of teachers.

MR GRAHAM (Pilbara) [6.35 pm]: I was suitably impressed by the minister 's speech, and I look forward with interest to see which way he votes. I remind the minister of the wording of the motion -

> That this House endorses the rights of teachers and other public sector employees to participate fully in democratic debate and notes that the community benefits from the information provided by the exercise of these rights.

A good one-third of the minister's speech outlined that people already have that right. This is not a difficult or heinous motion, but one to which the minister has devoted time lending his support. As government spokesman, the minister expressed support for the teachers' and public sector employees' right to speak out publicly on matters which affect them. Section 4 of the code of conduct gives them that right.

Mr Barnett: It qualifies it. It sets standards about how they might do that. If there is a transgression, that is where the issue arises.

Mr GRAHAM: I am not arguing that point, and neither is the minister. I refer to the balance in those rights, which the motion endorses. It does not criticise the minister. We might do that in our rhetoric, but the motion simply protects that right for teachers.

This is a difficult issue. As the minister indicated, public sector employees, particularly teachers, still have the right to make public comment. The minister makes the point that they do not have the right to either directly or indirectly misrepresent the department or to purport to represent the department. The minister's comments have merit - I do not argue with him. From experience in government, I know it is sometimes difficult when involved in controversial issues to find oneself up against public servants. I would like to deal with a couple of public servants regarding speed limits, but, unfortunately in that case, they have that right to speak out. I recall undertaking some planning processes in the Pilbara and chairing a committee. I had some heated opposition from some people in a government department, and I complained at length to their minister and CEO about their performance. I thought they involved themselves in matters of no interest to them. I effectively had them stopped from making public comment. Those people were employed in a government department to

perform a job in a certain area. The areas of which they were critical were not areas in which they had any interest, expertise or skills; they were not even employed in that area. I agree with the minister that in those circumstances it is not reasonable for an employee of a government department to use the resources of the department to criticise an open and public process.

However, neither of the teachers referred to in this debate were in such circumstance. They were professionals commenting on policy issues at a professional level. I understand the technical point the minister raised, with which I am not at odds. However, teachers have a right to make their point. The minister may say that he does not have a problem with public comment, and that he expects loyalty from within the department.

Mr Barnett: Personally, I do not. I am not talking about these two teachers. It disappoints me when I hear of teachers who conduct themselves in a way which detracts from the department or their school.

Mr GRAHAM: Let us leave these two teachers aside for this debate; I am no longer interested in them. I may not agree with the minister's view. For the argument, I accept the minister's view that he talks to people and takes on board what is said. However, the constant complaint I receive from teachers is that the department is not willing to hear criticism internally. More than just anecdotal evidence can be found that that is beginning to happen. I am not talking about the petty criticisms. I am loath to name people and departments because of what is being said in those departments, particularly the Education Department, but I am talking about people who believe they have made constructive and positive criticisms inside the department, and who have complained privately that the system will not listen. The minister needs to address that problem in his department. That problem is separate from, but similar to, this issue, because if the minister wants people not to complain publicly, he must provide a system that is responsive and allows them to have input.

The minister made all kinds of analogies with corporations and companies. The minister knows my background. I have been employed as a rank and file unionist, which required me at times to criticise my employer, not in a radical, out of the way sense -

Mr Barnett: You have a union background, and while your allegiance may have been to your employer - and I am not suggesting that you were disloyal to your employer - a union, particularly in the industrial situation, looks for solidarity among its members. Is that not one of your catchcries?

Mr GRAHAM: Absolutely. We sing the song "Solidarity Forever".

Mr Barnett: I am saying that a union wants people to promote the objectives of the organisation.

Mr GRAHAM: I am glad the minister touched on that. The unions of which I was a member were democratic organisations, and I was able to influence the outcome. However, if the members of a union are not allowed to do that, they will create dissident groups, and that union will splinter and fall apart. In the private sector where I worked, I was sometimes critical of my employers, but I am sure - I can give the minister all their names and addresses - none of them would ever accuse me of disloyalty. We had some scraps and fights, some private and some public, but we sorted them out and got on with our business. That is the healthy and adult way to do business, because there are different points of view and perceptions.

Mr Barnett: I have not accused these teachers of disloyalty. I was making the point about loyalty to the organisation in a different context.

Mr GRAHAM: I accept that. However, while the minister has not accused them, he claims to seek loyalty.

Mr Barnett: I look for loyalty in the system.

Mr GRAHAM: I accept that. The heavy criticism of the Education Department internally is about its lack of receptiveness. The department must deal with that problem.

A balance needs to be struck. I will quote from the 1992 report of the Royal Commission into Commercial Activities of Government and Other Matters. It is easy for members opposite to say that that was a royal commission into members of the now Opposition, so it does not matter. The royal commissioners were very clever, because they quoted from the report of a royal commission into members of the Government. Therefore, their report is quite balanced. They said at page 4-15 that the Queensland Fitzgerald report made the observation that honest public officials are the major potential source of the information needed to reduce public maladministration and corruption, and they will continue to be unwilling to come forward until they are confident that they will not be prejudiced. That quote is as valid today in Western Australia as it was then in Queensland. They said also -

> The Commission endorses both statements. Even where appropriate systems are in place, one cannot be certain that maladministration and misconduct will be revealed. What is certain in this State is that appropriate systems are not in place to facilitate such revelation, nor to provide reassurance to officials and private individuals that if they make such revelations they will not be subjected to harassment, discrimination and legal proceedings.

That was the concern of the royal commission in 1992, and that is my concern with regard to public officials, particularly teachers, in 1998.

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [6.45 pm]: Teachers do have the right to speak out, and they should not be prevented from exercising that right. At the age of 37, I went back to college; and at 39, I became a teacher. One of the things that we were told in college, and which I was subsequently told many times during the 15 years that I taught, is that teachers are not allowed, and have never been allowed, to speak publicly as a teacher on behalf of either the Education Department or the school. I fully agree that this is absolutely right, because it is very easy to destroy the reputation of a school.

I will give a true example of how this can occur; but I will not name the school. A particular high school had a P & C association meeting, and the president of the association, who was not a teacher at that time, said in a press statement that that school was very overcrowded and very badly run. The P & C association got together with a group of people to try to advance the school. However, the parents had read that statement in the Press, and they started to doubt the school and refused to send their children to that school because they believed the comments, which were proved later not to be true, that the school was overcrowded and badly run. It took the school, the principal and the staff of that school more than five years to gain back the wonderful reputation that school had enjoyed before that statement was made.

That statement was not made by a teacher, but it was made in the public arena. That is why I am concerned when statements about schools, perhaps of a personal nature, are made in the public arena, are reported and are discussed, without all the facts being revealed. That also leads to polarisation. I worked in a school for 14 years, and I taught for 15 years. During that time, I did a stint as acting principal and had a fair amount of responsibility. I was also voted for seven years in a row by my peers at that school to chair the weekly staff meetings. We had problems. Problems can arise in schools when a large group of people are working together and do not always agree with every decision that is made in the staff room, and dilemmas can arise that appear impossible to resolve.

The only way that schools can fix things is to work as a team. All of the teachers in this State have many opportunities to go to their principals or deputies. I was often privy to information from other teachers when I was acting deputy; and even as a staff member, teachers used to come to me with their problems, perhaps because I was older than most of them. Teachers generally have these opportunities. They can also can go to their local superintendent, their area planning group, the Department of Education, or the minister. The minister will recall that I often write to him about the problems of teachers. Teachers have a massive amount of freedom to do this.

We need to remember that schools exist for children, and that any damage any person does by putting down and destroying a school puts down the children who attend that school. While I agree that teachers should have the freedom to speak when they wish, with that freedom comes a responsibility, and that responsibility needs to be considered in the light of how it can help the whole school community and how teachers can try to solve problems as a team in order to achieve the best educational and social outcome for the pupils at that school.

Amendment to Motion

Mrs van de KLASHORST: I move -

> To delete all words after "participate" with a view to substituting the following -
>
> > in debate and community discussion, so long as such debate and discussion conforms to the provisions of the Education Department Code of Conduct and the Public Sector Code of Ethics that are enunciated in the Public Sector Management Act 1994.

MR TUBBY (Roleystone - Parliamentary Secretary) [6.50 pm]: I briefly comment on the issue that has been very well presented by the Minister for Education. When I became a teacher 31 years ago, one of the first things I was told was that if I wished to criticise the Education Department, the minister or any issue concerning the government education system, I must first resign and I would then have the liberty to criticise. That principle did not change during the whole of my time in the education system.

Mr Graham: That was the filthy Brand Government.

Mr TUBBY: That was the policy, and it was exactly the same for people working in private enterprises. If, for example, a mechanic employed by the member for Geraldton in his business openly criticised in a public arena things that were happening at the business premises, I guarantee he would not be an employee in that business for very long. That criticism denigrates and runs down the business. It is exactly the same in the education system.

Mr Graham: What if the mechanic criticising the fictional car yard or repair shop made it public that the owner is charging for new parts fitted to cars and is using secondhand parts? Is that legitimate?

Mr TUBBY: No comment.

Mr Bloffwitch: All he needs to do is go to the police and have the owner up for fraud, because it is a criminal offence.

Mr TUBBY: Exactly. We are talking about policy and policy issues. As the Minister for Education said, if members of the public school teaching profession openly criticise in the public arena their Education Department and their schools, it creates a very bad impression of the public school system in the eyes of the public. Little wonder that the private school system is growing faster than the public school system when teachers openly criticise schools. Throughout my career, I came to realise why this policy applied. No matter what issue is discussed, with 20 000-odd teachers employed in the Education Department, someone will always disagree with the decisions made. If they had the freedom to openly criticise at any time, I guarantee that almost on a weekly basis a teacher somewhere would be running down the state education system. That is not acceptable. Teachers who want to criticise should do so in-house.

I had intended to relate the following incident to the member for Belmont during his speech. At the end of my career, I was principal at the Gwynne Park Primary School. Close to the Christmas holidays in 1987, the library resource centre and administration block of a neighbouring school, the Neerigen Brook Primary School, were completely gutted by fire. In the middle of the term after I was endorsed as a candidate for Dale, I was at a principals' meeting in the Armadale area and was speaking to the principal of the Neerigen Brook school. I asked how the reconstruction was going of the library resource centre and administration block. He said nothing had been done, and that was three months after the fire. The kids and staff were still not allowed to go into the area and it was off bounds, although it was in the middle of the school. The local member for Armadale at that time was also the Minister for Education, and a couple of weeks before I went on leave to fight the election I dared to criticise the local member for Armadale, as Minister for Education, in the local media.

Mr Barnett: Who was the minister?

Mr TUBBY: Bob Pearce. I criticised him because he could not do anything to have a school fixed in his own electorate which was disadvantaging pupils in his constituency. I said that if that was happening in the minister's electorate, what was happening elsewhere in the education arena. I received a lovely, one-page letter from the Director General of Education putting me right in my box. He made exactly the same points to me at the end of my career that had been made to me at the beginning, 22 years earlier. He said I should not publicly criticise the minister or the Education Department because in effect I was criticising the public education sector. He was exactly right. I should have left my criticism for a couple of weeks until I had resigned from the Education Department. He was right and I was wrong. The same principle applies today. No matter which Government is in office, teachers should not be able to willy-nilly criticise the state Education Department. Therefore, I support this amendment to the motion, and disagree with the original motion.

MR RIPPER (Belmont - Deputy Leader of the Opposition) [6.56 pm]: The Opposition will oppose this amendment, but it accepts that the Government will be successful in having the amendment approved by the Parliament. The Opposition will then be happy to vote for the resulting motion, as amended. The Opposition has good reason for opposing the amendment, because it restricts teachers to discussion which conforms to the provisions of the Education Department's code of conduct. The Education Department's interpretation of that code of conduct has resulted in disciplinary action against Mr Matthews. It was stated in *The West Australian* that Mr Matthews was relieved from teaching duties because in accordance with its code of conduct the department did not expect its employees to speak publicly against their employer. The Opposition's concern about the way the Government is seeking to amend this motion is that the Education Department may continue to interpret the code of conduct governing teachers in a way that will result in disciplinary action against more teachers, similar to that instituted against Mr Matthews. The Opposition therefore opposes the Government's amendment, but it is pleased to have won some statement of support from the Government for teachers' rights to participate in democratic debate.

Question (words to be deleted) put and a division taken with the following result -

Ayes (24)

Mr Ainsworth	Mr House	Mrs Parker	Mr Tubby
Mr Baker	Mr MacLean	Mr Pendal	Dr Turnbull
Mr Barnett	Mr Marshall	Mr Prince	Mrs van de Klashorst
Mr Bloffwitch	Mr Masters	Mr Shave	Mr Wiese
Mr Board	Mr Minson	Mr Sweetman	Mr Osborne *(Teller)*
Dr Hames	Mr Nicholls	Mr Trenorden	
Mrs Hodson-Thomas			

Noes (15)

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

Pairs

Mr Court	Ms Anwyl
Mr Kierath	Mr Brown
Mr Day	Mr Kobelke
Mr Johnson	Mr Marlborough

Question put and passed.

Question (words to be substituted) put and passed.

Motion, as Amended

Question put and passed.

House adjourned at 7.00 pm

QUESTIONS ON NOTICE

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

SENIORS

Airconditioning Homes in North West

84. Mr GRAHAM to the Treasurer:

(1) Did any organisation or person in any capacity within the portfolio responsibilities of the Minister commission a report into the expense of airconditioning homes for seniors in the North West of the State?

(2) If the answer to (1) above is yes -

(a) will the Minister provide a copy of the report; and
(b) from where can a copy of the report be obtained?

(3) If the answer to (1) above is no, why not?

Mr COURT replied:

(1) No.

(2) Not applicable.

(3) The Office of Energy has had carriage of the development of costings for an air conditioning subsidy for people living north of the 26th parallel. Since late 1997 the Office of Seniors Interests has had discussions with the Office of Energy concerning an air conditioning subsidy. Calculations developed by the Office of Energy were based on information provided by the Office of Seniors Interests, Government Employees Housing Authority and Western Power.

MILLENNIUM BUG

157. Ms McHALE to the Minister representing the Minister for the Arts:

(1) Is the "Millennium Bug" computer problem an issue for any of the departments or agencies under the Minister's control?

(2) If so, when will those departments or agencies have installed and tested all Year 2000 corrections?

(3) What have been the total funds expended to date to correct the "Bug"?

(4) What is the total cost estimated to be to install all corrective measures?

(5) Do those departments or agencies intend to engage external resources to manage the process?

Mrs EDWARDES replied:

The Minister for the Arts has provided the following reply:

Western Australian Museum

(1) The “Millennium Bug” is an issue for the Western Australian Museum.

(2) The Western Australian Museum plans to have 95% of all testing of compliance of computers, servers for e-mail, firewall systems, energy management systems, database networks and the collection of databases in Natural Sciences, in Social and Cultural History and in the Records Management sections of the Museum completed by the end of December 1998. It is planned that the remaining issues of security networks for the buildings and the collection areas, for public lifts and related exposures, will be managed and incorporated into the plan by the end of the first quarter in 1999.

(3) Funds expended in the previous financial year on the Y2K issues total $15,000. Funds expended this financial year to date total $19,622.

(4) The total cost estimate to the Western Australian Museum since work began and until completion, is of the order of $180,000.

(5) The Western Australian Museum plans to utilise the extensive resources of its external consultants AlphaWest to assist with the management of these Y2K issues. As the need arises during the current strategic review processes, panel contractors will be sourced as specific projects are developed.

Library and Information Service of Western Australia

(1) Yes, the "Millennium Bug" computer problem is an issue for The Library and Information Service of Western Australia. A project team has been working on the Year 2000 problem for over 16 months to minimise the risks associated with the problem.

(2) All year 2000 corrections are planned to have been installed and tested by July 1999.

(3) The total funds expended to date on the Year 2000 project are approximately $45,000.

(4) The total cost estimated to install and test Year 2000 compliance is $550,000.

(5) No. The Year 2000 project is being managed using existing internal resources within The Library and Information Service of Western Australia.

Art Gallery of Western Australia

(1) The Millennium Bug is not a significant issue for the Art Gallery of Western Australia.

(2) Not applicable.

(3) The total expended to date to correct the Millennium Bug is $6,015.

(4) The estimated total cost to install all corrective measures is $25,000.

(5) A consultant has been engaged to assist in conducting an inventory and a risk impact analysis of the problem.

Perth Theatre Trust

(1) The "Millennium Bug" computer problem is an issue for Perth Theatre Trust.

(2) The Perth Theatre Trust will have Year 2000 compliant hardware and software installed by early 1999.

(3) Total funds expended to date to correct the "Millennium Bug" are estimated at $5,000.

(4) Total cost estimated to install all corrective measures is $25,000.

(5) Perth Theatre Trust does not intend to engage external resources to manage the process.

ScreenWest

(1) The "Millennium Bug" computer problem is an issue for ScreenWest.

(2) ScreenWest will have Year 2000 compliant hardware and software installed by 31 December 1998.

(3) There has been nil expenditure to date to correct the "Millennium Bug".

(4) Total cost estimated to install all corrective measures is $5,000.

(5) ScreenWest does intend to engage external resources to manage the process.

Ministry for Culture & the Arts (ArtsWA, Business Units)

(1) Not significant.

(2) June 1999.

(3) Nil.

(4) $50,000.

(5) No.

NATIONAL DAIRIES WA LIMITED

439. Mr BROWN to the Minister for Health:

(1) Has any department or agency under the Minister's control have shares in National Dairies WA Limited?

(2) How may shares does the department or agency own?

(3) What is the purpose of the share ownership?

Mr DAY replied:

(1)-(3) No.

GOVERNMENT DEPARTMENTS AND AGENCIES

Compliance with Section 175ZE of the Electoral Act

656. Mr RIEBELING to the Minister for Resources Development; Energy; Education:

(1) Which public agencies within the Minister's portfolios are required to comply with section 175ZE ("the section") of the Electoral Act 1907?

(2) Which of those agencies included the required statement in their annual report?

(3) Which of those agencies did not include the required statement in their annual report?

(4) In respect of those agencies which did not include the required statement, will the Minister require the agencies to amend their annual report to include the required statement?

(5) In the case of those agencies which did not include the required statement, why did they not include it?

(6) What is the amount of expenditure incurred by or on behalf of each such agency in relation to the matters set out in the section 175ZE -

(a) in the 1996-97 reporting period;
(b) in the 1997-98 reporting period; and
(c) in the current reporting period to date?

(7) What is the name and address of each advertising agency, market research organisation, polling organisation and direct mail organisation on which expenditure has been incurred since 1 July 1996 by or on behalf of each agency?

(8) When was that expenditure incurred?

(9) What was the value of the expenditure incurred in each case?

(10) What is the nature and content of the advertising, market research, polling or direct mail services provided by each agency and organisation on each occasion?

(11) What was the name of the officer incurring each item of expenditure?

(12) What was the name of the certifying officer in relation to each item of expenditure?

(13) What is the name of the principal officer in each agency responsible for ensuring that the statement required under section 175ZE is included in the agency's annual report?

Mr BARNETT replied:

Department of Resources Development

(1)-(2) The Department of Resources Development is required to comply with Section 175ZE of the Electoral Act 1907.

(3) The Department of Resources Development did not include the required statement in its 1996/97 annual report. It will be included in the 1997/98 annual report.

(4) See answer (6)-(12) below.

(5) The Department was not aware of the requirement to include the required information in the 1996/97 annual report.

(6)-(12) Section 175ZE of the Electoral Act requires that all public agencies publish annually information on expenditure on advertising, market research, polling, direct mail and media advertising. This section came into force in October 1996 and has only operated since then. The Western Australian Treasury was advised a number of months ago by the Western Australian Electoral Commission of this requirement which was then noted in the instructions to agencies for the preparation of Annual Reports. In the Political Finance Report 1997, tabled 12 August 1998, the Electoral Commissioner recommended:

> That section 175ZE of the Electoral Act 1907 regarding reporting on electoral expenditure by public agencies be moved to a more appropriate piece of legislation such as the Financial Administration and Audit Act 1985.

The Government intends to give early and favourable consideration to this, and bring forward the necessary amendments to the Electoral Act. All agencies in my portfolio are now aware of the requirement to meet the provisions of section 175ZE of the Electoral Act, and henceforth will be providing the appropriate information. However, I am not prepared for agencies to devote the considerable resources necessary to retrospectively prepare this report, and in particular to provide the level of detail requested. If the member has a question in relation to a specific advertising contract I will endeavour to provide the information.

(13) D R Kelly.

Office of Energy

(1) Office of Energy.

(2)-(3) No.

(4) See answer (6)-(12) below.

(5) The Office of Energy was not aware of this requirement.

(6)-(12)

Section 175ZE of the Electoral Act requires that all public agencies publish annually information on expenditure on advertising, market research, polling, direct mail and media advertising. This section came into force in October 1996 and has only operated since then. The Western Australian Treasury was advised a number of months ago by the Western Australian Electoral Commission of this requirement which was then noted in the instructions to agencies for the preparation of Annual Reports. In the Political Finance Report 1997, tabled 12 August 1998, the Electoral Commissioner recommended:

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(13) Les Farrant.

AlintaGas

Section 175ZE of the Electoral Act has no application to AlintaGas. Therefore our answers are:

(1)-(13)

Not applicable.

Western Power

Section 175ZE of the Electoral Act has no application to Western Power. Therefore our answers are:

(1)-(13)

Not applicable.

Department of Education Services

(1) The Department of Education Services is required to comply with section 175ZE of the Electoral Act 1907.

(2) The Department of Education Services will include the required statement in the 1997/98 Annual Report.

(3) The Department of Education Services did not include the required statement in its 1996/97 Annual Report.

(4) See answer (6)-(12) below.

(5) The Department of Education Services did not include the required statement because it was unaware of the requirement.

(6)-(12)

Section 175ZE of the Electoral Act requires that all public agencies publish annually information on expenditure on advertising, market research, polling, direct mail and media advertising. This section came into force in October 1996 and has only operated since then. The Western Australian Treasury was advised a number of months ago by

the Western Australian Electoral Commission of this requirement which was then noted in the instructions to agencies for the preparation of Annual Reports. In the Political Finance Report 1997, tabled 12 August 1998, the Electoral Commissioner recommended:

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(13) Mr Peter Browne is the Principal Officer for the Department of Education Services responsible for ensuring that the statement required under section 175ZE is included in the Annual Report.

Education Department of Western Australia

(1) The Education Department is required to comply with section 175ZE of the Electoral Act 1907.

(2)-(3) The Education Department did not include the required statement in its annual report for 1996/97.

(4) See answer (6)-(12) below.

(5) The Education Department did not include the required statement in its annual report for 1996/97 as it was not aware that it was required to do so. The statement will be included in its 1997/98 annual report.

(6)-(12)
Section 175ZE of the Electoral Act requires that all public agencies publish annually information on expenditure on advertising, market research, polling, direct mail and media advertising. This section came into force in October 1996 and has only operated since then. The Western Australian Treasury was advised a number of months ago by the Western Australian Electoral Commission of this requirement which was then noted in the instructions to agencies for the preparation of Annual Reports. In the Political Finance Report 1997, tabled 12 August 1998, the Electoral Commissioner recommended:

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(13) In accordance with section 175ZE (1) of the Electoral Act 1907, the Director-General of Education, Ms Cheryl Vardon, is responsible for ensuring that the statement required under section 175ZE is included in the Education Department's annual report.

Curriculum Council

(1) The Curriculum Council is required to comply with section 175ZE of the Electoral Act 1907.

(2) The statement will be included in the First Annual Report, 1997/98.

(3) Not applicable.

(4) See answer (6)-(12) below.

(5) Not applicable.

(6)-(12)
Section 175ZE of the Electoral Act requires that all public agencies publish annually information on expenditure on advertising, market research, polling, direct mail and media advertising. This section came into force in October 1996 and has only operated since then. The Western Australian Treasury was advised a number of months ago by the Western Australian Electoral Commission of this requirement which was then noted in the instructions to

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(13) Mr Paul Albert, Chief Executive Officer of the Curriculum Council is responsible.

HOMESWEST'S SPECIAL TRANSFER POLICY

857. Ms McHALE to the Minister for Housing:

I refer to the 'special' transfer policy of Homeswest and ask -

(a) for each of the following years, how many tenants have been transferred under this policy -

- (i) 1997-98;
- (ii) 1996-97;
- (iii) 1995-96;
- (iv) 1994-95;
- (v) 1993-94; and
- (vi) 1992-93;

(b) what is the average waiting time for a transfer under this policy; and

(c) what is the justification for charging a 'fee' of the full market rent until $200 (for seniors) or $250 for families has been accrued?

Dr HAMES replied:

(a) The ‘special’ transfer policy was introduced in October 1997 to assist those tenants who wish to transfer to an alternative zone when their circumstances would not warrant a transfer on a priority basis. Since the policy was introduced 5 clients have been assisted and there are 26 clients currently listed for a transfer.

(b) The waiting time for assistance under the policy varies dependent upon the turnover of the desired accommodation and existing demand in the nominated zone. Special transfer clients are given consideration subsequent to priority applicants.

(c) Prior to the implementation of the policy, Homeswest tenants could only transfer when they had a serious and urgent need to relocate or where they occupied some forms of lower demand accommodation eg. apartments, townhouses and bedsitter units. This is not a fee. In recognition of the administrative cost associated with the transfer, the tenant forgoes his/her rental subsidy until the amount is recouped.

BANDYUP PRISON, OVERCROWDING

999. Ms WARNOCK to the Minister representing the Attorney General:

(1) Given the serious problems associated with overcrowding at Bandyup Women's Prison, has the Attorney-General determined an opening date for any proposed new women's prison?

(2) If so, what is that date?

(3) What decision has the Government made about the site for any new women's prison?

(4) Is the Attorney General aware that activity rooms at Bandyup have been turned into "4 out" accommodation (4 women to a room)?

(5) What plans does the Attorney General have to improve the accommodation for women prisoners at Bandyup in the immediate future?

(6) Is it true that the Government has funded a choir at Bandyup?

(7) If so, what money has been spent on it?

(8) How much is budgeted for rehabilitation programs at Bandyup?

(9) What do these programs involve?

Mr PRINCE replied:

The Attorney General has provided the following reply:

(1) No.

(2) Not applicable.

(3) No decision has been made to date. However, the Pyrton site remains the Ministry of Justice's preferred option for a minimum security prison for women.

(4) Yes.

(5) The Ministry of Justice is pursuing part of the Pyrton site in Eden Hill as a minimum security prison. The existing surplus buildings would be an excellent solution and community consultation is underway. When additional female prison accommodation is procured, the Bandyup facilities can be upgraded.

(6) The Department for the Arts has provided funding for choral purposes.

(7) Approximately $1,400 to date.

(8)-(9) $12,000 for transitional pre-release programs and $28,000 for education programs. Aggression control and Substance Misuse programs are provided on an "as needs" basis. Approximately $35,000 in 1998/99 is anticipated.

LOCAL GOVERNMENT SUPERANNUATION

1086. Mr McGOWAN to the Minister for Local Government:

(1) What plans does the Government have in relation to Local Government employee superannuation?

(2) Will the Government be enabling Local Government employees to have a choice in relation to the superannuation fund their contributions go into?

(3) If not, why not?

(4) Does the Local Government Act provide some restrictions in this matter?

(5) If so -

(a) where; and

(b) how?

Mr OMODEI replied:

(1) This matter is currently under review.

(2) This will be considered as part of the review.

(3) Not applicable.

(4)-(5) The *Local Government Act 1995* provides for transitional arrangements in schedule 9.3, clause 16, for the superannuation scheme as set out in Part VIA of the *Local Government Act 1960* to continue until new regulations are made under section 5.47. Restrictions apply because local governments are required to participate in and comply with the industry scheme or, in certain limited instances, in the City of Perth superannuation scheme. However, nothing prevents a local government from participating, in respect of an employee of a local government, in a superannuation scheme in addition to contributing to the industry scheme or the City of Perth scheme if the local government and employee agree.

QUESTIONS WITHOUT NOTICE

VACATION SWIMMING PROGRAM

310. Dr GALLOP to the Minister for Education:

(1) Why is the Government moving to privatise the Education Department's successful vacation swimming program, Vacswim, which currently provides swimming lessons for about 68 000 Western Australian children each year?

(2) Is it not the case that privatisation of Vacswim will inevitably result in higher enrolment costs for Western Australian families?

(3) Why is the minister so determined to turn over that hugely successful program to people whose only motive is to make money?

Mr BARNETT replied:

(1)-(2) I appreciate the question from the Leader of the Opposition. The long-term future of vacation swimming classes has been before the Government since 1994. There are three components: The first is the vacation swimming classes, the second is in-term swimming classes, and the third is the training of swimming teachers. It is true that the Government has initiated a process in which other groups may put in proposals for running vacation swimming classes and to provide teacher training in swimming instruction. In-term swimming classes will remain the responsibility of the Education Department. The Leader of the Opposition throws in words such as "privatisation" and so on.

Dr Gallop: Of course it is.

Ms MacTiernan: What else is it?

Mr BARNETT: I will explain. It has been a very successful program, but the world has moved on.

Dr Gallop: Let's keep it that way.

Mr BARNETT: I would not prejudge the tender process.

Dr Gallop interjected.

Mr BARNETT: Hang on; let me make it clear. The Leader of the Opposition talks about people for profit and tries to put a negative slant on it. The tendering groups will include Surf Life Saving Western Australia, which might take swimming instruction and safety instruction to a higher level than is the capacity of the Education Department.

Dr Gallop: So you are biased in its favour?

Mr BARNETT: No.

Dr Gallop: Why are you saying it then?

Mr BARNETT: I made it very clear. I said that one of the groups that will propose it will probably be Surf Life Saving Western Australia because it has been involved. There are other groups such as professional swimming clubs - all sorts of groups.

Dr Gallop: How much do they charge? Do you know the difference in cost?

Mr BARNETT: The Leader of the Opposition really needs to -

Dr Gallop: No, I don't. I am defending the interests of working families in this State.

Mr BARNETT: I ask the Leader of the Opposition to be quiet. I will not answer questions if I am not given the opportunity. I do not regard future summer vacation swimming classes as the core role of the Education Department.

Dr Gallop: Aha, so it's not a core role!

Mr BARNETT: No, it is not. In-term classes will continue.

Mr Ripper: Teaching children is not their core business.

Mr BARNETT: This is ludicrous. I am prepared to give groups such as Surf Life Saving Western Australia or whoever it might be the opportunity to take summer holiday swimming and safety lessons to a higher standard if they can convince me and other interested parties that they can do it. It is up to them to do it.

Dr Gallop: Increased costs for families are inevitable and you know it.

Mr BARNETT: Families might get an increased service.

Dr Gallop: If you went to the Bayswater leisure centre now, what would it cost you for a lesson?

Mr BARNETT: It is very cheap. I cannot remember the exact figure.

Dr Gallop: It is $9 a lesson. What does it cost in the summer vacation? It costs $2.20. There will be an increase in costs and you know it.

Mr BARNETT: It will probably be a non-profit community-based group that succeeds, and it might not be universal; it might be regional centres and parts of Perth. The Leader of the Opposition will probably find a higher level of instruction. He will also find a choice for parents between base instructions and higher levels. Why should we be afraid of groups such as Surf Life Saving Western Australia and swimming clubs taking on summer vacation swimming lessons? I think it is a damned good idea.

The SPEAKER: Order! Before I call the member for Hillarys, I am not sure how many questions to record after that.

OPERATION GALLIPOLI

311. Mr JOHNSON to the Minister for Police:

Will the minister inform the House what impact Operation Gallipoli has had on outlaw motor cycle gangs? Opposition members peddle the story that the police are doing nothing.

Mr PRINCE replied:

I thank the member for some notice of this question.

For the past week or more the Opposition has engaged in a campaign to the effect that the police are ineffectual and are not dealing with outlaw motor cycle gangs. Operation Gallipoli, from 19 October to eight o'clock this morning, has resulted in seven drug charges, one charge of assaulting a police officer, five charges of driving without a licence, 18 charges of driving with a blood alcohol content in excess of the permitted amount, 118 traffic infringements, two charges of breach of bail, and one charge of possession of an unlicensed firearm. Further, there have been five search warrants executed, 666 vehicles stopped and people's names taken, 2 082 people put through the random breathalyser, and three weapons seized. In addition to that the police have managed also to arrest and charge people who are alleged to be responsible for the death of the man at Spearwood. They have attended several drug matters outside the outlaw motor cycle gangs. They have also this morning uncovered a major amphetamine factory. Indeed, overnight - that is, last night until this morning - throughout the whole State they have conducted 11 raids on premises - four in Bunbury, four in Kalgoorlie, two in Broome, and one in Perth. A 38 year old from Bayswater has been arrested and charged with possessing an unlicensed firearm. He will appear in court on Friday. A 46 year old in Maylands has been charged with breaching bail. He is in custody. He came to court this morning, but I do not yet know what was the result. A 30 year old in Broome has been charged with possessing unlicensed ammunition, possession of cannabis and unlawful possession of pearls. Those are members of outlaw motor cycle gangs, and that is public knowledge.

I inform the Leader of the Opposition that that has been done since 19 October to date, and all that he has done is carp and criticise. He has said that there is a bipartisan approach to law and order matters and dealing with such problems. According to the Notice Paper of 13 August, private members' business Order of the Day No 1 was the -

> *Police (Confidence Power and Review) Amendment Bill. (Dr Gallop).*
>
> To be read a second time.

Where is the Bill? Where is the speech? It is absolute hypocrisy for that lot to sit there and do nothing but carp and criticise. The men and women in the Police Service are out on the streets at night dealing with those people, and all that the Leader of the Opposition does is seek to make political points. He is a hypocrite!

The SPEAKER: Before I give the call to the next member, I have allowed in two questions rather lengthy interchanges of interjections. It appears to me that I have been too generous because from where I sit it really does not look so good.

BIKIE FUNERAL - TRAFFIC INFRINGEMENTS

312. Mrs ROBERTS to the Minister for Police:

I refer to the minister's claim in this place yesterday in relation to traffic offences committed by bikies last Thursday that "If the bikies can be identified they will be charged".

(1) Is it not the case that Polair 4 took extensive and extremely detailed close-up video footage of bikies breaking the law?

(2) Is this footage being used to identify and charge bikies who broke the law?

(3) What action is the Police Service taking to access the footage taken by television stations which also clearly shows bikies breaking the law?

Mr PRINCE replied:

(1)-(3) I have been in constant touch with the acting Commissioner of Police with regard to this matter; indeed, we had a meeting for more than an hour in which we discussed many things, including this. If those breaking the law can be identified, they will be charged.

Several members interjected.

The SPEAKER: Order!

Mr PRINCE: He did not tell me that. If they can be identified, they will be charged. That is that.

WATER RESTRICTIONS - SUMMER MONTHS

313. Mr BAKER to the Minister for Water Resources:

Will the minister provide this House with a brief report concerning the need for water restrictions during the summer of 1998-99?

Dr HAMES replied:

All members will be aware that some prolonged rain has occurred over the past few weeks which has eased the situation with our water somewhat. We have currently 257 million gigalitres of water in our dams. It is the lowest level of water we have had for 10 years. In fact, it represents one of the worst run-offs into our dams in our history. The daytime sprinkler ban that we have in place will need to continue but it is unlikely that we will need any extension of that ban, provided people are conservative with their water use. Members may be aware that the Water Corporation has been running a campaign to encourage people to reduce by 10 per cent their consumption of water. Over the first two weeks of that campaign people have achieved a better than 10 per cent reduction. We have approximately one million kilolitres in the bank, as it were, waiting for summer. Given that on some very hot summer days last summer one million kilolitres of water were used, it is not a great deal to spare. We are still encouraging people to be conservative with their water use and to make sure that they do not waste water so that we continue to achieve a 10 per cent reduction in consumption. If people do that, there will be no need for any further restrictions. We will continue to monitor the situation throughout the summer. In the Water Corporation's budget, $150m over the next four years has been allocated to improving our water supply. Some $15m has been brought forward to the current financial year, and will be used mainly to put bores into the Yarragadee formation to improve our current water supply.

BEACH PARKING, PAID

314. Dr GALLOP to the Minister for the Environment:

On 20 August this year, the Minister for Local Government justified the Government's decision to stop the Cottesloe Town Council from introducing paid parking at the beach by claiming in his media statement that "Both physical and financial freedom of access to our beaches are among the treasures of the Western Australian way of life". Is it still the position of her Government that physical and financial freedom of access to our beaches is one of the treasures of our way of life?

Mrs EDWARDES replied:

There is a difference between the Cottesloe beach situation and dealing with a coastal national park. Labor members have a very short memory on the issue of charging fees for national parks which have beach access. According to the information I have received, Nambung and Kalbarri National Parks both have beach access and fees were introduced for both under the former Labor Administration.

LEEUWIN-NATURALISTE NATIONAL PARK, VISITOR ENTRY FEES

315. Dr GALLOP to the Minister for the Environment:

As a supplementary question, can the minister confirm that visitor entry fees in the Leeuwin-Naturaliste National Park will attract a goods and services tax?

Mrs EDWARDES replied:

No, I cannot.

YOUTH FACILITIES AND SERVICES

316. Mr BARRON-SULLIVAN to the Minister for Youth:

I refer to the fact that there is very strong support throughout the State for the provision of services and facilities specifically for youth. Will the minister advise the House what this Government is doing to assist in meeting these community expectations?

Mr BOARD replied:

Before I answer the question from the member for Mitchell, I acknowledge the fact that in the Speaker's gallery we have some outstanding young Western Australians who have been nominated for the Silver Chain youth commendation awards. These young people have made an outstanding contribution to the community. I hosted an event for the Premier at lunchtime today to give recognition to what they are doing in our community.

[Applause.]

Mr BOARD: The youth grants award program, which was started only one year ago, has put some $1.5m in youth grants into the community of Western Australia. Most of those grants have been accessed by youth groups; that is, young people who form part of the youth organisations and community groups and who are working with the community, wanting to put something back into it and demonstrating to the wider community what young people are doing and achieving in Western Australia. A large part of those grants that have been accessed, whether through youth groups or local government, has contributed in many ways to facilities, and particularly to programs. The programs are ongoing.

I encourage all members to look at their electorates. We are distributing grants throughout the State. Approximately 53 per cent have gone to the metropolitan area and 47 per cent to the country. I am endeavouring to ensure that grants are spread throughout the community. One of the encouraging aspects is that our new youth advisory councils have accessed about 10 per cent of the grants. This is a meaningful way in which we are able to give some real teeth to the councils which are providing services via youth to the community. I commend the program and look forward to applications.

POOLS, ISOLATION FENCING

317. Mr McGOWAN to the Minister for Local Government:

I refer to the story on the front page of today's edition of *The West Australian* under the headline "Pool tragedy adds to grim WA record" which details Western Australia's very poor record in the area of deaths by drowning. Will the minister reverse his 1993 decision to abolish compulsory isolation fencing in the interests of protecting the lives of young children in our community?

Mr OMODEI replied:

The opposition spokesman on local government needs to do a little homework on this issue. When the regulation was changed to introduce self-latching and self-closing doors and perimeter fencing, the isolation fencing regulation that was in place was to be for all new pools only. The regulation did not apply to another 40 000 pools that already existed. To bring all of those pools into line and to reduce the number of deaths by drowning, I as the Minister for Local Government introduced across-the-board perimeter fencing with self-latching and self-closing doors.

In the following years the number of pool deaths reduced. They have since gone up, more particularly in country areas where there are open water drains, dams and rivers. It is a very serious issue. My personal view is that people who have young children should have isolation fences around their pools. However, to apply an isolation fence regulation across-the-board and to have some retrospectivity in that regulation would not be acceptable to the community. There needs to be a very intensive education program to warn people about the possibility of drowning.

Members will recall that many of our playgrounds and places like Kings Park, for example, where there is playground equipment have pools and ponds that are not fenced, nor are the rivers around the metropolitan area, and some property developments have playground equipment adjacent to pools. It is a very vexed matter. The increase in the number of toddlers drowning has occurred primarily in country areas where there are dams and open water. Members opposite will know that children of four, five and six years and even younger, have a great propensity to bypass barriers. They may get a chair and open a pool gate so that their brother or sister is able to get close to the pool. Parents need to be very vigilant.

To that extent, last year we changed the Local Government Act to allow a person, other than from within local government, to be authorised to inspect swimming pools in urban areas. The Royal Life Saving Society is very keen to get into the business of inspecting pools and educating people in cardiopulmonary resuscitation - CPR - and ensuring that pool gates and fences and self-latching and self-closing doors do work. We have given it the ability to do that. This is a very emotional issue, but it would be almost impossible to introduce isolation fencing both across the board and retrospectively.

COUNT US IN CAMPAIGN

318. Mr MINSON to the Minister for Disability Services:

I noticed, with some interest and satisfaction, on news reports last night that the minister has launched a community education campaign called Count Us In. I would appreciate an indication from the minister of the objectives and general details of the program.

Mr OMODEI replied:

I thank the member for some notice of this question. As members know, as Minister for Disability Services, the member for Greenough introduced some sweeping changes in the disability area, and he is to be commended for that. The Count Us In community education campaign starts today. Some members may have seen it on television at lunchtime. Its aim is to enhance community attitudes towards people with disabilities, with the primary targets being adults aged 18 years and over and an emphasis on adults aged 35 years to 55 years. Research indicates that this is a group of people who are less aware of people with disabilities than are the younger members of our community. The research also indicates that about three out of five people regularly come into some contact with a person with a disability, either as a friend, a family member, a neighbour, a work mate or a member of the local community. There are 305 000 people with disabilities in Western Australia; that is, one person in six.

Yesterday I launched the Count Us In program. It includes a series of four 15-second advertisements produced for the campaign. Each features a person with a disability promoting the very important message: "See beyond my disability; see me and count me in." The campaign advertisements feature a person who is legally blind, Ben Sgherza; a person who is deaf, Melissa Ravlich; a person with a physical disability, Mallika Macleod; and a person with an intellectual disability - in this instance, Down syndrome - Nicholas Cartmel. The advertisements were developed through a rigorous program of research. The first will go to air today, and there will be a pause over Christmas and New Year. We will then review the campaign and evaluate what has come out of it. The total budget for the campaign is $285 000, and I commend the Lotteries Commission for contributing $120 000 to it.

WATTLE BLOCK

319. Dr EDWARDS to the Minister for the Environment:

Given that Wattle forest block is interim listed on the register of the National Estate by the Australian Heritage Commission, that earlier this year it was recognised as valuable by the Regional Forest Agreement World Heritage expert panel, and that it should be protected under forest management plan ministerial condition 7, why is the minister sending in loggers to Wattle block?

Mrs EDWARDES replied:

It is proposed that only part of Wattle block be logged.

WARWICK TRAIN STATION CARPARK

320. Mrs HODSON-THOMAS to the minister representing the Minister for Transport:

With respect to -

Dr Gallop: The minister is grandstanding on logging.

The SPEAKER: Order! I formally called the Leader of the Opposition to order for the first time.

Mrs HODSON-THOMAS: As I was saying, with respect to the Warwick train station car park -

(1) What is the ratio of paid parking bays to free parking bays?

(2) Are any statistics available to indicate the percentage of paid parking bays being utilised throughout the day?

(3) Are there any plans to address the problems caused by vehicles belonging to commuters being parked in nearby residential streets?

Mr OMODEI replied:

The Minister for Transport has provided the following response.

(1) The ratio of paid parking bays to free parking bays is 466:434.

(2) No. However, from observation, the paid parking area is generally full from between 9.30 am and 10.30 am each day.

(3) In recent months an additional 80 bays - 67 paid parking and 13 free parking - were provided at the Warwick railway station car parking area through reconfiguring the facility. A new railway station and passenger interchange, including a parking area to accommodate 660 vehicles, will be constructed next year just south of Hepburn Avenue in Greenwood. It is expected that the new station will attract a significant number of passengers who currently use Warwick station. In the long term, this will overcome the parking problems being experienced there.

GOODS AND SERVICES TAX - EDUCATION

321. Mr RIPPER to the Minister for Education:

(1) In view of the minister's previous confusion about the impact of the Liberal Party's goods and services tax on school fees and also in view of the undeniable effect this new tax will have on education costs, such as canteen lunches, school uniforms, excursion costs and books, will the State Government be making a submission to the inquiry to be held by the Federal Government into the application of the GST on health and education?

(2) If not, why not?

(3) Does the State Government regard the two-week inquiry into this issue as adequate?

Mr BARNETT replied:

I thank the member for some notice of this question.

(1) The finer details of the goods and services tax legislation will now be developed. A lot of work has been done already. We will find that some refinements in education will be needed because issues will arise. As I have said when the member has raised this issue before, it is my clear understanding, confirmed by the then federal minister for schools, Senator Chris Ellison, that compulsory fees or charges will not attract the GST. In the legislation this Government has before this Parliament, it proposes to have mandatory charges for consumables and disposable items, and perhaps excursions. If those opposite support this proposal for mandatory charges, those costs will not attract the GST. If, however, the Labor Party has its way and makes these charges voluntary, those costs will be subject to the GST and, moreover, the assistance scheme will not be available to people. Those opposite want to be very careful on this issue.

(2)-(3) As to the inquiry, the issue of the impact of the GST on education costs will be a topic discussed between federal and state ministers at the Ministerial Council on Education, Employment, Training and Youth Affairs, MCEETYA, meetings.

Mr Ripper: Will you make a submission?

Mr BARNETT: I do not intend to make a submission directly to the inquiry on education. However, I will now deal very closely with Dr Kemp and I expect there to be a schools ministers' meeting before the end of the year. Clearly the GST will be discussed.

SALINITY ACTION PLAN

322. Mr MASTERS to the Minister for Regional Development:

The Government has begun the process of making the salinity action plan a publicly-owned plan. Can the minister advise what public consultation has occurred, what consultation still remains to be undertaken and what actions and time frames now remain before the revised plan is presented to the public in its final form, recognising that significant areas are affected by salt within the Shires of Busselton and Capel.

Mr COWAN replied:

The Western Australian State Sanity Council, through a reference group, has been able to go through the process of redrafting the salinity action plan. To date, seven meetings have been conducted throughout regional Western Australia to discuss proposals for the redraft. The draft plan has been put before Landcare groups at those meetings and submissions have been invited.

As to the consultation that remains to be undertaken, the council intends to review the submissions, of which there have been over 100, this month and next month. Immediately after that, a revised draft plan will be released for further public consultation. The draft is expected to be completed by the end of this year, and we envisage that it will take, through the public consultation process, until March before a final draft plan can be placed before the community. It will be some time after that before the plan will be accepted. I imagine that we will have an updated final draft of the salinity action plan before 30 June next year.

WATTLE BLOCK

323. Dr EDWARDS to the Minister for the Environment:

(1) Is it not the case that the temporary control area at Wattle block is totally within the area interim listed on the Register of the National Estate?

(2) Does the minister regard the forest in the Wattle block temporary control area as having high conservation value?

Mrs EDWARDES replied:

(1)-(2) The area which is subject to logging is part of the forest management plan. Interim listing does not stop logging, and has not done so in the past. If the member, together with her map, wants a briefing, I will be pleased to provide one.

BUNBURY PORT, TENDERING OUT PORT SERVICES

324. Mr OSBORNE to the minister representing the Minister for Transport:

Opposition claims that the work force of the Bunbury port will be thrown onto the scrapheap in the event of tendering out various port services have created unnecessary alarm in Bunbury. Will the minister outline the process undertaken by the Bunbury Port Authority to investigate the feasibility of tendering out, and detail any assistance the current work force will receive to ensure their future employment?

Mr OMODEI replied:

The Minister for Transport has providing the following response -

The Bunbury Port Authority Board has decided to market test and, if suitable, to outsource the provision of services in the Bunbury port. Outsourced services may include stevedoring, mooring, unmooring, pilotage transfer, hold cleaning of vessels and other associated activities. Employees of the Bunbury Port Authority will be assisted if they so wish to put in a submission for the provision of services in their own right; that is, for the establishment of an employee company. The Bunbury Port Authority Board has agreed to contribute up to $25 000 for employees to engage a private consultant to develop and submit the tender on their behalf.

The tender process will be subject to State Supply Commission guidelines and evaluation criteria for the contracting out of services. If contracting out proceeds, the employees will have the opportunity to transfer to the new employer. The Bunbury Port Authority will give some preference to those submissions which give priority of employment to the existing work force. Those employees who do not wish to transfer their employment will be considered for redeployment or redundancy in line with government policy.

INDUSTRIAL AND COMMERCIAL EMPLOYEES HOUSING AUTHORITY HOMES, SALE

325. Ms MacTIERNAN to the Minister for Housing:

On 23 May 1996 the minister received legal advice that there were possible breaches of the law in relation to the sale of Industrial and Commercial Employees Housing Authority homes in 1995. Last week the Minister for Fair Trading said that the matter was not referred to his department for investigation until 30 March 1998.

(1) Why have the minister's officers sat on this matter for nearly two years after obtaining legal advice before referring the matter to the Minister for Fair Trading?

(2) Is it not true that the minister would have done nothing to deal with this disgraceful episode if he had not been shamed into it by the Opposition?

Dr HAMES replied:

I thank the member for her question and for some notice of it.

(1)-(2) My officers have not sat for two years doing nothing after obtaining legal advice. They prepared a report back in July 1996, and that report went to the Industrial and Commercial Employees Housing Authority Board, which also sought legal advice. In November 1996, based on that legal advice, the ICEHA Board decided that no further action was warranted. The matter was left at that time until the issue was again raised by the member for Armadale; in the past I have given the member credit for her actions. Once that happened, I again reviewed the issue and referred it to Crown Law for legal advice. The legal advice on that occasion suggested that there was the possibility of action being taken, and that it should be referred on. I did so. It was referred, as stated correctly by the Minister for Fair Trading, on 30 March 1998, not 30 May as indicated in the copy of the member's question provided to me.

DAWESVILLE DEVIATION

326. Mr MARSHALL to the minister representing the Minister for Transport:

Members of a local progress association in my electorate are concerned that the Dawesville deviation may be curtailed if the Peel deviation receives approval to commence. Is the Dawesville deviation on schedule and, if so, on what date will work begin?

Mr OMODEI replied:

The member for Dawesville has been most persistent on this matter. The Minister for Transport has provided the following response -

A decision on the Peel deviation will be made before the end of the year. The outcome of this decision might have an impact on the timing of the Dawesville deviation project, which is scheduled to begin in 2000-01.

WATER CONSUMPTION, ILUKA

327. Mr BAKER to the Minister for Water Resources:

I refer to the recent revelation that the residents of Iluka in the City of Joondalup are the greatest consumers of scheme water in the Perth metropolitan area. Has the minister inquired into the reasons for this high rate of water consumption; and, if so, what were his conclusions?

Dr HAMES replied:

The Government has looked into this matter. Iluka was listed as one of the very high water usage suburbs in the Perth metropolitan area. The average water consumption per head of population is about 350 kilolitres, and the consumption in this suburb, along with many others on the coastal strip, is well over 600 kilolitres. Iluka is a relatively new suburb with 50 per cent of its homes aged two years or younger. Therefore, much work is being done in the area on watering gardens. I indicate to members of those communities that it is appropriate in those areas to install bores, a concept the Government is promoting. The use of expensive scheme water is not appropriate. Also, we are sending out a booklet to members of that community titled "Waterwise Guide to New Gardens". Therefore, we are providing guidance to the residents of Iluka in garden planting and water use to help reduce that high level of water consumption.
