WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Tuesday, 20 October 1998

Legislative Council

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

STANDING COMMITTEE ON LEGISLATION

Report on Workers' Compensation and Rehabilitation Amendment Bill

Hon B.K. Donaldson presented the forty-third report of the Standing Committee on Legislation in relation to the Workers' Compensation and Rehabilitation Amendment Bill 1997, and on his motion it was resolved -

That the report do lie upon the Table and be printed.

[See paper No 280.]

BANDYUP WOMEN'S PRISON

Urgency Motion

THE PRESIDENT (Hon George Cash): I have received the following letter dated 20 October -

Dear Mr President

At today's sitting it is my intention to move an Urgency Motion under SO 72 that the House at its rising adjourn until 9.00am on 25th October 1998 for the purpose of discussing matters raised in a letter from the Coalition for the Reform of Women's Prisons sent to the Premier, and the Attorney General of WA dated 14th October 1998, such letter being in reference to Bandyup Prison.

Yours sincerely

Nick Griffiths, MLC
Member for East Metropolitan

In order that this motion be discussed, there is a requirement that four members signify their support by standing in their places.

[At least four members rose in their places.]

HON N.D. GRIFFITHS (East Metropolitan) [3.38 pm]: I move -

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

I do that for the purpose of discussing the letter that was referred to in the letter I wrote to you, Mr President. That letter deals with Bandyup Women's Prison and raises the question of overcrowding and the mix of prisoners. It then calls on the Government, in particular the Premier and the Attorney General, to do something about the state of affairs. The people under whose name the letter was sent refer to themselves as representative members of an association called the Coalition for the Reform of Women's Prisons. A number of names are listed, including a Uniting Church of Australia chaplain; a Roman Catholic chaplain; a member of the Christian Centre for Social Action; the chairperson of the Prisoners Advisory Support Service; the convenor of the Women's Electoral Lobby; a Sister of Mercy; a member of the National Council of Women; another Sister of Mercy; the chairperson of the Uniting Church's Social Justice Commission; a project officer for the Catholic Social Justice Council; the coordinator of the Christian Centre for Social Action; the chairperson of the Anglican Social Responsibilities Commission; a member of the Aboriginal Catholic ministry; and a further Roman Catholic chaplain.

My understanding is that a copy of this letter has been sent to a number of, if not all, members. Upon reading it, I thought it raised matters of great concern which needed to be addressed urgently. The question of overcrowding at Bandyup, of course, is not new. It was raised in the Auditor General's report of October 1997 entitled "Waiting for Justice" in which he made reference to the standard capacity of Bandyup being 83 prisoners and the peak capacity being 95 at 26 June 1997. The current number is 110. As the months have passed, I note that in July of this year a newspaper report made reference to Bandyup housing 118 prisoners in June 1998. This is clearly an unsatisfactory state of affairs.

In the letter, reference is made to the prison holding 124 prisoners. It seems, therefore, that the muster is increasing. Reference is made to that being 50 per cent above its intended level. These are not just figures. They relate to people and how they are living. The letter points out that apart from a couple of corner cells, the rooms where the prisoners reside are very small. They are described as being the width of a bed by about a bed-and-a-half in length built as single bedrooms but with many now holding two women. Reference is then made to those larger corner rooms which hold four prisoners. It is clearly overcrowding. The letter makes reference to it being a goldfish bowl environment. It criticises the fact that the prison

is absorbing rising numbers and it also criticises the practice of doubling up prisoners in rooms designed for one. It points out the dangers that exist with respect to the lack of privacy, and it uses language such as -

> . . . officers and prisoners are being exposed to a volatile and dangerous situation . . .

In that context, a couple of weeks ago I noted media reports about an incident in Bandyup, and as a result several prisoners were detained in the Midland lockup for a period. Overcrowding is significant, but on top of that, as the Auditor General referred in his report last year, sentenced prisoners and remand prisoners are in the same prison, and not just any sentenced prisoners but a mix of remand, minimum security and maximum security prisoners, and they are there because they happen to be women prisoners. That is an unsatisfactory practice and it affects the wellbeing of those concerned. Again, those concerned are prisoners and prison officers. When we deal with remand prisoners, we deal not just with matters which affect sentenced prisoners. As far as society is concerned, remand prisoners have done nothing wrong - they have been accused - but they are experiencing punishment. That should not be the case and it should be addressed.

The letter, as one would expect, raises the issue that in our society, as has been and will always be the case, women primarily but not exclusively are the care givers for children and that there is the possibility that incarcerating remand female prisoners with other prisoners will have a bad effect on family life. As the letter puts it -

> . . . to part children from their mothers merely serves to accelerate the next generation of law breakers.

That is a pessimistic view of the world, but those people have a great concern and it should be noted. A comparison is drawn between that situation and the Fremantle Prison riots. Reference is made to human beings suffering intolerable conditions. The conditions that are described are intolerable and they are not right. When we reflect on and measure the worth of our society, we should examine just how well we treat those who depend on society for their wellbeing. Prisoners come into that category, particularly women prisoners on remand. People who are in the care of the State, whether they have committed serious crimes or otherwise, should not have to put up with intolerable conditions.

The letter makes another interesting point about the staff dealing with -

> . . . more and more women with psychiatric problems and/or intellectual disabilities . . .

It raises the issue of a co-relation between cutting numbers in institutional care such as Graylands - I know that mental health services have improved in recent years - and an increase in numbers in penal institutions such as Bandyup. In that context, I note that this week is Mental Health Week.

I shall refer to four specific points that are raised in the letter and then conclude, but before I refer to the group's suggested calls for action, I note that it questions -

> . . . the morality of a government that permits an institution and its staff to operate in such an inhumane and unjust environment . . .

People should not be subjected to those conditions. The letter requests that -

> . . . minimum security prisoners be removed as soon as possible . . .

It mentions several interesting sites such as the old Sunset Hospital, and it goes on to request that -

> . . . remand/bail options be reviewed, and a range of separate facilities for women on remand be established (both at Bandyup and at bail hostels) which will take into consideration the needs of, as well as facilities for, children;

That is very urgent. The letter goes on to request that -

> . . . modern educational and training facilities and work opportunities beyond the 'domestic' be provided for all female prisoners;

That leads to the issue of program funding for prisoners who are sentenced - programs which should rehabilitate prisoners to bring down the rate of recidivism. I am dealing with women prisoners at Bandyup. What is the state of affairs now with program funding for women prisoners at Bandyup? Has that been increased to cope with the dire straits in which those unfortunate prisoners find themselves, or has it been cut back or maintained? That requires an explanation. The letter requests that -

> . . . the issue of suffering be viewed as duty of care rather than an extension of punishment - with corresponding emphasis placed on the right to adequate provision of medical, psychiatric, psychological, and spiritual services;

It concludes with the plea -

> Could you please give us some indication as to how and when these points will be implemented?

My plea to the Attorney General is this: When and how will he address the urgent situation in which inmates at Bandyup find themselves?

HON HELEN HODGSON (North Metropolitan) [3.47 pm]: In the past couple of months I was fortunate to have the opportunity, first, to be briefed by a member of the Ministry of Justice staff, who came to my office; and, secondly, I was given an opportunity to visit Bandyup Women's Prison and to look at the conditions in which inmates find themselves. It is daunting to walk through the security gates, pass the razor wire fences and go into the prison grounds. It has a psychological impact that is hard to understand unless one actually walks through, as we did. Even though one is there on official business in a totally innocent capacity, one can still understand what it must feel like to live behind the razor wire for a period. When one sees the conditions in which the women live - for example, the rooms and accommodation - one sees the severe problems that the women in Bandyup face.

I was told that there was an attempt to create a minimum security environment within the razor wire because most of the women there are not maximum security prisoners, but there is an atmosphere. When one walks into the A compound, where the majority of prisoners are housed, and one feels the atmosphere that pervades the place, one can understand how it must feel to live in such an environment.

The prison was designed with a capacity for 85 prisoners. I note that the letter we are debating states that last week it held 124 prisoners. According to notes that I have been given by the Ministry of Justice, in May 1998 there were 126 prisoners there. At that stage the overcrowding was considered so serious that women prisoners were asked whether they were prepared to be transferred to Greenough Regional Prison because there was capacity there. Nine women were transferred, which reduced the immediate pressure, but this cannot go on. This prison is running at 50 per cent above capacity solely because we have only one women's prison in this State. Some regional prisons have limited facilities for women prisoners. Basically all women who are convicted of serious offences, if they are not in a regional centre, must go to Bandyup prison.

This has a number of effects. Firstly, there is a mixture of people who have been imprisoned for different levels of offences. Women are there on remand, for serious murder offences, drug offences and, occasionally, defaulting on a fine. The break-up of the prison population I was provided with at the time I was briefed on the matter shows that 57 per cent of women in Bandyup prison were there on drug-related offences. I have not calculated a percentage, but most were there for non-violent offences. There is still the possibility of women being admitted for fine defaulting, but at the time of the briefing only one prisoner was in for non-payment of fines. It appears that the legislation has partially addressed the situation of women being imprisoned, and thus removed from their families, for non-payment of fines. Women prisoners from all walks of life, no matter what their offence, basically have only one destination - Bandyup Women's Prison.

The staff members do their best with the available facilities. I acknowledge that they are working extremely hard to rectify some of the deficiencies. The education centre is so overcrowded that I wonder how anybody can learn anything in that environment. From speaking to the staff members, it is my understanding that in the main people are seeking basic literacy skills. Some are continuing studies commenced while in the general community and there are always some doing higher degrees and formal education. The most pressing need is for basic literacy skills to help these women survive once they are released from prison. The facilities available to deliver this are almost as bad as those in which we must work in the some of the nether regions of this building. It is overcrowded with limited facilities.

Hon Cheryl Davenport: It is claustrophobic.

Hon HELEN HODGSON: It is very claustrophobic. I see two issues critical to the women prisoners in this State. The first is the sheer overcrowding. That is why there is a need for the prison proposed for the Pyrton site, a new centre. We need another facility somewhere in this State. I understand discussions with the local community are still going on about the Pyrton site.

Hon N.D. Griffiths: The community is opposed to the Pyrton site. The Government should get that message. Another site is necessary.

Hon HELEN HODGSON: Consultation is still in progress about the location of that site, but we desperately need another women's prison.

In the briefings I had on this matter, I asked about facilities for the women in the regional prisons. Although they may not face the same overcrowding as those in Bandyup prison, their position is not much better in other significant respects. There must be segregation of the female and male prison populations; therefore, the women do not have equal access to the workshops, the education centres and recreational facilities. They are the minority in the regional prisons where they are accepted and they generally get the raw end of the deal. Speaking on behalf of women in this State, it is about time something was done about that.

The second issue is the need for the separation of women prisoners with different categories of sentences. I have asked questions in this place about the proportion of women whose security level would be classified as maximum, medium and minimum. In the briefing notes I was provided with a month or so ago, I found that 45 per cent of women in Bandyup prison would be classed as maximum security, 25 per cent as medium, with 30 per cent as minimum. The Bandyup prison has been set up with a maximum security exterior, but with reduced interior controls. It still raises the point that we have women of

different standings mixing together and it reduces the programs that can be delivered to different women, depending on their needs. There is also a high proportion of Aboriginal prisoners - 25 per cent, which is considerably higher than the proportion in the general population. Yet there are no facilities for Aboriginal women to exercise their cultural needs; for example, there is no place to accommodate Aboriginal spirituality.

Hon Peter Foss: There is.

Hon HELEN HODGSON: The notes I was given say that there is not, but that may have changed. In fact, there is no chapel for women of any religion because there is simply not enough space. Recently more exterior space has been created by erecting a large shed - that was all it was when we were there - which will be used as a multipurpose facility, but at the moment it is unfinished. It is an exterior shed without lining and any of the things that will make it usable.

It is vital to act on this issue for two reasons: First, to address the basic issue of overcrowding in Bandyup Women's Prison and, secondly, to separate women and give them the same rights that male prisoners have - to progress from a maximum security to a minimum security regime.

HON PETER FOSS (East Metropolitan - Minister for Justice) [3.57 pm]: It has been made quite clear by the Government that the situation at Bandyup Women's Prison is not acceptable. That is one reason we are seeking to open a minimum security prison, one where we can provide the people who are about to be released with the appropriate training to allow them more easily to come into the community. At the moment the preferred site is at Pyrton. It is ideal because it will enable proper accommodation for 50 women immediately, with the capacity to put in significant training areas there. We would not find anything better than the facility proposed to be located at Pyrton, which site is available immediately and will address the needs.

Community consultation has been difficult in regard to the Pyrton site. At the request of the community, I renewed that consultation and indicated the degree of speed I hoped it would be able to achieve. It has not been possible to achieve that, which is regrettable. I understand now from one of the co-chairman - the two chairmen are Hon Derrick Tomlinson and the member for Bassendean - that they will have their final meeting on 2 November. I know a group of people are very much opposed to the facility being placed on the Pyrton site. I accept that those people are opposed to it and will carry on a campaign against it. The survey carried out by the Ministry of Justice shows that those people are a very vocal group, but not necessarily representative of the majority of the members of the community who are not opposed to it.

There is always a problem with minimum security prisons. People do not want them nearby where they live, and there will always be people against them. I challenge members to find any place in the whole of the metropolitan area where, if we said we wanted to establish a minimum security women's prison, we would not have a vocal group opposed to it. Unfortunately, I am almost tempted to suggest that wherever we put this prison, it should be called the "Nimby Prison for Women", because nobody wants these women living next door to them, in their back yard. The community must face up to the fact that another facility must be provided, and whether it is at Pyrton or somewhere else, some people will be opposed to it.

There is no alternative but to have such a prison and provide it in the metropolitan area. It must be in the metropolitan area because women's access to their families is important. The suggestion to put it in the country is not acceptable as far as women are concerned. Pyrton is ideally placed because of its relationship to Bandyup Women's Prison and its general access to the public.

Hon Ljiljanna Ravlich: Why don't you just buy the vineyard next door and be done with it?

Hon PETER FOSS: I will tell the member why we cannot do that: It is there. It could have been almost purpose built. A 50-bed nurses' quarters is currently used for offices. If we were not considering Pyrton, we could reasonably be accused of wastage and disregard for an obvious place. I am pleased to say that Mr Clive Brown, who is co-chairman, has taken a proper attitude, although his view seems to have been misrepresented by Mr Stephen Smith in the recent election. He put up posters stating, "Elect Mr Stephen Smith and we will stop Pyrton." He and Clive Brown were going to stop Pyrton. I do not know how that became part of a federal campaign, but it indicated a totally irresponsible attitude on his part and a total disregard for the needs of women prisoners.

Hon Kim Chance: That matter is about the choice of site.

Hon PETER FOSS: Yes, but he has not given us any reasons why it is not a good choice of site, other than that some of the local people are against it. He thought it was a good issue. I am still waiting to see the final report about the choice of site. I made it quite clear to the community consultation group that if a better site cannot be suggested, I must make a decision. If there is nowhere better than Pyrton, it will be Pyrton. It must be Pyrton because we cannot allow the nimby attitude to prevent the establishment of such a place. I know there will be a nimby attitude and Hon Nick Griffiths has said that we cannot put it at Pyrton because the local people are against it. The properly conducted survey has shown that they are not against it. Even if they were, he must realise that one of the things the Government must do to deal with problems such as this is make decisions which, even though they may not be popular, it has no alternative but to make. If, when the final

consultation comes in, I have not been shown a better site, Pyrton will be it. It certainly has many recommendations. Another site may be better, but I am yet to be informed of that.

Today's muster is 110 prisoners. If 50 prisoners are taken off that figure, it is reduced to 60 prisoners. When members take into account that the prison has a capacity for 85 to 95 prisoners, it makes a huge difference to the running of that prison. The number of female remand prisoners in this State will never justify a separate prison. We have a maximum of around 25 female remand prisoners. Remand prisoners are always high security because they are not sent to gaol unless they must be restrained in gaol. Once we remove the 50 prisoners from Bandyup, we will be able to give a better subdivision of those prisoners within that prison. We will also be able to deal with some of the other matters that have been raised by members. It is harsh that women prisoners do not enjoy a similar standard to that of men prisoners. No-one in the State would say that prisoners should have it terribly comfy. Hon Helen Hodgson said that it was daunting to see the razor wire. Bandyup Women's Prison has a much nicer feel than almost any other prison in this State.

Hon Derrick Tomlinson: Canning Vale Prison would have to be the worst.

Hon PETER FOSS: Eastern Goldfields Regional Prison does not do too badly either. We are trying to change Greenough Regional Prison to make that a better situation.

Hon Kim Chance: There is a very high quality of prison officer at Greenough.

Hon PETER FOSS: We have a very high quality of prison officers throughout the State. However, there will always be a variety from the best to the worst. We are trying to make changes at Greenough Regional Prison. I would prefer to knock down the Eastern Goldfields Regional Prison and start again for both male and female prisoners. I said that there were some spiritual provisions for women prisoners at Bandyup because I asked some time ago for a special place for women to be built. It is now being built and will be opened shortly. The women prisoners have been building it. It is outside because Aboriginal people want to have their place outside. I am moving to have that done with other prisons. The first one is at Bandyup Women's Prison. The women have planned and designed it and are building it themselves. It is very important for Aboriginal women and Aboriginal prisoners throughout the State. I have instructed the department throughout the State to deal with the matter of Aboriginal spirituality. A group of people, involving Aboriginal people and dealing with Aboriginal prisoners, are deciding how best to carry that out. I am not suggesting for one moment that what is in Bandyup is right, and we are trying to change it. I ask members to give me their support if the recommendation comes forward that the minimum security prison be at Pyrton. So far Pyrton seems to be perfect. It requires bipartisan support. I am pleased to say that Mr Clive Brown has given me that support to date and he recognises the difficulty of the situation.

Hon N.D. Griffiths: He is opposed to Pyrton. He is representing his constituents and he knows they do not want it at Pyrton.

Hon PETER FOSS: He has taken a very fair view.

Hon N.D. Griffiths: Yes, he has, in representing his constituents.

Hon PETER FOSS: Even if we remove 50 prisoners, doubling up will continue among Aboriginal prisoners because that is their personal desire. We would like to reconstruct the prison with cells which are designed for doubling up as opposed to cells designed to be single cells which are doubled up. Aboriginal women sleep on the floor of cells, not because no places are available, but because many Aboriginal women from the remote areas of the State do not like sleeping in beds. That will continue to happen, but it will happen by design.

HON LJILJANNA RAVLICH (East Metropolitan) [4.07 pm]: I have spoken on the issue of the state of the prison system in Western Australia on a number of occasions because I am concerned about what I have heard and read about prisons generally. The minister should hang his head in shame. Although he wants to take the heat out of this argument by stating that it is not an acceptable situation and women are doing it a bit tougher, the bottom line is that this minister has sat on his hands for the past five years and there has been no apparent improvement in the situation. I understand that there may be some difficulty finding appropriate sites and ensuring that the infrastructure is right. However, the bottom line is that it does not take five years to find an appropriate site. It does not take five years to find an appropriate solution. The bottom line is that it is not confined simply to the issue of infrastructure.

Other issues relating to the programs which are run within the state prison system and the services provided to women prisoners are involved. The State has a responsibility to treat men and women equally. This is quite clearly not the case if we look closely at what is happening at Bandyup Women's Prison. This facility is now almost 30 years old. Everyone accepts that it is overcrowded. The minister said that today's muster is only 110 prisoners, which is somewhat less than the figure of 124 purported in the letter. This brings me to another issue which I want to raise as a matter of concern in this place. The figures with which we are provided by the Government about muster numbers are rubbery. They are rubbery because they are taken at that time on any day that the maximum number of prisoners are out of the prison system and are being transported to doctors or elsewhere. Therefore, when the Government gives us the muster numbers, it misrepresents the truth. The reason that I raise my concern about that matter is that a gentleman came to my office the other day and said," I was interested to read in *Hansard* the information that you received from the minister about the muster numbers. Those

figures do not reflect the accurate situation, because they are taken at that time of the day when the maximum number of people are being transported out of the prison system. Those people are technically part of the prison system; therefore, the figures are under-counting the true situation."

Some of these issues can be dealt with more easily than can others. Bandyup Women's Prison has the capacity to deal with 83 women prisoners but has 124 inmates. That raises the question of whether additional resources have been provided to that prison to assist it to cope with that increase in prisoner numbers. We need to ascertain also, with regard to the overcrowding at that prison, why officers and prisoners are being exposed to a volatile and dangerous situation and why since 1993 the Government has done nothing about it.

The mix of prisoners at Bandyup is inappropriate. I put a question to the minister some time ago about an escape from the minimum security prison, and the minister's response was that a minimum security prison has no boundaries and people can come and go as they please; therefore, technically it is impossible for people to escape. However, women who are on remand at Bandyup do not appear to have the same right to walk in and out -

Hon Peter Foss: Remand is quite different.

Hon LJILJANNA RAVLICH: The bottom line is that Bandyup has an enormous amount of perimeter fencing, which would make it almost impossible for a prisoner to escape.

Much can be done in our prison system that is not being done. Some time ago, the Government commissioned a report by Australasian Correctional Services. That report was very damning. It made a comprehensive analysis of the problems at Bandyup and said -

> The greatest shortcoming of the facility is the practice of housing medium and minimum security females inside a prison designed to hold maximum security prisoners. This creates tension between the lower classification prisoners and staff who have to implement procedures for everyone consistent with maximum security status. . . .
>
> Cells in the original block, in common with cells at Bunbury, the Remand Centre and Canning Vale, are substantially below legal minimum standards. . . .
>
> The lack of a coherent closed circuit video surveillance system covering all of the perimeter fence, not just the front section, reinforces the view that the present perimeter fence is an overkill even for maximum security women.

That report is interesting, because it finds that between 60 and 80 per cent of the prisoners at Bandyup are on some form of medication. That figure is incredibly high. I wonder whether these women come into the prison system when they are on medication, or whether as a result of their environment they become victimised and depressed and need to receive medication. The figures for Casuarina Prison as at 13 March 1998 are that of a total muster of 482 prisoners, 137 prisoners have mental health problems and 109 prisoners are on medication. Therefore, in this typically male prison, only 25 per cent - or 1:4 - of prisoners have some form of mental health problem. I cannot verify what percentage of prisoners in Casuarina are on medication, but I would be surprised if that figure were anywhere near 60 or 80 per cent. The Government is not doing all that it can to provide support services for general medical and psychiatric treatment. This matter must be addressed by the Government, and particularly by the Minister for Justice.

Mr Riebeling MLA asked a question on Wednesday, 22 October 1997 about the budget for psychiatric services. The minister replied that a total of $219 600 had been set aside in the 1997-98 budget for psychiatric services. If this State has a total of 2 520 prisoners, that means that $114 per prisoner in this State has been set aside to provide psychiatric services.

Hon Peter Foss: What is the situation outside of the prison system?

Hon LJILJANNA RAVLICH: I have no idea, but if I were in charge of the prison system and between 60 and 80 per cent of the women in Bandyup were on some sort of medication, I would be asking some questions and would be attempting to do something. This minister should go to Cabinet immediately and say that this State needs as a matter of priority a facility which is suitable for those women prisoners, even if that means new money, or abandoning the idea of Pyrton. The bottom line is that if the Government can afford to spend $88m on a bell tower to ring in the year 2000, $5m on the Elle tourism campaign, and $100m on a new convention centre, it can afford to ensure that when it takes away the liberty of women in society, it offers to those women prisoners a duty of care.

HON GIZ WATSON (North Metropolitan) [4.19 pm]: I speak to this urgency motion on behalf of the Greens (WA). We agree that the current situation is intolerable. It is unacceptable that prisons in this State have occupation rates that are 50 per cent above design levels. This situation should have been anticipated and dealt with in a more appropriate way. It is intolerable that women prisoners are being treated worse than male prisoners. It is probably only because female prisoners are less likely to resort to physical violence when they are in crowded conditions that we are not experiencing even greater problems, given the level of overcrowding and the unacceptable conditions in which those women are required to live.

Hon Derrick Tomlinson: It is not in the nature of women to resort to violence. That is the only reason that does not happen.

Hon GIZ WATSON: If that level of overcrowding existed in one of the male prisons, we would have a very dangerous situation on our hands. Just because women are not naturally prone to engage in aggressive responses is no reason to -

Hon Simon O'Brien: You have not met the members of our state women's council!

Hon GIZ WATSON: No! Just because some restraint is being shown by those women is no reason to continue to ignore the situation.

Hon Peter Foss: Will you support the relocation to Pyrton if it turns out to be the best option?

Hon GIZ WATSON: The issues involving Pyrton have not been resolved, and better options exist.

Hon Peter Foss: Like what?

The PRESIDENT: Order! Members, this is not question time. Hon Giz Watson has the floor and she should direct her comments to the Chair.

Hon GIZ WATSON: The other issue of great concern is the State's duty of care to ensure that certain conditions are met, even for those people who are in prison. I would not be surprised if this were not open to challenge and the Government had neglected its duty of care. I am also concerned about the long-term effects of overcrowding. It has already been mentioned, particularly about women who have children, that the Government is generating a level of resentment and anger among not only inmates but also the families and friends of those women involved which will have repercussions throughout our community. This situation will reinforce the feelings of those people who already feel wrongly done by.

Hon Peter Foss: I hope the member is not suggesting that they are being wrongly done by because they are locked up in gaol.

Hon GIZ WATSON: No. However, the community has standards, and even a person who has been incarcerated has certain rights.

Hon Peter Foss: There are also wide views in the community as to what that standard should be. Some people say that it is too comfortable.

Hon GIZ WATSON: I argue that the community will reap the results of these situations.

Hon Peter Foss: I do not agree with them, but that is what some people say.

Hon GIZ WATSON: Fortunately, most members in this place do not agree with that.

How did we reach the point where our gaols are full to overflowing? There have been comparable periods in history when prisoners were accommodated in hulks off the coast. We must question our approach to implementing justice within our community. I suggest that many people have been incarcerated for drug offences, and I question whether overcrowding our prison system is the best way to deal with a health and social issue. That is an underlying issue to do with gaols in general, and it is contributing to overcrowding in Bandyup Women's Prison. The issue is whether the Government can do something about this. Ample evidence exists for minimum security prisoners being immediately contained elsewhere.

Hon Peter Foss: I can think of one possible place.

Hon GIZ WATSON: There are other alternatives. The most immediate requirement is for the Government to house minimum security inmates in alternative accommodation until this can be sorted out in the longer term.

HON B.M. SCOTT (South Metropolitan) [4.23 pm]: I have read with interest the letter that was tabled today, and the urgency motion before this House. I share a concern for what is contained in the letter. A number of people who signed the letter and representatives of a number of organisations came to see me earlier this year. I made some inquiries with the office of the Minister for Justice and was briefed on the situation. Throughout the year I have obtained updates from staff.

The conditions of women prisoners and their experiences in Bandyup Women's Prison that were put to us today are not new to any of us. Probably what is new for the State is the rise in the crime rate among women. Perhaps we could lay blame on the Minister for Justice for not properly planning for this expected increase. However, in all fairness, the minister and his office have been making a genuine attempt to find an appropriate new location to house the extra women prisoners. I want to go on record and support what has been said about the overcrowding of women in prisons, the explosive situation that exists, and the desperate need to find an appropriate place to house the prisoners.

Several locations have obviously been considered. However, this is not something that can be done overnight. The Minister for Justice has referred to the committee considering Pyrton and Saranna, and that could be a short-term resolution. Like the people who have signed the letter, and speakers before me today, I think it is important that this Parliament takes on board the most important aspect of the debate - that is, the total inequity between our dealings with men in prison and women in prison. However, as I said earlier, to a degree there are reasons for that inequity.

The female prison population has grown enormously in the past few years, and a previous speaker referred to the high number of drug offenders in the prison system. Very few serious crimes are committed by women, and although we have murderesses and other women who have committed serious offences, fortunately, it has not been in the nature of women to be in that category in high numbers like men. However, as a woman member of this Parliament I feel strongly about this, and that is the reason I took a keen interest when it was brought to my attention that we should look at providing some equity in the situation with not only appropriate accommodation - the overcrowding is totally unacceptable - but also educational facilities. No matter what view one holds about how we should deal with our prisoners, surely one of the overriding priorities for any Government should be an attempt at rehabilitation. We should find the funds to address the most serious issues of low levels of literacy and numeracy among women prisoners, the need to rehabilitate them in their lifestyles - for example, their tendency to abuse their bodies by drugs - and other financial management issues.

The issue of psychological suffering being heightened by overcrowding and sharing accommodation is one serious concern. However, as a woman member of the Government I can assure members opposite that I have been taking a close interest in this. I have had a great deal of cooperation from the minister's office. Although it may not be in the public arena, women on this side of the debate have a genuine interest to ensure that is the case, and I support the minister in his moves to find alternative accommodation. It is a serious situation that needs our immediate attention and I support any moves to increase the accommodation, so that women prisoners in this State at least have similar opportunities to the men - that is, access to appropriate minimum security standards.

HON CHERYL DAVENPORT (South Metropolitan) [4.29 pm]: I do not think the move to relocate minimum security prisoners from Bandyup Women's Prison will solve the overcrowding problem. When I visited Bandyup in September I was told that only 30, not 50, of the current intake would move. Bandyup's capacity is 85, yet the muster has been as high as 126. I do not see how removing only 30 will solve the problem of overcrowding, particularly in the A compound block. That area is one of the most depressing places I have ever been in. God help anyone of us if we have to spend time there as a prisoner for any reason. Moving the minimum security sector out of the prison will not solve the problem. Unfortunately, the system is overcrowded and we need to find more creative ways to come up with ideas on solving the problem.

Motion lapsed, pursuant to standing orders.

DISALLOWANCE MOTIONS

Statement by the President

THE PRESIDENT (Hon George Cash): I advise the House of a couple of procedural matters following some issues that have been raised with me. In respect of order of the day No 1, a disallowance motion, members will see the words "last day today" have been included for the benefit of the House. I should explain that "last day today" does not mean that we put the question today. That means that it is the tenth day, excluding the day on which the motion was moved. In accordance with Standing Order No 153C members will be aware that when 10 clear days have expired, the motion must be put at the succeeding sitting of the House and the motion is not able to be further adjourned. Because there has been some confusion in the past about the use of those words, I have discussed the matter with the Acting Clerk, Mr Allnutt. He has indicated to me that new words will be used in the future so that it is very clear as to when the final day - that is the day on which the motion is to be put without further adjournment - has arrived.

In respect of order of the day No 7, the matter of a Select Committee of Privilege, I have been asked why that order of the day does not have precedence accorded to it in accordance with disallowance motions which under Standing Order No 153A are given precedence over all other business in respect of orders of the day. The answer can be found in Standing Order No 155. So that there is no confusion, I will read Standing Order No 155, which states -

> Whenever a matter or question directly concerning the privileges of the Council, or of any committee or member thereof, has arisen since the last sitting of the Council, a motion calling upon the Council to take action thereon may be moved, without notice, and shall, until decided, unless the debate be adjourned, suspend the consideration of other motions and orders of the day.

The operative words in this instance are "unless the debate be adjourned". The debate was adjourned and this now takes its place like any other standing order that does not have specific precedence. I hope that explains to some members why those orders of the day are listed in the sequence that they are.

ADDRESS-IN-REPLY

Motion

Resumed from 15 October.

HON NORM KELLY (East Metropolitan) [4.34 pm]: I will not be taking up my full allotment of time on this. However, I would like to take the opportunity to make a few comments about the State's health system, in particular about this

Government's apparent hell-bent desire to continue down the road of privatisation of its public hospitals. I particularly want to look at the proposal to privatise the Armadale-Kelmscott Memorial Hospital.

Hon Derrick Tomlinson interjected.

Hon NORM KELLY: The fact that the Government has sought preferred tenderers to submit their proposals for that privatisation shows, it would appear, that the Government still has not learnt from the valuable comments that have been made by the Auditor General on all the problems in the State that this Government has had with the privatisation of the Joondalup hospital - or as they put it these days, the health campus, which seems a strange change in wordage. Members who are aware of community feelings in the south eastern suburbs of Perth will know that there is strong opposition to that which the Government has proposed for the Armadale-Kelmscott health service.

Hon Derrick Tomlinson: There is strong support for that which the Government has proposed. There is strong opposition to some aspects of the program. However, are you telling me that the people of Armadale do not want a 120-bed public hospital? Is that what you are saying?

Hon NORM KELLY: No. If Hon Derrick Tomlinson had listened, he would have heard me say that there is strong opposition to the Government's -

Hon Derrick Tomlinson: I heard you say that there is strong opposition to that which the Government proposes.

The PRESIDENT: Order, members!

Hon NORM KELLY: There is strong opposition to privatising the Armadale-Kelmscott health service. There is a great deal of support for a new hospital to be built in that area. That strong support has been brought about by successive Governments' failure to adequately fund and provide those services to that part of the Perth metropolitan area.

Hon Derrick Tomlinson interjected.

Hon NORM KELLY: It seems to be far easier for the northern suburbs to get such funding and resources ahead of the needs of the south eastern corridor. It is good to see that the Government is moving to address that problem. However, I strongly question the direction which it is taking in changing resourcing for that area, particularly the desire to have these public services run by private organisations.

Hon Derrick Tomlinson: Do you know what the decision is?

Hon NORM KELLY: I have not been able to get a decision.

Hon Derrick Tomlinson: That is because there has not been a decision.

Hon NORM KELLY: Exactly.

Hon Derrick Tomlinson: However, you are telling us what the Government is going to do and has decided.

Hon NORM KELLY: Yes. It is clear from the documentation that the Government is hell-bent on privatisation and completely ignoring the community. I ask Hon Derrick Tomlinson whether he believes that the Government has taken on board the Auditor General's report and changed its ways accordingly on the Armadale-Kelmscott health service?

Hon Derrick Tomlinson: Have a look at the document. Have a look at the call for expressions of interest.

The PRESIDENT: Order!

Hon NORM KELLY: The document shows that the Government has not learned from that experience. In his report, the Auditor General found that there was no reliable information that the $58m contract would provide net tangible benefits to the State from either its services or facilities relative to the public sector model it was replacing. The benchmark exercise conducted by the Government did not reflect costs savings that might be expected if a competitive public sector bid had been developed, and did not take into account the value and utility of the existing hospital buildings. Once again, we see the Armadale-Kelmscott health service heading down the same path in that we are not seeing the possibility of a viable public sector bid for this service to be provided.

Hon Kim Chance: How many potential proponents are left in the field?

Hon NORM KELLY: It started off with five and has been narrowed down to two. Ramsay is one; I am not sure of the name of the other one.

Any service - this goes beyond health privatisation - requires a comprehensive evaluation of the benefits, costs and risks involved before we privatise long-established public structures such as the Armadale-Kelmscott Hospital, the establishment of which, as members would know, involved great community input, volunteer work and donations. Members can understand why the local community feels a sense of ownership of those resources, and they can understand people's anger when they see the Government choosing to ignore that community input and involvement in the local health service and then

passing it on to totally outside interests. The corporation involved in the Ramsay health tender - I do not know its name - had only one other operation in Western Australia, and that was Hollywood Private Hospital.

Hon Kim Chance: Which it actually handles very well, to be fair.

Hon NORM KELLY: It does a good job, but it is an eastern States corporation coming into Western Australia. Okay, it does a good job at Hollywood, but there is potential to override local community interests and community ownership of health services. We must remember that the profit motive is the driving force in the operation of a privatised health service and that, when it comes to decision making, management must choose on behalf of shareholders. Financial decisions or decisions as to services to be provided will ultimately be based upon shareholders' return for the dollar invested. If managers did not do that, they would be legally negligent, and they would be in conflict with the long-held view that health services should be provided with the quality of service and patient care being utmost in mind.

In considering the wider issues of health funding, it is important to consider the people who provide the health service, in particular those who work at the coalface and who can see the effects of government and administrative decisions on quality or on patient care. Through my office, the Australian Democrats surveyed nurses in the East Metropolitan Region to ascertain their ideas and to assess the impact of government and health providers' policies on the quality of patient care. It was an involved survey. Unlike some surveys that politicians like to do, such as those containing a simple question and answer in order to get a 100 per cent response that more funding should go into Health, which is quite obvious, our survey was scientifically based. Members should note what was included in it because the statistical validity of the results is strong.

Increased workloads was a strong issue; for example, increased workloads with decreased staffing has resulted in a decreased quality of patient care. That view was stated by 92 per cent of respondents, so it occurs across the board. I am not talking only about the public health system, because the survey covered nurses in public hospitals, private hospitals, nursing agencies and aged care - right across the spectrum. The survey accurately reflected the percentage of nurses in those categories as shown in Health Department data.

Nurses feel that they have no genuine involvement in the planning of health services. Of course, during the privatisation of Armadale-Kelmscott Hospital, the Government did not consult not only nursing or hospital staff but also the local community before going ahead with its plans. There is an obvious shift of costs from public hospitals to wider community health care services, and through that we do not have an accurate reflection of the real overall costs of the health system; it is just a matter of transferring them to other providers. There is strong opposition to the privatisation of services and there is the view that health care is a community service which cannot be run as a business in which the primary motive is profit.

I shall deal with a few qualitative responses to the survey. One matter is the difference between permanent staff and the increasing number of casual staff, which has a negative impact. In particular, there is concern about the loss of the ongoing patient care that regular staff can provide. There were a couple of comments that part-timers never receive the same patients from day to day and that they are used by management to fill gaps in rosters, thereby giving no respect to ongoing care. Others commented that they are working with casual staff who are floundering in unfamiliar territory. Of course, it is discomforting for patients to have different people treating them. Also, there is not the continuity of knowledge that permanent staffers would have.

Another matter that relates to staffing is the need for more hands-on staff. More than one-third of respondents considered it to be a big issue - basically, there are too many chiefs and not enough indians. Another comment was that -

> The 1991 career structure took four senior nurses away and then promoted some of us indians to take over the admin nurses work while still leaving us with a full patient case load. Result - one less on the wards, four more in the offices.

That is typical when a decreasing number of ward staff must cope with the same workload and when more people go into the administrative side of things. The result is that patients receive less hands-on treatment. That is backed up by the Health Department's annual report last year, which showed a 0.46 per cent decrease in nursing staff and a 3.21 per cent increase in administrative staff. We must question exactly what is happening. Why is there such a need for an increase in administration staff at the expense of ward staff? Because of the State's problems with extensive waiting lists, there is a need for more administrative staff to manage the waiting lists, but we must ensure that hospital patients receive proper care and attention.

Nurses are very aware of the relentless push to increase efficiency and productivity. Their comments showed a strong sense of frustration. Many respondents did not feel they could do the job they believe they should be doing. One respondent states -

> Nurses need more time to do 'real' nursing care such as talking, explaining, reassuring patients and family, other than just the purely technical side of nursing.

A few weeks ago I talked with a nurse who worked in a cancer ward in a major hospital in Perth. She told me about one

patient who had a very advanced form of cancer, who had to make a decision about whether to have an operation which had about a 50-50 chance of success, or not to have it which brought with it the risk of death. We can understand how a person would feel being on his own in hospital when confronted with having to make that sort of decision. The man did not have any family members to whom he could talk about making virtually a life or death decision. At those times patients must be able to talk to the medical carers, the nurses, around them on not only a medical level, but also a psychological, emotional and spiritual level about the decision they are to make. This nurse explained to me her level of frustration at being unable to spend two or three minutes with the man, to allow him to talk through the issues about the decision he had ahead of him. She was working in a cancer ward where she was confronted constantly with such situations, and she felt she was failing in her job as nurse by not being able to provide that care and attention.

It is impossible to equate directly the level of care that people in hospitals in those situations must receive, to the dollars required to provide those services. This sort of care and assistance cannot be equated easily by an accountant; that is, how many minutes a nurse will spend with a patient and how that total time can be costed over a number patients. The demands are different and the economic rationalist way of determining how to fund those demands does not equate. The dangers of cutting costs in these areas are also quite clear. One nurse states -

> At times there are dangerously low levels of nurse:patients ratio which puts patients at risk and can devastate a professional.

Once again, there is an idea that nurses must give the quality care they are trained to give. Another nurse states -

> We are so short of essential stock I have at times had to use non-sterile items on infected wounds.

That shows a direct relationship between inadequate funding and lack of supplies. I do not know whether that statement relates to a private or public hospital, but the economic imperatives in both are quite similar these days. I have already mentioned cost shifting as another big issue. Patients are often discharged from hospital before they are ready to go home. The respondents recognised that shifting the costs to the community is simply a way of reducing costs in the hospitals. From anecdotal evidence in the Joondalup experience, we see earlier discharges, but those from the private component at Joondalup must be readmitted because they have been sent home too early. That places a burden on community nursing services to take on that high acuteness of recovery services. One respondent states -

> There needs to be more help for the increased workload in the community for the nurses left to cope with early discharge patients.

I am interested to know how this early discharge impacts on readmissions and the cost of that to the health care system. The nurses see the restructuring of health care services in this State as quite a big issue; in particular, it is directly linked to the privatisation of services. That was of concern to most respondents. The nurses stated quite strongly that the health care system exists as a community service for patients. Some nurses felt that decisions about changes to the system did not reflect this. They believe hospitals have a different set of variables and cannot be run as businesses, the sole intent of which is to make a profit. One nurse states -

> Hospitals cannot be run like supermarkets or boutiques, yes it is a business but the powers that be have forgotten what the business is - taking care of the sick.

The nurses were asked to list in order their priority issues. The delivery of quality care to patients ranked quite high; yet personal benefits, such as wages, ranked a lot lower in what they see as being crucial issues in need of change. Wages is one issue that is impacting on the nursing profession. We are all aware that there has been a drain on nursing staff. Many nurses are leaving the profession and, for that reason, we must import many more from other countries to staff our health institutions in this State adequately. It shows directly that we are not supporting nurses in this State. One respondent states -

> I have been nursing for 22 years and have responsibilities and can be liable in a court of law and I feel, as do many of my coworkers, that we are not recognised as such. Our rate of pay is shocking when we get $11.72 an hour. Shop assistants get more with no responsibilities or training.

While yet another respondent comments -

> Since completing this questionnaire I have left nursing and am working in a canteen. For that I am earning 18 cents per hour less.

That sums up how much we value nurses in our society. This Government is still not providing the proper support for the nurses this State. This survey had a very high response from long-term nurses, with 73 per cent of the respondents having worked in the nursing profession for more than 16 years. We have been able to tap into that wealth of experience in the nursing profession - those who are committed nurses. That is why they are still in it. Many of those who had a lesser commitment have already left the health system. A couple of months ago I was talking to a director of nursing at one of Perth's major hospital. She told me that we were getting to the critical point - we have already lost the nurses who are not committed to this profession and are now in danger of losing those who are. It will take a long time to turn this situation around and restore morale and confidence among nurses in this State.

In recent months a new group called the Nurses Health Lobby has been established. Although it has strong links with the Australian Nursing Federation, the lobby has a real commitment to differentiate between industrial issues and concentrate on the critical health issues that abound in this State. It is important that we listen and learn from these experiences so that better health policies can be structured in this State to address the inadequacies that prevail across the board in these areas.

Debate adjourned, on motion by Hon Bob Thomas.

[Questions without notice taken.]

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL

Committee

Resumed from 15 October. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon MaxEvans (Minister for Finance) in charge of the Bill.

New clause 10 -

Progress was reported after the following new clause had been moved -

Page 24 - To add after clause 9 the following new clause to stand as clause 10 -

Section 13C inserted

10. After section 13B of the principal Act the following section is inserted -

" **Unconscionable conduct connected with lease renewal**

13C. (1) A landlord must not, in renewing a retail shop lease, or in connection with the renewal, or possible renewal, of a retail shop lease to a tenant engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a landlord has contravened subsection (1) in connection with the renewal of a retail shop lease to a tenant, the Tribunal may have regard to -

(a) the relative strengths of the bargaining positions of the landlord and the tenant;

(b) whether, as a result of conduct engaged in by the landlord, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the landlord;

(c) whether the tenant was able to understand any documents relating to the supply of goods and services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were exerted against, the tenant or a person acting on behalf of the tenant by the landlord or a person acting on behalf of the landlord in relation to the renewal of the lease or possible renewal of the lease;

(e) the amount for which, and the circumstances under which, the tenant could have acquired an identical or equivalent lease from a person other than the landlord;

(f) the extent to which the landlord's conduct towards the tenant was consistent with the landlord's conduct in similar transactions between the landlord and other like tenants;

(g) the requirements of this Act;

(h) the requirements of any other legislation or industry code, if the tenant acted on reasonable belief that the landlord would comply with that code;

(i) the extent to which the landlord unreasonably failed to disclose to the tenant -

(i) any intended conduct of the landlord that might affect the interests of the tenant; or

(ii) any risks to the tenant arising from the landlord's conduct (being risks that the landlord should have foreseen would not be apparent to the tenant);

(j) the extent to which the landlord was willing to negotiate the terms and conditions of any lease for the occupation of the retail shop by the tenant;

(k) the extent to which the landlord and the tenant acted in good faith;

(l) whether there have been substantial and persistent breaches of the lease conditions;

(m) a desire to change the tenancy mix or redevelop the centre for which vacant possession is required;

(n) the economic performance of the tenant compared to other comparable businesses in the retail shopping centre or locality during the life of the lease;

(o) the level of investment obligated under the lease and the ability of the tenant to meet that investment at a reasonable rate over the term of the lease;

(p) any compulsion upon the tenant to undertake during the term of the lease a refurbishment or a refit and the ability of the tenant to meet that cost at a reasonable rate over the balance of the term of the lease;

(q) the value of the current store fitout to the tenant's business as a going concern;

(r) the availability of suitable comparable premises in the immediate vicinity; and

(s) the disparity between the rental level of any final offer and that as determined as a fair market rent for the premises by a specialist retail valuer.

(3) A landlord or any person acting on behalf of a landlord is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, to a tenant by reason only that such landlord or person institutes legal proceedings in relation to that lease or possible lease or refers a dispute or claim in relation to that lease or possible lease to the Tribunal.

(4) For the purposes of determining whether in connection with the renewal of a retail shop lease, or possible renewal of a retail shop lease, a landlord or any person acting on behalf of a landlord is in breach of this section the Tribunal -

(a) must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged breach; and

(b) may have regard to the circumstances existing before the commencement of this section but not to the conduct engaged in before that commencement.

(5) On hearing a dispute at lease end in respect of whether a landlord, or any person acting on behalf of a landlord, has acted unconscionably under this section the Tribunal may -

(a) dismiss the claim;

(b) uphold the landlord's decision not to renew the lease but make provision for payment to the tenant in recognition of the contribution

that the tenant has made to the economic value of the retail shop or the retail shopping centre during the life of the lease; or

(c) issue a new lease with the terms and conditions as determined.

(6) Where the Tribunal makes an order or orders in accordance with subsection 5(b) in assessing any economic loss the Tribunal must consider matters such as -

(a) any forced disposal of the tenant's stock at a discount rate; and

(b) any inability to recover the tenant's cost of any fixtures or fittings".

Hon NORM KELLY: Hon Bob Thomas' amendment covers three and a half pages and relates to a critical part of the Bill. The Australian Democrats believe it is essential that we have a provision dealing with commercial tenancies and unconscionable conduct. That has been highlighted by the Reid report and the amendments to the Trade Practices Act, which now includes more provisions covering unconscionable conduct. The Government also recognises the need for such laws in this State. They should be in the Fair Trading Act, but, given that that is not the case, while we have the opportunity to include them in this legislation, we should take it. Perhaps at a later date, when the Government is prepared to amend the Fair Trading Act, we can look at including these provisions in that Act and deleting them from this legislation. I would be very concerned if we did not take this opportunity to include these provisions.

The ALP's amendment concerns me in that it relates only to lease renewals. I would like to see something covering the entire issue of unconscionable conduct. There might be a need to amend the amendment to cover not only shopping centres but also all retail shops. I am willing to listen to the ALP's argument.

Hon BOB THOMAS: I put the Australian Labor Party's argument last Thursday. This amendment provides proper standards for businesses operating under the Trade Practices Act. It also provides some protection to small businesses in their dealings with landlords and gives small business access to the Commercial Tribunal in respect of these matters rather than their going through the common law courts, which are very costly and time consuming. The ALP believes these provisions should be available to small business. However, it would be more than happy to look favourably at an amendment from the Democrats expanding the scope of the protection to cover all businesses in this area. The principle of the unconscionable conduct section of the Trade Practices Act should apply to this legislation. It is inappropriate to wait the period proposed by the Government. I understand it has made $100 000 available to the Ministry of Fair Trading to undertake a number of reviews, including bringing those provisions within purview of the Act. That will take a long time. It has been possible to transfer the principles of the provisions dealing with unconscionable trading into the Fair Trading Act, and there is no reason for it not to be done with this legislation. I invite the Democrats to present a form of words to expand the scope of this amendment, and the ALP will look favourably at any such amendment.

New clause put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Mark Nevill		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon Greg Smith
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon N.F. Moore	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Pairs

Hon J.A. Cowdell	Hon W.N. Stretch
Hon Ken Travers	Hon Dexter Davies
Hon Tom Helm	Hon Barry House

New clause thus passed.

New clause 10 -

Hon BOB THOMAS: I move -

Page 24, after line 30 - To insert the following new clause to stand as clause 10 -

New section 13D

10. After section 13B of the principal Act the following section is inserted —

" **Relocation entails obligations**

13D. (1) Where a retail shop lease contains a provision that enables the landlord to require the tenant to relocate the tenant's business from one shop to an alternative shop in the shopping centre, the lease shall be taken to provide that —

(a) the tenant's business cannot be relocated unless and until the landlord has given 3 months written notice of the relocation (**"the relocation notice"**) with details of —

(i) the alternative shop to be made available to the tenant; and

(ii) the proposed refurbishment, redevelopment or extension to the first mentioned shop sufficient to indicate a genuine proposal that is to be carried out within a reasonably practicable time after the relocation of the tenant's business and that cannot be carried out without vacant possession of the tenant's shop;

(b) the tenant is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease excepting the term of the new lease which may be for the remainder of the term of the existing lease; and

(c) the rent for the alternative shop is to be the same as the rent for the shop to which the existing lease relates provided that such rent may be adjusted to take into account the difference between the market value of the shop to which the existing lease relates and the alternative shop at the time of relocation.

(2) Where the tenant receives a relocation notice in accordance with subsection (1) the tenant may terminate the lease within 28 days after receipt of such notice by giving written notice of termination to the landlord.

(3) Where a tenant terminates a lease in accordance with subsection (2), the lease is terminated 60 days after receipt of the relocation notice unless the landlord and tenant agree that the lease is to terminate at some other time.

(4) Where a tenant receives a relocation notice in accordance with subsection (1) and the tenant does not give the landlord a notice of termination in accordance with subsection (3), the tenant is taken to have agreed to relocate to the alternative shop identified in the relocation notice.

(5) Where a tenant agrees to relocate the tenant is entitled to payment by the landlord of the tenant's reasonable relocation costs including costs incurred by —

(a) dismantling and reinstating any fixtures and fittings;
(b) packing and removal;
(c) any new fitting requirements;
(d) any legal requirements associated with the relocation; and
(e) any disruption to trading relating to the tenant's business. "

The amendment proposed by Hon Ken Travers is no longer considered necessary by him.

The CHAIRMAN: Order! The member's amendment is in order except for subclause (5), which requires an appropriation.

Hon BOB THOMAS: I seek leave to add to the amendment a subsection (6) as follows -

Subsection (5) does not apply to the Crown as a landlord.

Leave granted.

Hon BOB THOMAS: The Opposition believes there is some inequity in the way small businesses are treated when a centre wants to relocate them. Many people enter into lease arrangements with a specific shop in mind because of benefits such as passing traffic and exposure to potential customers. They can be inconvenienced financially if they are required to relocate within the centre. Some protections should be implemented to ensure that they are treated with fairness.

Hon NORM KELLY: The Australian Democrats support the amendment. Relocation is a contentious issue. Landlords operating in good faith will not find any imposition in these conditions. Only those who do not operate in good faith will have problems with such conditions.

Hon MAX EVANS: The existing powers exercised by the registrar are adequate protection. The matter has not been raised by the stakeholders as an area of concern for intervention. The registrar of a commercial tribunal has been mediating and resolving matters of relocation and redevelopment clauses successfully since 1985. The industry is well aware of the registrar's powers. Perhaps the Opposition is not. The issue was not proposed in the Green Bill provided by the Government before the last election and the Government does not support this amendment.

New clause, as amended by leave, put and passed.

New clause 10 -

Hon BOB THOMAS: I move -

Page 24, after line 30 - To insert the following new clause to stand as clause 10 -

Section 14A inserted

10. After section 14 of the principal Act the following section is inserted —

" **Free association of tenants**

14A. (1) Two or more tenants in a shopping centre may establish a merchants association for tenants of that shopping centre provided that membership of such an association is open to any tenant in the shopping centre.

(2) The landlord of a shopping centre must consult with an association established under this section in relation to —

(a) tenancy mix;

(b) variable outgoings;

(c) promotional or other levies,

and the landlord may consult with the association on any other matter affecting such shopping centre.

(3) Any provision of a retail shop lease that purports to prohibit or exclude a tenant's membership of an association established in accordance with this section is void. ".

This clause relates to the free association of tenants. Some of the most contentious issues that operators of small businesses have raised with us relate to tenancy mix, variable outgoings and the money spent on promotions and other outgoings. Those of us familiar with small business people, especially those in shopping centres, know they pay a lot of money to purchase their businesses or a great deal in rent once they lease premises from the landlord. They also contribute substantial sums towards the outgoings of the shopping centres and promotions, etc. Small business operators would like some say in the way those moneys are spent. They believe that by setting up associations of tenants they can act collectively to determine effective use of the funds. The Opposition believes that it would be in the best interests of the shopping centre to have a cooperative approach between representatives of the tenants associations and the landlords so that they get together and make things work in the best interests of everybody involved.

Hon J.A. SCOTT: The Greens support this amendment. Retailers have told me that pressure has been put on those wanting to form associations in shopping centres to stop them from doing so. It is a fundamental right of anyone to join an organisation.

Hon MAX EVANS: I can understand what the parties intend. The other side of the picture is that tenants are often requested by landlords to upgrade shopping centres, which invariably involves evolutionary change in tenancy mix and sizes. It would be unreasonable to have this amendment imposed by a minority group on both the landlord and the majority of tenants. The proposal could also cause unnecessary disputation between trade and multiple-faction tenancy groups within any given shopping area. The level of consultation by the owner with tenants would be open to manipulation, or one or two disaffected tenants may stymie a redevelopment that would have benefitted other shopping centre tenants. The Government does not support the amendment.

Hon NORM KELLY: With reference to changing the tenancy mix, what safeguards are in the legislation if, for instance, a successful retailer owned a coffee shop and the landlord had access to the information on turnover and wanted to introduce another coffee shop into the centre to improve his return? That would have a detrimental effect on the existing coffee shop.

Sitting suspended from 6.00 to 7.30 pm

Hon MAX EVANS: This proposed new section is not necessary. It says that the landlord may or may not consult; however, landlords can consult with tenants on any matter whatsoever now.

New clause put and a division held, with the Deputy Chairman (Hon Mark Nevill) casting his vote with the noes -

Ayes (11)

Hon Kim Chance	Hon N.D. Griffiths	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Mark Nevill	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Ljiljanna Ravlich	Hon Tom Stephens	

Noes (15)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon Greg Smith
Hon B.K. Donaldson	Hon Helen Hodgson	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Max Evans	Hon Norm Kelly	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*
Hon Peter Foss	Hon Murray Montgomery	Hon B.M. Scott	

Pairs

Hon J.A. Cowdell	Hon W.N. Stretch
Hon Ken Travers	Hon Dexter Davies
Hon Tom Helm	Hon Barry House

New clause thus negatived.

New clause 10 -

Hon BOB THOMAS: I move -

Page 24, after line 30 - To insert the following new clause to stand as clause 10 -

Section 15A inserted

10. After section 15 of the principal Act the following section is inserted —

" **Standard leases in plain English**

15A. (1) The Minister must make regulations prescribing a standard lease in plain English not later than 12 months after the day on which this Act comes into operation.

(2) In order to comply with subsection (1) the Minister must consult with —

(a) the Property Council of Australia;

(b) the Retail Traders Association of WA Inc;

(c) the Real Estate Institute of WA Inc; and

(d) the WA Retailers Association Inc,

in relation to the form and content of the standard lease.

(3) The standard lease as prescribed by regulation must be used for all leases (including any renewed or extended lease) which is entered into after the day on which the regulation prescribing the standard lease is published in the *Government Gazette*.

(4) Subject to section 15, a standard lease may be varied by either party to the lease by appropriate deletions or additions to such lease. ".

This proposed new section relates to the provision of standard leases in plain English. We think there should be some provision for uniform legislation across Australia. We recognise there are moves in that direction in Victoria and New South Wales. We note plain English leases work well in the residential sector and we think this will be beneficial to small businesses in commercial tenancy operations. I indicated during the second reading debate that we support the Government's move for the tenant guide, but we think this is an improvement on the benefits associated with that guide.

Hon MAX EVANS: I am most surprised that you, Mr Deputy Chairman (Hon Mark Nevill) are in the Chair for this part of the consideration of this Bill. You could make a very good speech on this proposed new section because you are the master of plain language these days. Hon Bob Thomas intimated that he is seeking to take the mumbo jumbo out these leases by having them written in simple English, thus making them easy to read. However, it seems to me that he wants a standard

lease format. Residential tenancy leases and offer and acceptance documents are provided in a standard format. I see a helluva lot of difference between documents written in plain English and a standard format. This proposed new section is not necessary. It has already been tried. It would be very difficult to design a perfect standard lease for large shops and small shops, whether they be in the country or the city. Standard documents for residential tenancies or an offer and acceptance must be black and white so that they hold up. The proposed new section is not expressing what Hon Bob Thomas is seeking to achieve. He talks about a standard lease; however, I think this amendment goes beyond a document written in plain English. I doubt that is what he wants.

Hon NORM KELLY: I appreciate the intent of this proposed new section. This goes to the issue of being able to devise standard leases. Although there are difficulties in a variety of situations that must be accommodated, there is scope to have standardisation where it may mean a very lengthy form, but with the deletion of inapplicable clauses in that form. There is a need for standardisation, particularly if the tenants are negotiating with various management agents or brokers and the leases have inconsistent terminology. I would like the Government to implement that in the regulations.

Hon Max Evans: In the regulations or in the tenant guide?

Hon NORM KELLY: In the tenant guide. However, standardisation may be a problem with regard to proposed subsection (2), which outlines the various bodies with which the minister must consult. It may also be difficult to develop a standard lease if the groups that are involved are diametrically opposed, and the time that it may take to formulate such a standard lease may be to the detriment of both the tenants and the landlord. For those reasons, the Democrats will not support this proposed new section.

Hon J.A. SCOTT: I hope that Hon Bob Thomas can explain this proposed new section a bit better, because I do not see how it will be possible to apply such a level of standardisation given the huge variety of businesses and the huge variety of leases that people will be taking out. I am sure that many factors should be included in all leases, but this proposed new section appears to be going a bit too far.

Hon BOB THOMAS: We propose that the standard lease will have some generic sections that will apply to all leases, and some sections that will be filled out according to the circumstances that apply to the particular premise that is to be leased. We do not propose that all leases will be the same. However, certain sections of the lease will be standard, and the lease will be written in plain English.

Hon MAX EVANS: A large shopping centre might have 100 or 200 shops, and if I were managing that centre, I would want to have a standard lease so that the same terms and conditions would apply to all of the shops. The lessees would probably also want to have a standard lease to satisfy their legal eagles. However, it would be a huge impost to prescribe that a standard lease must be prepared within 12 months. I am not certain how it would be possible to prepare such a standard lease, and it might also be quite a dangerous thing to do. I do not believe it would add much value to the Bill, because it would not prevent a landlord from imposing adverse conditions upon a tenant. We do not support the amendment.

Hon J.A. SCOTT: I thought the tenant guide would deal with what should be contained in a standard lease.

Hon MAX EVANS: Yes.

New clause put and negatived.

New clause 12 -

Hon NORM KELLY: I move -

Page 25 - To insert after clause 11 the following new clause to stand as clause 12 -

New section 27A and 27B inserted

12. After section 27 of the principal Act the following sections are inserted —

" **General penalty**

27A. (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and is liable to a penalty not exceeding an amount of $50 000.

(2) The provisions of this section apply to any retail shop lease entered into on or after the commencement of this Act but shall only be applicable to offences which occur on or after the commencement of the *Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998*.

Proceedings for offences

27B. (1) A prosecution for an offence against this Act shall be by way of summary proceedings

under the *Justices Act 1902* upon the complaint of the Registrar or any person authorised in writing in that behalf by the Minister.

(2) The authority of a person to make a complaint in respect of an offence against this Act shall be presumed until the contrary is proved. ".

A common complaint from tenants who have been aggrieved by a landlord who has contravened the Act is that even though the Commercial Registrar has made a determination in their favour, that has been limited to requiring the landlord to correct what he has done wrong in the first place. The penalty that is proposed in this new section will add teeth to the Act by providing a deterrent to landlords. I urge members to support the amendment.

Hon MAX EVANS: I understand that the current Act contains no penalties. I can understand that the member wants to have something with which to whip landlords who do the wrong thing, but we will not support the amendment.

Hon BOB THOMAS: I am told by Nick Catania that this clause was included in previous Bills of this nature that were moved by the ALP. Therefore, we support the amendment.

Hon J.A. SCOTT: I wonder why Hon Norm Kelly came up with the figure of $50 000 and whether it is an arbitrary figure or has some relevance. Is it proposed that the regulations will prescribe some link between the proposed penalty and the extent of the injury or damage that has been caused to a party as a result of contravention of the Act?

Hon NORM KELLY: I did not intend to steal the thunder of former members from the Australian Labor Party, but these clauses were part of the Commercial Tenancy (Retail Shops) Agreement Amendment Bill 1996 that was introduced by Nick Catania and were taken word for word from that Bill. I consulted Nick Catania while I was working on this Bill, and he assured me that the need for such a provision has not diminished but has increased. This is probably a good opportunity to acknowledge the work of Nick Catania in representing the interests of small businesses, and in particular of retail tenants in this State. He is a very strong advocate for those people and is doing a fantastic job in representing their interests.

The proposed penalty of $50 000 is not an arbitrary figure but is taken from that 1996 Bill. It is intended to provide scope for a decision to be made to reflect the damage that has been caused. The penalty will apply to either the tenant or the landlord who contravenes the Act, and will ensure a penalty that is commensurate with what has occurred. Setting too low a maximum penalty could result in the landlord making a commercial decision that it is worthwhile to contravene the Act. A maximum penalty of $50 000 will create a stronger deterrent against illegal action. This is complementary to any determination that can be made by the tribunal to provide recompense to the aggrieved person or body, and will ensure that those illegal practices are not encouraged and the Government will crack down on them. This will add teeth to those clauses which deal with unconscionable conduct.

New clause put and a division held, with the Deputy Chairman (Hon Mark Nevill) casting his vote with the ayes -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Mark Nevill		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon Greg Smith
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon N.F. Moore	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Pairs

Hon J.A. Cowdell	Hon W.N. Stretch
Hon Ken Travers	Hon Dexter Davies
Hon Tom Helm	Hon Barry House

New clause thus passed.

Title put and passed.

Bill reported, with amendments.

WEAPONS BILL

Second Reading

Resumed from 19 August.

HON N.D. GRIFFITHS (East Metropolitan) [7.57 pm]: The Australian Labor Party is pleased to support the Bill, because it is about time that a Bill was introduced into this Parliament to effectively clamp down on the use of replica firearms and non-firearms weapons. I note that a couple of years ago this place dealt with the issue of firearms. This Bill does not deal with firearms.

The Australian Labor Party's approach to this Bill is consistent with its bipartisan approach to issues of public safety. We support the principles of the Bill. However, the legislative framework to effectively clamp down on the use of replica firearms and non-firearms weapons needs to be workable. The Bill seeks to replace and to update section 65(4a) of the Police Act. It is proper that the Parliament of Western Australia, as expeditiously as it can, consistent with making sure that the legislation is workable, deals with this real issue of public safety.

I propose to refer to the Police Act provision and what is, in effect, the Victorian model. This is legislation modelled on what has taken place in Victoria, and I propose to contrast that Victorian position with what is proposed, in terms of principle, in the Bill; to give consideration to the scheme of the Bill; and to demonstrate how it is seen to operate, by way of example, by referring to what is commonly known as the use of pepper sprays.

I propose to read the operative part of section 65(4a) of the Police Act, because without having these words in front of us, consideration of the Weapons Bill is meaningless. The commonly held perception, which may well be correct, of the need for a Weapons Bill lies in the perceived inadequacy of that section of the Police Act. Section 65 of the Police Act states -

> Every person who shall commit any of the next following offences shall on summary conviction be liable to a fine not exceeding $500 or to imprisonment for any term not exceeding 6 calendar months . . .

The House should note the current penalty regime of a $500 fine or six months' imprisonment. The appropriate subsection is (4a), which states -

> Every person who, without lawful excuse, carries or has on or about his person or in his possession any rifle, gun, pistol, sword, dagger, knife, sharpened chain, club, bludgeon or truncheon, or any other article made or adapted for use for causing injury to the person, or intended by him for such use by him.

Those are the words which this Bill seeks to, if I may put it this way, modernise to make workable to regulate these implements which are in various categories.

Having considered the second reading speech and legislation which exists elsewhere in Australia, it seems that we have substantially embarked on a Victorian model. I note in that context that this is a Bill which emanates from the Minister for Police and is being introduced in the Legislative Council by the Attorney General in his representative capacity. I refer to page 2 of the second reading speech and note the words -

> . . . the legislation of other States was evaluated. It became apparent from this process that other States had also experienced similar problems with non-firearm weapons as have been experienced in Western Australia and, in many cases, were in the process of providing police with powers to deal with these weapons.
>
> It should be noted that in Victoria, the introduction of like legislation, the Control of Weapons Act 1990, resulted in an immediate reduction in reported crimes involving knives.

I have seen the anecdotal evidence in respect of crimes involving knives, and I note the words of the second reading speech that the Victorian legislation led to an immediate reduction in reported crimes involving knives. The Victorian legislation is the Control of Weapons Act 1990. As I read that Act and compare it with the Bill, that Act is substantially the model for the Bill. The Victorian Act uses different terminology and different labels. It has three categories; this Bill has three categories. I will refer to the Victorian Act and briefly compare it with the Western Australian Act so that we can consider the evolution of the Bill, because it is important to note the success of the Victorian Act. It is that success, not just with respect to knives, but with respect to all of these items, that the Opposition wants to promote. If something is successful, we want to promote it. Problems exist. However, I will go through the Victorian material insofar as it is relevant to Western Australia. I do not mention this to occupy time. A purpose is behind it. I say this to the Attorney General, through you, Mr President, because I have some difficulties with the method being used here. Serious difficulties exist. The Opposition is joining with you, Mr President, in trying to achieve the objective. The matter has been on the Notice Paper now for some time. The Opposition wants to pursue this legislation. It wants to have good, strong, workable legislation which achieves the policy objectives which in fact put in place the substantive law that we want to achieve. However, we want it to be workable.

The Victorian legislation contains three categories relating to prescribed weapons, regulated weapons and dangerous articles.

Without reading the sections, any consideration will tell us how that relates to the Weapons Bill. Under the Act, a dangerous article means any article which has been adapted or modified so as to be capable of being used as a weapon, or any other article which is carried with the intention of being used as a weapon. A prescribed weapon means an article which is prescribed by the regulations to be a prescribed weapon, and one can see how that tends to reflect itself in the proposed Western Australian regime. A regulated weapon means an article which is prescribed by the regulations to be a regulated weapon. Under section 5 of the Victorian legislation, prescribed weapons are weapons which are prohibited. The penalty in respect of that is 60 penalty units. I would like a penalty unit regime, and I hope we get one soon.

Hon Peter Foss: There is resistance in certain quarters.

Hon N.D. GRIFFITHS: There is always resistance in certain quarters and we can deal with that at another time, another place and in another debate. I am trying to engage in a constructive debate to get the best possible workable legislation not only so that the police have the capacity to do their job well but also to be fair in how we deal with matters in Western Australia. I note in that category of weapons the penalty is six months imprisonment. Control of regulated weapons is a different category and that is prescribed by regulation. However, if one reads the Bill the resonance is there. I quote clause 6 of the Victorian legislation -

> A person must not possess, carry or use any regulated weapon without lawful excuse.

Lawful excuse includes the pursuit of lawful employment, participation in lawful sport, recreation and display of weapons. It does not include for the purpose of self-defence. Again, there is a maximum penalty. Putting aside penalty units which is a monetary penalty, the maximum penalty is six months imprisonment. In my view that flows on because an important part of the criminality, the item which is the subject of the section and therefore the sanction, is dealt with by regulation.

Hon Simon O'Brien: That six months has to be regulated?

Hon N.D. GRIFFITHS: On the Victorian model there is an offence which has a penalty of six months imprisonment. However, an important ingredient of what amounts to the offence is contained in the regulations. Our legislation has categories of items and an item is categorised by regulation rather than being set out in Statute. It is not unusual for that to occur; in fact, it is commonplace. I shall come to it in my speech and develop it later. However, I am concerned that as a matter of general practice, when we cause penalty to occur as a result substantively of what is in regulation, the maximum is six months. The situation is different in the Bill that we are considering. Therefore, that is a matter I raise by way of constructive debate because it is something that must be explained very carefully.

Hon Simon O'Brien has been a member of the Joint Standing Committee on Delegated Legislation with me for the last few months and we have had some interesting experiences. He understands all too well the role of regulation in the setting of penalty. The substantive principle is not difficult. When we are talking about something really serious like setting the maximum, it is a matter for Parliament in the first and last instance.

Hon Simon O'Brien: Would you clarify in the Victorian Act that you have quoted from the penalty in terms for the regulated items? Is it six months?

Hon N.D. GRIFFITHS: Yes, it is six months. There are three categories - dangerous articles, six months; regulated weapon, six months; and prescribed weapon, six months. Those three categories for the most part, not in absolute terms in each case, mirror the three categories in our legislation. That is not to say that the category in Victoria has the same definition as the category in Western Australia. However, it is substantially the same. As I read it, noting the second reading speech and looking at the development of these matters, this is legislation which, if not modelled on Victorian legislation, has borrowed significantly from it. I refer back to the words in the second reading speech - when ministers make statements in second reading speeches, I am entitled to rely on them, and I do as matters of fact - that the legislation worked and brought down significantly the rate of knife-involved offences. Therefore, that is why I am very concerned that we should get this right. There is a very serious distinction between the situations in Western Australia and Victoria. The use of regulations is the same, however, the penalty is different. It is a matter, at the very least, deserving of comment.

Hon Simon O'Brien: Is the penalty for all three categories the same? Is there a differentiation in the number of penalty units that the Victorian law requires?

Hon N.D. GRIFFITHS: In dealing with penalty units, the control of regulated weapons is 60 penalty units; the control of use of dangerous articles is 60 penalty units; and the prescribed weapons is 60 penalty units. Therefore, it is the same penalty. Perhaps it should not be the same penalty. I invite the member to read the document I have with me. I am happy to pass it over at an appropriate time when I have finished my observations. However, when I see legislation taken in part or in substance from another jurisdiction, it is my duty to examine it, determine differences and query why there are differences.

Victoria has an interesting treatment of pepper sprays. I mentioned in my opening comments that I would use the issue of pepper sprays to demonstrate how this legislation was workable or otherwise; because the use of pepper sprays has been in

the public mind for some time. It is an issue which needs to be addressed and concerns public safety. I am developing this as an example so that, apart from anything else, the House can appreciate that we want this legislation to be workable in the interests of public safety. Under the Victorian legislation a change occurred by regulation, as is the case when matters are left to regulation. Interestingly, the change came into operation on 24 August 1998. I refer to the Control of Weapons (Amendment) Regulations 1998 of the State of Victoria. Regulation 4 refers to the principal regulations. We use the phrase "pepper sprays". Regulation 4 is part of the primary Control of Weapons Regulations 1990 which are prescribed regulations under the Control of Weapons Act. Section 5 of that Act reads -

Prohibition of prescribed weapons

(1) A person must not -

(a) bring into Victoria; or

(b) cause to be brought or sent into Victoria; or

(c) manufacture, sell or purchase; or

(d) possess, carry or use -

a prescribed weapon without an exemption.

The Governor in Executive Council can make an exemption. However, we are not at the committee stage now. I am looking at the Victorian analysis and, therefore, I think the Attorney General notes the relevance of this. We are dealing with the prescribed regulations which are prohibited, unless there is an exemption, and it is -

An article designed or adapted to discharge -

I wish that they would just use the word "capsicum" -

- oleoresin capsicum spray.

There it is. There is the reference to capsicum spray - pepper spray. I think that everybody is talking about pepper spray.

Hon Peter Foss: Yes.

Hon N.D. GRIFFITHS: I understand it to be that anyway. In effect, it was banned in Victoria in August of this year under a legislative regime on similar lines - substantially the same lines, so it is better than "similar". It is closer than "similar" to what we are proposing to have in Western Australia.

Because I support the policy in the Bill I will not take a long time - even if I opposed the Bill, I would not take a long time - as there are only a few matters to which I need to refer in voicing my serious concerns, because I want it to be workable legislation. I am afraid I must refer to some words in the clauses to illustrate my general point in terms of regulation, penalty, category and the like. Reference to the Bill will disclose that we have three categories of weapons, as there are in Victoria, and that the penalties differ, but that they are significantly greater than in Victoria. For example, I refer to the prohibited weapons, the equivalent to the Victorian prescribed weapons. Again, what amounts to a prohibited weapon will be decided by regulation.

Hon Peter Foss: I have tabled those.

Hon N.D. GRIFFITHS: The Attorney has tabled draft regulations; therefore, they have no status other than being a declaration of intent. I accept the bona fides that he, as Attorney General, presented in tabling them, but, let us face it, he is several times removed from what will happen and he has no control over what occurs down the track. Frankly - I am not being personal about it - the idea of doing that through regulation is a significant weakness in the Bill. I am ignoring the monetary penalties; I am concerned about liberty. The equivalent to the Victorian prescribed is two years, whereas in Victoria the second reading speech stated that to achieve the result requires a penalty of six months. Again, in essence, it is controlled, but significantly controlled by words in a regulation.

Hon Peter Foss: Victoria also has half the imprisonment rate of Western Australia.

Hon N.D. GRIFFITHS: I hate to say it, but Kennett's Victoria might be doing something right compared with us under the current Government, but let us not be political about it; I am being bipartisan. In 1990, under a Labor Government, we reduced the rate. We were in office in 1990, and we reduced the problem significantly, according to the second reading speech; that is, two years compared with six months when a matter is dealt with by regulation. We had the category of controlled weapons, which in general terms, if one is to deal with Victoria, would be one year. Again, that is a significantly different scenario. The fact that what falls into what category is determined by the Executive as distinct from Parliament is a matter of concern. I refer to pepper sprays in particular. I have dealt with the Victorian situation. In Western Australia, draft regulations are kindly provided to us. I am glad we have them because they help to tell us how the Government, at this stage -

Hon Peter Foss: They have no legal standing.

Hon N.D. GRIFFITHS: They have no legal standing at all. I am glad that we have them and I appreciate the bona fides in which they are provided. There is a lot to be said for being provided with draft regulations. I am not having a go at the practice of having draft regulations. I hope that my comments are taken as constructive, because they are meant to be. These are draft regulations, and, as the Attorney correctly points out, they have no legal standing whatsoever.

I deal with pepper sprays - I must use that word again. Pepper sprays are defined as controlled weapons. I am looking at the draft regulations by way of example. Regulation 5 states that -

> An article specified in Schedule 2 is prescribed to be a controlled weapon.

Schedule 2 lists several matters. Item 16 states -

> A spray weapon made or modified to be used to discharge oleoresin capsicum.

It is a long time since I did leaving chemistry.

Hon Peter Foss: The fact that you call it "leaving chemistry" is indicative of that.

Hon N.D. GRIFFITHS: I am sure the Attorney called it "leaving chemistry" as well.

Hon Peter Foss: I did.

Hon N.D. GRIFFITHS: I do not think that we touched on the subject in leaving chemistry. Well, I know that I did not and I hope that the Attorney did not. If he has, I am pleased to note that he has been remarkably restrained in the use of the substance - that we know of. In any event, there it is in the schedule. This matter has special treatment in the regulations. We must think about how it will develop, because the matter should be given to the Executive. Regulation 6 of the draft regulations states -

> **Oleoresin capsicum spray weapons prescribed under section 7(4) -**
>
> (1) Spray weapons made or modified to be used to discharge -

That phrase again -

> - oleoresin capsicum are prescribed for the purposes of section 7(4) of the Act.

The regulations for the real reference to the Act, then it continues -

> (2) Section 7(4) of the Act does not apply to a weapon referred to in subregulation (1) if it is carried or possessed by a person for the purpose of being used in lawful defence in circumstances that the person has reasonable grounds to apprehend may arise.

I invite members to read clause 7 very carefully. By way of example, the concluding words of clause 7(4) are -

> . . . if any, as the regulations may prescribe.

I do not propose to go into that part of the clause in any greater detail because of our practice of not engaging in the relative minutiae of clauses. I use those words to demonstrate the point that the substantive part of what is to be the criminality, or the lack of it, is contained in the regulation. The issue of pepper sprays must be given a fair deal in Western Australia. It has been a matter of public concern for a considerable time. The Australian Labor Party applauds the policy and the principles. We want these items properly regulated, but regulated in a workable and constitutionally proper way in terms of the relationship of the Parliament vis-a-vis the Executive. I do not like too many issues going over to regulation in the way that the Bill seeks to do. I am looking for explanations about that.

Hon Peter Foss: Could you clarify that? Are you supporting pepper sprays being available?

Hon N.D. GRIFFITHS: We are of the view that pepper sprays are properly available in appropriate circumstances. I will deal with that shortly. I am pleased to have the Attorney General's interjection because that is one of our fears: The track that the Government may be going down. Through its capacity to speak to the media, a degree of disquiet has occurred about the issue of pepper sprays; in any event, a degree of concern about where it lines up. Pepper sprays, in the context of Western Australia, are an appropriate material. I will mention a number of matters so the Attorney General is encouraged to deal with that. The fact that pepper sprays are dealt with in a particular way by use of this regulatory regime in Victoria, and even though pepper sprays are proposed to be dealt with differently in Western Australia, does not give us great comfort because that can be changed. It can be changed at the whim of the Executive.

Hon Peter Foss: Once it is in, it can be disallowed.

Hon N.D. GRIFFITHS: Once it is in, it can be disallowed. We all know that the Parliament can rise and not come back

for many months. Addressing the machinery point of that interjection, in July of last year the Executive increased fees for people making use of our courts. It took until March-April for those regulations to be disallowed because of the processes of Parliament - Parliament not sitting, delegated legislation committee meetings and the like. It is not a defence to say, "If it is a bad law, do not worry about it. It can be disallowed." A bad law can exist for many months. I am concerned to ensure that the real needs of the population, which is very concerned about public safety - that is why the Attorney General is receiving bipartisan support for this Bill - are met.

I will make brief reference to a number of media reports and some episodes in Parliament. I find that what happens in Parliament from time to time is of interest. Not everything I read is of interest, but that is life. A headline in *The West Australian* on 5 March 1998 stated "Police reject push for sprays".

Hon Peter Foss: That is the police.

Hon N.D. GRIFFITHS: That is the police. This is a Bill under the Police portfolio, and as much as the Attorney General and I agree on just about everything, he is handling the Bill only as a representative minister. It is the police and the police view. The article concludes -

> "In the evaluations that we have carried out here we have some real concerns about the use of the spray by both police and the public," Mr Kucera said.

Fair enough. That is a reasonable view. This is a Bill which emanates from the Minister for Police. It has been introduced for the first time in this Chamber, rather than in the other place. However, that is a matter for the Government. When we deal with police Bills, it is preferable that they be introduced in the other place and we review them in this Chamber. In fact, we can probably do a better job if we review them. I do not mind the Attorney General introducing his Bills in this Chamber, but that is idiosyncratic and we will let that go by. Someone must introduce these Bills somewhere. However, the Minister for Police should be responsible for his Bills, then the Attorney General and I can properly review them rather than the Attorney General being in the invidious position of defending what he knows about the weaknesses that I have described, not in terms of policy but in terms of method. Those weaknesses are verging on the indefensible, but the Attorney General will do a brave job in defending them.

I will quickly conclude because other members are keen to deal with the matter. A headline in *The West Australian* on 6 March 1998 states "Pepper sprays 'vital' form of self-defence". The Opposition put forward its view that they are a vital form of self-defence. The police point of view is repeated. The article states -

> Police hoped pepper spray would be banned under the proposed weapons Bill . . .

There is a capacity under this Bill for them to be banned - like Victoria.

> . . . that would prohibit the possession, sale or importation of certain knives and weapons capable of being concealed.

Does that not sound like the police wanting the Victorian model to be followed on the issue of pepper sprays? This raises our concern. Members opposite can never have a go at us about delay. The last paragraph states -

> After Cabinet opposition it was dropped from the draft legislation last year but may now be reconsidered.

This has been around for a while. Let us get it right. On 10 March another headline states "Pepper spray attacks spur ban call". Again in March 1998 reference is made to the police calling for the sprays "which are sold in shops, to be banned". An article in *The West Australian* on 21 June 1997 stated -

> Pepper sprays are banned in WA. In March 1995, Police Commissioner Bob Falconer spoke out against their use by the public after three police were injured in spray attacks.

As the Attorney General quite correctly pointed out, again the police push for pepper spray use. Interesting. Another headline reads "MP arms family with spray".

Hon Peter Foss: Who was that?

Hon N.D. GRIFFITHS: I do not know. It was the *Sunday Times*. It stated -

> At least one WA politician has bought controversial pepper sprays to protect family members.
>
> The MP is concerned that women in the family are vulnerable to attack. Pepper spray is used to fend off assailants.
>
> But despite some politicians supporting the widespread use of sprays, Police Commissioner Bob Falconer is not convinced that sprays should be available readily.

The track record of the Commissioner of Police shows that he is a fairly formidable lobbyist for getting what he wants and perhaps not getting what others in the public might want.

The next heading is "Old turn to pepper sprays". This does not refer to the former Minister for Agriculture, Hon Dick Old, because I think he had retired from Parliament when we had "MP arms family with spray". The heading is from *The West Australian* of 15 August 1998 and reads "Old turn to pepper sprays. But new Police Minister says they may be banned". This is not very firm ground for pepper sprays, but we must return to a more appropriate forum.

Hon Ray Halligan asked a question of the Attorney General representing the Minister for Police. I refer to *Hansard*. I regret to say the date was 1 April 1998, but it was the afternoon. The member quite properly asked -

> What is the current legal status of pepper sprays?

The Attorney replied -

> I thank the member for some notice of this question. Under section 65(4a) of the Police Act, the carrying of any weapon which is intended to cause injury is unlawful. In addition, the use of such a weapon, including a pepper spray, for offensive purposes would constitute an offence. The actual possession of pepper sprays is not currently unlawful in Western Australia. However, the situation is being monitored.

In the other place the member for South Perth at page 2727 of the *Hansard* is reported as asking question on notice 3240. He asked -

> (1) Is any consideration being given to the banning of pepper sprays in Western Australia?
>
> (2) If so, what is the rationale behind such a move?

The question was to the Premier, who responded -

> (1)-(2) Under Section 65(4a) of the Police Act, the carrying of any weapon which is intended to cause injury is unlawful . . .

Did the Attorney General write this?

Hon Peter Foss: It sounds similar to my answer.

Hon N.D. GRIFFITHS: He must have read it. It continues -

> . . . and the use of such a weapon, including a pepper spray, for offensive purposes would constitute an offence. While the actual possession of pepper sprays is not currently unlawful in Western Australia, the situation is being monitored.

So it was. I merely raised this to outline the present uncertainty and the need to make sure because people want a sensible regime with pepper sprays. I have not taken out a copy of the judgment; I hate to say it but I rely on a media report of 2 September 1998 headed "Sprays ruled a weapon". It reads -

> The Supreme Court has confirmed that pepper spray is an offensive weapon and it is illegal to carry it without a lawful reason.
>
> Justice Geoffrey Miller said he was in no doubt pepper spray should be classed as an offensive weapon under the Police Act, together with guns, knives and truncheons.
>
> Justice Miller was upholding an appeal by the crown against Bunbury Magistrate Kenneth Moore's decision in April to dismiss charges against a man who said he kept two cans of pepper spray for self-defence.

I referred earlier to that which is contained in section 65(4a). Opposition members firmly support the policy of the Bill. We want some workable weapons legislation to be put in place. We have concerns about the extensive use of regulations for arriving at criminality and the penalties that result from the use of regulations. We think those matters should be the subject of further examination. We certainly support the policy principles of this Bill.

HON GIZ WATSON (North Metropolitan) [8.45 pm]: I have taken some time to examine the Weapons Bill and to consult with people involved in criminal law. Whenever we are examining similar Bills to do with criminal law and police powers we face the issue of how we balance the powers of the police or State against the powers and responsibility of the individual. This Bill certainly comes into that category. It is an interesting to consider when weapons can be used in self-defence and when they cannot, and by whom and in what circumstances. I followed with interest Hon Nick Griffiths' comments to do with pepper sprays. It is certainly not an easy matter on which to come to a decision.

I want to raise broader questions. It seems that this Bill is one in a series which this Government is putting up to do with law and order. I assume that is in response to the current climate in the community and its concerns about law and order. It is a valid concern. The State seems to be experiencing more crime and an escalating level of violence. There is some question about how real the statistics are and how much they are community perceptions. However, I will not go into that. My question is whether introducing laws such as these will achieve greater levels of community law and order. I argue that, as the Greens perceive the issue of law and order, the crucial issues include community cohesiveness and a sense of

belonging, which are vital to how individuals behave in a community and whether they are aggressive to others. If individuals feel they are part of a community and they have a place in it, the level of violence and aggression is a lot less. I feel that resorting to weapons is part of that pattern of alienation.

Hon Peter Foss: As well as reality, the perception changes.

Hon GIZ WATSON: Yes, and such things as the feeling of threat. People are more likely to arm themselves with various weapons if they feel threatened. There is also the question of whether as a culture we resort to weapons. Different cultures have different responses. We are seeing a broader range of weapons being used by people; in fact, I was quite shocked to read in the draft regulations the list of weapons that are around.

As a community, we must look at attitudes regarding conflict resolution. Do we teach people, especially young people, methods of resolving conflict which do not result in physical violence and ultimately the use of weapons? Do we teach in schools that one need not resolve conflict by taking knuckledusters in the pocket to school? The results of increased inequity in our society is evident. We must address those underlying issues as a Parliament and community, and I argue that putting controls in place is perhaps not the most effective way of dealing with this issue.

Hon Peter Foss: Do you support the whole idea of firearm and weapons legislation?

Hon GIZ WATSON: I will speak later on the more specific aspects of the measure. Suffice it to say, I feel comfortable with the prohibition of certain weapons. We need to extend that list. That aspect of the Bill is fine, but its other aspects are problematic to Greens (WA). Again, if one looks at what produces conflict and violence in society, one must also look at whether people have a sense of fairness and feel they are omitted, mistreated and not given opportunities. We must consider people's education levels. These are real underlying causes of resorting to the use of weapons and violence.

I have looked at this Bill in a fairly critical manner. A danger always exists with a community perception of increased violence that police will be given additional powers. Each Bill which might be presented at any given time may not in itself be too big a step in that direction; however, one must look at incremental changes in powers handed over to the police. In an ideal world, with a perfect Police Force without bad apples, the community might not be so anxious about increasing police powers. We always must be cautious. We do not know how things will change in the future.

If we allow the powers to be granted as proposed under the Weapons Bill, we need to be satisfied with a number of aspects. First, are the existing laws inadequate? Second, is there a particular need for the new provisions? Third, will the proposed Bill achieve the Government's intention as outlined in the second reading speech? Fourth, do the new provisions strike the right balance between the rights and powers of the State versus the rights and powers of the individual? Fifth, have the provisions been thoroughly debated? I will deal with those issues one at a time. First, are the existing laws adequate? The second reading speech indicates -

> The Bill replaces section 65(4a) of the Police Act, which has provided police with the only powers they have had, until now, to deal with the problems of non-firearm weapons in the community. This section may have been adequate to deal with the problems in 1956 when it was introduced but it has been found wanting in recent times.

Further -

> The lack of specific powers in relation to these weapons has made it difficult for police to contain these offences. For example, under current laws, when police have cause to suspect a person is armed for inappropriate purposes they are powerless to act unless they actually sight a weapon.

The Bill will replace section 65(4a), which is already comprehensive in its definition of weapons; it reads -

> Every person who, without lawful excuse, carries or has on or about his person or in his possession any rifle, gun, pistol, sword, dagger, knife, sharpened chain, club, bludgeon or truncheon, or any other article made or adapted for use for causing injury to the person, or intended by him for such use by him.

That is a fairly broad definition. I can cite the case of my involvement with various political demonstrations in which we were instructed that anything one carried could be construed to be a weapon if the police chose to do so, including a placard on a stick or a Swiss Army knife in the pocket.

Hon Peter Foss: It is specific.

Hon GIZ WATSON: A pocket knife could be argued both ways: It could be construed to be a weapon depending on the circumstances. I suggest that the current laws are not inadequate in this regard.

Hon Peter Foss: Intention must be proved, and that is the hard part.

Hon GIZ WATSON: I would argue that that can be done. I have seen circumstances in which intent was proved.

Hon Peter Foss: We have had the same problem with stalking; that is, magistrates find it hard when a person says he did not intend to do so.

Hon GIZ WATSON: Greens (WA) agree that prohibiting certain weapons is valid, and increased fines are needed as they are much too low in current values. Also, the second reading speech does not give information on specific cases where the law has been found wanting. It would be useful to provide specific examples to illustrate the need for this Bill.

In relation to proving intent, I refer to section 43(1) of the Police Act, which relates to the powers of apprehending offenders. If this provision is taken in combination with the weapons definition, the police have very broad powers to apprehend on suspicion. Section 43(1) states -

> Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night may apprehend . . .

A passage then leads into the following -

> . . . all persons whom he shall have just cause to suspect of having committed or being about to commit any offence . . .

Taking Hon Peter Foss's comments a moment ago, I would read that as a comprehensive provision by which police can apprehend offenders and would-be offenders. Combined with the broad definition of weapons, the police already have broad powers.

Is there a need for a new provision? Hon Nick Griffiths mentioned the issue of pepper sprays. I looked through the draft schedule of the regulations to be attached to this Bill and I was curious to see why acoustic devices were to be prohibited weapons. I will be interested in the response from the Attorney regarding what self-defence options will remain for people. I have a great deal of background in working with women and sexual assault, and I am concerned that we may not leave any options regarding the lesser defence weapons -

Hon Peter Foss: Are you suggesting that it should go into the regulations?

Hon GIZ WATSON: I am questioning whether the acoustic shock weapon would remain prohibited; perhaps it should be controlled.

Hon Peter Foss: It is a good point.

Hon GIZ WATSON: That is probably also an issue I am struggling with in this Bill because we are not dealing with the regulations. Members do not have the option of fully debating which weapons should be included and which should be excluded. That should be part of the debate in this place or in committee.

Hon Peter Foss: Do many women carry those acoustic weapons?

Hon GIZ WATSON: I am not familiar with the situation in Western Australia. I know that in London many women carried them and it was quite an effective means. I prefer them to pepper sprays.

Hon Peter Foss: The Government would be open to that suggestion if you showed it was a valid defence for women.

Hon GIZ WATSON: My third point is whether the Bill will achieve the objects stated in the second reading speech. I took exception to some of the wording in the second reading speech. For instance -

> Day after day members will have seen and read of knives and other offensive weapons being used in robberies and assaults, and of gangs fighting in our streets with nunchakus, knives, machetes, baseball bats, pickets and so on.

I do not know which street the Attorney General lives in, but we not have reached that stage yet in the street in which I live.

Hon Peter Foss: I can tell you where it does happen. It happens in my kid's school.

Hon GIZ WATSON: I am not suggesting it does not happen sometimes.

Hon Peter Foss: When my kids were at school gangs of kids turned up regularly armed with those things. You will find it in Northbridge at night.

Hon GIZ WATSON: It is a relative matter. There must be a balance between real concerns about escalating violence and a perspective on how much it is happening. In other countries these levels of violence are high and I have experienced them, but Perth is not doing that badly relatively speaking.

Hon Peter Foss: No, but it is not a bad thing to get in first before it reaches that level.

Hon GIZ WATSON: I am querying whether this legislation will achieve that. I do not oppose the setting up of a list of prohibited weapons and dealing with that, but I am concerned about other aspects of the Bill. The Bill seeks to strike the right balance between the powers of the police and the powers of the individual, but my major objection is that it seeks to reverse the onus of proof. That is not acceptable. I do not accept that people will be held guilty and they will be forced to prove their innocence.

Hon Peter Foss: They must only prove why they have those items in their possession.

Hon GIZ WATSON: That is fundamentally a reversal of the presumption of innocence.

Hon Peter Foss: Do you not think people with a weapon should be asked to explain why they have it?

Hon GIZ WATSON: It depends on what is defined as a weapon. For a number of reasons, I do not accept that. First, it is not necessarily easy for a youth to defend himself against this provision and provide that proof. In the ongoing climate of reduced access to legal aid, there is concern, particularly among those who work with young people who get tangled up in the legal system, about this reversal of the onus of proof.

Hon Peter Foss: First, you must prove it was carried and possessed in circumstances which give reasonable grounds for suspecting the person had that intention.

Hon GIZ WATSON: I have taken counsel from people working in the criminal law area and they are of the opinion that it is not acceptable.

Hon Peter Foss: They always are.

Hon GIZ WATSON: In this case I agree with them. The second matter about which I have some concern - I seek some clarification - is the exclusion relating to a police officer, police employees and people providing a service or assisting police to carry or possess such weapons. Does that also allow these people to purchase, sell, supply or manufacture prohibited and controlled weapons? I am not clear about the reason for excluding the police and their assistants.

Hon Peter Foss: It is only in the performance of their functions.

Hon GIZ WATSON: I understand the exclusion that allows the police and others to have a prohibited or controlled weapon if they are handing it in. One exclusion is for handling and bringing in such a weapon and the other is for purchasing, selling, supplying or manufacturing.

Hon Peter Foss: A person does not commit an offence because of something done by that person in the performance of his functions.

Hon GIZ WATSON: What functions would the police carry out that require them to continue to hold onto a prohibited or controlled weapon?

Hon Peter Foss: If they seize the weapons and take them somewhere, while they are in their possession they clearly have a prohibited weapon. They must hold them -

Hon GIZ WATSON: Until the court has them. After that, why is there a need for police to have those weapons?

Hon Peter Foss: There is no need. It is only while they are doing it in the performance of their functions.

Hon GIZ WATSON: Once the court case is complete, there is no further justification?

Hon Peter Foss: No, but every now and again the police show people these weapons, and they have a museum.

Hon GIZ WATSON: I am concerned not only about the possession and handling of prohibited and controlled weapons but also about the purchase, sale, supply and manufacture.

Hon Peter Foss: As long as it is done in the performance of their functions, it is all right.

Hon GIZ WATSON: What about purchasing them?

Hon Peter Foss: If it is not legitimate for them to purchase them, it is not protected. You do not prescribe it in advance, otherwise you will leave something out that should be in. It is defined by purpose.

Hon GIZ WATSON: The way the Bill is drafted, it is acceptable for people to defend their homes with one of these weapons, but not to defend themselves on the street. It is an interesting differentiation. It does not help homeless people who might be set about on the street. It is an indication of how highly our society values property above people. Obviously, other laws allow people to defend their property but, again, I raise that in the context of what can be used in self-defence. Why is there differentiation between people defending their double-brick homes in the suburbs and defending themselves outside a nightclub, when they could not use that reason for defence?

Hon Peter Foss: It is at the dwelling, not for the purpose of defending the dwelling. A person is allowed to have it in his house but is not allowed to carry it on the streets. It does not say that it is only for defending one's house; it is for defending oneself.

The PRESIDENT: We are at the second reading stage but the issues we are canvassing would be more appropriately debated in committee.

Hon GIZ WATSON: Has the Bill been thoroughly debated? Apart from the issue of the onus of proof being reversed, the substantive part of this Bill will be dealt with in regulations, as has been stated by Hon Nick Griffiths. That is a major problem. It is poor practice to leave the substantive part of this legislation to be dealt with in the regulations. We have been kindly provided with a draft of those regulations, but the second reading speech notes that that draft is not final.

Hon Peter Foss: It cannot be final.

Hon GIZ WATSON: As decision makers we should be provided with a full list of the weapons so that we can debate each item on its merits. It is not good enough to have this dealt with in regulations. This is very much about executive versus parliamentary control. I have had those comments supported by members of the Law Society who have raised the same issues with me. It is also unfortunate that this legislation has been debated tonight, because I understand the Law Society will produce a report in a few days.

Hon Peter Foss: Really! It has taken its time.

Hon GIZ WATSON: That is what I have been told. I would have found it useful to have been able to read that report before debating this Bill.

Hon Peter Foss: I always like to have the Law Society's views, but unfortunately sometimes they take some time to be produced.

Hon GIZ WATSON: I will listen with interest to the other contributions to this debate. Suffice to say, the Greens have severe reservations about this Bill and it is unlikely to gain our support.

HON NORM KELLY (East Metropolitan) [9.12 pm]: The Australian Democrats support the principles of this Bill, but have serious doubts about some aspects of it. We can appreciate why the Government wants to implement this type of legislation, but we are concerned about how it is to be implemented and the resulting wide-ranging implications. I will not refer in detail to the issues already raised by Hon Nick Griffiths and Hon Giz Watson, although we have similar concerns, but I look forward to the Attorney General's response.

One issue of serious concern is the change to the burden of proof. That change has the potential to undermine the foundation and legitimacy of our legal system, which is the presumption of innocence until proven guilty. Even though this is not without precedent, Parliaments should look very carefully before agreeing to such a reversal.

Hon Nick Griffiths outlined the Australian Labor Party's concerns about the extensive use of regulations and the severity of penalties for offences that have a close connection with the regulations. The Democrats are also concerned about the level of the penalties. Combined with the reversal of the onus of proof, there is a danger that injustices will occur.

The wide-ranging powers of stop, search and seizure without a warrant and pre-arrest will burden police with an enormous discretion, and that will make them increasingly vulnerable to legal challenges. The Democrats understand why the police want the increased power - it may make their job easier - but at the same time it may place them at risk of such legal challenges. While police officers in this State remain open to such challenges, we are in very dangerous territory.

Currently, the pre-arrest and search and seizure powers pertain primarily to offences involving stolen goods. The need for a warrant is highlighted in the judgment in Parker v Churchill in 1985, which states that what is required by law is that the justice of the peace stand between the police and the citizen to give real attention to the question of whether the information proffered by the police justifies the intrusion desired. We need those protections when we have the potential to intrude on personal liberties. This syphoning process exists to protect the citizen and police officers, because it ensures the requisite lawfulness - the breach of which could undermine the ability to gain a successful conviction.

The Democrats have an amendment on the Notice Paper and others are being drawn up and will be on the Notice Paper tomorrow. We want a review of this legislation because when granting these wider police powers it is important that we assess at the earliest possible stage their effectiveness, use and possible abuse. I will propose that a review take place after 12 months. Often the review process is undertaken five years after legislation comes into effect, but it is critical that we undertake an early review of the effectiveness of this legislation. I understand that the Police Service has a policy of conducting a review of any legislation involving police powers or the laws it must administer after 12 months. I will propose that the Parliament tie into that system by requiring a ministerial response to such a review.

The clauses relating to search and seizure, both with and without a warrant, are of concern. An offence can simply mean a reasonable ground for suspicion of having that intention. That provides a broad scope for interpretation. When that is combined with the search and seizure powers without a warrant and a police officer having a suspicion on reasonable grounds, one sees how broadly these laws can be interpreted. Although we like to think that police officers will use those powers with the best intentions, we must ensure that we protect against possible abuse and maintain citizens' rights despite those wide police powers.

Another example of the Government apparently wanting overly to broaden powers is clause 14, which relates to search and

seizure with a warrant. A warrant issued under that clause entitles entry to a place at any time. I would like to hear the Attorney General's comments on why that seems to be a broadening of the -

Hon Peter Foss: The Gypsy Jokers, the Club Deros and others - we were asked today what we will do about them. You don't think that we should be able to go in with a warrant at any time and get 'em. I really wonder what you think we are going to do with the bikies.

Hon NORM KELLY: It is interesting that the Attorney General refers to bikies and gang warfare. There is dangerous potential for legislating in the midst of what is occurring at the moment.

Hon Peter Foss: That was not the reason, but it is a bloomin' good reason after the event.

Hon NORM KELLY: But getting back to the time of being able to enact a warrant, section 7(1)(I) of the Criminal Code allows for entry by day unless especially authorised. The current powers allow for entry at night, but that must be with a special authorisation. That is a protection. When a warrant is issued, a private citizen's rights are protected unless there are special circumstances to deem it necessary for entry at night. Why cannot that provision be included in the Bill? That would not limit the correct use of those powers, but it would mean that the police would need to satisfy the person issuing the warrant that they needed it at those times. The Attorney General mentioned a scenario in which it might be necessary to search a bikie gang in the middle of the night - I can understand that - but the same provision as exists in section 7(1)(I) of the Criminal Code, rather than the power to enter a place at any time, would not preclude that. It is not trying to stop the Police Service being effective, it is trying to ensure that there are proper controls and safeguards.

On the extensive dependence on the regulations that would accompany the legislation, Hon Nick Griffiths mentioned possible disallowance and that we could wait months before disallowance was allowed. If possible, it is important to access draft regulations prior to debating the Bill so that we can pre-empt potential problems that may arise in the regulations. It is far better to do that in the early stages than to go through the procedure of disallowance, as that will often occur months after gazettal. It negates the proper role of Parliament and it adds to the confusion of people who must apply such regulations. I think that the sixteenth report of the Joint Standing Committee on Delegated Legislation referred to the benefits of departments putting forward regulations prior to gazettal so that there is scrutiny and appraisal prior to gazettal, once again to prevent potential problems at a later stage.

Another aspect is how well resourced the Police Service is in applying the legislation. It is clear that the Police Service is under-resourced.

Hon Peter Foss: Rubbish. We doubled its budget. It is nonsense to talk about it being under-resourced.

The PRESIDENT: Order! This is the second reading debate. We are meant to be discussing the general principles and policy of the Bill.

Hon NORM KELLY: Especially when there are such broad stop-and-search powers, police on the beat can stop people on the suspicion that they may be carrying a weapon. That has potential to increase the workload of -

Hon Peter Foss: It is more likely to reduce the workload because they don't have to fart around with all the funny stuff that they have had to do until now.

Hon NORM KELLY: It depends on whether they are to be effective and are to target what they define as suspect groups. It will be interesting to see whether Aborigines who are loitering in an area of town will be more prone to be stopped and searched.

Hon Peter Foss: They will stop the people who are likely to have weapons. They already know who is likely to have weapons.

Hon NORM KELLY: Police who may be biased towards people whom they suspect -

Hon Peter Foss: Anything could happen.

The PRESIDENT: Order! I am trying to progress the debate. Hon Norm Kelly will address me in the Chair, and I will ensure that no-one interjects.

Hon NORM KELLY: Thank you, Mr President. I am relaying some concerns that police officers have expressed to me about the legislation. Although some police like the idea of increased powers, they are also wary of their ability to utilise them, not only in respect of their workload, but also, as I have said, the liability to which they are subject.

There are other matters that I wish to pursue but I will save most of my comments until the committee stage. Although the Australian Democrats support the Bill, we do not support it in its current form. I look forward to a constructive debate in committee.

HON PETER FOSS (East Metropolitan - Attorney General) [9.28 pm]: I thank Hon Nick Griffiths and Hon Giz Watson

for some positive and helpful comments. I must say that Hon Norm Kelly's contribution was the biggest load of garbage I have heard in a long time. It seems that he does not realise how police operate. If we give police a power, when the occasion arises they can use it. In fact, it makes their job easier. Someone does not use a certain tool unless he needs to use it. The problem has arisen that, currently, the Police Act requires a police officer to prove intent to use a weapon. It is perfectly acceptable for someone to carry a weapon as long as he does not intend to do anything nasty with it. In fact, it is perfectly acceptable for someone to carry something which would not normally be considered to be a weapon as long as he did not intend to do anything nasty with it. As we all are aware, occasionally it is extremely difficult to prove that intent unless the person has actually taken the thing and started to use it. The Bill states plainly that there are certain things which one cannot in any circumstances justify carrying. They are the items that are prohibited. Although a person may be able to carry others, that person should at least have a lawful excuse for doing so. Other items are of a nature whereby they are capable of being used as a weapon, but they are not prohibited unless a person intends to use them for injuring or disabling a person or causing a person fear. That third category is taking what currently exists in the Police Act and restricting it to those which are not obvious weapons. However, they are, as quoted by Hon Nick Griffiths, dangerous articles which are potentially capable of being used as weapons. However, they are not obvious weapons; they are things a person might legitimately have.

Therefore, the three categories include things that, by no stretch of the imagination, a person could possibly justify having, and the police can charge a person with simply having them. They do not have to prove the intent. The Government is saying a list will be published so that people know they cannot use those articles. A person can have other items only if he is prepared to explain to the public, and anybody who requires him to, why he has them. It is not unreasonable or unusual to say to people that they must say why they have an article. If it is on the list, a person knows that if he takes it somewhere, he can be asked to explain why he has it. That is not an unfair thing to say to people. Members should consider what is in the regulations. I am sure they could think of similar circumstances where one could say, "If you are going to carry one of those, you should be prepared to explain why you are carrying it."

Hon Norm Kelly: What is the situation when the weapon is not visible?

Hon PETER FOSS: Let us deal with this question first. In the Weapons Regulations, schedule 2, "Controlled weapons", lists a number of items. A person might have a baton flail because he says he is a martial arts expert and he is just about to attend his martial arts course. If somebody is found in the middle of the night in Northbridge with a baton flail, it may be that it is reasonable to ask for an explanation and not to believe that explanation. The police should be able to say to people like that, "I don't particularly like your excuse. I am going to charge you." Firstly, the policeman will take the weapon from the person, because he will not want the person to go off with it and then later have to prove that that person had possession of it. For the safety of the people in the area, the policeman will take possession of the baton flail and charge the person with not giving a proper excuse for being in possession of it.

It is perfectly reasonable to have a bow. My son does archery every Saturday. I am sure most policemen would not be disturbed to see a 13-year-old boy going to an archery class to shoot arrows, and I do not think he would ever be called upon to explain. However, if he were in Northbridge at two o'clock in the morning - which I very much doubt, knowing my son - it would not be unreasonable to say to him in those circumstances, "What is your reason for having that bow? What is your excuse?" That is not a change of the onus. We are saying in advance that if a person is found carrying these things, that person will legitimately be asked to explain why. That is not a change of the onus of proof. The onus of proof is still on the prosecution to prove all these elements. However, the person is told that if the prosecution can show that he was carrying one of those listed items and the excuse he offered was not a lawful excuse, he will be guilty of an offence. Therefore, a person knows perfectly well that if he goes out carrying one of these objects, that is the situation.

An argument could be mounted that some of these items could be put in the prohibited weapons category. Reference is made to a dagger, a double-end knife, a fixed baton, and a halberd. A person could reasonably have a halberd. People from the Society for Creative Anachronism, I think it is, go around dressed in armour and belt each other with swords and things of that nature. Reference is made to hand or foot claws and an imitation firearm. An imitation firearm is interesting, because it is not inherently dangerous. It may cause fear, but a person cannot be hurt with it. However, the fact that it can cause fear is important. Reference is made in schedule 2 to a metal whip, a pressure point weapon, a pronged weapon, a sickle or scythe weapon and a spear. During the course of this debate it has occurred to me that many indigenous people carry spears. Obviously they can offer the excuse that they are going hunting kangaroos. Similarly, dealing with spear-guns, an article made to discharge a spear would probably include a woomera. Again, a person might be in Northbridge at night with a spear and a woomera because he is going to do an Aboriginal dance, and as part of that dance, that person will use his spear. On the other hand, if a person is not of indigenous background, is maybe dressed in black jeans and black shirt, is in the company of a number of people carrying nunchakus, and he has a spear with a woomera, it may be considered that that is not a lawful excuse. However, it is a matter for the court to decide whether a person has given a lawful excuse. It is reasonable to ask people carrying spears in Northbridge at night, "Why are you carrying a spear?"

Hon N.D. Griffiths: I thought the minister was going to talk about one of his many contributions to the arts.

Hon PETER FOSS: That is true; I was carrying a spear. Admittedly, my spear was made out of cardboard, and it may not have been able to create much havoc.

Hon N.D. Griffiths: The people the minister scared would be pleased to hear that.

Hon PETER FOSS: Being an imitation spear, it would not come under the heading of an imitation firearm. Reference is made to a sword, a throwing blade or knife and a throwing star. Again, these are martial arts items. One thing that has changed since the Police Act originally came into effect is that martial arts have become very popular, and as a result one will find people carrying things in the ordinary course of events, with a perfectly reasonable excuse, that would never have been considered likely to be carried in the past. Therefore, when these things are carried, it is not unreasonable to say, "What is your excuse? What are the reasons for doing so?"

Hon Norm Kelly: What about when somebody is carrying martial arts weapons in his car, and that person is not necessarily going to a martial arts class, but has simply left them in his car?

Hon PETER FOSS: A lawful excuse could plainly be, "I carry them in my car all the time. I go to and from my martial arts classes, and I keep them in my car. They are always carefully locked in the boot." This concept of people being called upon to give an explanation is an old one. Section 65 of the Police Act states -

> Every person who shall commit any of the next following offences shall on summary conviction be liable to a fine not exceeding $500 or to imprisonment for any term not exceeding 6 calendar months -

Subsection (4a) deals with the very things we have been talking about. However, in subsection (4aa) we have things like protective jackets. Protective jackets do not cause anybody any harm, but they do give rise to a reasonable suspicion that people intend to protect themselves. They might use them, say, in a bank robbery, and they will be protected from the lawful activities of the police by wearing a flak jacket. Section 65(4b) is an old section, but it is interesting. It states -

> Every person who, without lawful excuse, carries or has in his possession any jumper leads, silver paper, wire hooks, cutting implements or other implement or device to facilitate the unlawful driving or use of a motor vehicle.

It is often hard to prove what the person was going to do with the silver paper or the jumper leads at night. However, it is reasonable to say, "What are you doing in this car park without any keys, but with some silver paper, jumper leads and wire hooks?" Of course, if the law says under those circumstances that a person should give an explanation, the law is not being unreasonable or reversing the onus of proof. It is asking why on earth a person is doing it.

Section 66 contains some similar provisions. Section 66(4) states -

> Every person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person), any picklock, key, crow, jack, bit, or other implement of housebreaking or any explosive substance.

Again, if a person is wandering around with a picklock, a key, a crow, a jack, bit or other implement for housebreaking, he may be asked to say why he has it. That is not unusual at all. It has a presumption of those relating to other articles. I do not think it is going too far. It is new, but I do not think it is unreasonable. In part, clause 8 states -

> (2) A person is presumed to have had the intention referred to in subsection (1) if -
>
> (a) the article was carried or possessed in circumstances that give reasonable grounds for suspecting that the person had the intention; and
>
> (b) the contrary is not proved.

That is saying that we must at least prove the circumstances. We must give rise to that. One reason we must do that is that we have this wonderful golden rule which has grown up in the past 80 or 90 years of proving every element of defence. We have long had in our English law the idea that, if people can show sufficient circumstances, it is reasonable to ask them to indicate why it is that we call on the very person who can answer the questions to tell us why. It is not unreasonable and unknown.

I will go through the comments made by Hon Nick Griffiths. He quite rightly picked the genetic origin of the legislation as Victoria. He asked whether the offence is under the Act or under the regulations. The nature of the offence is under the Act; the particular item which fits within that is covered by the regulations. That is where the difference arises. There is a concern, and I share it, that we may end up creating an offence by exception. Let us refer, for example, to the proposed regulation under clause 7(4). It states that spray weapons may be modified or used to discharge oleoresin capsicum prescribed for the purposes of proposed new section 7(4) and that that proposed new section does not apply to a weapon referred to in subregulation (1) if it is carried or possessed by a person for the purpose of being used in lawful defence and in circumstances that may arise when the person has reasonable grounds to apprehend.

Hon N.D. Griffiths: Is that under the regulations?

Hon PETER FOSS: Yes. The point made by Hon Nick Griffiths does apply to that aspect. To some extent, because we are prescribing the conditions of the exception, we are prescribing an offence. There is an offence of carrying an oleoresin spray other than for lawful defence in circumstances that may arise when people have reasonable grounds to apprehend. To that extent, I share some of that concern. It has been avoided in the House in clause 8(3) where that excuse is provided.

In answer to the question asked by Hon Giz Watson, this does not relate to people defending their property, but rather when people are in their house. The difference is that we can keep all manner of things in our house, but it is a totally different proposition when we go out onto the highways and byways carrying those same items. There is no reason that having a butcher's knife in a house should not have fairly general support, but when a person walks out of his house carrying that butcher's knife, the situation changes slightly.

I know I should not mention this - every time I do, my daughter gets very upset - but some time ago we were burgled. My daughter came home as the burglars were swiftly departing, and I think it was her coming home that caused them to depart. She then got her brother's hockey stick and proceeded to walk around the house with hockey stick in hand to determine whether the burglars were still there. I have no doubt that her intention was to use the hockey stick for either offensive or defensive purposes, and quite legitimately so. I think it was extraordinarily brave of her to do that. I might have stepped outside and called the police. That is something that should be catered for within this legislation. The point has been raised that it is difficult to cater for all these circumstances in the legislation. As I say, it is quite legitimate to keep all manner of things in our house, but it is a different matter when people step out onto the highways and byways with those same items.

There is no doubt that the police are against pepper sprays, not just the Western Australian police, but all police. It is probably fair to say that the police quite strongly desire those sprays to be banned. Just as strongly, Cabinet and the coalition parties are determined that people should be allowed to have them. I might seek some more information from Hon Giz Watson as to these acoustic weapons. I am not sure whether she was talking about only the things that make a loud noise or the things that the officers from the Special Air Services Regiment throw into a house before diving in through a window. The items in the legislation, I think, refer to the devices the SAS people use. I do not think the items that make loud noises would be counted as acoustic weapons, but the ones the SAS people throw in the house before jumping in through the window would be included.

Hon N.D. Griffiths: I have not seen that movie.

Hon PETER FOSS: It was not a movie. It happened while I was living in London. We are determined that the sprays should remain in the legislation. Again, Hon Giz Watson quite rightly said that a number of matters must be considered. First, how dangerous things are and how dangerous people perceive them to be. They are two quite different things. She is quite right in saying that Western Australia is one of the safest places in the world. That does not alter the fact that people here have the perception of living in a very dangerous place. Currently a young lad from Brazil is staying with my family. When he hears us talking about the dangers in our streets, he laughs. He says that all people in Brazil just about live in fortified encampments. He has never come across a place as safe and as nice as Western Australia.

That does not alter the perception: People fear crime. It is not as bad as being the victim of crime, but it approaches it. It is not a matter of how often victims use oleoresin sprays to protect themselves; it is how many thousands of people see themselves as potential victims, who feel brave enough to go into society and move around because they know in their handbags they have the spray. I have met women who have said that on many an occasion they have felt threatened, but felt comforted by the fact that they had with them their spray.

The argument that the spray can be used against police or in offences is irrelevant. They will continue to be used in offences because criminals can get hold of not only sprays, but also massive machine guns that are not even allowed into Australia. Those people will get hold of those things no matter what, and they will stash them somewhere. If it means that citizens feel safer as a result of carrying these sprays with them - they may also be safer; the important thing is that they feel safer - that is very important. That is why we vehemently support oleoresin sprays. It is not that we are unaffected by statements by the police that they have been used against police and in robberies and for this, that and the other. That may very well be the case. It is a good thing that victims have not used them. Perhaps the sprays are working.

There is another interesting aspect to being a victim: If people walk around feeling like victims, often they will become just that. When we were living in New York, my wife had a friend who was continually being propositioned and followed, and all sorts of things happened to her. I consider my wife to be a far more attractive woman, but these things did not befall her. The reason was that my wife walked around with considerable confidence in her step and did not look like a victim. Because of that, she was left alone. If we do not allow women, in particular, to carry these sprays and to have a feeling of confidence, they are likely to be victims simply because of the difference in their demeanour. There may very well be women who daily are protected because they carry with them the spray which gives them the confidence to move around.

Cabinet and the coalition parties, and I am pleased to hear the Opposition and I detect the Greens (WA), support the oleoresin sprays. We will certainly maintain that position. Hon Giz Watson plainly said that the behaviour of society is the greater determinant of whether we have crime or whether we have attacks, or whether we do not. We have supported this

type of legislation because we believe it makes a difference to the type of society we have. I do not think we would like a society like that in the United States, where weapons are freely available and frequently carried. We think that would change the nature of our society. Some politicians are viewed with some disquiet when they refer to the police carrying weapons regularly. That seemed to happen without any political debate. It was an administrative decision and, given the mood of this Parliament, had it happened in our time, both sides of the House might have had severe reservations about that occurring. However, that happened.

Hon N.D. Griffiths: That happened in the early 1980s.

Hon PETER FOSS: That happened on an increasing number of occasions. I did not particularly like that, and had I been in politics at that time I would have raised that matter and opposed it.

The arguments that have been raised are quite legitimate. We do not propose to make major changes to the law. We propose to have three categories of weapons: Those for which no excuses can be made for carrying; those for which excuses can be made for carrying, and for which excuses should be offered; and those which are not normally considered to be weapons, but which it will be an offence for a person to carry with intent to use as a weapon.

I understand that the Opposition also supports the idea of increasing the fines. We know that specific cases do arise. My children's school was visited regularly by gangs of youths who carried out fights. We live in Mt Lawley, which is supposedly one of the better suburbs. However, a number of gangs of youths turned up there with these sorts of weapons, and we know that they exist. We are trying to give the police some powers which they can use. It is fortuitous that this bikie gang warfare has occurred recently, because it illustrates plainly why we need to have the power to say that certain weapons are not allowed. The police must have the power to take action either with or without a warrant. If the police were walking along the street at night and saw kids coming along with things stuffed into their pockets, they could not wait to take action until they had obtained a warrant, because by the time they came back with the warrant, the kids and the weapons would have disappeared.

This legislation is necessary. It strikes an appropriate balance. The question raised by Hon Nick Griffiths about large offences being created by regulation will not arise other than with the possibility of creating an offence by exemption. We can deal with that matter in committee. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Referral to Standing Committee on Legislation

HON N.D. GRIFFITHS (East Metropolitan) [9.53 pm]: I move -

> That the Weapons Bill be referred to the Standing Committee on Legislation for consideration and report, and that the committee report no later than 10 November 1998.

We have just agreed to the second reading of this Bill because we agree with its policy. We want what this Bill seeks to achieve to be put into law as soon as reasonably possible. I remind the House of my comment in the second reading debate to the effect that the Government has had this matter hanging around for a considerable time. We want this Bill to be referred to the legislation committee for a short period so that that committee can consider, first, the role of the regulations in determining the element of criminality. As this Bill is worded, the regulations will determine which items will have the nature of the criminality. Therefore, that matter needs to be examined by the legislation committee.

That committee has five members, three of whom are members of the coalition parties. Therefore, I am not saying that we should throw this legislation to the wolves of some negative Opposition. I note from a report which was tabled today that the legislation committee has shown itself to be doing good and solid work and to be quite capable of doing the job.

The second reason that this matter should be referred to the legislation committee is that the proposed penalty is two years' imprisonment. Ordinarily one would expect that to be six months.

I would like to be able to move that the sitting of the House be extended, but that is not my prerogative -

Hon N.F. Moore: I am sure we can give you that power one of these days.

Hon N.D. GRIFFITHS: If the Leader of the House wanted to accommodate me and I could seek leave to deal with that matter -

Hon N.F. Moore: I have asked you people on the odd occasion to sit beyond 10.00 pm but that has been too difficult.

Hon N.D. GRIFFITHS: I am so concerned to get this matter moving that I have proposed to the Leader of the House that we sit beyond 10.00 pm in order to deal with this question.

This Bill has a more detailed use of regulation to deal with matters than has been the case in many of the Bills that we have

been asked to consider. I am a member of the Joint Standing Committee on Delegated Legislation, and in future I and other members of that committee may be asked to do a very big job indeed if this Bill is passed in its present form, without the benefit of the considered views of the legislation committee.

The legislation committee will have a huge task in examining this Bill. Some of the matters that committee should consider are the definition in clause 3 of "controlled weapon", which means an article prescribed by regulations to be a controlled weapon; and clauses 6, 7, 8 and 10, among others.

HON PETER FOSS (East Metropolitan - Attorney General) [9.58 pm]: Because of the late hour, I will say merely that I object to this motion and believe it is quite unnecessary. However, if this Bill were to be referred to the Standing Committee on Legislation, the earlier it was referred to that committee, the better. I oppose the motion.

HON SIMON O'BRIEN (South Metropolitan) [9.58 pm]: I also oppose this motion. I want to discuss aspects of this Bill in committee, and I fear that I would not be able to do that if we were to go down this path. I further believe that this motion is totally unnecessary, and that despite what Hon Nick Griffiths has said, a referral will delay the introduction of this legislation.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Mark Nevill		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon Greg Smith
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon N.F. Moore	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Pairs

Hon J.A. Cowdell	Hon W.N. Stretch
Hon Ken Travers	Hon Dexter Davies
Hon Tom Helm	Hon Barry House

Question thus passed.

FRIENDLY SOCIETIES (WESTERN AUSTRALIA) BILL

Receipt and First Reading

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

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [10.02 pm]: I move -

That the Bill be now read a second time.

The Bill before the House implements the Friendly Societies (Western Australia) Code as a law of Western Australia. The code is set out as a schedule to the Bill. The Bill is part of the legislative process required to include national uniform regulation of friendly societies within the framework of the existing financial institutions scheme which currently regulates permanent building societies and credit unions.

The code set out in the schedule to the Bill is legislation which has been adopted through an application of laws mechanism by all jurisdictions in Australia, other than Western Australia. Western Australia has agreed to introduce into its Parliament legislation consistent with the model legislation prepared in Victoria. This is done by providing that the code set out in the schedule, which is similar in all material respects to the Victorian model legislation, becomes a law of Western Australia.

It was decided that Victoria would provide the model for the legislation, as friendly society regulation is more significant to Victoria than any other Australian jurisdiction. Approximately 37 per cent of Australian friendly societies are located in Victoria and Victorian societies control approximately 82 per cent of friendly societies' funds in Australia. In the 1995-96 financial year Victorian friendly societies controlled just under $8b of the gross total assets under the control of friendly societies in Australia which stood at $9.7b. In contrast the Western Australian industry is less than 1 per cent of the total Australian industry with funds under control of under $80m.

Friendly societies initially operated as fraternal organisations providing benefits to meet contingencies facing members in times of sickness, retirement and unemployment, and on death. During the 1980s friendly societies took advantage of favourable treatment available under the commonwealth Income Tax Assessment Act 1936 and entered the field of single premium insurance policies or bonds, resulting in an unprecedented growth for friendly societies, particularly in Victoria. The main services offered by friendly societies may be summarised as life insurance, health insurance, retirement villages, superannuation and funds management.

Because of the unique structure of friendly societies, the state ministers who were members of the Standing Committee of Attorneys General decided that discrete legislation should be prepared rather than integrating friendly societies into the Financial Institutions Code. Discrete legislation is required because the structure and activities of friendly societies are different from the structure and activities of permanent building societies and credit unions.

Whereas the main business of permanent building societies and credit unions is similar to traditional banking - that is, taking deposits and making loans - friendly societies do not offer banking products.

The code is the product of negotiations and discussions which have been proceeding between the States and Territories, and to some extent the Commonwealth, following the resolution of the Ministerial Council for Financial Institutions in May 1994 which adopted recommendations of the special Premiers' working group on non-bank financial institutions. This working group was established to examine proposals for national uniform regulation of NBFIs after heads of government agreed in October 1990 to reform the legislation covering the operations and supervision of NBFIs to contribute to the stability of the financial system. The working group completed a paper which recommended that friendly societies be brought within the framework of the existing financial institutions scheme. The working group paper identified deficiencies in the then current friendly societies supervision, including -

> non-uniformity in prudential standards and supervisory practices across States, which inhibits efficient interstate expansion by friendly societies;
>
> potential for loss of public confidence in individual institutions, which could lead to loss of confidence in the industry as a whole; and
>
> constraints on existing supervisors due to a clear lack of legislative authority.

In May 1994, MINFIN resolved that friendly societies be subject to national uniform supervision as recommended in the working group paper and resolved that -

> friendly societies be integrated into the financial institutions scheme with the Australian Financial Institutions Commission as the sole national coordinating and standard-setting body and with supervision to be undertaken by the state supervisory authorities. The SSA for Western Australia is the Western Australian Financial Institutions Authority. Division of responsibility between AFIC and the SSAs is to mirror the existing financial institutions legislation;
>
> an implementation task force, accountable to the ministerial council, be established to develop discrete legislation consistent with existing financial institutions legislation for a uniform national scheme of supervision; and
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> that initial legislation be introduced into the Parliament of Victoria and adopted by jurisdictions.

The Financial Institutions Agreement, which is to be amended to incorporate friendly societies, will govern the continued operation of the financial institutions and friendly societies schemes. Under the agreement the code cannot be amended without the approval of the ministerial council, and so far as Western Australia is concerned an amendment is not effective until it has been passed as a law of Western Australia. Each State and Territory will also be obliged not to submit to its Parliament legislation which will conflict with or negate the operation of the uniform legislation. By these terms of agreement, ongoing uniformity in all key areas will be achieved and maintained.

It is appropriate that I now draw attention to how the code overcomes the limitations of the existing system of regulation of friendly societies, and comment on the other more important aspects of the code. The legislation incorporates comprehensive provisions for the formation, registration, management and regulation of friendly societies. Directors' duties are similar to Corporations Law standards in the interest of accountability to members of friendly societies and the public.

SSAs will have similar duties and powers to those they currently have in relation to the supervision of permanent building societies and credit unions under the Financial Institutions Code. The functions of the SSAs include the registration, supervision and regulation of societies; the supervision and enforcement of compliance by societies with the code and prudential standards; ensuring that an effective and efficient system of prudential supervision is applied to societies; and the protection of interests of members of societies. The scheme of supervision will be industry funded through payment of annual levies by friendly societies. This levy system already applies to other financial institutions such as permanent building societies and credit unions.

The legislation will allow easier interstate trading by ensuring consistency in the supervision practices of the state regulatory bodies. In addition, the code will allow a friendly society which is registered under the friendly societies legislation of a participating State to carry on business in Western Australia, or vice versa, as a foreign society. These provisions are based on the Financial Institutions Code and allow for a foreign registration procedure based on two considerations - namely, the society obtaining a compliance certificate from its home SSA, and providing the host SSA with the details of the society's nominated agents in this State.

A friendly society conducts its business activities by establishing separate benefit funds to support the society's contractual obligations to its members. Although the activities undertaken by a friendly society are diverse, the administration and organisational infrastructure of a friendly society are financed by its management fund as distinct from the separate member benefit funds. The existence of benefit funds allows friendly societies to engage in such a diverse range of activities because they have an operating structure to legally segregate different activities. It is essential that the legislation take into account this structure, and therefore detailed provisions dealing with the concept of benefit funds are included in the code. For example, the code includes provisions which deal with the application of assets of benefit funds in a winding-up. These provisions are based on similar provisions in the commonwealth Life Insurance Act which deal with the application of the assets of life offices statutory funds on a winding-up. These provisions ensure that the assets of each benefit fund are only available to meet the liabilities of the society which are referable to that benefit fund. The liabilities of a society which are not referable to a particular benefit fund are to be met by the remaining assets of the society.

Important provisions which have also been included in the code as a response to industry recommendations are those which allow a society to terminate a benefit fund without having to resort to a winding-up of the society as a whole, or to restructure a benefit fund; that is, to transfer the whole or part of one or more existing funds to another existing fund or to a new fund.

The fundraising provisions in the code reflect the proposals accepted by the Commonwealth in the interface arrangements relating to fundraising by friendly societies. These proposals provide that fundraising by friendly societies will be regulated under the code and not under the Corporations Law. The code incorporates investor protection provisions that reflect the protection available under the Corporations Law in relation to the offer of prescribed interests. The code requires a disclosure document to be prepared by a friendly society to be lodged with the SSA for approval before making an invitation to persons to apply for benefits in a benefit fund.

These provisions also include a regime of civil liability for those involved in the preparation of the disclosure document for misleading and deceptive conduct and for misstatements and omissions in disclosure documents. Further, the fundraising provisions set out a comprehensive regulatory scheme applicable to those persons who deal in benefits or carry on a business advising in relation to benefits, requiring that those who do so hold a securities licence under the Corporations Law or hold a proper authority from a registered friendly society.

An important change to be implemented by the legislation is to allow friendly societies to demutualise and issue permanent share capital. This is a major change in the structure of friendly societies which have traditionally been based on the concept of mutuality; that is, a structure without shares to signify ownership and a society not seeking to generate profit for owners. Friendly societies will be permitted by the code to issue permanent shares or redeemable preference shares.

Although this is contrary to the traditional structure of friendly societies as mutual ownership structures, an overwhelming majority of the industry has welcomed the opportunity to demutualise. The industry views demutualisation and the issue of permanent share capital as fundamental to its preservation in ensuring its competitiveness with alternative structures such as corporations.

The provisions allowing friendly societies to issue permanent, non-withdrawable, shares are based on the provisions in the Financial Institutions Code which allow permanent building societies to issue non-withdrawable shares. A society will not be permitted to issue permanent shares unless the society's rules authorise the issue of permanent shares and the society complies with the code and the prudential standards issued by AFIC. Like building societies, an existing friendly society that wishes to issue shares must undergo a process of demutualisation - that is, a change of ownership from members to shareholders who subscribe capital, which is to be set out in the prudential standards. The process will involve a vote on the decision to demutualise by the society's members and the proposal for, and basis of, demutualisation must be fully disclosed to members.

The legislation will facilitate mergers between societies and transfers of engagements, which is the process of one society transferring all or a part of its assets, liabilities, rights, obligations and so forth to another society, by including procedures similar to those in the Financial Institutions Code allowing societies to merge or transfer their engagements to another society.

A procedure is also included in the code for friendly societies to convert to companies, for example, life insurance companies or incorporated associations. The procedures for conversion to a company are based on those in the Financial Institutions Code. The procedure to allow conversion to an incorporated association has been included to allow certain small societies, some of which operate like a social club, to move to a less onerous regulatory regime and for various fraternal activities to

be conducted by incorporated associations. Only those societies without benefit funds may convert to an incorporated association as it is considered that societies with benefit funds must be subject to some form of prudential regulation for the protection of members of the funds.

I wish to bring to the attention of members the penalties which are set out in the code. The penalties are consistent with the significant penalties under the Financial Institutions Code for similar offences. However, it has been recognised that the penalties are, in some circumstances, inappropriate for the offences to which they relate. As part of the ongoing review of the Financial Institutions Code, MINFIN officers from the ministerial council are reviewing the penalties in the Financial Institutions Code in light of general commercial law principles.

One tenet of the financial institutions scheme is the desire to promote uniformity of legislation for like entities across Australia. To this end, the MINFIN secretariat has approached the Commonwealth with a view to conducting a joint exercise to work towards the consistent treatment of penalty provisions between the Corporations Law and the financial institutions legislation. It has been agreed by all jurisdictions that, in the interim, the penalties in the code remain consistent with the Financial Institutions Code with a view to amending the legislation at a later date to take advantage of the proposed review by MINFIN and commonwealth officers.

I also wish to mention the impact of the Financial System ("Wallis") Inquiry initiated by the Commonwealth. The inquiry has considered and made recommendations on the regulatory arrangements affecting the operation of the financial system. Bodies regulated under the financial institutions scheme, which includes friendly societies, may be transferred to commonwealth regulation on or before 1 July 1999. Despite this, I believe the national system of regulation to be implemented by the code should proceed as soon as possible as deferral would be to the detriment of the industry and to the staff of the regulator in Western Australia in the longer term.

Finally, I am pleased to say that the Australian friendly society industry as a whole, and the Western Australian Friendly Societies Association in particular, has expressed support of the code and is extremely keen to see the commencement of the scheme as soon as possible. I commend the Bill to honourable members.

Debate adjourned, on motion by Hon Bob Thomas

FRIENDLY SOCIETIES (TAXING) BILL

Receipt and First Reading

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

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [10.15 pm]: I move -

That the Bill be now read a second time.

This Bill supports the Friendly Societies (Western Australia) Bill. Section 13 of the Bill imposes a liability to pay any fees which may be prescribed by regulations made under that Bill, except to the extent that those fees may be taxes. In the case of taxes, section 46(7) of the Constitution Acts Amendment Act clearly directs that a Bill imposing taxation shall deal only with the imposition of taxation. The purpose of this Bill is to ensure that to the extent that any fee referred to in section 13 of the Friendly Societies (Western Australia) Bill may be considered to be a tax, it can properly be imposed. This Bill has no other purpose and operates entirely as a supplement to the Friendly Societies (Western Australia) Bill. I commend the Bill to honourable members.

Debate adjourned, on motion by Hon Bob Thomas.

BILLS (2) - RETURNED

Messages from the Assembly received and read notifying that it had agreed to the following Bills without amendment -

1. Births, Deaths and Marriages Registration Bill.

2. Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Bill.

House adjourned at 10.17 pm

QUESTIONS ON NOTICE

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

GOVERNMENT DEPARTMENTS AND AGENCIES

Financial Statements Prepared by Contractors

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

Page 7 of Auditor General's report on Ministerial Portfolios highlighted that some of the common problems identified during the audit were that financial statements were being prepared by contractors who had a poor understanding of the Government reporting framework -

(1) Which Government departments are using contractors to prepare financial statements?

(2) Can the Premier provide details of the names of the departments and contractors being used?

(3) Which of these departments had major accounting discrepancies?

(4) Will these departments be renewing the contracts with these contractors?

The answer was tabled. [See paper No 281.]

PROCLAMATION OF LEGISLATION

144. Hon NORM KELLY to the Leader of the House representing the Premier:

(1) How many pieces of legislation, passed by Parliament by the end of 1997, are yet to be proclaimed?

(2) What are these pieces of legislation, according to each Minister's responsibility?

(3) On what dates were these pieces of legislation passed by Parliament?

(4) What are the reasons for non-proclamation of these pieces of legislation?

The answer was tabled. [See paper No 282.]

TRANSPORT

Speed and Red Light Cameras, Revenue

184. Hon KEN TRAVERS to the Minister for Transport:

(1) How much revenue did the Department of Transport collect from speed and red-light cameras in 1997/98?

(2) How much does the Department of Transport expect to receive from speed and red-light cameras in -

(a) 1998/1999;
(b) 1999/2000; and
(c) 2000/2001?

(3) How much funding did the Road Safety Council receive in 1997/98?

(4) How much has been allocated to the Road Safety Council in -

(a) 1998/1999;
(b) 1999/2000; and
(c) 2000/2001?

Hon M.J. CRIDDLE replied:

(1) None. The Department of Transport did not commence collecting revenue from speed and red light cameras until July 1998 when the function was transferred from the Ministry of Justice.

The amount of revenue hypothecated to Transport - Office of Road Safety (one-third of speed and red light camera revenue to the Road Trauma Trust Fund (RTTF) in 1997/98) was $4.8 million.

(2) It is estimated if the current levels of camera deployment continues (known as the Enhanced Traffic Enforcement Program - ETEP - it is projected that Transport will collect:

1998/1999	$35.8 million ($11.9 million to the RTTF)
1999/2000	$29.7 million ($9.9 million to the RTTF)
2000/2001	$23.8 million ($7.9 million to the RTTF)

This assumes a 17 per cent reduction in the number of vehicles triggering the cameras in 1999-2000; and a 20 per cent reduction in vehicles triggering the cameras in 2000-2001.

(3)-(4) The Road Safety Council is constituted under the Road Traffic Amendment Act 1996 and this body has the function of recommending how moneys standing to the credit of the Road Trauma Trust Fund should be spent. The Minister for Transport approves all funding based on the Road Safety Council's recommendations. The Road Safety Council is not a body corporate and cannot enter into contracts or receive money or expend money directly. The Department of Transport, through the Office of Road Safety provides the administrative support to the Council when expenditure is required.

MR WILLIAM McSHARER, AQUACULTURE LICENCES

364. Hon GIZ WATSON to the Minister for Transport representing the Minister for Fisheries:

Mr William McSharer of Cordil Holdings Pty Ltd has applied for a series of aquaculture licences at Lancelin, the Cervantes Islands and Green Islets. Respondents in the public consultation process for the licences allege that Mr McSharer is inclined to use threats of violence, interference or litigation as stand-over tactics in his business dealings. I therefore ask -

Has the Executive Director of Fisheries WA investigated the possible criminal and business record of Mr McSharer in order to satisfy himself that the applicant is a "fit and proper person" to hold an aquaculture licence as required under Section 92 1(a) of the *Fish Resource Management Act 1994*?

Hon M.J. CRIDDLE replied:

The Executive Director of Fisheries WA is required to determine if an applicant is a "fit and proper person" to hold an aquaculture licence, as specified under Section 92 1(a) of the Fish Resources Management Act 1994.

DENMARK SHIRE, RATING CRITERIA

369. Hon BOB THOMAS to the Minister for Transport representing the Minister for Local Government:

(1) How many properties in the Denmark Shire were changed from unimproved to Gross Rental Value for rating purposes during the calendar year 1998?

(2) What specific local criteria were used to determine which properties would be changed from UV to GRV?

(3) Are there any properties in the Denmark Shire which meet those criteria listed in (2) above but were not changed to GRV?

(4) What was the reason for those properties listed in (3) above remaining on the UV rating system?

(5) What procedures were followed in making the changes from UV to GRV rating?

Hon M.J. CRIDDLE replied:

(1) 46. However, three of the properties contained more than one lot.

(2) The criteria is that the land is being used for non-rural purposes.

(3) Not known. Only those properties requested by the Council are considered for conversion.

(4) Not applicable.

(5) Under section 6.2.8 of the Local Government Act 1995, the Minister must have regard to the general principle that the basis of a rate on any land is to be the predominant use of that land. The council's application clearly identifies that properties are being used for non-rural purposes.

VOCATIONAL EDUCATION AND TRAINING, FUNDING FOR NON-CORE SERVICES

379. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

In regards to the new industry advisory arrangements for vocational education and training -

(1) How much funding has been allocated for non-core services?

(2) How much funding has been allocated to the following organisations -

(a) Chamber of Commerce and Industry;
(b) Housing Industry Association; and
(c) Building Industry Group Trust?

(3) In total, how many organisations were allocated non-core services funding?

Hon N.F. MOORE replied:

(1) $1,176,836.

(2) The following funding has been allocated:

(a) Chamber of Commerce and Industry $257,583;
(b) Housing Industry Association $35,370; and
(c) Building Industry Group Trust $59,919.

(3) 15 organisations.

SHIRE OF WANNEROO, CHIEF EXECUTIVE OFFICER'S APPOINTMENT

404. Hon KEN TRAVERS to the Minister for Transport representing the Minister for Local Government:

In relation to the appointment of Kath White as the chief executive officer of the Shire of Wanneroo -

(1) Who appointed Ms White to the position?

(2) Did the Minister for Local Government, or his office, play any role in the appointment process?

(3) If so, what role?

(4) Have the Commissioners ratified the appointment?

(5) Of the 36 applicants for the position, what were the names of those short-listed?

Hon M.J. CRIDDLE replied:

(1) The Commissioners of the Shire of Wanneroo acting as the Council and in accordance with the provisions of the Local Government Act 1995.

(2)-(3) No.

(4) Yes, by resolution on 6 October 1998.

(5) It would be inappropriate for the names of any candidates, short listed or otherwise, to be released without consent. Any such request should be directed to the Commissioners of the Shire of Wanneroo.

QUESTIONS WITHOUT NOTICE

RURAL AND REMOTE SCHOOLS

307. Hon TOM STEPHENS to the Leader of the House representing the Minister for Education:

(1) Will the minister provide a breakdown of the Government's proposed expenditure on its scheme to encourage teachers to serve in rural and remote schools?

(2) How much of this proposed expenditure is net additional expenditure beyond what would have been available to teachers anyway?

(3) Over what period of time will the funding be expended?

(4) Has any additional funding beyond what was announced with the 1998-99 budget been provided?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The Education Department plans to spend $27m over the next three and a half financial years, from the beginning of the 1999 school year, on the country incentives package to attract and retain teachers in isolated and difficult

to staff rural schools. Approximately $12.95m of this funding has been made available by combining $3.7m per annum in existing allowances provided to staff in rural areas for such things as airconditioning and transportation. Eligible staff will receive the benefits of this program by way of regular payments supplementing fortnightly salaries, giving flexibility in how the payments are to be used. The Education Department will continue to spend a further $21m per year on benefits and allowances such as rental subsidies and locality allowances for country teachers, outside of the country incentives package.

(2) Just over half of the proposed expenditure is made up of an additional allocation by the Government of $13.9m over the same period.

(3) See (1).

(4) No.

MERCEDES-BENZ AUSTRALIA, BUS CONTRACT

308. Hon TOM STEPHENS to the Minister for Transport:

(1) Have the contracts with Mercedes-Benz Australia for the purchase of 848 buses yet been signed?

(2) If yes, when were they signed?

(3) If not, why have they not been signed?

(4) Are the funds for the purchase of the buses coming from government revenue or are the buses to be subject to a lease purchase arrangement by the private sector?

(5) If the buses are to be purchased by the private sector, which company has been selected, and has the lease agreement with that company been signed?

(6) Will any of the first round of buses to be ordered use Transcom equipment?

(7) If so, how many?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(3) A letter of intent was signed by the Director General of Transport on 26 June 1998 and forwarded to Mercedes-Benz. The formal contract will be signed shortly.

(4) The financing of the bus acquisition program may proceed through external arrangements or through traditional government financing, with the final decision dependent upon whether the external proposal can meet the required conditions.

(5) The buses are not being purchased by the private sector.

(6)-(7) No.

SUPREME COURT JUDGE, APPOINTMENT

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

(1) Has a decision been made on the appointment of a new Supreme Court justice?

(2) If so, who is the proposed justice?

(3) If a decision has not been made, when will the decision be made?

Hon PETER FOSS replied:

The honourable member, if anybody, should be aware of the convention that one does not discuss any matter prior to it going to the Governor in Executive Council. The decision can be made only by the Governor in Executive Council, and it is considered improper to make any statement prior to that decision being made.

NATIVE TITLE LEGISLATION

310. Hon HELEN HODGSON to the Leader of the House representing the Premier:

In relation to the submissions received in response to the draft legislation for a state native title regime; that is, the Native Title (State Provisions) Bill and the Titles Validation Amendment Bill -

(1) How many submissions were received?

(2) Will the minister table a list of the persons or organisations that made submissions?

(3) Was a written response to these submissions prepared on behalf of the Government?

(4) If so, were those who made submissions provided with a copy of that response, and will the minister table that response?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) A total of 203 submissions had been received as at 19 October 1998. Prior to the closing date for submissions, 10 September 1998, 45 submissions were received. Between 10 September 1998 and 18 September 1998, a further 16 submissions were received. Between 18 September 1998 and 19 October 1998, a further 142 submissions were received.

(2) Yes, I would be willing to table the list of the persons or organisations that made submissions. I do not have those papers to table, but I shall do so tomorrow.

(3) A letter of acknowledgement was sent to people whose submissions were received by 18 September 1998.

(4) Not applicable.

WESFARMERS LPG PTY LTD

311. Hon J.A. SCOTT to the Leader of the House representing the Minister for Energy:

(1) Is the minister aware that Professor Allan Fels, chairperson of the Australian Competition and Consumer Commission, has described Wesfarmers LPG Pty Ltd's share of the liquefied petroleum gas market in Western Australia as an effective monopoly?

(2) Can the minister tell the House who are the suppliers of LPG in Western Australia and what are their approximate market shares?

(3) Has the minister investigated why BP Refinery (Kwinana) Pty Ltd is able to wholesale LPG from Kwinana refinery at 12.5¢ per litre while the wholesale price is 34¢ to 37¢ a litre?

(4) Is the minister satisfied that Wesfarmers is adding a distribution cost of between 21¢ to 23¢ a litre to the price of LPG when transport is only from Kwinana to Perth and yet LPG auto gas shipped and trucked into Victoria from overseas during the current gas crisis was still cheaper?

(5) Why is this cost so high?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The Minister for Energy is obliged to the honourable member for pointing out comments which the member ascribes to Professor Allan Fels, of which the minister was not aware.

(2) Wesfarmers LPG and BP produce and wholesale LPG for the Western Australian market. Currently, BP supplies around 45 per cent to 50 per cent of the wholesale market and Wesfarmers LPG the remainder. The wholesalers are Kleenheat Gas, BP, Boral Gas (WA) Pty Ltd and BOC Gases Australia Ltd. Six retailers operate in the market covering auto gas, bottle and bulk on-site storage customers. Kleenheat and Boral sell into each of the market segments, and BP, Gogas Australia Pty Ltd, BOC and Elgas Limited sell into the auto gas segment only. Information on market share in each of these segments is commercial information not readily available to the Minister for Energy.

(3) I understand that both Wesfarmers LPG and BP sell LPG to the local wholesalers at prices that reflect the then current world price. The Minister for Energy has not investigated the prices at the wholesale level.

(4) The Minister for Energy has no evidence that Wesfarmers is pricing into the auto gas or other market segments on the basis claimed by the honourable member and does not regard pricing of LPG into this segment of the Victorian market during the recent crisis in supply of natural gas as relevant to ongoing pricing of LPG in Western Australia.

(5) The reasons for variance in LPG pricing in any market segment are understood to include the costs of distribution, marketing and sales, the level of local competition for market share, and the availability and pricing of competitive fuels. While the State is fortunate to have a very reliable supply of LPG, it does not have the diverse and competitive LPG market of the eastern States, where the price of LPG may be heavily discounted from time to time.

MURRAY DISTRICT HOSPITAL, FULL-TIME EQUIVALENTS

312. Hon J.A. COWDELL to the minister representing the Minister for Health:

Further to my question 1701 of 17 June 1998 -

(1) How many of the 130.67 full-time equivalents employed at the Murray District Hospital as at 17 June 1998 have -

(a) taken up employment with Health Solutions (WA) Pty Ltd at the Peel health campus;
(b) taken up employment with private nursing homes;
(c) been offered redundancies; and
(d) taken redundancies?

(2) What transition payments have been made to staff transferring to private providers?

(3) What payments have been made to staff accepting redundancy?

(4) What redundancy payments are anticipated by 31 December 1998?

(5) How many staff will be employed at the Murray District Hospital, by area of services, as at 31 December 1998?

(6) How many staff is it anticipated will become redeployees by 31 December 1998?

Hon MAX EVANS replied:

I thank the member for some notice of this question. As this question requires an amount of research and is unable to be answered within the time frame, I request that the member put this question on notice.

ORGAN DONATIONS

313. Hon MURIEL PATTERSON to the minister representing the Minister for Health:

This question came to me from a bereaved widow. To comply with a donor's wish to have organs donated in the event of the person's death -

(1) Is it correct that the surviving family is responsible for the payment of extension of life support while arrangements are made to bring in a recipient to receive the organ?

(2) If not, what is the regulated procedure and responsibility of the surviving family?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No. This is funded by the public health service.

(2) Neither the donor family nor the recipient or his/her family is responsible for any payment for the extension of life support pending organ donation.

OAKAJEE - SURVEYING AND DRILLING WORK

314. Hon GIZ WATSON to the Leader of the House representing the Minister for Resources Development:

With regard to the answer to question 224 of 13 October 1998 about surveying and drilling work currently being undertaken on the proposed Oakajee heavy industry site and on the adjacent reef -

(1) How much did it cost for the sampling for geotechnical baseline data carried out in 1997 by the port and harbour consultants?

(2) How much did it cost for the work boat and crane to do the deep sea drilling at the harbour site, and was the work completed?

(3) In what period was the $650 000 referred to in the answer to question 224 expended?

(4) What is the total expenditure to date on the pre-feasibility of the harbour, port and industrial site, and the pre-construction of the harbour, port and industrial site?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) The cost of sampling for geotechnical baseline data carried out in 1997, including work boat and crane, was $614 661. The required work was completed.

(3) The $650 000 referred to in the answer to question 224 relates to a contract for geotechnical investigations that is still in progress.

(4) The total expenditure to date by the Department of Resources Development on technical, economic, financial, environmental, feasibility and planning studies for the harbour, port and industrial site is $2 784 190. The total expenditure to date by the department on pre-construction work for the harbour, port and industrial site is $34 320.

CITY FORESHORE DEVELOPMENT

315. Hon NORM KELLY to the Leader of the House representing the Premier:

With regard to the proposed bell tower and development for the city foreshore -

(1) Will the Premier table the revised funding allocations to finance this project, including the sources of such funding?

(2) Has the Premier considered delaying this project to enable these funds to be allocated to the Health budget?

(3) If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Funds of $4.5m have been specifically allocated in the capital works program over the next two years to cover the construction of the bell tower.

Hon Ljiljanna Ravlich: That has not been to Cabinet.

Hon N.F. MOORE: When was the member there last?

Hon Ljiljanna Ravlich: I will be there soon!

Hon Tom Stephens interjected.

Hon N.F. MOORE: Heaven help this State if Hon Ljiljanna Ravlich and Hon Tom Stephens were ever trying to run it!

Hon Kim Chance: It would be a lot of fun!

Hon N.F. MOORE: It would be a lot of fun.

The PRESIDENT: Order! Obviously the members interjecting do not have questions to ask, but I have about nine members waiting to ask questions.

Hon N.F. MOORE: Additional costs associated with stage 1 of the development, which includes work on the jetties, boardwalks and replacement buildings, will be sourced from funds which are available from the capital city development program. Funding for stage 2, which includes the sinking of Riverside Drive, which will not be for some two years, will need to go through the normal budgetary process.

(2)-(3) The biggest single ticket item in this year's budget was Health funding of $1.544b, which included a capital works budget of $95.9m, representing an 18.9 per cent increase over last year's funding. The Health budget has also been boosted by the State Government being able to secure an additional $125m in commonwealth funding under the new Medicare Agreement over the next five years. The Government is committed to the continual delivery of health care services in Western Australia, as it is to the development of the whole State across a range of sectors, which brings benefits to our community.

DIRECTOR GENERAL OF EDUCATION - EMPLOYMENT CONTRACT

316. Hon LJILJANNA RAVLICH to the minister representing the Minister for Public Sector Management:

I refer to the employment contract for the Director General of Education, Ms Cheryl Vardon, and ask -

(1) What is the value of Ms Vardon's contract?

(2) Does Ms Vardon's contract contain clauses with regard to family visits, property allowances and the removal and storage of furniture and effects?

(3) If not, on what basis does the minister approve the payment for family visits and costs relating to property and storage?

Hon MAX EVANS replied:

I thank the member for some notice of this question. There are four very similar, complicated questions on this matter, and I ask that they all be placed on notice.

BUS COMPANIES - MISSED, LATE OR EARLY SERVICES

317. Hon BOB THOMAS to the Minister for Transport:

With regard to the minister's advice that during the months of July and August 1998, a total of 80 fines were issued to the four private bus companies, I ask -

(1) Does the number of missed, late or early services include those that resulted from industrial action by drivers?

(2) If yes, how many, and for which services?

(3) If not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(3) In instances where industrial action results in services being dropped, the contractor is simply not paid for the services not performed.

WESTRAIL CUSTOMER SERVICE ASSISTANTS

318. Hon CHERYL DAVENPORT to the Minister for Transport:

(1) Can the minister now explain why Westrail is proposing to fill vacancies for customer service assistants with guards from Chubb Security Australia Pty Ltd?

(2) Were these positions offered to the more than 400 redeployed MetroBus drivers? If not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) In late 1994, as a result of antisocial behaviour on the suburban passenger railway, a review was carried out of the then existing security arrangements, which subsequently resulted in the implementation of initiatives to improve security presence on trains and at stations. On a progressive basis, fully trained security personnel with special constable status were positioned on afternoon shifts on stations, and 35 customer service assistants were introduced to cater for customer service on the day shift. The strategy is that security personnel will be introduced onto day shifts to replace customer service assistants by natural attrition.

(2) Westrail has a contract with Chubb Security Australia Pty Ltd for the provision of security services on the suburban passenger railway system. MetroBus drivers have the option of remaining on the government redeployment list in an endeavour to secure a position within the government sector, or accepting a redundancy package and seeking employment in the private sector, including with Chubb Security Australia Pty Ltd. It is their personal choice what they do.

DR LIBBY MATISKE - REPORT

319. Hon CHRISTINE SHARP to the minister representing the Minister for the Environment:

Will the minister please table a copy of the consultancy report by Dr Libby Matiske which reviewed the Department of Conservation and Land Management's assessment of old growth forest for the regional forest assessment?

Hon MAX EVANS replied:

I thank the member for some notice of this question. It is not possible to provide the information in the time required and I request that the member place the question on notice.

Hon Ljiljanna Ravlich: Start answering some questions! I am getting sick of this!

Hon N.F. Moore: Get off the grass! You receive more answers than are received in any other Parliament in the world!

The PRESIDENT: Order! Members will understand that the standing orders make it very clear that a minister may give the answer that he deems appropriate to the question asked. I am not in a position to direct a minister about the manner in which a question should be answered. However, if the time that elapses between a question being lodged and an answer being expected in the House is insufficient to enable an answer to be given, I suggest that matter be taken up by the House business committee. We may need to extend the time for answers to be given. That is up to members to discuss among themselves.

GEOGRAPHE BAY - CRAB FISHING

320. Hon KIM CHANCE to the minister representing the Minister for Fisheries:

(1) Has the Minister for Fisheries released a paper entitled "Proposal for the Management of Commercial Crab Fishing in Geographe Bay"?

(2) Do the recommendations contained in this proposal accurately reflect the recommendations contained in a review document dealing with this matter which was received by the minister on or about 3 July this year?

(3) Did the 3 July review document recommend widespread consultation on the matter of the management of crabs in Geographe Bay?

(4) Why did this consultation not take place?

(5) Why was the 3 July document never released?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(5) Fisheries Western Australia established a working group to assist in providing advice to the Minister for Fisheries on the future management of the blue swimmer crab fishery. The current proposal for the future management of the Geographe Bay crab resource was developed after consideration of the recommendations submitted by the working group. The current proposal is open to public comment until 13 November 1998. If the member wishes to receive a briefing on the matter, I am prepared to intercede on his behalf and arrange it through the minister's office.

CSC AUSTRALIA PTY LTD, CONTRACT

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

I refer to the minister's advice of 17 September that the overall price of the Health Department's 1 January 1993 to 3 December 1998 contract with CSC Australia Pty Ltd was $89.733m, as varied, and his further advice that he had no information on the cost of specific systems and other goods and services within the terms of this contract. Will the minister explain how it was possible to calculate and negotiate variation on the overall price of this contract without any information on the cost of systems and other goods and services provided within the terms of this contract?

Hon MAX EVANS replied:

I thank the member for some notice of this question. The variations made to this contract related to additional services that were not covered by the original contract scope. The original costs were thus not a factor in determining the variation costs. For upgrades to systems covered by this contract, such as the Oracle Financials System, separate contracts have been negotiated to include cost offsets calculated for any outstanding work.

LEGAL AID COMMISSION ACT, AMENDMENTS

322. Hon HELEN HODGSON to the Attorney General:

(1) Are any amendments to the Legal Aid Commission Act being considered or proposed?

(2) If so -

(a) when will the Bill be introduced;

(b) has the Bill been made available to any organisations for public comment;

(c) if yes to (b), which organisations and on what basis were they chosen;

(d) what public consultations will there be; and

(e) how will the interests of potential clients or consumers of legal aid services be represented in any consultation process?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(2) A draft Bill to amend the Legal Aid Commission Act has been distributed to relevant stakeholders for comment. It is not for public comment; it is confidential comment. I hope that the Bill will be introduced this session. It has

been widely distributed to stakeholders representing all the areas. We hope that it will lead to a better service. However, it is not a change that will cause major concerns to consumers. We hope that it will improve the service to the consumers.

COMMUNITY LEGAL CENTRES, CONSULTATION

323. Hon HELEN HODGSON to the Attorney General:

As a supplementary question, have the community legal centres been involved in the consultation process to date?

Hon PETER FOSS replied:

Not directly.

GANTHEAUME POINT TOURIST DEVELOPMENT

324. Hon TOM STEPHENS to the minister representing the Minister for Lands:

I refer to the proposal for a tourism development at Gantheaume Point.

(1) Why did the Government call for expressions of interest on this project?

(2) Was this done following consultation and approval of the local government authority and other interested parties in Broome?

(3) Does the proposal allow for development of fragile cliffs, beach and areas adjacent to the waters at Gantheaume Point for a tourism development?

(4) How far back from the coastline is this development project to be set?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Broome is a priority tourism destination within the Western Australian tourism development strategy. Expressions of interest were called to stimulate tourism development in Broome on an area of crown land identified as being potentially suitable for such purposes.

(2) The Shire of Broome, the Broome Turf Club and the Rubibi Aboriginal working group were consulted before calling for expressions of interest.

(3)-(4) The selected developer will work with all appropriate government agencies and local stakeholders in formulating a development proposal which will need to receive all statutory approvals including coastal management and environmental approvals.

OAKAJEE HEAVY INDUSTRY SITE

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

With regard to question without notice 253 of 13 October 1998 about the surveying and drilling work currently being undertaken on the proposed Oakajee heavy industry site and the adjacent reef -

(1) Was the first information about work in the area supplied to the Shire of Chapman Valley by a tourist who is concerned about a bulldozer working on the beach?

(2) Is the work being carried out in the area defined as pre-feasibility work or pre-construction work?

(3) If it is pre-construction work, has an environmental management plan been produced by the proponent?

(4) If not, why is the work continuing?

(5) Why are the proponents now carrying out pre-feasibility work, when the feasibility information now being sought by this work should have been available for assessment during the evaluation by the Environmental Protection Authority?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The Shire of Chapman Valley was made aware of drilling work being undertaken on Thursday, 8 October 1998 by the Department of Resources Development. The issue was raised by a tourist on Monday, 12 October 1998.

(2) The work being undertaken in the area is to obtain information for the tender documents for the port.

(3)-(5) Not applicable.

FINANCIAL ACCOUNTS, OPERATING SURPLUS/DEFICIT

326. Hon MARK NEVILL to the Leader of the House representing the Premier:

I refer to the financial accounts of the Government for the 1997-98 financial year.

(1) What is the operating surplus or deficit, both adjusted and unadjusted, of the consolidated fund for 1997-98?

(2) How does this result compare with what was budgeted in the 1998 budget papers?

(3) How does this result compare with the pre-election forward estimates released in November 1996?

(4) When will the Government be releasing the Treasurer's annual statements for 1997-98?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(4) The information sought by the member about the 1997-98 financial accounts of the Government will be tabled in this House early next month. The Consolidated Fund Treasurer's annual statements for 1997-98, which contain the actual transaction data sought by the member, are currently being audited by the Auditor General. In accordance with usual practice, these statements will be tabled early in November following clearance by the Auditor General.

LANE BLOCK, NORTHCLIFFE

327. Hon J.A. COWDELL to the minister representing the Minister for the Environment:

(1) When is the Department of Conservation and Land Management planning to log Lane Block near Northcliffe?

(2) Has a temporary control area been declared over this block?

(3) If so, when?

(4) If not, is it intended to issue a temporary control area notice?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) As soon as possible.

(2)-(3) No.

(4) Temporary control areas are declared for the purposes of ensuring public safety during logging operations. It will not be necessary to declare a TCA if persons who are presently camping in the area without approval can be encouraged to leave. The minister has asked CALM to request those people to leave the area forthwith to allow the log supply to the Pemberton Mill to be maintained.

MENTAL HEALTH REVIEW BOARD PRESIDENT

328. Hon KIM CHANCE to the minister representing the Minister for Health:

I refer to an article in *The West Australian* on 5 December, in which the then Minister for Health was reported as saying that the position of Mental Health Review Board president would be readvertised after one year and ask -

(1) On what date does the current contract for the position of Mental Health Review Board president expire?

(2) Has the position been readvertised?

(3) If yes -

  (i) when was the position advertised;

  (ii) was the position advertised on a national or international basis; and

  (iii) how long is the new contract term?

(4) If not -

  (i) why has the position not yet been advertised; and

  (ii) when will the position be advertised?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The current contract expires on 19 November 1998.

(2) No.

(3) Not applicable.

(4) (i) The process to advertise the position began some time ago. Consultation on particular aspects of the process is currently occurring with key stakeholders.

(ii) The position will be advertised as soon as practicable, so that a quality process can be assured which complies with relevant public sector standards and which is appropriate for the status of this position.

PARLIAMENTARY SUPERANNUATION SCHEME

329. Hon JOHN HALDEN to the Minister for Finance:

On an ABC television program the minister said he was making changes to the existing parliamentary superannuation scheme to help older parliamentary members. I ask -

(1) Is this true?

(2) What changes is the minister proposing and how will older members benefit?

(3) What is the justification for so doing?

(4) Given that the Australian Labor Party's position is clear, why has the minister referred the Karasek report to the Parliamentary Superannuation Committee, when a decision is simply required from the Government?

Hon MAX EVANS replied:

(1)-(3) I do not know what is meant by "older members". I do not know whether that was taken out of context. Two factors are involved - present members and future members. I will ignore those questions relating to older members because that has nothing to do with me. It is not part of the debate.

(4) I will take up this matter with the Parliamentary Superannuation Board next week, as is appropriate. Two suggestions were made in the Karasek report; one is to close off the old scheme with all new members coming under the superannuation guarantee charge. I went to the Salaries and Allowances Tribunal because there is the question of transitional payments for members who move from the current scheme to the new scheme. Also in the report are proposed rates of pay that might be applied to people who transfer to the SGC. The Salaries and Allowances Tribunal reported the other day that it will not recommend any rates of pay until Parliament makes a decision. The Government will close the old scheme and recommend that the SAT work out appropriate transitional arrangements, because it all comes under members' rates of pay. It must then work out any changes in rates of pay if the superannuation scheme changes for new members of Parliament or those who transfer to the new scheme, as recommended in the original report. The conditions remain the same for existing members of Parliament.

OUTLAW MOTORCYCLE GANGS

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

I refer to the issue of outlaw motorcycle gangs and organised crime, and ask what legislation under the Attorney's portfolio is being proposed to deal with the issue and what is the current status of such legislation?

Hon PETER FOSS replied:

By putting organised crime and bikies together, I am not sure whether the member is asking a question about organised crime and bikies, or organised crime involving bikies. There is organised crime which does not involve bikies and they pose a slightly different problem. I will deal with organised crime in general, and organised crime involving bikies.

The biggest problem with bikies, so far as the public is concerned, is the disorderliness of the activities in which they are involved at the moment; that is, shooting and murdering people and generally engaging in internecine quarrels which are likely to end in the death of or injury to bikies themselves. That is being investigated not through my portfolio, but through the Police portfolio. It is quite clear that bikies are involved in organised crime which includes the trading of drugs. In particular, they are involved in the amphetamines trade.

Hon Mark Nevill: Do they run sections of the Police Force?

Hon PETER FOSS: That is asked of me in my representative capacity, and the member must put it on notice! With regard to organised crime generally, the legislation currently under drafting deals with forfeiture. As members will be aware, one of the most effective ways of striking at organised crime is through the proceeds. The problem the police have struck with organised crime is securing evidence against people within that organisation in order to convict them of an offence. Parliament can pass as many laws as it likes declaring which activity constitutes an offence, but the cases must be taken to court and proved beyond reasonable doubt. It is a problem, in the first place, getting witnesses who are prepared to give evidence and to keep them alive long enough to give that evidence. The Government is proposing to follow the American experience when dealing with organised crime and confiscate the proceeds. That has been under instructions from the Director of Public Prosecutions, who is responsible for the current Crimes (Confiscation of Profits) Act. The department will come up with what it hopes will be the leading legislation in Australia. It had hoped the legislation would be available this year, but I am advised that the drafting will be quite extensive and take a long time. That is because confiscation legislation gets the toughest time and is most heavily tested in the courts. The department knows that when it uses that legislation against organised criminals, the alleged offenders will fight it every inch of the way and to the highest courts of appeal. Legislation has recently been introduced in Victoria and New South Wales, and the DPP has advised that neither legislation is totally satisfactory and that WA should continue to look for one that goes further. When that is drafted, I will seek bipartisan support in the Parliament because it will necessarily be quite rigorous as it has been proved clearly across Australia and the world that the money behind organised crime will be used enormously to fight any legislation. Of necessity, that legislation must be very strict if it is to survive that sort of challenge.
