

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

QUESTIONS

No. 020

Tuesday, 13 August 2013

Questions appear according to the date on which notice was delivered.
When a question has been answered it is removed from the postponed list.

POSTPONED QUESTIONS

Notice Given *Wednesday, 19 June 2013*

125. Hon Sally Talbot to the Minister for Disability Services

Notice Given *Tuesday, 25 June 2013*

127. Hon Alanna Clohesy to the Minister for Agriculture and Food representing the Minister for Housing

128. Hon Alanna Clohesy to the Minister for Agriculture and Food representing the Minister for Housing

129. Hon Alanna Clohesy to the Minister for Agriculture and Food representing the Minister for Housing

130. Hon Alanna Clohesy to the Minister for Agriculture and Food representing the Minister for Housing

133. Hon Sally Talbot to the Minister for Mental Health

134. Hon Darren West to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum

136. Hon Adele Farina to the Minister for Agriculture and Food representing the Minister for Housing

137. Hon Adele Farina to the Minister for Agriculture and Food representing the Minister for Housing

138. Hon Adele Farina to the Minister for Child Protection

146. Hon Adele Farina to the Attorney General representing the Minister for Police

147. Hon Adele Farina to the Attorney General representing the Minister for Police

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148. Hon Adele Farina to the Attorney General representing the Minister for Police
149. Hon Adele Farina to the Attorney General representing the Minister for Police
152. Hon Adele Farina to the Parliamentary Secretary representing the Minister for Health
153. Hon Adele Farina to the Minister for Mental Health
154. Hon Adele Farina to the Parliamentary Secretary representing the Minister for Health
155. Hon Adele Farina to the Minister for Mental Health
160. Hon Adele Farina to the Parliamentary Secretary representing the Minister for Health
162. Hon Adele Farina to the Minister for Agriculture and Food representing the Minister for Housing
163. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Regional Development

Notice Given **Wednesday, 26 June 2013**

164. Hon Adele Farina to the Minister for Mental Health representing the Minister for Community Services
165. Hon Darren West to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum
166. Hon Alanna Clohesy to the Leader of the House representing the Minister for Energy
167. Hon Amber-Jade Sanderson to the Minister for Agriculture and Food representing the Minister for Housing
168. Hon Stephen Dawson to the Minister for Agriculture and Food representing the Minister for Fisheries
169. Hon Samantha Rowe to the Leader of the House representing the Minister for Finance
170. Hon Alanna Clohesy to the Minister for Commerce
171. Hon Samantha Rowe to the Minister for Mental Health representing the Treasurer
172. Hon Amber-Jade Sanderson to the Parliamentary Secretary representing the Minister for Water
173. Hon Darren West to the Minister for Mental Health representing the Minister for Planning
174. Hon Adele Farina to the Parliamentary Secretary representing the Minister for Health

Notice Given **Thursday, 27 June 2013**

176. Hon Sally Talbot to the Parliamentary Secretary representing the Minister for Health
177. Hon Sally Talbot to the Minister for Mental Health
178. Hon Sally Talbot to the Minister for Mental Health
179. Hon Sally Talbot to the Minister for Child Protection
180. Hon Sally Talbot to the Minister for Mental Health
181. Hon Nick Goiran to the Parliamentary Secretary representing the Minister for Health
182. Hon Nick Goiran to the Parliamentary Secretary representing the Minister for Health
183. Hon Sue Ellery to the Parliamentary Secretary representing the Minister for Health

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- 184. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum
- 185. Hon Stephen Dawson to the Minister for Agriculture and Food representing the Minister for Housing
- 186. Hon Sally Talbot to the Minister for Mental Health

Notice Given Tuesday, 6 August 2013

- 187. Hon Robin Chapple to the Minister for Aboriginal Affairs
- 188. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Housing
- 189. Hon Ken Travers to the Parliamentary Secretary representing the Minister for Transport
- 190. Hon Sally Talbot to the Minister for Child Protection
- 191. Hon Robin Chapple to the Minister for Aboriginal Affairs
- 192. Hon Robin Chapple to the Minister for Aboriginal Affairs
- 193. Hon Robin Chapple to the Minister for Mental Health representing the Minister for Environment
- 194. Hon Sally Talbot to the Minister for Child Protection
- 195. Hon Sally Talbot to the Minister for Child Protection
- 196. Hon Sally Talbot to the Minister for Child Protection
- 197. Hon Sally Talbot to the Minister for Child Protection
- 198. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum
- 199. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Regional Development
- 201. Hon Kate Doust to the Minister for Commerce
- 202. Hon Lynn MacLaren to the Minister for Agriculture and Food representing the Minister for Forestry
- 203. Hon Lynn MacLaren to the Minister for Mental Health representing the Minister for Heritage
- 204. Hon Kate Doust to the Minister for Commerce
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Notice Given Wednesday, 7 August 2013

- 208. Hon Kate Doust to the Minister for Commerce
- 209. Hon Kate Doust to the Minister for Commerce
- 210. Hon Amber-Jade Sanderson to the Attorney General representing the Minister for Corrective Services

Notice Given Thursday, 8 August 2013

- 211. Hon Kate Doust to the Minister for Commerce

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213. Hon Kate Doust to the Leader of the House representing the Minister for Finance
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233. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum:

I refer to Exploration Permit Applications in relation to STP-EPA-0004, STP-EPA-0005, STP-EPA-0030 and STP-EPA-0072, and I ask:

- (a) what is the stage of each of these applications;
- (b) who are the holders/applicants of each of these tenements;
- (c) is this a Native Title determined area;
- (d) if yes to (c), what is the group identified in that determination;
- (e) have the companies identified in (b) had discussions with the Native Title parties about access to these lands;
- (f) what is the identified purpose of each of these leases;
- (g) if drilling is to occur as part of this exploration, what is the anticipated depth of drilling;
- (h) are there any proposals to use fracking as part of the exploration process;
- (i) if commercial quantities of condensate or gas are found, will fracking be used to extract the commodity;
- (j) if yes to (h) or (i), has the Native Title PBC been advised of this;
- (k) if yes to (h) or (i), have the Native Title members been advised of this;
- (l) has the Native Title Prescribed Bodies Corporate, or its members, been advised of the risks associated with the process of fracking;
- (m) if no to (l), why not;
- (n) are any of the areas of these leases covered by federal jurisdiction in relation to the national estate;
- (o) if yes to (n), which areas;
- (p) if yes to (n), has the relevant federal authority been informed by either the state or the proponents of these proposals;
- (q) if yes to (p), when; and
- (r) if no to (p), then why not?

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234. Hon Robin Chapple to the Parliamentary Secretary representing the Minister for Water:

In relation to the taking of ground water from Old Mowanjum quarry, I ask:

- (a) when did the Department of Water first become aware of the exposure and taking of ground water from the Old Mowanjum quarry;
- (b) was permission granted or a licence issued to the quarry owners or their contractor by the Department of Water for the exposure, excavation or the taking of ground water from this site;
- (c) if yes to (b), on what date;
- (d) was the quarry owner or their contractor in breach of section 5c of the *Rights In Water And Irrigation Act 1914* in the period between the answer to (a) and the answer to (c);
- (e) if yes to (d), was the quarry owner or their contractor asked to desist by the department;
- (f) if yes to (e), on what date;
- (g) what legal action was taken by the department against the quarry owners or their contractor in the period established between the answer to (a) and the answer to (f);
- (h) is the department in breach of section 5c (1)(b) of the *Rights In Water And Irrigation Act 1914* in that it did cause or permit this activity to be done;
- (i) if yes to (h), what action has the department taken in respect of its own obligations to comply with section 5c (1)(b) of the *Rights In Water And Irrigation Act 1914*;
- (j) has any action or prosecution been undertaken in respect of any answers or matters contained within this question;
- (k) if yes to (j), what action was undertaken and on what date;
- (l) if no to (j), why not; and
- (m) if no to (j), will the Minister undertake to initiate an inquiry into the failure of his department to act on this matter?

235. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, and I ask:

- (a) will the Minister implement every recommendation within the report;
- (b) if no to (a):
 - (i) why not; and
 - (ii) which recommendations won't be implemented; and
- (c) if yes to (a), what is the time frame for implementation of the recommendations?

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236. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 43 which states "It is of note that industry experts, including the Western Australia Building Commissioner, are of the view that the statutory declaration process is a poor tool that has failed to ensure security of payment for subcontractors", and I ask:

- (a) does the Minister agree with this statement; and
- (b) will the Minister outline how he will address this major concern raised by many with in the construction industry?

237. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 19, which outlines in chart 1 the dollar value of losses reported by subcontractors, and I ask:

- (a) Can the Minister provide a more comprehensive breakup of estimated losses by providing the percentage of subcontractors who have an estimated loss of:
 - (i) \$100,000 to \$499,000;
 - (ii) \$500,000 to \$999,999; and
 - (iii) \$1,000,000 and upward?

238. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 28 to 29, and I ask:

- (a) could the Minister explain why Building Management and Works gave a level 1 prequalification to Dalcon when the company had demonstrated considerable performance and financial issues, of which Building Management and Works were aware of as early as 2005;
- (b) does the Minister believe that the entire prequalification process for companies applying for Government tenders needs to be completely revised;
- (c) if yes to (b):
 - (i) what changes will be made; and
 - (ii) how long will these changes take to implement; and
- (d) if no to (b), why not?

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239. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 40, and I ask:

- (a) did Oostveen comply with the conditions imposed on it by Building Management and Works' Business Assessment Team upon receiving the Government Contract to:
 - (i) obtain a 5 per cent bank guarantee;
 - (ii) obtain a specific directors personal guarantee; and
 - (iii) monitor payments to subcontractors for the duration of the proposed contract?

240. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 43, and I ask:

- (a) does the Minister find it appropriate to not have Building Management and Works representation monitoring construction sights which are undergoing Government contracts; and
- (b) does the Minister intend on implementing that all Government contracts require on sight monitoring by Building Management and Works officials throughout the course of the contract?

241. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 44, which states "Whilst Building Management and Works identified payment performance monitoring as a "condition" of contract award, there were no systems in place for such monitoring to be undertaken", and I ask:

- (a) why does Building Management and Works have no system in place to monitor payment performance or the provision and checking of statutory declarations when it is stated as a condition; and
- (b) why did Building Management and Works not check that Statutory Declarations were being complied with on Government contracts when Building Management and Works were on notice regarding non-payment of subcontractors?

242. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 44 to 45, and I ask:

- (a) why was there no formal process in place to refer a matter to the West Australian Police for action under the *Oaths, Affidavits and Statutory Declarations Act 2005*, at the time

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Building Management and Works became aware of suspected false and/or inaccurate statutory declarations; and

- (b) does the Minister agree with the report's claim that "it is possible that referral to the police may have acted as a deterrent to other building contractors who later submitted potentially false statutory declarations"?

243. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 44, and I ask why did Building Management and Works not refer the matter of non-compliance with statutory declarations to the police until after head contractors went into liquidation?

244. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 45, and I ask were any payments to head contractors withheld by Building Management and Works due to non-production of statutory declarations?

245. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 45, and I ask:

- (a) which subcontractors gave knowledge to Building Management and Works of non-payment prior to some head contractors becoming insolvent;
- (b) who were the head contractors involved; and
- (c) why were no steps taken by Building Management and Works to monitor payment performance and check the veracity of statutory declarations after Building Management and Works became aware of non-payment to subcontractors?

246. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 45, and I ask why did Building Management and Works fail to pass on information to the architects, nominated as the Superintendent's Representative, outlining the concerns with the financial capacity of some contractors to undertake projects, as identified as part of the prequalification and review of tender and award of contracts?

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247. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 48, and I ask why has the complaint management KMC Group Case Study on page 48 been censored?

248. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 49, and I ask why was no effort made to check the veracity of statutory declarations being submitted by Oostveen in March 2012 when Building Management and Works were aware months prior that subcontractors were not being paid?

249. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 49, and I ask will the Minister set in place legislation to ensure that, in the future, Building Management and Works has contractual relationships with subcontractors who work on State Government contracts?

250. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 49, and I ask why was there no central log of subcontractor complaints during the State Government's Building Education Revolution rollout?

251. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 49, and I ask does the Minister admit that the losses experienced by subcontractors was compounded by the fact that Building Management and Works had no central complaint management process and poor decision making in managing those complaints?

252. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 51, and I ask will the Minister reform Building Management and Works to ensure that there is a more robust and thorough approach taken to acquiring the provision of prequalification documentation by applicants?

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253. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 51, and I ask will the Minister ensure that a weighting system pertaining to crucial information provided by builders when applying for prequalification be established with greater weight being assigned to financial capacity, performance history and technical expertise?

254. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 52, and I ask will the Minister ensure that all future prequalification assessments conducted by Building Management and Works involve greater measures to obtain "real-time" financial assessments?

255. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 52, and I ask will the Minister ensure that in future Building Management and Works consider the cost benefit of ascertaining the total financial exposure of a head contractor at prequalification?

256. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 53, and I ask will the Minister ensure that a detailed review is done into the Aveley Primary School project so a greater assessment can be made into the reasons for the apparent failure to impose the conditions identified by the Business Risk Assessment Team?

257. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 54, and I ask will the Minister review the level of expertise and experience needed of persons engaged in Project Manager roles at Building Management and Works?

258. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 54, and I ask will the Minister reform Building Management and Works' practices and procedures to ensure that:

- (a) business risk assessment conditions are communicated to relevant decision makers and stakeholders;
- (b) business risk assessment conditions are included in business risk documentations; and

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- (c) there is accountability for their implementation?

259. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 54, and I ask will the Minister conduct a review of commercial best practice in relation to assessing risk and awarding contracts in the construction industry?

260. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 55, and I ask will the Minister ensure that Building Management and Works:

- (a) monitor and conduct random audits into the use and veracity of statutory declarations made by head contractors; and
- (b) ensure head contractors be made aware that this will be undertaken as standard Building Management and Works practice by including details in prequalification packages and tender documentation?

261. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 56, and I ask will the Minister make it the policy of Building Management and Works (BMW) to refer all suspicious statutory declarations to a person within BMW assigned primarily to the task of monitoring payment performance and that person, under the supervision of the delivery manager, refer non-compliant statutory declarations to the police for investigation, and liaise with the police in respect of investigation and prosecution?

262. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 56, and I ask will the Minister legislate to ensure the adoption of a more robust use of AS2124-1992 Clause 43 provisions to withhold payments and obtain its own legal advice in respect of:

- (a) whether payments withheld under clause 43 may be held as funds of a stakeholder or as an equitable set-off; and
- (b) options available at law to protect payments to subcontractors from being treated as preferential payments by liquidators?

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263. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 56, and I ask will the Minister implement a communication strategy to all industry stakeholders raising awareness and understanding of Building Management and Works policy, practices and processes in relation to monitoring of payment performance, auditing of statutory declarations and the withholding provisions of AS2124-1992 clause 43?

264. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 57, and I ask will the Minister establish within Building Management and Works a central registrar of subcontractor complaints to be managed by the Business Risk Assessment Team?

265. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 57, and I ask will the Minister establish a formal investigation process within Building Management and Works with the purpose of investigating claims of non-payment made by subcontractors, which may include a requirement for proof of payment to match with any submitted statutory declarations?

266. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 18, Quantum of Claims made by Subcontractors, and I ask:

- (a) what assistance will be given to the additional sixty-nine subcontractors identified in the investigation who are claiming losses from non-Building Management and Works administered contracts; and
- (b) if no assistance is to be provided, why won't the Government provide any support to these subcontractors who have been victims of the same negligent processes as the one hundred and ten who will receive Government aid?

267. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 27, Application Form, and I ask:

- (a) why weren't functions put in place to ensure that all contractors provided all relevant documents and information needed for the prequalification application form; and
- (b) why were building companies given Government contracts when insufficient documentation for their prequalification applications was submitted, as identified within the report?

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268. Hon Kate Doust to the Leader of the House representing the Minister for Finance:

I refer the Minister to the Small Business Commissioner's report into the Construction Subcontractor Investigation, page 42, and I ask is the monitoring of compliance with statutory declarations a condition on all State Government tenders?

269. Hon Lynn MacLaren to the Minister for Mental Health representing the Minister for Environment:

- (1) In answer to question on notice No. 6341, 27 November, 2012, a report was tabled with the following reference "Williams, GK (2012). Review of alternative release sites for Western Ringtail Possums for animals arising from the Busselton Health Campus development. Department of Environment and Conservation (DEC) internal document." Will the Minister table the document?
- (2) If no to (1), why not?
- (3) For the years 1994-2012, please list how many ringtail possums were released into DEC estate from:
 - (a) approved or other habitat destruction sites, per year; and
 - (b) other sources, such as rehabilitated ringtails from carers, per year?
- (4) For each of the approved or used Conservation and Land Management (CALM)/DEC estate ringtail possum release areas or sites, for the years 1994-2012:
 - (a) what is the name of each release area or site;
 - (b) what was the date of the first and the last releases; and
 - (c) what was the total number of ringtails, adults and young, released?
- (5) What is the total number of ringtail possums, including pouch young and juveniles, released at each approved release area within each of the following four-year periods:
 - (a) 2001-04;
 - (b) 2005-08; and
 - (c) 2009-12?
- (6) How much funding did CALM/DEC receive from the development industry to relocate ringtail possums and monitor them afterwards for each of the following four-year periods:
 - (a) 2001-04;
 - (b) 2005-08; and
 - (c) 2009-12?

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- (7) How much funding was provided to CALM/DEC ringtail translocation projects from sources other than the development industry in each of the following four-year periods:
- (a) 2001-04;
 - (b) 2005-08; and
 - (c) 2009-12?

MALCOLM PEACOCK

Clerk of the Legislative Council