WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Friday, 9 May 1997

Legislative Council

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

PETITION - LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Hon Kim Chance presented the following petition bearing 48 signatures -

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

The Petition of the undersigned respectfully showeth:

Our wish that any changes to the state's industrial relations system should recognise the special needs of employees to be protected from disadvantage, exploitation and discrimination in the workplace, and that we are opposed to the Labour Relations Legislation Amendment Bill 1997 which represents an attack on employees, their unions and personal freedom in Western Australia.

Your petitioners most humbly pray that the Legislative Council, in Parliament assembled will: Defer consideration of the Bill until after May 22 1997 to enable those Members of the Council elected in December 1996 to consider the Bill when they take their places after May 22, thus (a) enabling employees to participate in legitimate industrial action to gain better working conditions without the threat of massive fines and imprisonment, and (b) ensuring employees who are unfairly dismissed have access to a fair hearing before the Industrial Relations Commission including the right to proper compensation for unfair dismissal and that the Industrial Relations Commission retains the role of "independent umpire" without interference from Government or the Minister for Labour Relations.

And your petitioners as in duty bound, will ever pray.

[See paper No 441.]

PETITION - COMMUNITY BASED MIDWIFERY

Hon J.A. Scott presented the following petition bearing 138 signatures -

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

We, the undersigned residents of Western Australia are concerned that women do not have Choices in Childbirth, specifically choices as to where and with whom they give birth and that recognition is not given that continuity of midwifery care throughout pregnancy, childbirth and the post natal period makes a vital contribution to the future health of the family and the community.

Your petitioners therefore humbly pray that the Legislative Council will ensure State Health Services include Community-Based Midwifery as a part of Maternity Services and make recommendations for appropriate coverage under medicare.

And your petitioners as in duty bound, will ever pray.

[See paper No 442.]

PETITION - GUILDERTON REGIONAL PARK

Hon J.A. Scott presented the following petition bearing 121 signatures -

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

We, the undersigned residents of Western Australia support the establishment of a Regional Park immediately to the south of Guilderton in order to protect the mouth and lower reaches of the Moore River and the significant dunes and coastal heathlands south of the mouth of the Moore River.

Your Petitioners, therefore respectfully request that the Legislative Council will give this matter earnest consideration, and take urgent action to acquire their land before it is further rezoned or developed.

And your petitioners as in duty bound, will ever pray.

[See paper No 443.]

MOTION - JOINT STANDING COMMITTEE ON COMMISSION ON GOVERNMENT

Reports to be made Order of the Day

HON J.A. COWDELL (South West) [11.07 am]: It is appropriate in this, the first hour of our sitting today, that we consider some of the injunctions of the Commission on Government and reforms it proposed, prior to our moving to the industrial relations legislation at midday. I move -

> That the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh reports of the Commission on Government Joint Standing Committee be made an Order of the Day for the next sitting of the House.

The Opposition is aware that when the commission was actually sitting the Press gave its deliberations a reasonable coverage. However, since then, many of the commission's proposals have been forgotten by the public and ignored by the Government. It is therefore time to remind the Government of some of those recommendations, some of which are more salient than others.

The current situation is summarised well by two of the regular commentators on the affairs of this Parliament, David Black and Harry Phillips.

Associate Professor Black, in one of his *Sunday Times* commentaries, noted as follows-

> To my mind, the reasons the Court Government took so long to set up the Commission on Government (COG) can be summed up in its response to one of the recommendations in the final fifth report.
>
> In recommendation 247, the COG, while acknowledging "the importance of codes of personal conduct and ethical behaviour on the part of all public officials", went on to assert that its inquiries had demonstrated "there should be substantial institutional reform to prevent corrupt, illegal or improper conduct in the Western Australian public sector".
>
> The Court Government was blunt in its response: "To the extent that this recommendation can be taken to suggest that the problems which arose during the WA Inc period were not the result of corrupt or improper practices by individuals in power it is not accepted."
>
> At the same time, the Government, in itemising the structural reform it had already undertaken (including the establishment of the Anti-Corruption Commission and the Public Sector Management Act 1994), did allow the possibility of "further institutional reform to the extent that it is necessary and practicable".
>
> For a variety of reasons, including the delay in its establishment and its own drive for comprehensiveness, the COG reports, although well produced and valuable, lack the political potency that characterised the Fitzgerald Report in Queensland.
>
> Thus the Government has chosen to accept some recommendations, reject others and leave many to be determined elsewhere.
>
> The latter include recommendations concerning the operations of Parliament and parliamentary privilege, which the Government deems are not matters which are appropriate to be decided by executive action.
>
> Another area in which I support the Government is in its rejection of such recommendations pertaining to the operations of the Cabinet as having the individual contributions of ministers recorded in the minutes.

The Government does not seem to have acted in that regard, particularly with respect to recent royal commissions. To continue -

> This would arguably not only reduce the extent of frank and open debate within Cabinet but challenge the whole concept of collective responsibility . . .
>
> Also, on electoral reform, all the indications are that in the life of the next Parliament we will see the overdue move to one-vote-one-value for the Legislative Assembly.

An optimistic view. Professor Harry Phillips was perhaps more accurate when he was quoted as follows in *The West Australian* -

> He predicted that it would take another four years before the COG recommendations become an electoral liability.
>
> "At the end of the decade one of the contributions to the election result may be that they missed an opportunity when the climate was right for more forthcoming reforms," Professor Phillips said.

The coverage of these reports on the Commission on Government, all five volumes of them, and the 11 reports of the joint standing committee, on which there are five members from this Chamber, have received scant attention. This House might have debated, on my motion, perhaps one or two of those 11 reports. The motions sat on the Notice Paper year in, year out without consideration.

Of course, if the reports were not considered per se, there was no passage of motions calling on the Government to implement any of these reports. This House did from time to time, but on very few occasions, see the Government move, by virtue of legislation, to introduce some reforms proposed by the COG. Generally the Government's commitment was minimal. In many areas the Government handballed responsibility back to Parliament, although Parliament never considered the reports. Therefore, it has not recognised that the responsibility was handballed back to it. On many occasions in the official Government response to the report, there is the comment, "This is a matter for Parliament, not for the Executive Government." Time and time again this response came up, but because the Government said the matter was entirely up to Parliament and the Parliament has not bothered to formally consider those recommendations, they went nowhere.

It is now time to remind the Government and the Parliament of their obligations. Some progress has been made in making structural changes to be able to accommodate this. A change has been made in the sessional order, and I compliment those who participated in the informal committee, so that the House might now formally consider committee reports on a Thursday morning. They were never considered in the past. This House may also now, by virtue of the limitation of urgency motions, get around to the substantive motions more often during the course of the week. These are constructive reforms that the Opposition looks forward to utilising. The Opposition will also look forward to utilising the introduction of private members' Bills and, hopefully, their passage from this Chamber to another place. The Government will be able to consider private members' Bills in the other place in the same way this House considers government legislation; that is, in a more independent frame of mind.

The motion I have brought before the House this morning is more in the nature of a reminder call. If members consider the overall record of the Government's commitment to the COG recommendations, they will find that the record is not good. The coalition has fully supported only 22 recommendations of the COG. It has given qualified support to 105 recommendations and it has opposed 136 recommendations. I hope that comes to 263 - it should, otherwise I am in trouble. Nevertheless the situation is that the Government has fully supported only 22 and partially supported 105. In comparison the Opposition, having fully considered all the recommendations, has decided it can fully support 179 recommendations of the COG. That compares with the Government's fully supporting 22.

The Labor Party can give qualified support to 80 further recommendations and opposes outright only four recommendations. The Government opposes outright 136 recommendations. There is unanimity on four of those recommendations. Members opposite will probably be aware of the Opposition's unanimity on Robson rotation, block voting and a few other essential matters that apply to the Parliament.

The problem is that even though the Government has come up with unqualified support for only 22 out of the 263 recommendations, it is already backsliding. We had an assurance before the election about one-vote-one-value, but now we find that assurance evaporating. It is important that we get the Government up to the mark on the recommendations it fully supports before they slip into columns headed "partial support" or "outright opposition". Already, 136 recommendations are in the outright opposition column.

We will move systematically through some of the reports I mention in this motion, but it is opportune to make some urgent reminder calls at this stage, given that we may not cover all those recommendations in the first hour of this debate.

Foremost among those recommendations is recommendation 134 of the Commission on Government report No 2, part 2. This is the considered opinion of the Commission on Government. It may have something to do with other matters which will come before the House. I almost read the recommendation about Ministers shaking the fundraising can, which I did not mean to raise at this stage - although it is no doubt appropriate. Undoubtedly, fundraising will be very good following the passage of legislation through Parliament next week as one class of donor will no longer be in the market place.

Hon John Halden: That is politics Singapore style.

Hon J.A. COWDELL: Indeed.

Hon Cheryl Davenport: If you criticise the Government you get the chop.

Hon John Halden: I would hate to make that comparison; I am too generous to do that!

The PRESIDENT: Order!

Hon J.A. COWDELL: Recommendation No 134 reads -

> There should be no restrictions placed on political donations from trade unions or corporations provided that the donations meet the requirements of disclosure contained in previous recommendations.

Members would be aware that at the time of the Commission on Government we had a wide ranging discussion on political donation per se, during which the Opposition proposed that we consider a ban on overseas donation on the basis of concern about influence on our political system by overseas donors. We saw the example recently in the American presidential election of donations to both sides of politics by the Chinese Government, about which concerns were expressed. The Labor Party raised this issue before the Commission on Government but the proposition was not adopted. The Labor Party's view is still that a ban should be placed on overseas donors.

Also, a second category of donors was considered; that is, donors who received government contracts. We could see scope for corruption of the political process: The Government privatises whole sectors of what was previously public administration to the private sector, and suddenly one has donation to the governing party from the new entrepreneurs. These days we see not only the privatisation of whole sectors by the Government, but also a reduction of the public sector from 113 000 to 90 000 employees through contracting out. We are presented each year with a bill of $60m for consultants, yet no limitation is placed on that class of donor. No limitations are placed on overseas donors, be it Government or corporations, and their interest in our political system.

Hon N.D. Griffiths: Is that what Mr Kierath was doing in China?

Hon N.F. Moore: Or Terry Burke?

Hon J.A. COWDELL: He was looking at the Chinese industrial system, no doubt. No restriction is placed on overseas donation or on contractors who take over sectors of public administration.

It is not entirely true that no ban will be made on corporate donations as one sector is to be banned - the union sector. Obviously, union donations were going to the wrong political party. The Commission on Government considered this matter and made recommendation 134, about which it commented -

> Restrictions on who can make donation are defended on the ground that individuals should make the decisions concerning donation and that institutions should not be permitted to make donations on behalf of their members without the consent of each member. Organisations and institutions argue that while their members may have individual thoughts on donations, if it is within their rules or articles of association that political donations can be made and it is to be to the collective benefit of the organisation that political donations be made, then they should be allowed . . .

The Commission on Government went further -

> We believe that limitations on certain donors are not necessary in Western Australia. The disclosure ethos operated throughout Australia, particularly at the Federal level, has been one of transparency in political donation and expenditure.

Despite that recommendation, the Government has determined that one class of donation is improper; that is, donations from the workers. It is all right for public companies through executives in closed boardroom sessions to make any generous donation they want to the Liberal Party, but it is not all right for the unions to make donations anywhere else. The limitations will apply to not only donations, but any political expenditure.

This is an urgent reminder: I thought it was appropriate, given that the House is considering reports of our Joint Standing Committee on the Commission on Government, that we remind members of recommendation 134. We are about to trample that recommendation into the dust on this very day.

Perhaps while I am covering political donations, I should remind members of recommendation 142, which refers to certain other classes of political donation. It refers to local government. The Local Government Act 1960 should be amended to provide that candidates in local government elections should be required to disclose all donations from a single source totalling $200 or more. The Government has also ignored this recommendation. Having observed some of the practices in local government only a week or so ago, I know this is in need of urgent action. People need only look at the reports and the evidence taken by the Wanneroo Inc royal commission to realise that disclosure of donations at local government level and of donations through local government mayors to political parties must be regulated, but the Government has not addressed that recommendation either. The only areas it wants to address are union donations and union expenditure of any sort.

I cannot avoid mentioning recommendation No 50, only because Hon Norman Moore has on many occasions chided me and taunted the Labor Party on this matter. Recommendation 50 refers to members of the Legislative Assembly

who resign without due cause. We have had situations where members on the Labor side of the Chamber have resigned prematurely from the Legislative Assembly, thus causing by-elections. Members from the coalition side have done the same. On many occasions the Minister has yelled across the Chamber that we must stop this terrible activity. I agree with him. Obviously it cannot be done on a voluntary basis.

Hon N.F. Moore: I didn't say that. All I said was that you made a statement and a week later Ian Taylor resigned and you did not attribute anything you said to that event.

Hon J.A. COWDELL: We supported a recommendation to have constraints in place when the Minister raised that question with us.

Hon N.F. Moore: I do not share your views.

Hon J.A. COWDELL: We propose a system that some penalty be imposed for early resignation. What is the Government's response to this? Recommendation 50 said that it would be very difficult, in practice, to determine what are genuine circumstances for retiring from Parliament. We have seen no action whatsoever from the Government; however, we are willing to act and introduce legislation to impose a penalty.

Hon N.F. Moore: But not retrospectively.

Hon J.A. COWDELL: No, not retrospectively. I know the Government's commitment has a proposal to retrospectively -

The PRESIDENT: Order! I ask the member not to talk to the Minister, but to talk to me.

Hon J.A. COWDELL: In this regard we do not propose retrospective legislation, but we challenge the Government on this recommendation, as we will on others, to live up to its rhetoric, when saying that it wants to improve the government system to prevent corruption. We will bring in the proposals as private members' Bills and put them to the Government, and it will have a chance to vote on them, either for or against.

Hon N.F. Moore: I will seek to put in a retrospective clause.

Hon J.A. COWDELL: The motion mentions 11 individual reports, and I will refer to some of them. In summary, these are areas where the Government has refused to undertake any legislative action and we in the Labor Party commit ourselves to reform in these areas: Enhancing the operation of the Freedom of Information Act in line with recommendations 4 to 10, and 17 - if the Government refuses to act on that, we will; and introducing privacy legislation in line with recommendation 4. The Government has said that it will conduct an inquiry into this matter during its current term. We will bring that matter to the attention of the Government so that it honours the undertaking in its formal response. Then there is the matter of improving access to Cabinet records, which is mentioned in recommendations 13, 14, 15 and 16. The Government has said that it is not interested in improving accessibility to Cabinet records. We will move in this area.

Hon J.A. Scott: Unless it is Carmen Lawrence's Cabinet records.

Hon J.A. COWDELL: That is right. Increased ministerial and departmental accountability to Parliament is covered in recommendations 23 to 27, 30 and 31. The Government has declined to act to increase accountability to Parliament. We will act. The Government has refused to act on recommendations 32 to 37; that is, to enact legislation to establish the independence of the Auditor General and to ensure that the activities of all government departments are properly audited. The Government says that it will not act in this regard. We will.

Then there are the recommendations regarding electoral reform for the Legislative Assembly and the Legislative Council, referred to in recommendations 40 to 50 and 53, 250, 255 and 256. The Government started off very well here. Prior to the last election the Premier announced fairness would be introduced to voting practices for at least the Legislative Assembly, if not the Legislative Council. We would get away from the situation where one seat in the country could have 9 000 voters and one in the city could have 31 000 voters, but each of those people have one vote. The Government said it would move on that. Of course, after the election it does not matter and it is shelved. The Government did not propose reform in this Chamber, although given the change in composition it may change its mind.

[Interruption from the gallery.]

Hon E.J. Charlton: Go and do a day's work.

[Interruption from the gallery.]

Hon E.J. Charlton: Heil Hitler!

The PRESIDENT: Order, Minister! I will make the comments that have to be made. My job is to ensure that the business of this House continues. In my judgment, the actions I have been taking are the right actions.

Point of Order

Hon E.J. CHARLTON: Mr President, I am becoming increasingly disturbed by what has been going on here in the last little while. I acknowledge what you have been attempting to do. However, I wonder how long we intend to put up with people breaking the law outside this place as well as inside it. I ask members opposite: If someone who had lost a child through an overdose of drugs came in here and shouted from the gallery, would that person be tolerated and allowed to carry on in the same vein that we have had to put up with in the last few minutes?

The PRESIDENT: Order, Minister! What has happened? Some people have come here this morning with limited time. They sat very quietly and behaved themselves until they were about to depart. They have not given me a copy of their program or their agenda and so I do not know what will happen next. For no more than three minutes they allowed their emotions to -

Hon E.J. Charlton: Mr President, I was not referring to them.

The PRESIDENT: They are a part of the disruption that is going on. In my judgment, apart from eating into Hon John Cowdell's time this morning, they did not do a lot of harm. Now we will be able to proceed. I will take a different stance if the circumstances over the next week suggest that I should. I think we have made great progress on a very controversial piece of legislation. Everybody in this Chamber has behaved extremely well. Those people do not know the rules. They do not understand the rules as we understand them and so they let their heads go for a minute. If the place is disrupted to the extent that it is unable to do its work at all, I will take a different stance and do something about it. However, until then I intend to do as I have been doing.

Debate Resumed

Hon J.A. COWDELL: As I was saying, it is important to remind the Government of some of the key recommendations of the Commission on Government, and particularly recommendation 134 today of all days. I referred to electoral reform and the introduction of one-vote-one-value. We come now to the definition of parliamentary privilege and establishing a right of public redress - recommendations 60 to 65. This is one of the areas that the Government skipped over on the basis that it was the responsibility of the Parliament rather than the Executive. The Executive runs this Parliament absolutely, and so it is an easy way of ducking the problem. I was particularly disturbed by a number of recommendations stating that it is the responsibility of Parliament not the Executive. However, it requires the appropriation of additional funds to do anything. If that is not a ducking the situation, nothing is. The Government was leaving it up to us but providing us with no money to do anything. Nevertheless, on the definition of parliamentary privilege and establishing a right of public redress, we will be bringing this, because it is the subject of one of our joint standing committee's reports, to the attention of Parliament because we believe there should be a right of public redress if people are mentioned here in an adverse way. They should be able to appeal to a committee for the right for their views to be presented.

I am not advocating the exact implementation of the recommendation of COG in this regard, which required you, Mr President, as the Presiding Officer, to search far and wide throughout the State for people who have been maligned to inform them of this case, and then allow them access to the process. We did not agree with that. In fact, the joint standing committee came up with some excellent recommendations to adapt the COG proposals more realistically to the situation as it applies at the moment. However, we proposed nevertheless that there should be some avenue of redress. We do not have an unlimited capacity for setting up committees in this Chamber; yet there is scope for a committee. It may be the committee would be charged - it cannot be as long as it is a joint committee - with the oversight of the Anti-Corruption Commission.

However, if it were to be a committee solely consigned to this Chamber that dealt with the Anti-Corruption Commission, it may be appropriate that the functions of that committee be expanded to other matters because if the committee were to deal only with the Anti-Corruption Commission, it may create its own agenda and create work where there is no work. However, if it had a number of functions, it may be able to operate effectively. As I said, if it were just a Legislative Council committee with oversight of the Anti-Corruption Commission, we could add the privilege question to that committee's terms of reference such that the public could have redress through that committee. We could also look to that committee's having a role in establishing an ethics code for this Chamber. Indeed, in one committee we could implement three reasonable Commission on Government recommendations. As I said, that could be done at no expense to the public purse, because we already have a joint standing committee on the Anti-Corruption Commission. The Legislative Assembly's message has been on the Notice Paper for some weeks, and we should respond one way or another.

The strengthening of the Anti-Corruption Commission - recommendations 68 to 70 and recommendation 83 - should be highlighted. The Government has not implemented a number of proposals in that regard. As I recall the Government's response, it was that it will get the Anti-Corruption Commission up and running, see how it operates and then have it consider this or that aspect. It would then report back and we could determine whether we have progressed. The Government will need to be reminded of those undertakings. It is an important area that I signal now.

The report goes on to refer to the enactment of public interest disclosure legislation to protect whistleblowers - recommendations 72 to 82. The current Administration came to office with much fanfare, lauding whistleblowers for highlighting information which was to the public good and which had come to light under the previous Labor Administration. However, once the Government had settled in it saw no need to pursue its commitment to any such legislation. It is appropriate that the Government address that issue. That was one area which the Government said the Anti-Corruption Commission should investigate and on which it should provide advice. We would need advice from groups other than the Anti-Corruption Commission, but I hold the Government to that undertaking. It should give that brief to the commission and get at least an opinion.

The report included a set of recommendations for enhancing parliamentary scrutiny of the Executive - recommendations 190 to 122. The Government must take up that issue and we should continue to remind it.

The issue of further regulation of political donations and finance was also raised - recommendations 128, 134, 142 and 145. I have already highlighted recommendation 142. It is opportune that the Government act on that recommendation because it relates to disclosure of donations at the local government level. It is appropriate that the Government now look at extending financial disclosure to that sector; in fact, it is very relevant that it act on that issue now.

Of course, I have highlighted under this section that the Government is proceeding to act on one aspect of political donations, but contrary to the specific and precise recommendation of the Commission on Government it is singling out one corporate donor sector to outlaw. There are plenty that should be in the queue before that sector, including government preferred contractors and overseas donors.

The report also refers to the need to enhance the role of the Ombudsman. We received a very valuable report from the retiring Ombudsman, who identified a number of areas that need to be addressed, as did the Commission on Government in recommendations 151 to 154 and 158 - areas that this Government has chosen to ignore.

Reference was also made to developing a parliamentary and local government code of conduct - recommendations 159 and 160, 163 and 166 to 169. It is important that we develop a parliamentary code of conduct, perhaps with the committee's assistance, but such a code would also be appropriate for the local government sector.

The financial independence of Parliament was also mentioned - recommendations 170 to 172. Mr President, we know that from time to time you have successes in respect of the financial needs of Parliament, and the televising of proceedings was one of those successes. Indeed, we did advance our cause in that regard. I suppose the new roof was also appropriate in that it enables us to continue to sit. However, specific proposals must be addressed to enhance the independence and functioning of this place, and we all know what must be done. The Government cannot simply duck by saying that that is the responsibility of Parliament. This area requires appropriation and the Government must come to the party. Parliament must come up with the specific requests first - and it will.

The report also refers to Parliament's endorsing the caretaker conventions. The current governing parties made a great fuss about this when they were in opposition. Now we find in the reports that Carmen Lawrence's memorandum to the Public Service of February 1993 is seen as quite sufficient in establishing the caretaker conventions and that there is no need to bring that memorandum before the two Chambers of this Parliament to consider whether it is appropriate or to add or delete sections. It is inappropriate that that memorandum of February 1993 be the definitive word on the caretaker conventions. The Government must act in that regard, as should we, in accord with the Commission on Government's suggestion.

The Commission on Government did not recommend any action on the regulation of government advertising and travel, and I believe it got this wrong. There must be action in this regard; we should have formal regulation, not informal rules that can be bent to suit the Government from time to time. Recommendation 183 should be strengthened.

Reference was made to the regulation of the government media service, which in itself needs addressing. The propaganda machine was to be severely restricted by this Government, but it has been one of the growth areas in the public sector. This Government has enhanced it and an additional unit has been established.

The report referred to the establishment of an administrative review tribunal, but the Government has not responded adequately to the COG's recommendations 204 to 214.

The making public of ministerial directions is a very reasonable request - recommendation 218. The Government has chosen not to act on that recommendation, and that must be highlighted as well.

The COG also recommended a tightening of the financial disclosure provisions for members of Parliament - recommendations 222, 224 and 225. These recommendations were in the main, but not wholly, adopted by the joint standing committee. They should be considered carefully by this House and the Parliament, as should the prevention of ministerial conflict of interest, recommendation 228, and the introduction of civic education, recommendation 253. We hope that there might be some progress, from the Premier's initial response to this, and that the conversion of the old Hale school building behind this Parliament is not sufficient to advance the cause of civic education. It is a useful start, but only that. The Government must do far more in this regard. As the Minister will know from my question the other day on how politics and legal studies were progressing in the upper school, I hope they can progress. I have always been a proponent of Australian studies at the upper school level.

[Debate adjourned, pursuant to Standing Order No 195.]

LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Committee

The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clause 1: Short title -

Hon TOM STEPHENS: I make some preliminary comments as we go into the debate in Committee. As members would understand the Opposition is opposed to this legislation in principle and in detail. We know that the Committee debate in the Chamber does not provide us with the opportunity to rehearse the arguments that were gone through during the second reading debate. We know the obligations that standing orders bring to us on how the Committee stage must be handled. However, it is appropriate to make some comments. We have arrived at the start of what will possibly be a long Committee debate dealing with a complex piece of legislation that amends three Acts. We are in Committee on a Friday, which is not totally unprecedented but is an unusual process and part of the Government's strategy to ensure this legislation passes through the Parliament before 15 May. We object to that time line and to the strategy.

Hon N.F. Moore: We are here today to give you more time within that framework.

Hon TOM STEPHENS: We would be happy to take that time after 22 May in order to ensure that the legislation could more accurately reflect the will of the people.

Several members interjected.

The CHAIRMAN: Order!

Hon TOM STEPHENS: Mr Chairman, I know that your task is not an easy one but you will do it extremely well. The Opposition does not want to engage in any processes that will make the Committee debate difficult or unnecessarily awkward for the Chairman. I will appreciate it if that process is respected by the other side as well. We will treat the Committee debate seriously. We will debate every clause and we will, as you know, Mr Chairman, oppose every clause because that is where we are at. We recognise that in the debate on the short title we have an opportunity to talk about the structure of the Bill. The guidelines tell us we can talk about the architecture of the Bill and how the combination of clauses will or will not achieve the policy agreed to at the second reading. We can talk about an alternative scheme or approach that would achieve the policy of the Bill. We know only too well that we are not to rehearse the second reading debate. We are not to refer to the Bill as if it were amended by the Government's proposed amendments, which appear on Supplementary Notice Paper No 6, when we are talking to the short title. Therefore, we will not do that.

However, our intention is to give this Bill a good run for its money during the Committee stage because we are opposed to it in principle and in detail. We also believe that the principles enunciated by the Minister do not find themselves reflected in the detail of the Bill. We will come to that at various stages during the Committee debate. We know that the Committee stage will inevitably grind along. Not only must we sit on an unusual day but also we had the second reading debate guillotined last night at midnight before the conclusion of Hon Graham Edwards' contribution, with other members wanting to speak.

Hon N.F. Moore: If you had taken two hours like most people, another six hours would have been available for other members to speak.

Several members interjected.

The CHAIRMAN: Order!

Several members interjected.

The CHAIRMAN: Order! We are not going anywhere at the moment. Let us make some progress on clause 1 and not rehearse what has already happened.

Hon TOM STEPHENS: We will not go any further other than to say that we suffered from the guillotine. The Minister has not been able to respond to that second reading debate and the points raised by us. I hope that the Minister might take some opportunity in this limited debate on the short title to respond to some of the points that were raised during that debate, within the confines of what is permitted by the Chair and the processes in this Chamber as regards the way in which the short title may be handled.

Having made those preliminary comments about the way in which we intend to handle the Committee stage, I can also indicate to the Chamber that over the weekend, despite the fact that we are opposed to the legislation, we will continue to work on drafting amendments for the consideration of the Committee as a way of expressing our opposition to and criticism of the clauses. We believe they do not accurately reflect the stated policy and principle of the Bill as enunciated by the Minister during the second reading debate.

We will then be in a position next Tuesday, when I gather the House will again sit in Committee, again subject to the guillotine, to consider the remaining clauses of the legislation.

We will press on now with the debate on the short title. The Bill states at page 2 that this Bill will become an Act to be cited as the Labour Relations Legislation Amendment Act 1997. I said during the second reading debate that it is necessary to be serious and also to add a bit of humour to the handling of this legislation, because through humour we can, hopefully, make some pointed references to what we are doing with this legislation.

I believe other short titles can be found to better describe the provisions of this legislation. Some of the titles that come to mind are the Political Handicapping Labour Relations Bill; the Labour Enslavement Bill; the Union Bashing Bill; the Ordinary Mums and Dads in Western Australia Bashing Bill; and the Let the Rich get Richer and the Poor get Poorer Bill. I know that I am starting off the debate in a light-hearted way, but I hope I am making clear our view of how this legislation has been drafted and what will be its effect. Some of my colleagues have a sense of humour that is much better than mine and will, no doubt, have versions of the short title that the Government may find more attractive. Another short title that is not humorous but accurately describes what this Bill will do is the Restriction of Political Expenditure and the Regulation of Union Practice Bill.

I recently saw a letter to the editor in which someone had dreamt up a name for the Bill which reflected even more accurately what it will do than does this short title. I had hoped to find it in the great wad of newspaper clippings that I have been keeping since only March of this year but which is already inches deep, but I could not find it. Other suggested short titles are a Bill to Restrict the Rights and Freedoms of the Ordinary Working Men and Women of Western Australia; a Bill to Give Unlimited Freedom to the Employers of Western Australia; and a Bill to Dismantle the Effectiveness of the Western Australian Industrial Relations Commission. All of those short titles are legitimate options to describe the effect of this legislation on the industrial relations system of Western Australia.

Hon B.K. Donaldson: You have a very fertile imagination. It is like writing a book!

Hon TOM STEPHENS: I am also feeling very tired at this stage, but I am looking forward to getting refreshed over the weekend and to coming back into this Chamber next week to go back into -

Hon Max Evans: You can have next week off, if you like.

Hon TOM STEPHENS: We would encourage members opposite to take off next week, the following week and the week after that, and to come back on 22 May and we will give them a Bill that will do us all proud.

Hon E.J. Charlton: Us all proud?

Hon TOM STEPHENS: I am speaking about us all.

Regrettably, the short title of this Bill is a short title for a Bill that does not deal appropriately with labour relations legislation in this State. I find some clauses of this Bill attractive. Those clauses are found at pages 6, 24, 31, 53, 60 and 62. I would like to see those pages of the Bill amended in a way that would deal appropriately with labour relations legislation.

Hon B.K. Donaldson: Have consequential amendments!

Hon TOM STEPHENS: That is right. Page 70 contains another clause that we would like to see expanded. There are ways of doing that, as the draftsperson would know. Another two clauses that I would like to see expanded are at pages 71 and 72; the draftsperson would know what I mean. Those pages of the Bill are blank. We believe that if those clauses were expanded, and if the existing clauses of this Bill were removed, we would have an appropriate piece of labour relations legislation at this time and would do labour relations in this State a great service.

During Committee, we will also outline some of the problems that arise in this legislation; and that will involve some considerable work over the weekend. We are faced with the disadvantage in Committee that we cannot argue about or oppose the policy of the Bill; we can argue only our opposition to the detail of the Bill. That leaves me at some disadvantage, because as I read the Minister's second reading speech, I am confused about what is the policy of the Bill. For example, the Minister's second reading speech states that the primary purpose of the Bill is twofold. We must then ask: Is the policy of the Bill just to achieve that twofold purpose that has been achieved by the completion of the second reading debate; that is, to reintroduce those labour relations legislative reforms that were first tabled in September 1995 but were not passed; and to make changes to the Western Australian industrial relations system to take account of the federal Workplace Relations Act 1996? If that is the twofold purpose of the Bill, then much of the detail of this legislation is inconsistent with the policy objectives as enunciated by the Government. I believe, regrettably, that those policy objectives are not achieved by the various clauses of this Bill.

We all know that the policy objectives of the Bill are wider than those twofold purposes that the Attorney General identified in his second reading speech. Before the Attorney General moves too far into this Committee debate the Opposition would like to know whether he is prepared to enunciate more clearly the policy intentions of this Bill. During the second reading debate reference was made to 10 additional items. The Attorney General indicated that the Bill contained changes to the pre-strike ballot provisions. As the Government knows, the Opposition and the Trades and Labor Council are prepared to accommodate pre-strike ballots in labour relations legislation. Regrettably, the detail of that Bill proves the Government is not serious about that policy objective. As one goes further into the Bill one finds that definitions in the legislation are endeavouring to achieve something much wider than that policy objective; that is, the pre-strike ballot as a prerequisite before any industrial activity and then additional interference in the processes of the union movement to make that ballot almost impossible to achieve.

The cancellation of award coverage and state awards when the state union's federal counterpart seeks federal award coverage for employees is listed as a policy item by the Attorney General. He says that policy objectives of the Bill are to enable state workplace agreements to override federal awards; to remove obligations on employers to show grounds for the dismissal of employees; and to remove the entitlement of dismissed employees to any accrued pro rata annual leave. If that is so, when we debate that clause and we argue against that, would we be in breach of the processes of this Chamber that say that we cannot do anything to the Bill that would somehow go against the policy objectives of the Bill? If those issues are not policy objectives of the Bill it would be handy for the Attorney General to state that. The Opposition would be delighted if those policy objectives were no longer part of the processes that were being unleashed through this Committee on the people of Western Australia.

Although this does not appear in the principal objectives to which the Attorney General referred, they are evidenced by the detail of the Bill that is aimed at limiting union political expenditure. The Opposition does not agree with that policy objective, and it is not contained in the Attorney General's claims of what are the two principal reasons for the Bill. The Opposition would be delighted, even at this late stage, to hear that the Government might desist from that objective. The detail of the Bill extends the financial obligations of union officials to include union employees. That is another policy objective with which we disagree and we would be delighted if it were withdrawn.

The detail of the Bill reveals a proposal to cancel agreements with employers for the collection of union dues and another to require consultation between employers and employees before a matter goes the Western Australian Industrial Relations Commission. That stated policy objective, a principle of the Bill that is stated in the Attorney General's second reading speech, is one that I embrace and endorse. I am sure that notion is embraced and endorsed by the Trades and Labor Council. Regrettably, the detail of the Bill does not achieve that result; it simply places people in more conflict without the opportunity for resolving the industrial disputation in ways that are fair and equitable. Therefore, that detail of the legislation should be appropriately amended, to at least achieve what the Government has in plain English stated is one of its policy objectives.

I believe the Government's subtext is that it is trying to remove the Western Australian Industrial Relations Commission from the role of umpire in the industrial processes of Western Australia.

An objective of the Bill is to remove from union officials the right of entry to a workplace and inspection of records unless an employee is or was a member of the union. The Opposition hopes that the Government might step back from that objective, even at this stage.

Is it the policy of the Bill to make ballots compulsory before any form of industrial activity can be undertaken for any worker across Western Australia? Is it a policy objective to apply this legislation only to union employees or to every employee? Is it a policy objective to restrict strikes in a narrow definition, or to widen the definition to include any form of industrial activity? If the Attorney General can clarify the policy objectives of that section, will he then be prepared to amend the detail of the legislation to restrict the current provisions in such a way that the legislation is made more in accord with the precise literal words in the Attorney General's second reading speech, where he refers only to pre-strike ballots, though the detail defines strikes in such as way as to be all embracing?

Is it the policy of the Bill to ensure that union members will participate in a pre-strike ballot before engaging in any industrial activity? Is it the policy of the Bill to prohibit participation by union members in any form of strike unless endorsed by secret ballot of all the relevant members? Is it the policy of the Bill to enable a person authorised by the Minister or any other person affected by the strike to seek an injunction against a person engaged in a breach or proposing to engage in a breach of this requirement? If that is the policy objective of legislation, it is inconsistent with other provisions of Bill, which are to ensure the sound working of the industrial relations system in Western Australia. Is the definition of the pre-strike ballot contained in the Bill the policy of the Bill? I hope the Attorney General will fall away from that definition and accept that alternative definitions may be a way of achieving the Government's objectives and are not as all embracing as those currently contained in that detail.

Is it the policy of the Bill to require that the Full Bench of the Western Australian Industrial Relations Commission declare that a branch of a federal union operates in conjunction with the state authority as though they were the same body if certain criteria as set out in the Bill are established? Is that a policy of the Bill that is immovable? Is it also a policy of the Bill to remove the protection of federal registration, and to require that pre-strike ballots be conducted as speedily as possible? If that is the policy of the Bill, the detail of the legislation does not achieve that. The detail of the legislation reveals an objective that drags out that process, by some calculations to around seven weeks. In those circumstances how is that process compatible with the notion of pre-strike ballots being conducted speedily?

Is it the policy of the Bill to specifically enjoin the commission to deal with an application for a pre-strike ballot expeditiously? If it is, the Bill requires amendment. Is it a policy of the Bill to enjoin the commission to endeavour to give a decision and any direction and reasons relevant to that decision within five days of the application being made? If that is the policy, it is wrong. The Government should not proceed with that policy. The legislation should not be amended to limit the time inside which the commission may make a decision, because the delay processes make the other policy objectives and principles of the Bill unworkable.

Is it the policy of the Bill to require that strike action, whether a stoppage, a ban or any other limitation on the performance of work, must conclude no later than 28 days after the declaration of the result of the ballot? Again, if that is the policy it is inconsistent with some of the other principles of the Bill. When we reach that part of the Bill we will indicate the exact problems of the detail and how it is inconsistent with other policy objectives.

Is it policy that any resultant strike should not be afforded any new legal protection under the Statute? If that is a policy objective it is a sneaky one because the second reading speech states regularly that the Labor Party needs to come to terms with the fact that its members are orphans, and that our British counterparts have accommodated pre-strike ballots in their industrial relations system. The Government has not recognised that from that context comes an opportunity to afford legal protection under the Statute, and if the Government was doing that in this Bill, we could have an opportunity for some less virulent criticism of the legislation.

Is it the policy of the Bill to ensure no immunity from civil action for unions which undertake strikes in accordance with the ballot process? This is a convenient moment to refer the Chamber to today's *The West Australian*. An article headed "Kierath law failed trial: unionists" by Mairi Barton reads -

> Unionists are claiming the acquittal of Perth union official James Fox on an extortion charge as a victory against Labour relations Minister Graham Kierath's industrial reforms.
>
> Only since Mr Kierath established the building and construction industry task force in 1993 to enforce a code of practice have union officials been charged under the criminal code.

This is the precise point to which we alluded when we spoke about the difference between the circumstances governing industrial relations in Britain and those applying in Western Australia. That is, the Criminal Code is still pulled out from time to time, as it was in this case, although the jury acquitted the union organiser.

Hon J.A. Scott: Mr Kierath found him guilty in the other place.

Hon TOM STEPHENS: And before he went to trial. Fortunately the jury ensured that the union official was found innocent.

Hon N.D. Griffiths: I understand that Mr Kierath wants to be an executioner.

Hon TOM STEPHENS: I note that one of the documents I left Hon Nick Griffiths to refer to last night - I do not know whether he did - details the sections of the Criminal Code that the Minister for Labour Relations has been sifting through in his efforts to obtain strategies aimed at attacking the union movement. Again, this is evidence of the need for the policies of this Bill to be clearly enunciated so that if there were an opportunity even at this late stage of providing some immunity from that madcap approach to labour relations in this State -

Hon Kim Chance: Hon John Cowdell mentioned that matter as well.

Hon N.D. Griffiths: I did not, because I had only 45 minutes in which to speak.

Hon TOM STEPHENS: I did not hear every word of the debate.

Is it the policy of the Bill to ensure there will be no immunity from civil action for unions which undertake strikes in accordance with the ballot process? If it is, that is a tragedy; but if we have an opportunity for that issue to be opened up, even at this late stage, I invite the Minister to do so.

Is it the policy of the Bill to enable the commission to order a ballot to be held on the application of the union, or one of its members, or a relevant employer, or an organisation of employers, or on its own motion where the commission has reason to believe that a form of strike is contemplated by members of the organisation? Is it the policy of the Bill to enable the Minister to direct the commissioner to order a ballot if he or she is of the opinion that a strike is contemplated by a union or its members, and that the safety, health, welfare or economic wellbeing of the community or part of it is at risk?

Is it the policy of the Bill to leave precise procedures for the implementation of the ballot as matters entirely for the commission to determine or are these issues to be addressed through the schedule or subsequent regulations? Is it the policy of the Bill to ensure that conciliation and arbitration powers of the commission are not diminished and that parties will continue to have access to the commission to seek sections 32 and 44 orders where a dispute is threatened or occurring?

Is it the policy of the Bill to preserve the rights and assets of individual union members? The policy of the Bill outlined in the second reading speech seems to set out an objective of ensuring that those assets of individual union members will be forfeited. Were that stated policy objective reflected in the detail of the Bill, that would be the difficulty. However, I understand that detail is not precise in the relevant clause.

Is it the policy of the Bill to protect by law employers who cheat and thieve from their employees? In many ways, if that is the policy objective, the detail of the Bill is aligned with that objective, because so much of the detail makes it extremely difficult for the Industrial Relations Commission, union officials, or anyone to address the imbalance against employees. Regrettably, the detail of the Bill weights the scales against the ordinary employees, and they will end up experiencing great difficulty in obtaining access to their legal entitlements - for instance, dismissed employees' annual leave entitlements. That is a policy objective. The detail of the Bill restricts that loss of annual leave entitlement to 12 months inside which the misdemeanour or offence may have occurred and which led to the dismissal of the employee. Nonetheless, that is a legal entitlement of the employee. It is an asset and it is being stripped from those employees by this legislation, so that what they have built up is being removed because of dismissal for a misdemeanour or an offence. If that is the policy of the Bill it is a great pity, and we would like the opportunity to rectify the situation so that employees could not be dealt with so harshly by the Statutes. Is it the policy of the Bill to remove the right to privacy of a union member who may want or need to keep confidential his or her union membership? If that is the policy objective, the Bill does that. It provides no opportunity for such protection any more. It has been said that the policy of the Bill is to implement the recommendations of the Fielding report, in part. Regrettably, this Bill does not do that. It goes against some of the observations made in the Fielding report relating to pre-strike ballots.

Is it the policy of the Bill to bring to Western Australia the labour relations regime and pre-strike ballot provisions of the United Kingdom? The Bill would need to be significantly amended to do that. Is it the policy of the Bill to reflect community views on labour relations issues? The Bill does not do that, despite the claims made by this Government. Like many members, I have received endless correspondence from people across Western Australia asking that their observations on this legislation be made available to the Chamber. It is difficult to choose examples when a lot of material is made available to members and many people ask them to present their case to the Chamber. I will do the best I can with a small number of those. I will pick virtually at random a couple of the items that came my way.

Hon N.D. Griffiths: If it were not for the guillotine, you could still be making your second reading speech because you have so much to say.

Hon TOM STEPHENS: That is right. I refer first to a submission from Walter Horeb from Inglewood -

> Dear Mr Stephens,
>
> I believe you are interested in receiving feedback from community members about the Court Government's 3rd Wave of Industrial Relations legislation. I am happy for any or all of my letter to be read out during the parliamentary debate. I have also enclosed some extracts from 4 books which I consider as relevant. Please feel free to use this material in your speech if appropriate.
>
> When other political events make Senator Colston's rorts scandal seem minor, then Australian politics has definitely shown us its ugliest face. It is important that Mr Kierath's legislation is not seen as only the work of an extremist Minister, or even of a hard line government. Primarily, it is part of a broader agenda which becomes clearer when it is placed in the context of other very recent events at both state and federal level. It is to these events I now turn.
>
> The first was Mr Kierath's comment about his trip to China. His stark observation that we need to work ten times as hard to stay competitive was made almost simultaneously with BHP's announcement that it was closing its Newcastle steel operations.
>
> Perhaps we should see Newcastle as a powerful example of how uncompetitive and inefficient Australian workers are. If this really is the case, then any legislation which tries to develop more efficient work practices should be applauded.
>
> Such an analysis is supported by many from the conservative side of politics, but it is excruciatingly flawed. These three events are linked, but not by any so called rational accurate interpretation of how things really are. The link is a simplistic and heartless world view, in which profits are the only worthwhile good.
>
> This economic irrationalism, this wider agenda which has spawned Mr Kierath's legislation, is rapidly becoming the object of derision amongst thinking Australians, and, unfortunately, also amongst non thinking Australians. (Unfortunately in the sense that the reactions against economic rationalism amongst some are equally as dangerous as the evil being reacted against). The agenda which gives rise to Mr Kierath's legislation is now only credible in the eyes of the power elite which propagated it in the first place.
>
> At the core of economic rationalism lies a complete abrogation of responsibility for the wider community. BHP's callousness is hard to believe, and even harder to stomach. The Big Australian, once proud of its image as Australia's leading corporate citizen now stands before us, as a naked corporate opportunist. In the words of a BHP executive, it was not a case of the Newcastle operation not being profitable, it simply was not profitable enough. And the Federal Government's response is that of Pontius Pilate.
>
> "What will be, will be." Profits rule!

The letters keep coming. This is my first opportunity to open a letter from Margaret van Keppel. She states -

> W.A. is a wonderful place in which to work and live - please let it stay this way, for present and future generations.
>
> Submitted with respect and in good faith.

I do not know what the experience of other members has been, but I am receiving submission after submission in the mail, urging the Chamber not to proceed with this legislation. I received an analysis of the legislation from the International Centre for Trade Union Rights in Europe. Another in which members on my side of the Chamber, and perhaps members opposite, will be interested comes from an address at 582 Queensberry Street, North Melbourne. In response to my referral of this Bill to the person for comment it states -

> Dear Mr Stephens,
>
> Thank you for your letter of 7 April.
>
> Very briefly, I have little or no sympathy with the proposed Bill. I take it that it is largely a repetition and extension of the Act put through the W.A. Parliament by Mr. Kierath, a couple of years ago. Its aim is to further curtail the power of the union movement, in pursuit of a policy of further lowering wage levels, a policy initiated by the US in 1973 and pursued ever since. Due to the decline in union membership, union power is only a shadow of what it was twenty years ago. By reducing the legal rights of the union to intervene on behalf of the members, the Bill is essentially designed to leave the industrial worker, who has no economic power, without support, to face his employer alone, with the employer having the power to hire

> and fire. It is easy to understand what "freedom of contract" between two parties so unequal in power means in practice . . .
>
> Legislation aimed at weakening unions and compressing wages is justified on the basis of the argument that it is inordinately high wage levels which are the main factor in maintaining an inordinately high price level for Australian exports. The economic crisis with which Australia is now faced is due to much more complicated factors which I have tried to analyse in the enclosed paper.

The author of this letter has expressed his opposition to the Bill. The paper he sent me was not resonant with all of my own philosophies. Hon Kim Chance might find some of it more attractive than I did. Members will be interested to know the letter is signed by B.A. Santamaria. He enclosed a special edition of *News Weekly*.

Hon Kim Chance: We'll swing Bob around to the left yet.

Hon Derrick Tomlinson: Des Dans quoted Mr Santamaria in 1979.

Hon TOM STEPHENS: In reference to which debate?

Hon Derrick Tomlinson: It was the debate on the Industrial Relations Act 1979.

Hon TOM STEPHENS: I am not surprised. Was he in support of or in opposition to the legislation?

Hon Derrick Tomlinson: I think Mr Santamaria is consistent, which, when we read that debate in 1979, is more than we can say for members of the Australian Labor Party.

Hon Kim Chance: There is a difference between consistency and flexibility.

Hon TOM STEPHENS: That is right. As well as that, there is a recognition that over an extended number of years the Labor Party has had to take various steps in the Parliament, as it does with this legislation, to try to defend the working conditions of the ordinary men and women of Western Australia. The approach that was adopted by the ALP in 1979 was aimed at opposing provisions in the Industrial Relations Act and maximising the opportunity for the employment conditions of workers to be protected and supported by legislation. Regrettably, the social context keeps changing. Through assault and attack the conditions of workers continue to be under threat. The latest assault on the working conditions of the ordinary men and women of Western Australia is to be achieved by dismantling the vestiges of support for those conditions that are contained in that Act of 1979.

It has already been amended too many times. Apart from the President and Hon Phil Lockyer, Hon Norman Moore and I are the only two remaining members who were in this Chamber when Hon Des Dans was arguing against those 1982 amendments to the Industrial Relations Act 1979. The amendments introduced by the then Leader of the House and Minister for Labour and Industry, Hon Gordon Masters, who had to fight for the Bill clause by clause, again disadvantaged the ordinary men and women of this State.

Hon Derrick Tomlinson: The ALP was not enamoured by the 1979 Act.

Hon Kim Chance: We have always opposed attempts to bring down the rights of workers.

Hon TOM STEPHENS: Exactly, and that is my point. This Bill will amend three Acts. The principal Act to be amended is the Industrial Relations Act 1979, to which Hon Derrick Tomlinson has just referred. That legislation is the source of the jurisdiction of the Western Australian Industrial Relations Commission, and the commission itself determines many of the conditions of employment for employees that come within its jurisdiction. The contract of employment, which is the basis for many employer-employee relationships, has its origins in the common law brought to the colony from the British Isles by early settlers. Since the enactment of the principal Act, the situation has changed and two other Acts govern the contracts of employment between some employers and employees. Those Acts were introduced by this Government when it came to office in 1993. The Opposition opposed the Workplace Agreements Act and the Minimum Conditions of Employment Act when they were introduced in 1993. They were controversial and iniquitous and the Opposition believes they have had an undesirable impact on the workers in Western Australia. The Government now proposes to amend them in such a way that the impact will be even worse.

The history of this Act is recorded in the most authoritative analysis of the history of Western Australian industrial relations law to 1992. I refer to the book written by Marcelle Brown entitled *Western Australian Industrial Relations Law*, the second edition of which was published in 1991. No significant amendments were made to the industrial relations system between 1991 and 1992, but of course the situation changed dramatically in 1993. Therefore, regrettably, this book must go to a third edition in order to accurately record the history of the system to the present.

Reference is made in the book to the law governing employment in this State as law that cannot be studied in isolation from other jurisdictions where the common law is also in operation. It describes the decisions of English superior

courts as still being authoritative in this context, especially the decisions of the Privy Council, which until 1986 was the highest court of appeal from Western Australian courts. Decisions of the High Court of Australia on common law matters are binding on Western Australian courts, and the Supreme Court decisions of other Australian jurisdictions in this area are of interest only in terms of their persuasive authority. Since the beginning of this century there have been extensive divergences from the common law in matters concerning collective employment. The system of industrial conciliation and arbitration introduced in Western Australia in 1900 contains many elements foreign to common law, as do the parallel systems provided by the federal industrial relations Act of 1988 and by separate legislation in each other State. These parallel systems are not identical.

Hon Derrick Tomlinson: You will get it sorted out eventually.

Hon TOM STEPHENS: I hope that will be to the point at which members opposite are persuaded and encouraged not to persevere with the Committee debate beyond the short title. The member may be persuaded by my comments or the comments of others so that at the conclusion of the Committee debate he and his colleagues will say they have had enough, they recognise the error of their ways and the Bill should be withdrawn. I hope a report will be made to the House that the Committee of the Whole has had enough of this Bill and it will recommend that we should move to the next item of business on the Notice Paper.

Hon Derrick Tomlinson: We have certainly had enough of you, Mr Stephens.

Hon TOM STEPHENS: The member may have had enough of me for the present, and my comments on the short title will draw to a close very soon. Nonetheless, I hope that after lunch we shall hear from the Attorney General. I hope that even at this late stage the Attorney might be persuaded during this debate to withdraw this legislation.

Sitting suspended from 1.00 to 2.00 pm

Hon PETER FOSS: I am grateful for the invitation by the Leader of the Opposition to give him a better idea of the policy decided by the second reading which binds us in this Committee. It is interesting to hear the Opposition's views on this Bill, although we heard very little about their particular objections. The general objection is that they oppose the Bill in principle and in detail. However, until now we have heard what is its objection in principle, which in part is based on a perception of what the Bill seeks to achieve. That is why the Leader of the Opposition went through the second reading speech and asked questions about the principle of the legislation. However, the Opposition's approach to the Bill has in some way made it difficult for them to understand the Bill.

What members are really saying is that this Bill is against workers and against the unions. It is strange they should say that because, as far as I know, it has been said about every industrial relations Bill that has come before this Chamber. I am indebted to you, Mr Deputy Chairman (Hon Derrick Tomlinson) for some of the research done on past debates.

In the course of this debate the current industrial relations system has been held up to us as the epitome of a good model and we have been told how it has yielded an excellent system of cooperation between employers and employees with an effective system of arbitration. In the debates of 1979 on the Industrial Arbitration Act, similar claims were made. Most of us will remember the similar claims about the 1993 industrial relations amendments. It was "the end of industrial relations"; yet members opposite are arguing on the basis of there being a good industrial relations system in place which would continue if this Bill were not passed. Member's dire predictions of 1979 and 1993 were wrong. I will read from a number of speeches in 1979. On 20 November 1979 Hon Don Cooley said -

> Since 1974 little by little and systematically the Liberal-Country Party Government in this State has been digging a grave in which to bury industrial relations. This Bill is the final nail in the coffin for industrial relations in this State.

Having hammered that last nail and buried it in 1979 it is apparently alive and well in 1997.

> When it comes into operation this will put an end to any industrial relations.

That is exactly what is being said today. Hon Des Dans said -

> In the first instance, this legislation is wrongly labelled. It is labelled the "Industrial Arbitration Act, 1979". I firmly believe its appropriate title should be the "Industrial Confrontation Act". Before we go any further with the dotting of every "i" and the crossing of every "t" in respect of this Bill - and I consider Mr Cooley has done this most adequately - we must consider some of the reasons for the Bill being submitted at this stage of the session and we must consider the 7 per cent or 8 per cent of the Bill which under certain circumstances is likely to lead to very bad situations down on the job.

Again, they are similar statements to those being made in this debate. On the same day, Hon Lyla Elliott said -

> The Minister talks about the inadequacies of the present industrial machinery in this Bill and he stated this in his second reading speech. However the Bill places further restrictions on the jurisdiction of the commission. Under the Bill, the Industrial Commission is prevented from dealing with disputes related to union membership, workers' compensation, and other matters regarded as the prerogative of management. It excludes access to the commission by a number of groups, including the academic staff associations of post-secondary education institutions. The provisions relating to industrial disputes and penalties are harsh and undemocratic.

That is the very system being held up to us. Interestingly, in the course of that debate there was a historical examination of industrial relations over the years similar to what we have heard in this debate.

The Opposition says it opposes this Bill in principle and in detail. However, at the same time members opposite tell us they accept the principle of secret ballots. They then say that this Bill does not provide for secret ballots. It does, whether we agree on the manner is another matter altogether. They say they want to have secret ballots conducted under the auspices of the union. The Bill allows that as one of the alternatives. It can be done by the Industrial Relations Commission, delegated to the Electoral Commission or delegated to the union. The Government sees the secret ballot process whereby in the first instance the Industrial Relations Commission will carry it out or ask the Electoral Commission to do it. When the Bill was last before the Parliament the Opposition objected to the Bill being far too prescriptive. The Bill described exactly how the ballot should be carried out. We paid attention to that criticism, and the principle in this Bill is to allow the industrial commission to set out the manner of carrying out the ballot. We envisage the following process: The Industrial Relations Commission will carry out a number of secret ballots itself or through the Electoral Commission. It can be worked out pragmatically by seeing how it happens. I accept the criticism made before about how can we lay down a prescriptive way of doing something before we try it. In the past the industrial commission has shown itself to be capable of doing that. It will work it out with the parties. As I think the Opposition said, the Industrial Relations Commission does not exist at the behest of the Government, but to make the process work. Why do members opposite not accept that the industrial commission will endeavour to make certain that the provisions work? Once it finds a way to make the provisions work, I expect those unions which show the capacity and responsibility to carry out secret ballots will be given that opportunity. It is provided for in the Bill. I am sure the industrial commission will be sensible enough to know when to give them that responsibility. It seems to be assumed by the Opposition that the procedures will be complex and the unions will not get a look in. I am sure the industrial commission has the capacity to work out a logical and practical process and to satisfy itself which unions should be able to carry out the secret ballots themselves. We listened to the arguments.

Hon Tom Helm: Will you give us an outline of why we need to have secret ballots?

Hon PETER FOSS: We believe it is important. I understood that point was not being opposed by members opposite.

Hon Tom Helm: It isn't, but we need to know why.

Hon PETER FOSS: We believe it is important that before a step is taken as strong and as crippling to everybody involved as a strike - not just the employer and the employees, but also the public - it must be ascertained that the people who intend to strike agree that a strike should take place. We have certainly been approached - I am sure Hon Tom Helm would have heard people say the same - on the basis that it is very difficult to be the odd one out in a meeting at which everyone must raise their hands to indicate whether a strike should take place, particularly in some union meetings. Members opposite will agree that there are unions and unions. Some unions have a belief that if its members do not show solidarity they are letting down the others and so those people face strong peer pressure to go ahead with what is suggested by the union officials. Other unions take an even stronger view, which are somewhat more -

Hon E.J. Charlton: Direct.

Hon PETER FOSS: - direct in imposing what they want. Under those circumstances it may not even be healthy not to comply.

Hon Tom Helm: Are you suggesting the strike decisions are unanimous? They are not.

Hon PETER FOSS: No.

Hon Tom Helm: You must be more specific than that. That is not true; you are being facetious now. By their not voting are you saying people are scared to vote against a strike, therefore we need secret ballots?

Hon PETER FOSS: Why do we ever need secret ballots? Why did we introduce secret ballots for election to Parliament? The reason is that the Government believes the pressures which apply when there is not a secret ballot have the capacity to affect the ballot result. If members opposite do not accept that, I am sorry. The Government

believes a more democratic result will come from a secret ballot and it knows there are instances of complaints from workers who believe it is neither safe nor appropriate for them to vote against a recommendation of the union executive.

Hon Tom Helm: Give me an example.

Hon PETER FOSS: Hon Tom Helm cannot write my speech for me. If he does not like what I am saying, it is too bad.

Hon Tom Helm interjected.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson) Order! Hon Tom Helm asked the Attorney General some questions which he is attempting to answer. If the member wants to interject, which is contrary to standing orders, he should at least pay the courtesy of listening to the answer.

Hon PETER FOSS: The most important thing, and I do not wish to go beyond this because it would be outside this debate, is that it is accepted by the Opposition and the Government that as a principle there should be secret ballots, but the question is the mechanism for carrying it out. The principle so far as it relates to ballots is that it is democratic for them to be secret ballots taken before the extreme step of a strike takes place. All we can look at is the mechanism. I explained earlier that the mechanism provided in this instance requires a union that is conducting a strike to do so only in accordance with the procedures which will be set by the Industrial Relations Commission. Those procedures will be practical because that is the record of the commission.

Hon John Halden: Will those procedures be laid down by way of regulation?

Hon PETER FOSS: I do not think they will. In each case the commission is entitled to set the procedures. In its normal manner I believe it will have a custom for how it carries things out. A practice will develop over time. I said earlier that the Government paid attention to the criticism of the former Bill that it was highly prescriptive and one could not contemplate all the little things that might need to be dealt with until it had been tried, and the commission is the appropriate place to do that. That is the first principle outlined in the second reading speech.

One of the criticisms of the Government's proposal for a secret ballot is that 50 per cent of the people eligible to vote had to vote. Members will note that on the Notice Paper there is an amendment to increase that to 75 per cent.

A number of things are set in the Bill, some are major and some are minor matters. The first matter raised by Hon Tom Stephens is what is the principle of the Bill. He asked whether the main principle was one of those outlined at the beginning of the Bill or further on in this Bill. The Bill deals with the principal issue as well as other issues. The major ones are set out in the first place.

The problem with the federal award coverage arises because of the nature of unionism. Under the provisions of the Act there cannot be dual coverage. The federal Act is directed towards reducing coverage between unions. It is well known that body snatching used to be a common activity of unions. To extend one's coverage and overlap others was seen as an important role of unions and this led to demarcation disputes. The way these two issues are reconciled is interesting. On the one side there is the possibility of demarcation disputes where one can choose a union; on the other side a person who wants to belong to a union has only one choice - the union that happens to have coverage.

I was interested in Hon John Halden's remark that if it cannot be done through a union one could start a company. The Government would be pleased if that was the way it was conducted. If people were to do that there would, for a number of reasons, be significant advantages. One reason is that restrictive rules relating to unions would disappear. One would lose some of the protection of the Trade Practices Act specifically given to unions. The company would have to comply with the Corporations Law with regard to disclosure on people joining and it would need to have a prospectus. It would also lose the capacity to have sole coverage. From a theoretical point of view the Government would strongly support it because one of the difficulties with unions is that people do not have a choice. That is the reason for the principal difference between corporations and unions. If a plumber wants to be covered by a union, he must go to a plumbers' union.

Hon John Halden: If you are a lawyer, you have to go to the Law Society.

Hon PETER FOSS: One does not. The Law Society of Western Australia does not have exclusive coverage. If I wanted to start a new law society, I could do so. If I wanted to belong to the Labor Lawyers Association, which is most unlikely, I could join that association.

Hon N.D. Griffiths: It would not have you.

Hon PETER FOSS: That is a relief. One can join the Family Law Practitioners Association, the Criminal Lawyers Association and others.

Hon Doug Wenn interjected.

Hon PETER FOSS: One can choose which one to belong to. If one wants to belong to an organisation which will look after one's interests, one does not have to belong to the Law Society. It does not have exclusive coverage. One could start another law society and in places that has happened. The important difference between that and unions is that because of the scope of coverage in the rules one does not have that choice.

The Minister for Labour Relations said that if the Government were able to get rid of exclusive coverage, he would be happy to look at the question of protection during a strike where people have had a vote. Many of these things are governed by the nature of unions.

When dealing with the federal award coverage it is important that people have the capacity to stay with a state award. If a union has decided that the membership will be covered by a federal award, that will be the case. We have had instances where neither the employer nor the employees wished to move to a federal award. However, contrary to the wishes of the employer and employees, the union had them covered by a federal award while they wished to remain with a state award.

The principle involved is that if people have the capacity to be covered by a state award, they must use the mechanism of the current Industrial Relations Act. The only way that can be done is to have another union which is not associated with that federal union take that coverage. If the people involved want to stay with the federal award, they can stay with the federal union and the award. If, on the other hand, they wish to stay with a state coverage, they have the capacity to move from that union into one which is not affiliated with a federal union and therefore continue to remain in the state system. That is the important choice which will be available.

It has been said that people do not have any choice. They certainly do. They have the choice of staying with the federal union or going into the state union. As far as the issue of state agreements and federal awards is concerned, the Government is harmonising with section 152 of the federal Workplace Relations Act. The Government has to make those amendments to resolve the conflict between state and federal law with regard to workplace agreements. It was put in place by the Federal Government and this Bill will allow Western Australian workers to avail themselves of that federal provision.

Some strange things have been said about unfair dismissal. Members should understand what unfair dismissal is. It is not unlawful. It was an invention that was added to give an extra protection to workers who had been lawfully dismissed. I think Hon Jim Scott misunderstood this situation. The word "unfair" was used. Essentially, people have contracts of employment or they are covered by awards and under those contracts that can be terminated by either party. It is possible for a person who has a contract of employment to buzz off. Under those circumstances that person cannot be compelled to continue his contract of employment. There is a disparity between the position of the employer and the position of the employee. There will be no compulsion on the part of the employee to continue to work and that is even when the employee breaks the contract. Even when unlawfully the employee terminates the contract he will not be compelled to continue to perform the contract.

What happens when it is the other way around? One can compel the employer following unlawful dismissal to make appropriate recompense, but what happens when a lawful termination takes place? When the contract determines the termination of employment, and the employer follows those terms according to law without criticism under law, a new concept of unfair dismissal has been introduced. It is an unusual concept, which previously had two aspects: It allowed compulsory reinstatement of the employee, despite the fact the employment had been lawfully terminated, and the employer was stuck with an employee even though the employer had lawfully terminated the employment. That was an unusual measure. It went beyond the measure to compel the employer to take a person back even though the employment was lawfully terminated.

Hon J.A. Scott: Cannot the law apply to other situations where unfair dismissal occurs for reasons other than you have put?

Hon PETER FOSS: No. One cannot have unfair dismissal unless it relates to a situation of lawful termination. If it is an unlawful termination, one has the right to bring action for breach of contract, which was previously dealt with by the commission as well. Unfair dismissal is a novel statutory concept grafted on top of breach of contract -

Hon N.D. Griffiths: You don't like it, do you?

Hon PETER FOSS: It does not matter whether I like it; it is a matter of understanding its character. It is grafted onto the concept of a breach of contract. It comes into play when a breach of contract has not occurred as a new statutory remedy for people who have been dismissed lawfully.

In the normal way, the person who wishes to avail himself of a new remedy must prove the grounds of that remedy. The person is lawfully dismissed, but the dismissal is unfair. In this instance, as the employer acted as he was entitled

to do - he is not the criminal Hon Jim Scott said he was - and exercised his lawful right as a law abiding citizen, the former employee who wants to exercise the new remedy should prove his case. That is not unreasonable. To have this special remedy on top of the law for when the employer has acted lawfully, the employee should have to show in some way how the dismissal was unfair. I have no problem with that.

It was changed only to conform to federal law. Many people said they would prefer to have proceedings for unfair dismissal brought under state, rather than federal jurisdiction. When the onus was reversed in the federal jurisdiction, we also reversed it here. We are simply now putting the procedure back to how it operated in the past, as is perfectly proper. It is not an outrageous new suggestion. It is returning to what people reasonably thought was a fair balance between the two areas.

If people want to exercise the remedy and special relief and disregard the contract and say something extra happened which was unfair, it is reasonable that the onus be on the employee. After all, the employee is asserting something above and beyond the lawfulness of the contract.

I now refer to the duties of officials of organisations. Quite significant alterations have been made under Corporations Law with regard to the liability of directors and other people regarding their conduct with respect to corporations. It is extended far beyond its original scope of directors, and applies to various kinds of employees and people carrying out the executive work.

Hon John Halden: There is no provision in Corporations Law to be in contempt of the Supreme Court. They are described in essence but they are likely to be less than they could be as unspecified penalties for contempt of the Supreme Court.

Hon PETER FOSS: There are some extreme penalties under Corporations Law for people who breach their duties. People are not only convicted of an offence, and rightly so, but they can also end up liable for all the consequences of that loss. When directors and others breach their duties, they can end up losing the benefit of limited liability and could end up responsible for the debts of that organisation. It is six of one and half a dozen of the other. One can speculate about the significance of that penalty.

I noticed the other day that some people were fined a couple of thousand dollars for contempt of court. Generally speaking, penalties are not as extreme in the law of contempt as the member makes out.

Hon John Halden: I am not satisfied by "generally".

Hon PETER FOSS: I cannot think of too many specific cases, certainly in this State, where the -

Hon N.D. Griffiths: In this State the process is a penalty as it is very expensive to defend. Even if a person is innocent, it costs that person a lot of money. You should be remedying that situation.

Hon PETER FOSS: I accept that point; the member is correct. Also, it is correct that the penalties in this State have not been extreme. The United States has a far more extreme way of dealing with contempt of court. In the common law area, it is reasonably respectful of the position of the person in contempt. It is not unusual for an accumulation of effect from a breach of duty to a corporation. Under Corporations Law, the consequences which may flow from that are to be entirely liable for the debts of the corporation. That is a severe penalty when compared to some of those under consideration.

I have dealt with policy on pre-strike ballots. One of the big disadvantages we have suffered in this process - I now upgrade the position of the Opposition and the TLC for a moment - is that we have drafted this legislation from the perspective of the Government, and one of the proper processes of government is to allow legislation to be criticised by the public, particularly the Opposition. A difficulty through this process has arisen from the attitude of the Opposition. Members opposite so disagree with the legislation that they will not contribute to it in a positive way. Therefore, we have not had that useful contribution to the process. I would welcome - I wish it had happened - constructive comments.

The Trades and Labor Council representatives from the beginning have flatly refused in any way to sit down and talk about the legislation. They said, "We will not talk about it or discuss its content in any way. We do not want to be associated with what might happen to it as a result of our comments." Its attitude has been worse than that: I was carrying out negotiations with a group of unions which had specific concerns about the legislation and useful comments were being made on the legislation. With the authority of Cabinet, I arranged a further meeting with the group to address specific concerns. The arrangements for the meeting had been made. However, a representative rang me and said, "The TLC said we're not allowed to talk to you." Therefore, the TLC was not only not prepared to discuss the Bill with the Government, but also it actively discouraged other unions from having discussions with us.

Frankly, one of the benefits of our public processes of legislation making is that it is improved through constructive comments from the Opposition and people opposed to the legislation. By abdicating that responsibility, the TLC and the Opposition put away the opportunity to serve the public through positive and constructive comments.

Inside and outside the House, I have asked opposition members to let me know their specific concerns with the legislation. This is the offer I made: I said, "I will have amendments meeting your requirements drafted by parliamentary counsel so we will discuss the essence of the Bill, not the drafting of the amendments. The Government will give priority to your amendments so we will have a genuine discussion about the legislation, not about terrible drafting which will never work." We presented a real opportunity to make the legislation the best possible to pass through this House.

That offer has not been taken up by those opposite. They have regularly rejected it. I do not pretend for one moment that legislation which is drafted and seen from only one point of view is the best legislation that is capable of going through this Chamber.

Hon N.D. Griffiths: It is the worst.

Hon PETER FOSS: The Trades and Labor Council has a duty to its members and the public of Western Australia to provide an alternative perspective. I want that perspective; I have asked for it.

Hon N.D. Griffiths: We will vote against the short title.

Hon PETER FOSS: That is the attitude those opposite take in this role. Hon Tom Helm has made it quite clear to members what he believes the situation to be. He says that he will not discuss this Bill until after 25 May. I know his reasons: He believes he will have more numbers in support of his position then. However, that is not an appropriate attitude. Members opposite cannot abdicate their current responsibility to this place and the people of Western Australia by saying they will not discuss the Bill.

Hon J.A. Scott interjected.

Hon PETER FOSS: I am glad Hon Jim Scott has made that point. From the very moment this legislation was proposed, the TLC has refused pointed blank in any way to be involved in constructive criticism of it. It simply will not discuss it. I would love to think it would do that. At one stage, after urging from the Australian Council of Trade Unions, it even gave an undertaking that it would put forward some alternative propositions. All it put out was the usual general critique, saying nothing whatsoever.

Hon Bob Thomas: It weakens your fundamental argument.

Hon PETER FOSS: The opportunity has been not just lost, but denied and refused by those who have a duty not only to this Parliament but also to the public of Western Australia to talk with us about this Bill. The TLC has said that it supports the principle of pre-strike ballots, yet it will not offer to discuss with us this legislation; it has refused to do that. I am sure Hon Jim Scott, knowing the TLC from the beginning has refused in any way to participate in discussion of the Bill in a constructive way, will agree that it has lost an opportunity to provide a service to the public of Western Australia.

I refer to political expenditure provisions in the legislation. This goes back to the point made by Hon John Halden. We have said that if people had the opportunity to join another union, if they could choose - that is, they could go to a union which said that it supported the Liberal-National Party side of politics, or that it did not support anybody and would not put any money into political donations - we would have no problem with saying that corporations and unions are similar. However, the problem with regard to unions keeps coming back to one point: A worker can join only one union. This exclusive coverage makes the big distinction. If people want to be in a union - we think people are entitled to be unionists -

Hon Jim Scott: You don't have to join either.

Hon PETER FOSS: Then they are not unionists. We happen to believe it is a right to be a member of a union, that people should have the ability to be members of a union. They should not be faced with the choice of the Labor union, the one that supports the ALP and no other. That means people have no options at all.

Hon N.D. Griffiths: You should have a bosses' union; that is what you want.

Hon PETER FOSS: If those opposite want me to tell them the distinction between corporations and unions, I will: The big difference is that people can invest in a wealth of corporations. There are lists of them. It is purely a matter of people making a determination on the basis of what they believe is the best investment. They can choose any corporation; they can move from one to another. If they do not like some corporations, they can take out their money and invest it somewhere else. However, when it comes to being a member of a union, what choice do they have?

They have none, because the union arrangements say that one union, and one union only, will cover a specific area. The whole process is driven in that direction.

Hon J.A. Scott: Is it not a fact that the Labor Party was formed by the unions to have a working class party in the Parliament?

Hon PETER FOSS: Whether it was or was not, the important point is that people in our society may wish to join a union, but not subscribe to the Labor Party. At present they can join only one union. Hon Jim Scott keeps missing the point.

Hon N.F. Moore: Make very clear to him the exclusive coverage over workers.

Hon PETER FOSS: The Minister for Labour Relations has said this time and again: If the unions were prepared to give away the exclusive coverage of certain workers, he would be prepared to review totally many aspects of the legislation generally; in other words, he would give many of the things the unions asked for, if they gave away exclusive coverage. We would then have industrial democracy.

The problem is that people may be members only of a union which covers their specific area of work. That is the reason behind the differences between membership of a corporation and membership of a union - there is no choice. If Hon Jim Scott wants to invest in a corporation, he can go out and pick whichever one he likes. He can pick corporations he thinks have a green focus. I am sure if he were to invest any money, he would not do so in a corporation that was involved in things of which he did not approve. He probably would not invest in the Wesfarmers or the Whittakers groups because they cut timber; however, he would probably like to invest in a corporation that made green products.

By comparison, if workers say that they like a particular union because it happens to do things that they support, they are told that they cannot support it. For example, plasterers are told that they can join only the union covering their trade. They do not have a choice about what is done with their subscriptions or who supports them.

Hon J.A. Scott: That is a pretty specious argument.

Hon PETER FOSS: Let me explain it this way. We will classify everybody in Western Australia.

Hon Bob Thomas: Do you think the metal workers should covered by the nurses' union?

Hon PETER FOSS: We will classify Hon Jim Scott as a certain type of person and say that if he wants to invest money, he can invest it only in the Bunnings or Wesfarmers groups; that he cannot put his money in the bank - no savings accounts for him.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): We have three conversations going across of the Chamber. Only one person should be speaking, and one only, and that is the Attorney General.

Hon PETER FOSS: This will be the green law of investment. We will bring in a law that people can invest only in the kind of investment that has been assigned to them by law. They can choose not to invest, but if they invest, they must do so in a designated investment. We will divide all the people in Western Australia into specific groups because we want to make sure the money is spread around properly and people will be allocated certain companies according to what they do. For example, because Hon Jim Scott is a member of Parliament, perhaps he should invest in the oils and industrials area. If he were a labourer, perhaps he would be allowed to invest in building and construction companies.

Hon J.A. Scott: That does not follow.

Hon PETER FOSS: We will classify people and allocate specific companies in which those people can invest. More than that, they could invest in only one company.

Hon P. Sulc: Are you saying a union membership is a commercial transaction?

Hon PETER FOSS: Based on his qualifications, Hon Jim Scott will be allocated to invest in the Wesfarmers group. He loves that organisation because it seems to have done a lot of good for Western Australia. It produces some excellent timber; it is increasing its export markets in timber.

Hon N.D. Griffiths: Do you have shares in it?

Hon PETER FOSS: No. Hon Jim Scott will love that company because it has improved the value of timber; it is right up his alley. It is doing some really good things. He would have the choice of either keeping his money in his mattress or under his bed, or he could invest in Wesfarmers.

The DEPUTY CHAIRMAN: This a very entertaining line of thought, but it is diverting from the short title of the Bill. Even though considerable latitude is allowed, I suggest that instead of giving investment advice to members, the Attorney General should draw attention to the Bill.

Hon PETER FOSS: I think I have made my point; I was probably overdoing it a little.

There appears to be some misunderstanding about the collection of union dues. One of the reasons many people are opposing this legislation is that a lot of false information has been spread about the consequences of the Bill, in particular by the State School Teachers Union of WA. It is being suggested that it will be impossible for union dues to be deducted. That is not the case. It is totally permitted. What is not permitted is for it to be an industrial matter. It is a matter for award or industrial agreement that employers deduct union dues. It is a matter of convenience between the employer, employee and union for that to take place.

If it is not convenient for any one of those, it will not take place. The employer could not be compelled to deduct it if he did not want to; it could not be taken forcibly from the employee if he did not want it deducted; and if the union did not want to be involved, it would not have to be. People have the liberty to do what they want; it is not a matter of compulsion. The State School Teachers Union said it would not happen in the future. That suggestion is wrong. It can happen but the parties will be able to make their decisions about what they want. That is not draconian. People will be able to make up their minds and that is reasonable.

We have introduced what we call the Alannah MacTiernan amendment to the right of entry provision. She said that a union should not have to disclose to the employer who are its workers. We accept that. The amendment will allow the union to verify to the commission the members who are former employees or who are employees of a particular workplace. If the union told the odd fib, it would be penalised. However, provided the information is correct, the union will have a right of entry. We have also made it clear that a refusal of right of entry is a breach of the award. The Alannah MacTiernan amendment addresses the problem that was perceived with that provision. The list of names is not disclosable to the employer. The union will disclose that list to the commission and once it is before the commission it will not be available to anyone else.

The unions have raised with us some problems they have with the legislation. We believe the provisions in the legislation are clear. However, to make all of them clear, we will introduce amendments. For instance, we wanted to make it clear that the legislation does not in any way override the Occupational Safety and Health Act. The Government believes the ordinary statutory interpretation made that clear anyway. However, to make it quite clear, we have said in the definition of "strike" that, when a safety issue is involved, the Occupational Safety and Health Act will apply. Workers will have the same rights that they have currently under that Act to stop work when a situation is unsafe.

We have also made it clear that things that are done under the disputes resolution procedures will be lawful and workers should carry out those procedures prior to going on strike. The unions have agreed to that. The disputes resolution procedures are a compact between the employer and the employee on how they will resolve disputes. It is not intended that workers should strike prior to exhausting those procedures. That will not further delay the right to strike that will be imposed by this legislation. That is a procedure, voluntarily assumed, by the workers. That is what they said they would do. How many times have the unions objected because employers have tried to duck the disputes resolution procedures and they were pulled in line by the commission? The legislation says, "You have agreed to do it, you said you would do it, you follow it."

Hon Tom Helm: Without a ballot?

Hon PETER FOSS: The disputes resolution procedures are followed before the ballot. They do not have to have a ballot. We have made it quite clear that if under the disputes resolution procedures, workers are allowed to have a ban or a limitation, they may do so under this legislation also.

Hon Tom Helm: Without a ballot?

Hon PETER FOSS: Yes. However, we are ensuring that the disputes resolution procedures are followed.

The Opposition has said that that will add weeks to the process. The process will not be added to by this legislation. It is included because that is what the parties agreed they would do. They should do it because that is what they said they would do. I think everybody here would agree that nobody should strike without following the disputes resolution procedures which have been agreed. Many of those procedures provide for bans and limitations and for stop work meetings. All we are attempting to ensure is that the procedures are followed.

There were concerns about the minimum conditions of employment provisions. We have tried to bring them into line with the awards. That is not unusual.

There is no doubt that measures have to be put in place to improve various processes relating to industrial relations in this State. This Bill sets out to do that. The legislation includes a number of major measures to do that and a number of minor measures. The Government is now trying to work towards making those provisions the best provisions it can. That will happen only if there is proper debate in this place. In default of assistance from the Trades and Labor Council and from the Opposition, the Government has placed on the Notice Paper a number of amendments, not amendments that we want to make to the legislation, but amendments that will satisfy the concerns of some unions that have voiced their concerns. The amendments are a genuine attempt to meet those concerns, as long as they do not affect the underlying policy of the Bill. I accept that the Opposition and the Trades and Labor Council may not agree with the underlying policy in this Bill. However, the Parliament has to decide that it will accept that policy.

We have now to consider seriously the amendments that have been suggested by people who are concerned, including union members who have been concerned enough to tell the Government what are their concerns. We have listened to them and we have tried to address as many of their concerns as we can. There may be others that we can also address. I indicated at the beginning that there comes a time when the Opposition can no longer defer or delay dealing with this legislation. Members of Parliament have to deal with this legislation now. I know that the Opposition wants this legislation delayed until after 22 May. That is not acceptable to the Government. Some members opposite have chosen not to contribute until now.

Hon Tom Helm: What about your mob?

Hon PETER FOSS: I am talking about a contribution in terms of putting up appropriate amendments.

Hon Tom Helm: Don't members on your side of the Chamber make contributions? They don't get punished; we do. The guillotine has not fallen on them.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order!

Hon PETER FOSS: The important thing at this stage is that the Parliament has decided that the legislation will be debated and completed before 22 May. It has also decided on what is the principle of the Bill. I have made it clear that I will listen to rational argument and sensible amendments, but time is running out. The reason that time is running out is that the Opposition has chosen to adopt a particular attitude; that is, it will not debate it before 22 May and it will not make any contribution.

Hon Kim Chance: We did not bring in the guillotine.

Hon PETER FOSS: The Opposition is now required to make a contribution because the House said that it can delay no longer. The time has come for the Opposition to address this legislation. The time has now come for the Opposition and the Trades and Labor Council to do what they were requested to do months ago. They have squandered that time because they thought they could play the tricky game of pushing debate beyond 22 May.

Hon Kim Chance: Bullshit.

Withdrawal of Remark

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! Hon Kim Chance will withdraw that unparliamentary term.

Hon KIM CHANCE: I withdraw.

Committee Resumed

Hon PETER FOSS: I regret that that was the Opposition's attitude. I believe that, as responsible members of the community and of this Parliament, members opposite should have faced up to this legislation and dealt with it. It is irresponsible for the Opposition to try to delay the legislation further. The people whom the Opposition purports to serve have been ill-served by the Opposition's adoption of that attitude.

I urge members of this Committee to strongly support the short title of this Bill.

Hon TOM STEPHENS: The Opposition rejects the assertion made by the Attorney General. It is true that we object to the principles and the detail of this legislation. We have said all along that the principles that the Government enunciates for this legislation are not reflected in the legislation. Nonetheless, we now know that we are boxed in by the guillotine because that guillotine will fall on the legislation, with the legislation being enacted soon after 15 May. In the meantime we are being forced to have a short Committee debate. It began today - the Government has brought in new amendments today - and will continue on Tuesday.

All members of the Opposition will be devoting their energies over the weekend and next week to a focused and concentrated debate on the problems with the detail of this legislation. We will focus on pointing out those problems, of which there are so many, during the Committee debate.

In addition to the problem of principle, there is a problem with the detail. We will introduce a series of amendments next week, but we do not have any expectation that those amendments will be accepted by this Government. Nonetheless, we will bring them forward. Even if they are adopted, this legislation is irredeemable. It is a poison pill and the Government is asking us to put a sugar coating on it. It is offensive to the Labor Party and the labour movement to do that. Nonetheless, we will participate in the debate and do our job as parliamentarians. We recognise that we are caught by the processes and are forced to consider the legislation in this Committee debate. We will do that, but nothing will redeem this situation and nothing will redeem this Government for persisting with this pernicious legislation.

Hon JOHN HALDEN: I take this opportunity, following the comments of the Attorney General and the Leader of the Opposition, to seek some specific clarification in relation to a couple of clauses that we will discuss later. These clauses are inconsistent with the Government's general principle and philosophy as contained in the second reading speech. I refer to clauses 36 and 37, which are somewhat confusing in their principle. Whether or not the Opposition chooses to consider amendments in relation to these matters, we need some further understanding of what the Government is proposing and whether it has it right.

From my reading of clause 36, it appears that, if there is an award and workers strike, the commission will order them back to work. However, if the issue involves strike matters and there has been a ballot, they must go back to work. Further, if it involves a strike matter and a ballot has not been held, the order is optional. In that case, the commission must use its best endeavours to encourage those people back to work. It is strange in a situation where we are advocating pre-strike ballots that, in relation to strike matters, if a ballot is held, the commission must order the workers back to work, but if a ballot is not held - the central premise of this Bill - they will not be ordered back; it will be a best endeavours arrangement on the part of the commission.

This is an absolute nonsense. The Government cannot say that the central premise of the Bill is to encourage pre-strike ballots and, in the area of strike matters, provide that if a ballot is not held, it is an option for the commission to get it right. It appears that, given the premise and the objectives of this Bill, the Government has it around the wrong way.

This issue must be clarified. The Government is encouraging the Opposition to amend the Bill, but it should get its own house, philosophy and central premise in order before we can amend it. As it stands, this is a nonsense.

I will clarify this a little more because there might be some confusion. The Government is confusing the scenario where, if workers are subject to an award, a ballot is held and they are ordered back to work, not all awards are breached by a strike. I have tried to think of a situation where that is not the case, but in most cases it would be so; in fact, 99 per cent of awards have dispute resolution procedures and require people to work certain hours as per their contract of employment and the award. It appears that, if an award is breached, it is a strike and they are interlocked almost exclusively.

In the other area of strike matters so defined in the Bill, if a pre-strike ballot has not been held, one must surely be required to be ordered back to work under the central philosophy of this Bill. Perhaps it should be the other way around; that is, if a pre-strike ballot has been held, the commission's best endeavours should come into play in relation to strike matters. The Government has it the wrong way around.

I also wish to refer to clause 37, but perhaps the Attorney General can respond and I will deal with that clause later.

The CHAIRMAN: Before the Attorney General answers, I draw attention to the fact that we are discussing the short title. The debate on the short title provides opportunities for clarification of matters of principle and policy in relation to the Bill. However, in general, the policy of the Bill is debated in the second reading stage. I understand Hon John Halden's intention in addressing the specific clause is to pursue and clarify matters of policy rather than the detail of clause 37.

Hon PETER FOSS: Hon John Halden has raised a very good point. I confess that on a first blush reading of the provision it may be read in the manner he suggests. If that were the case, he would be correct in saying that we would have some difficulty in reconciling that with the policy enunciated during the second reading speech. Therefore, it is appropriate that at this stage I place on record the way in which this clause operates and why that is consistent with the general policy of the Bill.

The member is right in saying the intent is that before a strike there be a pre-strike ballot. However, it is also the intent of the Bill to ensure that such procedures as currently exist before a strike takes place or before a claim is made

should also be honoured. In other words, we should not get to the stage of having a pre-strike ballot until the obligations under the award are honoured. There are few provisions in an award that can be broken by the parties to that agreement where that leads to a strike. Subclause 8 provides -

> Despite any other provisions of this Act, if it appears at any time to the Commission that an industrial matter referred to the Commission involves a strike which constitutes, or will constitute, a breach of -
>
> (a) any award, order or agreement to which an organisation of employees whose members are participating in the strike is a party; or

It must be a breach of the award by the party to it, which in this case would be the organisation of employees.

Two possibilities arise under awards in which that could occur: First, if there is a dispute resolution procedure. If the dispute resolution has not been followed, the union would be in breach of the award. The other most common situation in which one would find a provision in the award that can be breached by the party - that is, the union - is where there is a "no extra claims" provision. It is fixed for a period and there are no extra claims. Other than those circumstances, I cannot think at present of a provision in the award under which one would have a breach of the award by the union. It is not saying that the strike is a breach of the award, because generally speaking it is not.

Hon John Halden interjected.

Hon PETER FOSS: Generally speaking, it is not a breach by the union. It has to be a breach of the award by a party; so it has to be the union breaching the award and not the employees. It is not the fact that the employees are on strike but that the union has done something which breaches the award. The mere failure of the employees to attend work is not a breach of the award by the union. One would have to have something which specifically bound the union; that is, the dispute resolution procedures, no further claims procedure or something which said that the union shall not initiate any strike. It does not affect the rights of the workers but is a voluntary assumption of a particular course of action by the union where the union has resiled from that course of action. We have to make a distinction in this case between the actions by the workers which are preserved from this and the actions by the union where the union is held to be an equal party with the employer and, therefore, liable to be kept to its word. I agree with the member that had this provision related to the workers, it would not be consistent with what we have said is the policy of the Bill.

Similarly, when one deals with proposed subsection (5b) it is "any understanding, undertaking on procedure entered into, given or agreed by an organization of employees whose members are participating in the strike". It has to be an undertaking from the union not to strike. It is quite possible that the no strike undertaking could be in the award or outside it. Even if it were outside the award, if the union has given that undertaking and it is in breach of its undertaking to the employer, the clause comes into effect. I accept the point that the member has made. I am glad the member raised the point because it enables me to put that distinction on record so that anybody who wishes to interpret this Bill will be able to do so. It did require clarification.

[Interruption from the gallery.]

Hon JOHN HALDEN: Clause 37 seems to say that for the provision of essential services, no matter whether a ballot is undertaken, the commission must order workers back to work. There should be some provision for current arrangements. If a union or group of unions has a continuity of supply agreement, why would the commission not allow a pre-strike arrangement on the terms and conditions of the continuity of supply? Why should a group of workers who have entered into a contract and have not breached the contract and, assumingly, will continue with that contract in spite of the fact that they may go through a pre-strike ballot arrangement, not be allowed to exercise their rights under this legislation? It appears that this legislation bars those people from an opportunity. As long as they comply with the "contract" they have entered into, they should be allowed to experience and enjoy whatever limited rights this Bill gives them. They will not be able to do that.

Hon PETER FOSS: Again the point raised by the member is a good one. If action constitutes a strike, it will require a pre-strike ballot. If workers have a continuity of supply agreement, which contemplates that there may be a strike and that during that strike there will be continuity of supply, they avoid the provisions of proposed subsection (5b). They must still have a pre-strike ballot because there is still that moving between being on strike and not being on strike, but they will not be in breach of proposed subsection (5b) because the undertaking or agreement between the employer and the union, provided it is appropriately drafted, will be that they are entitled to do these things if they follow the procedures and will, if they go on strike, maintain the continuity of supply. The only difference this Bill will make is that it will say, "Before you take that final step of going on strike, you must have a pre-strike ballot. Once you have done that, you can go on strike but you will need to maintain the continuity of supply." They will not come under proposed subsection (5b) but under proposed subsection (5c). This is aimed at the sort of agreement, particularly in essential services, that a union can have with the employer as to what will happen in the event of a

strike. Under those circumstances they will be honouring that agreement. Let us say that the continuity of supply agreement is not with an essential services union but somebody else. They will not be in breach of proposed subsection (5b), because they are honouring their agreement. If they have had a pre-strike ballot, they will not be caught by proposed subsection (5c) but merely by the current provisions of the Act relating to any strike that takes place where there is provision for mediation and so forth.

The point the member raised is that arrangements are currently in place between employers and employees and those arrangements can deal with all manner of things: Whether there will be a strike; if there is a strike, what will be done with regard to continuity of supply and so on. Any breach of those arrangements, whether they are in the award or an agreement, will result in them coming under either proposed subsection (5b), in the case of clause 37, or proposed subsection (8), in the case of clause 36. The net result is that there is an advantage in having some sort of agreement on how to deal with these matters, but if they break the agreement they will come under the compulsory procedures of either proposed subsection (8) or proposed subsection (5b). If they do not breach that agreement, provided they have a pre-strike ballot, the current provisions are there under section 44 of the Act.

The member has highlighted the importance of those provisions in the award which deal with strike processes and dispute resolution processes. If they are not followed, the consequences are specifically more stringent than if they are followed. If there is a pre-strike process, there is still a requirement for it to be dealt with expeditiously and for the resumption of work to be dealt with. If people have done both of those things, they are under the ordinary regime of arbitration and conciliation.

Hon JOHN HALDEN: Having listened to the Attorney, it should be clear whether we are referring in clause 37 to strike or strike matters. Although I find the term strike matters a bit of a nonsense, it is a far more encompassing term. Is this proposed section referring to a strike or to strike matters?

Hon PETER FOSS: This is an important matter. We have three concepts: A strike; which is broadly defined; strike matters, which are a subsection of strike; and breaches of an award by a party by reason of a strike. A mere strike by a party is not of itself a breach of an award. Proposed subsection (5b) in clause 37 and proposed subsection (8) in clause 36 deal specifically with a breach of an award by a party, not by a worker.

Hon Tom Helm: An award, not an agreement?

Hon PETER FOSS: An award, an agreement or an order. I am using the word "award" in anticipation of the amendment that we have moved to short cut the terminology, because it is a bit of a mouthful to have to say every time "an award, order or agreement".

We have a hierarchy. The first one is a breach of an award by a party - that is, the union, not the workers - of an undertaking given by the union under an award or agreement. That attracts the most severe response; that is, a compulsory order to return to work. The next one is a strike matter, which is a strike by workers which has not been authorised by a pre-strike ballot, and a few other things. That requires the commission to use its best endeavours to get them back to work, which may include an order to return to work. The third one is a strike by the workers which has been authorised by a pre-strike ballot.

The first one in the hierarchy involves only the union; the second and third ones involve the workers, regardless of whether they have had a pre-strike ballot, or essential services unions which have, as will be the case when the amendment comes in, a continuity of supply agreement. That hierarchy determines the response. A strike of workers is the lowest level of the hierarchy and is subject to the ordinary section 44 processes. The level that would attract the most severe penalty is if a union were in breach of an award or agreement in which it had undertaken not to strike or make a claim within the period of the award but to follow certain dispute resolution procedures, and that would attract a mandatory order to return to work.

Hon JOHN HALDEN: I am still confused about the Government's rationale in this process. The Minister is saying that if workers did not hold a pre-strike ballot, the commission would use its best endeavours, but if they did hold a pre-strike ballot, they would be ordered to return to work. Surely the rationale is around the wrong way. Under the Minister's rationale - I am not saying I agree with it - if we are to have legislation which will impose mandatory pre-strike ballots, then surely if workers did not hold a pre-strike ballot, they should be ordered to return to work, and if they did hold a pre-strike ballot, the commission should use its best endeavours. The problem with these two clauses is that the punitive aspects, if I can use that expression - it is wrong, but I will use it anyway - are around the wrong way, because the penalty does not fit the crime.

Hon PETER FOSS: The member is right. Under our logic, one could justify an order to return to work if the workers had not held a pre-strike ballot. However, rather than do that, we have said that the commission should use its best endeavours to ensure that normal work resumed immediately, and that might include an order to return to work. We

have not gone so far as apply it to all strikes. The most draconian remedy would apply only if a union had breached an undertaking that it had given in an award or agreement, regardless of whether there had been a pre-strike ballot.

Hon N.D. Griffiths: How is a union supposed to compel its members to go back to work?

Hon PETER FOSS: That is an interesting question. We should deal with that when we get to that clause.

Hon N.D. Griffiths: It goes to the crux of this Bill.

Hon TOM HELM: This issue is close to my heart. The unions at BHP have given an undertaking to maintain continuity of supply while they deal with matters that concern them, perhaps by way of a stop work meeting that would be unpaid but would be authorised so long as that commitment was met. Did the Minister say that in that case, they would not need to hold a pre-strike ballot?

Hon Peter Foss: No.

Hon TOM HELM: If BHP allowed a stop work meeting to take place so long as there was continuity of supply -

Hon Peter Foss: A stop work meeting is different, or it will be when the amendment comes through.

Hon Kim Chance: We are not allowed to discuss that.

Hon TOM HELM: Under those provisions, would workers who had undertaken to maintain continuity of supply - I am not talking about essential services here; they will continue to push iron ore through the crusher - be required to hold a ballot to decide whether they should hold a stop work meeting off site to talk about an industrial dispute, or whatever?

Hon PETER FOSS: On one interpretation, no, but in order to put it beyond doubt, I have put some amendments on the Notice Paper to deal with two things: Stop work meetings, which are a total cessation of work for a period of time in order to discuss certain matters; and bans and limitations, where the workers continue to work generally but put a ban or limitation on a particular activity, and that will depend on whether it is a status quo ban or a non status quo ban. In each case it must be in accordance with the agreed procedures. A status quo ban or limitation continues until the commission orders otherwise, and a non-status quo ban continues until such time as it is in the hands of the commission. The other kind of ban or limitation is on health and occupational safety.

Hon N.D. GRIFFITHS: The people who framed the policy and the detail of the Bill have lost sight of what we are talking about, which are every day situations at places of work where ordinary people decide that something is wrong and they need to act on it. Sometimes that may involve very few people. It may involve a workplace of perhaps three or four people who decide that something drastic is required. They may decide that to achieve a prompt remedy for what they perceive to be an injustice it is necessary that they withdraw their labour - the generally accepted use of the term strike. In the application of this Bill members of an employees' association - as the Bill states, or as we understand, members of a union - will be required to go through very complicated procedures. Whether one is ordinary, superordinary, a QC or whatever and one reads that aspect of the Bill which deals with so-called pre-strike ballots, the first thing that grabs one's attention is that it starts on page 7 and continues to page 24. It is a lot of words and a lot of law that is amending a lot of sections in the Industrial Relations Act 1979. This Bill is supposed to be something that the full resources of the State have given attention to for a considerable time. We know it is something very dear to the heart of the Liberal Party, even though it did not tell the electorate about it.

Supplementary Notice Paper No 6 dated Friday, 9 May came before members today. Several pages of the notice paper are seeking to change many of the clauses that I referred to as being part of those pages dealing with part 3, pre-strike ballots. It is one thing to expect a competent and experienced union officer with years of experience - sometimes not - to deal with this, but how is the ordinary person supposed to be able to deal with this legislation? I posed a simple question when Hon John Halden and the Attorney General were exchanging views on later clauses: How is a union supposed to get its members back to work? Unlike the State Government the union does not have the power of force. It cannot compel, it can only persuade. Basically it can only seek to do something. It does not have a sanction against its members. The Attorney General said we could deal with this later on. However, that is a fundamental question.

Hon Peter Foss: It is, and I will deal with it under clause 36.

Hon N.D. GRIFFITHS: The issues in this Bill will affect people in everyday situations. We are not talking about situations which involve people who deal with legislation every day, who are involved in matters of relatively high policy, or about the Attorney General and the member for Riverton on the one hand and the Secretary of the Trades and Labor Council on the other.

Hon Kim Chance: We are talking about 15 year old shop assistants.

Hon N.D. GRIFFITHS: We could be talking about 15 year old shop assistants in a non-unionised shop. We could be talking about people who live in the electorate of Hon Kim Chance who work in a small business. The definition of small business means that it can employ quite a few or very few employees. Many of these places are not unionised, though many employ union members. Consider a garage or roadhouse in country town that has four or five employees. Their toilet is not working, and they are sick of the proposition that they are required to provide the cash float to start off the day. I give that by way of example; I am not accusing any business of anything. They say, "We've had enough. We want to do something about this." I know what they will do ultimately; they will vote against members opposite - but that is a long way down the track because we will not have an election for a few years. They want to do something about their conditions; they are free people; they are not serfs or slaves; they are not people in the tiger economies who work for next to nothing. They are used to being treated properly in a democratic society because, irrespective of the operations of the common law, which is not and never has been worker friendly, they are used to having the capacity to withdraw their labour. How will they make their decision now? How is this legislation user friendly?

I know some people enjoy trying to do a very poor imitation of Paul Keating. However, this is a serious question. I want to know how the ordinary person placed in a difficult situation is able to access appropriate processes so that he can protect his basic, decent interests. I am concerned that all these words that I have made reference to do not permit people to protect themselves properly. In many situations that withdrawal of labour is required. I have met many people who have gone on strike from time to time but I have never met anyone who wanted to go on strike. I have never met anyone who wanted to cause discomfort to their relationships.

Hon PETER FOSS: We will deal with that when we reach clause 36. It is a detail rather than a principle of the Bill. I have placed on the Notice Paper amendments which will make it clear that if one does not comply, the only criminal penalties to be imposed are those on the union, not on the employer. I accept the point, and we will remove that criminal penalty by amendment. That in the main addresses the concern that the member has. Nothing follows as a matter of course that one has committed an offence, although enforcement proceedings can take place. The main provision so far as the commission is concerned is to seek to do its best to get employees to resume work. I assume that many people would call in the union and the union would start negotiations, but the first step taken would not be to strike. It has always been the intent and principle of our industrial law that one should not start with a strike but finish with a strike. It makes sense that the first step is not the ultimate sanction but something more limited in its effect.

We have listened to the concern that has been expressed in that regard; that there should not be a criminal penalty flowing from one going on strike without having followed the pre-strike ballot procedures, but there should be a capacity for the commission to make sure work is resumed and for it to be encouraged to make sure that work is resumed. In the instance given, there is ample opportunity within the structure of the Act, as it stands, for those disputes to be addressed in the normal way; in fact, in the way they are addressed now - just short of going on strike, leading to consequences which do not include a criminal penalty so far as the worker is concerned.

The DEPUTY CHAIRMAN (Hon W.N. Stretch): In the past few minutes the debate has moved away from the purpose of the short title. We cannot revisit the policy of the Bill. We should be restricted in our comments to the clauses, and at the same time make sure we do not go too deeply into the subject matter of each clause. This is the short title, which is a little limiting. I ask members to bear that in mind, and we will get through this as best we can.

Hon KIM CHANCE: I was interested to hear the Attorney General's comments on the short title. It was a thinly disguised second reading speech. I was interested in what he had to say about the attitude of the Labor Party in its defence of the existing Industrial Relations Act. He seemed to be arguing that from the comments of Labor members in 1979 and 1993 on amendments to the Industrial Relations Act, we somehow adopted a position that denoted our concept that the Industrial Relations Act is perfect. I can remember this argument being used against us in the context of the debates in 1993 on the Workplace Agreements Act, the Minimum Conditions of Employment Act, and the Industrial Relations Amendment Act. That is nothing more than sophistry. I cannot imagine why the Attorney General would have raised that as his first contribution on the short title.

On each occasion that he referred to in 1979 and 1993 we were witnessing changes being introduced by a conservative Government which took away the rights of workers. It is no surprise that Labor members objected in fairly strong terms about that action, and in 1997 it is no different. Again, we are seeing rights being taken away, and it should be no surprise to anyone that Labor members will hold up what we have as being better than what we will have after the passage of legislation, which further impinges upon the rights of workers. It does not denote that we think the existing legislation is perfect. It denotes nothing more than what we say: The existing legislation, for all its faults, is better than what it will be after the passage of these amendments.

Despite the comments by the Attorney General, this Bill does not facilitate secret ballots. It makes no sense for the Attorney General to say that this Bill facilitates the process of secret ballots. Some workers in strangely unspecified

occupations fit the general description of essential services. The right to the limited protection which is afforded by secret ballots as determined and described in the legislation, is removed from those workers. If we cannot have the beneficial effect - limited as that might be - of a secret ballot, as a direct result of the legislation, how can it be argued that this legislation facilitates the process of secret ballots? It does the opposite. If a worker is occupied in an essential service - and we do not know what it might be because there is no prescription for it - that worker faces no less than an additional penalty for taking or even contemplating action as a result of this Bill. All it provides to that worker is the possibility of an additional penalty. It does not provide any right. That worker does not gain anything from this Bill. That worker is even denied the right to a secret ballot as a direct consequence of the Bill. A worker in an emergency service is specifically denied the right to a secret ballot as a consequence of the Bill.

Hon Peter Foss: When we reach that clause, I would be grateful if you would point that out.

Hon KIM CHANCE: The Attorney General made the point in his comments on the short title, and he was wrong. An occupation which is probably relatively easy to define as an essential service is that of a power station worker. Currently a power station worker has the option of negotiating an award or an industrial agreement with his or her employer which codifies the right to a secret ballot or the requirement for a secret ballot provision. That is an option available to every worker in every workplace now. As we have said, awards and industrial agreements codify that right or requirement. If this Bill were passed, effectively that option would be removed. If it was not removed - it could be argued in black letter law that it would not be - the option in section 23 would be invalidated. Even if a ballot was taken properly and according to the specification of the law, it would have no effect because, regardless of whether a secret ballot was conducted properly, it would be a breach of the legislation for a worker to take any action. Therefore, it would be entirely illogical to proceed with the secret ballot. A group of workers is specifically denied the protection of the secret ballot process, but that same of group workers has the right to negotiate a secret ballot under the current legislation. To put that in context with what I said earlier, I do not think the current legislation is perfect; however, it is better than the shape it will be in after we pass this Bill because this Bill will remove access to secret ballots that is available to every worker now.

The Attorney General said also that the Trades and Labor Council and the Australian Labor Party had refused to negotiate with the Government on the consequences and make-up of this legislation. One of the consequences of living in my electorate is that I do not see everything that happens in Perth. However, with my own eyes I saw Jennie George from the Australian Council of Trade Unions and Tony Cooke and Stephanie Mayman from the Trades and Labor Council going into the Premier's office. I asked Tony Cooke and Stephanie Mayman where they were going. They said they were going to see the Premier. I asked what they were going to talk about and they said they were going to talk about this legislation. That one instance that I witnessed suggests that what the Attorney General has just told us is incorrect. I know from what my colleague Hon John Halden told me that talks were held between the Australian Labor Party, the Minister for Labour Relations and the Attorney General. That was a meeting at which the Attorney General was present, yet he says the Labor Party and the TLC have not been prepared to talk about this legislation.

Hon Peter Foss: I illustrated those instances. They told us they could not talk to us.

Hon KIM CHANCE: That is certainly not the case in one of those two instances.

Hon Peter Foss: They rang me back and said that they were not allowed to meet, and they did not.

Hon KIM CHANCE: The ALP has never been not prepared to debate this Bill; it has simply asked that we not do so until the Chamber is properly constituted. The Attorney General has made a pitiful attempt to regain the high moral ground. The Australian Labor Party has not limited the debate on this Bill; the debate has been limited by the introduction of the guillotine in this place and by the procedural motions introduced by the Government.

Hon PETER FOSS: Hon Kim Chance spoke about pathetic attempts. I referred to the fact that the ACTU disagreed with the TLC about negotiating with the Government. It was at the insistence of the ACTU that Mr Cooke went to the Premier's office. Unfortunately, no negotiation took place at that stage, although it was indicated by Jennie George that it should do so. Stephanie Mayman and Tony Cooke said they would come back with propositions. It was at the insistence of the ACTU that they agreed to do that, although reluctantly. The ACTU said it would come forward with positive recommendations for amendment. Unfortunately, once the ACTU people left, that resolution left with them.

Hon Tom Helm: They are still here.

Hon PETER FOSS: They have not brought it forward. The Government was told it would receive that document on that Saturday. They sent in a document that contained no propositions, but just the usual general complaints. To this day the Government has not received anything that could be called a negotiation. All they have said is that they are against the Bill in principle, but in no way did they put forward an alternative.

Hon Kim Chance is right: I set up a meeting on Sunday with the emergency services unions to go through their objections. They rang back on Saturday and said Tony Cooke said they could not meet. I have not met them; I was not able to. I have been ready and willing to meet them since we had our first meeting with them.

Hon Kim Chance: They did meet the Premier, though.

Hon PETER FOSS: They met the Deputy Premier. I was present at that meeting, and we were making progress. Some of the amendments I put forward came out of that meeting. That goes to show that if such a meeting is held, progress can be made. However, contrary to the wishes of the emergency services unions, at the instruction of the TLC they were not allowed to meet any further with us. Since the meeting with the Deputy Premier they have not met us.

The Opposition has refused to talk to the Government about the substance of any amendment, despite the fact that over a period of months I have invited it to do so and have offered to prepare amendments so that we do not disagree about the form of the amendments, but purely the substance of what is intended. The Opposition admitted again that it is not prepared to do so until 22 May and until it considers that this place is lawfully constituted.

Sitting suspended from 3.46 to 4.00 pm

Hon MARK NEVILL: I am an economic interventionist. Since the collapse of communism and the winding back of right wing dictatorships, the greatest threat I see to our society today is capitalism. An interesting paper titled "The Threat of Capitalism" has been put out by George Souros, a renowned investor. If it is unchecked, everyone's wages will be driven down to the lowest common denominator and conditions will be eroded. It will affect not only wage earners but also everyone in the community, from farmers to taxi drivers. There are not enough jobs to go around even now.

Although everything will be screwed down to the minimum, there will still be a large pool of unemployment. In Europe about 20 million people are unemployed. Members can imagine what that will deliver to that continent within the next 20 or 30 years. This approach to society is dangerous. There is no doubt in my mind that this Bill is designed to weaken, crush and destroy unions.

In the United Kingdom as a result of legislation like this, union membership dropped by about two-thirds. That is what the Government has in mind. It is purely ideological and about the dollar result at the end of the line rather than the quality of life. That is one way of looking at society. However, it clouds the real problems in society, which balloon and end with the whole thing falling apart.

Hamersley Iron Pty Ltd has a $100m action against four unions and the Australian Council of Trade Unions. Hamersley Iron will take that to the wire because it wants to bankrupt the four unions. It probably has a good chance of doing that along with the ACTU. Where will that leave us? It will force the working people in this country to go underground for union membership. That is happening now in the Pilbara. Union membership in the Pilbara is increasing. However, they are not joining the unions openly; that is, they are not having the *Australian Worker* delivered to their employment to ensure that the company does not know they are members of the AWU. They are having it delivered to post office boxes in Perth. That action will drive unions underground.

I have been following the effect of workplace agreements for some time. Under this Bill, workplace agreements are developing two classes of people in this State - those under state workplace agreements who are being screwed unmercifully and those on special workplace agreements that override federal awards. Those workplace agreements have a no-disadvantage test in them. That is the only way they can override a federal award in the light of constitutional problems. There is no such test in the state workplace agreements.

It is easy to employ people on a casual basis under state workplace agreements. That avoids employers having to provide workers with any benefits such as overtime or penalty rates for working outside normal working hours provided in the awards. The rates are attractive to employers. They enable them to pay a flat hourly rate. They know how much they must pay at the end of the week. In the past, the casual rate always had built into it allowances for entitlements such as long service leave.

My wife works as a casual midwife for which she is paid a higher rate than people working full time. On a workplace agreement the opposite happens. For example, a person I know was paying $15 an hour under the award rate. That person told me that under a workplace agreement the word "casual" could be almost interpreted to mean full time. Under workplace agreements that employer - it is commonplace in the food industry - pays about $11 a hour. That is a saving of $4 an hour, which could amount to $160 a week less for the employee.

The workplace agreements are screwing down wages. How far do we go with this competition ideology? We cannot compete with the wages of Vietnam and China. Globally, where will we end up? Not with the sort of economy I want to see developed in Australia. The Asian tigers and Japan have high wages and low levels of unemployment.

We have high levels of unemployment and low wages. Those countries have a different view of how to manage not only the economic side of society but also the social side of it.

The whole philosophy behind this Bill is sterile. I would like the Attorney General to explain why we should be allowing two classes of people to develop in the Western Australian workplace. There are those on state workplace agreements who do not enjoy the no-disadvantage test and whose wages are dropping, and those on the special workplace agreements with the no-disadvantage test which can override federal awards. Is it not wrong and should the Government not really be putting the test in the Bill so that workplace agreements go to those people who can deliver better advantages to their employees?

Hon PETER FOSS: I accept the examples Hon Mark Nevill gave. To some extent he indicated the answer to his question by referring to the Asian tigers which, as he said, have high wages and low unemployment. They are not economic interventionists.

Hon Mark Nevill: In Japan they are.

Hon PETER FOSS: They are not intervening on behalf of the workers. Neither Korea nor Singapore imposes those conditions on employment. They tend to allow the wages to be set by the marketplace. Those countries have high wages and that has been something of a surprise to them. They manage to get efficient organisations and workplaces so that they can compete.

The biggest single problem with the award system is the ossification of the processes of work itself. As Health Minister I recall people saying, "We could work more efficiently and better than we are but we cannot do it because the award dictates every process we do. If we try to change our method of working, it becomes economically unfeasible because of the penalty rates involved." A change in the process is needed. The member referred to the initial effect in some areas - it is only some areas because people are earning more than they did before, and the member's electorate would be an example of that. Within areas of the mining industry people are taking home large amounts of money and they also have a flexible type of working arrangement where productivity is increasing simply because they are operating in a way that suits both employer and employee. They are doing it in a way that both of them think is efficient.

Hon Tom Helm: With an award safety net.

Hon PETER FOSS: I believe there should be a safety net, but it should not be an award safety net. A problem with the award has always been that it deals not only with what employees should be paid, but every single aspect of the process of working and in a manner which economically dictates that process. In other words, the process cannot change without its becoming uneconomic and without any real benefit for the employees.

We must reach a situation where people have the capacity to work in a sensible way, and are adequately paid when it is necessary to dispose of a job. In the example the member gave I am sure in certain areas there will be a drop in pay. In the majority of areas where workplace agreements have been successful there has been a major increase in the amount people are paid.

If we are to compete as a nation, we must have a work process which both properly rewards the worker and is sensible, economic and practical. I do not think anybody would deny that the award system did so strait-jacket the work processes that it was very difficult for Australian industry to be competitive. It has been demonstrated in some areas where the strait-jacket has been removed that Australia is very competitive.

Hon J.A. COWDELL: I will refer to one aspect raised by Hon Mark Nevill. There now appears to be two levels of state workplace agreement: One can be registered and in fact qualify for recognition under the federal Act and override a federal award. The other is just a state workplace agreement under the current Act, which does not have a no disadvantage clause and, therefore, cannot override a federal award. Is that the case or is the Government changing the regulations so that all state workplace agreements registered from here on in satisfy the no disadvantage clause and are able to override the federal award?

Hon PETER FOSS: From now on if one wishes to override a federal award one will have to satisfy the test, but one is not obliged to satisfy the test.

Hon TOM HELM: I ask the Chamber not to support the short title because it does not relate to what is in the Bill. The Bill has nothing to do with labour relations, but it has a lot to do with dictatorship. It is to do with Hon Peter Foss and some of his cronies - I say "some of his cronies" because by their silence I know some members opposite do not agree with what the Government is doing. The guillotine is there not for the benefit of the coalition, but to keep the Opposition quiet. Some members opposite do not believe the Attorney General when he says this Bill is about creating a fairer industrial relations system and that the awards impose too many strait-jackets. On the one

hand, he says that and, on the other hand, and in response to Hon Mark Nevill, he speaks about over-award payments and other payments in exceptional circumstances in the workplace.

I will refer to a few things the Attorney General said about waiting for amendments from the Labor Party. It is like saying, "I'm going to deal you the death sentence and I want you to tell me whether it should be by lethal injection, hanging or electrocution." The Attorney General has a nerve to tell the Opposition that he wants the Opposition to provide amendments to a Bill which it considers is obnoxious. In the other place the Opposition tried to have amendments passed which would make the legislation acceptable.

Hon N.D. Griffiths: The purpose of the proposition put forward by our colleagues was to show the Government it will not work.

Hon TOM HELM: That is right. The Opposition received a set of amendments from the Government at the beginning of this week and another set today.

Hon Peter Foss: They are basically the same.

Hon TOM HELM: I do not care whether they are basically the same or fundamentally different. The Attorney General should not point his finger at the Opposition when he, as the architect of whatever word one wants to use to describe the Bill, should provide the Opposition with amendments. It is the Government's Bill, not the Opposition's Bill. Why should the Opposition be obliged to make this thing work? It will not work.

I remind members that the Attorney General said he wanted the Opposition to debate the Bill fairly. It does not matter what the Labor Party has done to avoid debating this Bill - by God the Attorney General is right because it does want to avoid debating the Bill - the coalition parties control this place - the 17:16 rule. I cannot remember the last time this place sat on a Friday. It was probably at the end of a parliamentary session. It is unusual.

Hon N.D. Griffiths: We don't want to remember it.

Hon TOM HELM: I do not really care. If the Government want this House to sit day and night on a Friday, Saturday or Sunday, even though it is not humanly possible to do it, by God the Opposition will try to avoid debating this legislation. Does the Government want to do that? No. Does it want members on its side to make a contribution to the debate? No. Let us not talk about how the Opposition has avoided speaking to the Bill. The Opposition does not mind speaking to the Bill at any time after 22 May. That has within it the inherent danger that the Democrats could negotiate with the coalition and put something together, as it did in the federal sphere, which the Opposition might not like. That does not matter. We will have the argument at that time. This is an illegitimate Chamber until it reflects the people's vote on 14 December 1996.

The question on the short title has been put and the Minister with passage of this Bill tells us we should support it because it reflects the Government's intentions to improve the industrial relations position, which he claims is bad. He says that the award is too structured and organisations in this State do not work efficiently. However, we are the most efficient State in Australia and among the best in the world in that regard. The iron ore industry produces cheaper ore and has greater production than that of elsewhere in the world, including Brazil.

Hon Peter Foss: Now.

Hon TOM HELM: Exactly. The next thing the Attorney General said was that in 1973 people on our side of politics said the end of the world was nigh. I was not around then so I cannot comment. However, in 1993 and 1995 we told the Attorney that his industrial relations Bill was a crock of dust, and he took it away. He changed his mind on the second wave as he agreed with us.

Hon N.D. Griffiths: No he didn't; Hon John Halden wanted him to change his mind.

Hon TOM HELM: I will not be cynical and say that an election was looming at the time. We had it right and the Government had it wrong. We will not have a state or federal election for a few years so the legislation is put before us. Of course, on this occasion I argue the same way I did then, but I will lose the 22 May argument if the Bill is dealt with now.

The short title has no bearing on industrial relations. As we go through the short title, I will demonstrate some issues I have in a file before me which indicate that single employers and employees have concerns about the way things will operate under the proposed legislation. Maybe I misunderstand the legislation or do not have a complete grasp of the amendments we received today. It was interesting to hear the Attorney allude to the amendments which were plonked on our desk today. Even the amendment we saw last week gave little chance for scrutiny. We are dealing with this Bill and proposed amendments to other Acts of Parliament, so it is not an easy issue.

The Attorney claims that the Opposition will not debate this matter, but that is up to him. He completely controls this place as he demonstrated today. We could stay here for as long as necessary - we would follow him. However, the Minister's mob want to give it away as they are tired and after a sleep. I feel sorry for them because their hearts are not in this Bill.

Hon Peter Foss: Yes, they are.

Hon TOM HELM: If they were, we would not be here today as the Attorney would lift the guillotine and give us a chance to debate the detail of the Bill.

Hon P.R. Lightfoot: You would filibuster until 22 May.

Hon TOM HELM: The senator-elect should watch his mouth!

The DEPUTY CHAIRMAN (Hon Murray Montgomery): Order! The member will address the Chair.

Hon TOM HELM: I always do.

The DEPUTY CHAIRMAN: The member has not done so for a short while.

Hon TOM HELM: If that were done, we would have all the time in the world to look at these amendments. Maybe we could then get through business a little quicker. We will not do it in five minutes. The Government says we have certain time allocated to debate this matter. I do not know about you, Mr Deputy Chairman, but if someone tells me I can only talk on a matter for a certain time, I am more inclined to tell that person to stick it. I say, "I do not want to debate your legislation in your allocated time under the coalition Government's and the Minister's terms. I want the freedom, right and responsibility given to me as an elected member of this Chamber to debate this matter properly."

Hon Derrick Tomlinson: You want to debate it on your terms.

Hon TOM HELM: I want to do it in the way it should be debated according to the rules of this place which are 103 years old.

Hon Derrick Tomlinson: That is exactly what we are doing.

Hon TOM HELM: That is not the way the Labor Party did it.

Hon P.R. Lightfoot: Keep the red flag flying, comrade!

Hon TOM HELM: We have two senators now! The member will be all right in Canberra. He may be able to act like an animal in Canberra, but not here, so he should be quiet. The guillotine and gag were never used by the Labor Party.

Hon P.R. Lightfoot: They were used every day in Canberra.

Hon TOM HELM: The other mouth, Hon Ross Lightfoot, was not in this Chamber when the Labor Party was in government.

Hon E.R.J. DERMER: I seek clarification of clause 5, which will extend responsibility for the financial management of a union or employer organisation by inserting "or employee" . Union rules entitle union officers to have responsibility for financial management and other matters, but they do not entitle employees to have such responsibilities. Employees of unions discharge their duties at the direction of the union officers. Given that fact regarding the structure of union rules, why insert "or employee" in section 74 of the Act?

Hon PETER FOSS: The member has hit on the correct word of "entitle". If no entitlement is conferred on an employee, the rules give the entitlement to a particular officer of the union. However, some form of delegation or contract of employment may pass on that entitlement to someone else.

Hon E.R.J. Dermer interjected.

Hon PETER FOSS: It all depends upon how it is done. If a person is not entitled to do something, he is not caught by the provision. It only applies if the person is entitled to do something - that is the essence of it. By all means, it could be that union rules give an entitlement solely to a person and that no possibility arises of delegation, contract of employment or any other manner passing the entitlement on to another person. In that case, nobody but the officer has such entitlement. However, if under union rules, under contract or by some other means, that entitlement is passed on to an employee, such a person falls within the provision. If the entitlement is not passed on, the person is not caught.

Hon J.A. SCOTT: Firstly, a couple of statements were made about the amendments, which cannot yet be regarded as part of the Bill. As I understand the sessional order, clause (3), states that these amendment will be accepted into the Bill whether they are debated or not.

Hon Peter Foss: Only with an affirmative vote will they become part of the Bill.

Hon J.A. SCOTT: Even if they were not debated, was it not?

Hon PETER FOSS: Yes, but we hope we will debate them.

Hon J.A. SCOTT: So in effect they are part of the Bill.

Hon PETER FOSS: No, they are not - unfortunately.

Hon J.A. SCOTT: I stumble in my reference to the short title as I, like Hon Kim Chance, thought the Attorney's speech was on the second reading. He spoke about the political expenditure provisions, an aspect which is completely inconsistent with the rest of the Bill. People have referred to other areas of inconsistency, but this is a glaring example. This should not be in here. In both the Bill and the second reading speech these provisions come under the heading "Political expenditure". I want to know what political expenditure has to do with labour relations. I do not see it as having anything at all to do with it.

Hon E.R.J. Dermer: It should be in the Electoral Act, along with mention of the confederation of industry.

Hon J.A. SCOTT: It should be put in legislation in such a way that all who make political donations are covered in an equal and fair way. The Attorney General said that he thought it was fair because people have a choice whether to put money into a company. He gave different examples. He asked how I would like it if I could invest in only one area. That is a nonsensical argument. In this State the monopolistic practices are such that if I wanted to invest in retailing, there are not many companies other than the Coles-Myer group in which I could do that. I do not know where else I could go to get a return on my investment.

Hon Peter Foss: You can invest in anything you like. There are lots of areas.

Hon J.A. SCOTT: There are lots of areas of investment, but a choice of only a couple of companies, and sometimes only one. In the green technology areas there are very few.

Hon Peter Foss: You can put your money in the bank.

Hon J.A. SCOTT:. Very little enterprise is shown by Australian business people in the green technology area. They do not want to risk their savings, notwithstanding that it is one of the fastest growing areas of enterprise in the world.

Hon Peter Foss: Do you know how many countries are listed on the stock exchange?

Hon J.A. SCOTT: I do not.

Hon Peter Foss: More than enough for choice.

Hon J.A. SCOTT: The Attorney General seems to forget that all unions are not affiliated with the Labor Party. They do not all collect political donations for the Labor Party, as I understand it.

Hon Peter Foss: They will not be caught by this then, so it is not a problem for them.

Hon J.A. SCOTT: I do not think the Attorney General's argument stands up. We are supposed to represent the community. It sees that the Government is putting into labour relations legislation -

The CHAIRMAN: There is too much audible conversation in the Chamber coming from about five different sources.

Hon J.A. SCOTT: Provisions about political expenditure are out of place in this legislation. They should not be in this Bill. As I was saying, the community sees that the Government is not prepared to deal with political expenditure in a proper way. The Attorney General said that if the money could go to the Liberal Party, that would be okay. That is the real reason behind this provision. The same conditions must apply to corporations that do not tell their shareholders to whom they are giving political expenditure. They do not even tell shareholders that they will donate money to a political party.

Hon Cheryl Davenport: Before disclosure in this State, they would not have known at all.

Hon J.A. SCOTT: That is right; it went quietly ahead. Private enterprise donating money is a far greater area of risk, particularly with the Government moving into privatisation and outsourcing at the moment. Private enterprise is now getting contracts for the provision of government services.

The CHAIRMAN: Part 4 of the Bill, which goes from clause 13 onwards, refers to political expenditure. It would be more relevant for the discussion in which the member is engaging to be put forward when we come to that part of Bill.

Hon J.A. SCOTT: All the provisions on political expenditure should not be considered here because they are inconsistent with labour relations. They have nothing whatsoever to do with that; not one iota.

The CHAIRMAN: That is my very point. That point should be made when we get to debate on that part of the Bill.

Hon J.A. SCOTT: I thought we were talking about the structure of the Bill, about the way in which the Bill is made up. It is made up of a whole lot of clauses, most to do with labour relations; however, part 4 is not. I find it hard to understand why it is there.

I seek some clarification of why it is part of the Bill. I do not want to debate the provisions, but rather why they are in this Bill. It worries me. I feel that members of the community whom we represent see that it is very unfair for these provisions to be in this Bill.

This part does not deal with the other part of the political expenditure equation. It should be in a separate Bill. I do not want do get into the detail of it, but it should not be here. I have not been convinced in any way by the Minister's arguments about this. They are totally off-the-planet excuses that have nothing to do with reality. We are talking about two different bodies. The Attorney General tried to equate a body which exists to make a profit with another which represents the rights of the individuals who are members of it. His arguments in no way stand up.

Hon Peter Foss: That is an horrific thing to do - make a profit!

Hon J.A. SCOTT: These organisation are not supposed to be equal. Political expenditure is just that; it is not about labour relations, and should not be in the Bill. I very much want to know why these provisions are in this Bill; why they are not put into another Bill where they should cover all people, including those who donate money to the Liberal Party.

Hon E.R.J. DERMER: I seek further clarification about clause 5. In answer to my previous question, the Attorney General said that it might be possible that an employee of a union would assume the responsibilities of an elected officer.

The CHAIRMAN: Order! I have not been in the Chair for the whole of the debate, but the member will need to convince me that he should be talking about this now, rather than when we come to clause 5.

Hon E.R.J. DERMER: When he was in the Chair, Hon Bill Stretch advised that an appropriate and legitimate purpose of this debate was to seek clarification from the Attorney General about the content of each clause, and that is my objective.

The CHAIRMAN: No, not the content of each clause. The member can talk about the structure of the whole Bill and why a specific clause may not fit into that structure, but he cannot comment on the content of it.

Hon E.R.J. DERMER: In pursuing the objective of looking at the structure and how they inter-relate -

The CHAIRMAN: I suggest the member continue, and I will stop him if I think he is going too wide.

Hon E.R.J. DERMER: This question is in the same spirit as that which I asked earlier. I want to understand the purpose of the clause, to see how it connects to other parts of the Bill. Is it appropriate that employees should be included in this clause?

Clause 74 contains the notion of an employee being responsible for the financial management. Is the Minister aware of a union or an organisation that has that practice? I am not aware of any. If the Minister is not aware of a union or an organisation that has that practice, why is it relevant to include this change in the Bill?

Point of Order

Hon DERRICK TOMLINSON: The honourable member is asking questions relating to the detail of the Bill. We established earlier that it would be appropriate for a member - Hon John Halden raised matters relating to clauses 36 and 37 - to use a clause to elucidate the policy of the Bill in the response to questions on the short title. The honourable member is extending the debate on clause 1 to get detail on other clauses. I suggest he is out of order.

The CHAIRMAN: The point of order is valid. I told the member, after initially querying why he was talking about clause 5, that he could continue his remarks until I assessed whether they were valid. I was about to pull him up when he sat down.

Committee Resumed

Hon TOM HELM: I show the Committee a cartoon that appeared in the *Geraldton Guardian.* The first picture depicts a shearer kicking out of the shearing shed a sheep he has just sheared. The second picture depicts a boss kicking a worker out the front door of the workplace.

I received a note from an organiser of the Australian Manufacturing Workers Union on behalf of a group of workers employed by T & J Spraypainting in Balcatta. The note states that Mike Henderson, the organiser, had sought -

> . . . to inspect the time and wages records. This access has been denied. Section 49B points out that at least 24 hours notice should be given. The company was notified with sufficient notice and the Motor Trade Association, the employers representative, was also given notice. This further notice was due to the fact of a matter relating to an issue regarding present employees before the State Commission.
>
> The ex-employees are concerned that the 3rd Wave legislation, if it is passed, will make it difficult for proper inspection.
>
> The Company has chosen to ignore the Union's entitlement of inspection which only serves to confirm that all is not right at T & J Spraypainting.

With that documentation was a letter signed by the employees of T & J Spraypainting, who drew the attention of the commission to the fact that their employer individually pressured them not to allow the AMWU access to the company's time and wages records.

The Minister's comments did not address the activities to which we have referred on a number of occasions and by way of amendments. The inspection of time and wages records is a difficult area for unions now. We strongly believe this Bill will make it worse.

Hon P. SULC: The Attorney General referred to the categorisation of workers for one union. I am an industrial refrigeration fitter. Without having examined the articles of association of other unions, I now can choose to be a member of four unions - the Australian Manufacturing Workers Union, the Communication, Electrical and Plumbing Union, the Australian Workers Union, and the Construction, Forestry, Mining and Engineering Union. Union membership is not a fee for service or a commercial transaction, as is buying shares in Bunnings. It is a financial acknowledgment of the realities of modern collective bargaining. A guarantee for workers requires complex and expensive legal processes. A union's role in this is to protect its members' rights. These provisions are designed to straitjacket the unions.

Hon PETER FOSS: Members opposite asked me why the legislation does not deal with membership of companies in exactly the same way as it deals with unions. They asked what distinguished them. I pointed out the features which distinguish them, but they are now saying they are two different things. Hon Tom Helm and Hon Paul Sulc have told us there is no connection between vesting in a company and being a member of a union. I could not agree more. They are totally different, which is why a distinction is being made between them. I am pleased to hear the support from the two members that making the difference is justified.

I will not reply to Hon Jim Scott because that would be tedious repetition. There is a very good reason for the matters to which he referred being in the Industrial Relations Act. Part 2 of that Act deals with the Western Australian Industrial Relations Commission. However, division 4 of that part deals with industrial organisations and associations. Those organisations are constituted and their powers are set out in that Act. We could put the matters to which he referred under division 6. That Act goes a lot further than dealing only with industrial relations. It is the Act which brings all of those organisations into existence.

Hon J.A. Scott interjected.

The CHAIRMAN: Order!

Hon PETER FOSS: The problem with Hon Jim Scott is that he does not like hearing arguments -

Hon J.A. Scott interjected.

The CHAIRMAN: Order! Hon Jim Scott asked the Minister for an answer. The Minister is responding. Hon Jim Scott might not like it but it is a response.

Hon PETER FOSS: Precisely, Mr Chairman. Hon Jim Scott believes that if he shouts loudly enough, he will not be able to hear the explanation because he does not like the explanation. In the same way that my previous answer relating to investment answered his question, so does my answer now relating to the contents of the Industrial

Relations Act. The problem is, he does not like what he hears. His ears do not work well when his mouth is working overtime.

Hon TOM STEPHENS: Nothing has happened in the debate on the short title that convinces the Opposition to support the legislation. Nonetheless, we conclude our opposition to the clause at this point and will move to the Committee debate of the various clauses.

Clause put and a division taken with the following result -

The CHAIRMAN: Before the tellers tell, I cast my vote for the ayes.

Ayes (17)

Hon A.M. Carstairs	Hon Peter Foss	Hon M.D. Nixon
Hon George Cash	Hon Barry House	Hon B.M. Scott
Hon E.J. Charlton	Hon P.R. Lightfoot	Hon W.N. Stretch
Hon M.J. Criddle	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore	

Noes (15)

Hon Kim Chance	Hon Val Ferguson	Hon J.A. Scott
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Tom Stephens
Hon Cheryl Davenport	Hon John Halden	Hon P. Sulc
Hon E.R.J. Dermer	Hon Tom Helm	Hon Doug Wenn
Hon Graham Edwards	Hon Mark Nevill	Hon Bob Thomas *(Teller)*

Clause thus passed.

Progress reported.

STATEMENT - HON MARK NEVILL

Estimates Committee Hearings

HON MARK NEVILL (Mining and Pastoral) [4.53 pm] - by leave: The 1997-98 Estimates Committee hearings will be held from Wednesday, 28 May to Friday, 30 May 1997. The hearings will be held in the Legislative Council Chamber, allowing all members a better opportunity to participate in proceedings. These hearings are important to the functioning of the House and I ask all members to contribute fully during these days of sittings. I will table the program for the agencies to be examined during the estimates hearings. I would like to thank you, Mr President, for permission to use the Legislative Council Chamber to conduct the hearings.

[See paper No 444.]

[Questions without notice taken.]

ADJOURNMENT OF THE HOUSE - ORDINARY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.32 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Labour Relations Legislation Amendment Bill - Time Management Arrangements

Hon N.F. MOORE: As members will be aware, a time management arrangement is in place for next week and a number of standing orders have been suspended. The time management arrangement for the various stages of the debate on the Labour Relations Legislation Amendment Bill are contained within the resolution of the House. However, as members will know, it is quite possible for those times to be varied.

Hon Tom Stephens: We would like to adjust the last one to 27 May.

Hon N.F. MOORE: The only stage and time not subject to change is that for the third reading, which is to be completed on 15 May at 5.00 pm. However, the timing of the Committee report and the adoption of the report is flexible. I have suggested that the Leader of the Opposition may like to indicate how the Opposition wishes to deal with the business next week within the constraints of the third reading time. It is quite possible that the Committee stage will not finish at midnight on Tuesday if the Opposition wishes to debate it for longer than that. We could debate it until some time on Thursday and move the adoption of the report and the third reading on Thursday. In

other words it is not definite that the Committee stage will be finished at midnight on Tuesday. I ask the Opposition to take that on board seriously because that is what I had in mind when I first drafted the motion to which we agreed.

Adjournment Debate - Homosexual Law Reform

HON P. SULC (East Metropolitan) [5.31 pm]: This is the first time I have used the adjournment debate to discuss a matter in the House. I do so because the Tasmanian Parliament has recently changed its laws on homosexual behaviour from being the most reactionary in Australia to the most liberal. This reflects poorly on this State as we now have the most reactionary homosexual laws.

Hon Peter Foss interjected.

Hon P. SULC: We know the reason it did not get through this House.

Hon Peter Foss: Your Government changed it to a more reactionary law in 1992; it was better before that.

Hon P. SULC: During the past couple of days I received a letter from the Sexuality and Youth Suicide Project, a joint organisation comprising the Western Australian AIDS Council and the Gay and Lesbian Counselling Service of WA (Inc). I knew that some of the attempted suicide rates in Western Australia, particularly among young men with sexuality issues in their lives, were quite high, but I did not realise the figure was as high as this letter indicates.

Each year between 4 500 and 7 000 young people aged from 12 to 25 years attempt suicide. This is not a reflection of only our laws but also the attitudes reflected, for example, in the amount of counselling available to people in this State with sexuality problems, especially adolescents.

I will leave my comments there, other than to say I have a great problem with certain parts of the Criminal Code, particularly section 322A, and parts of the Law Reform (Decriminalization of Sodomy) Act 1989 and how they impact on these people, especially young adolescents with sexuality concerns.

Question put and passed.

House adjourned at 5.35 pm

QUESTIONS WITHOUT NOTICE

EDUCATION - DEPARTMENT

Joe Scaffidi Builders

350. Hon KIM CHANCE to the Leader of the House representing the Minister for Education:

Some notice of this question has been given.

(1) Do Joe Scaffidi Builders or any associated business currently hold any contracts with the Department of Education?

(2) What is the nature of these contracts?

(3) When were they granted and how many contracts are held?

Hon N.F. MOORE replied:

I regret that I again must indicate that I do not have an answer from the Minister for Education and I ask that the member place the question on notice.

POLICE - BIKIE GANGS

South West

351. Hon KIM CHANCE to the Attorney General representing the Minister for Police:

With reference to the reports on page 10 of today's *The West Australian*, and given the statements by Senior Constable Graeme Lewington and Inspector Graeme Gordon that police need more resources to address the problems of bikie gangs in the south west, I ask -

(1) Why are not more resources being allocated to the police in these regions to address the problems?

(2) What steps is the Minister taking to rectify the problem?

(3) What, if any, facilities are in place to provide regional police with the ability to acquire police from other regions when budgetary constraints are not conducive to such action?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(3) While resource levels are subject to ongoing review, the Bunbury police district received an additional 10 police officers during the past year through the State Government's commitment to increase the operational strength of the Police Service. The district is adequately resourced to cope with normal operational demands.

When situations arise that police are unable to foresee, senior officers are able to call upon additional resources from other districts and regions to assist in maintaining a high police presence.

The State Government has ensured that police are adequately resourced through continuing financial commitments. In the 1997-98 state Budget announced last month, funding for the Police Service was increased by $29m, bringing total funding to $399m. This latest boost to police funding brings the total increase in funding to more than $160m over the past five years.

POLICE - BIKIE GANGS

South West

352. Hon KIM CHANCE to the Attorney General representing the Minister for Police:

Can the Minister explain why dozens of police are available to confront peaceful unionists but the police are unable to find enough to confront law-breaking bikie gangs?

Hon PETER FOSS replied:

I thank the member for some notice of this question. Police are deployed as situations arise, acting on information available. Where prior notice is received of the gathering of a large number of people for whatever reason, sufficient

police are deployed to ensure law and order is maintained and the safety of the community, including those involved in a protest, is not endangered.

"Operation No Tolerance" is a police initiative to control bikie gangs throughout the State's south west. Under the direction of the District Police Superintendent in Bunbury, police monitor the movements of bikie gangs and then set up road blocks to demonstrate a high police presence in the performance of random breath tests and searches for drugs and illegal weapons. Additional responses will be made available by the Police Service, including the use of officers from other regions, where necessary.

HEALTH - COCKBURN SOUND

Bacteriological Monitoring Data

353. Hon J.A. SCOTT to the Minister for Finance representing the Minister for Health:

I refer to the recent bacteriological monitoring data collected by the Health Department in Cockburn Sound, which showed dangerously high levels of faecal coliforms in late summer at the CBH facility and Kwinana Beach, and ask -

(1) Has the source of this contamination been located; if not, what action is being taken to locate the source of the contamination?

(2) Has this contamination necessitated the closure of the mussel farm near CBH?

(3) What steps are being taken to warn the public about the dangers of consuming fish and shellfish taken from Cockburn Sound or from contact recreation in these waters, and what warnings were issued during the recent serious contamination events?

(4) Can the Government rule out the Cape Peron outfall as a source of contamination to the southern end of Cockburn Sound during summer wind conditions?

(5) Is the Health Department monitoring for salmonella bacteria, hepatitis A or any other pathogens in the contaminated areas?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

Data available to the member is based on samples taken by the Health Department at the shoreline. This is part of the routine monitoring of recreational waters in the metropolitan region. The taking of samples at the shoreline represents the "at worst" situation because at the shoreline there is an accumulation of decaying seaweed and other animal and vegetable matter and wastewater run offs. Samples taken from deeper waters a short distance from the shoreline show low levels of bacteria and these samples comply with National Health and Medical Research Council guidelines. This data of recreational water quality provides an early warning indicator for public health and to the mussel industry in Cockburn Sound.

(1) Extensive monitoring of Cockburn Sound has failed to identify a single source. Numerous factors are likely to be involved such as -

- run-off after periods of heavy rain and discharge from stormwater drains;
- decaying animal and vegetable matter; for example, decaying seaweed;
- discharge of water from recreational and commercial vessels;
- point sources such as septic tank overflow at the CBH jetty; and
- exercising of horses at various locations in Cockburn Sound.

There was a source of faecal pollution in the vicinity of Jervois Bay late last year. This appeared to be a discharge from a vessel. However, no specific point source was determined. Investigations confirmed that the source did not arise from the sewerage outfall at Woodman Point.

Actions taken by the Health Department include -

- The mussel industry, in conjunction with government agencies, has intensified monitoring of mussels in the immediate vicinity of the leases and in the surrounding waters.
- The department has investigated septic tanks located on the CBH jetty. These have been sealed to prevent any likelihood of overflow.

- A working group including representatives of government agencies and recreational and commercial vessel users has been established to consider strategies for water disposal on board vessels.

(2) No. The mussel industry voluntarily ceased taking mussels in October and March when high levels of bacteria were detected at the shoreline. Further intensive monitoring of water in the vicinity of the leases and the mussel meat confirmed there was no risk to public health or safety from the product. In view of these confirmatory results, harvesting was resumed.

(3) There has been no danger arising from the consumption of fish and shellfish taken from Cockburn Sound. No warnings have been issued with regard to recreational water use and none has been required. As indicated, the data were obtained from sampling taken at the shoreline and there is no public health risk arising from recreational water activities.

(4) Yes.

(5) Water samples are subjected to analysis for faecal bacteria, which provide an indicator for a broad range of pathogens. Mussels are routinely monitored for total bacterial count and E.coli. Monitoring for hepatitis A and salmonella is considered unnecessary in view of the extensive range of bacterial indicators monitored.

SPORT AND RECREATION - WORLD MINING AND ENERGY GAMES

Funding Application

354. Hon TOM STEPHENS to the Minister for Tourism:

In relation to the 1997 application for funding for a mining and energy games -

(1) Who made the application?

(2) Why was the application for the funding of these games rejected?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) World Mining and Energy Games.

(2) Following an evaluation of the proposal for the 1997 event, combined with conclusions drawn from the 1995 event, EventsCorp concluded that the proposed 1997 World Mining and Energy Games would not achieve EventsCorp's criteria.

SPORT AND RECREATION - WORLD MINING AND ENERGY GAMES

Funding Application

355. Hon TOM STEPHENS to the Minister for Tourism:

With reference to my question without notice asked yesterday on the mining and energy games, I ask -

(1) When was the application for the first mining and energy games received?

(2) From whom was the application received?

(3) When was the application approved?

(4) When were the games held?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The initial request for assistance for the World Mining and Energy Games was received on 16 March 1993. An application for bidding assistance of $25 000 was approved by EventsCorp on 17 September 1993. Subsequently a final funding application of $125 000, including the initial $25 000 for bidding, was recommended by the EventsCorp management committee on 8 December 1993.

(2) Messrs B. Tolhurst and B. Mason.

(3) The Western Australian Tourism Commission approved funding of $125 000 on 17 December 1993.

(4) On 22 to 29 October 1995.

POLICE - ARREST DELAY

Wanneroo Times Article

356. Hon TOM STEPHENS to the Attorney General representing the Minister for Police:

I refer the Minister to an article in the *Wanneroo Times* published on 6 May 1997 under the headline "Still getting away with it".

(1) Will the Minister confirm that it took police three months to arrest and charge a Heathridge woman called Rose, who is mentioned in the article, with three counts of stealing, 31 counts of receiving stolen property and 39 counts of fraud?

(2) Will the Minister explain how it took police three months to identify and charge a woman who used her personal identification when selling allegedly stolen goods to pawnbrokers?

(3) If not, why not?

(4) Does the Minister agree that three months is an excessive amount of time to arrest someone who used her own identification when pawning allegedly stolen goods?

(5) If not, what would the Attorney consider to be an excessive amount of time?

Hon PETER FOSS replied:

(1)-(5) I do not have the answer to that question. Maybe it has not been brought into the Chamber. I will check that and find out.

CRIME - "THREE STRIKES AND YOU ARE IN" LEGISLATION

357. Hon N.D. GRIFFITHS to the Attorney General:

I refer to his Excellency the Governor's speech on opening day and ask: Where is the Government's three strikes legislation?

Hon PETER FOSS replied:

I believe it is still being drafted.

STALKING LEGISLATION - INTRODUCTION

358. Hon N.D. GRIFFITHS to the Attorney General:

Is the Attorney now able to advise when he will introduce revised legislation with regard to stalking?

Hon PETER FOSS replied:

No, I am not, but I have requested the ministry to follow up that matter vigorously so that I can give the member some indication.

DE FACTO PROPERTY DISPUTES LEGISLATION

359. Hon N.D. GRIFFITHS to the Attorney General:

What effect has the Labour Relations Legislation Amendment Bill had on the priority of legislation with regard to de facto property disputes?

Hon PETER FOSS replied:

None that I am aware of.

LABOUR RELATIONS LEGISLATION AMENDMENT BILL - CRIMINAL CODE

Conflict

360. Hon P. SULC to the Attorney General:

(1) Does the Government intend to enact legislation that conflicts with section 75 of the Criminal Code, which reads -

Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of misdemeanour, and is liable to imprisonment for 3 years?

(2) If not, can the Attorney explain the conflict between the Labour Relations Legislation Amendment Bill and section 77 of the Criminal Code?

Hon PETER FOSS replied:

(1) No.

(2) There is no conflict.

CAMP KURLI MURRI - RECIDIVISM STUDY

361. Hon N.D. GRIFFITHS to the Attorney General:

I refer to the statement in the budget papers to the effect that a study of recidivism with respect to ex-Camp Kurli Murri detainees would be conducted by 30 June this year and ask -

(1) Has that study commenced?

(2) Who will conduct that study?

(3) Will the Attorney give a commitment to table the results of that study when it is finalised?

Hon PETER FOSS replied:

I ask that the question be put on notice
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NATIVE TITLE - PASTORAL LEASES

362. Hon J.A. SCOTT to the Minister representing the Premier:

(1) Does the State Government favour extinguishment of native title over pastoral leases in Western Australia?

(2) If native title were extinguished over pastoral leases in Western Australia -

(a) would pastoralists be required to compensate traditional owners;

(b) if no, would compensation be paid by state taxpayers; and

(c) if compensation were paid, what would be the expected cost to either the pastoral industry or taxpayers through government revenue?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.. Unfortunately, in the time available I have not received an answer from the Premier. I suggest the member place the question on notice.

POLICE - COMPUTER AIDED CALL-TAKING

Advertisements

363. Hon KIM CHANCE to the Attorney General representing the Minister for Police:

(1) When were the advertisements seeking expressions of interest in supplying computer aided call-taking and dispatch services for the police placed in the newspapers?

(2) What were the names of the companies who replied to the advertisements to express an interest?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) An advertisement calling for interested organisations to submit brief written information on an integrated call-taking and dispatch system appeared in *The West Australian* of 23 July 1996 on page 24.

(2) The information requested is presently archived with the Public Sector Management Office and will require two or three days to locate. If the member is prepared to wait I will be able to supply the information next week.

FAMILY COURT (ORDERS OF REGISTRARS) BILL

Federal Retrospective Legislation

364. Hon N.D. GRIFFITHS to the Attorney General:

I refer to Order of the Day No. 8, the Family Court (Orders of Registrars) Bill -

(1) Has the Attorney General been advised when it is anticipated that the Federal Parliament will pass its retrospective legislation?

(2) Has he received a copy of the federal Bill?

(3) If so, will he give the Opposition a copy of the Bill?

Hon PETER FOSS replied:

(1) No, I have not.

(2) No, I have not. However, the Bill was drafted in conjunction with the federal Parliamentary Counsel, so I would expect it to have a close resemblance. One of the reasons I introduced it when I did was so that the public could comment and rely upon it. We have received comments from the public, in particular, from family law practitioners. As a result an amendment will be made to pick up a concern that was expressed.

Hon N.D. Griffiths: There is an amendment on the Notice Paper.

Hon PETER FOSS: That has also been accepted by the federal Parliamentary Counsel. Once I receive a copy of Bill, if I am permitted by the Federal Government, I will be happy to pass it on.

FAMILY COURT (ORDERS OF REGISTRARS) BILL

Federal Retrospective Legislation

365. Hon N.D. GRIFFITHS to the Attorney General:

Is the Attorney General aware of the cause of the delay on the part of Hon Daryl Williams' department?

Hon PETER FOSS replied:

It may be presumptuous to suggest that the delay is with Hon Daryl Williams' department. All I know is that the legislation has not been made available to me. It may be that this is due to some other internal workings of government quite unassociated with Hon Daryl Williams.

PRISONS - PAROLE AND REMISSIONS

Report

366. Hon N.D. GRIFFITHS to the Attorney General:

(1) Has the Attorney General now received a report from the committee reviewing parole and remissions?

(2) If not, why the continued delay?

(3) If so, when did the Attorney General receive that report and will he table it?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No, I have not received the report.

(2) I am not sure that it is a continuing delay. I assume that the committee is continuing to carry out its task.

Hon N.D. Griffiths: It was announced in September.

Hon PETER FOSS: I understand, but it is not for me to comment on the degree of complexity or difficulty involved. However, knowing the chairman of that committee it is most unlikely that it is due to delay. The chairman is rightly recognised as being one of the best organisers and doers of things within the legal profession.

Hon N.D. Griffiths: The chairman has other duties.

Hon PETER FOSS: He does, but he has kindly agreed to devote his capacity and ability to what has been a vexed question over a lot of time. The member is aware that it was not through want of attention that the law was inadequate; it almost had too much attention and ended up with the wrong result. I am confident that the chairman and members of the committee are determined this time that whatever they put before the Parliament will achieve the result that is intended. I will not say there has been a delay; perhaps the task is more complex than originally envisaged.

(3) Not applicable.

LEGAL AID - COMMISSION

Funding

367. Hon N.D. GRIFFITHS to the Attorney General:

Noting the position of the federal Attorney General, why was there no increase in funding to Legal Aid WA in the State Budget when demand has increased for the commission's services?

Hon PETER FOSS replied:

This Government has not accepted the position of the Federal Government. We see it as a very poor negotiating move, and a very poor way of dealing with the Federal Government to indicate that we would take up any shortfall that might occur as a result of the actions of the Federal Government. At this stage, we do not know what reduction might be made by the Federal ministry because, although the amount of the reduction in its Budget has been fixed, the way in which it is allocated has not. We are continuing our negotiations with the Federal ministry on what amount will be paid to the Legal Aid Commission and for what work it will be applied.

I am most concerned with the question of domestic violence and particularly restraining orders within marriage. As I have indicated, this is a federal matter. It is assigned to the Federal Government under the Constitution that it deal with matrimonial causes; and notwithstanding that people may avail themselves of state law in order to deal with that matter, it is within the jurisdiction of the Commonwealth Government.

ARTS AND CULTURE - FUNDING

Lotteries Commmission

368. Hon TOM STEPHENS to the Minister for the Arts:

The Minister would be aware of the $685 000 reduction in arts funding next year owing to a downturn in Lotteries Commission revenue.

(1) What arts program will be affected by this reduction in funding?

(2) How will this impact on the development of a vibrant local arts community?

(3) How will it impact in the community?

(4) Will the Minister today commit to maintaining funding to the arts from consolidated revenue?

Hon PETER FOSS replied:

(1)-(4) The member has misunderstood what is happening. We had an estimate from the Lotteries Commission as to its funding. The arts are supported in two ways; by fairly steady funding from consolidated revenue and variable Lotteries Commission funding which is dependent on how lotteries go. When Lotteries Commission funding increases steadily, as it has done over recent years, we do not reduce consolidated revenue funding. In other words, we do not try to keep it at a constant or particular amount; we take advantage of the increases which come from the Lotteries Commission, and we budget for them. We have tried to do three year budgeting for the arts because if various arts agencies were to make any reasonable future plans, and were to develop the arts in Western Australia, they would like to have longer term funding. Therefore, we have gone to triennial funding. We work not only on the actual amounts we receive but also on the Lotteries Commission projections. There has been a reduction in those projections.

It is like people who claim they have made $100 000 on the stock market when the prices increase, but until they sell their stock they have not made anything, and by the time they do sell they could make a loss. We have been put in the same situation by Lotteries Commission projections. The commission predicted a steady increase over the next three years, which is close to the time period over which we make our arrangements, but that prediction has now been revised downwards. It is not so much a reduction in funding

for the arts, but that we do not have the projected increase that we anticipated. Even if it were a decrease it would not be appropriate for us to supplement it from consolidated revenue, because we do not do it the other way when it is increased. However, I have made arrangements with Treasury which will alleviate some of the problems which arise from the changed status of some of the agencies as a result of changes to the ministry. We can use other money which would otherwise be available but, essentially, we do not supplement either up or down.

The agencies which have triennial contracts will not be affected. We have tried to spread the difference in the projections as fairly as we can. I repeat that it is not a reduction in funding but a reduction in the projected increase in funding.

RACING - COUNTRY

Funding

369. Hon GRAHAM EDWARDS to the Minister for Racing and Gaming:

(1) Does the Minister recall a commitment he made during a debate on the Acts Amendment (Racing and Betting Legislation) Bill in December 1995 that he would increase by regulation the distribution of funds to country racing to 36 per cent?

(2) Does he intend to honour that commitment?

(3) If not, why not?

Hon MAX EVANS replied:

(1)-(3) The member will recall that when the legislation was put in place by Hon Pam Beggs, 28.09 per cent of the Totalisator Agency Board profits was to go to country racing and 6 per cent to non-TAB clubs. The proposition was put at that time to lift the figure to 36 per cent, the extra money country racing wanted, which would have taken $1m from the Western Australian Turf Club. That would not have answered all the problems. The Turf Club had already promised about $400 000 above the 28.09 per cent. When the other things happened it took that money out, but it was put back in again. This year it will pay about $500 000 in excess of the 28.09 per cent. It must look at its minimum stake money on Saturdays and Wednesdays. The minimum stake money of $25 000 is having a big impact on the overall profitability of the Turf Club. At the moment, it is holding on to what it has and it has given money in addition to that in the past two years.

LOTTERIES COMMISSION - REVENUE DOWNTURN

Amendment to Lotteries Commission Act

370. Hon GRAHAM EDWARDS to the Minister for Racing and Gaming:

Given the projected downturn in Lotteries Commission revenue, has the Minister been approached by any interest groups, or is he or the Government considering adjusting the 2 per cent clause in the Lotteries Commission Act that relates to moneys going to arts, sports and so on, to cover the downturn in Lotteries Commission revenue?

Hon MAX EVANS replied:

I just said to Hon Eric Charlton that I wished somebody would ask me that question. I thank Hon Graham Edwards for that. Two or three years ago I changed the distribution. When the Labor Party was in office the figure was 2 per cent to arts and sports. However, if the profit was greater than the consumer price index, only CPI was paid. Last year there was a profit of about 12 per cent and CPI was about 3 per cent. In the old days we would have given only 3 per cent and kept the difference. As a result of Hon Norman Moore's office explaining this - I had not realised the problem - we lifted the figure so the 2 per cent was given.

Last year we budgeted for a $369m profit; therefore, they will get about $7.4m. Last year there was a $391m profit, which gave them about $7.9m each. We went well over what we had promised because we were $300 000, or 12 per cent, over budget. The figure last year was about $340 000. This year we are 1.5 to 2 per cent over budget and the TAB is 1.5 per cent over budget. Our TAB is the only TAB in Australia that is over budget, and Western Australia is doing better than the other States in lotteries. Western Australia has the highest per capita turnover of lotteries in Australia by something like a 20 per cent margin on some of the other States. Contrary to the answer given out by the Department of Culture and the Arts the other day, in Powerball this State gets 20 per cent of the sales from 10 per cent of the population. When one is the highest, it is difficult to continue increasing. The turnover in

lotteries has increased from $300m to $400m in four years. I do not take all the credit for that. The figure has levelled out now, but they are still getting more than they did last year.

Hon Tom Stephens: When you make people poor, they gamble more.

Hon MAX EVANS: I just give them the dream, and they want to win it. I was in Kalgoorlie with Hon Mark Nevill and Hon Ian Taylor the other day. I remember seeing Ian Taylor in the corridor of this place with a $15m Lotto ticket, collecting money from members. I thought what a wonderful thing that was because half the members would leave if they won it, but he said a lot of the members did not even pay him. He is still waiting for those members who did not pay that day to pay up.

SENATE VACANCY - JOINT SITTING

Date

371. Hon TOM STEPHENS to the Leader of the House:

(1) Have any discussions been held with the Leader of the House about the day on which there will be a joint sitting of the two Houses of Parliament to provide the Senate with a replacement Western Australian senator?

(2) If so, what date is being considered for the joint sitting?

Hon N.F. MOORE replied:

I have not been involved in any formal discussions on this matter. A number of proposals have been put forward and Thursday, 15 May, Friday, 16 May or Monday, 19 May are potential dates. I do not think it will be held on a Saturday but I have had no formal discussions with anybody. I will need to do so reasonably quickly, and I will advise the member as soon as a decision is made.

MINISTERS OF THE CROWN - ATTORNEY GENERAL

Office Staff

372. Hon TOM STEPHENS to the Attorney General:

(1) How many staff are employed in the Minister's office?

(2) At what levels are those staff employed?

(3) What is the total cost of employing those staff for the current financial year?

(4) What is the FTE allocation to the Attorney General's ministerial office by Corporate Services?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Thirteen.

(2) One level 3; one level 8; two level 6; one level 5; four level 3 and four level 2.

(3) Salary allocations come under the jurisdiction of the Ministry of the Premier and Cabinet, and I ask that this part of the question be asked of the Minister representing the Premier in this place.

(4) 12.6.

LAW REFORM COMMISSION - REPORT ON LIMITATION AND NOTICE OF ACTIONS

Delay in Tabling

373. Hon N.D. GRIFFITHS to the Attorney General:

I refer to paper No 438 tabled in the House today; namely, the report of the Law Reform Commission on limitation and notice of actions, and the fact that the report is dated 14 January 1997. I ask -

(1) When did the Attorney General receive the report?

(2) What is the reason for the delay in tabling the report from 14 January to today?

Hon PETER FOSS replied:

(1)-(2) I am unaware of the answer to either of those questions.

PRISONS - PRISONERS

Work and Training Opportunities

374. Hon N.D. GRIFFITHS to the Attorney General:

I refer the Attorney General to a statement in the 1995-96 Program Statements that the Ministry of Justice would explore the scope for expansion of work and training opportunities for prisoners through improved commercial management of prison industries and involvement in community assistance projects with other agencies and private organisations. That statement is included in the 1996-97 Program Statements as a major achievement with the addition of the words "is ongoing". I ask -

(1) What progress has actually been made towards achieving the end promised?

(2) Have any tenders been granted?

(3) If so, what is the nature of those tenders?

Hon PETER FOSS replied:

(1) I assure the member that this is an ongoing program and the ministry is looking for more opportunities. A recent survey comparing prison systems throughout Australia revealed that Western Australia has one of the highest rates, if not the highest rate, of engagement of prisoners in work programs. That does not mean the ministry intends to stop there. I have recently visited prisons in the Eastern States which have some new ideas for engaging prisoners in work programs, and I intend to implement them in Western Australia.

The ministry is also keen to use prisoners in public projects which, again, is very satisfactory for the community.

(2)-(3) These parts of the question should be put on notice.

CROWN SOLICITOR'S OFFICE - CLIENT SURVEY

375. Hon N.D. GRIFFITHS to the Attorney General:

With reference to the statement made at page 51-20 of the Program Statements that a client survey will be conducted on behalf of the Crown Solicitor's Office during 1996-97 I ask -

(1) Has that survey been conducted?

(2) If so, by whom was it conducted and what did the results indicate?

(3) If not, when will the survey be conducted and by whom?

Hon PETER FOSS replied:

I ask that question be put on notice.
