WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Tuesday, 13 May 1997

Legislative Council

Tuesday, 13 May 1997

THE PRESIDENT (Hon Clive Griffiths) took the Chair at 3.30 pm, and read prayers.

BILLS (2): ASSENT

Message from the Lieutenant Governor received and read notifying assent to the following Bills -

1. Trustees Amendment Bill

2. Metropolitan (Perth) Passenger Transport Trust Amendment Bill

STATEMENT - THE PRESIDENT

Standing Committee on Constitutional Affairs and Statute Revision, Resignation of Hon Paul Sulc

THEPRESIDENT (Hon Clive Griffiths): I have received a letter which reads as follows -

> Dear Mr President
>
> Due to other commitments, I must tender with regret my resignation from the Constitutional Affairs and Statutes Revision Committee forthwith.
>
> Yours faithfully
>
> Paul Sulc
> Member for East Metropolitan Region.

PETITION - TRANSPORT FARE INCREASES

Hon J.A. Cowdell presented the following petition bearing the signatures of 4 533 persons -

> To the Honourable the President and members of the Legislative Council in Parliament assembled.
>
> We the undersigned petitioners object to the Liberal Government's recent savage increases in public transport fees, particularly as they apply to concession holders in outer metropolitan areas such as Mandurah and Murray. We object to:
>
> > The increase in ordinary concession fares by up to 25%.
> >
> > The introduction of a ban on the use of multi-rider concessions before 9.00 am - leading to fare increase of up to 150% for aged pensioners, the disabled, students and unemployed.
>
> We believe the Government is completely out of a touch, doesn't care about the impact these increases will have on family budgets and is penalising Mandurah and Murray residents seeking jobs, education and medication treatment in the metropolitan area.
>
> We call on the Government to remove the ban on pre 9.00 am concessional travel and not to proceed with its plan to further increase ordinary public transport fares by 30% and concessional fares by 60%.
>
> And your petitioners, as in duty bound, will ever pray.

[See paper No 448.]

PETITION - LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Hon Tom Stephens presented the following petition bearing the signatures of 53 persons -

> 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 oppose 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 449.]

A similar petition was presented by Hon N.D. Griffiths (90 signatures).

[See paper No 450.]

MOTION - URGENCY

Drug Use and Abuse

THE PRESIDENT (Hon Clive Griffiths): Honourable members, I have received the following letter -

> Dear Mr President
>
> At today's sitting, it is my intention to move under SO 72 that the House at its rising adjourn until 9.00 am on 25 December 1997 for the purpose of discussing the rising incidence of drug usage and abuse in Western Australia.
>
> Yours sincerely
>
> Tom Helm MLC

In order to discuss this matter, it will be necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

HON TOM HELM (Mining and Pastoral) [3.41 pm]: I move -

> That the House at its rising adjourn until 9.00 am on 25 December.

I am not one to use the urgency motion very often. This is only the second time I have used it to raise a matter of urgency in this place. This matter could not be more urgent, given the headlines in the newspaper lately relating to the amount of heroin that is hitting the streets of Perth and the number of people who are dying from drug overdoses. One must wonder what one can do about it. We in this Chamber can do little more than highlight the issues and offer help and guidance on how our society might deal with the problem. I was also prompted to bring this matter to the attention of the House by a letter I received today from the Australian Parliamentary Group for Drug Law Reform. It refers to a public meeting to be held on the use and abuse of heroin and states -

> As you are a signatory to the Australian Parliamentary Group for Drug Law Reforms, I would like to give you early notice of a seminar which is being conducted under the auspices of the group to address the heroin problem which has been so evident in Perth over the last six months.
>
> The meeting will take place on Sunday 8th June 1997 from 2pm until 5pm. The venue will be the City of Perth Community Centre, Perth Railway Station.

It then refers to the speakers. Following the receipt of that advice, it became necessary for me to bring to the attention of the House by way of this motion the structure of our society and the fear people have and contrast that with the Minister for Labour Relations' Bill which is currently before the House and which will make great changes to workplaces in Western Australia.

I have read a report somewhere that states that we are losing about one person a week to heroin overdose and other drug abuse. We have been advised by the police that on the streets of Perth at the moment there is a batch of heroin that is 60 per cent pure, whatever that means. However, it means to the people who take heroin that they are dicing with death every time they stick a needle in their arms. That is a worry by itself.

I will refer the House to one method of trying to deal with this problem and to proposals by the union movement and by the more enlightened employers who are trying to deal with the same problem in the workplace. Some employers feel that the only way to solve the drug problem in the workplace is to do spot checks on people to find out what drugs they have on them, and by bringing in the police to do spot searches of remote mining camps. That is draconian. Research to which I will refer later in my speech suggests that is not the way to deal with the problem. That research suggests there should be more education and consultation between the players. On a work site there are only two players, the employer and the employee. I suggest that is the only way to solve this problem rather than by the draconian method reflected in the industrial relations legislation, which refers to the manager's right to manage.

Industrial disputation has been brought about by an employer thinking he will reduce the incidence of drug taking or he will make the workplace safer by bringing in policemen in the first instance to check on people's accommodation. Mr President, you would be aware of what life is like in mining camps. People work 12 hour shifts and there is little outside activities to take their minds off the job. When they come home after doing a 12 hour shift, they are tired and all they want to do is go to their dongas and sleep. They certainly do not want to be held outside the camp while the police search their belongings to see whether they have any illicit drugs. Whether or not drugs are found in those places, that attitude enforces the feeling of "them and us" at those sites. While some employers are working hard with employees to reduce drug abuse, others refer to, as does Kierath, the managerial prerogative, which does not take into account the research that has been carried out in many places that suggests that is not the way to resolve the problem. Our society is heading down one track, and some members of the coalition Government are heading down another, the confrontationist path. As I will demonstrate by referring to the documents that I have with me, that is not the way to deal with the problem. These documents are not Labor Party or union documents; in some cases they are state government documents and documents from other places.

The first document to which I will refer is a ministerial statement on 3 May 1996 by the former Minister for Mines, Mr Kevin Minson. When launching the wide ranging report into the use of alcohol and drugs in the workplace, he made a number of recommendations, including the implementation of a workplace health promotion program, high quality supervision to reduce the risk of alcohol and drug related harm with an emphasis on general good work performances, and others. The ministerial media statement reads -

> Mr Minson said the report also addressed the use of drug testing as an option.
>
> "However, while this strategy appears to have some merit, it can be very expensive and there are no controlled studies which demonstrate drug testing reduces drug use," he said.
>
> "Due to the increasing emphasis on safety in all the workplace, a report such as Alcohol and Drugs in the Workplace is a valuable tool in the fight against injury and accidents."

The report on Alcohol and Drugs in the Workplace was issued on 13 May 1996. These documents came from the Parliamentary Library where the staff undertook some research for me. I attended a seminar which addressed the use of alcohol and drugs in the workplace. I was surprised to hear eminent and respected people in the community speak on the use of alcohol and drugs in the workplace. Some employer groups were adamant that drug testing is not the way to go.

A document put out by the Chamber of Minerals and Energy entitled "Alcohol and Other Drugs in the Workplace" reads -

> Some organisations have considered drug testing as an option. Drug testing only measures exposure to drugs, it does not measure impairment. While the strategy may appear to hold some merit, it is important to stress that there are no controlled studies which demonstrate that drug testing reduces drug use. Similarly, there are no controlled studies which demonstrate that the technique improves health, safety or productivity. On the other hand, drug testing can be very costly in terms of implementation, in terms of industrial relations and in terms of debate and legal challenge on privacy grounds.

The Chamber of Minerals and Energy could not be described as a radical group but a conservative employer organisation. We must look at the educational needs of people and society's problems which bring about the use or abuse of drugs. We must go down that track. I am aware of the reductions in the assistance given to the Alcohol and Drug Authority and associated organisations and the huge changes taking place in educational and methadone programs. While health and safety matters are not being attended to, people will die, not from drug overdoses but from the effect of people affected by drugs, one of which is heroin.

The "Alcohol and drugs and the workplace: information paper" was put out by the Queensland Department of Employment, Vocational Education, Training and Industrial Relations, Division of Workplace Health and Safety, and dated approximately 1992, so it therefore goes back quite a while. The document contains some enlightening statements.

It reads -

> MOVING TO ADDRESS ALCOHOL AND DRUGS AT WORK
>
> Consultation
>
> Consultation among employer, employees and unions is essential if alcohol and drug problems are to be addressed adequately. This may occur through a committee, comprised of representatives of employees, unions, personnel staff, health and safety staff, alcohol and drug consultants [etc] . . .

The last sentence of that paragraph reads -

> For action at an industrial level, it is essential that consultation occur with unions.

The penultimate paragraph reads -

> One method of assessment is through testing for the presence of alcohol or drugs There are many problems associated with this approach. These include invasion of privacy in obtaining samples, difficulties in ensuring the validity of the samples, the possibility of false results, high cost, lack of demonstrated effectiveness and the negative effects on employer employee relationships.

That was found as a result of intense studies across the nation on how we make our workplace healthier and safer, and how to try to get the effects of drugs out of the workplace. That division found that the only way to achieve those results was to consult with employees and their representatives. That evidence seems to suggest that consultation is an important component, yet it appears that some members of this coalition Government are prepared to bring in a Bill that would reduce anyone's ability to reach out and talk to effective representatives and to deal with the problems of drug use in our society. I hope that members will support the motion.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [3.55 pm]: I am quite stunned to hear the member speak on what I thought was an urgency motion on this very serious issue. The member reserved his comments to the position of the union involvement in the workplace and did not come forward with what I was expecting to be very forthright and positive suggestions on how to deal with the drug issue with which the whole world is confronted. The effects that drug taking from a very early age are bestowing on our community, particularly our younger people, are tragic. The drug pedlars, pushers and financiers around the world have not spared Western Australia from the perilous attack that they are successfully making on so many people.

I could not believe that the member said the way to go is not through random drug testing in the workplace. He spoke of all the problems it would bring between employer and employee. Does the member have the same sort of attitude towards random breath testing for alcohol and driving? The whole reason for the testing is about safety in the workplace. That is why people are taking this initiative. It is not simply that they do not want drugs on the site; it is about the effect that drugs are having not only on the performance of the drug takers, which is obviously impaired significantly, but also on lost days and the safety of not only them but also their fellow workers who are dependent on the teamwork required in carrying out the operations of our technological age. If we were to take the way put forward by the member, we would be saying the same thing about random breath testing for alcohol and also about gun laws. We have recently been through a whole parade of members of the Labor Party across Australia saying that we have to eliminate guns -

Hon Tom Helm: What is wrong with you?

The PRESIDENT: Order!

Hon E.J. CHARLTON: My trouble is that I have difficulty in contemplating the member's obsession since the Labour Relations Legislation Amendment Bill came to this House. The sooner it gets out of this place the better, so that we can start to get back to my listening with great interest to the comments of Hon Tom Helm on other issues. He has always had original thoughts and put them forward in a robust way. I expected and hoped that today he would come up with some positive suggestions on how to act collectively. This is not a government issue; it is a community issue and about both sides of the Parliament joining together in order to try to deal with the problem and make Western Australia a leader in the world in dealing with drug problems. I have been a critic of our performance. I want to see us come up with new initiatives in addition to those that we have already put in place.

In fairness to everybody I will run quickly through some of the initiatives that have been put in place. The Government has enacted legislation to strengthen the capacity of the police to target drug suppliers, including telephone interception, use of listening devices, simplified procedures for the disposal and destruction of prohibited drugs, and the application of greater resource flexibility to support large task force operations.

Hon John Halden: That has not worked.

Hon E.J. CHARLTON: The Police Service has established the alcohol and drug coordination unit and placed alcohol and drug advisers in each region. It has developed an education package entitled "Police Community Drug Education" and completed the first round of training for 96 school based crime prevention and operational police officers in their role as law enforcing educators. I am not saying that now we have done all this the problem is under control, because it is not; it is getting worse by the day. More than 60 people died from drug overdoses in the year before last, and last year the number was 38; however, 22 have already died this year.

Hon John Halden: Do you think that the use of heroin is under control in our State at the moment?

Hon E.J. CHARLTON: No, it is out of control. I have been a critic of the whole approach to the issue. We need to do two things better. First, we need to be tougher on the criminals. I am appalled that we cannot successfully deal with them in the courts. People are regularly charged and either they get off because they have been able to pay enough to find a way through the law or the penalties are totally inappropriate.

The most important issue is education. We should start the drug education process with the very young in our schools and continue it through to year 12. We should educate our young people about the disastrous consequences of drug use not only to them but also their families.

I watched a television program the other night that sent shivers down my spine. It related the story of a young person who was found on the streets and who had attended a leadership camp - not the camps we have talked about in this place previously. This young fellow has been awarded one of the nation's prestigious awards for youth leadership. Both his parents committed suicide as a consequence of drug addiction and he was sent to foster homes, where he experienced the problems that many young people suffer in those situations. However, he was taken in by a good family, he received support from someone who showed some leadership, and it was in him to make a success of his life. We should hold up young people like him as an example to the rest of the nation. We should get our heads together, on this if on no other issue, to come up with the best approach. We know we will not turn the problem around overnight, no matter what we do. However, consultation is the first step.

As a result of this debate I hope that we will form a group - not a select committee, but a task force - to try to work together to see what we can come up with. Unquestionably parents worry about their kids and the availability of drugs. In the 1980s I saw a representative of the police about a situation that I was concerned about in Tammin. The response was, "What can we do about it? We cannot walk into people's homes unless we have grounds to do so." Obstacles were put in the way of the police trying to get to the people whom the whole community knew were peddling drugs. They are the same people who are peddling drugs in mines. Not only are there people who peddle drugs to feed their habit, but also those who make it available and receive a commission from someone higher up in the line. If I had the time I would run through a number of other government initiatives. They go on and on.

Hon John Halden: Would you table that document?

Hon E.J. CHARLTON: I would be happy to do that. I will rearrange the document and put it in a form that can be tabled. It is important that we make that information available to the Opposition and work together on this problem. I was surprised by Hon Tom Helm's comments. I was looking forward to his enlarging on the broader aspects of the problem.

Hon John Halden: You have Chance and Halden to come.

Hon E.J. CHARLTON: Perhaps Hon Tom Helm will do that in a couple of weeks, and we can get onto bigger and better things in this State.

HON KIM CHANCE (Agricultural) [4.05 pm]: I support the motion. I thank Hon Tom Helm for bringing it to our attention today. I also thank the Minister for Transport for his advice on the Government's response. I agree with him that a bipartisan approach is called for on this issue, more so than on any other single issue that we face.

On ABC Radio news this morning we were greeted with the story of a school in suburban Caulfield in Melbourne where hidden cameras had been placed in the toilets and, as a result, 14 of that school's students had been apprehended in the process of exchanging drugs. Most people would have been surprised that the bulk of the news story was not that 14 students at that suburban high school were dealing in drugs, but that there were hidden cameras in the toilets. That is probably a commentary on society. Nobody is surprised any more that drugs are dealt in our schools. We tend to put other issues in front of it. It is necessary in a debate of this scale, dealt with in the format of a urgency motion, to be a little specialised in what we do. That is the reason that Hon Tom Helm dealt with his concerns about drug use in the workplace and, necessarily, I will limit my comments to illegal drug abuse. I will leave aside the abuse of legal drugs and talk about amphetamines, cocaine, but mostly heroin and the other opiate derivatives.

Heroin has caused the death of a frightening number of mostly young people in Western Australia in recent weeks. While the opiate overdose death rate is a debatable figure - I will go into why later - between 150 and 160 Western Australians are said to have died in the past 18 months as a result of opiate overdose. Those most recent deaths are due to an apparent single line of heroin which is of unusual purity. Hon Tom Helm may have referred to that. The police have been so concerned about the nature of this particular line of heroin that is currently available to people in Western Australia that they took a most unusual step. They warned heroin users to carefully check the purity of the substance prior to administering it. It probably shocked some people that the police gave advice to people concerning an illegal act, effectively saying that if they were going to commit this illegal act, this is what they should do first. I strongly commend the Police Service for making the decision to give that advice. I know it would not have been given lightly; however, coming from the police that advice will be listened to by most people. It is a sign of the times that a law enforcement service can be moved to such action.

The abuse of illegal substances, and heroin in particular, has become so widespread that we are now forced to regard it as an unfortunate part of our society's daily life, as we already do with the abuse of legal drugs that, incidentally, kill far more people than illegal drugs. We can no longer pretend that, unlike the United States, we do not have a significant problem. The fact is we do have a problem of major proportions. It is a problem that underlies a much wider level of criminal involvement than is contained in simply the increase in drug use and dealing statistics. Crimes such as home invasion and other personal and property crimes all the way up to armed robbery are frequently committed in Western Australia for no purpose other than to raise funds for the maintenance of the offender's habit. Increasing crime rates and the untimely death of our young people by overdose might be the most visible effects of the increasing incidence of drug abuse, but the cost to society is far wider than that. We kid ourselves if we think otherwise. Society faces the cost of suicides - as mentioned by the Minister for Transport - family breakdown, serious illness and social and workplace dislocation.

Hon B.K. Donaldson: Society also has the cost of ongoing health problems of those who overdose and survive.

Hon KIM CHANCE: Yes, that involves a major cost. However, the most tragic aspect is the increase in deaths by overdose. That is the aspect that confronts us - an apparently healthy young person, lying dead in a park, home or toilet, for no reason other than the misunderstanding of the strength of a dose of a drug. I acknowledge that the level of heroin deaths is a disputed figure. I do not know why that is the case. However, my colleague in the other place Hon Jim McGinty had great difficulty obtaining figures on that from the Alcohol and Drug Authority. Mr McGinty took up the issue in Parliament on 12 March at page 194 of *Hansard*. He made the point that for an unspecified reason an element of secrecy surrounds the overdose death statistics. Whatever the exact figures, the State faces a rapidly increasing mortality level as a result of opiate overdose.

Prior to 1995 the number of overdose deaths ranged from between five and 15 per annum. In 1995 the official death toll from heroin overdose was 65. Mr McGinty cited expert advice that put the figure for the past 18 months between 150 and 160. That is a disturbing trend. It points to the increasing level of use, notwithstanding the sudden increase which, as I suggested, is linked to the unusual purity of recent heroin supplies. Current evidence suggests that heroin is now more available in Western Australia and cheaper than it has been; yet the amount of heroin seized by the Australian Customs Service in the financial year 1996-97, as yet uncompleted, looks likely to be less than the amount seized in the financial year 1995-96. In the 10 months of the current year that were included in those figures, only 56 kilograms of heroin was seized in Western Australia compared with the previous 12 months in which 72 kg was seized. Those statistics were no doubt taken into account by the Premier when he was critical of funding cuts to the Australian Federal Police. I agree with the Premier 100 per cent. Those cuts will almost certainly reduce the capacity of the federal police to identify and convict major drug dealers.

Western Australia is behind other States in addressing heroin abuse, and the cuts to federal police funding will not help the State catch up. According to Associate Professor Bill Saunders from Curtin University of Technology, Western Australia's level of opiate related deaths increased 506 per cent between 1991 and 1995, but the number of deaths in other States decreased. One of those States is South Australia where, over the same period, heroin deaths decreased by 40 per cent. Ours increased by 506 per cent. It would be difficult to find societies more similar in demographics, income and culture than South Australia and Western Australia. At the very least we should ask why two such similar societies have varied so much in the level of deaths due to opiate overdose. It is not a statistically small group. Those figures should be statistically relevant. For some reason there is a difference in the way Western Australia is handling the problem. I will not attempt to identify what that difference might be because that subject is beyond me. However, we should ask others who are qualified to answer that question: What on earth is going on here? Like other speakers, I have run out of time before I have covered all the issues that are raised by this motion.

HON B.M. SCOTT (South Metropolitan) [4.15 pm]: I welcome the opportunity to address this motion. As a member of a Government that is serious about addressing drug issues I am pleased with the action our Government has taken so far. I will spend a few moments outlining the action the Government has taken. The motion states it

is "for the purpose of discussing the rising incidence of drug usage and abuse in Western Australia". Hon Tom Helm rightly pointed out that there has been an increase in drug abuse in this State, as there has been throughout the world. That is of concern to many community leaders, and particularly to parents and people who must care for children of drug abusers.

The Premier considered this problem to be so serious that he took charge of the matter and commissioned a task force to consult people across Western Australia in 1995 and to report in 1996. I presume most members have seen the Task Force on Drug Abuse report entitled "Protecting the Community", which I will table. In that report the Premier states that drug abuse is one of the most serious and worrying problems and that the damage caused by drugs affects not only those who abuse them, but also their families, their friends and the community as a whole. That is the other issue I will focus on in my brief time this afternoon.

As an outcome of that drug task force, which was chaired by Michael Daube, statewide consultations were held. I was able to attend two or three of those public meetings. It was distressing to hear not only drug addicts, but parents of addicts talk about their experiences and frustrations and their numbness at confronting these issues when their young people were found to be drug addicted. One of the important matters to consider is that in this debate on drug use and abuse, we are not talking only about illicit drugs. As parents and community leaders we have a responsibility to look at the most commonly used drugs that surely mark the beginning of the use of illicit drugs.

Most of the debate has been on illicit drugs. As a result of the task force a parent booklet entitled "Drug Aware" was published. It covers mostly illicit drugs, which most parents are probably concerned about. However, 1994 statistics on the usage of drugs by students in Perth metropolitan high schools indicate that 39 per cent of students used alcohol; 23.7 per cent used marijuana; 19.6 per cent used tobacco; and 0.7 per cent - the second lowest figure - used heroin. Through this type of publication, which has gone out to all schools and parent groups, the Government has ensured that parents know what to look for when they suspect their children are on illicit or licit drugs, because many parents are not aware.

Information is probably the most important thing parents need in order to tackle these issues. They must be educated to know what to look for. That is one of the outcomes of the statewide task force that has been established.

One of the other major thrusts in approaching this problem of drug use and abuse is the Western Australian school drug action task force, which has already published a strategic plan for 1997-2000. Accompanying that in all private, independent and public schools is "The Principles of Best Practice". One of the recommendations of the task force was that drug education be taught in all schools so that from an early age children are made aware of the damage to their health from drug use and abuse.

Hon N.D. Griffiths: Do you think the $250 000 allocated is sufficient?

Hon B.M. SCOTT: For the publication of "The Principles of Best Practice"?

Hon N.D. Griffiths: For the drug education program the Government is proposing to put through schools?

Hon B.M. SCOTT: I am suggesting today that the Government has adopted a positive approach to attacking drug use and abuse. I am the first to acknowledge that the best way to begin is to promote, encourage and support a drug education task force that will canvass both sectors of the school system in Western Australia. From that I hope strategies and initiatives will be developed, such as the Quit campaign and the Appoint a Skipper campaign to deter young drivers from driving while under the influence of alcohol. A start must be made somewhere.

The other initiative from the statewide task force on drug use was the suggestion that local communities become involved. Solutions become more realistic only when local communities are involved. It has been suggested that local drug action groups be established. It is proposed that up to 17 be established in rural and metropolitan regions. As a member of Rotary, I have been closely involved and I was invited to facilitate the launch of two of these groups, one in Fremantle and another in Rockingham. The purpose of these groups within the community is to make sure people are more aware, to form strategies that will work and to involve as many people as possible at the local level. They are designed to promote the spread of drug information and material throughout the community, to work with schools and to encourage retailers to observe voluntary codes of conduct such as, for example, restricting the sale of solvents, which is another area of drug abuse. Solvent abuse is a common problem around my office in Fremantle, and on most afternoons young children can be seen sniffing solvents from coke bottles.

The drug issue is a very wide one and the Premier's initiative of establishing a task force, together with the other initiatives to which I have referred this afternoon, is a positive reaction from the Government. I acknowledge the presence of Hon Cheryl Davenport at the launch in Fremantle, and it was good to see that bipartisan approach. It was suggested that all schools should get together and strike an accord, similar to that struck in Fremantle between the hotels, nightclubs and liquor outlets. If that sort of local action can be initiated through these local drug action

groups, it will be very positive. I commend the involvement of service groups, such as Rotary and Lions Clubs, because they have been behind some good initiatives throughout the world. When local groups such as those become involved, there is some hope that these measures will be successful. We must be realistic when looking at these matters, and I welcome the opportunity to look at drug use and abuse. I remind the mover of the motion that, although he alluded to the dangers of drug abuse in the work force, consideration must be given to the beginning of the problem. Parents and community leaders must take the lead, and the Government must establish programs that will act as interceptors when children are young. Early intervention is the way to go, and the Government has supported that in its initiatives.

HON J.A. SCOTT (South Metropolitan) [4.25pm]: This is a timely motion and I am pleased to hear from members opposite of the Government's concern, and Hon Eric Charlton's suggestion that an informal group of members from both sides of the House should get together to try to do more about the problem. One of the significant issues that has not been addressed so far today is that although money has been allocated to cut back on the problems occurring, some examination should be made of why young people take drugs and why they try to get high to escape this world by using heroin and sniffing glue, petrol and lead paint.

I have watched a couple of interesting programs on this subject on television, the most recent being the "Four Corners" program on the Redfern Aboriginal community. There are many problems with the buildings in which those people live and one of the major difficulties in the area is the use of heroin. One of the significant factors is that only one person in the whole community was employed, and that was only part time. The biggest problem for those people seemed to be boredom to the point at which they chose to escape from it by taking drugs, particularly heroin. That resulted in a very high crime rate in the area, involving offences such as rape, mugging, child prostitution and so on. These causes are often forgotten, and consideration must be given to the isolation of many young people at the age when they experiment.

I agree with Hon Barbara Scott that the task force referred to will pick up some young people in schools, but for the most part they will be law abiding and will not be heavily involved in the use of heroin or other opiates, although they may experiment. The children of most concern are those who want to be part of a counterculture, and I do not believe the task force will pick up these children. Something must be done in the Perth metropolitan area to give young people more to do. There is little for them to do, even in Fremantle, which is a bustling place. Young people who cannot go into hotels have almost nothing to do, and nothing is being done about the street kids. It is a shame upon our society that these kids exist. Why are not proper drop-in centres provided in which these kids can be looked after? I have noticed that the people dying as a result of using high grade heroin are not the addicts, but those using heroin for the first or second time.

People experimenting with heroin are being caught by its high grade. Many people think they can escape danger by using it once or twice; they think they will suffer no side effects. Such people need education. Other people need more activities to occupy their time. One of the keys to this issue is the provision of more jobs. We must make young people part of society, not allow them to be apart from it. Of course, some young people will always want to be outside of society, but we must provide some entertainment or excitement for them.

[Motion lapsed, pursuant to Standing Order No 72.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION - ESTABLISHMENT

Consideration of Assembly's Message - Amendment to Resolution

Message from the Assembly received and read indicating that, in response to Legislative Council message No 5, it had agreed to the following resolution -

(1) The Standing Committee on Delegated Legislation - the "committee" - shall consist of four members of the Legislative Assembly and four members of the Legislative Council.

(2) (a) The Assembly members of the standing committee shall be chosen as the House may determine but, where there is a party in the Assembly of not less than five members, other than a party whose leader is either the Premier or the Leader of the Opposition, one of the Assembly members of the standing committee shall be a member of that party;

(b) the term of office of each committee member extends from the time of election to the committee until the expiration of that Parliament during which he was elected;

(c) when a vacancy occurs on the committee during a recess or a period of adjournment in excess of two weeks, the President or the Speaker, as the case may be, may appoint a member to fill the vacancy until an appointment can be made by the Council or Assembly, as the case may be;

(d) a member may resign from membership of the committee at any time in writing addressed to the President or Speaker, as the case may require, and the appropriate Presiding Officer shall thereupon notify the House of the vacancy, and any member elected to fill that vacancy holds office for the balance of the vacating member's term and is eligible for re-election.

(3) A person shall not be elected to, or continue as, a member of the committee if that member is -

(a) a Minister of the Crown;

(b) the President of the Legislative Council;

(c) the Speaker of the Legislative Assembly; or

(d) the Chairman of Committees of the Legislative Council or of the Legislative Assembly.

(4) At its first meeting and thereafter as the occasion requires, the committee shall elect from its members a chairman who belongs to the party or parties supporting the Government, and a deputy chairman.

(5) It is the function of the committee to consider and report on any regulation that -

(a) appears not to be within its power or not to be in accord with the objects of the Act pursuant to which it purports to be made;

(b) unduly trespasses on established rights, freedoms or liberties;

(c) contains matter which ought properly to be dealt with by an Act of Parliament;

(d) unduly makes rights dependent upon administrative, and not judicial, decisions.

(6) (a) If the committee is of the opinion that any of the regulations ought to be disallowed, in whole or in part, it shall report that opinion and the grounds thereof to each House before the end of the period during which any motion for disallowance of those regulations may be moved in either House, but if both Houses are not sitting, it may report its opinion and the grounds thereof to the authority by which the regulations were made;

(b) where a report is made to the regulation-making authority pursuant to rule 6(a), a copy of the report shall be delivered to the Clerk of each House, who shall make it available to any member of Parliament for perusal, and any such report shall be tabled in each House not later than six sitting days from the start of the next sitting of each House.

(7) If the committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

(8) A report of the committee shall be presented in writing to each House by a member of the committee nominated for that purpose by the committee.

(9) The committee has power to send for persons, papers and records, and to sit during a recess or an adjournment of either House or both Houses.

(10) A quorum for the conduct of business is four members of whom not less than two shall be members of the Assembly and not less than two members of the Legislative Council.

(11) Except to the extent that they impinge upon the functioning of the committee, its proceedings shall be regulated by the standing orders applicable to select committees of the Legislative Council.

and amends paragraph (9) by adding after "records," the words "to move from place to place,".

The Legislative Assembly seeks the Legislative Council's concurrence in the amendment to paragraph (9).

That the Legislative Assembly appoints Mr Bloffwitch, Mr Cunningham, Mr McGowan and Mr Wiese as members of the Committee.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [4.35 pm]: I move -

That the amendment proposed in message No 12 be agreed to.

The amendment is very simple. It will change paragraph (9) to enable the committee to move from place to place, which most members would regard as desirable. It does not require the committee to come to the House on every occasion it seeks to move from place to place. Accordingly, I ask the House to support the amendment proposed by the Legislative Assembly.

Also, this amendment will not affect the situation in this Chamber in that it will remain necessary for the committee to advise the House of its intention to travel and to indicate the financial arrangements necessary for that travel. The House must then by resolution agree to those financial arrangements.

Question put and passed

Membership

On motion by Hon N.F. Moore (Leader of the House), resolved -

> That Hon E.R.J. Dermer, Hon Nick Griffiths, Hon B.K. Donaldson and Hon B.M. Scott be members of the Joint Standing Committee on Delegated Legislation.

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION

Membership

On motion without notice by Hon N.F. Moore (Leader of the House), resolved -

> That Hon Tom Helm replace Hon Paul Sulc as a member of the Standing Committee on Constitutional Affairs and Statutes Review.

PERSONAL EXPLANATION - HON KIM CHANCE

Kimberley Pastoral Stations

HON KIM CHANCE (Agricultural) [4.38 pm] - by leave: I thank honourable members for this opportunity to correct information I gave to the House on Wednesday, 9 April of this year. In debate on the Acts Amendment (Land Administration) Bill, I advised the House, as recorded on page 1334 of *Hansard*, that there were 60 owner-operator pastoral stations in the Kimberley, 43 of which were Aboriginal stations. I further advised that the source of that information was Peter Yu, the Chief Executive Officer of the Kimberley Land Council. However, I learnt yesterday that those figures were incorrect. I now quote a statement by Mr Yu -

> In the Kimberley only 60 stations are owner occupied - of those, 43 percent are owned and occupied by Aboriginal groups.

I further seek leave to table a copy of Mr Peter Yu's speech to the Annual Conference of the Pastoralists and Graziers Association held in Broome on 3 April 1997.

Leave granted. [See paper No 451.]

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.

Progress was reported after clause 1 had been agreed to.

Clause 2: Commencement -

Hon TOM STEPHENS: I cite these further amendments by the Government to this Bill as yet another reason that we on this side of the Chamber would like the Bill to be handled in a more considered way. That could happen after 22 May. That argument has been put a few times and is supported by the arrival of yet another Supplementary Notice Paper containing further amendments which I first saw when the attendant brought it around a few moments ago. I take this opportunity to thank the Attorney General for making available to us the clause notes for the Bill. That is a helpful addition to our reading of the Bill. Debate on this clause in Committee has regularly been the source of considerable discussion whenever the Attorney General has wanted to become involved in consideration of a Bill. Clause 2(1) states -

> Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives Royal Assent.

Subclause (2) tells us that the provisions of parts 2 and 4 come into operation on the twenty-eighth day after the day on which this legislation receives the Royal assent. Subclause (3) states that the provisions of part 3, which deals with pre-strike ballots; part 5, which deals with federal award coverage; part 10, which deals with the Workplace Agreements Act; and proposed sections 34, 35(b), which cover the miscellaneous provisions in part 7 - 36 and 37, come into operation on such day as is, or days as are respectively, fixed by proclamation.

Many people who are following this debate, not only those in the media but also those who read *Hansard*, will want to know what is provided in these clauses. The clause notes tell us that subclause (1) means that the proposed sections of this Act, which are to come into operation on the day the legislation receives Royal assent are contained in part 1; that is, in the preliminary clauses - in part 6, which relates to the unfair dismissal proposal; part 7, which relates to miscellaneous provisions relating to awards, etc.

Part 9 deals with the minimum conditions of employment legislation. Proposed section 36(a) refers to the definition in the commonwealth Act. The clause note makes no reference to proposed section 34, which is in part 7. I cannot recall exactly to what that clause refers, but perhaps the Minister can indicate in his response to my comments why clause 34 is to be proclaimed at a date to be fixed. From the clause notes we know part 2 relating to duties of officials and organisations and part 4 dealing with political expenditure will come into operation 28 days after the date on which the legislation receives Royal assent.

As I have said, part 3 refers to pre-strike ballots; part 5 refers to federal award coverage; part 10 relates to the Workplace Agreements Act 1993; and the remainder of part 7 deals with miscellaneous amendments that come into operation on such days as are fixed by proclamation. The clause notes say that regulations are required for part 3 as well as for proposed sections 35(b), 36 and 37 due to their incidental reference to strike ballots. Part 5, which relates to federal award coverage, and proposed section 34 - here is the answer to the question I began -

Hon Peter Foss: It is all there, isn't it?

Hon TOM STEPHENS: The answer is there in part.

Hon N.D. Griffiths: It should still be on the record though.

Hon Peter Foss: Yes.

Hon TOM STEPHENS: Proposed section 34 deals with time and wages records. The clause notes say that part 10 requires the establishment of administrative procedures within the Office of the Commissioner of Workplace Agreements to enable the tasks of the tribunal to be undertaken. All of that was said in the second reading speech. Within the second reading speech there is a reference to the provisions of pre-strike ballots. There is a gap in the paragraph, and I wonder whether the Minister can tell me whether something was originally meant for inclusion in that second reading speech but subsequently was deleted.

I ask the Attorney General to explain why there are different arrangements for the commencement of some clauses in the Bill. Why will the provisions in the parts and clauses referred to in clause 2(3) come into operation on such day as is, or days as are, respectively, fixed by proclamation? I ask the Attorney General to give an indication of exactly when the Government proposes to proclaim those provisions. In my preliminary comments I said that the Attorney General had vigorously and extensively referred to proclamation -

Hon Peter Foss: Are you saying that I am being consistent by making these distinctions?

Hon TOM STEPHENS: I note that there are some distinctions.

Hon Peter Foss: Would you like me to explain them to see if I am being consistent?

Hon TOM STEPHENS: I am going to read through a few of the Attorney General's speeches. To begin I will quote the speech of the Attorney General during debate on the proclamation of another Bill, in which he said -

> Bringing in legislation is rather like sending a rocket to the moon. When the rocket is fired one knows that there will be a period before it arrives at the moon and, in the meantime, the moon will have moved. It is almost like firing a rocket at Jupiter rather than at the moon. The rocket is not fired so that in several months it will arrive where the moon was at the time it was fired; it is fired so that the two meet when they come together. The difficulty with legislation is that Ministers know there will be a time delay.

This legislation appears not to have been fired at the moon, but rather at the setting sun; it is the setting sun of the old days when there once were extraordinary levels of industrial disputation in the community. This Bill is aimed at some past crisis in the 1970s rather than at the tranquillity of the present industrial scene. The Attorney's reference to proclamation is a clear example of exactly what is wrong with the commencement arrangements of this Bill. This

Bill appears to be targeted at some future date and not the present Western Australian industrial scene. There is nothing on the horizon of the industrial scene that demands or is likely to demand -

Hon Peter Foss: I don't think that quote was about proclamation, it was about another thing when you have two sets of legislation going through at the same time. Was that the context of that one?

Hon TOM STEPHENS: It was.

Hon Peter Foss: Perhaps you marked it and forgot the context.

Hon TOM STEPHENS: I knew the context, but it was -

Hon Peter Foss: But you got it wrong.

Hon TOM STEPHENS: I did not get the context wrong. The Attorney General has the legislation wrong.

Hon Peter Foss: But it has nothing to do with proclamation, has it?

Hon TOM STEPHENS: The Attorney General dealt with it during a debate on proclamation of another Bill and I thought -

The CHAIRMAN: Order! Not only is Hon Tom Stephens posing the questions, he is also answering them. Hon Tom Stephens should let the Attorney General answer some of the queries.

Hon TOM STEPHENS: How is the Attorney General's current strategy with this clause consistent with his previously known position on proclamations? Before I sit down and give the Attorney General the opportunity to respond, I refer to the interpretation amendment Bill he introduced in 1991. When he spoke about proclamation of Acts he said -

> . . . it is not desirable in every instance to draw the regulations that are necessary to implement an Act because the Bill may not be passed or may be passed in a different form, and the drafting time spent on that legislation will be lost. However, it is also true that the drafting of such legislation may very well point up the problems with the regulations and all too often, these problems emerge only after the Bill has been passed. This may lead to an unworkable situation or to the proclamation of the Act being indefinitely deferred. The solution to this may be to reduce the stream of legislation passing through the House, much of which seems to be of doubtful value. It may be necessary to slow the speed at which legislation passes through the House so that the general outcome of the Bill may be known prior to its passage being completed. In that way, regulations may be drafted before the Committee stage in the second House, thus enabling a more definite date of commencement to be inserted.

The Attorney General was then a humble backbencher.

Hon N.D. Griffiths: He was never humble.

Hon TOM STEPHENS: Hon Nick Griffiths reminds me that humility would not become the Attorney General. During his days as an opposition backbencher he also said -

> Our principal objection, however, to the practice of proclamation is that the constitutional process of enactment provides for three participants in the passing of an Act of Parliament . . .

The Attorney General engaged in this debate for some time, and it is important that we go to what he had to say then and see how he would square that with what he is doing now. He said that the two Houses of Parliament and the Governor in Executive Council were the three components and said -

> I believe now that the involvement of the Governor in Executive Council is no longer considered to be a discretionary one.

That is an important point, because some people in the community seem to think that somehow at the end of this debate, when the Bill is finally through this place - I gather that owing to the amendments it will go to the other place - there is some point in lobbying the Governor or anyone else. The Attorney General makes the correct point that there is no discretion left with the Governor in Executive Council. It is not a discretionary right, and the whole notion of lobbying the Governor -

Hon Peter Foss: It does not even go to Exco.

Hon TOM STEPHENS: Is the Attorney General saying that the proclamation no longer goes to Exco?

Hon Peter Foss: The proclamation does, but assent certainly doesn't.

Hon TOM STEPHENS: Too often a misconception can build up in the community that somehow or other they might be able to overcome the pain that the Government is about to inflict upon the people of Western Australia by lobbying the Governor to get involved in this process. As we know, and as the Attorney General knows, and as he has put on the record, there is no opportunity for that to happen. Once the Bill is guillotined through this place the people will have to live with what the Government has inflicted upon them. It would be unfair to allow them to have any false illusions about the role of the Governor in protecting them from this legislation. I am not sure I would argue the case for the involvement -

Hon N.F. Moore: Imagine what you would be saying if the Governor did get involved!

Hon TOM STEPHENS: I would be happy to have any divine intervention, but I sure would not want intervention from the Governor. The Attorney General in his former back bench role went on to say -

> Thus, essentially, legislation is the province of the Houses of Parliament. Insertion of the provision for proclamation virtually allows the final say as to when, or if, legislation will be enacted to rest with the bureaucracy. We are not happy with this. We believe that if legislation is not required it should not be passed

I say "hear, hear" to that. It is not required; it should not be passed and it is a pity that it is to be. The Attorney General in his previous incarnation said -

> It is appropriate that some procedure be laid down as to what happens to legislation which is not proclaimed within a reasonable period after Royal assent.

He then set out that regime in the second reading of his Bill, as follows -

> The alternative to this would be for the Act automatically to come into effect after 12 months. In many ways I prefer this.

He said later in the same paragraph -

> If the Government is unhappy with the legislation being repealed, it can always introduce a further Bill to extend the period during which the Act can be proclaimed.

Then he went on to talk about Acts that are partially proclaimed. He described the various options that could be considered including -

(i) 12 months after the date of Royal assent;

(ii) 12 months after the proclamation of the first part of the Act which is proclaimed;

(iii) 12 months after the proclamation of the last part of the Act to be proclaimed; and,

(iv) some longer variations of each of (i) to (iii).

In another debate in 1991, Hon Peter Foss said -

> The Government has indicated that it is prepared to accept an amendment to my amendment.

That was to add the word "proclamation" after the words "and in any event this Act, or so much of it as has not been proclaimed, shall come into operation 18 months after the date upon which it receives the Royal Assent". The Minister at that point said -

> Where proclamation is deemed appropriate, some reasons should be provided for this within the second reading speech.

That has not happened.

Hon Peter Foss: It has happened in the clause notes instead.

Hon TOM STEPHENS: Perhaps the Attorney General could -

Hon Peter Foss: You so kindly read them out.

Hon TOM STEPHENS: I would like the Attorney General to pin this down from the clause notes. This section of the Bill -

Hon Peter Foss: Certainly. If you sit down I might be able to do it.

Hon TOM STEPHENS: I will in a few moments. This clause could have gone through without the Chamber and the community being the beneficiaries of that which the Attorney General has to say in fulfilment of his own -

Hon Peter Foss: I have been very good at providing the clause notes, which I think is a reasonable substitution.

Hon TOM STEPHENS: That means to me that there are a whole lot of constituents who will want to read this debate and to judge this Government.

[Pursuant to sessional orders, Committee interrupted to take questions without notice.]

[Questions without notice taken.]

Hon TOM STEPHENS: I will continue to remind members of the comments the now Attorney General made when he handled legislation in this place on behalf of the Opposition. In 1991 he said that where proclamation is deemed appropriate some reasons should be provided for this within the second reading speech. That has not happened on this occasion, although there is partial explanation in the clause notes. Perhaps the Attorney General is about to give a more detailed explanation.

Does the Attorney General believe his pre-1993 expectation of the way proclamation should be handled is accommodated in this Bill and that the following reference to proclamation is also accommodated in it? In relation to a principle of the Bill that was being debated on that occasion the now Attorney General said -

> The first is its proclamation and commencement date, which has been affected by the fact that the Bill has been some time coming into the House. I think the House has indicated that, as a matter of principle, it does not like to have multiple proclamation dates in legislation because that then allows some bits to come in and other bits not to come in. We do not like open ended proclamation dates.

He went on to quote a range of answers that had been delivered in 1992 in reference to various unproclaimed pieces of legislation.

Again in August 1992 the now Attorney General indicated his preference for firm proclamation dates. He said -

> That will probably make it far more efficient, and that is the reason given in the Bill for varying the proclamation dates. I believe that we should not have open ended proclamation provisions, . . . but that we should specify those parts that we believe do not need to be separately proclaimed and they should be proclaimed at the latest on a certain date 12 months after assent. The only ones that should be left open ended are those which relate to these forms.

I have extracted only a few of his comments from *Hansard*. Perhaps somebody else has extracted all of them.

Hon Peter Foss: They are excellent quotes.

Hon TOM STEPHENS: In November 1992 the now Attorney General said -

> I am sure the Attorney General can guess the point I will raise because it is one I have raised many times before; that is, the question of proclamation and, in particular, proclamation on days that are to be fixed. When I raised this originally I suggested that an amendment -

Hon Peter Foss: That should be day or days.

Hon TOM STEPHENS: He went on to say -

> I do not believe it should be theoretically possible for the intent of an Act to be changed by selective proclamation.

I suppose that is adequately handled in this Bill. To continue -

> Surely in this case at least it should be possible to break the thing up.

I suppose that is also being accommodated in this legislation. To continue -

> The Government has done that with the current amendment, and I commend it with regard to the amendment to part 6. It is a discrete part and if the Government is to make some variable proclamations it may be necessary to refer it to particular parts. To the extent that it is necessary to proclaim parts separately, the Government should make a distinction about how the separation will take place so that it is shown in the Bill. It should also include an end date so that Parliament retains its control over the legislation.

That was a handy quote on which to conclude my remarks. Will the Minister explain why the scheme for proclamation is contained within this clause?

Hon PETER FOSS: I am grateful for the quotes which have been made by the Leader of the Opposition because he has shown the consistency I maintained over the years and, more importantly, the achievement I have had with regard to this whole question of commencement. Before I refer to that, I will reply to another matter raised by the Leader of the Opposition about further amendments. An amendment on the Supplementary Notice Paper picks up a point which was made by Hon John Halden about clause 36. I draw the attention of members to proposed amendment AD36 on page 9 of the Supplementary Notice Paper. I listened very carefully to members opposite in the second reading debate and when a valid point was made I acknowledged it by putting an appropriate amendment on the Supplementary Notice Paper. It appeared the Opposition was not prepared to do that. Another amendment contained in the Supplementary Notice Paper is AB10 on page 6. I do not want to waste too much time on this because it is probably out of order for the member to have mentioned it and it is out of order for me to reply. I will keep my out of order reply to the out of order question as brief as I can.

I come back to the question of "commencement". I am pleased it is a matter which has gained the attention of the Opposition as a relatively important part of the Bill for it to comment on. Obviously, from the time it is taking on it, it sees it as an important part. It is quite right to reach that conclusion. I regularly raised the question of proclamation during my time in opposition and my actions have led to a permanent change in the practice of drafting. That occurred when I was in opposition. At that time it was almost commonplace to provide that a Bill would be proclaimed. It did it in the form of "on such day or days" as were provided by proclamation. That is the extreme in terms of proclamation because it allows selective proclamation. This Bill exhibits that change which has permanently occurred within the office of parliamentary counsel with regard to thinking clearly about "commencement". The very quote by Hon Tom Stephens where I made that suggestion has been adopted. My views have been consistent and I am pleased they have been adopted.

There are three parts to the commencement clause. The first is that everything other than that specifically referred to will come into operation on the day the legislation receives royal assent. The question of why legislation does not come into operation immediately it receives royal assent has often been raised in the Parliament. It is probably sensible for most legislation. There are two principal reasons - had Hon Tom Stephens been more generous in his quotes we might have been given more information about this - the first of which is that sometimes it is necessary for there to be a period of warning between the final stage - that is, royal assent - and the coming into operation of the legislation. That has been taken as the default position under the Interpretation Act. That Act states that if legislation does not say when it will come into operation, it comes into operation 28 days after royal assent. Part 1 has brought most of this Bill forward in terms of time of coming into operation. Part (2) remains as it is in the Interpretation Act. Part 3 deals with the other parts - not just when one needs a warning of its coming into operation, but other things that need to be done prior to its coming into operation. I suggested that the Committee notes should be in the second reading speech because members should be informed of them. In this case, we have substituted clause notes. I am a firm believer in providing clause notes wherever possible and, generally speaking, I do. The regret I occasionally have is the quality of the clause notes, which often only paraphrase the Bill.

Hon Tom Stephens: Can I encourage your practice of tabling the clause notes when you introduce the Bill.

Hon Peter Foss: I had them here. I agree they should be available when the Bill is introduced.

It is important that people understand the reasons for the distinction in the commencement. As has been said, the regulations are to be proclaimed. It is not the intention of the Government to defer the proclamation of these parts for longer than is absolutely necessary to prepare the regulations. On some occasions it may be appropriate to draw up the regulations prior to introducing the legislation. There are problems with that. The first is there are limited resources for drafting. Those limited resources do not involve only a lack of money; there is also a lack of draftspeople. Even if we had more parliamentary draftspeople, the time spent in writing regulations that may never see the light of day because the legislation is not passed or is passed in a different form means there must be balance.

I still believe having a fixed end date on proclamation is a good idea. It was not accepted by the Parliament when I introduced that Bill and it has not been generally accepted by the Parliament or by the Government. However, there is something to be said for one of those old variations that I mentioned. The one I proposed in my Bill was that once we started proclaiming legislation the whole lot should come into effect at least on the twelfth month after we first started proclaiming it. We may put off proclaiming it; however, once we began proclaiming it the rest will come through in 12 or 18 months.

I have views on interpretation. It is one of those things that is worth a healthy public debate. I would like to hear people's views. There should be a fixed end proclamation date, whether it is one year or two years after the Bill is assented to or 12 months after it is proclaimed. The Interpretation Act should be the vehicle for doing it. I believe I have been consistent. I thank the Leader of the Opposition for his quotes. I have been successful in changing the way in which this Parliament deals with the commencement of legislation. It was quite slack before. If there was a suggestion that something had to be proclaimed, the whole Bill was subject to proclamation. If there was a

suggestion that it had to be proclaimed in bits, the whole Bill was subject to being proclaimed in bits. I do not believe that is a healthy way of doing it. I am pleased that when this Bill came to me it was in that form and I am satisfied with how it has worked out.

Hon N.D. GRIFFITHS: During the second reading debate, the Leader of the Opposition said we were opposed to this Bill in principle and in detail. In dealing with clause 2 we move onto the detail. Clause 2 is the program for the implementation of what we consider to be the very evil matters contained in the Bill. Clause 2 deals with the matters in three categories. I will not mention those categories as that has been done already by Hon Tom Stephens and the Attorney General. However, they come in these categories: First, those matters the Government is super keen on moving through as quickly as possible - in other words, the moment this Bill receives the royal assent; second, those matters in respect of which the Government thinks warnings should be given - for the word "warning" I suggest the public read "intimidation" because this Bill is about preventing the trade union movement from operating effectively; the third category also comes within that area of warning but is also one for which the Attorney has foreshadowed regulations. The words in each of the categories of this clause should be opposed.

There is a further reason which has only just been advanced by the Attorney General; that is, the Government has very scarce drafting resources. However, those scarce drafting resources have been employed in dealing with this awful, evil piece of legislation. It is a waste of drafting resources and a waste of the time of the Parliament when there are so many worthwhile things we should be debating. Subclause (3) deals with those provisions that "come into operation on such day as is, or days as are respectively, fixed by proclamation". Such days or day will occur in perhaps several days. That being the case, why are we dealing with this at all? Why could we not deal with it in the future? We all know the reason; it is because of standing order 17:16, or noting how the votes have gone in divisions, standing order 17:15.

The Attorney has not stated with precision why warning is required with the second category of provisions. We know why the warning or, as I call it, the intimidation is required. We have read the provisions to which clause 2(2) relates. I do not want to go into the later stages of the Committee debate at this time. However, I think it would be nice to hear the Attorney General place on the record why the Government is warning people to watch out, because the big bad Liberal-National Party Government is coming to get them. We all know what coalition members were considering in the Cabinet room about using the provisional code and the resources of police and, frankly, of the judiciary to prosecute trade union officials doing their duty to defend the interests of working people in this State.

Hon Bob Thomas interjected.

Hon N.D. GRIFFITHS: As Hon Bob Thomas has so correctly interjected, the police do not like this legislation. Frankly, no reasonable person likes this legislation. I do not like any part of it which strikes at the trade union movement. I certainly do not like clause 2, which sets out, with no great clarity, the timing and implementation of this set of evil measures that we will go through as 13 May progresses.

Hon PETER FOSS: I probably should make clear at this stage of the debate that I believe Hon Nick Griffiths was speaking to the policy of the Bill. The policy has been set and is clear. I do not intend to reply to those matters of policy. I accept that he can say them, but I will reply to those matters which I believe properly arise during the Committee stage.

Hon N.D. GRIFFITHS: I do not want the Attorney to be in any doubt at all that when I address my comments to clause 2, which is about timing, it is therefore very appropriate that I address those comments to the timing of the evil policy of the Bill. To suggest otherwise is a nonsense. The Attorney need not comment on that. He is a great supporter of the policy of this Bill. That is why he wants to achieve those points set out in clause 2 as soon as it can be done. He made very clear on clause 2(3) that he intends this legislation to be a warning to the trade union movement. It is not only a warning to the trade union movement but also to the people of Western Australia.

Hon TOM HELM: Clause 2 on the commencement date and proclamation is another example of the arrogance of the Attorney General and the Minister whose bidding he is doing in this Chamber. Our whole argument has been that we are prepared to discuss the content of this Bill and to allow the mandate which the Government appears to have to put it forward. From 22 May is the most appropriate time to do that. Allowing the proclamation and certain parts of the Bill to come into effect after 28 days and other terms fixed by proclamation is an extension of the coalition's arrogance from the word go. The Attorney General can respond to this or not - I do not really care. If people think that by the proclamation of this Bill we will have the judiciary and others in this State locking up trade unionists because of some whim of the Attorney General or his master in another place, they will be mistaken. People outside are already talking about the fact that it does not matter whether this Bill goes through. I will not rest easily when there is an opportunity to fight it.

Once the Bill passes through this Chamber, as it inevitably will do because of the use of the guillotine, if it ever gets before the court, the Government will have problems with the judiciary implementing it. The first unionist to go to gaol will be the first martyr of this Government's actions. The Government will live to rue the day that it brought this legislation before us. It is well worth using this clause to demonstrate that arrogance and to tell the members of this Chamber and the people of Australia that it will not really matter because unions will not lie down and accept what the Government puts before us.

We on this side of the Chamber will fight the legislation tooth and nail by regulation and every other means we possibly can. The proclamation does not matter to us, but it matters to the Government because it will not wait until we have a properly constituted Chamber in which to debate this legislation in the open and clear way that it should be debated.

Hon PETER FOSS: Again, the member is not speaking to this clause. I will point out a couple of things. First, he obviously has not read the Bill or listened. The Bill does not provide for the locking up of trade unionists. That myth has been spread by the trade union movement in order to get some support for its position. It is incorrect, and I suggest that the member read the Bill to find out that it is incorrect.

The member referred again to the illegitimacy of this Chamber. Whether it is this Chamber or the one after 22 May, this Government has 17 out of 34 elected members. The member seems to assume that because a member from this side of the House will be appointed President it may mean that one of the votes legitimately given us by the people of Western Australia will be lost to us. The fact remains that we as a Government have 17 members. The Labor Party representation, which I am sorry to say suffered very badly at the last election, has gone down to about one-third of the members in this Chamber; and there are some new members, whom we are very pleased to see come into this place. The fact remains that before or after 22 May this Government has had the confidence of the people placed in it just as much as anybody else has.

The CHAIRMAN: Order! Before we go on, may I make the point that we have strayed into the area of the policy of the Bill. I will not allow that situation to continue. Several speakers have already done that. We must concentrate on clause 2 before the Committee.

Hon N.D. GRIFFITHS: Last Friday at question time I asked the Attorney General where was his new three strikes legislation. I have just looked at clause 2, and here it is.

Hon TOM HELM: I have read the Bill in so far as it reflects on the prison terms that may be available for people in breach of the legislation. When breaches take place and people do not pay fines and when matters of contempt are before the court, prison sentences will have to be imposed. I do not need to be told to read the Bill, because I have read it. By the same token, the Attorney General knows by his little smarty-pants ways that the legislation can have the possible effect of people being gaoled.

Point of Order

Hon PETER FOSS: The member cannot speak in that way.

Several members interjected.

The CHAIRMAN: Order! I do not think there is a point of order. It is quite liberal language that is used in the Chamber from time to time. As usual, we do not have to agree with or like what is said, but people have an opportunity to say it.

Committee Resumed

Hon TOM HELM: I might withdraw what I was thinking but I will not withdraw what I said.

Hon PETER FOSS: I assure the member that we now have new fines and penalties enforcement legislation. When people do not pay fines, the first move now is to take their licence away, and the second move is to execute against their property -

The CHAIRMAN: Order! The Minister himself is straying from the clause.

Clause put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN (Hon Barry House): Before the tellers tell I cast my vote with the ayes.

Division resulted as follows -

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.

Sitting suspended from 6.00 to 7.30 pm

Clause 3: Principal Act -

Hon TOM STEPHENS: The amendments that are contained in the various clauses of the Bill will amend the Industrial Relations Act quite substantially. The Act came into being with that title relatively recently. I will make a couple of points on this clause because they are germane to the earlier discussion. During the second reading debate we discussed the history of industrial legislation in Western Australia, starting with the predecessor to this Bill and going right back when the first Act was enacted in this area in 1900 - the Industrial Conciliation and Arbitration Act 1900. When one goes through each of the subsequent enactments and amendments to that legislation one sees a sweep of history that takes us through the processes of worker situations and community response leading to legislation. Through all of those processes I find it quite remarkable that by and large those very early processes that were unleashed in the early 1900s that laid down the ground rules have stayed intact in so many ways. For instance, the registration of an industrial organisation has been in place for the full 90 years. In 1902 the Industrial Conciliation and Arbitration Act incorporated concepts such as the boards of conciliation which were removed in 1912. Those early processes were the first responses in putting in place a system that tried to protect very substantially and significantly the wages and conditions and the processes for looking after the working community of Western Australia. In many ways legislation that followed has been almost like a step back on each occasion. Even Labor Administrations have tried to move amendments such as that which is now before the Chamber. Those Administrations were never able to enact legislation in the image and likeness of Labor Party policy. It has always been legislation delivered to the people of Western Australia that has represented significant compromise over the desire of the day. In 1979 the Labor opposition criticised this principal Act that is now referred to at clause 3.

Hon N.D. Griffiths: It was a Liberal Party Bill.

Hon TOM STEPHENS: It was a Liberal Party Bill that represented a waltz away from those processes that were trying to protect and enhance the conditions of the working community of Western Australia. Never in the history of the Labor Party has it ever had an opportunity to enact legislation in the likeness of that enshrined in the objectives of the party. There have been many significant amendments, including the Industrial Conciliation and Arbitration Amendment Act 1909.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): I draw the attention of Leader of the Opposition to the fact that we are dealing with clause 3. Although I appreciate the member's occasional reference to the Industrial Relations Act 1979, at this stage his interesting treatise on history has strayed somewhat from the clause. I ask the member to draw his comments back to the clause.

Hon TOM STEPHENS: I will deal with this clause in so far it is an opportunity to refer to this Act as the subject of substantial amendment by this Bill. I will confine my remarks to the processes that are defined. I had the opportunity of discussing this in advance with officers at the Table and I will not be doing anything other than conforming to standing orders, as I have done in my handling of this debate.

As one looks back over the history of the Act it is unfair to criticise the Labor Party because of the stances it adopted when the Act was subject to substantial amendment in 1979. On each of the occasions in history when substantial amendments have been made to this Act, under its various names, whether in 1900, 1902, 1909 or the 1912 amendment which introduced the Industrial Arbitration Act - most of the provisions of which stayed in force right

through until 1980 - they have represented a substantial walking away from the processes of fully protecting the needs of workers.

The 1952 set of amendments will be dealt with yet again in this Bill; that is, amendments to expressly exclude the commission from requiring an employer to employ or re-employ a worker, except under certain limited conditions. That provision was contained in the section 61(2)(d) redraft of the Act at that time. The 1973 amendment to the Industrial Arbitration Act during the Tonkin years endeavoured to put in place a significant protection of the working conditions of the men and women of Western Australia. It always had to be a compromise with what was tolerated by this Chamber. Labor Party members have not had the freedom of their counterparts, who are exercising that freedom during their very last moments of control over this place.

In 1976 three Acts were passed to amend the Industrial Arbitration Act, the third of which set up the exemption from union membership on the grounds of conscientious belief. The 1977 amendments dealt with the introduction of the public authority concept. The Industrial Arbitration Act was passed in 1979, with many reservations expressed by the State Parliamentary Labor Party, whose concerns were outlined in the other place by Arthur Tonkin and in this place by Des Dans and others. We continue in that same tradition with this Bill, and even on this clause.

Throughout this sorry history of Western Australia the Labor Party has been limited in what it could do as a party on those issues. In 1980 and 1981 further amendments were made. I was here for the 1982 amendments that were perpetrated on the principal Act. Then came the Labor Party's Green Paper of 1983 and the 1984 amendments to the principle Act under its current name, the Industrial Relations Act. The earlier amendment in 1982 was in response to the Kelly report. In 1983, when the Labor Party first formed government, it circulated a Green Paper under Minister Des Dans. I remember the Caucus debates at that time. We knew that whatever reforms we wanted to make, we would be limited by virtue of what we could get through this place. Some amendments were made in 1985 and again in 1987 when the Labor Party was in office. Yvonne Henderson, as the Minister for Productivity and Labour Relations, made substantial amendments in 1990, but she was limited by the situation in this place.

That earlier assault on the Labor Party was unfair. The book by Marcelle Brown to which I referred earlier, *Western Australian Industrial Relations Law*, is an authoritative discourse on the legislation up until 1993. It has all been downhill. That is the fault of this place. I look forward to the day when the conservatives will no longer control the processes of legislation in this Chamber. In future we will be able to work out with other parties ways of getting legislation through this place that will better protect the interests of the entire Western Australian community.

Hon N.D. GRIFFITHS: Hon Tom Stephens has talked about the future. The short term future is that this Bill will pass because of the oppressive forces against the Opposition. The medium term future is that transactions will occur with other parties to resist the more oppressive measures the Government will bring against us.

Point of Order

Hon PETER FOSS: I do not believe this is relevant to the clause.

Hon N.D. GRIFFITHS: The Attorney General should listen and he will find out.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): There is no point of order. Hon Nick Griffiths should continue.

Committee Resumed

Hon N.D. GRIFFITHS: There is a longer term future and I look forward to the day when we can do the right thing by the people of Western Australia. This clause seeks to impinge on the operations of the principle Act, the Industrial Relations Act 1979. It is appropriate to consider what the provisions foreshadowed in this Bill will do to that principal Act. This is a much narrower debate than any consideration of the effects of the short title of the Bill. I do not suggest that it is open to me to say that members should condemn the principles of this Bill, because the Chamber has already made its decision. As members know, I condemn the principles of this Bill. However, I will illustrate how the operation of the principles of this Bill will cause great harm to the people of Western Australia.

I have said on a number of occasions that as part of any measure, an acid test must be applied: Is what we are doing good for the people of Western Australia? I know many in this place know it is not good for the people of Western Australia. I know, and I regret, that with an overwhelming majority, by the tyranny of standing order 17:16 - amended by standing order 17:15 as the votes have turned out - the evil that the operation of this clause will effect on the people of Western Australia will come to pass.

Hon Tom Stephens pointed out the history of the Industrial Relations Act. What he said is perfectly true: What is being overthrown here is not an industrial relations system brought into being by the Australian Labor Party, but a constrained industrial relations system, which is the work of the Liberal Party and its so-called conservative

predecessors. Hon Tom Stephens made a number of comments about the history of industrial relations legislation. He referred to amendments by the so-called conservatives perpetrated on the principal Act. I note that in these days the word "perpetrated" has a particular meaning and I understand its meaning in relation to the majority of members opposite, vis a vis those of us on this side of the Chamber and the people of Western Australia.

The CHAIRMAN: Order! I do not want to interrupt, but an audible conversation is going on in the Chamber which is becoming distracting. Will members who wish to have conversations please leave the Chamber. I apologise to Hon Nick Griffiths for interrupting him.

Hon N.D. GRIFFITHS: Hon Tom Stephens also said that they are not conservatives, they are radicals. They are changing our world and they are liberals in the classic meaning of the word. They believe in the free market. I move with precision to the meaning of clause 3 and the effect of the Labour Relations Legislation Amendment Bill on the Industrial Relations Act 1979 and how it will operate. Notwithstanding the contorted operations and anti-labour bias that led to the blue copy of the Bill, the Industrial Relations Act 1979 relies on certain basic principles. One is in part a recognition of the fundamental inequality of bargaining between an employee and an employer except for very rare categories of people. That is demonstrated by virtue of the recognition given to unions as employee organisations. It is an important recognition. To give recognition in name alone is nothing. If it is to be a meaningful Act and if it is to be a labour relations Act, it must allow unions as representatives of employees to function effectively.

That brings me to the precise effect of this Bill on the principal Act. This Bill is designed and intended to prevent employee organisations from effectively functioning. I do not want to be retrospective but sometimes interjections across the Table are not picked up, notwithstanding the great ears and wisdom of Hansard. There was a short exchange and references were made to the end of the world. Hon Peter Foss said that every time a labour relations Bill comes to this Chamber members on this side believe it is the end of the world. I said that if the Attorney believed in the end of the world and the concept of time, as the hours passed we were getting closer to that. I interpreted his nod and smile to mean yes. I do not think he was acknowledging the vision of time, but rather his view of the end of the world with respect to a civilised industrial relations system albeit under the constraints of the Industrial Relations Act 1979.

I note that in due course I must shortly sit down and when I do so I surrender my right to speak to any other member who wishes to speak, and I do so willingly. However, I intend to rise again and again because I want to press this point and illustrate how it impinges on the effectiveness of the Industrial Relations Act 1979. This Bill is evil and it must be resisted until we can speak no more. I intend to do so because this Bill is an attack.

Hon TOM HELM: I bring to the attention of the Committee the use of the word "principal" in this obnoxious legislation in describing the Act that will be amended. It is the only "principle" dealt with in this legislation. I join with my colleague Hon Nick Griffiths in saying I will expend whatever energy I can to prevent this legislation from being progressed. It is the duty of members to do that because of the damage it will cause to people. It is proper to amend legislation from time to time, but generally reasons are given for any proposed changes. In this case no reason has been given. The Committee has been told that the Government has a mandate, but no other reason has been given.

As my colleague said, members on this side were told when the second wave of industrial relations legislation was introduced in 1995 that they always whinge and moan about the sky falling down and about the end of the world. The Attorney said that was not the case, and members on this side were crying wolf too often. However, this time the Opposition will demonstrate as it goes through the clauses why it is a flawed document and is also obnoxious.

The CHAIRMAN: Order! I have pointed out previously that we are dealing with clause 3. Previous speakers have been allowed considerable latitude because they have argued that they will demonstrate how the Bill before the Committee will affect and change the Industrial Relations Act 1979. That is a legitimate debate on clause 3. I suggest the member is straying very far from that purpose, and I ask him to return to argument about clause 3.

Hon TOM HELM: It is easy to stray because we are talking about the principal Act and the clauses that will bring changes to that Act. After the changes were introduced in 1995 - they were not as draconian as those now before the Committee - they were withdrawn, I assume as a result of pressure from this side of the Chamber as well as from the union movement across the State. The points made then are equally valid now. Once the representatives of employees are no longer part of the equation the system becomes unbalanced. Amendment of the principal Act will result in an imbalance, and it is the duty of the Attorney to explain how this Bill will restore that balance.

How will members opposite make arguments to demonstrate the need to make amendments to restore some balance in the industrial scene? I can easily use the same arguments - I hope I am not doing so - to show that this Bill is not about industrial relations but is the act of a dictator; somebody who does not care.

Hon N.D. Griffiths: It is the triumvirate: The member for Nedlands, the member for Riverton and the Attorney General.

Hon TOM HELM: The imbalance to which I referred was the imbalance between the Government on the one hand, acting for the common good; the employer, the shareholders and those who control the capital; and those who represent the labour side of the equation. The workplace properly has three elements. Do we deal with amendments to the principal Act to restore balance or correct some unintended consequences in the legislation? So far, that has not been the case. So far, we have not heard any principled argument from government members; they simply say, "We will do it because we can." They have the power and will exercise it. We have not heard any other reasons for these proposed amendments to the principal Act.

We will use the argument as constantly and as often as we can: It is wrong to remove that balance and take away the rights of unions and of work people to combine to act in the best interests of union members. The Government claims we are standing fast because we do not want secret ballots, but that is not true. To some extent we are being hypocritical in this place; we have true secret ballots only every four years, but unions have them more often. Members should be aware that if a union mass meeting wants a secret ballot on an issue, it can be held; it does not require amendment to the principal Act to place the force of the law behind the process. If the Attorney General had any inkling about how industrial relations work, he would know that.

We have records that show the number of industrial problems in the State in the last 10 years. If government members could demonstrate that we are in chaos, it could be said that these amendments are important. They cannot do that. The Opposition's job is to outline that by introducing these amendments, the Government is taking us back God knows how far. The people of Western Australia will not abide by the draconian actions proposed by the amendment. For members who do not know, historically Australia is famous for not bending the knee or owing to anyone for the right to a secure and safe job. People do not expect some person, in the shape of the Attorney, who has some huge abilities, to -

Point of Order

Hon PETER FOSS: The member is not even speaking on the Bill, let alone the clause. He must direct his remarks to the clause.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): That is a valid point of order. I have indicated previously to Hon Tom Helm that he must demonstrate how the amendments embodied in the Labour Relations Legislation Amendment Bill will affect the Act. There is even an argument that clause 3 should not be debated. I have ruled that members can argue in the manner described, and I suggest that the member confine his arguments to those terms.

Committee Resumed

Hon TOM HELM: I thank you, Mr Deputy Chairman, for that advice. It seems rather odd that the person who raised the point of order spent most of my contribution speaking to the Leader of the House. Therefore, he would not know what I said.

Hon Peter Foss: I have detailed notes in front of me.

Hon TOM HELM: He has two ears, and he talks out of another part of his anatomy most of the time! The Attorney raised a point of order, which the Deputy Chairman thought had some validity. Keeping within the guidelines of the Chair, I emphasise the argument that the proposed changes to the principal Act are taking us back to the Dark Ages. They are frightening in their intent and will not help industrial relations at all. The Attorney General has had many opportunities to explain the need for these amendments, and he has not taken that opportunity.

Hon PETER FOSS: I make it clear to Hon Tom Helm that I have paid very close attention to what he and other members have said. Clearly, we have a filibuster here.

Hon N.D. Griffiths: You're an expert on the filibuster!

The DEPUTY CHAIRMAN: Order!

Hon PETER FOSS: Also, we have had some tedious repetition. One reason I am paying close attention is that I am noting how many times Hon Tom Helm, and other members opposite, repeat certain arguments. It will only go so far before I am sure the Chair will have to intervene when I point out the number of times a certain argument has been repeated -

Hon N.D. Griffiths: Stop bullying the Chair! You're a bully; do you know that?

The DEPUTY CHAIRMAN: Order! I will decide when I am being bullied!

Hon Tom Helm: You might not know.

The CHAIRMAN: Order! Hon Tom Helm is close to provoking a response from me, and I suggest that he not cast aspersions on the Chair.

Hon PETER FOSS: I have been paying careful attention to debate and noting repetition of argument. I am keeping a record. I will make certain that I will rise at the appropriate time if the tedious repetition becomes so tedious that I think it breaches the rules.

Hon N.D. GRIFFITHS: I do not want to respond to that tedious tone and remark -

The CHAIRMAN: Order! The member is dealing with clause 3.

Hon N.D. GRIFFITHS: - as I am responding to clause 3; if I respond to the Attorney, I will be somewhat tedious.

I again turn the attention of the Chamber to the fact that this Bill impinges on what is more or less - in recent times somewhat less - a workable industrial relations system in Western Australia as presided over by the Industrial Relations Act 1979. We know that the Workplace Agreements Act 1993 bit into that system like jaws with the intent of making it unworkable. The actions of the Chamber tonight, or whenever the Bill is passed, will impinge far more greatly on the operation of the Industrial Relations Act; that is, this Bill will prevent one of the pillars of that Act functioning, as it will prevent trade unions from operating effectively. That is the reason for its introduction.

A matter of major concern today, as distinct from yesterday or tomorrow, is that last week the House in its great wisdom of 17:15 passed certain motions. As a result we have a process which prevents and stifles the sort of debate that the Attorney General, the Leader of the House and other government members, when in opposition, were allowed to get away with. If I must put up with inane interjections, I will do so.

Hon N.F. Moore: If we have to get a stifling motion, I will work one out.

The DEPUTY CHAIRMAN: The member will address the Chair.

Hon N.D. GRIFFITHS: It is very important that when we consider the effect of this Bill on the principal Act, the Industrial Relations Act 1979, we consider two things. I will make these comments very quickly by way of introduction. In the last Parliament when a Bill of great controversy relating to the issue with which we are dealing tonight was being debated, I had a conversation with a gentleman who has served Western Australia well and who will continue to do so; a very senior member of this Parliament. I asked him this: "What is the point in continuing? This legislation will be passed sooner or later. What is the point of staying up until two or three or four in the morning, because it will be passed and it will go into legislation?" I said this in a moment of weakness, which occurs after a few late nights in this Chamber. Some members may remember some of those late hours. In these moments of weakness we have doubts and we ask why we should debate the legislation. This gentleman said, "It is your duty to resist evil for every moment you can, for every minute you are able to speak, because although it may not delay the passage of this Bill, it is your duty to point out that what they are doing is evil."

There is a view that this clause should not even be debated. If it should not be debated, it should not be in the Bill. I think that is a trite view.

The DEPUTY CHAIRMAN: Order! I also made the point that I have allowed the debate to continue within the terms the member specified; that is, he would use clause 3 to demonstrate how the Bill affects the principal Act. I suggest that is the matter to which the member should confine his remarks.

Hon N.D. GRIFFITHS: I am doing so; in particular, I am pointing out why it is very important to do so. The last time the Industrial Relations Act was amended, it was subject to the chopper, to a guillotine. Hon Bob Thomas remembers it well. That Bill had a lot of clauses. I have before me now - no doubt all members of this Chamber remember it - the lovely freedom of debate afforded to us by the member who was handling that Bill. I recognise his face. The name does not change; the face does not change; the modus operandi does not change. This is the same old chopper in for the kill. He is not interested in debate.

Point of Order

Hon PETER FOSS: I notice the member recognised he was wrong as soon as I began to take this point of order. He must address the Bill and this clause and he must cease to use repetition. I must say that he is breaching each one of those conditions and he must be getting to the limit of how much he should be allowed to carry on.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! I do agree that Hon Nick Griffiths is breaching the limit. On at least three occasions I have pointed out the limits to which he may address this clause. He has persisted

in wandering from that. I warn him to confine himself to the matters which he defined as a term of reference for this clause.

Committee Resumed

Hon N.D. GRIFFITHS: I will not go over those matters. I accept the ruling. I have laid the groundwork by way of introductory comments to evidence the fact that what we are about to move through tears up a proper system. It may be tedious for the Attorney General, but it is neither tedious nor repetition.

The DEPUTY CHAIRMAN: Order! I will be the judge of that. I suggest the member continue to debate clause 3 in the terms to which we have agreed.

Hon N.D. GRIFFITHS: I am doing so. By reference to each clause, I could go through this Bill in some great detail. Because I want to see the Attorney General justify in detail what he is inflicting on the people of Western Australia, I will not do that to which I am entitled in debating this legislation in Committee; that is, go through each clause of the Bill and relate it to the Industrial Relations Act 1979 - that would be a tedious process. I will not be repetitive, although I must confess I find the Attorney General's interjections tedious and repetitive.

Clause put and passed.

Clause 4: Part II, Division 5 heading amended -

Hon TOM STEPHENS: Mr Deputy Chairman, as you will appreciate, on each of these clauses the Opposition will rise, not to be - I am a little disarmed; the Attorney General is starting to mark his scoresheet -

Hon N.D. Griffiths: He should be a school master.

The DEPUTY CHAIRMAN: Order! I ask the Leader of the Opposition to address the Chair, rather than pay attention to the doodling of the Attorney General.

Hon TOM STEPHENS: I have no intention at any stage during this debate, as I have managed to avoid up to this point, of repeating anything. I do not wish to be on the Attorney General's scoresheet. I would appreciate it if the Attorney General would make sure he takes note that I am not repeating myself at any point in this debate.

Hon Peter Foss: But others may repeat you.

Hon Bob Thomas: So what?

Hon Peter Foss: That is tedious repetition.

Hon N.D. Griffiths: Stop your tedious interjections.

The DEPUTY CHAIRMAN: Order!

Hon TOM STEPHENS: This clause indicates, as do all 40 clauses of this Bill, there is sufficient debating material in this Bill to argue, within the confines of the standing orders, the detail of this Bill at length. It could take us well into the term of the next legitimate Legislative Council if we were not faced with the guillotine.

The Trades and Labor Council has made available to the Opposition, as it has to the Government, some commentary on this clause in which changes to the duties of officers starts. In this clause we see an amendment whereby included in the heading is the term "employee". By any standard this is a dramatic departure from what is in the Statute. The commentary that has been provided by the TLC to the Government is in the following term -

> PART 2 - OFFICIALS OF ORGANISATIONS
>
> **Summary of Concerns**
>
> The definition of "finance officials" becomes so broad as to be vague and subject to extensive litigation to interpret what ultimately might be harsh sanctions being applied to a relatively junior employee within an organisation.

It becomes relevant to introduce this issue now, as I try to respond to the furrow in your brow, Mr Deputy Chairman, because it is inappropriate to insert the term "employee" without some reference to why it is being inserted in the clause. It would be a nonsense if I did not object to the notion of the word "employee" being inserted in the clause.

Hon Peter Foss: Would you like me to postpone this clause?

Hon TOM STEPHENS: I must deal with it now. Once "and employees" is inserted into part II of the principal Act we will be left to tackle how that will change the Act and, subsequently, to spell out a range of provisions that will

then extend from union officials to this new category. I want to make at least some preliminary remarks now because this is the first time some of the provisions of the Industrial Relations Act have been extended to cover employees of unions. The subsequent provisions could have been more adequately expressed in amendments to the principal Act.

Although the Government says it is talking about only certain employees, what this does is launch a real assault on all employees to try to scare the living daylights out of not only union officials but any employee of a union. The commentary provided by the Trades and Labor Council also states -

1. The definition of "finance officials" becomes so broad as to be vague and subject to extensive litigation to interpret what ultimately might be harsh sanctions being applied to a relatively junior employee within an organisation.

2. The 1995 amendments relating to financial duties of officials of unions have only recently come into effect following substantial review of union rules by the Registrar of the Industrial Relations Commission. That process only concluded in the last six weeks . . .

So, the process was presumably completed at the end of March, or early April, and the union movement suddenly had to organise itself to respond to the new arrangements that came into place in the 1995 amendments to the Act. Then off we go again in 1997 amending the Act.

Have any illegal activities or prosecutions under this section of the principal Act motivated the Government to amend this section of the Act? Are some activities of union employees somehow inadequately covered by the sections of the Act that necessitate this particular change? The second reading speech does not contain enough information to come to any conclusion on that question. The clause note simply says that at this point the heading has been amended to reflect that this section applies to the duties of officers and employees of an organisation. That presumably leaves open the possibility of extending it later, if the Government were of the mind to do that. However, one must keep in mind that the Government will not have control of this Chamber in the future, so there is some hope that any extension cannot be achieved.

The heading will become "Duties of the officers and employees of organisations". What does the Government seek to achieve by inserting these words? Which employees is it after and why is it after them? What is it about the activities of certain employees of the union movement that has the Government amending the principal Act in this way? I would appreciate some response from the Minister on those questions at this time.

Further consideration of the clause postponed, on motion by Hon Peter Foss (Attorney General).

[Continued on p 2844.]

Clause 5: Section 74 amended -

Hon PETER FOSS: Some questions were raised during debate on clause 1 and I gave an undertaking at that stage that I would give some explanation of some of the terms to assist with interpretation. The addition of the words in clause 5(1)(b) includes an employee who is entitled to so participate in a representative or advisory capacity. The governing word is "entitled". "Entitled" means to give a rightful claim to anything. In that sense it attaches only to an employee who satisfies all conditions necessary to establish the rightful claim. Accordingly, only employees of an organisation who are entitled to participate directly in the financial management of an organisation are covered by the definition. "Entitlement" must, therefore, be derived from a rightful and lawful claim and extends to an employee who is entitled to participate in a representative or advisory capacity.

The term "advisory" is an adjective which means having the attribute of advising, being to offer counsel or to give advice. For example, "entitled to participate" means a rightful claim acting under an independent right or a legal right as an employee to participate directly in the financial management of the organisation by, firstly, giving advice in an advisory capacity but, with no decision making role or vote or, secondly, giving advice as a representative of a group of members, but again with no decision making role or vote. For example, an accountant who is an officer of the union is entitled to participate in an advisory capacity or represent a class of members who are entitled to participate in the management in a representative role. An employee who is merely acting under direction is exempt.

This intends to give financial accountability. If people, as of right, can participate in the financial arrangements of the union, they should take responsibility for doing that. If they have the right, with that right comes a responsibility. I think everyone knows that with rights come responsibilities. Unless one has the right to participate - that includes in an advisory capacity - one does not get caught by this provision. Once this provision is inserted it follows as a matter of course that the title should reflect that it has been extended.

This is not an unusual state of affairs. As I mentioned earlier, under Corporations Law, what started off as a responsibility only of people who were directors, or who stood in the position of directors - those who were held responsible for the decisions that were made in certain areas under Corporations Law - has been extended over the years to pick up those officers who have an executive position. It is a matter of logic that if people make the decision, they take the responsibility. If all they are doing is what they are told to do, they do not take the responsibility. It is logical and appropriate that there be that accountability to members of unions. In the same way as shareholders are entitled to the protection of people having responsibility as well as exercising rights, so too do members of the union have that right.

Hon TOM STEPHENS: Those members who are following the debate, of which there are many on my side of the Chamber, will have noticed -

Hon Peter Foss: From their rooms in that case.

Hon TOM STEPHENS: Yes, from all over the building. People are also following it closely from the gallery. What is missing from the Attorney General's answer to my simple set of questions, which included the question of what is it about the activities of some employees of the union movement that has suddenly attracted the attention of the Government that has warranted this amendment to the Act? Which officers or employees of the union movement is the Minister for Labour Relations after? Is the Minister after them all, or is he after only limited categories of people? Does the Minister want to scare off any person who wants to work with the union movement? It is not adequate for the Attorney to respond in this way, because presumably these amendments were drafted because the Minister for Labour Relations had observed certain actions taking place in the industrial affairs of Western Australia that justified these amendments. This clause may encompass a range of people, such as in-house accountants or in-house lawyers who take on roles within the Western Australian union movement that may fit this description - not that I think it is flush with such people, but there are some such people.

Hon Kim Chance: Even external lawyers who are acting in a representative capacity.

Hon TOM STEPHENS: That may be the case, and perhaps the Attorney General will respond to that point. I am dealing with the professional categories that may be embraced by even a narrow interpretation of this clause. Has this clause been referred to the professional associations of those people?

Hon Peter Foss: The Leader of the Opposition has read this, has he not?

Hon TOM STEPHENS: Yes, and many others have read it as well and are left asking the same questions that I am asking. People who have made their expertise available to the union movement, to the Trades and Labor Council and to the Opposition and have read the plain meaning of this clause are left asking: Who on earth is the Government after, and why? The Labour Relations Minister indicated in the debate in the other place that he has a narrow category of people in his sights. I wonder whether that is confirmed by what the Attorney has said in this place, because I fear that this clause provides an opportunity for an assault on all the people in the union movement. If that is not the intention of this clause, the Attorney should be more specific about the people whom it is targeting. Why has this clause been drafted if it is not simply a general warning to those who want to be associated with the union moment, whether as a member, an official or now an employee, that the Government is coming to get them through the penalties that are contained in this legislation, which is, as my colleagues have said, quite wicked in its intent and effect?

Hon PETER FOSS: It is interesting to see the somewhat paranoid attitude that the Opposition has taken to this clause. This is an important piece of legislation for unions, because when section 74 was originally put into the Act, it was not a matter of going after people but of saying that a finance official means an officer of an organisation who is entitled to participate directly in the financial management of the organisation, and of setting standards for a finance official by saying that a finance official shall act honestly. Is that going after people? Do members opposite think that we should not set these standards?

Hon Kim Chance: You are being silly.

Hon PETER FOSS: Members opposite are doing pretty well at being silly. Section 74 states that a finance official is to act honestly, to exercise a reasonable degree of care and diligence, and to ensure that the organisation keeps and maintains accounting records. It states also that a person who is or has been a finance official of an organisation is not to make use of information acquired by virtue of the person's position as a finance official to obtain or seek to obtain, directly or indirectly, a pecuniary advantage for the person or for any other person or to cause or seek to cause detriment, loss or damage to the organisation. Any reasonable person would think those were reasonable standards to set for a finance official in an organisation. How can setting standards be regarded as going after someone? Those members opposite who say this is a going after clause because it is, in some way, penalising these people as opposed to setting standards for them are demonstrating clearly that they have read neither the Bill nor the Act. It does not

surprise me that members opposite are prepared to accept the worst about this Bill when all it is doing is setting standards and extending those fiduciary responsibilities to these people -

Hon Tom Stephens: Who are "these people"?

Hon PETER FOSS: They are employees. Members opposite have no problem when these words are applied to officers. This amendment will apply exactly the same words to an employee of an organisation who is entitled to participate directly in the financial management of the organisation and will include an employee who is entitled to so participate in a representative or advisory capacity. Nothing can be clearer than that.

This clause does not apply to consultants or solicitors. Perhaps we should extend it to them as well. Members opposite cannot have read the clause, because it is quite plain that under even the most extended and extraordinary reading, it does not apply to those people. At the moment, this clause applies only to officers or employees who are entitled to participate in the financial management of the organisation, and extends to them the fiduciary duties that would be extended to anyone who was in such a position. That is entirely supportable. It is not a going after anybody. It is a proper protection of the members of an organisation. If members opposite are opposed to that, by all means say so and we will make sure that the union members know that the Opposition does not think they deserve to have proper fiduciary duties extended to them.

Hon TOM STEPHENS: Members have possibly heard me say during this debate that I have been reading a book to my young daughter called *Pigs Might Fly*. That book contains a notion that is very relevant to this clause: The unlikely event factor, which is very high on a particular occasion and causes pigs to fly. If the Attorney wants any member to believe that the Minister for Labour Relations is not coming after the officials, employees and members of unions, he must want us to believe that pigs can fly.

Hon Peter Foss: Just see the doctor about your paranoia.

Hon TOM STEPHENS: We have the documentation. We know what the Attorney is up to. We know how he will use the Criminal Code against the union movement. We know what the Attorney is about to do regarding the police officers and other law enforcement officers in his efforts to prosecute union officials and employees as they go about their rightful business. We have the word about the Attorney and his colleagues; unfortunately for him more people in the community are becoming aware -

The CHAIRMAN: Order!

Hon TOM STEPHENS: I return to the Trades and Labor Council commentary, which is germane to the clause: The disqualification of elected union officials and appointment of an industrial magistrate takes the role of an electoral process out of the hands of union members. It is argued in the summary that we will start to see breaches of the conventions of the freedom of association subscribed to by Australia as a result of its subscription to the International Labour Organisation convention No C/87.

The commentary addresses the point made by the Attorney General, but we have yet to receive a response from the State Government. This goes to the heart of the responses made by the Minister for Labour Relations. I turn to the legal views of trade unions and their financial responsibility: Courts have, in the past, treated union officials and the duty of union officers as being, in part, equivalent to that of company directors and thus subject to fiduciary duties which require the maintenance of high standards of honesty and good faith. That is the determination of the courts in the cases cited as precedents in 1954 - Carling v Pratt - and presumably those precedents are still in place.

Hon Peter Foss: Precisely, so it is not a case of our going after anyone, is it?

Hon TOM STEPHENS: We have yet to hear from the Attorney where this is not working. Why is the Government heading in this new direction ?

Hon Peter Foss: The same has happened with Corporations Law.

Hon TOM STEPHENS: The Attorney takes the opportunity of ignoring the substantial point. Before we finish dealing with this clause I want the Attorney to provide an example of a problem which has justified the change to the Industrial Relations Act.

Hon Peter Foss: The member is assuming that there is a problem which must be overcome. He is assuming that a duty must be expanded.

Hon TOM STEPHENS: We know the Minister for Labour Relations very well. The Act is not being adhered to by a responsible Minister.

Hon Peter Foss: I cannot answer your paranoia.

Hon TOM STEPHENS: The Act is being looked after by the current incumbent responsible for labour relations. We know what he has done with the Act so far in its current form, let alone what he may be able to do with it in its amended form. He seems to be hellbent on doing this. In those circumstances, is it any wonder that the TLC, the ordinary working men and women of Australia, have questions about every provision in the Bill? We have every right during the Committee debate to ask questions. Who is the Attorney talking about? Which employees are being considered? Where have the problems occurred?

I return to the TLC commentary. It states that similarly it has been held that officials may not use the powers and opportunities of their position for individual gain. It would seem that these decisions illustrate a general principle that officers of an organisation are required by law to exercise the powers conferred on them bona fide for the purposes for which they are conferred. The case referred to is Allen v Townsend. The commentary states that failure of officers of a trade union to operate in this way have been held to result in non-compliance with the union rules as a whole. One of the clear trends in the regulation of trade unions has been the increasing emphasis on financial accountability. Union rules, in large part, reflect ultimate responsibility for the application of principles of diligence, financial accountability, and the right to sue or be sued, to the elected head of the organisation. In most cases, this is the secretary. They are the people who are obligated to do the job as required by the Act.

I turn to the definition of financial official. Regrettably, the clause notes keep moving in and out of the terminology of "financial" official and "finance" official. Presumably at some stage the Government was toying with referring to the official in the Bill as a financial official or a finance official. Eventually it tossed a coin and decided on a finance official, in the Bill, but left different words in the second reading speech and the clause notes. It says here that the definition of financial official - and that is wrong, because it is a finance official - is amended to include employees as well as officers because it is likely to be the financial affairs of the organisation that are dealt with by both. The clause notes state that this alteration to the definition of financial official broadens the scope to include those employees who are entitled to participate in the financial management of the organisation, even if only in a representative, advisory capacity.

I return to the commentary by the TLC, which states that this definition as it stands is vague, and has been widened from the 1995 amendments to include employees. When one considers the expression "entitled to participate directly in the financial management of the organisation", the TLC is concerned that within union rules the person or persons ultimately responsible in respect of any trade union is either the secretary or the secretary and the executive. In some cases, the rules do contain provisions which allow that authority to be delegated to an assistant secretary or deputy. Additionally, it is the secretary of a union who is entitled under the rules to be sued and to sue. Given these lines of authority, the TLC expresses a concern about the general provision in relation to a financial official.

These are free associations of the working community of Western Australia. While a limited amount of interference by the Government in the affairs of the free associations of workers is explicable, understandable and reasonable, these changes which would have us delving into the employment arrangements of the unions, and objecting to the arrangements that govern the affairs of the unions, right down to the arrangements they have in place with their work force, in my view and in that of the union movement -

Hon Peter Foss: They cannot become involved with matters involving their employees - they stay outside!

Hon TOM STEPHENS: The Government should not be involved. It is time that the Attorney recognised the whole notion of conventions - and this is why I delivered my earlier speech relating to the history of the union movement. There is an opportunity for the Government to intervene at some level, but to the point where the Government starts becoming involved in this way, it is unacceptable.

I guess this is part of the tactics used by the Attorney: Whenever we try to talk to him, he wants to talk to either a colleague or one of his advisers.

Hon Peter Foss: I am taking instructions. How else can I do it?

Hon TOM STEPHENS: The Attorney is offensive. When we were in government we put up with so much offence from the Attorney. In a little while the constitution of this Chamber will change, and the Attorney will no longer be able to put his legislation through.

The CHAIRMAN: Order! Let us try to debate the issues rather than personalities.

Hon TOM STEPHENS: I agree, Mr Chairman. I just asked the Attorney to show some deference to the Chamber. He does not serve the Chamber well.

Hon Peter Foss: I am. I have been listening to the member and answering him.

The CHAIRMAN: Order!

Hon TOM STEPHENS: The Attorney does not serve this Chamber well!

Hon Peter Foss: Mr Chairman!

The CHAIRMAN: Order! I have drawn this to the attention of the member. He has persisted, but I ask him not to persist any more.

Hon TOM STEPHENS: Nothing will be gained by this amendment, other than an attempt to frighten off the union movement. The Attorney has yet to pinpoint a problem that warrants this amendment to the Act. Unless he can point to the problem that he believes is being addressed by the amendment, regrettably this clause - together with every other clause we have dealt with, and those we have yet to deal with - will not obtain the support of the Opposition.

Hon PETER FOSS: The cases quoted by the Leader of the Opposition, like everything else he has quoted today, have ended up proving my point. One of the points made about one of those cases was that there has been a tendency for increasing financial responsibility in unions. He is quite right. Since the nineteenth century, legislation has been moving to that extent not only in relation to unions but also every aspect of life, particularly corporate life. If Hon Tom Stephens chose to read the report of the Burt Commission on Accountability, he would see why a greater degree of accountability is required of corporate bodies. Anyone who has a position of responsibility is increasingly likely to be covered by legislation which enshrines the progressive extension of financial duties. This has happened in general commercial life. It has gone beyond applying merely to directors and officers, but to any employee directly involved in the business of a corporation. This amendment still does not go anywhere near as far as the general duty owed by members and employees of corporations. When those laws were introduced the corporations did not ask what mischief was intended. The fact is that this is the tendency. The law has moved towards extending that duty, responsibility and liability.

The extraordinary statement that typified nineteenth century attitudes - in fact in many ways the unions are nineteenth century in their thinking - was the statement by the Leader of the Opposition that the Government should not interfere in the relationship between a union and its employees. That was said during debate on an industrial relations Bill. What is an industrial relations Bill about? It is all about the concept that we cannot just leave employers and employees to make their own arrangements. They need a system in which to operate; they need Governments. According to members opposite the Government can get involved in the internal arrangements of every organisation except a union. It is all right for the Government to inquire into everybody else's arrangements, but it must not go anywhere near unions.

Hon Tom Helm: He did not say that.

Hon PETER FOSS: He did; Hon Tom Helm should read it in *Hansard*. The proposition by the Leader of the Opposition is that the Government should not be involved in matters dealing with arrangements with employees. Purely by coincidence a case is before the courts involving a union, but it is sub judice so I will not use it as an example. I do not have to give an example. The purpose of this provision is to extend to members of an organisation the statutory duty - now, at the end of the twentieth century - reasonably expected of not only financial officials in the community but all officials and employees, that everyone else expects as a matter of course. The Leader of the Opposition asked for an example to illustrate why this was necessary. I said that I was dealing with the legislation. That is the reason; the legislation is to extend the duty. That is what that clause and this amendment are all about.

Members opposite said that I could not just give that explanation because, in their self-confessed paranoia, they said they knew the Minister for Labour Relations. It is not that they do not accept that is what this section is about, or that this clause amends it to extend that duty. They think the Minister for Labour Relations has left out something from the Bill and he has a hidden agenda.

Even with this amendment, employees and unions will be in a far less onerous position than employees of any corporation in Australia. If members opposite think that because people happen to be employed by a union they do not have the same responsibilities as members of any corporation in Australia, they have an antediluvian attitude. Members of unions are entitled to say their legislation gives them the same protection -

Hon Tom Stephens: The union rules do.

Hon PETER FOSS: No, they do not.

Hon Kim Chance: Is that why the unions have been supporting this Bill so strongly?

Hon PETER FOSS: They have been told by members opposite that it has a totally different basis than is intended. If the Leader of the Opposition had sold it to them fairly, he would have told them that this was nothing unusual, and that if while working for a corporation they had decision making powers but did not act honestly, they would be caught. The unions' attitude is that they represent employees; but it is all right for employees to be caught if they are

working for a corporation. However, it is different for union officials; they are the employees' friends so they do not need to act honestly and diligently! Heaven forbid if it were legislated that they should.

Members opposite want different rules to apply to their mates from rules applying to every other employee. Most of those employees are people whom members opposite are supposed to be representing. Members opposite have shown clearly that they do not care about the workers, but about union officials and people who work for unions. They do not want the same standard as applies to everybody else in the community. That is why they have been given this lovely little brief on behalf of the unions.

The Opposition's principle is as enunciated by the Leader of the Opposition. The Government should not interfere between a union and its employees; that is for everybody else. The attitudes of members opposite have not left the nineteenth century. They do not want the same standards of financial accountability that apply to everybody else to apply to unions. I have given my answer; I do not have to reveal the people who have caused this. All I must say is that a principle is involved here and it is enacted in legislation that deals with every other corporation. It should also apply to unions

Hon Tom Stephens: Would you apply it to your ministerial staff?

Hon PETER FOSS: The Leader of the Opposition should look at what is in the Public Sector Management Act. It is a different function from when it was under his Government.

The CHAIRMAN: We need to address the clause. The debate has become quite general.

Hon KIM CHANCE: This is a complex clause because it flows from clause to clause a little. As I was listening to the Attorney General I pictured a pea and thimble trick. Unfortunately the pea of truth is not hidden under any of the thimbles. The further one goes the more one realises the Attorney was talking about something that was not realistic. In the first case it is a matter of judgment, and I concede he has a different point of view from me. However, in effect he is saying that the unions should not have the capacity to set their own rules. If they wish, union members can apply rules like that within their own organisation's constitution.

Hon Peter Foss: Corporations should be the same I suppose.

Hon KIM CHANCE: Corporations have a different role. The Attorney General argued that on a number of occasions. He will not apply the political participation rules to corporations that he is quite happy to apply to unions. He should not say to me that he is applying the same rules to corporations as to unions. That is sophistry.

Hon Peter Foss: Have you read the report of the Burt Commission on Accountability?

Hon KIM CHANCE: I have, as a matter of fact.

Hon Tom Stephens: Are you going to apply Corporations Law to political donations?

Hon Peter Foss: We have been through that.

Hon KIM CHANCE: The members of a union have more than enough capacity to apply the principles established in the Burt commission.

Hon Peter Foss: If they choose not to, you feel we should not worry about it?

Hon KIM CHANCE: If they are unable to and require statutory intervention they are free to come to the Government and say they would like a change in the level of statutory intervention. The fact is that no record is available and the Attorney General has given no indication that any single union has ever approached him or any other branch of the Government to ask for legislative changes of this nature. However, I am prepared to leave that aside because we are dealing with clause 5 rather than clause 4, even though it is very hard to divorce the two. I was happy to support the Minister's suggestion that we deal with clause 5 first because it makes sense.

Under this Bill the rules which currently apply to an elected, responsible officer of a union apply to the employees of a union who may, from time to time, fulfill functions of that or any other officer. Unions are best equipped to make their changes to this rule. However, that is not my principal concern.

When the Attorney General said that this extends the application of the legislation to employees in the same sense as it currently applies to officials - he read a number of the requirements which are currently laid down in section 74(4) to (9) of the Act - he failed to indicate that there are no provisions in the Bill to achieve this. He was referring to the requirements of the Act as they currently apply to a union official. What he failed to tell the Committee - this is where we come to the pea and thimble trick - is that section 74, which is headed "Duties", commences with the words "In this section and section 77 -". The Attorney General quoted from the requirements set down in section 74. In section 77 things begin to change even though there is only a minor amendment to it in

this Bill. What is triggered in the amendment to section 77 goes to the new amendments in proposed sections 78, 79, which I am not worried about, and 80. Proposed section 78 deals with the penalty provisions - a new penalty of $5 000 and a daily penalty of $500 will apply to the employee.

I might be talking about a minor functionary, but worse than that we come to the iniquitous proposed section 80. On the face of it, it is not dealt with in the amendments covered by clause 5. However, if an order is issued under section 77, the penalties which apply under proposed sections 78 and 80 also apply. I am referring to the new provisions of the Bill which are underlined in the blue copy of the Bill. We are not taking only a minor functionary of a union and applying to him the same provisions of financial accountability - this is what the Attorney General tried to tell the Chamber - as exists now to that minor functionary performing the role in a delegated or advisory capacity of a finance official; we are imposing the possibility of a penalty on that person provided an order is issued under section 77, so that he cannot work for another three years. That is the pea and thimble trick.

I am not saying that what the Attorney General said was untruthful. However, there is no truth in the implication that it involves an employee in no more an accountability requirement than an officer now has. It is not true. It goes to all the new requirements which are imposed by this Bill. Members opposite should not kid themselves about what they are doing. If they are happy to do that, the Government is free to continue. Government members need to know that this is not a simple expansion of the existing duties. It is a radical extension of those duties. In all fairness, the Attorney General should have said so.

Hon PETER FOSS: Hon Kim Chance quite rightly pointed out that there are two considerations: Firstly, the duty and, secondly, the penalty, which we will deal with later. The first question members must consider is whether the duty should be there. It quite plainly must be there. Members must then consider what should flow from a breach of that duty. I agree they are two separate provisions. The Committee will have to deal with them when it comes to the relevant clause. At this stage, the Committee is deciding whether those people should have that penalty imposed on them. If members opposite think the duty should be in the Bill, the penalty must flow. Irrespective of whether the person is an officer or an employee, that person has the responsibility. The actual penalty imposed will be something which is in the discretion of the court. If members opposite agree that employees, as much as anybody else, should be caught by the duty - that is the situation generally at law with corporations, whether it be a financial or union-type corporation - the obligation arises from the reasons stated in the Burt Commission on Accountability report. That report states that one's financial obligations are to one's self as a single entity - in other words a sole trader - and one can do what one likes with one's money as long as it does not impinge on other people. When a person has a partner, he has a direct responsibility to his partner and both people participate in the partnership. As soon as we reach the situation of the corporation, there are people who are not involved in the day-to-day management of the corporation and they trust somebody else to look after it for them. The Burt commission report referred to the further question of government and said it had no choice in where the money went. It referred to cases where the highest degree of accountability was required. The reason I proposed some of the changes to statutory corporations arose out of that report. It is an area which must be carefully considered.

Whether members agree or not, sometimes people's decisions to choose to join a union are not as voluntary as might perhaps be the case with other forms of investment. Sometimes people feel obliged to join a union and in the past when there were closed shops people were required to join a union in order to keep their jobs. I do not think it is something the Labor Party would espouse now because it would be contrary to the principles of freedom of association that the member was talking about.

Hon Kim Chance: True, but some of us regard them as the good old days.

Hon PETER FOSS: They might have been, but they would have been in breach of a number of conventions. Attitudes have changed on both sides of the labour relations fence. When the Committee deals with the penalty clause it will be legitimate to argue that they are too strong and draconian. It is not appropriate to say at this stage that there should not be a duty. This clause is about whether there should be a duty and who should owe that duty. Frankly, the people who have been caught by the provision are the least able to have that duty.

Hon KIM CHANCE: With respect to what the Attorney General said, it is too late by the time the Committee gets to those clauses to deal with the matter. I acknowledge that the Opposition has the opportunity to argue the extent of the maximum penalties, but by then the Committee will have committed the employees of a union to these new provisions.

Hon Peter Foss: To the duties.

Hon KIM CHANCE: Yes, to the new duties and not the existing duties.

Hon Peter Foss: You will find that Hon Tom Stephens said they already existed at common law, but were not statutorily enshrined.

Hon KIM CHANCE: I will not go into that. It will be too late to leave it until then because by the time we get to that stage the Committee will have passed the clause and imposed the new duty on those employees.

Hon P. SULC: My first point concerns something the Attorney General said earlier in the debate on this clause about employees and people working in a representative or advisory capacity. The blue Bill defines "employee" as any person employed by an employer to do work for hire or reward including an apprentice or industrial trainee. Surely any person working in a representative or advisory capacity to do with finance and gaining a reward from it would include lawyers or accountants whether they are in-house or out of the organisation. Does it include a real estate agent who is selling property on behalf of the union? They receive a reward for doing services for the union.

What level of proof is required by the legislation? Hon Kim Chance referred to some of the penalties involved for breaches of the duties that now extend to employees. I wonder - I cannot find anything in the Bill - about the level of proof. My understanding of the Industrial Relations Commission is that it deals with the balance of probability and not beyond reasonable doubt. This takes it beyond the Corporations Law, criminal law or common law under which most corporations and other bodies exist, especially when we look at the legal process that this goes through before the judicial interference comes into play and falls on the heads of these employees. I know that, before it gets to the point of going to a tribunal of any type, corporations are investigated by the police, the Director of Public Prosecutions and official corruption organisations, whereas this can be taken straight to the court or, in this case, to the commission and it does not necessarily have to relate to people within the union; it can relate to people within the organisation or under the industrial registrar, an industrial inspector if we ever get to see one of those, or the deputy registrar. It cuts out a whole level of investigation that we would normally see in corporate law.

How are the definitions of official and employee separated? Employees of a union who are entitled to financial responsibility can be those who are collecting union dues and banking them for the union. Do these persons come under the Bill purely because they are banking money?

Hon PETER FOSS: We are going back to basics a little. An employee needs to have that relationship of being an employee. The definition of employee picks up what is called a contract officer rather than a contract for services. Therefore, a lawyer who is engaged from a private firm would be engaged on a contract for services. A lawyer who works within the organisation would come under a contract officer.

Hon P. Sulc: It does not define that.

Hon PETER FOSS: The definition of employee means any person employed by an employer to do work. The word "employ" is quite clear.

Hon P. Sulc: Employed in a representative capacity?

Hon PETER FOSS: No. An employee is an employee. That is a defined term. They have to be in the relationship of employer and employee. It is a well-known relationship. Anybody who is employed is under a contract of service. The definition in section 74 does not change that.

Hon Tom Helm: Therefore, they are caught by this.

Hon PETER FOSS: They are not caught. To be caught by the Act, a person has to be an employee. Generally speaking, that is clear. "Officer" is also defined in section 7 of the Act.

Hon P. Sulc: That means people who are paid to do anything, such as a shop steward?

Hon PETER FOSS: One must refer to the definition of officer in section 7. It is all set out in the Act.

Hon P. Sulc: However, a shop steward comes under the definition of officer.

Hon PETER FOSS: The member has to look to see what is a shop steward's term of employment. It depends on whether the conditions are met.

Hon P. Sulc: A shop steward comes under paragraph (d).

Hon PETER FOSS: The member has his answer. He should read the definitions.

Hon Tom Helm: It is very loose, isn't it?

Hon PETER FOSS: No, it is clear. In any case, members have to read the definitions and apply them to the person they are concerned about. No terms in the definitions are unusual or difficult. The concept of employment is not a difficult one. We are not dealing with anything new or terms that are peculiarly defined.

Hon Tom Helm: If what you are saying is correct, unions should be the same as other organisations.

Hon PETER FOSS: A person is either an officer or an employee. He has to be one or the other to even start being caught.

Hon P. Sulc: A shop steward is an official under this.

Hon PETER FOSS: The member has to consider each case to see. I am not here to say whether each official or employee is caught. That depends on his circumstances. Those who are caught are employees and officers. If the member wants to apply those terms to each individual he must consider all the facts and circumstances which define if they are or are not officers or employees. That is not the end of it. One then has to look at the section to see whether the person is entitled - the word used in the amendment - to participate directly in the financial management of the organisation. If the shop steward to which the member is referring is neither an officer nor an employee, or he is one of them and is not entitled to participate directly in the financial management, he is not caught.

Hon P. Sulc: What about a shop steward who organises collection fees?

Hon PETER FOSS: The first question the member has to ask is whether that person is an officer.

Hon P. Sulc: Yes, he is.

Hon PETER FOSS: Is he an employee?

Hon P. Sulc: No, he is not.

Hon PETER FOSS: Therefore, if the member believes that person is an officer, he is caught by the legislation. However, I do not believe that person is entitled to participate in the financial management of the organisation. I do not believe the collection of dues is financial management.

Hon Tom Helm: Particularly when they get a 10 per cent discount. It is not unusual for shop stewards when collecting fees to have 5 or 10 per cent of what they collect.

Hon PETER FOSS: Is it?

Hon Tom Helm: Yes. You don't even know what I am talking about.

Hon PETER FOSS: That might be participating in a representative capacity. If that question relates to the Act as it stands at the moment, which the member is vigorously defending, essentially that is what one has to do.

The next question the member asked was, what is the standard? The standard for all these penalties is a civil penalty except for the one contained in proposed new section 78, where a person who fails to comply with an order under section 77(2)(e) is guilty of an offence. That would be based on the criminal standard of proof, which is beyond reasonable doubt. The other standard of proof is on the balance of probabilities. This move into civil penalties has become more general. It is also found under the Corporations Law. I do not know that I particularly agree with the concept of civil penalties, but it has become quite fashionable, certainly in the industrial relations area where it is seen as an advantage because people do not end up with a criminal offence against them. It is six of one and half a dozen of another. I suppose it has advantages for both the people who wish to recover the penalty in that they have a civil standard of proof -

Hon N.D. Griffiths interjected.

Hon PETER FOSS: The difference in the standards of proof does count on occasions. Hon Nick Griffiths is right that in 99 cases out of 100 it makes no difference in the end. Nevertheless, many cases have been decided on the point and an awful lot has been written on the two standards of proof.

Hon E.R.J. DERMER: There is a real danger of confusing the role of an employee and of an officer. I raised the question with the Attorney General last week. His answer was that an employee would have responsibilities for financial management in a delegated form or by contract of employment. My experience of studying union rules is that they are quite clear. The concept of entitlement rests with an officer duly elected to fulfil a service for the union. As elected officers they have a series of responsibilities to carry out. An employee quite simply is someone who acts at the direction of an officer. As I understand the operation of unions, an employee will not work in a position with financial management responsibility. Union officers are responsible for financial management and employees carry out work at the direction of the officers. Similarly, I submit that in a representative or advisory capacity an officer has a duty and an entitlement, which have been specified in the rules, to have responsibility for financial management and for a representative role. An employee operates at the specific direction of an officer. For these reasons it is not wise to insert "an employee" into clause 5, either in subclause (1)(a) in respect of financial management or in subclause (1)(b) in respect of a representative of advisory capacity. The normal relationship of an officer is to carry out his duties to which he is entitled under the rules. He will be answerable to the membership of the union in the

normal electoral process, unless by the distortions of this Bill that duly elected union officer is disqualified and, therefore, the members of the union are deprived of the option of that person continuing in his elected role. An officer is answerable to his members; an employee is answerable to the officer. Does the Attorney General envisage from section 74(1) to (13), if clause 5 is carried, that the employee will have a responsibility for the financial management for the representative function of the union which is greater than the normal common law fiduciary responsibility of the employee to his employer, who in this case will be the officer of the union?

Hon PETER FOSS: If I could give an example of an employee who would fall within this, let us keep in mind that if the person does fall within it, the point I have made is that it is appropriate that he owe that duty. An accountant is a classic example of somebody who is entitled to participate in financial management but probably is not an officer. If finances went dreadfully wrong and it was found that the accountant had been hiding bills and not putting them up for payment and had totally misrepresented the cash flow situation of a union, so that ultimately it went bankrupt because of its lack of knowledge of its financial affairs because of the accountant's actions, the union members would be out to get the accountant's scalp. Notwithstanding that he is not an employee, union members would say, "You are the one who was meant to tell us."

Hon E.R.J. Dermer interjected.

Hon PETER FOSS: In most of these matters there is a common law fiduciary duty.

Hon E.R.J. Dermer interjected.

Hon PETER FOSS: Why do we need it in the Corporations Law or in the Statutory Corporations (Liabilities of Directors) Act?

Several members interjected.

Hon PETER FOSS: Let us take the example of statutory corporations. Even though it has always been the case that duty was owed, it was not until it was written in that law that people started paying some attention to it and being concerned to ensure that they carried out those duties. Many of the aspects in here involve common law duties, but once one puts it in an Act, one makes it quite clear that that is the extent to which the law has gone at that stage. A lot of people do not know about these obligations when they take these things on. The member says that he knows they are caught. Do they know? Hon Tom Stephens has pointed out the way in which the law has developed. He has given some examples of cases which indicate that perhaps, yes, it is already caught by common law, but it is not until such time as one puts it in writing and says to people, "This is what you face" that people realise the extent of their liabilities and responsibilities. Unfortunately, many people do not know that law. Many do not have the chance to go to a lawyer and ask, "What are my fiduciary duties?" They may never have heard of fiduciary duties.

Hon N.D. Griffiths: Will you put out tens of thousands of advertisements about people's fiduciary duties?

Hon PETER FOSS: Hopefully, now that there is a ready access to the statement of fiduciary duty, people involved in unions will be more likely to be aware of it than they are currently. I am giving an example of an employee who is quite plainly entitled to participate in the financial management of a union and about whom most people would think, "Hang on, that person does owe similar sorts of duties to that of the officer."

Hon E.R.J. Dermer interjected.

Hon PETER FOSS: No. If the member does not think an accountant is involved in the financial management, then -

Hon E.R.J. Dermer interjected.

Hon PETER FOSS: We are talking about financial management. If unions are like organisations of similar size, most would not have financial knowledge within them. They would rely on a person such as an accountant running on a day to day basis matters such as bringing bills up for payment, making sure they have the right amount of money in the bank, receiving advice when they are undertaking financial liabilities which they do not have the capacity to discharge and the like. They would definitely rely upon an accountant and take his advice and then leave it for him or her to get it done. They would not hire an accountant and say, "Don't tell us anything until we ask you a question. All right, have we got enough money in the bank to pay our liabilities? Have we sufficient cash flow to undertake these particular engagements?" Of course, they would not do that. They would ask, "How is our financial position? Can we do this?" The accountant would say, "Yes." That involves an underlying amount of management because that decision cannot be made without managing things.

Hon E.R.J. Dermer interjected.

Hon PETER FOSS: Rather than go over any more, may I just disagree with the member? I believe that if the member hired an accountant to be an accountant to his organisation, he would expect him to participate directly in

the financial management of the organisation. Surely that would be part of the terms of his contract. If he said, "I did not know you expected me to be involved in the financial management of the organisation", one would say, "You are a funny sort of accountant in that case." That is my view. The member may disagree with it.

To go back to the shop steward, one other thing in the definition of "officer" is that the shop steward would have to be able to participate in the committee of management. The definition of "officer" does not include the office of any person who is an employee of the organisation. Therefore, he would be caught under the definition of "officer" because he is not an employee of the organisation. The next question is whether he is entitled to participate -

Hon Tom Helm interjected.

Hon PETER FOSS: I might leave the member to discuss this with Hon Ed Dermer, because he seems to take a slightly different view of what is meant by "entitled to participate in the financial management of the organisation".

Hon TOM HELM: The Attorney has just demonstrated that he knows little about industrial relations. In my union - the Australian Manufacturing Workers Union - people from the shop floor, rank and file people, belong to the state executive, which meets every month and authorises cheques for payment and those sorts of things. A union member who is elected to the state executive, which is the supreme governing body of the union between conferences, will be caught under the provisions of this Bill for sure.

Hon Peter Foss: He is already in the Act.

Hon TOM HELM: That is what I am saying.

Hon P. Sulc: How many members are on the state executive?

Hon TOM HELM: About 30, more than half of whom are rank and file members of the union, who are doing the best they can for the union. Those people will be caught by the provisions of this Bill and may be held responsible for the decisions that they make with the best will in the world. The Attorney says that this is wonderful and is needed. He does not suggest for one minute or even give examples of why it is needed. Do unions suffer from the actions of particularly nasty people? Do unions not have the ability to sack employees or ask for the resignation of elected officials who do not do the right thing? For the Government to seek to involve itself in union matters suggests that unions do not have the ability to look after themselves.

The Attorney says that everybody else is subject to this kind of government and ministerial interference. It may be necessary for the law to provide some protection for people who invest in organisations like the ones that were run by Bond and Skase and that were into making money, or in companies that are run by cheats, vagabonds and rogues, but unions are not there to make a lot of money, or to make any money at all, and if they are not servicing their members, which is their role, they will lose members and will no longer be a union. The circumstances are different. If we were to treat unions in the same way as corporations and organisations that aim to make money for their shareholders, why should the provisions of this Bill not be applied to the Lions Club International, Apex WA, the Returned Services League, the Scout Association or parents and citizens' associations? Is not this legislation relevant to them as well? Should not they be subject to the same provisions?

Hon Peter Foss: They already are.

Hon TOM HELM: Not like this.

Hon Peter Foss: Yes they are.

Hon TOM HELM: No P & C association in which I have been involved can have its officers replaced by ministerial decree. Let us go through it again. Let us look at Ministers. Ministers would probably be officers under this interpretation.

Hon N.D. Griffiths: They consider themselves to be officers of the Crown.

Hon TOM HELM: If they are officers, they are obliged to act honestly at all times. If they did not act honestly at all times, what could we do? Could we replace them, or take them through the courts? Could I stand here and say, as a member of this Chamber, "A Minister has not acted honestly"? During question time today, the Attorney was asked a question about a report, and he said, "Well, what usually happens is that when I get a report, it comes to the office, one of the bureaucrats in the office has a look at it and checks it out, and it is then tabled in this House, so I am not fully au fait with what the report may say." However, it is his report. What do we do about that? Do we have to cop that?

Hon Peter Foss: I said if you wanted to know the timetable, give me notice.

Hon TOM HELM: I am not concerned about the timetable. I am concerned about this amendment. I am saying that what is good enough for everybody else is not good enough for this Attorney, and it certainly is not good enough for voluntary organisations. My union - and my union is better than most, I must say, but it is not 100 per cent different from most other unions - could not exist without the help of those people who can be described as officers, who work for nothing for the good of the union. Hon Tom Stephens is right. We have a right to know who the Minister for Labour Relations is after, because we are pointing out that the structure of unions will, at the very least, be changed, or, at the very worst, will make them no longer viable organisations.

Let us be fair. This legislation is all about destroying the ability of unions to represent their members. We are not talking about making money. We are not talking about opening Swiss bank accounts. The Attorney is suggesting that this amendment to draw employees into the web is here in order to subject them to the same fiduciary duty as officers and to make them subject to the same penalties, which he thinks may be a bit draconian. They are draconian, and they are aimed at dealing with some of the problems that this Minister and this Government have had with the ability of unions over the past 10 years to act in a responsible way. This amendment will capture almost everybody. How can the Attorney ask people to do things that the Attorney and other Ministers are not obliged to do? In order to catch Ministers who do not carry out their responsibilities, we have to set up a royal commission or call in the Director of Public Prosecutions, or take some other long and protracted action. It seems a bit hypocritical for this Minister to defend this obnoxious part of a quite obnoxious Bill.

Hon PETER FOSS: I remind the member of what the Government is asking these people to do. The Government is saying under section 74 amended that these people should act honestly at all times. I do not think people who have financial responsibility in a union, whether they are employed or are officers, would disagree that they should act honestly. The Government says they should exercise a reasonable degree of care and diligence. If an accountant is employed by a union, surely the Opposition would not say that merely because he is employed, he does not have to act with care and diligence. People take on accountants because they are expected to use reasonable care and diligence.

The Government says also that they should ensure they keep and maintain accounting records - again, a perfectly reasonable thing to ask them to do. Additionally, the legislation states that they should not make use of information acquired by their position to obtain a pecuniary advantage - another perfectly reasonable thing to request of them. I do not think the mere fact they are employed, as opposed to being an officer, should be the distinction as to whether those duties apply. I do not believe there is anything unreasonable in a section that says people are to act honestly, take care and not make any profit out of something for themselves.

The Opposition asks whether this provision applies to Ministers. Members opposite participated in this Parliament when the Government went a lot further and introduced legislation to take away the entitlements of members of Parliament and Ministers. The Government took away superannuation entitlements and perks of office because, as the member might recall, a number of people from the Opposition's era were convicted.

Hon Tom Helm: They got caught. You won't catch them with this.

Hon PETER FOSS: Of course they must be caught. First we set up the duty and then we set up the penalties that apply. The Criminal Code has a whole section dealing with public officers.

Hon Tom Helm: Why can't that be applied in this instance?

Hon PETER FOSS: They are not public officers.

Hon Tom Helm: So they are different?

Hon PETER FOSS: Yes, the Criminal Code applies to public officers. The Government recently strengthened those provisions by introducing much stronger penalties than would normally be applied. However, in the case of corporations, the Government says they must act honestly. I do not think there is anything unusual in saying that people must act honestly or diligently if they are officers or employees involved in financial management. I am sure members of the union believe they should act honestly, diligently and with care. That is what they believe is the case. However, under the Act as it stands, the only people who have that provision statutorily imposed on them are officers of the organisation: The employees - the accountants or bookkeepers - do not have an obligation under the Act. All the Government is saying with this provision is that if there is to be that sort of duty, it should apply to people who are employed.

Hon TOM HELM: The Attorney General states the bleeding obvious. He talks about that being what people want. I am sure union members want that from their officers and employees. However, I am trying to point out that shop stewards are the backbone of the union. In my union's case, people who are not stop stewards but are elected to the state executive make important decisions on a month by month basis to which they could be subject to penalties under

this legislation. It does not matter if every Minister or member of Parliament who is caught doing the wrong thing will be hung, drawn and quartered - they must be caught first. At present in the union movement the Criminal Code can apply to anyone connected with the union who does his or her own thing. That is fine. Why do we not apply the provisions of this amendment, and the ease of prosecution, to politicians and Ministers? If it is good enough for unionists, why is it not good enough for us?

The organisation, an officer or member of the organisation, the registrar or deputy registrar, or an industrial inspector - we never see any of them - can make a complaint about a union person, whether he be a stop steward, a full time official, the general secretary or a guy off the shop floor, and can report a contravention of section 74. A raft of things seem to be justice as far as politicians, and Ministers in particular, are concerned; however, they do not apply to people in unions.

A person need only be one of those described in section 77(1)(a) to (e) and he is up for the penalties provided for in the legislation. There is a set of circumstances for one group of people, but none for the other. I do not care if the Government wants to apply those rules to members of financial organisations. I will not be a member of them anyway; it does not worry me. However, I am a member of a union and if I am good I may get to be on the state executive of my union and to make decisions. People will look twice at the provisions of this Bill before they accept those positions, which previously they would have accepted easily.

Hon P. SULC: I am concerned not only that a raft of people will be able to bring these matters before the Industrial Magistrate's Court, but that under the Criminal Code and the Corporations Law, and all the other Acts to which the Attorney General refers, processes are involved before a matter gets to court to find out whether the complaints are justified; whereas these matters will go straight to the Industrial Magistrate's Court without any investigation, purely on the basis of a complaint. This would not be countenanced for an ordinary member of Parliament or a Minister. Matters will soon come before this Chamber that could be said to be in contravention of this provision if it applied to a Minister. It amuses me that we are placing these over-the-top provisions on unions, yet the Attorney General says he does not think they are necessary for other organisations.

Hon Peter Foss: I did not say that; I said it applied to all other organisations.

Hon P. SULC: Is the Attorney General saying they can go straight to court on the basis of a complaint without any form of investigation?

Hon PETER FOSS: The member misunderstands the normal process. Let us take an ordinary criminal case. A case before the Court of Petty Sessions is commenced by a document called a complaint.

Hon P. Sulc: Which is investigated by the police.

Hon PETER FOSS: Nothing in law says it must be investigated, but if it is not investigated before it is taken to court, the police will not do well in the case. The reason they are investigated by the police is not that a law demands the police to investigate before a complaint can be brought before the Court of Petty Sessions, but if a person wants to win the case, or have a good reason for bringing it, it must be investigated. It is the same in this instance. If a complaint is made in these proceedings, which has not been investigated and for which there is no evidence or reason, it is obviously vexatious.

These proceedings would be brought only if there were evidence that the person had acted dishonestly or without due care and diligence in looking after the money, or had not maintained proper records. There can be no case without some investigation. It is a matter of commonsense and not a matter of law. Otherwise it would be a waste of time. The amount of information needed to get anywhere is dependent upon how difficult or obvious the whole matter is. This clause is providing that people who have financial management on behalf of unions must act honestly, diligently and with due care, and not make profit for themselves. I do not believe that is unreasonable. It applies to them as a matter of common law as it stands.

Hon N.D. Griffiths: Why do it?

Hon PETER FOSS: There is a good reason and I will get to it later. Most people do not know it applies.

Hon N.D. Griffiths: Under our system ignorance of the law is no excuse.

Hon PETER FOSS: It is hardly a sympathetic method of dealing with it. I said earlier that one of the wonderful things about the legislation on statutory liability for directors is that it draws the attention of people to the law. Ministers in Parliament, for example, are subject to the Financial Administration and Audit Act, the Criminal Code, the Public Sector Management Act, the Anti-Corruption Commission Act, the Parliamentary Commissioner Act, and the Auditor General's Act.

Hon P. Sulc: They would be replaced for three years.

Hon PETER FOSS: A member convicted under one of those Acts would be disqualified forever and not just three years, even if the offence were not associated with his office. Depending on whether it a state or federal offence, a member convicted of an offence for which the penalty is imprisonment for up to two years would go forever.

Hon N.D. Griffiths: It is not quite the same as this legislation but we will deal with that later.

Hon PETER FOSS: By all means. A number of offences are involved. There are far more strictures on, and legislation covering, members of Parliament and their activities, and on anyone involved in government including employees.

Hon N.D. Griffiths: No, you are wrong. What you are doing is far more restrictive on people involved in trade unions.

Hon PETER FOSS: The member can form that view if he wishes.

Hon N.D. Griffiths: I am correct.

Hon PETER FOSS: I do not think the member is. Members of Parliament are required to show far greater accountability. The union people referred to in this clause do not have the same requirements to account that members of Parliament have. It is not a tough call to say to officers already caught by it or to employees involved in financial management that they must act honestly and with care and diligence, and not make a profit by exploiting the knowledge they have. None of those provisions is unreasonable, and I think every union person would expect that obligation to be already imposed upon them.

Hon P. SULC: Employees are covered by common law, so this represents a double whammy. In financial management corporations, employees might prepare the books and proposals, but the final responsibility lies with the officers of that organisation to make decisions on the basis of information provided. If the information presented is misleading or false in any way, they are covered under common law provisions and the matter is sorted out in-house. Why in this legislation is a double whammy imposed against union employees who will be covered by the same rules as union and corporate officials? Other clauses in the Bill provide for these matters to be dealt with under common law.

Hon N.D. GRIFFITHS: Clause 5 seeks to amend section 74 of the Industrial Relations Act 1979. The crucial words are the expansion of the class of finance official to include an employee who is entitled to so participate in a representative or advisory capacity. There is great concern about its breadth and what this will mean. It is noted that section 74 deals with a number of duties. One of the most significant aspects of section 74 is subsection (13), which will be amended by clause 5(2) to read -

> Subject to section 79, this section is in addition to and not in derogation of, any rule of law relating to the duties or liabilities of a finance official and does not prevent the institution of civil proceedings in respect of a breach of such a duty or in respect of such a liability.

The Attorney General has gone on at some length about the law and how it applies in common law obligations relating to many people and classes of people. The basic objection to this clause is that it is gratuitous. Its purpose is to scare, warn and intimidate people. It is consistent with the principles of the Bill, which are to discourage people from being involved in trade unions to prevent trade unions from operating effectively. That is the reason for the amendment. Parts of it are innocuous and parts are potentially very harmful but basically the words are there to intimidate. My colleagues object to that intimidation and rightly so.

Hon TOM STEPHENS: I do not accept the Attorney General's response as an accurate representation of the provisions. Specifically, there are provisions within the management structures of these free associations of workers to handle the affairs of these associations, without the need to involve the Industrial Relations Commission and to extend to employees of unions the penalty provisions that will eventually fall, as a consequence of this clause.

The provisions of the Criminal Code would catch an employee for the breaches described by the Minister should those circumstances arise. This is nothing more than an attempt to further weaken the union movement by discouraging people from being employees of the union.

Clause put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

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.

Postponed clause 4 put and passed.

Clause 6: Section 77 amended -

Hon TOM STEPHENS: The clause notes, for the purposes of the record, indicate that this provision will insert two words and a few numbers to the following effect: In reference to section 77(2)(b) of the principal Act, it will provide that on hearing an application in respect of breaches of duty, the Industrial Magistrate's Court may impose a penalty not exceeding $5 000. Therefore, we are still talking about penalties which will apply to union employees and officials. This civil penalty is not an offence provision, but can be imposed only once for any one course of conduct, regardless of how many breaches of duty occurred in the course of that conduct.

The additional words "and section 79(5)(a)" will mean that a penalty will not be imposed if criminal proceedings are instituted under any other enactment in respect of a breach of duty relating to section 74. This is another part of the Bill which brings together arrangements attacking the union movement. As a result of the combination of provisions representing that attack, the Opposition yet again opposes another provision.

Hon PETER FOSS: Although it is said to be a "draconian provision", the clause actually mirrors the provisions in the Trade Practices Act relating to unions. It might be said that we are bringing ourselves into line with the federal provisions which, I think, were introduced by the previous Federal Labor Government. To that extent, if the provisions are draconian in that way, it is strange that they were introduced by a Federal Labor Government.

Hon N.D. Griffiths: You blame Keating for everything, don't you?

Hon PETER FOSS: No. It seems strange that it suits members opposite to describe it as a further "draconian measure", yet it is something we took from a federal provision.

Hon N.D. Griffiths: Draconian is your word.

Hon PETER FOSS: I thought it was Hon Tom Stephens' word.

Hon N.D. Griffiths: You repeated it previously.

Hon PETER FOSS. The measure will prevent any duplication of penalty, which I thought would be seen as an improvement. The Opposition is determined to tell everybody that the legislation means something different from what it actually means; it believes that if it uses the right adjectives, and repeats them often enough, people might believe what it is saying. However, if members opposite bothered to find out what the measure says, and where the provision comes from, they would find it is probably very reasonable.

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

Hon PETER FOSS: I believe it is. I do not impose on the public my own beliefs.

Hon N.D. Griffiths: You impose your numbers!

Hon PETER FOSS: I try to ensure that my remarks are measured -

Hon N.D. Griffiths: Try harder.

Hon PETER FOSS: - and consistent with the wording of the Bill. I noticed that Hon Tom Stephens made a general statement.

Hon Tom Stephens: I read the clause notes.

Hon PETER FOSS: The reading of the clause note was very accurate.

The CHAIRMAN: Order! The Attorney General said that he likes his comments to be measured, but I would like him to make them relevant to the clause.

Hon PETER FOSS: As the comments read out by Hon Tom Stephens indicate, this is a reasonable provision. In fact, it moderates the general effect. It has been taken from the federal Act and, therefore, it is an important clause to include in the legislation.

Hon TOM STEPHENS: The point I made which seems to have escaped the Attorney General is that the entire effect with the interplay of the provisions of the Bill is the draconian effect on the trade union movement and the lives of working men and women of Western Australia to which I referred. Although the Attorney might like to pick up a particular part of any clause and say it is somehow or other comparable to federal legislation, when all provisions are combined the legislation is a massive and savage blow against ordinary working men and woman. It is the combined effect, as well as in many cases the individual effects of the clauses, to which the Opposition strenuously objects. We will not make much more of a mouthful of this clause -

Hon Tom Helm: Oh, yes!

Hon TOM STEPHENS: I will not, anyway. The combination of all the clauses is disastrous.

Hon KIM CHANCE: I am a little intrigued about the outcomes of this clause. Again, I must plot it through carefully so I understand it. It revolves around section 77 (2)(b), which amounts to limitations on the penalty which may apply. It is my understanding that the amendment to insert the words "and section 79(5)(a)" means that no penalty will be imposed by the Industrial Magistrate's Court if criminal proceedings have already taken place and a criminal penalty has been applied. My confusion arises as to where those limitations come into effect.

Proposed section 80 states that "if an order is made against an officer of an organisation under section 77(2)(b) . . ." Therefore, notwithstanding the fact that section 77(2)(b), as amended, will seem to remove the possibility of double jeopardy, proposed section 80 opens the book on double jeopardy. If, for example, there was an allegation that an officer or employee of the union had misappropriated union funds, that matter could be dealt with under this clause, but with an option of dealing with it, firstly, as a criminal matter or, secondly and possibly also, as a matter before the Industrial Magistrate's Court. If found guilty, that person would be much better off being dealt with in the criminal court where a penalty might apply. That provisions seems to be included to prevent the question of double jeopardy. Even if convicted in a criminal court, that person could still be caught up in the provisions of clause 80, where, an order having been made against that officer under proposed section 77(2)(b), he could be subject to a further order prohibiting him from performing any other functions of that office in the union for three years. If the intention was to remove the double jeopardy, why has it not done so?

Hon PETER FOSS: I think the member is correct in his assumption. The provision is the same under the federal Act.

Hon Kim Chance: That does not make it right.

Hon PETER FOSS: I accept the point. Another point must be made; that is, those opposite keep saying that this legislation has an evil intent and nothing like this has been seen before. This provision happens to come out of the federal Act, where the disqualification period is five years, not three. I ask those opposite to realise that the provision must be taken in context, so it has the same effect as the federal Act, where the disqualification period is five years. The exact same double jeopardy provision is in the federal legislation. Yes, if people are prosecuted and receive a criminal penalty, they are not proceeded against under the civil penalties. Given the way proposed section 80 is drafted, unless people have been dealt with under the civil penalties, these provisions do not apply. They come in where a penalty is being imposed under proposed section 77.

Hon Kim Chance: It could be argued that people would be much better off being charged with a criminal offence.

Hon PETER FOSS: As I said, in setting up the scheme of the relationship between civil and criminal penalties, we have followed the federal Act, except that the disqualification period is two years less than it is under the federal legislation.

Hon KIM CHANCE: First, I am not a lawyer so I am not in the business of defending criminals; however, I am in the business of making sure our law is as equitable as it can be. People are caught in a unique situation where they

could face different standards of justice, depending upon which court they are tried in, either criminal or industrial. The range of penalties available and even the question of double jeopardy are different, depending on the course of action that is taken. That might not be unique in law, but I hope it is. Frankly, I do not regard it as an excuse to say that these clauses reflect, to some extent, the commonwealth Act. If it is junk commonwealth law, it does not become any better if it becomes junk state law.

I am particularly concerned that taking it out of the context in the commonwealth Act might have created another difference. I do not know whether that is the case. All we can read is the black letter law in front of us, and that outcome is not good. I believe sufficient concern arises from this provision alone to set this clause aside until the end of the Committee stage.

Hon PETER FOSS: There are quite marked differences between the civil and criminal penalties. The civil penalty was introduced so that people do not end up with a criminal record. That is regarded by many people who have regard for their own personal status as a better option. I am sure many hardened criminals do not regard another conviction as a stain upon their character; however, other people regard a criminal conviction as being the most severe and terrible thing that could happen to them, quite apart from any penalty that is imposed. The severe part of the penalty for them is that they have been convicted of an offence.

Hon Kim Chance: That is what makes it so wrong; a lesser penalty is confined in the lesser court.

Hon PETER FOSS: It is not a lesser penalty. Quite apart from anything else, people have been convicted of an offence, which in itself is a penalty. Civil penalties do not carry with them that state.

Hon TOM HELM: We are not just saying that this is evil law, an illegitimate law, a law that will not work. I am not aware of a union official who has ever been caught. We can have all the law we like; however, the important difference in this legislation is that an employee will be caught. Under the definitions in this Bill an employee could be someone who works in the office. The state executive of my union, which meets every month, might include the person who answers the telephone in the office. That person could be part of the executive that makes decisions about the day to day running of the union, financial and otherwise. Such an employer will be caught by this provision. Employees can be caught by the provisions of not only criminal law, but also civil law. Rather than being evil law, this is just plain bad law; badly drafted and badly crafted law.

Hon Kim Chance: Junk law.

Hon TOM HELM: That is right. More proof of that is the raft of amendments that have come before us in the shortest possible time in which we can look at them. That is an indication not only of how bad the legislation was when it went through the other place, but also, as the Attorney General has told us, that bits of other Acts were just stuck into this legislation. Surely that is saying to all members of this Chamber that this legislation should be thrown out. Although I doubt it, I hope this is an unintended consequence of this clause; that is, those people who are defined in this legislation as being employees of the union and who make decisions, can be not only condemned and attacked under the provisions of the legislation, but also affected by criminal law. If that is the intention, let us get it out in the open. Let us see where we are.

Hon PETER FOSS: I am somewhat concerned by the statement by Hon Tom Helm that the person answering the telephone might be caught up in this provision. We are talking about those who have been given financial responsibility by the union. They have that responsibility.

Hon Tom Helm: It is called the state executive.

Hon PETER FOSS: Members of the union have given them their trust and their job in the executive. I believe they have been given their job because members of the union believe they are capable of carrying it out honestly, with due care and diligence and not making any pecuniary benefit for themselves. The person Hon Tom Helm is talking about is one who has been sent by his or her fellow workers to represent them and whose job is to look after and manage the finances. Presumably, those sorts of people have been entrusted with that job because the fellow workers believe they are capable of it. As I said, they believe those people will carry out the job honestly, with due care and diligence and will not make a personal profit out of it. If people do that job dishonestly or without due care and diligence or in a way in which they make a personal pecuniary benefit out of it, those employees should be subject to a penalty, irrespective of who they are.

Any person who assumes that responsibility should carry it out to the best of his or her abilities. Hon Tom Helm should not be saying that anybody can have this liability. People can have this liability only if they act dishonestly in handling their fellow workers' money. If they act without due care and diligence in handling their fellow workers' money and if they make a personal profit for themselves in handling the information gained, the workers should have some form of comeback available to them. I would be very surprised if Hon Tom Helm were saying that they should

not. The member may argue about the degree of that penalty, but surely he is not saying that a person who is not prepared to put that sort of effort into the job, to be honest and to treat the job seriously should be allowed to go scot-free.

Hon TOM HELM: We have already agreed that provisions of the criminal law take care of those who do the wrong thing. Unions are not so silly, or so loaded with cash, to elect people who would do the wrong thing. The Criminal Code deals with them. They can be sacked and they can go before the courts. Steps can be taken to deal with them. But the Attorney General is talking about an industrial magistrate.

I will stick to the example of a telephonist. I am not talking about the lowest common denominator. I am talking about the most innocent person elected by his or her fellow workers to represent their best interests on the state executive. If they tell them to be crooks, liars, cheats or vagabonds, then the Criminal Code will deal with them. But what happens if the person makes an honest mistake? I know the Attorney General does not make mistakes -

Hon Kim Chance: A silly, careless mistake.

Hon TOM HELM: If that person goes before a criminal court there is a fair chance the court will accept the defence that it was an honest mistake. However, if it goes before the industrial magistrate -

Hon Kim Chance: Did not show due care and diligence.

Hon TOM HELM: We have a different kettle of fish. If the Attorney General agrees that there is a place for unions in our society, our unions can only be strong and stay strong and represent the best interests of their members if the ordinary rank and file members are encouraged to take positions of authority that involve decision making. Therefore, people should be proud and should fight to be on decision making committees so they can best represent the interests of the union. People who are appointed to those jobs are not paid. They are only there to represent their fellow workers or union members, but they may not be aware that they are subject to the Criminal Code. If they make a mistake, at least they know under the criminal code they can stand in front of their peers or at a trial by jury or magistrate and believe they will get a fair go. But what will happen when the industrial magistrate considers due diligence and says, "Hang on, Mr Welder, you should have been aware of the provisions of this Act; you should not have made that decision"? All we will end up with is an organisation run by bureaucrats and, heaven forbid, people with legal backgrounds, like Hon Peter Foss. It would be a disaster to have people like him running a union. It would be unthinkable. But that is what the change will do. Ordinary people will not be represented. They will be too frightened because they will get done twice.

Hon PETER FOSS: As usual Hon Tom Helm makes it up as he goes. That is not what the Bill says. It states -

> A finance official is to act honestly . . .

Hon TOM HELM: That's fair.

Hon PETER FOSS: Hon Tom Helm does not have any problem with that one. He agrees they should act honestly.

Several members interjected.

The CHAIRMAN: Order!

Hon PETER FOSS: It continues -

> (3) A finance official is to exercise a reasonable degree of care and diligence at all times in the performance of the functions of the finance official's office or employment.
>
> (4) The degree of care and diligence required by subsection (3) is the degree of care and diligence that a reasonable person in the finance official's position would reasonably be expected to exercise.

Hon Kim Chance: That is exactly the point.

Hon Tom Helm: There lies the problem.

Hon PETER FOSS: No, on the contrary. It contains so many reasonables it would be impossible for somebody who acted honestly to be caught out by it, as long as that person had his eyes open.

Hon Tom Helm: Get rid of it then. Chuck it out.

Hon PETER FOSS: I would have thought "the degree of care that a reasonable person in the finance official's position" is not the care that a bureaucrat, lawyer or accountant would exercise, but the care a reasonable person would exercise. In England the "reasonable person" is the man on the Clapham omnibus; in other words, the ordinary person who gets on and off a bus. We are not talking about this great building up of the standard that Hon Tom Helm

is making out. We are talking about a reasonable person in the finance official's position, who would reasonably be expected -

Hon Kim Chance: Yes, a qualified person. Accountants.

Hon PETER FOSS: It does not mean that at all. It is referring to a person who is an officer of the organisation. We know who the officers are. The Industrial Relations Act has a list of them. It does not say anything about accountants.

Hon Kim Chance: But elected or appointed to fulfil that position.

Hon PETER FOSS: Exactly.

Hon Kim Chance: Your amendment extends the duties of that qualification to an employee.

Hon PETER FOSS: Hon Tom Helm is objecting to the Act.

Hon Kim Chance: I am objecting to the amendments.

Hon PETER FOSS: At least Hon Kim Chance is sticking to what we are talking about.

Hon Kim Chance: From an elected officer to an employee, who may be a very junior employee.

Hon PETER FOSS: Hon Kim Chance keeps losing track of the point. We are dealing with a person who is entitled to participate in the management of the union. It must only be a person who is involved in that management capacity and must only be a person who is obliged to exercise the sorts of skills a person on an ordinary public bus would be required to exercise. Is it unreasonable to ask these things of that person: One, they act honestly; two, they exercise a degree of care and diligence, qualified by three mentions of "reasonable"; and, three, they must not use their position to make a personal advantage?

Hon Tom Helm: I agree with all of that.

Hon PETER FOSS: At least Hon Tom Helm agrees with two out of three, no matter whether the person be an employee or an officer. The only one his is concerned about is whether they should act with care and diligence. Even if we assume that this ordinary person on the bus to Balga -

Hon N.D. Griffiths: What about dealing with the person on the bus to Nedlands.

Hon PETER FOSS: I do not think that Nedlands and Clapham are equivalent. We are not dealing with an accountant, we are dealing with an ordinary person. The man on the Clapham omnibus was the court's way of saying an ordinary bloke who travelled by public transport. First we have to satisfy these requirements before we can find that they have gone wrong, and we still have the capacity, by order, to issue a caution to the respondent.

Several members interjected.

Hon PETER FOSS: Opposition members keep referring to the extreme act at the other end, but they should keep in mind the sort of culpability I am talking about. They do not even exercise the sort of care that an ordinary person on public transport, going to an ordinary suburb, would use, and even then a person would be given a caution instead of a penalty. Of course there will be a wide variety of differences in culpability, but that is allowed for in the legislation. Members should also keep in mind that we are dealing with an industrial magistrate. How many times has Hon Tom Helm told me that the people involved in this area of industrial relations know the area they are dealing with and know how to handle things? Does the member really think that an industrial magistrate, given the circumstances the member has given to me, and assuming this person did not exercise -

Hon Tom Helm: Who appoints them?

Hon PETER FOSS: Once they are appointed, they are there -

Hon Tom Helm: Your comrade appoints them.

Hon PETER FOSS: The member has some confidence in them, I hope.

Hon Tom Helm: We used to.

Hon PETER FOSS: History shows that we should have confidence in them. A person who failed that very minimum standard of duty would be given a caution. Anybody can go through any legislation and try to predict the apocalypse. Some of these clauses are already in other legislation. The federal Act provides for a five year suspension -

Hon Tom Helm: For an employee?

Hon PETER FOSS: Yes. It applies to a person. A huge range of people may be disqualified for office for up to five years under the federal legislation.

Hon Tom Stephens: There is a slight difference in the federal sphere; that is, the Minister responsible is not a madman and a zealot!

Hon PETER FOSS: The person who will be doing this is the industrial magistrate. Members opposite can give all sorts of reasons as to why they do not like it, but the argument does not wash.

Hon KIM CHANCE: I want to make a point about the central issue of reasonable care and diligence. Section 74(4) states that the degree of care and diligence required is the degree of care and diligence that a reasonable person in the finance official's position would reasonably be expected to exercise. I have no difficulty with the wording of the Act, because it makes it clear that we are talking about the level of expertise that is expected of a finance official who is elected or appointed to that position. However, the difficulty I have with the amendment is that exactly the same level of competence is required of an employee who may act in that position, on even a part time basis.

Let us assume that in a relatively small union, only two people occupy the position of finance official: The general secretary and the accountant. The accountant is charged with the organisation of that union's finances. However, the third person in the office, the telephonist, who has a multiskilled role, has to fill in when the accountant is absent. Therefore, the full weight of the degree of competence that would be expected of the finance official - the accountant - would fall upon that union officer when acting for the finance official.

Hon Peter Foss: That is not quite correct.

Hon KIM CHANCE: If it is not correct, it is not what the legislation says. If the principal finance official was away for a week and that junior officer made an appallingly silly blunder and managed to dump $20 000 worth of union funds, the full weight of the expectation of competence that would fall upon the accountant would, by virtue of this amendment, fall upon that junior officer, whom no reasonable person would expect to have accounting qualifications. If the accountant made that mistake, it would probably be professional negligence. The amendment does not make allowance for the lower level of competence of a junior officer.

Hon PETER FOSS: Let us look at who would be responsible under those circumstances. If in the absence of the accountant the union appointed someone who was not competent to carry out that job, which is what the member is almost saying, the people who would be responsible would be the people who appointed that person. They do not escape their responsibility by appointing someone who is not competent. That is the first point. The situation before the amendment is that the accountant would not be liable because the accountant is an employee, not an officer.

Hon Kim Chance: He may be an elected official. He may be qualified as an accountant but be elected deputy secretary, or whatever.

Hon PETER FOSS: I did not pick that from the speech. Certainly the people who were responsible for appointing that person, including the accountant, if he was an officer, and under the amendment even if he was an employee, would be responsible because they had appointed someone who did not have the appropriate competence. Financial management is not just the things that are done with money but the things that are done with finances, so appointing an incompetent person would be a problem.

Hon Kim Chance: How would that be caught by the amendment?

Hon PETER FOSS: It is caught, because they are involved in the financial management and they have acted without reasonable care and diligence. Hon Kim Chance seemed to be indicating an instance where the person did not have the appropriate competence.

Hon Kim Chance: It was entirely hypothetical.

Hon PETER FOSS: Hon Kim Chance was making the case seem more extreme by implying that the poor person did not know what he or she was doing. He did that because he was trying to make the best possible case, but at the same time he was making another case -

Hon Kim Chance: Silly mistakes are made.

Hon PETER FOSS: I understand that, but Hon Kim Chance purposefully picked a case where everyone would say, "I understand how they made a mistake, because if I had that job I would make that mistake." People who appoint someone who does not have the appropriate competence and capacity are probably themselves lacking in care and diligence. If the accountant went on holiday, why put the telephonist in charge? The first thing we should say to such a union is, "Why not get a relieving accountant? Why are you cutting corners by appointing the telephonist? It is

unfair on that person." It is probably appropriate that there be a duty on people to appoint someone who will not make silly mistakes and does have some competence.

The degree of care and diligence required is the degree of care and diligence that a reasonable person in the finance official's position would reasonably be expected to exercise. Again, any person who made the telephonist the acting accountant would have rocks in his head, because that would be unfair to the union, its members and the telephonist. This example illustrates that we do need these duties to prevent people from making those silly decisions. The degree of care that would be expected from an acting accountant-telephonist is different from the degree of care that would be expected from an accountant, because an accountant has professional qualifications. A telephonist does not have accounting qualifications and probably should not be put in that position in the first place.

The amendment allows for the example which the member gave. It is not an absolute standard. It is the degree of care and diligence that a reasonable person in the finance official's position would reasonably be expected to exercise. An accountant who has the full time responsibility for 12 months is in a different position from a person who comes in from day to day. That person cannot be expected to have the same background knowledge as a person who is there all the time.

A real protection exists because subsection (3) refers to a reasonable degree of care and diligence, and states that a reasonable person in that position would reasonably be expected to exercise that. Of course, we cannot expect a telephonist, who is acting in place of an accountant - without any qualifications and who should not have been asked to do the job in the first place - reasonably to exercise a degree of care which is equivalent to that of an accountant. The member has made his case, not by saying that the law is unreasonable but by posing an example which in itself is unreasonable.

Hon P. SULC: Clause 6 seeks to insert "and section 79(5)(a)" into section 77(2)(b). We are told this will remove the double jeopardy of a matter being dealt with in a civil court and an industrial court. I realise we are not debating clause 7, but proposed section 79(1)(a) will mean that if a matter were before a civil court prior to being before an industrial court it could remain in both. From my reading of the following clause, it would conflict with the double jeopardy aspect.

Hon TOM HELM: It is strange that the Attorney has taken a part of the federal Act and inserted it into this Bill. That would be fine, except it catches the employees. It is worth noting that the federal Act was put together as a result of negotiations with the Democrats. After 21 May we will have Democrats in this Chamber; therefore what is the Government afraid of? Why not go through this exercise after the Democrats have entered this Chamber, and see how we get on then?

Hon P. SULC: I hope to receive a response from the Attorney on the point I raised.

Hon Peter Foss: Perhaps the member can repeat his point. I am having difficulty with it.

Hon P. SULC: Clause 6 relates to the removal of the double jeopardy. However, the following clause seeks to insert new section 79(1)(a). It appears to suggest that if a matter were before a civil court before going to an industrial court, that would remove the double jeopardy.

Hon PETER FOSS: If a matter were before a civil court it could be referred to the Industrial Magistrate's Court, and vice versa. One way or another, it would end up being referred from one court to another.

Hon Kim Chance: Both can take place. It is bound to take into account any penalty.

Hon P. SULC: On my reading of it, a matter is not justifiable by the Industrial Magistrate's Court unless the matter was before another court when the application was made. This still suggests to me that despite what the Attorney has said, if a matter is before a civil court before going to an industrial court it can still be tried in both.

The DEPUTY CHAIRMAN (Hon Murray Montgomery): I remind the member that we are dealing with clause 6. I understand his argument, but we are still dealing with clause 6.

Clause put and passed.

Clause 7: Sections 78, 79 and 80 inserted -

Hon N.D. GRIFFITHS: This clause takes us to the meatier part of the Bill. It seeks to insert three new sections into the Industrial Relations Act. The first is proposed section 78 -

> A person who fails to comply with an order under section 77(2)(e) is guilty of an offence and liable to a penalty of $5 000 and a daily penalty of $500.

This piece of the legislation deals with the day to day operations of trade unions. It proposes to insert with respect to aspects of that, penalties of $5 000 and daily penalties of $500. I am aware we talk about maxima, but the fact remains that they are penalties for which people can be made liable. They can be made liable in very wide circumstances. To be liable for that penalty it is necessary to be found guilty of failing to comply with an order under section 77(2). A material part of section 77(2)(e) is in these terms -

> On the hearing of an application under subsection (1) the industrial magistrate's court may, if the contravention or failure to comply is proved, do any one or more of the following - . . .
>
> (e) order the respondent to do any specified thing or to cease any specified activity.

Although those words seek to specify, they do not specify. They are words with wide import; they may affect unduly; they are designed to affect unduly, as part of a package; they are designed to prevent trade unions from operating effectively. We may hear an argument that there is no need to worry; that if we do things in a proper, normal, honest, diligent way, there will be no difficulty. That should be the case. There should be no difficulty, but the problem with this proposed section - in fact the problem with this part of the Bill - is that it is intrusive.

Section 77(2) refers to applications under subsection (1). The material part of that refers to a person who is or has been a finance official of an organisation and who contravenes or fails to comply with section 74. We have just referred to section 74 and the expansion of the class. I have heard some wise interjections in this place, but I do not comment on wise interjections.

Under section 74 the Committee has expanded the class so that a finance official means an officer or employee. The Attorney made reference to those categories of act in a sense caught by section 74. I listened to his words carefully. I know he did not mean to, but he gave the impression that the various matters listed in section 74 as duties, those caught by the class, were matters which had to be taken into account in each case for there to be a breach. The fact is that they are distinct matters. When we examine those matters the import of proposed section 78 will be appreciated. Those matters, examined item by item, are fairly reasonable. It is reasonable behaviour. Of course somebody should act honestly at all times in performing the functions of an office of employment.

However, this proposed section seeks to have somebody intrude to review. In one sense that is fine, but we move on to an offence provision, a penalty. I suppose that is where the Attorney's case is at its strongest. One must act honestly. However, when exercising a reasonable degree of care and diligence at all times in the performance of the functions, that should not lead to a process which leads to an offence. This is a civil matter. I acknowledge that first there must be a finding and then a consequential order. Nonetheless, we are dealing with matters which in day to day life are properly civil matters - dare I say it, in the context of a system which seeks to inflict the most evil aspects of contract on our community. These are matters which, for the most part, are properly the province of contract or tort, not the province of criminal law or penal sanctions.

We should not be going down a road which the predecessors of those in power went down when they sent people to Port Arthur. Proposed subsection (4) again is an aspect referred to in another context.

Hon PETER FOSS: I note that the member is making a statement about this criminal penalty being a somewhat unusual consequence to follow from what is essentially a non-criminal proceeding.

Hon N.D. Griffiths: I am saying it is inappropriate. I do not care if Peter Reith wants to do it to other people.

Hon PETER FOSS: As Hon Nick Griffiths is probably aware, under section 81(c)(a) we make the distinction between the prosecution jurisdiction and the general jurisdiction of the court. Interestingly, in the general jurisdiction the rules provided by the Local Courts Act apply as if proceedings were an action within the meaning of that Act. That Act provides that it is inappropriate, in what are essentially non-criminal proceedings, to have what is essentially a criminal consequence.

Hon N.D. Griffiths: Note the word "offence".

Hon PETER FOSS: I do. Section 155 of the Local Courts Act 1905 provides that when a lawful order is made by a magistrate, not for the payment of money, but for the doing of some other act or for ceasing either for a time or permanently to do some act, any person acting in disobedience to such order shall be liable at the discretion of the magistrate to a penalty not exceeding $5 000 for each offence and to be imprisoned in default of payment or to be imprisoned in the first instance. The magistrate may issue a warrant of commitment accordingly.

Section 156 deals with powers of that particular court to deal with committal for contempt. Again it allows a fine not exceeding $5 000 and for a term not exceeding 12 months' imprisonment. This Act provides for $5 000 for each offence and for imprisonment in default of payment.

Hon N.D. Griffiths: These are not causes for comfort.

Hon PETER FOSS: Yet it is being suggested that the provisions in this Bill, with a fine of $5 000 and a $500 daily penalty, with no immediate capacity to imprison the person, are inappropriate. We must take it in context in generally considering the local court, a reasonably good analogy, which has the power to deal with orders by imposing a fine of $5 000 and imprisonment. It cannot be said in this instance that it is in any way inconsistent.

Hon N.D. GRIFFITHS: I disagree. Frankly I do not think one can ever justify a stance by saying two wrongs make a right. What takes place in the Local Court bears examination. The fact of the matter is that the Attorney General, this Government and members opposite are trying to impose criminal penalties on people carrying out the proper functioning of trade unions. The areas of activity for which the Government wants to chase people - to my mind and I think to the mind of most reasonable people - are more properly the province of the common law. They are more properly the province of tort and contract. It can be said that they do something with respect to the Local Court or may do something under Peter Reith's legislation. He may have some nasty legislation. No doubt there are many examples of awful legislation on the Statute books. I should be surprised if the contrary were the case because we know who has dominated this Chamber ever since its inception. The fact is that fairly innocent acts, in the sense that they are not what ordinary, reasonable people see as criminal types of behaviour, will be subject to a criminal regime. It is not right.

I refer the Committee to some aspects of that which trigger the process that gives rise to these penal sanctions. The degree of care and diligence required under section 74(4) is that which a reasonable person in the finance official's position would reasonably be expected to exercise. It does not sound like criminal activities. Why is it included in a criminal category? What is so special about the target? Of course, we know it is absolute hatred. Nothing has been said about section 74(5) as amended. Each finance official of an organisation is to ensure that the organisation keeps and maintains accounting records as required by section 63(1)(c). Let us ask ourselves if it is the sort of thing people might do by mistake when carrying out their duties. Nobody is perfect and sometimes people are careless. The most careful people are careless from time to time.

Hon Peter Foss: It is also an opportunity for a caution.

Hon N.D. GRIFFITHS: It has been said in this Committee that for certain categories of people the worst penalty is a conviction. That is why Mr Bond did not get so long; he suffered because he was convicted. That is great!

Hon Peter Foss: The caution goes before that.

Hon N.D. GRIFFITHS: One of the real penalties is going through the process of prosecution. Under this regime in Western Australia it is a process of persecution. With reference to section 63(1)(c) I ask whether people should be subject to the process of prosecution because of the opinion of an officious persecuting official carrying out the whims of the Minister for Labour Relations. We all know about his special squad persecuting trade unionists. We know they get it wrong and enjoy putting people through the expense and heartache, and enjoy putting their families under stress and strain because they choose to persecute them. Reference is made in the Bill to accounting records that are in accordance with generally accepted accounting principles and truly record and explain the financial transactions and financial position of the organisation. We are still in Australia and not in outer space. On the Notice Paper in the other place is legislation dealing with -

The DEPUTY CHAIRMAN (Hon Murray Montgomery): You cannot refer to that.

Hon N.D. GRIFFITHS: I am referring only to the Notice Paper. A report has been tabled in this place by a select committee dealing with professional liability. That report arose in part from, and dealt in part with, the fact that the big six accountancy firms in Australia were being sued for millions of dollars, as a result of concerns about whether they carried out particular functions as accountants. I acknowledge that that deals for the most part with aspects of audit but let us be realistic. We are dealing with the process of accounting and, according to some people, in some instances the big six firms did not get it right. However, trade unions will be subject to a process which leaves them liable to persecution, prosecution and penalty. I do not think that is right.

In defence of its position, the Government says these sorts of things should be done anyway. I accept that people should always behave properly and that it would be a beautiful world if people always carried out their duties with appropriate diligence. However, from time to time people get it wrong. When they get it wrong and if they have acted in a criminal way, by all means the Government should engage in a process that ultimately leads to a sanction. However, day to day activities which can involve honest and reasonable mistakes, albeit in breach of contract - in an employee's case a breach of a contract of employment - should not be involved in a criminal process.

Hon PETER FOSS: The member has missed the point that before a criminal penalty even arises a person must have breached their duty and disregarded an order of the court, which can include a caution. I pointed out this would be

an order made by an industrial magistrate. It was earlier suggested that this is an appointment by a lunatic, and I draw to the attention of members the process for appointing industrial magistrates set out in section 81B of the Act -

> The Governor may, on the joint recommendation of the President and the Chief Stipendiary Magistrate, appoint a person holding office as a stipendiary magistrate to be an industrial magistrate.

Stipendiary magistrates are appointed by the Governor on the recommendation of the Attorney General. Most magistrates have held office during the terms of a number of Attorneys General. The suggestion that suddenly there will be a lot of lunatic industrial magistrates because they have been appointed by a lunatic is not only a reflection on His Excellency but also a total disregard of section 81B of the Act.

Hon E.R.J. DERMER: Proposed section 78 states that -

> A person who fails to comply with an order under section 77(2)(e) is guilty of an offence and liable to a penalty of $5 000 and a daily penalty of $500.

Section 77(2)(e) of the principal Act specifies that the Industrial Magistrate's Court may order the respondent to do any specified thing or to cease any specified activity. The penalty is particularly onerous. Does the imposition of such a penalty preclude a person suffering an additional penalty from contempt of the Industrial Magistrate's Court or is it possible that he could have an additional penalty for contempt in addition to the penalty prescribed in proposed section 78?

Hon PETER FOSS: I do not think it could because of the specific remedy which is applied. One would not use the general capacity to punish a person for contempt because it is the specific provision under the legislation.

Hon E.R.J. Dermer: Could you be more specific?

Hon PETER FOSS: The member has asked for a legal opinion and if he wants more certainty, I would need more advice on it. He will find that there will be a difficulty with the Criminal Code. My instant reaction is that because they are both criminal matters the provisions of the Criminal Code will apply. Under those circumstances it would not be possible to provide both. In any event, because of the specific provision in the legislation, it would not be possible.

Hon E.R.J. Dermer: It would be better if the Opposition had clearer advice on this issue before it voted on the clause.

Hon PETER FOSS: I understand the member's position. I do not have sufficient time to research the issue, but I am sure that would be the situation.

Hon J.A. SCOTT: I refer to the relationship of this clause to section 74(2) of the principal Act which states that a finance official is to act honestly at all times in the performance of the functions of his office or employment. The Attorney General answered that in part when he answered a previous question about the functions of the finance official's office. Are they the functions put in place by the union or organisation for which they are working or is it as described by various Acts? If it is the latter and the organisation for which the finance official is working -

The DEPUTY CHAIRMAN (Hon Murray Montgomery): Will the member identify what he is referring to?

Hon J.A. SCOTT: I am referring to section 74 of the Industrial Relations Act.

The DEPUTY CHAIRMAN: The Committee is dealing with clause 7 of the Bill.

Hon J.A. SCOTT: It is indeed, and I am referring to the relationship between that clause and section 74(2) of the principal Act. It refers to breaches of duties imposed by section 74. Proposed section 79(5) states -

> If criminal proceedings are instituted under any other enactment in respect of conduct that also constitutes a contravention of or failure to comply with section 74 -

I am referring to the relationship between that section and clause 7. If an organisation quite deliberately breaches the Act, because it does not agree with the law, and instructs a person to carry out an order which goes against the duties laid down by the Parliament under this legislation, will that person be liable for criminal charges and prosecution? If that is the case, it is of concern to me. There are instances where this could be construed as being the laying of criminal charges for political reasons. It would be making criminals out of people who were politically opposed to particular laws.

Hon PETER FOSS: I do not know that I can answer that question in this context. The Committee has passed that point and it is a long way off the mark in any event.

Hon KIM CHANCE: Clause 7 has, among its many effects, the effect of inserting proposed section 78 into the principal Act. What is the purpose of proposed section 78? The proposed section has application in respect of only section 77(2)(e) of the principal Act. It simply means that the industrial magistrate may order the respondent to do any specified thing or to cease any specified activity. I reiterate it is already part of the Industrial Relations Act. It amuses me that it existed prior to the coming into effect of the amendment Bill. Apparently, there was no need for the application of a penalty clause; that is, proposed section 78 which applies only to section 77(2)(e) of the principal Act.

It is necessary to consider section 77 to try to delve the meaning of the existence of proposed section 78. It is found that section 77(2)(b) provides the capacity to apply a penalty of $5 000 and section 77(5) provides the capacity for the court to make an order with or without costs. The only difference in proposed section 78 is the application of the daily penalty of $500 which was not part of the principal Act.

I revert to my question: What is the purpose of proposed section 78 which is not already met in section 77 of the principal Act, other than the daily penalty; and, if there are justifiable reasons for proposed section 78 and the penalties therein, why were they not included in the 1995 amendments?

Hon PETER FOSS: They were included in the 1995 amendments, but they were accidentally left out when the Bill was split.

Hon Kim Chance: Of course, before the election!

Hon PETER FOSS: It should have been left with the rest of the Bill. We had to come back to section 155 of the Local Courts Act which is couched in virtually the same terms except that it does not include the default penalty. In addition, it has imprisonment in the first instance as an alternative to default of payment. The difference is that the provision under the Local Courts Act would allow for instant imprisonment and would require imprisonment for default of payment, whereas this legislation includes the usual provisions for the enforcement of fines.

Hon N.D. Griffiths: That is why people go to the District Court.

Hon PETER FOSS: It is not a huge change except that the option of imprisonment is not there either in default or in the first instance. When the split in the Bill was made, it should have been left with it, but it was taken out.

Hon Kim Chance: Because of the approaching election.

Hon PETER FOSS: Not at all, it was to make sure we got it through the Parliament.

Hon J.A. SCOTT: I may not have explained it very well last time, but I seek clarification. I do not want to see political prisoners in this State, and I do not think the Attorney does either. I will give an example of my concern. What happens if under this legislation an official of a union is informed by the broad membership of, say, the former BLF, that "We do not want you to comply with the political expenditure parts of this Bill. We want you to proceed as you have always done"? If that person is a loyal member and an employee of the union and he carries out those actions, will he suffer criminal sanction by refusing to comply with those laws and in effect become a political prisoner?

Hon PETER FOSS: I understand the question, but it has nothing to do with this clause; it relates to a later clause. The only way a person can end up in prison under this clause is if he or she disobeys an order of the court. Even then, that person will have to go through many steps before reaching that stage. It must be a person of the necessary category; someone who has acted either dishonestly without due care or diligence, or for his personal benefit. A person must then be taken before the courts, an order and offence made and the person fined. The possibilities are very many indeed.

The case the member posed does not fit with those requirements. We will deal with that question when we reach the relevant provision. Under this clause, a person can be imprisoned only if he or she has acted dishonestly, without reasonable care and diligence or made personal gain from the information - that is before even reaching first base. If a person acts in that way, surely he or she should suffer some penalty. We had no difference of mind on the first and last points. The matter of reasonable care and diligence raises some questions about a person being ordered to act in a certain way, and the person giving the order does not get out of the obligations. Hon Jim Scott is dealing with something which comes later in the Bill.

Hon P. SULC: I thank the Attorney for pointing out that proposed section 78 was left out of the original Bill, as it would appear to be one of the measures subject to the tripartite agreement we never saw. I have a few problems with this provision, with which I will deal point by point. I have had to come back to the Attorney General on a couple of points he did not note when I initially raised them with other points. Through proposed section 80(2), the Industrial Magistrate's Court may include in an order any provisions which it considers necessary to ensure the

operation of the order and to provide for the election - this is where the devil in the detail comes out - or the appointment of a person to replace the officer whose office becomes vacant under the order.

That inclusion of two words in that provision seems to fly in the face of the International Labour Organisation convention C87, freedom of association and protection of the right to organise convention of 1948, and which Australia ratified in February 1973. Article 3 of the convention reads -

> Workers' and employers' organisations shall have the right to draw up their constitution and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

Paragraph 2 of the article reads -

> The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

This provision appears to create a situation whereby once a person is disqualified, the industrial magistrate can appoint someone else to fill that position. I would hate to see the head of the Chamber of Commerce and Industry looking after my union, the Australian Manufacturing Workers Union, because the industrial magistrate decided that such person was suited and qualified to take over that role. Other ILO conventions talk about other interference in organisations, but I will not go into that. I propose a hypothetical situation, but this proposed section will allow a direct contravention of article 3 of the freedom of association and the protection of the right to organise convention to which Australia is a signatory.

Hon PETER FOSS: This is one of the myths perpetrated by the unions regarding this clause. I will give a couple of examples of union rules.

The State School Teachers Union deals under rule 27 with casual vacancies. It provides that the executive shall have the power to fill any vacancy occurring in those offices enumerated in rule 26(a), subjected to 26(b) thereof. It continues that any such vacancy which occurs within 12 months of the expiration of the elected officer's term of office shall, subject to subrule (d) of this rule, be filled by a financial member of the union appointed by the executive provided that any person so elected or the appointed officer -

Hon P. Sulc: Subject to their own rules.

Hon PETER FOSS: Please do not interrupt. It continues that the person should hold the position for no longer than the unexpired portion of the term of office. In filling a vacant office, in accordance with the preceding subrule, the executive shall appoint the senior vice-president as acting president.

The next example is the Australian Municipal Administrative, Clerical and Services Union. Again, it refers to extraordinary vacancies. It says that where such vacancy occurs in the office of any branch officer, executive council, trustee or state council, elected by the membership and the unexpired term of office is more than 12 months, or three-quarters of the term of the office, whichever is the greater, the branch secretary shall immediately report such vacancy to the state executive, and shall notify the returning officer. Under those circumstances, an election is held. If that is not the case, they provide for appointment.

The proposed section does not state that a magistrate can appoint these people.

Hon P. Sulc: Yes, it does.

Hon PETER FOSS: No, it does not. It states that -

> The industrial magistrate's court may include in an order under subsection (1) any provision that it considers necessary to ensure the operation of the order and to provide for the election or appointment . . .

It does not state that the magistrate elects or appoints these people. It states that he can provide for the election or appointment. It is only possible to read that provision as indicating that the election or appointment be conducted in accordance with the body's rules. It could not change the rules for the filling of casual vacancies. It allows for the fact that the rules enable both election and appointment. If it stated that the court could elect these people, it would override the rules of the union.

It is typical of the way the unions have misrepresented this provision. The word "election" obviously means in accordance with the union rules, but members opposite claim that the word "appointment" means that it will override the union rules. Members should read the provision. Obviously, the magistrate will make the order to make sure the election or appointment is carried out in accordance with the rules of the organisation. Nowhere does the provision

refer to overriding the rules of the organisation either as to election or appointment. Quite plainly that is the meaning of the Bill. To suggest any other meaning is mischievous.

Hon N.D. GRIFFITHS: I find the words of the Attorney General very interesting. He is the spokesperson for the Government in this Chamber on this Bill and he is talking about appointments and elections. Those opposite cannot even get around to sending somebody to the Senate! I will relate that comment to proposed new section 80.

Hon Bob Thomas: It has been 103 days!

Hon N.D. GRIFFITHS: Section 103 -

The CHAIRMAN: Order! That is not relevant to clause 7.

Hon N.D. GRIFFITHS: It made me think about it. We are talking about voluntary associations and elections, and I say that respectfully. The rules of employee organisations are quite properly within the purview of the Industrial Relations Commission. That is our system. In the context of the clauses which surround it, this proposed new section is very intrusive. It is wrong to have an officer's position declared vacant for something - I grant it is discretionary - which in the views of many may be minor, and to disqualify that person from holding an office for up to three years. It is all right for the Attorney General to say that this can apply to others in different areas. Frankly, it does not apply to people carrying out day to day activities who will be the subject of the processes of this Bill.

I made some comments about proposed new section 78 which are relevant to proposed new section 80. When it comes to elections and appointments, of whatever kind, contemplated in legislation or carried out by executive acts, or by the immortal democratic processes of the Liberal Party, those opposite just do not get it right. They should not be introducing this legislation or this clause. It is very consistent with the policy and the principles of the Bill. It is an illustration that this Bill is about preventing trade unions from doing their necessary work effectively. That is why I say that not only this part of clause 7, but the clause as a whole deserves to be opposed. I refer to proposed new section 80(3).

This is lovely stuff for those who like a bit of law and order. I suppose those opposite need to track somebody down and toss him in the clink because they are not having much success in many parts of the State. Those opposite do not seem to be directing their energies to real criminals. Subclause (3) states -

> A person who performs or attempts to perform the functions of an office in the organization while disqualified by an order under subsection (1) from holding or acting in the office commits an offence punishable by the Supreme Court as for a contempt.

When the Supreme Court punishes people for contempt, I suppose it hands out cautions! There are two aspects to this: First, some people who live in certain Liberal electorates do not like being brought before the courts - frankly, nobody does - and found guilty of an offence. The real punishment is the fact that they are convicted. Second, being punished by the Supreme Court for contempt means that ordinary people will be dragged before the Supreme Court and will go through a very expensive process. The Supreme Court will say, "What is more, we will not only punish you; we might give you a caution; we might give you a little slap on the wrist; but we will order that you pay the costs."

Some eminent Queen's Counsel briefed by the Government charge outrageous sums in line with the going rate in the Supreme Court. The costs of some of the people whom the Government employs to do its persecuting work are very high indeed. That burden will be levied on ordinary people. Of course, people may get a caution, or perhaps something else. I know what the maximum is. I would love the Attorney General to place on the record the maximum for which a person is liable. I want to hear him tell the Committee.

Hon Peter Foss: Why don't you.

Hon N.D. GRIFFITHS: No, I want the Attorney General to tell the world what is the maximum.

Clause put and a division called for.

Bells rung and the Committee divided.

[Interruption from the gallery.]

The CHAIRMAN: Before I put the question I point out that there has been a fair bit of tolerance and goodwill displayed to the gallery and from the gallery. I suggest that it would not be in the interests of people in the gallery to spoil that.

Before the tellers tell, I cast my vote with 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.

Clause 8: Consequential amendments to sections 81A and 81CA -

Hon TOM STEPHENS: We could take the opportunity of extensively debating this clause. Regrettably, the processes allowing for consideration of these clauses are rapidly drawing to a close. Apart from expressing our opposition to this clause, the Opposition does not have anything further to say on this issue. The Government seems to be hell-bent on bringing down the guillotine on this phase of the Committee debate and in those circumstances, we dispatch yet another clause of this Bill.

Clause put and passed.

Clause 9: Section 73 amended -

Hon TOM STEPHENS: This is the first clause contained in part 3 of the Bill. This part of the Bill deals with pre-strike ballots. This part will be subject to a series of amendments that are yet to be explained to the Chamber. A whole swag of lines are to be included in page 8 of the Bill to transfer definitions from one section of the Bill to another, change definitions and provide what appears to be a substantial amount of cosmetic surgery to the legislation.

The Attorney General, in his second reading speech to the House, persisted in saying that this legislation focuses on strikes and that this part deals with strike activity. Every commentator on this Bill recognises that this part of the Bill deals with more than the notion of providing ballots in advance of strike activity. This part of the Bill winds its way through 500 lines and 17 pages of a convoluted process aimed at attacking the opportunity for the ordinary working men and women of Western Australia to participate in industrial activity of any sort to protect themselves in their employment and their wages and conditions. These clauses will make any industrial activity subject to a convoluted ballot process - not a ballot process that can be determined by the rules of the unions, those free associations with which the workers are connected, but rather a convoluted set of processes that will be unleashed upon those free associations by a Government hell-bent on making it impossible for industrial activity of any sort to be taken by the working men and women of Western Australia. Does the Government have an excuse for doing this? The answer is no.

Disputation in Western Australia has been low. At a time when there is no demand for this legislation, why are these clauses being unleashed on the union movement? It is not because of the plain meaning of the clauses. There is something behind these clauses. They are aimed at stopping the union movement from supporting workers in the face of a determined small section of the employers who want to deprive workers from getting their just pay and conditions. A government Minister, regrettably supported entirely by the whole government team, is hell-bent on using these provisions to cut off workers from the protection of the union movement. We began this debate thinking that a few members in the government ranks had been accidentally given their heads to advance legislation they did not support. Regrettably, we have discovered as the debate has gone on that the zealots are in the majority.

All of the coalition's number are on display as we go through each clause of the Bill, no matter how unconscionable are those clauses. We find here that the combination of clauses has a disastrous impact. I want to draw on some of the comments that have been made available to us from the union movement about the effects of these clauses on the way that the work force operates in Western Australia. When we start to look at the commentary we recognise that no Government should proceed down the path put on track by virtue of this series of clauses. I gather that the Trades and Labor Council is waiting for a response from the Government to its points. The concerns expressed by the Trades and Labor Council are summarised in the following way: First, the pre-strike ballot conditions are in both direct and indirect conflict with counterpart state and federal Statutes. This is particularly the case in relation to health and safety matters and protected industrial action for persons employed, covered by federal awards and

agreements. Secondly, even where industrial action is approved by a ballot such action remains unlawful and without immunity from civil action. Thirdly, the time frames in this part are unreasonable. There is an extensive lapse between the onset of the industrial issue and the commencement of industrial action. Even at this point as we go through some of the argumentation that is provided to the Government, if not all government members, the opportunity exists for some government members to do the right thing in order, to use the words of one member opposite, to make the difference between unleashing bad or good law on Western Australia. The opportunity still exists for one or a couple of members opposite to participate in the process of making a difference. They could listen to the argument being put by the practitioners in this area and recognise that this is the opportunity to really re-examine their consideration of this Bill and withdraw their support, which until this time has guaranteed some prospect of getting the legislation through.

The Trades and Labor Council made the additional point to the Government that the practical effect of the pre-strike ballot provisions operates so as to negate the right of an employee to take industrial action. Under international and national laws the ability of trade unions to protect workers' rights is recognised. This in turn requires unions to have recourse to industrial action, including the right to strike. These rights become meaningless if the laws operate so as to obliterate the right itself. This commentary is very important. You might remember, Mr Chairman, that at an earlier stage of the debate we heard from the Minister for Labour Relations that he was prepared to cop international adjudication on these provisions. Just as the adjudication has started to become available in the preliminary phases as it goes through, measured against the International Labour Organisation covenants, one starts to see a change of position on the part of the Government. The Premier says, "No matter what the Minister for Labour Relations says and I do not care what the adjudication is internationally, we will withdraw that commitment, like so many other commitments that have been withdrawn. As a result you are left with the withdrawal of the prospect of that adjudication having any impact at all on the outcome of this debate."

The point made by the Trades and Labor Council is that the restriction of pre-strike ballots to union members not on workplace agreements is discriminatory and clearly intended to target those persons who are members of trade unions employed within the regulated system of labour in Western Australia. Any penal provisions against employees and their organisations in the context of a democratic society is considered to be abhorrent. Substantial penalties apply to organisations and individuals, including heavy fines, both daily and maximum, for a breach of the pre-strike ballot procedure and are considered to be harsh and unreasonable. One could add a few more adjectives. When one looks at the clauses in this Bill and the penalties that will apply, one can come to only one conclusion; that is, this unconscionable legislation should not be advanced any further. Additionally, the commentary states that where two or more breaches of proposed section 97B(2) of the Bill can lead to deregistration of an organisation, it is an extreme penalty for assisting a person to participate in a vote. The commentary continues to about an additional 14 points, of which it is clear the Chamber would not be the beneficiary, even at this late stage.

As we find ourselves moving closer towards this midnight guillotine, the Government is a bit like Dracula trying to suck the blood out of the working men and women of Western Australia. This is the sort of time that people like government members should be doing their business. They might think that the achievement of tonight will be buried in tomorrow's newspapers because it is surrounded by the federal budget stories, but in the end the Government will be exposed for what it is about to do.

The CHAIRMAN: Order! The member is straying a little from the clause.

Hon TOM STEPHENS: Clause 9 is the start of the clauses of part 3 which deal with the pre-strike ballots. This clause is to insert the words "or section 97B(2) of this Act", which is the section of the commentary I have got to. This clause is criticised in the commentary of the Trades and Labor Council. It is further evidence of why this legislation should not be proceeded with at this time. It seems that the Government is hell bent on a strategy aimed at getting legislation through this House. We are up to clause 9 of a 40 clause Bill. The Attorney General has not been able to strike against his notepad any more tedious repetition, certainly none from me. I gave none in the entire period during which I was contributing to this debate. Despite that, the Attorney General, apparently supported by his leader in this Chamber, is about to participate in a process where page after page of amendment -

Point of Order

Hon PETER FOSS: Could the member direct his remarks to the clause?

Hon TOM STEPHENS: I am more than happy to do that.

Committee Resumed

Hon TOM STEPHENS: In clause 9 we see the reference to section 97B(2). Clause 9 comes immediately before clause 10.

Several members interjected.

Hon TOM STEPHENS: Clause 10 is the start of a series of amendments that the Government is now apparently to subject to the guillotine process and put through this Chamber without explanation. A series of division after division will determine the outcome of this legislation without any effort to explain what is going on in this legislation. We are more than prepared to extend the time for this Bill - that is after 22 May. The Government can shift that guillotine beyond 22 May. We are ready to accommodate it any time.

We objected to the Government's guillotine the moment it introduced it. If the Government wants to fiddle with the internal boundaries of the guillotine, it has nothing to do with us. I have consulted every one of my colleagues and not one is prepared to support a process whereby this debate will be subject to guillotine.

Point of Order

Hon PETER FOSS: I ask that the member address his remarks to clause 9.

Committee Resumed

Hon TOM STEPHENS: Clause 9 deals with section 73 and provides for the cancellation or suspension of registration of an organisation. The clause notes tell us that this amendment is to section 73(3)(a), which provides the grounds upon which the Minister may make a request for the commission to give a direction required under section 73(1), that the registrar issue a summons to an organisation to show cause why the registration of the organisation should not be cancelled or suspended, either generally or with respect to any employee or group or class of employees.

This amendment to section 73(3)(a)(iii) will provide a ground that there is sufficient evidence of breaches by the organisation of section 97B(2). Section 97B(2) is that provision of the pre-strike ballot provisions which makes it an offence if a union or officer or employee of the union incites, encourages or assists some member of a union to participate in a strike in contravention of the pre-strike ballot requirements - all of the type of activity in which unionists, union officials and union members need to participate during their day to day work, as you, Mr Chairman, and the Chamber will well and truly know.

That sort of activity will be caught by the provisions of this Bill, which will guarantee for the Government, insofar as the Bill is operative, that a major blow is struck against the ordinary working men and women of Western Australia. The Government should be ashamed of itself. We were prepared to negotiate an alternative arrangement whereby this and all subsequent clauses could have been considered by this Chamber and the Government would have been able beyond 22 May to give explanations in reference to all of these clauses.

The Government can fiddle around and do what it likes with the guillotine. We have never accepted it. It will prevent adequate debate of this clause, and it will prevent adequate consideration of, and consultation with the community about, the amendments that the Government proposes to introduce. Regrettably, like cosmetic surgery on a corpse that should have been buried long ago, this is a bad Bill -

The CHAIRMAN: Order! It being 12 midnight, I put the question that clauses 9 to 40, plus the title, stand as printed.

Question put and a division called for.

Bells rung and the Committee divided.

Hon J.A. SCOTT: Mr Chairman, on a point of clarification, are we accepting the amended clauses as well as the amendments put forward?

The CHAIRMAN (Hon Barry House): The question was put according to the sessional order which was passed last week. Before the tellers tell, I cast my vote with the ayes.

Division resulted as follows -

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)*

Question thus passed.

Report

Hon PETER FOSS: I move -

That the Chairman report the Bill to the House.

Question put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN (Hon Barry House): Before the tellers tell, I cast my vote with the ayes.

Division resulted as follows -

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)*

Question thus passed.

Bill reported, with amendments.

House adjourned at 12.06 am (Wednesday)

QUESTIONS ON NOTICE

NATIONAL PARKS - PURNULULU

World Heritage Listing

220. Hon J.A. SCOTT to the Leader of the House representing the Premier:

In relation to the Premier's election promise to turn Purnululu National Park into a World Heritage area -

(1) When will the Premier initiate World Heritage Listing for the Purnululu National Park with the Federal Government?

(2) Will the Premier suspend all mining and exploration leases in the Purnululu National Park as a consequence of the proposed listing?

(3) If not, why not?

(4) Does the Government consider that mineral exploration/mining and the conservation of potential world heritage areas are compatible land use activities?

Hon N.F. MOORE replied:

(1) The Minister for the Environment has met with, and subsequently written to, the commonwealth Minister for the Environment to initiate implementation of our commitment to request the Federal Government to nominate the Purnululu Massif, otherwise known as the Bungle Bungles, for World Heritage listing. Detailed assessment of the Massif's values against the listing criteria, as well as stakeholder consultations, will need to occur.

(2) No.

(3) There are no mining and exploration leases over the Purnululu Massif.

(4) The government policy for World Heritage areas is to consider each case on its merits and seek the assistance of relevant authorities to ensure that if mineral exploration and mining activity is carried out, it is not detrimental to the nominated World Heritage values. In particular, consideration under the Environmental Protection Act 1986 will take full account of World Heritage values.

HEALTH - PREGNANCY PROBLEM HOUSE

Funding

221. Hon CHERYL DAVENPORT to the Minister for Finance representing the Minister for Health:

(1) Does the Health Department provide funding to the organisation Pregnancy Problem House, situated at 342 Wanneroo Road, Nollamara?

(2) If so, is the funding grant to provide counselling to women who may be contemplating an abortion?

(3) If not, what are the terms and conditions for funding?

Hon MAX EVANS replied:

(1) No, Pregnancy Problem House is a privately funded service.

(2)-(3) Not applicable.

HEALTH - DEPARTMENT

Radiation - Greenbushes and Balingup

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

(1) Has the Minister for Health's department carried out testing of the Greenbushes and Balingup reticulation points for gross alpha and beta radiation in the past three years?

(2) If so, on what dates?

(3) Will the Minister table the results for this testing of the Greenbushes and Balingup reticulation points for gross alpha and beta radiation?

(4) Have any isotopes been identified in these tests?

(5) If yes, are they soluble, insoluble or caused from gas?

Hon MAX EVANS replied:

(1) No, but the Health Department is aware that testing has been carried out by the Water Corporation as this comes within its area of responsibility.

(2)-(5) Not applicable.

WATER RESOURCES - POLLUTION

Greenbushes

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

Given that there is no provision in the Water Corporation's Customer Charter for a rebate of customer accounts where there has occurred a breach of National Health and Medical Research Council Drinking Water Guidelines (1987) -

(1) Will the Minister for Health consider giving all residents of Greenbushes a pro-rata payment for radiation pollution of the drinking water of the Greenbushes Town Dams?

(2) If yes, when will this happen, and what process will be followed?

(3) If not, why not?

Hon MAX EVANS replied:

(1) No.

(2) Not applicable.

(3) The payment of customer accounts to the Water Corporation is not within my portfolio of responsibilities. In any case, I am not aware of any reliable evidence that the Greenbushes town water supply contains radioactivity of any public health concern.

GOVERNMENT CONTRACTS - HARVEY-YARLOOP HEALTH SERVICE

General Management with Clerical Services

417. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) How many contracts have been awarded for the general management with clerical services for Harvey-Yarloop Health Service?

(2) Who has been awarded this or these contracts?

(3) What were the respective value or values of this or these contracts?

(4) What -

(a) savings; or

(b) additional costs,

have resulted from the provision of each of these services by private contractors instead of by Government?

(5) What mechanisms are in place to monitor the performance of the private contractors?

Hon MAX EVANS replied:

(1) One.

(2) To Adamwood, trading as "EMCARE". (At the request of the contractor, the contract was terminated on 31 January 1997.

(3) $155 000 per annum, being $310 000 over a 24 month period.

(4) (a)-(b) $40 000 was indicated at the time of awarding the contract although a review by the Auditor General has suggested that the savings did not occur. The view of the boards of management is that any additional costs were outside the contract and therefore not additional costs to the contract.

(5) (a) Monthly reporting to the board of management.

(b) Board reviews with staff of the operation.

FAMILY AND CHILDREN'S SERVICES - PROGRAMS FOR ABORIGINES

Funding

424. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Family and Children's Services:

(1) What programs are conducted in the Minister for Family and Children's Services' portfolio, and related agencies, to assist and advance the welfare of Aboriginal persons?

(2) What are the details of these programs?

(3) What funds are made available to these programs?

(4) What is the source of those funds?

Hon E.J. CHARLTON replied:

(1)-(4) It is not possible to quantify the proportion of funding from Family and Children's Services' budget which assists and advances the welfare of Aboriginal people, as the department provides a range of services which may be accessed by all members of the community including Aboriginal people. The department is committed to ensuring Aboriginal people access all services as well as developing a range of culturally appropriate services such as the Best Start program and the Aboriginal family information service.

Mainstream programs which address the needs of Aboriginal people include the areas of protection and care of children; out of home and alternative care; educational support, psychological assessment and counselling; family and individual counselling; financial support and skills development. These services can be accessed through the department's 21 district offices. Regional programs also address specific issues of concern to Aboriginal customers.

Family and Children's Services provides funding for -

services targeting Aboriginal youth.

Aboriginal targeted and Aboriginal managed agencies to deliver family support services.

Supported accommodation assistance program agencies that target Aboriginal people many of which are Aboriginal managed. These services provide crisis, short and long term accommodation services for Aboriginal people. Services are located in the metropolitan area as well as in the larger centres in the north west.

Occasional child care programs, including Aboriginal managed services.

Agencies concerned with Aboriginal child care and the placement of Aboriginal children.

Services to assist Aboriginal customers with financial difficulties such as household budgeting.

HEALTH DEPARTMENT - PROGRAMS FOR ABORIGINES

Funding

426. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) What programs are conducted in the Minister for Health's portfolio, and related agencies, to assist and advance the welfare of Aboriginal persons?

(2) What are the details of these programs?

(3) What funds are made available to these programs?

(4) What is the source of those funds?

Hon MAX EVANS replied:

The programs outlined below are those programs that are undertaken specifically to advance the health of Aboriginal people in Western Australia. These programs do not include the delivery of mainstream hospital, community health, mental health and continuing care services to Aboriginal people.

Program Name	**1996/97 ($)**	**Funding Source**	**Program Details**
Cervical Cancer Screening	272000	State	Culturally appropriate cervical cancer screening and education services for Aboriginal women
Environmental Health Program	2463488	State	Employment and support of Aboriginal Environmental Health Workers and implementation of minor environmental health works rectification programs in Aboriginal communities
Mental Health Counselling	281781	State	Counselling of Aboriginal youth suffering from or at risk of mental illness
Mental Health	140100	State	Delivery of inpatient and community based psychiatric services by the Aboriginal Psychiatric Services Unit
Maternal and Child Health	793607	State	Provision of culturally appropriate ante-natal and child health services for Aboriginal mothers
Health Promotion	983458	State	Delivery of health promotion education and prevention programs on issues such as smoking, alcohol, nutrition, STDs, and others.
Heart Health Program	415072	State	Screening of clients for cardiovascular disease and delivery of education programs for prevention of heart disease among Aboriginal people
Aboriginal Role Model Program	50000	State	Promote sporting personalities as role models to Aboriginal children and advocate positive health messages.
Nutrition Education Programs	637076	State	Specific targeted nutrition education programs for Aboriginal people; including school nutrition, community food stores, newborns and young children, and others
First Aid Training	26000	State	First aid training for Aboriginal community members
Injury Prevention	71560	State	Injury prevention and road safety education programs in Aboriginal communities
Paediatric Specialist Services	224035	State	Dedicated paediatric specialist services for Aboriginal children in various locations
Aboriginal Ear Health Program	98000	State	Ear Health Program in Lower Great Southern area
Podiatry Services	40000	State	Foot care program
Immunisation	100000	State	Trachoma and Flu vaccines

Family Futures Program	1250000	State	Deliver a whole of life whole of health community based program that targets specific sentinel health events
Aboriginal Health Worker	79000	State	Training and development for Aboriginal Health Workers, and development of staffing strategies for remote areas
Kalumburu	95000	State	Special project to improve the health of women and children in Kalumburu and to eradicate hookworm
Renal Project	30000	State	Intervention strategies to prevent end stage renal disease
Substance Misuse Program	508300	State	Development and implementation of community based alcohol and drug awareness and rehabilitation services
Sobering Up Centres	3622200	State	Management of eight sobering up centres in centres throughout the state
Addictions training	486500	State	Addictions training for Aboriginal Health Workers to enable delivery of drug and alcohol rehabilitation services at a community level
Dental Health training & needs analysis	37000	State	Identify dental health needs in remote Aboriginal communities in the Kimberley and train Aboriginal Health Workers in dental assessment
Aboriginal Health Development	33750	State	Provides a culturally appropriate primary health care service, supports Noongar persons in appropriate access to health services, provides opportunistic health services to Noongar families and coordinates relevant health services.
STD/HIV prevention	781600	State	STD/HIV prevention and education programs
ATSI Health Program	1800000	C/Wealth	Purchase specific medical services to target identified unmet needs within the Aboriginal community.
COAG Coordinated Care Trial	1557000	C/Wealth	Development phase of the Aboriginal Coordinated Care trial at four AMS sites.
Cervical Cancer Screening	25000	C/Wealth	Cervical cancer screening and education services for Aboriginal women
Expanded role for nurses and health workers	37180	C/Wealth	Pilot project to evaluate alternative models for the practice roles of nurses and Aboriginal Health Workers in rural areas
HIV/AIDS Project	810000	C/Wealth	HIV/AIDS education, prevention and treatment programs
Outreach Mental Health Project	103000 45680	C/Wealth State	Outreach services for Aboriginal people with mental disorders
Home and Community Care	1558442	C/Wealth and State	Home and Community Care programs targeted at special needs of Aboriginal people

Home and Community Care	264896	C/Wealth & State	Delivery of normal HACC programs in communities where 100% of the client population is Aboriginal
Alcohol and Drug Authority Programs	232100	C/Wealth & State	Aboriginal community development and alcohol counselling
Aboriginal Youth Projects	138000	C/Wealth & State	Health and life skills for Aboriginal homeless youth, community liaison and health promotion projects

GOVERNMENT INSTRUMENTALITIES - PROGRAMS FOR ABORIGINES

Funding

439. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Women's Interests:

(1) What programs are conducted in the Minister for Women's Interests portfolio, and related agencies, to assist and advance the welfare of Aboriginal persons?

(2) What are the details of these programs?

(3) What funds are made available to these programs?

(4) What is the source of those funds?

Hon MAX EVANS replied:

(1)-(4) The Advancing the Status of Women Program has been allocated $1.657m in the 1997-98 Budget to act as a catalyst so that government takes into account the needs and expectations of women as an integral part of government program, policy and strategy development. Advancing the welfare of Aboriginal women is implicit in this program. There are no separate initiatives for Aboriginal women.

The Domestic Violence Prevention Program has been allocated $1.4m in the State Budget for community grants. Aboriginal community education initiatives across Western Australia will be funded from this source consistent with the integrated resource plan developed in accordance with the domestic violence action plan. Other services and pilot programs to be funded will also be available to Aboriginal people.

FAMILY AND CHILDREN'S SERVICES - "BUDGET HIGHLIGHTS" NEWSLETTER

443. Hon N.D. GRIFFITHS to the Minister for Transport representing the Minister for Family and Children's Services:

(1) Who printed the newsletter "Family and Children's Services Budget Highlights 1997/98"?

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

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

(4) To whom was the newsletter distributed?

Hon E.J. CHARLTON replied:

(1) Optima Press.

(2) $930.

(3) $2 394.10.

(4) Non-government organisations funded by the department
Long day care centres
Family and Children's Services offices
Schools (primary and secondary)
Local government authorities
Public libraries in Western Australia
Media
Government departments (selected state and commonwealth)
Members of Parliament
Minister's office
Individuals and groups on request.

PORT KENNEDY - DEVELOPMENT

Funding - Documentation

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

I refer the Minister for Planning to the statement by the former Planning Minister, Richard Lewis, in the Legislative Assembly on Wednesday, March 30, 1994, in which he said the Port Kennedy Development Agreement Act 1992 "states in clear terms that the whole of the proposition shall be presented to the Government for approval and the bona fides and the ability of the proponents to finance the proposition must be placed on the table for all to see and for the Government to approve."

(1) As the current Minister, in answer to question on notice 56 of 1997, has stated that the developers of Port Kennedy have furnished the Minister with evidence demonstrating the availability of finance necessary for the carrying out and completion of the whole project, will he now table the documentation for all to see?

(2) If not, why not?

Hon PETER FOSS replied:

(1) The financial evidence required to be provided by the developers under item 4(4)(a) of the First Schedule of the Port Kennedy Development Agreement Act 1992 is hereby tabled. [See paper No 455.]

(i) Treasury advice of 30 November 1994.
(ii) Crown Solicitor's memorandum of 13 January 1995.
(iii) Paribas Private Banking Asia Limited letter of 20 February 1995.
(iv) National Australia Bank letter of 28 February 1995.
(v) Port Kennedy Resorts Pty Ltd letter dated 22 February 1995.
(vi) Crown Solicitor's memorandum of 28 February 1995.
(vii) Minister for Planning memorandum of 1 March 1995 to Premier.
(viii) Crown Solicitor's memorandum of 10 March 1995.
(ix) Minister for Planning memorandum of 25 March 1995 to Premier.
(x) Fleuris Pty Ltd letter of 27 March 1995.
(xi) Minister for Planning letter of 28 March 1995 to Fleuris Pty Ltd.
(xii) Premier and Treasurer's memorandum of 23 March 1995.
(xiii) Port Kennedy Resorts Pty Ltd letter of 7 April 1995 attaching a letter of 29 March 1995 from Paribas Private Banking Asia Limited.
(xiv) Crown Solicitor's memorandum of 10 April 1995.
(xv) Minister for Planning letter of 19 April 1995.

(2) See (1) above.

DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES - CONTRACT

Chamber of Commerce and Industry of WA - Contract

465. Hon N.D. GRIFFITHS to the Minister for Transport representing the Minister for Family and Children's Services:

I refer to the contract awarded by the Department of Family and Children's Services to the Chamber of Commerce and Industry of Western Australia to provide state wide industrial information and advice to the community services sector to commence on April 28, 1997 and to operate until June 30, 1999 -

(1) What is the department contracted to pay the chamber?

(2) Was the service put out to tender?

(3) Was the Trades and Labor Council invited to provide the service?

Hon E.J. CHARLTON replied:

(1) $614 946 with provision for variation.

(2) Yes. On 21 December 1996, and on 4 January 1997, a request for proposal was advertised under Contract and Management Services in *The West Australian* calling for submissions.

(3) The Trades and Labor Council, as with any other organisation, could choose to respond to the advertisements in *The West Australian* on 21 December 1996, and 4 January 1997.

QUESTIONS WITHOUT NOTICE

ABORIGINES - COMMENTS BY HON ROSS LIGHTFOOT

Government's View

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

I refer the Leader of the House, in his capacity as Leader of the Government in this House, to the comments of Hon Ross Lightfoot in *The Australian Financial Review* last week that -

(a) Aboriginal culture is abhorrent, involves terrible sexual and killing practices and is not relevant to the twenty-first century;

(b) Aborigines already own 50 per cent of Australia and have an implied right to the rest of the country; and

(c) Peter Yu of the Kimberley Land Council is not an Aborigine;

and ask: Are the member's claims the views of the Government?

Hon N.F. MOORE replied:

I fail to see the relevance of the question to my capacity as Leader of the House.

Hon Tom Stephens: Are they the Government's views?

Hon N.F. MOORE: They certainly do not represent the Government's point of view. The Government has not made a set of statements about Hon Ross Lightfoot's attitude to every point of view or issue that may affect any particular member of society. Those views are not the views of the Government, but Hon Ross Lightfoot is entitled to his opinion, as is any other person in society.

MINISTRY OF JUSTICE - MR DAVID BREWSTER

Conditions of Employment

375. Hon TOM STEPHENS to the Attorney General:

(1) Is Mr David Brewster working for the Attorney or the Ministry of Justice?

(2) If yes, what is the nature of the work?

(3) At what level is Mr Brewster being paid?

(4) Has Mr Brewster been allocated a credit card, mobile phone or car?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Mr David Brewster is on a 12 month contract with the Ministry of Justice.

(2) To provide executive and policy support for the Justice Coordinating Council and the Juvenile Justice Coordinating Council.

(3) Level 6.

(4) No.

LEGAL AID COMMISSION - STAFF

Number

376. **Hon N.D. GRIFFITHS to the Attorney General:**

I refer to the article at page 5 of yesterday's *The West Australian* headed "Legal Aid feels squeeze", which states that "Three staff a week have resigned from the organisation in recent weeks" and that "In the past year, 37 staff have resigned from Legal Aid", and ask -

(1) As at 10 May, how many full time equivalents were employed by Legal Aid Western Australia?

(2) How many FTEs were employed in the following areas as of 10 May 1997, as defined by the 1996-97 program statements -

(a) legal representation and duty lawyer;
(b) advice and minor assistance;
(c) alternative dispute resolution;
(d) information and referral;
(e) community education and training;
(f) serious criminal matters;
(g) separate representation;
(h) test cases; and
(i) legislative reform and policy?

Hon PETER FOSS replied:

The preliminary to the question does not appear to be a question and I think is out of order. I thank the member for some notice of this question.

(1) As at 10 May 1997, 177.91 FTEs were employed at Legal Aid Western Australia.

(2) The 1996-97 budget allocation to the programs is as follows -

(a) legal representation and duty lawyer 63;
(b) advice and minor assistance 23;
(c) alternative dispute resolution 1;
(d) information and referral 14;
(e) community education and training 8;
(f) serious criminal matters 65;
(g) separate representation 7;
(h) test cases 1;
(i) legislative reform and policy 3.

That is a total of 185. It is not possible to allocate actual FTEs to these programs as the FTE management system reflects organisational units, not programs. For example, the regional offices undertake the majority of the activities outlined in the programs, but the actual FTE management process can reflect only actual numbers in each regional office.

FISHERIES - PINK SNAPPER

Ban

377. **Hon KIM CHANCE to the Minister representing the Minister for Fisheries:**

(1) Is the Minister aware that businesses in Shark Bay are losing thousands of dollars in cancelled bookings in the charter fishing and hospitality industry areas as a direct result of the ban on taking pink snapper which he imposed from Monday, 1 May?

(2) Is he also aware that the ban is not supported by the local Recreational Fishing Advisory Committee and that no advice has been received from the RFAC to the effect that a total ban is required?

(3) Is he aware that the scientific advice on which the ban has been based is so limited as to be inadequate?

(4) What justification can the Minister provide for basing a ban of such severe economic consequence on such limited scientific data?

Hon E.J. CHARLTON replied:

(1)-(4) The taking of pink snapper in the eastern gulf of Shark Bay only has been prohibited because of very serious concerns that the stock is depleted, and because of the potential for the stock to collapse under continued fishing pressure. Other species of fish may still be taken in the eastern gulf, while both pink snapper and other species may be taken in the western gulf.

The decision to prohibit fishing for pink snapper in the eastern gulf of Shark Bay is supported by the peak Recreational Fishing Advisory Committee. The decision to protect the eastern gulf stock resulted from many indicators that the pink snapper stock is severely depleted. The advice that I received from the Fisheries Department is to totally protect the remaining pink snapper in the eastern gulf while further research is undertaken and is the only action which can guarantee the availability of this important resource for future generations. This decision is based on the best advice currently available to stop the total collapse of the fish stock in the region.

Last week, I was advised by representatives of the Fisheries Department that two years ago, five tonnes of pink snapper were taken out of the eastern gulf, and last year it was 100 tonnes.

CONSULTANTS - MR ALAN TINGAY

Conflict of Interest

378. Hon J.A. SCOTT to the Leader of the House representing the Minister for Resources Development:

(1) Is the Minister aware that consultant Alan Tingay, who carried out the 1994 public environmental review on the construction of a deep water port at Point Moore and the Point Moore draft coastal management plan for the Geraldton Port Authority, the 1995 PER for Kingstream Resources NL's one million tonne steel plant at Narngulu, the 1996 consultative environmental review for an upgraded 2.4 million tonne steel plant for Narngulu, the 1997 PER into the Oakajee deep water port for the Department of Resources Development, and the 1997 CER for the 2.4 million tonne An Feng-Kingstream steel plant to be located at Oakajee, is also the Kingstream Resources' environmental and community affairs coordinator?

(2) Does the Minister consider this to be appropriate, and is he satisfied there is no conflict of interest in the use of Alan Tingay or his company in assessing vital projects from which that company can benefit?

Hon N.F. MOORE replied:

I have not received a copy of the question or an answer from the Minister, so I suggest the member either ask me tomorrow or place the question on notice.

WHITBREAD ROUND THE WORLD RACE - WARD HOLT PUBLIC RELATIONS

Tendering Process

379. Hon TOM STEPHENS to the Minister for Tourism:

With regard to the $40 000 contract awarded to Ward Holt Public Relations to handle publicity for the Whitbread Round the World Race -

(1) Was a selective tendering process followed?

(2) If yes, who selected the companies that were invited to tender and on what basis were they selected?

(3) Did EventsCorp officer Ms Bev Ward play any role in -

(a) the development of the selection criteria;

(b) the selection of the companies invited to tender;

(c) the assessment of the final applications?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) A panel of three EventsCorp staff selected the companies which were invited to tender. That panel consisted of EventsCorp's marketing director, public affairs manager and promotions coordinator. The primary criteria in selecting the companies invited to tender were: Company background; previous experience in events; broad strategy for meeting objectives; and staffing structure. The essential requirements were: Demonstration of high level journalism skills; ability to provide hands-on assistance for launches-promotions; media conference organisation; strong media network from business to sport; demonstration of event management and publicity skills; and dedicated senior staff member during the Fremantle stopover. The highly desirable requirements were: Public relations experience in sailing events; sailing and tourism media network; knowledge of the Whitbread Round the World Race from an international and local viewpoint; understanding government procedures; and a sound working knowledge of event sponsorship.

(3) (a) As event manager of the Fremantle stopover for the Whitbread Round the World Race, Ms Beverley Ward was involved in the development of the selection criteria.

(b)-(c) No.

LEGAL AID - COMMISSION

Review

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

When does the Attorney anticipate that the review of the Legal Aid Commission will be finalised?

Hon PETER FOSS replied:

I am not sure to which review the member refers. The review of the Legal Aid Commission is a joint review - if it is the one to which the member refers - with the Commonwealth Government, and to some extent the delay is due to the Commonwealth Government. I do not know when that review will be finished. I have been carrying out a review for the purpose of discovering what will happen on 1 July.

I hope that review will be completed before 1 July so that I can put in place the necessary provisions. We have had difficulties with the commonwealth review, but we are very keen for that review to be finished.

SPORT AND RECREATION - AEROBICS CHAMPIONSHIP

Healthway Sponsorship

381. Hon TOM STEPHENS to the Minister representing the Minister for Health:

Healthway is listed in brochures advertising Aerobica-The Event - the FIG aerobics championships and fitness convention - as a gold level sponsor. What financial or in kind support is Healthway providing Aerobica?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

Healthway has allocated sponsorship of $22 000 for the 1997 FIG Sport Aerobics World Championships - Aerobica. Support sponsorship of $6 000 has been allocated to the Sports Medicine Association to promote the Sportsafe message at Aerobica as well as a schools program and at the state championships.

WHITBREAD ROUND THE WORLD RACE - 1993-94 FREMANTLE LEG

Public Relations Contract

382. Hon TOM STEPHENS to the Minister for Tourism:

With regard to the public relations for the Fremantle leg of the 1993-94 Whitbread Round the World Race -

(1) Who was the event manager during the Fremantle stopover?

(2) Which company won the government contract for public relations during the Fremantle stopover?

(3) How was the company selected?

(4) What was the tender price submitted by the company?

(5) What was the total amount finally paid to the company by the Government?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The event coordinator during the Fremantle stopover was Beverley Ward.

(2) Paul McDonnell.

(3) By invited tenders.

(4)-(5) Because this information refers to details of an event that was held four years ago, files will have to be sourced from the archives. Therefore, this part of the question will need to be put on notice.

SPORT AND RECREATION - WORLD MINING AND ENERGY GAMES

Western Australian Tourism Commissioner's Involvement

383. Hon TOM STEPHENS to the Minister for Tourism:

In the light of the revelation in *The West Australian* of Saturday, 10 May that a company associated with a WA tourism commissioner had received a grant of $125 000 to stage a Mining and Energy Games -

(1) Have any other WATC commissioners had any involvement in a submission to the Tourism Commission or EventsCorp seeking government funds?

(2) If yes, what are the names of the commissioners and what was the event for which funding was sought?

Hon N.F. MOORE replied:

I do not have a copy of the question, nor an answer. However, I understand that the people at the Tourism Commission who are seeking to provide the information for me have been unable to contact all of the commissioners today. Therefore, I suggest that the member place the question on notice, and he will be provided with that advice.

TOURISM COMMISSION - EMPLOYEES

EventsCorp or Commission Events

384. Hon TOM STEPHENS to the Minister for Tourism:

(1) Have any officers of the Tourism Commission any formal association with any of the events sponsored by the commission or EventsCorp?

(2) If yes, who are the officers and what are the events?

Hon N.F. MOORE replied:

(1) This is a broad question, since it involves 146 employees of the Tourism Commission. However, no officer from the Tourism Commission has any formal association with any of the events sponsored by the commission or EventsCorp, that we are aware of.

(2) Not applicable.

POLICE - OFFICERS

Injured - Compensation

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

(1) Is it correct that police officers are excluded from the coverage of the Workers' Compensation and Rehabilitation Act?

(2) If so, what provisions exist within police force regulations which can meet ongoing medical, hospital, rehabilitation and home care costs incurred by a former police officer as a result of injury in the course of his or her duties, once the officer's employment is terminated?

(3) Is it the Government's intention to review the Workers' Compensation and Rehabilitation Act with a view to expanding its coverage to include police officers?

Hon PETER FOSS replied:

The question has been previously asked and answered.

LABOUR RELATIONS LEGISLATION AMENDMENT BILL - DRAFTING

Parliamentary Counsel

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

(1) Was the Labour Relations Legislation Amendment Bill drafted by parliamentary counsel?

(2) Was any of the drafting of the legislation out-sourced?

(3) If so, to whom?

(4) What were they paid?

(5) Is there any ongoing consultancy with respect to this legislation?

(6) If so, who holds that consultancy and what are they being paid?

Hon PETER FOSS replied:

I would not know that, without being given notice.

AGRICULTURE - NATURAL RESOURCE MANAGEMENT TASK FORCE

Winding Up

387. Hon KIM CHANCE to the Minister representing the Minister for Primary Industry:

I refer the Minister to an article in the 10 May edition of *The West Australian* in which it is announced that the task force to review natural resource management and the viability of agriculture in WA would be wound up, and in which the Minister is reported to have said, "Action by Agriculture WA and the whole of government to agricultural resource management issues over recent months has largely overtaken the review process."

(1) Noting that the Minister has decided to wind up the task force to review natural resource management and the viability of agriculture in WA, can the Minister advise which action or set of actions by Agriculture WA or the whole of government to address agricultural resource management issues over recent months has largely overtaken the thrust of the review process?

(2) Is it correct, as reported in the article, that the task force had a budget of $100 000; if so, how much was expended?

(3) Is it true that the high level committee formed to conduct the review process was due to present its final report in July?

(4) Notwithstanding the Minister's opinion on the appropriateness of the continuation of the task force, will he still be attempting to obtain a positive outcome from the 18 public meetings convened in Western Australia by the task force and the 143 written and oral submissions that the task force received, to ensure that the thousands of dollars expended on the process will not be wasted?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1), (3)-(4) I refer the member to the ministerial statement that the Minister made in the other place today, and I seek leave to table the documents which answer the thrust of the question.

Leave granted. [See paper No 452.]

(2) Commencing in December 1995 the cost of the review process was $170 054, including the payment to task force members and operating expenditure. Agriculture WA salary costs in support of the review process over the same period totalled $133 281.

ROADS - CANNING HIGHWAY

Widening

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

(1) Has Main Roads discussed the widening of, or does it have plans to widen, Canning Highway and/or place a median strip down Canning Highway from Preston Point Road travelling east to Melville?

(2) If yes, what are the plans; what is the estimated cost; when is the estimated start time of the process; and will the Minister please table the plans?

(3) Will the plan require private land to be resumed by any government department; if so, how much land and to what monetary value?

(4) What is the rationale behind the plan?

(5) Have the residents and landowners who will be affected by the plan been consulted about it?

(6) If no, why not?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1)-(6) Plans to rationalise the Canning Highway road reservation in the metropolitan region scheme to provide for future upgrading of the highway to a four lane divided road formed part of the Fremantle regional strategy amendment. In response to community concerns regarding these proposals, the Government deleted this item from the proposed amendment to the region scheme and requested that Main Roads review the proposals in consultation with government agencies, local government and the community. Arrangements are being made for consultations to take place later this year.

FIREARMS - LICENCE FEES

Adjustment

389. Hon J.A. COWDELL to the Attorney General representing the Minister for Police:

Given current state budgetary constraints, the desperate need for enhanced firearm supervision and a public firearm education program -

(1) Why has no adjustment been made to the firearm licence fee in this year's state Budget?

(2) Has the Government considered a firearm licence that will encompass an owner's licence fee as well as an annual charge for each weapon registered on the licence?

(3) If no to (2), why does the Government insist on charging the same firearm licence fee to 38 858 licence holders who have one weapon as is charged to the 57 353 licence holders who have two to five weapons, the 8 553 licence holders who have six to nine weapons and the 1 496 licence holders who have 10 or more weapons?

Hon PETER FOSS replied:

As this question is premised on what I believe to be arguments, inferences and imputations it is out of order and therefore I decline to answer it.

EDUCATION - DEPARTMENT

Contracts - Joe Scaffidi Builders

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

I refer the Minister to his answer to my question without notice asked last Friday regarding Joe Scaffidi Developments Pty Ltd.

(1) Does Joe Scaffidi Developments or any associated business hold any contracts with the Education Department?

(2) What is the nature of those contracts?

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

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(3) The Education Department does not enter into contracts with building companies. The Department of Contracts and Management Services acts as the principal for all these contracts on behalf of the Education Department.

Scaffidi Developments Pty Ltd is a categorised contractor with CAMS and has entered into contracts with CAMS over many years. Scaffidi Developments has two contracts with CAMS, namely Gingin High School covered assembly area, for $168 000, and Kellerberrin, Kulin and Quairading High Schools covered assemblies, for $498 880.

These contracts were awarded in March and May 1996 respectively and construction on both was completed later in 1996. As with the majority of construction contracts, they are not completed until the 12 month defects liability period has expired. With these contracts this will occur later this year. CAMS is not aware of any other of Joe Scaffidi's associated businesses which enter into contracts with CAMS.

NATIVE TITLE - GOVERNMENT'S OPPOSITION

Cost

391. Hon TOM STEPHENS to the Leader of the House representing the Premier:

How much money has been spent by the Government and the former coalition Government on -

(a) opposing native title claims both in Western Australia and elsewhere, including Aboriginal objections to the use of expediting procedures for mining exploration and development proposals; and

(b) opposition to native title legislation through court processes and other means, including direct and indirect costs of using government personnel and resources?

Hon N.F. MOORE replied:

I ask that the member place the question on notice.

POLICE - ARREST DELAY

Wanneroo Times Article

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

Does the Minister have an answer to my question without notice asked last Friday in which I referred the Minister to an article in *The Wanneroo Times* published on 6 May 1987 headed "Still getting away with it". He will no doubt recall the five part question.

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) "Rose" was identified by the dealers' search facility as a person of interest on 4 March 1997 and inquiries commenced on that date. On 10 March 1997 the dealers' search facility identified a property match for a burglary offence from a transaction she had conducted at a pawnbroker's shop. She was unable to be located between 4 March and 27 March 1997. On 27 March all information relating to this case was referred to the Joondalup detectives' office for inquiry into offences of which "Rose" was suspected of committing. Rose was arrested and charged by officers of the Joondalup burglary team on 1 April 1997. She was arrested six days after being brought to the attention of the Joondalup burglary team as a suspect offender approximately one month after being identified as a person of interest.

(2) Every person who conducts transactions with pawnbrokers or secondhand dealers does not automatically become a person of interest requiring policy inquiry. "Rose" did not become a person of interest until 4 March 1997, although she conducted transactions with pawnbrokers and secondhand dealers prior to 4 March 1997. Such transactions did not deem her to be a person of interest at that time.

(3)-(4) Inquiries into the "Rose" case commenced on 4 March 1997 and were completed on 1 April 1997. This is a period of less than one month. For three weeks of that time she could not be found.

(5) As soon as a person becomes of interest to the dealers' squad an appropriate inquiry is conducted.

PAWNBROKERS - RECORDS

Identification of Stolen Goods

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

(1) Will the Minister outline the procedure which is supposed to enable police to identify thieves who sell stolen goods to pawnbrokers?

(2) Are police records of stolen goods matched with records of goods purchased by pawnbrokers?

(3) If yes, what is supposed to be the time frame between when these two records are matched?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Section 41 of the Pawnbrokers and Second-hand Dealers Act 1994 requires pawnbrokers and secondhand dealers to record all transactions in a prescribed manner. This includes make, model and serial number of

all items. Section 79 of the Act and section 15 of the Pawnbrokers and Second-hand Dealers Regulations 1996 require this information to be forwarded to the Commissioner of Police. Information is provided within a 24 hour period and is downloaded to the Western Australia Police Service computer as it is received. Once downloaded the computer automatically searches on a daily basis all information supplied by pawnbrokers against reported offences. If the computer has a successful match with a stolen article, information is relayed to the dealer's squad. An information report is then created and acted upon. The pawnbrokers reporting system identifies stolen property on which police officers conduct inquiries to identify and locate thieves. If property is not adequately described by complainants, it will not be matched with property entered into the computer from details obtained from pawnbrokers.

(2)-(3) Yes; all goods purchased by pawnbrokers are checked with police records and reported as stolen property on a daily basis.

PAWNBROKERS AND SECOND-HAND DEALERS ACT - FAILURE TO IDENTIFY THIEVES

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

(1) Does the Minister agree that the case involving "Rose" of Heathridge is evidence that the Pawnbrokers and Second-hand Dealers Act is failing to identify thieves selling stolen goods to pawnbrokers?

(2) Is there an investigation into this case or others like it?

Hon PETER FOSS replied:

(1) I am sure the member would not have asked this question if he knew the answer to the first one I was going to answer. Quite evidently the answer is no. It is because of the provisions of the Pawnbrokers and Second-hand Dealers Act 1994 and Pawnbrokers and Second-hand Dealers Regulations 1996 that "Rose" was identified as a person of interest because of the number of transactions she was undertaking with numerous pawnbrokers in the metropolitan area. Additionally, the pawnbrokers' reporting system made a positive match on an item of stolen property that she pawned to a pawnbroker. This information was obtained as a result of the introduction of the Pawnbrokers and Second-hand Dealers Act 1994, which requires pawnbrokers and secondhand dealers to notify the Commissioner of Police of all transactions conducted.

(2) As a result of investigations undertaken by the Joondalup burglary team and the dealers squad "Rose" was arrested and charged on 1 April 1997. The effectiveness of the pawnbrokers legislation has been well demonstrated and there is no reason to review this case. Should it be deemed appropriate, an investigation of the circumstances surrounding individual cases would be undertaken.

TOURISM - NATURE BASED TOURISM STRATEGY

395. Hon TOM STEPHENS to the Minister for Tourism:

Given that the draft was open for public comment in September 1995, will the Minister please advise -

(1) What is the nature based tourism strategy?

(2) Why has there been such a lengthy delay in the adoption of this strategy?

(3) Will the strategy be adopted; if so, when?

Hon N.F. MOORE replied:

I have given some consideration to that report. It will be implemented in the near future.

LAW REFORM COMMISSION OF WA - REPORT ON LIMITATION OF NOTICE OF ACTIONS

Consideration

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

I refer to paper No 438 tabled last Friday, the report on Limitation of Notice of Actions by the Law Reform Commission of Western Australia, and particularly to recommendation 25 of that report which states, now that the Attorney General is familiar with it: "The Commission should be given a reference to review the system of acquisition of title to property by adverse possession in Western Australia with particular reference to torrens title".

(1) Has the Attorney General considered this recommendation?

(2) Has he made a decision regarding it?

(3) If so, what is his decision?

(4) When will he make a decision on the recommendation?

Hon PETER FOSS replied:

As with all recommendations of the Law Reform Commission they are open to public comment. Obviously I will wait until I receive public comment before making decisions.

RAILWAYS - WESTRAIL

Ticket Vending Machines

397. Hon TOM STEPHENS to the Minister for Transport:

Why are Westrail's vending machines unable to accept notes or give change even though the technology to do so is clearly available and in use by the City of Perth parking stations? This question is without notice.

Hon E.J. CHARLTON replied:

For the benefit of the Leader of the Opposition I advise he put the question on notice. It appears that the left hand does not know what the right hand is doing. A ticket vending machine is being trialled by Westrail and it is intended, as part of the 10 year plan, to put these machines in place. They are approximately $10 000 each and obviously when the Opposition was in government it decided to spend its money in other ways and did not install these machines.

CRIMINAL INJURY COMPENSATION - ASSESSOR

Annual Report

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

I refer to tabled paper No 436 which was tabled last Friday; that is, the annual report of the Assessor of Criminal Injuries Compensation.

(1) When did he receive the report?

(2) Why was there a delay in tabling it?

Hon PETER FOSS replied:

(1)-(2) I do not remember when I received the report. When reports are received at my office they go to somebody who reviews them and then they are tabled. I would require notice of that question to give a detailed answer.
