Legislative Assembly

Tuesday, 10 November 2009

THE SPEAKER (Mr G.A. Woodhams) took the chair at 2.00 pm, and read prayers.

PAUL WILLIAM ANDREWS — CONDOLENCE

Statement by Speaker

THE SPEAKER (Mr G.A. Woodhams): Members, it is my sad duty to formally advise the house of the passing on 22 October 2009 of Paul William Andrews, formerly the member for Southern River. To accommodate the needs of Paul's family, the condolence motion has been postponed until next Tuesday, 17 November, immediately after prayers.

ST JOHN AMBULANCE — INDEPENDENT INQUIRY

Statement by Minister for Health

DR K.D. HAMES (Dawesville — Minister for Health) [2.02 pm]: Yesterday I released the report of the independent inquiry into the safety and quality of St John Ambulance Western Australia's clinical practices. As members may be aware, the report was commissioned in July this year to investigate the root causes of the tragic death of four patients highlighted by the ABC's *Four Corners* program and to present recommendations to improve clinical practices. On behalf of the Liberal-National government, I would like to express my sincere thanks to the families of the deceased patients for their cooperation with the inquiry. I would also like to thank the review chairman, Greg Joyce; the Chief Medical Officer, Dr Simon Towler; and all those who have contributed to this independent review.

The investigation examined systems and processes within the ambulance service, and the report's 13 recommendations are intended to strengthen the service capacity of St John Ambulance and to improve the safety and quality of care for patients. The recommendations cover issues related to the communication centre, clinical governance, staffing and continuing education. The report endorsed the continuation of the existing service model; however, it also makes it clear that there are a number of areas in which improvements must be made. To this end the state government will provide an immediate funding injection of $1.028 million to the St John Ambulance service in response to the recommendations. This funding will provide for the service's immediate needs as identified in the inquiry report.

Western Australians can be assured that they have a strong, high-quality ambulance service in place. This additional money will allow St John Ambulance service to employ 10 more call centre operators, 26 patient transport officers and a paramedic in Karratha during the remainder of the current financial year. This will boost capacity at St John Ambulance and improve the safety and quality of services provided to the Western Australian community. The Department of Health will immediately begin developing a business case, evaluating the funds required to address the report's other recommendations relating to additional expenditure.

It is absolutely essential that we get our response to this inquiry right. The state budget process will allow the government to make a measured assessment of how we can deliver maximum improvements in the ambulance service in the context of our broader, long-term health funding decisions. The need for additional ambulance services in country areas will be the subject of further assessment, as will the feasibility of introducing structured call taking in the SJA communication centre.

STATE EMERGENCY SERVICE — WEAR ORANGE WEDNESDAY

Statement by Minister for Emergency Services

MR R.F. JOHNSON (Hillarys — Minister for Emergency Services) [2.05 pm]: I want to firstly acknowledge Remembrance Day tomorrow and to pay homage to our fallen soldiers, and, indeed, to all our former and current armed forces personnel, wherever they may be.

Given that we relied so heavily on volunteers and indeed all those within the armed services during wartime, it is also fitting that tomorrow we will also be giving thanks to our volunteers in the State Emergency Service. This week is a milestone in the history of the SES in Western Australia—celebrating 50 years of service to our community. It is appropriate that our local celebrations coincide with National SES Week when across Australia there is recognition of the tremendous job that our SES volunteers do safeguarding the community.

The Fire and Emergency Services Authority supports more than 1 800 SES volunteers who last year gave countless hours of their personal time to respond to more than 570 incidents, including cyclones, cliff rescues, searches, floods and storms. I am sure that if we looked back over the past 50 years, each year would tell a

similar story. It is an inspirational story about thousands of people who carry out education and prevention programs, who respond to calls for assistance and who help us to recover from emergencies and natural disasters.

The SES has helped us through the Carnarvon floods in 1960 and 1961, the Meckering earthquake in 1968 and numerous cyclones, crashes, rescues and disasters since. Being an SES volunteer is a demanding, dedicated and sometimes dangerous job for which volunteers put their own lives at risk. Newman SES volunteer Jim Regan, for example, paid the ultimate price for his heroic efforts during the rescue of two tourists in Karijini National Park in 2004. Jim was part of the stretcher escort team that was struck by a flash flood that swept through Hancock Gorge. Last year at the SES awards Jim was recognised for his commitment and dedication with the Fire and Emergency Services Authority's most prestigious internal award, the Outstanding Achievement Medal.

This week is all about honouring and celebrating SES volunteers like Jim Regan. It is an important time for the people of our state to recognise and acknowledge their critical role. As Minister for Emergency Services, I have had the privilege of meeting many SES volunteers around the state and listening to their stories. Each time I hear about a different incident, it highlights their commitment to a tough job.

On behalf of the government I thank our SES volunteers for their efforts and achievements over the past 50 years. I also acknowledge their families and employers who support them and give them time off to do their work. I urge all members to get behind the SES this week. They can demonstrate their support tomorrow—Wear Orange Wednesday—by wearing something orange along with their Remembrance poppy. I also offer each member of this house an orange lapel pin in support of the SES in Western Australia. These can be obtained from the government Whip and the opposition Whip.

I ask everyone in our community to take the time to thank those individuals who are willing, rain, hail or shine, to give up their time to support individuals, families and communities in need and to help them survive and rebuild after an emergency.

The SPEAKER: Before I give the call to the Minister for Sport and Recreation, I just remind members of this place that I do not want to hear mobile phones.

COMMUNITY SPORTING AND RECREATION FACILITIES FUND — BIANNUAL APPLICATION PROCESS

Statement by Minister for Sport and Recreation

MR T.K. WALDRON (Wagin — Minister for Sport and Recreation) [2.08 pm]: In this year's budget the community sporting and recreation facilities fund was increased and given more flexibility. This has been extremely well received by local government and sporting associations alike.

As part of reforms to the program, one initiative introduced this year was a biannual application process for projects to the value of $150 000. For these smaller projects, the traditional annual application process was seen as overly bureaucratic and cumbersome. The implementation of a small grants round, with $750 000 available each time, has encouraged more applications for funding through a simpler and quicker application process. As is the case with the initiative introduced for larger CSRFF projects in the annual round, proponents of eligible projects are also able to apply for up to 50 per cent of the total project value when they can demonstrate achievement against a number of criteria, such as remoteness, sustainability initiatives and multi-use strategies.

I am pleased to advise the house today that the first round of CSRFF small grants has been completed. Thirty-eight applications were successful in this first round, including: Town of Port Hedland, $75 000 for installation of overhead lights at Gratwick Aquatic Centre; Mandurah Paddling Club, $25 000 for construction of a storage area; Thornlie Football and Sportsman's Club, $23 705 for installation of two floodlighting towers at Tom Bateman Reserve; Swan Valley Sporting Club, $25 095 for creation of an active reserve, including turfing, reticulation and water storage; Shire of Wyndham East Kimberley, $25 000 for development of the Kununurra sports precinct master plan; City of Subiaco, $48 166 for improvements to the Market Square skate facility; Western Australian Endurance Riders Association in the Shire of Collie, $9 087 for construction of a storage shed; and North Albany Football and Sporting Club, $6 000 for a feasibility study for club infrastructure development.

The CSRFF program remains a terrific example of the state government partnering with local government and grassroots sport and recreation associations to provide opportunities for people to be active in their community. The small grants process, introduced as a result of the government's election commitment to increase the fund, has provided another avenue within the fund to support projects that may otherwise have not occurred. I encourage all members to assist their electorates in getting involved in the next round, which opens in February 2010.

INFILL SEWERAGE PROGRAM — SPEARWOOD

Statement by Minister for Water

DR G.G. JACOBS (Eyre — Minister for Water) [2.12 pm]: I rise to inform the house that work on the infill sewerage project in Spearwood will commence in approximately two months.

Several members interjected.

The SPEAKER: Order!

Dr G.G. JACOBS: I am glad of the response, Mr Speaker!

Today I had the pleasure of announcing that the state government will call for tenders from next Tuesday, 17 November to commence work on the Spearwood infill project. We expect the tender process to be completed by late this year. I have visited Spearwood on a number of occasions and have spoken with residents and my colleague Hon Phil Edman, MLC, who presented a very strong case for sewerage infill. I have been urgently seeking a strategy to allow the Spearwood infill project to be completed. Many of the Spearwood residents have been waiting for up to 40 years to be able to connect to deep sewerage and I am acutely aware of the particular public health concerns that have arisen as the ageing leach drains have broken down.

The infill sewerage program was introduced in 1994 by the Richard Court Liberal government and has been running for 15 years. In 2001, Labor was elected to office and the program started to be slowed down; in fact, spending on the infill program was halved. In the 2009-10 state budget the program was deferred, to be reconsidered once the current financial environment improved. The program's original targets were $800 million and 100 000 connections. Currently, more than 89 000 properties have been connected to the system, with approximately 62 500 being in Perth and the balance in various regional towns.

The Department of Health prepared a confidential report for the previous Labor Minister for Health in 2006, which detailed serious concerns from both a health and environmental perspective in Spearwood. However, no work had commenced on this project. My colleague the Deputy Premier and Minister for Health, Dr Kim Hames, wrote to me last week confirming the reported concerns and indicating that these health issues have now worsened. Due to the concerns identified in the report, the state government will build infill sewerage in Spearwood and, as a result, all Spearwood residents will have access to sewerage infill by June 2011—even in these tough economic times. I must stress that any decisions on future infill sewerage projects will be taken in context of the 2010-11 state budget process.

QUESTIONS WITHOUT NOTICE

ST JOHN AMBULANCE — INDEPENDENT INQUIRY

842. Mr R.H. COOK to the Minister for Health:

I refer to the independent WA ambulance service inquiry and the minister's media statement yesterday in which he claimed that the St John Ambulance service would be able to employ 37 new staff immediately as a result of the cash injection of $1.028 million.

(1) Can the minister confirm that the public sector standard for the full cost of establishing a single full-time equivalent employee is a minimum of $100 000?

(2) Can the minister explain how he expects to fund 37 full-time employees on a permanent basis with an allocation of $1 million?

(3) When does the minister expect these additional to staff to commence work?

(4) Has the minister set out to mislead the public by giving the impression that he is providing a boost to St John's resources, when he knows that the scale of this problem demands a minimum injection of at least $20 million?

Dr K.D. HAMES replied:

(1)-(4) I cannot confirm that the figure of $100 000 is exact, but I suspect that it is; that seems to be about the right amount. What the member is failing to take into account is the training time required for some of those positions. We did not make up those figures. All those times and numbers were given to us directly by St John Ambulance. I told St John that the government would work with Treasury to work out the total amount of money needed. I asked St John to give us an indicative figure of what amount it thought was needed to do that, and it has done that.

Mr R.H. Cook: Sixty million?

Dr K.D. HAMES: That is a large amount of money. That is the amount in four years' time; it certainly is not the immediate amount. That is St John's request based on its estimate. What do we do? We are not about to hand

over that amount of money. I am sure that the former Treasurer would not have done that either. He would not have said, "We have St John Ambulance or the Royal Flying Doctor Service requesting X number of dollars. Okay, sure, here you are." There obviously has to be scrutiny. We have already set up a team with Greg Joyce, Dr Simon Towler and some financial experts to go through those figures and tease them out to see if that is exactly what is required. I said publicly that Greg Joyce will also look at the country system and how it works with the volunteer system. We will see whether we need to expand paramedic services in the country and we will look at other ways to make the service work better. They are going to do an evaluation of what is required to make that service a first-class service. Some of those positions—for example, the call centre operators—need three months' training. They will start in three months, as we were advised by St John. Some of the transport drivers can begin relatively quickly. I think it will take about four or five weeks to get the first tranche in place, which I think is 12 drivers, and the rest will start a month or two later. Again, that has been requested by St John. St John has told us what it needs to do urgently to address the issues that are presented in the report. We have responded directly to St John's request and have said that we will put in the money that it asked for straightaway and we will immediately start working out much extra will be needed.

ST JOHN AMBULANCE — INDEPENDENT INQUIRY

843. Mr R.H. COOK to the Minister for Health:

I have a supplementary question. Does the minister accept that his failure to respond meaningfully to the ambulance crisis now and to wait until the next budget will potentially mean that more people will die in the meantime?

Dr K.D. HAMES replied:

Absolutely not. I do not know why the member bothers to do all this now when we will debate this matter in half an hour. I will clearly show how good the service is that the ambulance is currently providing and highlight the minuscule change that has occurred since the Labor Party was in government. I will outline that the problems that have occurred were caused by the failure of the former government and why there is now so much pressure on the ambulance service.

Mr R.H. Cook: That is all I wanted to hear you say. Thank you. You can sit down now.

Dr K.D. HAMES: The Deputy Leader of the Opposition does not want to hear any of this, does he?

Mr R.H. Cook: No, because I have the information I need.

Dr K.D. HAMES: The Deputy Leader of the Opposition does not like hearing it. The trouble is that the Labor Party has lost an enormous asset in the former Minister for Health. He really understood the health system, the pressures placed on it and the problems that presented. Instead, the ALP has a wet-behind-the-ears spin doctor who has not got a clue. The Labor Party should get Jim back because the Deputy Leader of the Opposition is a failure.

NORTHBRIDGE — ANTISOCIAL BEHAVIOUR

844. Mrs L.M. HARVEY to the Minister for Police:

The Premier and the Minister for Police recently announced a raft of legislative changes to address antisocial behaviour and to assist police in managing antisocial behaviour in entertainment precincts, especially Northbridge. Can the minister please update the house on the intent of the legislation?

Mr R.F. JOHNSON replied:

I thank the member for the question. I have been away for a short break—a little holiday with my wife —

Ms M.M. Quirk: Good tan, minister!

Mr R.F. JOHNSON: Yes, it is not bad, is it?

I read some newspaper reports whilst I was away, and I was half expecting a question along these lines from the member for Mindarie because I thought he had taken over the shadow police portfolio; I actually thought there had been a reshuffle in the shadow cabinet! Obviously, the Leader of the Opposition has had to step in and put him in his place, and, quite rightly, allow the member for Girrawheen to be the one to ask questions and make comments about that particular area.

Several members interjected.

Mr R.F. JOHNSON: Is it not funny that people say to me that the member for Mindarie was very silly when he was on this side of house, and that he is even sillier on that side of the house? I have to say that I do not agree with that: I do not think he has changed at all!

Let me answer the member for Scarborough's question.

Mr J.R. Quigley interjected.

Mr R.F. JOHNSON: Here is the friend of the criminal.

Several members interjected.

The SPEAKER: Thank you, members.

Mr R.F. JOHNSON: This government is fully committed to law and order throughout the whole of Western Australia. Under the previous Labor government, violent crime, and crime in general, increased.

Several members interjected.

Mr R.F. JOHNSON: That was not only in Northbridge, but throughout the whole of the state. It increased not only on the streets, but also on our roads. In the next day or so we will be debating the stop-and-search legislation. I am fully aware that the opposition will vote against that legislation; it does not support these tough stances against people who carry weapons in entertainment precincts such as Northbridge.

Mr P. Papalia: Why don't you stop talking about it and do something about it?

Mr R.F. JOHNSON: We are, my friend; we are doing it today and tomorrow. We are doing something.

Several members interjected.

The SPEAKER: Everybody is refreshed; that is great. It is nice that you are all back in this place and fired up with enthusiasm. I would like to hear the minister's response more than anything else at this moment. The minister has the call.

Mr R.F. JOHNSON: My response is that this government is doing a tremendous amount in the area of law and order, as it has done since it was voted in by the people. As the Premier has said regularly —

Mr A.P. O'Gorman interjected.

The SPEAKER: Member for Joondalup!

Mr R.F. JOHNSON: Do not get excited, okay!

Mr A.P. O'Gorman: You haven't opened the police station. It got bombed, and you haven't opened it again!

The SPEAKER: Member for Joondalup!

Mr R.F. JOHNSON: As I said, no government has done more than the present government to toughen crime legislation to deal with criminals in WA. This government has ensured that anybody who bashes or seriously assaults a police officer will go to jail—in contrast to the wishy-washy legislation of the previous government. In the last three years of the previous government —

Mr J.R. Quigley: Just like the lout who kicked the ambo; bodily harm —

Mr R.F. JOHNSON: For goodness sake! Perhaps I should agree with the person who said that the member for Mindarie is sillier over there than he was over here!

A member interjected.

Mr R.F. JOHNSON: As is my friend the member—consistent in a lot of nonsense!

This government will continue its tough crackdown on crime and criminals. It has done that by way of the serious assaults on police officers legislation; we will be doing it with the stop-and-search powers; we will be doing it with the weapons bill, which will also be debated this week; and we will be doing it with the cannabis reform laws. We are making good the wishy-washy legislation that the previous government put in place, which simply resulted in the amount of cannabis being used in WA to get out of control. We are dealing with that, and we will continue to. That is why the people voted for us at the last election. As the Premier said, the former government threw in the towel and public threw in the towel on it; that is why they voted for us.

STATE BUDGET — DEFICITS

845. Mr E.S. RIPPER to the Premier:

Before I ask the question, I would like to welcome to the public gallery the gardeners, cleaners and teachers' assistants who have had their pay suspended because of their fight for justice for low-income workers.

I refer to the Premier's comments regarding deficit, and, according to my notes, in April 2009 he stated —

> I am not going to lead a government that goes into deficit. I can tell you that right now.

I draw the Premier's attention to the monthly report of general government finances for July and August 2009. They show that for the first two months of this financial year the state's finances were $687 million in deficit.

Over the next 10 months, the government has to get to this point on the chart, because that is its budget forecast. That is the size of the problem that faces this government.

(1) Is the Premier still confident that his government can achieve the estimated budget surplus of $409 million for the 2009-10 financial year? The Treasurer is telling the Premier no.

(2) What is the government's plan to turn around the current deficit position?

(3) Can the government achieve a budget surplus without resorting to even deeper cuts to front-line services?

(4) Is it not the case that public sector wages are now being paid with borrowed money?

Mr C.J. BARNETT replied:

(1)-(4) There is no doubt that the state government is finding it difficult to maintain its finances as it would want, but the government will continue to strive and achieve surpluses. The greatest random event that is affecting our bottom line —

Mr E.S. Ripper: Is the National Party!

Mr C.J. BARNETT: — is the appreciation of the Australian dollar. I think that is a dreadful affront on our country cousins!

The volatility is the rise in the Australian dollar relative to the US dollar. As members know, our export contracts for minerals and petroleum are basically in US dollars; therefore, that rise in value affects us adversely.

We will continue to do what it takes. We will continue to try and restrain expenditure and to shift resources around within portfolios so that we make sure that the taxpayer dollar goes to those areas where it matters most—in services to the state. We have a very aggressive capital works program—not only those that were detailed in the budget, but also a number of major projects.

Mr E.S. Ripper: Which you have announced but have not included in the budget yet.

Mr C.J. BARNETT: But we will.

Mr E.S. Ripper: You will do that as well?

Mr C.J. BARNETT: A lot is happening in Western Australia now. There is a great reliance on Western Australia to lead Australia in exports and investment. We are doing that, and we are working with the commonwealth government on that. I recognise it is going to be very difficult in maintaining our surplus over the next 12 to 24 months; thereafter, I expect we will find it easier to accommodate. But we have the world's best Treasurer. Everyone needs a challenge, and the Treasurer has a challenge. To answer the question, we are quite determined that we will maintain a surplus, however slim that might be.

STATE BUDGET — GOVERNMENT DEBT

846. Mr E.S. RIPPER to the Premier:

I have a supplementary question. What is the Premier's plan to repay the debt that he is building up as he borrows money to pay public sector wages?

Mr C.J. BARNETT replied:

How do we repay debt? We will repay debt by rebuilding the Western Australian economy. That is being done at a level that has not been done for 50 years.

Mr E.S. Ripper: It doubled in size on our watch!

Mr C.J. BARNETT: Can the Leader of the Opposition tell me which of the following he does not support—a supply base at Derby for the liquefied natural gas industry; a precinct for the LNG industry at James Price Point; the Gorgon project on Barrow Island; CITIC Pacific Mining starting a new project for the development of a new deepwater port for the Pilbara at Oakajee with associated rail infrastructure; and sinking the rail line through Perth and the waterfront development? Can the Leader of the Opposition tell me which of those projects he does not support?

HOSPITAL EMERGENCY DEPARTMENT WAITING TIMES — FOUR-HOUR RULE

847. Mr W.R. MARMION to the Minister for Health:

Minister, I am proud to be part of a government that is committed to reducing long waiting times in emergency departments in our hospitals. Can the minister please update the house on progress on the implementation of the four-hour rule program?

Dr K.D. HAMES replied:

I thank the member for the question. He is right to be proud, because I have just come from Sir Charles Gairdner Hospital where I was invited by the staff to speak to them about the implementation of the four-hour rule. There were about a hundred staff from that hospital and some from other hospitals there, because they have now reached the implementation phase of the four-hour rule. They have spent the past six months preparing, planning and discussing all of the changes that they need to make. Sir Charles Gairdner Hospital, along with Fremantle Hospital, Royal Perth Hospital and Princess Margaret Hospital for Children are joining together in the implementation phase of that four-hour rule.

For those members who do not know, the four-hour rule will mean that for patients going to any of those four hospitals, from the time a patient arrives at the emergency department until the time they are admitted to a ward, discharged and treated or transferred to another hospital, 98 per cent will have to be done within four hours. There is a phasing-in stage, during which the hospitals will get to 75 per cent over about the next 12 months, then 95 per cent and 98 per cent. However, I am strongly of the view that those hospitals can achieve it.

I was really excited today by the enthusiasm of the staff at the hospital. They are excited about this, they are talking about how they can do it, and they are confident that they can achieve it. It must be remembered that it was achieved in the United Kingdom in more than 130 hospitals. In Western Australia, there are different sorts of pressures. We have a growing population and an ageing population, so there are challenges. However, I have great confidence that the staff of all those hospitals can achieve that. The peripheral ring of hospitals, as well as Bunbury Regional Hospital, have just started their planning phase, and, as we progress, we will roll it out throughout Western Australia.

All the other states are extremely interested in the work that we are doing. I have been talking to some of the other state health ministers and to the federal health minister, who are watching with great interest. In fact, they already have teams of people coming over to Western Australia to see what we are planning and how we can do it. It is a tremendous step forward for our hospitals. It will mean that our patients receive far better care, and it will mean that finally the patient will be put first. The journey of the patient through the hospital will be the critical management step for all of the hospital. Therefore, instead of all the focus being on what happens in the emergency department—until now, we have had the worst waiting time in the country, at eight hours, for patients to get a bed—we will move very rapidly over the next 18 months to become the best in the country. Already during the planning phase, we have seen significant improvement as the hospital staff get together and work on things that they can change. They are already making some of those changes, and there has already been a significant improvement in all the parameters by which we judge how well a patient is treated in a hospital.

The member for Nedlands will be very pleased to see how Sir Charles Gairdner Hospital is going. By the way, it just received its renewed accreditation, so I handed over a certificate. The hospital has been through the accreditation process and has passed with flying colours. It is a fantastic hospital in the member's electorate, and he should be proud of it.

MENTAL HEALTH SERVICES — CHRISTMAS PERIOD

848. Ms A.J.G. MacTIERNAN to the Minister for Mental Health:

(1) Can the minister confirm that various mental health services at the Armadale Health Service will be closed for one month over the Christmas period, including the outpatient rehabilitation service, which provides suicide intervention services?

(2) Can the minister confirm that the Mead Centre, which provides services for adult mental health outpatients, will be operating on a skeleton staff for the same period?

(3) Can the minister provide details of other mental health services that will be forced to make cuts over the Christmas period to meet budget cuts?

Dr G.G. JACOBS replied:

I thank the member for Armadale for her question.

(1)-(3) I am not aware of the cutbacks that the member is suggesting over the Christmas period. It is very important to understand a matter that the opposition keeps carping about, and that is cutbacks in mental health. The opposition also carps about cutbacks in health. The spend in health, including mental health, this year has increased. We will come in on budget. I have answered questions from the opposition before about cutbacks in front-line clinical mental health services. There will not be any cutbacks in front-line services in mental health. As happens in many agencies and in many businesses in Western Australia, obviously arrangements are made over Christmas so that people can have time off. This is not about cutting back mental health services. When the opposition was in government we saw what it did for the unfortunate people with mental illness in this community. It can be summed up in one word—

nothing. We have created a ministerial portfolio of mental health to do better in mental health. We will provide improved services for people in mental health whether it is at Christmas or not.

MENTAL HEALTH SERVICES — CHRISTMAS PERIOD

849. Ms A.J.G. MacTIERNAN to the Minister for Mental Health:

I ask a supplementary question. Has the minister been briefed on the intention of his agency to make exceptional cuts to mental health services over the Christmas period? Is he acknowledging that these go well beyond anything that has ever been done before in terms of Christmas rostering?

Dr G.G. JACOBS replied:

I have not been briefed on exceptional mental health cutbacks over Christmas.

SPEARWOOD INFILL SEWERAGE

850. Mr J.M. FRANCIS to the Minister for Water:

I start by thanking the minister for taking on board the representations made to him by Hon Phil Edman, the City of Cockburn and me about the Spearwood infill sewerage program.

Several members interjected.

The SPEAKER: Some people in this place might like to ask the questions. You are all entitled to ask a question. The only person who is asking a question at the moment is the member for Jandakot. I ask that you hear him in silence.

Mr J.M. FRANCIS: Can the minister please update —

Mr M.P. Whitely interjected.

The SPEAKER: Some people do not listen. I formally call the member for Bassendean for the first time. I at least want to hear the member's question in silence.

Mr J.M. FRANCIS: Can the minister please update the house on today's developments to connect Spearwood residents to infill sewerage?

Dr G.G. JACOBS replied:

I thank the member for Jandakot for his interest and his representation in this important matter. Some months ago the Spearwood Action Group invited me to Spearwood to see the concerns it had with septic and leach drains in residential areas of Spearwood.

Mr F.M. Logan: Then you ran away from it.

Dr G.G. JACOBS: It is really interesting to hear from the member for Cockburn. Essentially, the opposition never wants to hear any good news. All it wants to do is carp about it. At least I had a background where I could look at the situation, make my assessment, do some special tests and then make a diagnosis and a decision. What does the member for Cockburn do? He carps about it and then when we look at the situation —

Mr F.M. Logan: You wouldn't even come to the meeting.

The SPEAKER: Member for Cockburn, I know you are interested in this. However, there are other ways you can contribute. I formally call you for the first time.

Dr G.G. JACOBS: The member for Cockburn often used to say to me, "If you do this and you do that, I will cooperate with you. Just get this thing done."

The Department of Health prepared a confidential report for the previous Labor health minister in 2006 which detailed serious concerns from both a health and environmental health perspective. Last week my colleague the Minister for Health wrote to me confirming the reported concerns and indicated that those issues have now worsened. It is a responsible government that assesses that and does something about it. It is beyond belief that members of the Labor government, when they were on this side of the chamber, chose to ignore the report during the best economic times Western Australia has ever seen and did not act for the residents.

Mr F.M. Logan interjected.

The SPEAKER: Member for Cockburn!

Dr G.G. JACOBS: When I visited Spearwood some months ago, I saw poor unfortunate residents who had been waiting 40 years. Forty years! I came to this job and over 12 months the member has carped about the fact that we have not done the work. Forty years! When members opposite were on this side, they had a program in the best economic times in Western Australia, and what did they do? They downsized the program. If they had carried on with the schedule —

Mr F.M. Logan interjected.

The SPEAKER: Member for Cockburn, I know that you are very interested in this; I understand. However, I have formally called you for a first time and now I formally call you for the second time.

Dr G.G. JACOBS: I will close with this: instead of repeating the behaviour on this issue shown by members opposite when they were the government, this state government is acting on advice right now, and the last remaining Spearwood residents without infill sewerage will be able to connect around June 2011.

HOUSEHOLD HAZARDOUS WASTE PROGRAM

851. Mr P. PAPALIA to the Minister for Local Government:

I refer to the household hazardous waste program delivered by the Western Australian Local Government Association in accordance with a state government agreement.

(1) Is it true that the Waste Authority will no longer fund the program?

(2) Have any household hazardous waste collection days been recently cancelled?

(3) What contingency measures are in place to protect householders and businesses in the event of cancellation of household waste collection days?

(4) How does the government intend using the $50 million a year raised by the new landfill levy tax if it is not going to support essential local government programs like the collection and disposal of household hazardous waste?

Mr G.M. CASTRILLI replied:

I thank the member for his question but it is probably best referred to the Minister for Environment. WALGA has not raised any of those issues with me whatsoever, so I will get back to WALGA and ask it what those issues are all about and I will get back to the member. WALGA has not raised any of those issues with me whatsoever.

HOUSEHOLD HAZARDOUS WASTE PROGRAM

852. Mr P. PAPALIA to the Minister for Local Government:

I have a supplementary question. In light of the 300 per cent increase in the landfill levy, which impacts on the minister's portfolio, does he not think that he should know about this particular impact as well?

Mr G.M. CASTRILLI replied:

The increase in the levy was a decision made by this government. I am a part of this government and I support this government. That is a question that the member should address to the Minister for Environment. However, as I told the member, I will contact WALGA. It has never contacted me on any of those issues.

RAVENSTHORPE AND HOPETOUN — GOVERNMENT SUPPORT

853. Mr M.J. COWPER to the Premier:

Can the Premier please outline to the house the actions of the Liberal-National government to encourage tourism and to boost businesses in Ravensthorpe and Hopetoun following the BHP closure earlier in January?

Mr C.J. BARNETT replied:

I thank the member for Murray-Wellington for the question. Ravensthorpe has had a year that that community will never forget. On 20 January this year, BHP shutdown its Ravensthorpe nickel operation and some 1 500 jobs were lost. I guess that even at a national level that was the most significant job losses associated with the so-called global financial crisis. This government took action quickly to try to deal with that situation. I was pleased to be in Ravensthorpe last Friday to take part in a ground-breaking ceremony for the Mt Caitlin lithium mine. It is not a big project by Western Australian standards—about $86 million of expenditure—but it will provide about 100 jobs in construction and operation. Lithium is primarily used in long-life batteries for vehicles, but also computers, phones and the like.

That was some good news for Ravensthorpe, but I just want to place on the record my thanks to my fellow ministers for the work that they have done in that area. It was heartening to have members of the community come up and acknowledge that work when I was in Ravensthorpe on Friday. Members will recall that we took immediate action to maintain public services when the nickel project closed down. We allocated $5 million, which was administered by the Minister for Regional Development, in assistance packages, financial advice and support for the shire so that it could maintain its services.

In other areas, such as education and health, we continue to maintain employment and services. A couple of weeks ago, the Minister for Regional Development and the Minister for Energy announced a $3 million project to build a new independent power supply for Ravensthorpe, and that is already having an effect on the expansion

plans of businesses in the town and the movement into Ravensthorpe of contractors and the like, who can now undertake work with a reliable power supply.

On Friday, I also announced that the state government would proceed, through Main Roads and local contractors, with building a sealed road of some 15 kilometres.

Mr C.J. Tallentire: Dieback spreader!

Mr C.J. BARNETT: It is a 15-kilometre sealed road along an existing track into the Fitzgerald River National Park.

Mr C.J. Tallentire: It's highly sensitive land!

Mr C.J. BARNETT: It is interesting; I flew over the national park on the way back, and there are tracks all over it. If dieback is being spread, it is being spread by people driving four-wheel drives, motorbikes and whatever else. By putting in place 15 kilometres of sealed road, which will probably be cordoned off from the park and have designated parking and camping areas and facilities, the government will give the public of Western Australia, particularly tourists, an opportunity to visit that national park. Hopefully the commonwealth government will come forward with its $20 million to allow the building of a similar stretch of road from Bremer Bay on the western side. It is then intended to have a 40-kilometre hiking trail connecting the two, which will be great for ecotourism. I am sure that the member for Eyre will be able to run the length of the trail; others will walk it! I think it is probably the most spectacular part of the Western Australian coast outside the Kimberley. We will now be able to use that great national park, and it will be well managed and well protected.

Mr P.B. Watson: Come to Albany!

Mr C.J. BARNETT: I think the member for Albany needs to get out more, and go and look at the Fitzgerald River National Park!

I thank the ministers involved; the individual ministers have done an outstanding job in supporting that community.

PRISON MUSTER — PRISONER ASSAULTS AND SEXUAL ASSAULTS

854. Mr P. PAPALIA to the Minister for Corrective Services:

I refer to the exponential growth of the prison muster that the minister has overseen, and the consequent move to accept double-bunking as the norm, housing as many as eight prisoners in one cell. What measures are being taken to ensure no escalation in the prevalence of assault and sexual assault amongst prisoners?

Mr C.C. PORTER replied:

I thank the member for his question. I begin by asking him whether he is suggesting that there is such an increase as things presently stand.

Ms M.M. Quirk: You're answering the questions.

Mr C.C. PORTER: I am asking whether there is a problem I should be addressing.

Several members interjected.

Mr C.C. PORTER: Is the member suggesting that, notwithstanding an overcrowded prison system, the government's management of the system is such that there has been an increase in assaults and sexual assaults?

Mr P. Papalia: No; that's not what I'm suggesting.

Several members interjected.

The SPEAKER: Members!

Mr P. Papalia: I am concerned because it relates to duty of care, and in light of my assumption that you are considering outsourcing management of the Eastern Goldfields Regional Prison, I am concerned about whether you have taken this into account.

Mr C.C. PORTER: We are all concerned; I am concerned about the prison system. The government is building 2 200 beds into the prison system.

Ms M.M. Quirk interjected.

The SPEAKER: Member for Girrawheen!

Mr C.C. PORTER: When the Labor Party went to the election, its plan for increasing the number of beds in the prison system was limited to the 100 beds for Derby. The Labor Party's concern translates into 100 beds; our concern translates into 2 200 beds. With regard to the situation in which we currently find ourselves, the Inspector of Custodial Services recently released a very interesting report on the inspection of Wooroloo Prison

Farm. There are some positives and negatives in that report. He said that the system had become increasingly overcrowded and gridlocked during 2009, but that much of the increase in numbers was entirely foreseeable and should have been planned for and funded by governments dating back many years. He said that the recent parole changes had exacerbated the problem, but did not create the problem. When we got into government, we went to the cupboard that was labelled "plans for increasing prison population", opened it up and found a 100-bed plan in there. We have managed in a very short time to plan for 2 200 beds, which will alleviate the short-term and medium-term problems we are currently experiencing. I share the member's concerns. If he wants to give me any kind of evidence that we are not properly running the prison system, notwithstanding the difficult circumstances that were left to us —

Mr E.S. Ripper: You haven't got an answer. Answer the question?

Mr C.C. PORTER: I advise the Leader of the Opposition that there is no question. Am I concerned? Yes, I am. Do members opposite want to show me a specific problem —

Mr E.S. Ripper: Have the number of assaults and sexual assaults increased? That is the question. Answer it.

Mr C.C. PORTER: Is the member suggesting that with respect to overcrowding the level of assaults and sexual assaults is higher now than it was under their government? Is that what they are suggesting.

Mr P. Papalia: You tell me.

Mr C.C. PORTER: What we are doing is planning for a prison population, which is something that the previous government was unwilling or unable to do.

PRISON MUSTER — PRISONER ASSAULTS AND SEXUAL ASSAULTS

855. Mr P. PAPALIA to the Minister for Corrective Services:

I have a supplementary question. Does the minister know whether the number of assaults and sexual assaults have gone up under this government?

Mr C.C. PORTER replied:

Is the member talking in gross or per capita numbers? There is some responsibility —

Several members interjected.

Mr C.C. PORTER: These are completely vague concerns and there is no actual question. I go through that data all the time.

Mr P. Papalia: The question was: do you know?

Mr C.C. PORTER: What is the member suggesting that I should know?

Mr P. Papalia: Do you know whether they have gone up under you? You do not know the answer.

Mr C.C. PORTER: There are always assaults and, indeed, sexual assaults in the prison system. That has been the case for decades. If the member is suggesting that per capita of the population it is worse now than it was under your government, then put the question and I will answer it.

PORTS — DERBY AND OAKAJEE

856. Mr M. McGOWAN to the Minister for State Development:

I refer to the minister's often stated views that ports in Western Australia must be Australian-owned, including as recently as on 11 March 2009 when he stated in this house that we will not have any overseas country or overseas interest-owned ports.

(1) How does the minister reconcile this statement with his views expressed on Sunday that a new port in Derby should be privately funded and owned by overseas investors?

(2) Does this change of view not mean that he has committed $700 million of public money to a port at Oakajee based on a set of prejudices that he no longer believes?

Mr C.J. BARNETT replied:

(1)-(2) We know that the Labor Party is opposed to Oakajee; we know that the Labor Party is opposed to the state government investing in and owning the common user infrastructure, being the outer harbour and channels; and we know the Labor Party is frustrated that my close friend Kevin Rudd, Prime Minister, has supported that project and has matched the government's funding dollar for dollar. I know that these three things upset members opposite.

Oakajee is a multiuser, multiproduct port for a range of different companies that own resources of varying nature and value. It is about servicing a wide mineral province. The proposal that this

government is working on with Japanese group Inpex is for a supply base to be established at Derby to service its development of the Ichthys gas field and potentially other gas fields. It is basically a port specific to their project, although we will ensure that should another project wish to use that supply base in the future that capacity will be in place. This is not seen as a broad export port. It is a supply base to an individual project for taking equipment and machinery backwards and forwards. If the state assists, we may well build the access road out to the port and we may make some land available. Again, that is the model of most of the essentially projects-specific ports developed in the Pilbara and elsewhere around Australia.

PORTS — DERBY AND OAKAJEE

857. Mr M. McGOWAN to the Minister for State Development:

I have a supplementary question. How does the minister reconcile what he just said with what he said on Sunday when he said about Derby that it is a major port in itself?

Mr C.J. BARNETT replied:

Yes. We have Bill and Ben, the flowerpot men, at the back!

Several members interjected.

The SPEAKER: Thank you, members. I am sure that the member for Rockingham wants to hear an answer to his question. I would like to hear an answer to it, too, but other people in this place seem entirely disinterested. At least give the member for Rockingham the courtesy of listening.

Mr C.J. BARNETT: As members would know, Derby, being at the end of a sound, as it is, has relatively shallow water. It has tidal movements of around 11 metres. Any port that can service even mid-sized shipping—some of the service boats for offshore rigs are large vessels in themselves—requires a long structure going out into deep water. The tidal movements and currents create difficulties, so to construct that facility with the various loading facilities—there may be conveyors and who knows what—and the supply side and the storage areas could cost probably up to $750 million. It will probably not be that high a figure, but it may be between $600 million and $700 million. The point I make is that it is not a major port in the sense of —

Mr M. McGowan: You said that it was a major port and it is internationally owned.

The SPEAKER: Member for Rockingham!

Mr C.J. BARNETT: The member asks the questions and I answer them. It is not a major port in the context of Fremantle, Dampier or Port Hedland, which would today cost many billions of dollars to build, but it is, nevertheless, at maybe between $600 million and $700 million, a significant investment and, in that sense, a major port for Derby. I am sure that the member for Kimberley would regard a $600 million to $700 million investment in Derby to be a major investment for Derby.

NORTHBRIDGE LINK PROJECT

858. Mr M.W. SUTHERLAND to the Minister for Planning:

I have noticed a large sign between the Perth Arena and the Perth Entertainment Centre advertising land for sale. Will the minister please give the house an update on the progress of the Northbridge Link project?

Mr J.H.D. DAY replied:

I thank the member for the question. I am pleased to say that very good progress is being made on the Northbridge Link project. Detailed engineering design work is currently underway on sinking the railway line. A review process has been underway for the area at the eastern end of the project around the Horseshoe Bridge. Together with the Premier, I expect to be providing more information about that area between now and the end of the year. What has happened in the past week, in particular, is that the first two lots of land in the Northbridge Link area that are now for sale have been put on the market. It is the area immediately between the Perth Arena project, which is of course under construction, and the old entertainment centre. Those two lots have been prepared for sale and are now on the market.

Several members interjected.

The SPEAKER: Thank you, members!

Mr J.H.D. DAY: I am glad that the opposition is interested in this issue. Lot 2 in particular is designated for mixed-use development and will include a component of hotel or short-stay accommodation. There is a strong demand for hotel accommodation in the central business district, and it is a very good potential site for such a development. It is also intended that there be other commercial, retail and possibly other residential development on that site. The site is able to accommodate a 16-storey landmark building, with restaurants, cafes and retail outlets at the ground-floor level and with commercial, hotel and residential facilities above.

Mr J.N. Hyde: You can't even get the police station started for Northbridge.

The SPEAKER: Member for Perth!

Mr J.H.D. DAY: I am talking about a project that is underway. The land is on the market. It is a direct result of the approval of the planning scheme amendment by me earlier this year, and it is happening.

Several members interjected.

The SPEAKER: Thank you, members!

Mr J.H.D. DAY: Extensive work has been undertaken on this project this year, and it is continuing. In addition to lot 2, there is also the neighbouring lot 3A, which is just immediately to the north of lot 2 and which is also being offered as an option for sale, together with lot 2, and includes the potential for a commercial, mixed-use development and retail and recreation opportunities as well. A substantial milestone has been reached in the Northbridge Link project. The land is on the market and it is being promoted in Western Australia, other parts of Australia and also in parts of Asia, including Singapore. At the moment we hope that there will be a very good result achieved for the public of Western Australia, not only with the amount achieved from the sale of the land, but, also, in particular, with the developments that will occur on that site, followed by the rest of the Northbridge Link project, which we will see getting underway next year.

MEMBER FOR BALCATTA

Infill Sewerage — As to Personal Explanation

MR J.C. KOBELKE (Balcatta) [2.59 pm]: I seek to make a personal explanation under standing order 148.

Leave granted.

Mr J.C. KOBELKE: In his earlier answer to a question, I believe the Minister for Water reflected negatively on me when I was Minister for Water Resources and involved in making decisions on infill sewerage in Spearwood, and I wish briefly to outline my involvement in that decision making. The infill sewerage program —

Mr R.F. Johnson: That is not a personal explanation, and you know it.

Mr J.C. KOBELKE: It is. The infill sewerage program was an excellent program —

Several members interjected.

The SPEAKER: Order! I suggest to the member for Balcatta that he might not necessarily agree with what the Minister for Water said previously in this house today, but, technically, this is not a personal explanation. I suggest to you that if you look at another way of bringing this issue forward, I will certainly enable that to happen, but, member, I cannot accept this as a personal explanation.

Point of Order

Mr J.C. KOBELKE: Can I make a point of order, Mr Speaker?

The SPEAKER: Point of order.

Mr J.C. KOBELKE: The issue is that many people are suffering in that area and the minister's statement suggested that those concerns had not been looked at. I simply wanted to —

Several members interjected.

Mr J.C. KOBELKE: I believe that is a personal reflection on me and I wish to make a brief statement to that effect.

The SPEAKER: Member, neither is that a point of order. As I said only a moment ago, I will certainly provide opportunities for anyone in this place to raise issues. I understand why you want to make comments, but it is not appropriate at this moment to do so. The avenue you are seeking to do it through is not acceptable. If you want to raise it in another way either later today or tomorrow, I will certainly countenance that.

SCHOOL SUPPORT STAFF

Petition

MRS M.H. ROBERTS (Midland) [3.02 pm]: Thank you, Mr Speaker. My petition reads —

> To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned, say that for sometime School Support Staff have endured a serious workload issue and that WA schools are struggling to cope with the allocation of support staff as a result of inadequate funding being injected into the staffing formula in use by the Department of Education and Training.

As a result of inadequate funding, monies are being diverted from important educational programs and essential school upgrades and maintenance.

Now we ask the Legislative Assembly to address the critical issues facing WA schools and their Support Staff by acting on the recommendations of the Twomey Taskforce by:

- Addressing the existing workload issues by providing adequate funding to schools so as to facilitate an increase in the number of School Support Staff;
- Resourcing any future shift of administration and clerical work from teachers to School Support Staff with increased School Support Staff numbers;
- Improving the status of School Support Staff and including them in school leadership and planning teams, and
- Developing an expanded career path for School Support Staff.

By implementing these recommendations of the Twomey Taskforce, the government will ensure that teachers are able to remain teaching in classrooms and to deliver the education our children deserve.

I certify that this petition conforms to the standing orders of the Legislative Assembly and contains 545 signatures.

[See petition 160.]

SHACK SITE COMMUNITIES

Petition

MR A.J. SIMPSON (Darling Range — Parliamentary Secretary) [3.04 pm]: My petition contains 304 signatures and is couched in the following terms —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned say that leased Shack Sites Communities, such as Wedge Island, Grey, Donnelly River, Broke Inlet, Dampier Archipelagos, and Israelite Bay have long been the traditional holiday/recreational destination for many thousands of ordinary Western Australians.

Most Shack Site Communities sprung up to accommodate the gathering of farming and town based families to enjoy holidays together in remote and idyllic fishing locations right across Western Australia.

Some Shack Site communities went onto becoming fully-fledged towns such as, Bremer Bay, Jurien Bay, Dongara and Horrocks, whilst some Shack Site Communities have disappeared.

However, some residual communities remain, with a strong sense of community and have become the preferred holiday option for many thousands of Western Australians.

These places are tangible examples of sustainable lifestyles, where younger generations can learn responsibility and become creative and family traditions and stories can be passed on.

The loss of these communities will seriously diminish the social, economic and health well being of many ordinary Western Australian families.

Now we ask that the Legislative Assembly support our campaign for the Government to

Examine how other States of Australia, including South Australia, Tasmania and New South Wales have retained conforming Shack Site Communities in order to preserve these valuable assets for many Western Australians to have affordable coastal holiday destinations and continue to allow human interaction all but lost in today's society.

A similar petition was presented by **Mrs L.M. Harvey** (242 signatures).

[See petitions 161 and 164.]

MINDARIE — ANTISOCIAL BEHAVIOUR

Petition

MR J.R. QUIGLEY (Mindarie) [3.05 pm]: I present the following petition —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, wish to say that the lifestyle and enjoyment of our homes in Mindarie is being undermined and significantly damaged by groups of youths of up to 30 or more who at night time congregate in the parklands that stretch from Marmion Avenue to the coast.

The police regularly attend at the park, but the youths disappear into the darkness of the night in the park.

We therefore request that the Government and the City of Wanneroo remove the heavily vandalized gazebo in the park which is a focal point for the youths and install lighting in the park so that the police have visibility and therefore some chance of apprehending offenders upon attending the parklands and the residents can video offenders for later identification.

We request the measures be put in place before summer.

The petition contains the signatures of 88 local residents. It is certified by the Clerk of the Legislative Assembly as conforming to the standing orders.

[See petition 162.]

ESPERANCE ANGLICAN COMMUNITY SCHOOL — REGISTRATION FOR YEARS 11 AND 12

Petition

DR G.G. JACOBS (Eyre — Minister for Water) [3.06 pm]: My petition relates to the Esperance Anglican Community School, and reads —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, are opposed to the decision of the State Government to not grant registration for years 11 and 12 to the Esperance Anglican Community School and reason that parents and children of Esperance are entitled to choice in education. Furthermore diversity of education adds to the attraction of the South-East region for professional and skilled workers therefore bolstering the economy.

Now we ask the Legislative Assembly to recommend and support the granting of registration for years 11 and 12 to the Esperance Anglican Community School.

Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners as in duty bound, will ever pray

The petition was signed by 56 petitioners.

[See petition 163.]

MOORE RIVER — HOUSING LOTS SOUTH OF ESTUARY

Petition

THE SPEAKER (Mr G.A. Woodhams): I have a petition to present with 44 signatures, which conforms to the requirements of the Legislative Assembly —

To the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, say that the announcement by the Minister for Planning on 9 June, 2009, to approve of the development of 2,000 housing lots on the south side of the Moore River Estuary, is contrary to the findings of the Gingin Coast Structure Plan and to the view that has been consistently and strongly put forward by the community since 1995.

Now we ask that the Legislative Assembly recommend that the land adjoining the proposed Wilbinga Conservation Park which is subject to the Moore River Company's plans, be:

1. purchased by the Government at a fair price to the landowner;
2. be managed in perpetuity for the benefit of the whole community, for the protection of the estuary of the Moore River;
3. purchased to stop suburban Perth sprawling to the Moore River and beyond; and
4. saved from any form of urban development so that Western Australian tax payers are not forced to contribute to or subsidise the massive infrastructure costs (roads, bridges, sewerage, water supply, electricity supply) that would be caused by a development at the extreme outer limits of the city).

We make this request because of the unique aesthetic and environmental features which this area contributes towards the natural capital of Western Australia.

[See petition 165.]

PETITIONS — REQUIREMENT TO CONFORM TO STANDING ORDERS

Statement by Speaker

THE SPEAKER (Mr G.A. Woodhams): Members, in tabling that petition, I draw all members' attention to the requirements of petitions in this place. There is a standard process by which petitions are tabled and a form that needs to be followed. Extra wording in the preamble to a petition could, in some senses, disqualify a petition from being tabled.

I want to draw that to members' attention because it has been made clear to me today that there have been a couple of petitions tabled in this place that would not necessarily qualify as petitions. They have been referred to the Assembly staff and then to me. I think the spirit and the intention of the petitions is correct, but they need to meet the requirements of the Legislative Assembly. I am not going to be a schoolteacher about this, but I do suggest that members look at the way in which petitions should be presented in this place.

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

DEPARTMENT OF EDUCATION SERVICES — ANNUAL REPORT 2008-09
WESTERN AUSTRALIAN TOURISM COMMISSION — ANNUAL REPORT 2008-09

Corrections — Statement by Speaker

THE SPEAKER (Mr G.A. Woodhams): I received a letter on 23 October 2009 from the Minister for Education requesting a correction to the "Department of Education Services: Annual Report 2008-09" tabled in the Legislative Assembly on 24 September this year. The minister has requested that a footnote to table 8 of the appendices to the report be added. Table 8 lists general and special education per capita grants paid to non-government schools in 2008-09 and includes enrolment details for the schools. The footnote will rectify a minor ambiguity in the way that student enrolments have been recorded.

I also received a letter on 5 November 2009 from the Minister for Tourism requesting that a correction be made to the "Western Australian Tourism Commission"—trading as Tourism Western Australia—"Annual Report 2008-2009" tabled in the Legislative Assembly on 24 September 2009. The minister has requested that information on page 25 of the report in relation to section 2.3, "Key Performance Indicators", be corrected.

According, under the provisions of standing order 156, I advise the Assembly that I have authorised that the necessary corrections be made to the tabled papers.

BILLS

Notices of Motions to Introduce

1. Higher Education Amendment Bill 2009.

Notice of motion given by **Mr R.F. Johnson (Leader of the House)**.

2. Mines Safety and Inspection Amendment Bill 2009.

Notice of motion given by **Mr W.R. Marmion (Parliamentary Secretary)**.

3. Criminal Code (Rock Throwing and Laser Pointing) Amendment Bill 2009.

Notice of motion given by **Mr J.R. Quigley**.

PRIVATE MEMBERS' BUSINESS, ALL STAGES OF BILLS, GRIEVANCES AND COUNCIL MESSAGES

Standing Orders Suspension — Notice of Motion

Mr R.F. Johnson (Leader of the House) gave notice that at the next sitting of the house he will move —

That for the remainder of 2009, so much of standing orders be suspended as is necessary to enable —

(a) bills to proceed without delay between the stages;

(b) messages from the Legislative Council to be taken into consideration on the day on which they are received;

(c) private members' business to have priority on Wednesdays between 4.00 pm and 6.00 pm; and

(d) grievances to be suspended.

AMBULANCE SERVICE, HOSPITAL CHRISTMAS SERVICES AND BUDGET PRIORITIES

Matter of Public Interest

THE SPEAKER (Mr G.A. Woodhams): Members, today I received within the prescribed time a letter from the Deputy Leader of the Opposition in the following terms —

> I wish to raise the following as a matter of public interest today, Tuesday November 10, 2009.
>
> "That the House condemns the Barnett Government for its pathetic response to the crisis in Western Australia's Ambulance Service, the extended closure of hospital services over Christmas and its lack of priority for the health budget."

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [3.15 pm]: I move —

> That the house condemns the Barnett government for its pathetic response to the crisis in Western Australia's ambulance service, the extended closure of hospital services over Christmas and its lack of priority for the health budget.

I think it is worthwhile re-examining the circumstances that led to the St John Ambulance inquiry. This was not an inquiry that the government entered into of its own volition; it was dragged kicking and screaming and conceded to this inquiry only after concerted pressure from both the opposition and members of the public. The circumstances that led to the inquiry were highlighted in an episode of *Four Corners* in which it outlined four tragic deaths potentially due to the inadequacy of the ambulance service. Most members will remember the experiences of those people, but I will refer to the description in the report of the St John Ambulance inquiry of one of these instances. This instance occurred in my electorate of Kwinana. Despite the clinical and careful wording of the report, it makes for chilling reading. It reads —

> SJA communications centre received a 000 call at 15:49 on the 25th May … from patient's wife requesting an ambulance for pancreatitis and vomiting blood. Call was prioritised —

Unbelievably, Mr Acting Speaker —

> as a level 4. At 16:02 patient's wife made a second call and a third at 16:17 to restate urgency and ascertain how long the ambulance would be.
>
> A transport crew was dispatched at 16:10 —

Some 20 minutes after the original phone call —

> arriving at 16:30 and requested paramedic back up at 16:35. A paramedic crew was dispatched at 16:40 on a priority 2 arriving at 17:01 and CPR was commenced but unsuccessful owing to significant blood loss.

That is an hour and 10 minutes after the original phone call was made. This person died on the lounge room floor, much to the distress of the family and, in particular, the kids in that household.

As I said, this government did not want to have this inquiry. These are the facts that the government did not want us to have and did not want the public to see. This is a report of an inquiry that the government resisted and did not want to have. It is worth looking at some of the findings of the report because it is a good report; it points to some significant and useful ways that we could reform our ambulance service. The report points to a lack of staffing and the need to upgrade the staffing resources. It points to a lack of training and professional development for paramedics and other people working in the service. It refers to reforming the clinical governance of the ambulance service. I think it goes without saying that there was some controversy about the way St John Ambulance undertook its clinical governance. The report referred to reforms of the communications centre to ensure that the way calls are answered and dealt with to ascertain the level of priority is adequate to respond to the volume and nature of those calls coming through. Not all the recommendations were far-reaching; some were commonsense, such as hiving off 000 calls to make sure they are dealt with differently and with a greater sense of urgency than other calls. The report highlighted deterioration in response times. It highlighted that the department has a response target of 90 per cent within 15 minutes of priority 1 calls, that the ambulance service had failed to reach that target over a number of years and that performance in this area was in fact deteriorating.

St John Ambulance service has a great deal of public support. It is an organisation that has been operating ambulance services within Western Australia for almost 90 years. It is a brand that is loved and trusted by many Western Australians, but the fact of the matter is that if it is not given the resources to run the ambulance service, it cannot produce the premium service that the Western Australia public deserves.

It is interesting to look at the cost breakdown for the ambulance service. It is cut-price. It is the most inexpensive ambulance service in Australia. The national average spend per capita for an ambulance service is $95, with an average state government contribution of $62 per person. In Western Australia, that goes down to a $52 per capita total spend, with a state government contribution of just $18. Without casting judgement over the veracity or the nature of the claim with which St John Ambulance has now come to the public domain—which is to top up its funding from around $40 million to around $100 million, an increase of $60 million on a per annum basis—we can see that there is plenty of scope in Western Australia to increase the emphasis and make great the priority of ambulance services.

It is worthwhile looking at what has happened since the inquiry. The government sat on the report from that inquiry for a number of weeks, waiting for a publicly convenient time to release it, much to the consternation of the public and to the paramedics who were interested in its outcomes. Following a cabinet decision yesterday, the government opted for a knee-jerk reaction to inject $1.028 million into the service to fund an extra 37 positions, which the government says can be taken out of that $1.028 million. We all know, from looking at the report, that that response is woefully inadequate; it is a bandage for a gaping wound.

The ambulance service needs solutions; it is an ambulance service that needs answers now. There has been an initial injection of $1.028 million. But what are we and the public being asked to do now? We are being asked to wait so that the minister can go away, have a bit of a dig, have a bit of a look-see and contemplate the ambulance service and the way it operates with a view to perhaps coming back with more resources in the next budget round. It will not be, therefore, until June next year that any fresh resources will be put into the ambulance service to address the issues that the inquiry referred to. The ambulance service is in crisis now. St John Ambulance officers regard the situation as a crisis. That is why they came out yesterday to say that if significant resources are not put into the service in the form of an injection of millions of dollars over the next four years, they will walk away from the service. They will walk away from a service that they have run for almost 90 years, that has become part and parcel of the work they do in WA and that is an important part of their corporate life in WA. We know that the paramedics think it is in crisis. It took the guts of those paramedics to go to the media in the first place, to spill the beans, to blow the whistle on the ambulance services to make sure that enough pressure was brought to bear so that this inquiry could take place. Lord knows that the public thinks that the ambulance service is in crisis. We know that the public now sees an ambulance service that is not responding to the needs of the community. We know that the ambulance service has failed abysmally for those particular families, and the minister asks us to wait. It is a service that is in crisis.

Everyone on this side can anticipate in large part what the minister's response to these criticisms will be. The minister treads a worn-out path every time we stand up here to point out the errors. We can tell by his annoyance on the radio on this matter the other day that he was concerned he did not get the heads up on this, so that he could have patched over the problem, by talking to those families before they got to the media and exposed the endemic problems of the ambulance service. His approach is to do nothing until someone gives him the heads up, so that he can block the political impact. We almost do not need the minister to get to his feet to know what else he will say. He will point to the legacy of previous governments. He will point to the legacy of the previous Labor government and say, "It's not our fault; it's all someone else's fault." In this situation, there is one exception. This did not have to become a crisis. Last year the then Minister for Health—the man whom the current Minister for Health admires so much, mainly because the present minister is having trouble living up to the same level of reputation and skill—had already opened this inquiry.

Dr K.D. Hames: What was that inquiry about?

Mr R.H. COOK: It was realised that there were problems in the service that needed correcting, so the Minister for Health in the previous government had the vision, the forethought and the responsibility to get that inquiry up and running. Who was he going to get to carry out the inquiry? None other than Mr Greg Joyce—the same man who has undertaken the present inquiry.

The Minister for Health interjected, asking what the inquiry was to be about. It was not intended to be about the present minister's cover-ups. It was not going to be about the neglect of the ambulance service. It was to be a systematic response to the difficulties that the ambulance service was facing.

Dr K.D. Hames: It was a response to the union.

Mr R.H. COOK: It was not, as the minister has suggested, a response to the union; it was in response to the calls from the paramedics—the same paramedics who ultimately had to take matters into their own hands and go to the media. The present minister cancelled that inquiry. If he had not done so, he would have had this information last Christmas. The inquiry was due to finish up by December last year, and I bet that Mr Greg Joyce would have done just as excellent a job then as he has done this time. The Minister for Health would have had all the information in front of him, except that he would not have had a crisis on his hands. He would not have had paramedics having to take matters into their own hands and go to the media. He would have had to

respond in a systematic and appropriate way. Because the minister cancelled the inquiry, he did not have that information in front of him. He wanted to cover it up, and it took the bravery of those paramedics to bring about the inquiry. It took a crisis, which now besets the Western Australian ambulance service. The government must respond to this crisis so that we can once again build the confidence of the Western Australian public in the ambulance service.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [3.30 pm]: This whole set of affairs in the health portfolio reveals two management techniques that the government has adopted. The first is denial, and the second is not exposing itself to information that will create difficulties. That is the issue that my deputy leader, the member for Kwinana, has just been arguing. We have an ambulance service in crisis. We would have known more about our ambulance service had one of the first actions of the Minister for Health not been to cancel the inquiry that the previous government had set in train to deal with issues in the ambulance service. That was a case of the minister not wanting to know what the circumstances might be: if he did not know, he did not have to act.

The second management technique is denial. We have seen that in the government's response to the questions asked about cuts to the health budget. We have read a long series of articles about cuts to health services. An article in *The West Australian* on Monday, 2 February is headed "Health services jobs may go in 3pc budget pruning" and states —

> Hundreds of health services support staff face losing their jobs after director-general of health Peter Flett announced yesterday that he had recommended their contracts not be renewed as part of the State Government's 3 per cent Budget cuts.

Dr Flett is later paraphrased as saying —

> The 3 per cent cut requirement meant he had to save about $120 million in the health budget.

On 10 March there was another article about general practitioner clinics and cuts to the health helpline funding. That information was based on a leaked internal document. An article in the *Sunday Times* on 13 September was headed "Hospitals to slash nurse and doctor jobs". The article begins —

> Massive cuts to doctors and nursing staff in WA hospitals have been predicted after revelations that the Health Department is facing a $1.6 billion budget blow-out over the next four years …

That article was based on emails between departmental officials who claimed that the South Metropolitan Area Health Service had been told to cut the equivalent of 943 full-time staff in the next year. Again, on 4 October there was another article about the extended Christmas shutdown at Royal Perth Hospital as a result of budget pressures. On 7 October there was an article in *The West Australian* about a document that we previously debated in the house. The article states —

> More than 470 full-time jobs will be axed at Royal Perth Hospital to meet its reduced budget, including 52 positions in its cancer and neurosciences division, 90 in the surgical unit and 74 in critical care, a leaked internal document has revealed.

Finally in the series of articles from which I am quoting, an article in *The West Australian* on Saturday, 10 October states —

> Royal Perth Hospital's psychiatry department has outlined plans to reduce the number of doctors and cut after-hours cover for wards and the emergency department.

Week after week and day after day we read reports based on documents from inside the Department of Health and documents from inside the hospitals stating that there have been budget cuts and service cuts. That is where the second strategy of the government comes in. It denies. It does not know. It has outsourced the management to the bureaucracy. It does not take ministerial responsibility. We hear from the government that it is not true, it is just a discussion document and that it is only a consideration of options or that it is a reconfiguration. The government has wheeled out every management speak and gobbledegook cliché to deny that there have been cuts to services in the Department of Health. How does the government explain the unending series of articles day after day? All these documents are flooding out of the Department of Health and giving the lie to the government's assertions that all is well in the health system and that no services are being cut. This cannot go on. Eventually the government will have to admit that it is cutting health services. The government will not be in a position to do anything else other than admit that.

I really fear for the health services when I look at the government's budget position. I was struck by how pathetic the response to the ambulance inquiry was. St John Ambulance has said that it will walk away from the ambulance service unless the government give it $60 million of additional funding. St John says that it is not prepared to have its name associated with a second-class ambulance service. That is what is coming at the government unless it gets its act together, and what was the government's response? It was a pathetic and

miserable $1 million to deal with the very serious issues raised in this ambulance report. I cannot believe that the government thought that anyone would think that that was an adequate response. The government has grossly inflated the number of staff it thinks it will get for that amount of money. That amount will provide 10 full-time staff for one year at public service rates. That is a miserable response to the sort of issues that were raised in the *Four Corners* program and in the independent report into the ambulance service.

I know what people inside the government would be thinking. They are no doubt extremely annoyed that this issue has emerged on its watch. I say to them that that is part of being in government. Issues always emerge on the government's watch and the government must be in a position to respond adequately. That is the problem the government will face because it has a very serious budget crisis. It is $687 million in the red only two months into the financial year. I cannot see how it will get a budget surplus this financial year. I think it will borrow money to pay for petrol and police cars and to pay for the wages of public servants right across the sector. The government is running up debt to pay for the current services. It has not left itself any capacity to deal with the issues that will emerge on its watch, and there will be issues, particularly in the health portfolio. The government cannot set down the markers for health and expect that nothing will happen in the next 12 months. The government will not be accepting its responsibility as the government if it does that. It must expect that issues will emerge, and it must give itself the capacity to deal with those issues. The government is not doing that. It has blamed the global financial crisis, but that is not the story. The story is revealed in Treasury's "Monthly Report of General Government Finances: Statement for the Month Ended 31 August 2009". Buried within the report is the statement —

> Expenses in August 2009 were $1,730 million. This is $300 million (or 21.0%) higher than in August 2008.

The government cannot have expense growth of 21 per cent from August in 2008 to August in 2009 and still expect to have some capacity left over to deal with the things that come along in the ordinary course of government such as a crisis in the ambulance service —

Mr T.R. Buswell: What would you cut?

Mr E.S. RIPPER: The Treasurer asked, "What would I cut?" The problem is the unsustainable deal the Liberal Party concluded with the National Party to gain government. It is the Premier's deal with the Leader of the National Party to spend $2.8 billion over and above what the state government would have spent over four years that is crippling the government. That is the source, at least in substantial part, of that extraordinary level of expense growth. Western Australians are going to suffer because of that. Our family bills are going up. They are skyrocketing. Our services are being cut. We are all going to experience the negative ill-effects of the unsustainable deal that was concluded by the Liberal Party and the National Party and by the Premier and the Leader of the National Party for the sole purpose of getting into power. It was a whatever-it-takes deal. Unfortunately, the people of Western Australia will pay. Their family bills are going through the roof and their health services are under threat because those services are being cut. If anything happens in the Department of Health that requires a bit of extra money, there will be no money to give. It is all going to get worse. People might think that the service cuts and their family bills are bad now. The figures in the monthly report of general government finances —

Mr T.R. Buswell interjected.

Mr E.S. RIPPER: I do not think I should take an interjection from the Treasurer. I would be ashamed if I presided over an expense growth rate of 21 per cent. It is a scandal that the Treasurer is presiding over such a high rate of expenditure growth. I cannot believe that during question time the Premier said this Treasurer was the best Treasurer in the world. If people think the situation is bad now because of the cuts in services and skyrocketing bills, it will only get worse because this government's financial mistakes will be paid for by every Western Australian. Western Australian families will pay a high price in bills and service cuts because the government cannot manage the finances. It could not manage them in the Court government and it cannot manage them now. We will see the first state deficit since the last time that the Liberal Party was in power.

MR C.J. BARNETT (Cottesloe — Premier) [3.40 pm]: I want to make a brief comment on the ambulance service in particular. I want to place on the public record that St John Ambulance has been providing ambulance services in Western Australia since 1922. Last year alone it provided emergency ambulance services to more than 180 000 patients. It employs a thousand people, and also has the involvement of three and a half thousand volunteers. I simply say that to make the point that St John has been providing long-term services to our state; it is a not-for-profit organisation and is largely community based. I want to place on record this government's respect for the work of St John. We recognise there are some serious issues that have emerged—not suddenly, overnight, but issues that have been brewing for several years. Those issues exist and that is acknowledged by government and by St John. I want to reassure the public of Western Australia that the government will ensure

that the ambulance service continues. It is an essential service for the state and the government recognises that it will need to grow, both with the growth in population and with an ageing population.

The Minister for Health provided some immediate financial support—yes, it is modest—of a little over a million dollars to deal with an immediate situation. As the government has indicated, we will look at this in the context of the next budget round; and without putting a number on it, we recognise that to maintain what is an essential service will require additional funding. The government will work on what level that will be, particularly the Minister for Health and the Treasurer, with St John. However, we will ensure that that service continues for the people of Western Australia. I know there has been some debate about the future of St John. The preference of this government is very much that St John continues and we contract through it to provide services to the public. I think that is a far preferable model than the suggestion that some people make that the state should take over that service. However, all of that analysis and work has to be done.

Again, I want to acknowledge the standing of St John. It has had some failings in its systems. That is regrettable; it is acknowledged. Those failings have contributed to the deaths of some people. The government will support and maintain that essential service in Western Australia.

MS A.J.G. MacTIERNAN (Armadale) [3.42 pm]: I want to talk about the cuts that are occurring to health services in Armadale, in particular through the Armadale Health Service. I want to pick up a theme raised by the Leader of the Opposition—that is, this issue of denial and not seeing any honesty at all about what is going on. In reality, we are seeing staff cuts and budget cuts of the order of 10 per cent across the Armadale Health Service. I raised a couple of early examples in this place previously. We found there was a cut to speech therapy and there was the reduction of a position. The minister said that we had it all wrong and that a person had gone on leave, but it turned out, as we thought, that the person had gone on extended maternity leave. The position had been advertised and filled, but the appointment was not allowed to be proceeded with, so there was a cut.

The next issue that emerged was the proposal to abolish the private maternity ward, the Galliers Wing, of the Armadale-Kelmscott Memorial Hospital. We were told that was not a budget cut and the closure was happening simply because the government could not recruit staff. We found, of course, when we probed that that was not true and that six people had made applications for those jobs. Then the government's defence was that the applications had been lost; someone had put them in a drawer and no-one knew about them!

Now in the Armadale Mental Health Service—an issue that I raised today at question time—we have cuts to services. A week or so ago it was proposed to close the entire child and adolescent health service for a four-week period. There was then a backtracking on that proposal. However, the outpatient rehabilitation service will now be closed for a month, and the Mead Centre, which provides care for people with psychiatric disorders and severe psychological disorders, will be operating with a skeleton staff. In fact, I understand that the centre was going to be closed at one stage, but the government has decided to keep that operating with a skeleton staff. The Minister for Mental Health was trying to claim today—again in line with this policy of denial that we have seen over and again—that this is standard holiday rostering. It is not; these are not cuts that have ever been made in other years. There is a very good reason for this. We know that mental health issues often spike around Christmas; Christmas is a period of high stress for many people and catalyses many of the underlying dysfunctions that people may have within their families. It is well known that Christmas is a busy time. It is not like closing down a surgery for a fortnight, which often is done so that the orthopaedic surgeons can go down to Eagle Bay! Mental health services are not cut like this or closed down. Rehabilitation services have not before been closed down like this for a month, nor have services like the Mead Centre been put on a skeleton staff for a month.

This does not apply just to mental health services, although obviously that is an area of great concern. This litany of stories is coming to me from many people. The opposition is constantly contacted by staff who have been at the hospital for many years and who are very, very concerned about what is going on. Within the general hospital virtually all the contract staff have gone, and people are being required to fill several positions. Indeed, they have been asked to come up with ideas for rolling several positions into one. People who have gone on leave recently have not been replaced. In the administrative area, people come back to extraordinary work levels that have accumulated while they have been away. There is a problem, and both the nursing and the clerical staff are reporting that it is not possible for them to book leave in the next year. They can book leave only if there is a gap in the roster. There are no relief staff. There is no capacity for them to book holidays at all. This situation is becoming unmanageable. Staff in every section have been told that they have to achieve budget cuts of 10 per cent. This cannot be done without a cut in front-line services. If one person is doing the job that previously two or three people did, that is a cut in front-line services. That is what is being experienced by the staff at the hospital. It is a major issue.

The government cannot continue to deny that it is not requiring these cuts to be made. These cuts are being made. The staff are being told over and again that if any of them are found revealing this information to members of the opposition, they will be fired. That is a very frequent refrain; they are told that they will be

sacked if they are found to be providing this information. We are seeing a situation which has to be faced up to by the government. It cannot continue to pretend that what is happening is not happening. There are thousands of staff out there who know what is happening. The government is not going to be able to keep it a secret. I do not know why members opposite think they are going to be able to keep pretending that something that is happening is not happening!

Dr G.G. Jacobs: What about ambulances?

Ms A.J.G. MacTIERNAN: Did the Minister for Mental Health read the motion? It would be useful for the minister to read that, because it did include a broad concern about cuts across the health service and the fact that the government cannot continue to maintain, and thereby to be dishonest with the people of Western Australia, that this is not impacting on front-line services. Of course it is! And the opposition will continue to come in here, day after day, and outline what is really going on until such time as the government faces up to it and is honest with the community.

DR K.D. HAMES (Dawesville — Minister for Health) [3.50 pm]: I am happy to respond to this matter of public interest. It is probably the third time I have responded to MPIs of a similar nature. This one obviously adds the ambulance service to the mix.

Mr E.S. Ripper: It's an ongoing issue, isn't it? While you keep cutting, we'll keep moving MPI motions.

Dr K.D. HAMES: The Leader of the Opposition talks about cutting. Let us reflect on what happened in the health budget. It went up. If funding is going down in some areas, it is because we are moving that funding to other more important areas. We are getting efficiencies out of our system. That money is all going into the health system and the budget has gone up, not down. We have only to look at the budget figures to see that.

I want to talk about the origins of this inquiry and the inquiry that the member for Kwinana talked about that I cancelled.

Mr E.S. Ripper: Later in your speech you can probably tell us the percentage increase in the —

The ACTING SPEAKER (Mr P.B. Watson): Leader of the Opposition, you had a chance to have your say. Let the minister continue.

Dr K.D. HAMES: The Leader of the Opposition should read it himself. He has a copy. He flogged out and got a copy off the internet last time.

The ACTING SPEAKER: Minister, do not encourage interjections.

Dr K.D. HAMES: The Leader of the Opposition is quite capable of doing that again or his little tweeter can go and do it for him.

I want to talk about the origin of the inquiry. In the lead-up to the last election, the former Minister for Health was under enormous pressure from the Liquor, Hospitality and Miscellaneous Union to change the way the ambulance service was managed and make it a public service as occurs in most of the other states, with the exception of the Northern Territory. As a result of that pressure, in the dying days of the former government, the former minister agreed to initiate an inquiry headed by Greg Joyce, though not because any issues of concern had been raised by his mates in the ambulance service. No-one had come to him saying that they had major problems in the operation of the service. They did it because they wanted it to be a publicly run service. The former minister initiated an inquiry. I have this straight from the person who was going to conduct the inquiry. He had been told by the minister that it was to become a public service, as opposed to a service run by St John. That is what it was for. When we came to government we had already made our position clear that we were not going to do that. We were going to keep it as a system run by St John. We were happy with that service. Our understanding was that the level of service was —

Mr E.S. Ripper interjected.

Dr K.D. HAMES: The Leader of the Opposition should give us a go. The level of service that was to be provided was equal to that of any other state. St John is providing an excellent service, as it has done for 100 years. We made that position clear. When we came into government and we were asked whether we still wanted an inquiry into whether the service should be public or private, we said no. We were going to leave it as it was and not change it. There was a protest about the wages of the paramedics outside the minister's office in town. Under the previous government the paramedics chased increased wages and were told they could not have them. The first thing we did in government was to look at that issue and support the paramedics getting increased money. We contributed more than $3 million in additional funds to resolve their pay dispute and make sure they got a decent wage. That was the first thing we did. The opposition said that if we had done that, we would have found that the service was in crisis.

Let us look at the crisis. I have some figures for the past 10 years that relate to the standard of service and response times, as provided by St John. I will go through them. I will deal only with priority 1 cases because I do

not have time to deal with the others. The average response time for priority 1 cases in 2003-04 was 9.77 minutes. It deteriorated to 9.92 minutes in 2004-05. Then it was 9.85 minutes and then 9.63 minutes. It jumped to 9.97 minutes when the opposition was in government. Now it is 9.96 minutes. Since we have been government, there has been miniscule improvement. What is the difference between this year when we are in government and 2004-05 when the opposition had been in government for three years? The difference is 0.04 minutes in average response times, which is 24 seconds. It became worse last year under the Labor government.

Now I will look at the priority 1 percentage. Priority 1 cases are the urgent ones, with a time line of getting to 90 per cent of those cases in less than 15 minutes. Let us look at the percentages over the years. When we left government in 2001-02, it was 90.5 per cent. Under our government, we had achieved that target of 90.5 per cent. During the Labor Party's first year in government, it was 89 per cent, then 89.4 per cent, then down to 88.9 per cent in 2004-05, then 89 per cent. Then it got back to 90 per cent for one year but went to 88.4 per cent in 2007-08 and is 88.1 per cent now. In 2004-05, when the opposition was halfway through its term of government and burgeoning with money as it was the middle of the boom, the percentage was 89.1 per cent compared with 88.1 per cent now. That is a difference of 0.8 per cent.

The opposition talks about a government in crisis, a health system in crisis and an ambulance system in crisis. Suddenly everything has deteriorated. Where is its evidence for that? Where is its evidence that those things have deteriorated? What about the *Four Corners* report? Let us go back to those cases that the *Four Corners* team outlined. Three of them were detailed in this document. Whose government were they under? Two of the three issues that occurred with that call centre were under the Labor Party's watch, under its government. What did it do? Nothing. Where were the complaints? There was nothing.

Mr R.H. Cook: We had an inquiry.

Dr K.D. HAMES: The then government did not have an inquiry. It did not even start it. It had not even appointed someone. It planned for an inquiry and then it lost government. That inquiry was not into the services that were being provided; the inquiry was into whether it should be a public or private system.

Mr R.H. Cook interjected.

Dr K.D. HAMES: Mr Acting Speaker, I do not think I shouted out to the member when he was on his feet. I did make some interjections, but I did not continuously interject.

The ACTING SPEAKER: Minister, if you continue to talk to the shadow minister, you must expect a reply.

Dr K.D. HAMES: I am not talking to him.

The ACTING SPEAKER: Yes, you were. You have been looking across the chamber at him. If you want to get the proper level of respect, talk through the Chair.

Dr K.D. HAMES: Let us look at the issue of funding and what the former government did with the funding. The funding in 2005-06 was $33.9 million. This is obviously from the former government. It went up by $800 000 to $34.7 million and then up $1.2 million to $35.9 million. Under us it went up $3.8 million to $39.75 million. That was because when we came to government, we immediately injected those additional funds. It is not as though the former government poured huge resources into addressing the issues within the ambulance service during the middle of the boom. If there were major issues of concern, its mates in the LHMU did not go to the government. The government did not say, "We agree. Look at those figures. Wow, they have deteriorated. We'd better do something about it." The government did not say that there were people dying unnecessarily as a result of problems with the call-out procedure and ask what it would do to fix it. It did not say that it had better fix something. After seven and a half years in government, the Labor Party almost got around to calling an inquiry. It did not quite get there but it was about to do it. After seven and a half years suddenly it thought that it had better do something. An inquiry was not called as a result of anyone expressing any concerns; it was called only as a result of union pressure to make it into a public service, not a service that is run by St John.

It is an absolute nonsense for the opposition to jump up and have a go at the government saying that it is a pathetic response. We should look at the pathetic response of the former government, which saw the deteriorating figures and did absolutely nothing. Let us go to the reasons for the deterioration of those figures. The figures went from an average response time of 9.63 minutes in 2007-08 to 9.97 minutes the following year. In the space of one year there was a significant increase in the average response time. Welcome, Madam Acting Speaker (Ms L.L. Baker)!

Why had the figures deteriorated over that time? The answer is simple and clear, and will be provided if one asks ambulance drivers or any of the staff of St John Ambulance: it is because of ramping at the hospitals. Ramping peaked during 2007-08 because of delays in the transfer of patients from the emergency departments; they were queued up, ambulance after ambulance, waiting to unload patients. I refer to an article that appeared in *The West Australian* on 15 December 2007, which revealed that ambulance drivers had spent 3 000 hours stuck in ambulances, waiting to drop their patients. No wonder they could not keep up their response times; no wonder

they could not address the urgent needs of patients who had called up, desperate for help, because they were stuck in queues at the hospitals. What did the government do about it? Nothing. What was it like when we came to government? It was dreadful.

Mr R.H. Cook: We launched an inquiry. What did you do about it?

Dr K.D. HAMES: The member knows what we have done; I talked about it in my ministerial statement earlier today. We have introduced the four-hour rule, which will make an enormous difference to waiting times.

Mr R.H. Cook: Peter Flett's best idea yet.

Dr K.D. HAMES: What did the former government do? It did nothing. When we came to government, Western Australia had the worst hospital waiting times in Australia. People were waiting up to eight hours for a hospital bed. Sometimes more than 50 per cent of Royal Perth Hospital's patients had to wait more than eight hours for a bed in a ward. The figure is now closer to 28 per cent, and that is even before the four-hour rule has been put in place. While Royal Perth Hospital has been planning the changes necessary to put the four-hour rule in place, it has made some initial changes, some of which, initiated by hospital staff, were undoubtedly put in place before we came to government. Those changes have brought about improvements, but there is a long way to go; we still have significant ramping in our hospitals. It has not as yet improved under the current government, but it will. There is no way that ambulance services can provide a decent response time in the time provided.

The inquiry that was carried out by Mr Greg Joyce and others was an extremely good one. The report goes through all the detail of the issues, and there is no question that there are governance issues. There is at present a very difficult relationship between paramedics and ambulance drivers, and the managers of the hospitals. However, I have to say that Dr Simon Towler, who was involved in the report, made an extremely good point to the media yesterday when he said that Western Australia is not the only state to have held an inquiry; every other state, over the past four or five years, has held an inquiry into ambulance services. In one state—I do not want to denigrate whichever city it was in New South Wales or Victoria—the relationship between management and staff had been described as "toxic"; this was a publicly run service. We certainly do not have that sort of relationship here, but it is a difficult relationship, and a lot of work needs to be done to address that. Part of it is to do with the frustrations experienced by staff working in the call system, which is clearly inadequate. The workload and the lack of staff are also creating enormous pressures, and that needs to be addressed. That is why the government has provided immediate funding.

The services provided by ambulance drivers and paramedics also need to be investigated. They have put forward a range of procedures that they believe should be undertaken, but I have to say that there are other points of view, particularly amongst doctors, who say that that level of treatment cannot be justified, or that that type of treatment is not warranted. We want an independent assessment of what those services should be and how they are run. My view is that paramedics should be able to do more; perhaps they will require extra training, but they should be able to do more. We need to get a lot more paramedics, ambulances and ambulance staff out there—hence the huge costs we are talking about and the amount of money that is required.

If the opposition was still in government and the Leader of the Opposition was still Treasurer, he would not accept unquestioningly a submission from an independent organisation—regardless of which non-government organisation it might be—recommending that the government spend X amount of money to fix the service. He would not say, "Okay; here's the cheque." He would drill down into the figures to make sure the numbers were accurate and that the amount was reasonable.

Mr E.S. Ripper: Have you set up that process?

Dr K.D. HAMES: I have set it in progress.

Mr E.S. Ripper: What is the process?

Dr K.D. HAMES: One of the recommendations of the report was to set up an implementation team. Greg Joyce and Simon Towler are continuing their work, and we will appoint some financial experts to make assessments. The Director General of the Department of Health is working out the exact makeup of the final team, but I have already advised the department to start that work immediately. There are two things I want done. Firstly, I want Greg Joyce to make further inquiries into the WA Country Health Service in particular—how the volunteer system works, and the interrelationship between paramedics and volunteers. Frankly, I think that the volunteers are becoming disillusioned. They are running out of steam because of a lack of support, and we need to boost that service. I also want exactly what the opposition would want if it were in government, which is an immediate assessment of the request for funding. I want to go through it line by line and dollar by dollar so that a business case can be made that can then come to the expenditure review committee for consideration. We are doing those things and we are following up on those requirements. I acknowledge that $1.028 million is a very small amount. It cannot be equated to wages; it is what St John asked for. Some staff will start in three months, some in two

months, and some in four months, after training. It is a staggered amount, and it is only a component of the total year's wages that we are talking about for the provision of those services.

I will leave it to others to talk about the financial issues relating to the budget, but I will briefly speak about services over Christmas. People were talking about the four-week issue at Royal Perth Hospital. There will be no four-week reduction in services. Over that four-week period, there will be specific reductions for different units at different times. The only time during which there will be a continuous break in services of more than two weeks is the period between 18 December and 4 January, when some services will be shut down. That is quite reasonable, in my view. In health, we try to get everyone to take holidays at the same time whenever we can, particularly in the outpatient clinics, so that we have full staffing for the rest of the year. It is the same for doctors. Everybody wants to have a break over Christmas and new year, and considering the huge amount of effort those staff put in, they deserve it. It does not include emergency services; emergency services will be available throughout that period for whoever needs them. The break is just for routine follow-up services. Even then, we will have to have clinics available to provide routine follow-up services for people, for example, who have suffered burns. Those will be made available. Only the routine follow-up outpatient clinical services—such as orthopaedic clinics and the like—will have services cut during that period, except for those that have to be there for emergency treatment.

MR T.R. BUSWELL (Vasse — Treasurer) [4.09 pm]: I rise to make a couple of points about some of the issues raised by the Leader of the Opposition in relation to the budget for the Department of Health. Ahead of the government's consideration of this report, I will say that I was concerned, as was everybody in the government, that the St John Ambulance service had, under our watch, slipped into an unsatisfactory state of service delivery. Anyone listening to the shadow Minister for Health could only have concluded that these events have only just emerged over the past 12 months or so.

Mr R.H. Cook interjected.

Mr T.R. BUSWELL: It is certainly reflective of the comments made by the member for Kwinana. I, like the Minister for Health, took some time to read through "St John Ambulance Inquiry: Report to the Minister for Health October 2009". I was very surprised when I got to the appendix that details three of the four cases that were looked at. Members may imagine my surprise when I discovered that the issue with patient 1 first emerged at 14.43 on 26 September 2007. The patient 2 issue was in 2009, which is a fair cop. The patient 3 issue was at 7.28 am on 12 July 2007. We are dealing with a serious issue but we are not, as the member for Kwinana would have us believe, dealing with a crisis that emerged this week or this month; we are dealing with a set of issues that have emerged over many years.

Mr J.R. Quigley: Since your election.

Mr T.R. BUSWELL: I know that the member for Mindarie had some busy times during 2007 on the family front and he may have been distracted, but we were on that side of the chamber in 2007 and he was on this side, perhaps sitting a bit further towards the back than he does now. Those are the facts. The facts are that we in government have to tackle a longstanding set of issues. We will tackle them. As the Minister for Health has said, we are providing funding in the first instance of a little over $1 million to meet the needs that St John Ambulance has identified—not us. St John Ambulance has identified and costed some issues in specific areas, such as paramedic numbers and communications centre numbers, as I understand it. I am sure that if the Minister for Health shakes his head, I will agree. That is about right on a certain time frame. We must be very careful not to create a scaremongering campaign that suggests that this crisis suddenly fell out of the sky. I also say to the Minister for Health: hands off my St John Ambulance volunteers in Busselton. They have been pushed around and buffeted by public comments made by none other than the member for Kwinana and Dave Kelly from the Liquor, Hospitality and Miscellaneous Union. They have mercilessly attacked volunteers in my home town who are dealing with some significant issues.

Mr M.P. Murray: While we are on that subject, Treasurer, recommendation 6 of the report is —

> Ambulance needs in country areas to be the subject of further assessment.

Will you be providing funding for that further assessment?

Mr T.R. BUSWELL: That is already happening. Where has the member been—asleep?

Mr M.P. Murray: No I have not.

Mr T.R. BUSWELL: I know it is a rarefied atmosphere in Collie. Mr Joyce—the same person—is doing the review.

I will talk shortly about the health budget, because there has been a lot of talk about supposed cuts to the health budget. That talk is not consistent with the facts. The facts are that the Department of Health's expense budget allocation in 2009-10 is 12.4 per cent higher than the budget allocation in 2008-09.

Ms R. Saffioti: What about the outlook?

Mr T.R. BUSWELL: I will get to that in a second. The budget is 12.4 per cent higher than the budget for the previous year. The 2008-09 budget, which the previous government left us with, was 12.4 per cent higher than the year before. All this talk about the health budget being reduced is not reflective of the facts.

I will talk about the action, because it is very interesting. The Leader of the Opposition made some points about expense growth. He is right. The expense growth is not sustainable. Our view is that a number of one-off expenditure items are in that $650 million year-to-date, end-of-August increase that will not be repeated. Even when we take those one-offs out, the underlying level of expense growth is still 9.9 per cent, which in my view is still too high. What are some of the one-offs? Just so that members know, a lot of it refers to funding that is passing through the state government books, and a lot of those count as expenses. There is $44 million of local government funding, $46 million of grants passed through to non-government schools, $51 million of grants passed through for the first home buyer boost, and $75 million of increased expenses because of some changes in accounting treatments and prepayments. There are a lot of factors, but there is still $290 million of underlying increase in actual expenses over the last year. Of that, $43 million is actual increased spending on health wages—$43 million. The opposition keeps talking about a reduced health budget. I have just told members that the health budget is higher. I am now telling them that $43 million more was spent in July and August of this year on health wages than in the previous year. The Department of Health estimate of that breakdown is that it is paying for an extra 636 nurses, an extra 80 doctors and an extra 193 medical staff.

Mr E.S. Ripper: Where do you reckon we get these articles about cuts from?

Mr T.R. BUSWELL: Let me get to that. I am not saying that I am necessarily pleased with that outcome. The Minister for Health should not get me wrong; I am not saying that at all. I am saying that, from a budgetary point of view, and at least from a wages point of view, year on year for the first two months more money was being spent in health. Why are we getting this pressure from within the health system? It is because for the first time in a very, very long time the health system is being held to account for its spending. It is creating enormous pressure in the Department of Health. We are forcing people to reallocate money within their very generous budget of $5 billion plus to areas of high need. We are forcing them to work within the budgets that have been put in place. We have recently signed off on a process, which we call the value-for-money audits, in which a major accounting firm will work within the Department of Health to help people better understand how they can control their expenses, manage their expenses and report on their expenses.

Dr K.D. Hames: I am very pleased to have it, I can tell you.

Mr T.R. BUSWELL: Nearly as pleased as I am. One of the reasons for this push-back, if I may use the term, from within the health system is that people are being held to account. It is very difficult. There is a lot of pressure within the health system. I call that pressure the pain of having to adapt to the increased disciplines of a new regime. The facts are that the health budget is up by 12 per cent and that health wages, which are the biggest expense component of the health portfolio, are, against my best desires, up by 10.3 per cent, or $43 million. That expense is funding, as I have said, 636 more nurses, 80 more doctors and 193 additional medical support staff. Yes, there are pressures, but there is more pressure for this funding to deal with the global demands for health. Members have seen that reflected in our response immediately to St John Ambulance and they will continue to see that reflected.

Question put and a division taken with the following result —

Ayes (24)

Ms L.L. Baker	Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr T.G. Stephens
Ms A.S. Carles	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Mr R.H. Cook	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Mr J.N. Hyde	Mrs C.A. Martin	Mr E.S. Ripper	Mr M.P. Whitely
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Ms R. Saffioti *(Teller)*

Noes (29)

Mr P. Abetz	Mr V.A. Catania	Dr G.G. Jacobs	Mr A.J. Simpson
Mr F.A. Alban	Mr M.J. Cowper	Mr R.F. Johnson	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.H.D. Day	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.C. Blayney	Mr J.M. Francis	Mr P.T. Miles	Dr J.M. Woollard
Mr J.J.M. Bowler	Mr B.J. Grylls	Ms A.R. Mitchell	Mr J.E. McGrath *(Teller)*
Mr I.M. Britza	Dr K.D. Hames	Dr M.D. Nahan	
Mr T.R. Buswell	Mrs L.M. Harvey	Mr C.C. Porter	
Mr G.M. Castrilli	Mr A.P. Jacob	Mr D.T. Redman	

Pairs

Mr D.A. Templeman	Dr E. Constable
Mr B.S. Wyatt	Mr W.R. Marmion

Question thus negatived.

CO-OPERATIVES BILL 2009

Assent

Message from the Governor received and read notifying assent to the bill.

BILLS

Appropriations

Messages from the Governor received and read recommending appropriations for the purposes of the following bills —

1. Aboriginal Housing Legislation Amendment Bill 2009.
2. Rail Safety Bill 2009.
3. Cannabis Law Reform Bill 2009.
4. Appropriation (Consolidated Account) Capital 2007-08 and 2008-09 (Supplementary) Bill 2009.
5. Appropriation (Consolidated Account) Recurrent 2007-08 and 2008-09 (Supplementary) Bill 2009.

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2009

Receipt

Bill received from the Council.

ARSON LEGISLATION AMENDMENT BILL 2009

Second Reading

Resumed from 21 October.

MS A.S. CARLES (Fremantle) [4.26 pm]: I resume my comments on this bill. I have spoken about the proposed amendments to the Bush Fires Act, which I support. I repeat that the Greens (WA) do recognise the seriousness of the crime of arson, and we want to ensure that the penalties for those who are found guilty of wilfully lighting fires are increased.

I turn now to some problematic amendments that are proposed to be made to the Criminal Code. I support the thrust of the legislation. However, there are some problems, particularly with the proposed penalties. Clause 10 of the bill proposes to insert into the Criminal Code a new section 444A. That proposed section places a duty on people who are in control of a fire, firstly, at the point of ignition, in proposed subsection (1); and, secondly, once the fire is under way, in proposed subsection (2). We are talking here about people who are lawfully lighting fires—CALM officers, local government staff, traditional owners and the like—and the consequences for them if things go wrong. We are proposing to amend the Criminal Code to provide that if a person in charge of a fire—essentially a public servant—fails to take reasonable care and loses control of the fire and causes damage to property, that person may be convicted and be given a penalty of life imprisonment.

Mr C.C. Porter: This will apply only if they unlawfully or wilfully light the fire.

Ms A.S. CARLES: No. That comes under the Bush Fires Act if they wilfully light a fire. Okay.

I support the amendment that was foreshadowed by the member for Mindarie, on behalf of the opposition, during the second reading debate on this bill at the Bunbury Regional Parliament. That amendment is to introduce the notion of "recklessness". I support that amendment because I, too, am very concerned that we may inadvertently capture people who have failed in their duty to take reasonable care when in control of a fire. I will not repeat the arguments put by the member for Mindarie. As I have said, I support what he has said.

The Greens also have a concern about, and will not be supporting, clause 11 of the bill. Clause 11 proposes to insert in section 444 of the Criminal Code a blanket penalty of life imprisonment. I foreshadow that I will be moving an amendment to remove that penalty of life imprisonment. The Greens have consulted with the Law Society of Western Australia about this penalty. The Law Society opposes the proposed increase in penalty to life imprisonment. It has advised us that such a penalty will mean that the offence will need to be dealt with by the Supreme Court, not the District Court, and that will add additional costs and complexities to the litigation. I support increasing the penalty in section 444 of the Criminal Code from 14 years to 20 years' imprisonment. This would be in line with the gist of the other amendments in the bill, it would be more in line with the scheme of the Criminal Code, and it would also be consistent with the increase in penalty from 14 years to 20 years in the Bush Fires Act, to which amendments are made through this bill.

This amendment would mean that a public servant doing his or her job could be charged, found guilty and sentenced to life imprisonment, yet someone who wilfully lights a fire could be sentenced to a maximum of 20 years. I see the Leader of the House shaking his head. That is what the amendment in the legislation says.

Mr R.F. Johnson: I don't think you're reading it properly.

Ms A.S. CARLES: I have read it properly; I have read it many times. The amendment to section 444 seeks to bring in a blanket life imprisonment penalty and remove the current penalty. It states —

> imprisonment for 14 years or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 20 years; …

Mr J.R. Quigley: What the member is concerned about is that the penalty is not by death; you would rather hanging for the offence. We all know that Lord Haw-Haw would rather hang.

Ms A.S. CARLES: I am saying to the Attorney General that I support increasing the penalty from 14 years to 20 years. I also support adding a $500 000 pecuniary fine to that. Life imprisonment is not a proportionate response in the scheme of our Criminal Code. Currently, we have life imprisonment only for serious offences against persons. We have life imprisonment for murder, armed robbery and drug trafficking. These are the most serious crimes against people that can result in life imprisonment. We must remember that we are talking about property here. The maximum penalty on conviction for aggravated sexual penetration, serious drug offences, manslaughter or grievous bodily harm is 20 years. It seems to me that a 20-year sentence, not life, would be a more appropriate penalty for this crime against property. I leave it to the Attorney General to ponder this suggestion. My amendment would remove only the blanket life imprisonment penalty. Can members imagine how it would feel to be a public servant knowing that he or she could be imprisoned for life if he or she were responsible for an out-of-control fire?

Mr C.C. Porter: Two offences are being created, one of which is with respect to a breach of a duty, which is a fire that potentially gets out of control. Life does not attach to that scenario. Life would attach only to a scenario in which the fire was wilfully and unlawfully lit. You're confusing the penalty and the offences.

Ms A.S. CARLES: No. What is the penalty then?

Mr C.C. Porter: You just said to me that a civil servant whose fire unintentionally got out of control could face life. What I am saying to you is that that is incorrect.

Ms A.S. CARLES: So what is the penalty for a proposed section 444A offence?

Mr C.C. Porter: Life imprisonment.

Ms A.S. CARLES: That is what I said—life imprisonment.

Mr C.C. Porter: No. The penalty for a proposed section 444 offence is life.

Ms A.S. CARLES: Yes, that is my point.

Mr C.C. Porter: No. There is proposed section 444A, proposed section 444 and proposed section 445A. Proposed section 445A attaches to proposed section 444A and establishes a penalty of 15 years' imprisonment.

Ms A.S. CARLES: That is for damage to vegetation, with 15 years' imprisonment.

Mr C.C. Porter: No; that is for a person who unlawfully omits or refuses to do any act that it is his duty to do. A person who breaches his duty would not face life; he would face 15 years' imprisonment. A person who wilfully and unlawfully lights a fire that damages property would face life. Your statement that a civil servant who unintentionally but negligently damages property would face imprisonment is just not right.

Ms A.S. CARLES: So the Attorney General is saying that it is just 15 years for a public servant?

Mr C.C. Porter: In the scenario that you have raised, if it were not wilful and unlawful damage of property, it would not be life; it would be 15 years.

Ms A.S. CARLES: Can a public servant be charged with life imprisonment under proposed section 444A?

Mr C.C. Porter: Yes, if he has wilfully and unlawfully lit a fire. But what you have said—that is, that a public servant who unintentionally or who breaches a duty, or whatever words you want to use, is going to face life—is not correct; it is 15 years. I understand your point; you don't like life attaching to wilful and unlawful damage.

Ms A.S. CARLES: Yes, to property offences; that is all. That is my point. I am very concerned that public servants who are responsible for back-burning will quit their jobs over this. I will conclude by foreshadowing an amendment to remove the life imprisonment penalty. My amendment is to delete lines 7 to 12 in clause 11 on page 6 of the bill.

DR J.M. WOOLLARD (Alfred Cove) [4.35 pm]: The Arson Legislation Amendment Bill 2009 obviously relates to how a person who has committed arson is dealt with by the law. Before I refer to the amendments in the bill, I will commend the work being undertaken by the Fire and Emergency Services Authority of Western Australia to better understand the motivations behind people who deliberately light fires. I also commend it for its endeavours in finding strategies to stop people from committing arson.

I have read the Attorney General's second reading speech and I have listened to the debate so far, and I have some reservations about proposed section 444A. Although I support the enactment of provisions that reflect the community's condemnation of offences such as arson, it is important that the proposed section capture only the people whose actions are at the higher end of wrongdoing. I am sure that the Attorney General will address this issue in his right of reply.

Proposed section 444A in clause 10 adopts an objective or reasonable person test in relation to the duty of a person who has charge of or who is in control of a source of ignition or a fire. The penalty for this criminal negligence is life imprisonment. In his second reading speech, the Attorney General said that the Model Criminal Code recommends arson offences with an intention element of recklessness. I have looked at the intention element of recklessness and I note that the member for Mindarie has an amendment on the notice paper in which he has copied word for word the definition of "recklessness" from the commonwealth's Model Criminal Code. The definition of "recklessness" is addressed in several sections of the Model Criminal Code. I like the definition of "recklessness" and I believe that the Western Australian Criminal Code could be modified to include the definition of "recklessness" in relation to arson. I appreciate that some states have adopted in various sections of their codes the definition of "recklessness" as used in the Model Criminal Code. However, I have looked at those sections in which they use the definition of "recklessness", and I think that we have basically got it right in most parts of our Criminal Code. I think that a definition of "recklessness" in relation to arson is appropriate. I do not think that we have to accept this definition of "recklessness" and modify our Criminal Code just because the Model Criminal Code uses the definition of "recklessness". In a general sense, in considering arson, the government is proposing an amendment that involves criminal negligence, while the definition used by the member for Mindarie, which comes from the Model Criminal Code, involves recklessness. We should be considering recklessness because it is imperative that the new offence catches only those people who commit arson at the higher level of culpability. This is because, as the member for Fremantle has just outlined, the offence attracts a penalty of life imprisonment.

When the Attorney General responds to the second reading debate he will come back to the comments that were made when we considered this bill in Bunbury, about the definition and interpretation of recklessness. He said in Bunbury that he thought that recklessness might be a higher standard than criminal negligence. He said that criminal negligence requires grossness or moral culpability. He said that he would discuss the opposition's amendment with his advisers, particularly in relation to the commonwealth's standard of recklessness, and report back to this house about whether recklessness was a higher or lower standard than criminal negligence. I will be very interested in hearing of the advice that the Attorney General has received.

We need to get this clear because criminal offences involve thought elements: intention, recklessness and criminal negligence. That is the order of hierarchy in terms of the level of wrongdoing. Intention is higher than recklessness, which is higher than criminal negligence. A person has intent in his or her conduct if he or she means to engage in that conduct. In common law, recklessness requires an accused to foresee the consequence of his or her actions. The element of recklessness has a subjective limb and an objective limb. The subjective limb is foresight of the risk and a conscious decision to take the risk, and the objective limb is taking a risk that is unreasonable or unjustifiable. I mention this because in a while I will refer to some English cases. In one case just one limb of the element was applicable, while in another both were. This is the rationale for my belief that we should be going for recklessness rather than criminal negligence. Criminal negligence is where the accused ought to have foreseen the consequences based on what was reasonable in the circumstances.

The Attorney General referred us to the Model Criminal Code. The commentary on that code states that there may be some cases in which criminal negligence may be at the higher end of wrongdoing than criminal recklessness, but it is very clear that this is not the norm, and it only occurs when a specific definition of criminal negligence has been provided.

Mr C.C. Porter: Was this from your briefing?

Dr J.M. WOOLLARD: I did not actually get the briefing, but I am very lucky in the support that the government has given me. I have a fantastic research officer. I appreciate the offer by the Attorney General of a briefing, but I have been away on committee work.

Mr C.C. Porter: It sounds consistent with the views of the person who would have given the briefing.

Dr J.M. WOOLLARD: In that case, Abbey has done a very good job for me.

In considering the subjective element, one must look at case law from the United Kingdom. The member for Midland raised concerns about innocent people being captured by this legislation. We know that that has happened with these definitions from the UK cases. The term "criminal negligence" does not take into account an individual's weaknesses, which the term "recklessness" does. English cases concerning recklessness adopted a meaning that was generally the same as criminal negligence, which I believe is the definition currently used in this bill. The current definition does not have the subjective element.

The case that was pulled out for me was "Commissioner of Police of the Metropolis v Caldwell". In that case, the House of Lords departed from an earlier understanding of recklessness that contained both the objective and subjective elements and conceded only the objective element. The test became whether the consequence was obvious to a reasonable man. That was the test for criminal negligence. The problem with that definition, which was just an object of definition, surfaced in the later case of Elliot, in which a 14-year-old girl of low intelligence was convicted of criminal damage, after finding in a garden shed white spirit, into which she dropped lighted matches, destroying the shed. Although it was accepted by the court that, due to the girl's low intelligence she would not have appreciated the risk associated with her actions, she was convicted because the court held, following Caldwell, that the test for recklessness was whether the risk would have been obvious to a reasonable person; it did not matter that the risk would not have been obvious to the accused. The case illustrated that a purely objective approach to criminal liability fails to take into account the individual weaknesses of an accused that may, under a subjective assessment of fault, excuse the accused from criminal liability.

Returning to the definition of arson in this bill, we should be using what has been suggested by the model code. We should be putting in recklessness, so that we have both the subjective limb, which is foresight of the risk, and the objective limb, which is that the risk was unreasonable or unjustifiable. While I support the government's intent in introducing this bill, I believe the inclusion of a subjective test in proposed section 444A is essential. I would not be able to support a bill that could result in the incarceration of an innocent person such as the girl in the case of Elliot, or the other examples were given earlier in this debate. My preference is to include in proposed section 444A a fourth element of recklessness. I would anticipate that such an amendment would include a definition of "recklessness", as outlined on the notice paper. That amendment was put on the notice paper by the member for Mindarie and, in fact, comes from the Model Criminal Code. Further to the member for Fremantle's comments, I also add my support for changing the definition of "property" in proposed section 444A(4). I believe that the member for Girrawheen will move an amendment to change that definition. This amendment would ensure that there was consistency between this legislation and the Bush Fires Act. It would avoid ambiguity. The definition of "property" should include bush and fauna rather than being limited to vegetation.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [4.50 pm]: I rise to make a fairly brief contribution to the debate on the Arson Legislation Amendment Bill 2009. It is a debate about which I feel passionately. I make my comments in the context of proposed section 444A "Duty of person in control of ignition source or fire". Proposed section 444A(1) states in part —

> It is the duty of a person who has charge of or is in control of a source of ignition to use reasonable care and take reasonable precautions to avoid lighting a fire that destroys or may destroy or cause damage to property that the person is not entitled to damage or destroy;

I and other members of Parliament are invited to ponder the scenarios under which this section would take effect and contemplate the scenarios with which we are familiar. I will speak briefly about an incident that concerns me. It involves a family friend who lives on the Balingup-Nannup Road. My family also owns property on the Balingup-Nannup Road. This matter essentially concerns an incident that occurred on Saturday, 14 February when a Western Power power pole fell over because of structural failure. It hit dry grass, which caused a spark that started a fire that destroyed many properties in the area. In particular, it destroyed a good half of the property owned by a member of my family. Mercifully, no buildings were destroyed but it did burn trees and fence lines. The fire was fought that day by members of the volunteer fire brigade, who did a magnificent job under the circumstances. It was a very windy day and the fire was quickly getting out of control. They were soon joined by Department of Environment and Conservation firefighters, all of whom tried to extinguish the blaze.

I will paint a picture of this area for members. It is heavily wooded by pine plantations owned by the Forest Products Commission. Essentially, there was a tinderbox scenario. The fire rapidly got out of control and engulfed many properties in the area, as I said, and burnt much of the forest in the area. I am left to ponder whether Western Power in this instance exercised a proper duty of care in relation to what might be considered a source of ignition or fire. A report into the fire at that time concluded that live termite activity extended up the pole that fell over but that there was no evidence that the pole had been treated for termites. It found advanced rot within the pole and that the pole had little or no pole strength remaining. It found also that the spans either side of the pole were unusually long—between 530 and 580 metres long.

It could be suggested that Western Power could have taken a little more care with the pole. As I said, this fire took place on 14 February. Perhaps Western Power could be forgiven under the circumstances if it had been sometime since the pole was last inspected. However, I understand that the pole was last inspected on 9 January that year. Barely a month had passed since Western Power had inspected the pole, which had live termite activity and had not been treated for termites. The power spans either side of the pole were unusually long and potentially unsafe. I am told that the power pole had approximately only 50 millimetres of solid wood around it

to keep it upright. A case could be made that Western Power had not taken a responsible approach to what might be called a source of ignition. It is debatable also whether Western Power used reasonable care.

The fire was fought over a number of days. On 15 February, the Department of Environment and Conservation firefighters who were fighting the fires around Balingup and Nannup were called away to Ludlow where another fire had started. I will come back to that fire. In the meantime, there had been a change in the wind patterns. Therefore, properties that the firefighters previously had thought were safe and would not come under threat came under threat. Mr Bob McGuinness is one of the neighbours and lives in a house along the Balingup-Nannup Road at a property that he had built over a number of years. He built the house himself. He had a shed which, in addition to large boat, contained the contents of his livelihood. He was a contractor and had tools and a range of equipment stored in the shed that he used to repair his contracting equipment. Mr McGuinness's house was surrounded by Forest Products Commission forest in a manner that he thought was dangerously close to his house. He decided to stay and defend that property, and it is just as well that he did because it would appear that there were not enough firefighters left to undertake the defence of his property. He undertook the defence of his property and was able to save the house but was unable to save the shed and other equipment on the property. He informs me that he lost a large shed, the boat in the shed, the contents of the shed, fencing and numerous trees. He had to sell his cattle the next day because there was no pasture for them to graze on. As I said, he nearly lost his house in that fire. The cost of the damage was approximately $140 000. It appears to Mr McGuinness, without having any great knowledge of the law, and I think quite rightly, that there is a case to be made against Western Power for not taking proper and reasonable care of the power pole for which it was responsible. He also raises the question about whether the Forest Products Commission took reasonable care in ensuring that the plantation forests around his property were not so close to his property as to represent a danger to his property in the event that a fire broke out.

I return momentarily to the question of the Ludlow fire. I understand that the Ludlow fire in this case was purposely lit, and it was to the Ludlow fire that the firefighting services of the Department of Environment and Conservation were diverted to attend. Perhaps a case could be made out that by virtue of—it is not that boring, Premier!

Mr C.J. Barnett: It is fascinating.

Mr R.H. COOK: Perhaps a case could be made that by virtue of attending the Ludlow fire there were not enough resources to attend to the fire that was now bearing down on to the property of Mr McGuinness. Perhaps a case can also be made that the person who lit the Ludlow fire also conducted himself without reasonable care, because the direct effect of lighting the Ludlow fire was properties in the Balingup-Nannup area coming under threat. These are, by and large, rhetorical questions to which the Attorney General may or may not give some consideration or response, but I raise these to place on the record for the Parliament the complex nature of these scenarios. They are complex through the ignition point, the nature of the fuel, and the resources on hand to fight the fire that perhaps have been diverted elsewhere.

Mr McGuinness asked me to make these comments tonight because Western Power and the Forest Products Commission have a very solemn responsibility to the people who own property in the region of their infrastructure and pine plantations. It occurs to me that if Western Power has a power pole that is supported by 50 millimetres of wood that has an active termite infestation that has not been treated, perhaps Western Power has a problem. Mr McGuinness has made the observation that he undertook an inspection along the same powerline that caused the fire that destroyed a lot of his property. He found that other parts of the line were caught up in Forest Product Commission pine trees, and that in itself presented an ongoing risk to other properties in the area. Mr McGuinness has lived in this area for over 20 years. He has operated two businesses in the area; one is a contracting firm. His partner is traumatised by the experience and is undertaking ongoing counselling as a result of the bushfire that almost destroyed their home. It is with reluctance but with a certain amount of resignation that Mr McGuinness now has made the decision, with his partner and family, to sell up, because he cannot see a situation in which the house in which he currently lives will be made any safer by the practices of the Forest Products Commission and Western Power in the area. It is interesting that the government has brought this legislation forward, because those incidents involved infrastructure which is maintained by Western Power but which is patently not safe and Western Power has done nothing to mitigate the risk associated with it, and the Forest Products Commission grows its plantations dangerously close to properties, which means that in the event of fire those plantations pose a risk to property. It will be interesting to see how this legislation will impact on the commission's property because, as the legislation says, in this instance there may be people or persons who are in control of a source of ignition and they should be using reasonable care. It is fair to ask the question: did Western Power and the Forest Products Commission take reasonable care in that particular instance?

I am sad that Mr McGuinness is now in this position and that he feels he has to sell up and move elsewhere because he is worn down by the nature of the risks that are posed to his property. I would like to think that

legislation such as this will more finely focus the minds of instrumentalities such as Western Power and the Forest Products Commission to ensure that they maintain infrastructure that is there for the benefit of the community but does not pose a risk to the community.

MR C.J. TALLENTIRE (Gosnells) [5.04 pm]: I rise to make a brief contribution to this debate. There is no doubt that the offence of arson causes enormous upheaval in our communities, especially our rural communities. It puts at risk lives, and destroys property and environmental values. Also, it is a problem that causes our hard-working volunteers and professional firefighters to put themselves at considerable risk. Recently I met with the Gosnells Volunteer Bush Fire Brigade, an organisation of outstanding citizens: people who want to contribute to our community, who are dedicated to the task, and who realise that at this time of the year, in early November, they have many months ahead of them of exceedingly dry, hot days when the risk of fire is very high. The last thing they need to know is that they will be called out to many fires that will have been caused by arsonists. All too often those people, who display such goodwill and such a desire to help the community, find that their volunteer effort goes towards putting out fires caused by people who have stolen vehicles that are then ignited in state forests or plantations. They are called out to other bushfire ignitions that are sometimes caused by sources that are never determined. Invariably they are called out for substantial periods of time. They have to deal with the disruption that comes to their lives, and that is then a problem for their employers. Nevertheless, they have made this commitment to be good volunteer bush fire fighters. It is important to note in this debate that the volunteer bush fire brigades across the state do an absolutely sterling job. They deserve only the best resources.

On that point of resources, it is very important to note just how effective the volunteer bush fire brigade network is. A fast attack vehicle, which, basically, is a converted Toyota Land Cruiser with a pump and a tank with some 500 litres of water on it, is an incredibly useful vehicle to get quickly to a fire and extinguish it when it is at the very early stages. The beauty of this is that with a network of bush fire brigades that each have at their disposal a number of fast attack vehicles, we can have a system in place whereby these vehicles are able to get to fires in a very short space of time. That is the beauty of our bush fire brigade network, which has saved this state from the terrible consequences that we are so aware of from fires in Victoria, where fires can get out of control and become enormous, with sometimes hundreds of kilometres of fire front. It is the virtue of our system that it enables our firefighters to get out there quickly and extinguish a fire at a very early stage.

I mentioned the Gosnells Volunteer Bush Fire Brigade, and I especially commend the work of Brigade Captain Michael Battrick, who leads that brigade, and the work that he and his team put in. They have very cramped facilities. I come back to the point that these brigades need the very best of resources, yet at the moment the Gosnells brigade is squashed into a shed with the Gosnells State Emergency Service. The level of resources that we are giving these brigades is simply not good enough. They are the ones who have to deal with the arson attacks that we see. They will be very pleased that this legislation is being put forward. It is legislation that is much needed. My colleagues, especially the member for Mindarie, outlined some important amendments defining recklessness. Those proposed amendments will make the legislation better legislation and therefore make it much more workable and much more likely to be applied. Those amendments are important.

I will move on to firefighting and draw on some of my experiences as a former member of the East Gidgegannup Volunteer Bush Fire Brigade. It is a bit like many military situations in that people often say that fighting a fire is 90 per cent sheer boredom and 10 per cent panic. Sometimes we found ourselves in very frightening and dicey situations. The rest of the time there is the tedious work of mopping up and making sure that logs and embers do not suddenly flare up. Many hours can be spent doing graveyard shifts on a fire field just making sure that the fire is well and truly out. It is so disheartening to know that so much of that effort is caused by arson or sometimes sheer carelessness. A number of times when I was called out, the cause of ignition was more likely that of carelessness when someone caused a fire while using an angle grinder. This legislation needs to ensure that people are aware of the risks involved in carrying out that sort of activity or anything that could possibly cause a fire. At the same time we have to make sure that the penalties are equitable and proportionate to the level of intent. That is where those amendments put forward by the member for Mindarie really do come into their own. They are vital additions to this legislation.

This legislation also needs to be coupled with a stronger push to educate the community on the risk of fire, especially in the peri-urban and rural environments where we often find that people with no experience of living in fire-prone areas are living in dwellings and they are not even aware of the need to get a permit during restricted times and that there should be absolutely no ignition of a fire in an outside area at certain times of the year. Perhaps those people are new to an area, having moved from interstate or overseas. They can put communities at risk. That was certainly an experience that I had when I was living in Gidgegannup in the electorate of the member for Swan Hills. It was really quite frightening. We were in the very fortunate situation of having fast-attack vehicles about 10 minutes' travel time from where the fire was burning and it was possible to quickly extinguish the fire. Whenever we see a plume of smoke on the horizon in the rural regions of our state, it really does strike fear into the hearts of many, with good reason.

In preparing for this speech, I have had a look at some of the comments by criminologists on the psychological profile of people who are likely to be arsonists. From what I can see, it can be summarised that many arsonists are people who lack remorse for the carnage that they can sometimes cause and the sheer scale of damage that they cause. It is hard to believe, but, according to leading criminologists, arsonists are not people who suffer from mental illness. They carry out the dangerous activity of lighting fires without realising what they are doing but they are not mentally ill. They enjoy the excitement of it and are often motivated by a sense of revenge. Their desire is to not only cause havoc but also exact revenge on others in their community. Invariably, they are male. There was one famous case in South Australia involving a female arsonist. Generally speaking, arsonists are male, they are typically between 24 and 27 years of age, they often live close to where they light fires and they are invariably loners. Interestingly, according to leading criminologists, they are not pyromaniacs. Only one to two per cent of the people convicted of arson are pyromaniacs. They have a very curious psychological profile. As I have said before, they lack any sense of remorse for what they have done. It seems that by having tougher penalties, as proposed in this legislation, we may have some means by which we can communicate with these people that their criminal intent is totally unacceptable in our society. We need to find other means of preventing this sort of criminal activity occurring beyond the penalties that exist in this legislation. That is where we really have to go. We always have to acknowledge that a preventive measure is far better than some sort of punitive measure that occurs after the event.

I have spoken a little about the social impact of the activity of arsonists. The environmental damage that is caused by fire when fire frequency far exceeds the natural fire frequency has to be better understood. A lot of work is going on in this state and elsewhere in the world into the general area of science known as fire science. It is very important that that work continue. It is very reasonable to say that in Western Australia we are only just beginning to understand how frequently many of our natural areas were burnt. In some areas the ecology has evolved to endure, survive and sometimes thrive with a fairly frequent fire regime. There may even be some ecosystem types that have adapted to a burn regime that may occur every seven or 10 years but those are probably few and far between; yet we see that in some areas of government policy that seven to 10-year fire frequency is suggested as a one size fits all. We have hundreds of different ecosystems in Western Australia and different vegetation types yet there is a tendency to impose the one fire frequency regime across all of those vegetation types. That would obviously be an inappropriate use of prescribed burning but in some cases we do have to burn for the preservation of property and to reduce fire risk, recognising that not only arsonists cause fire but also natural events such as lightning strikes. Much can be done to make sure that our planning system does not allow the building of dwellings in fire-prone areas. Our planning regime really has to get that right. At the moment there is an all-too-common occurrence of putting new subdivisions, often fairly cheaply priced—good value, people might say—small properties on the outer limits of the city in fire-prone areas. Through a poorly thought through planning regime, we could well be putting people in very dangerous situations where they are exposed to the serious threat of bushfires in the future.

I have spoken a little about the ecological impacts of overburning or inappropriate use of fire frequency that exceeds the natural. It is important to note that it is not just the vegetation that suffers but also bird species. We have some famous birds on the south coast, including the noisy scrub-bird, the western ground parrot, the western bristlebird, Carnaby's black cockatoo and malleefowl, that have all suffered because of inappropriate fire regime. So, too, have mammals. The once thought to be extinct Gilbert's potoroo has been more a victim of fire than just about anything else, with the possible exception of feral predators such as the fox. There have been some very serious ecological impacts as a consequence of arson.

We need to ensure that the legislation targets true arsonists; we have to ensure that the penalties in the legislation are correctly framed to allow for those who may be going about legitimate work—for example, undertaking a prescribed burn—that results in fire damage. We also have to recognise appropriate usage of fire on Indigenous lands in the form of firestick farming. In some cases, the skill of firestick farming needs to be re-learnt and developed, and we have to ensure that it is done in an ecologically sound way that is consistent with the way in which Indigenous people have conducted that activity for more than 60 000 years.

I fully support the intent of the legislation, but there is a serious need for amendments so that the legislation can be as effective as possible. Amendments in relation to recklessness need to be carefully examined by the government.

MR A.P. O'GORMAN (Joondalup) [5.21 pm]: I also support this legislation. I think it is appropriate that we try to tackle the causes of fire in our community and that we take a large sledgehammer to those who willingly and consciously set fire to things. Arson puts our firefighters in danger, particularly those in country areas where they are predominantly volunteers and have to leave their places of work and at times their places of enjoyment to fight fires.

In the time I have been in this Parliament I have served on the Community Development and Justice Standing Committee, and that committee has held a number of inquiries into emergency services. During the last inquiry

we visited Fitzroy Crossing. Around eight o'clock one morning we drove out to one of the local communities with a Fire and Emergency Services Authority officer; his name escapes me at the moment. Far off in the distance we saw what seemed like a very small puff of smoke. As we were holding an inquiry into emergency services, the FESA officer informed us that that sort of thing was seen on a regular basis up there. He said that nine times out of 10 those fires would fizzle away to nothing, but that on the occasions that they did flare up, they could become a major fire event in a very short time.

We drove back into Fitzroy Crossing a couple of hours later, and the small puff of smoke had by this time evolved into a fairly large plume on the horizon. It was still not an issue for the FESA officer; he did not seem too concerned about it. We then visited a pastoral station on the other side of Fitzroy, and were being shown through some of the firefighting and emergency services responses that the station took on. All the time we were doing that, I noticed that the FESA officer and the station owner—a female station owner—continuously kept their eyes on the horizon; they never once took their eyes off the horizon as they watched this plume of smoke develop.

We held a hearing in Fitzroy that started at about two o'clock that afternoon. When we got to the hearing we were told that the small plume of smoke we saw earlier, way off on the horizon, was now a major fire event in the area. In fact, some of the people we wanted to speak to in that hearing were local firefighters. We spoke to them in batches of only 15 or 20 minutes; two or three of them would come in at a time to speak to us. Most of them were black from head to toe with soot, and they were all fully kitted out.

As I recall, that fire was started deliberately. A person who deliberately starts a fire like that deserves the full force of the law to come down on him. My concern about this legislation—I know that the member for Mindarie has also spotted this problem—is how it will deal with fires that are started unintentionally. I come from a trade background, and I have on occasion found myself in such circumstances while welding. On one occasion I was working at Curtin University, welding in an exterior passageway. I had blocked the passage on both sides with physical barricades and tarpaulins so that the welding would not flash in people's eyes. Because I would be welding overhead, I put notices up and provided information through all the information channels available at the university. I had fire extinguishers and my trade assistant with me. While I was welding an overhead pipe, a couple of students came through the passageway. At the same time, there was a bit of a breeze and a piece of paper also entered the passageway. A spark from the welding happened to catch the piece of paper. I did not know anything about this, because I was up above with my helmet on and all my safety equipment. Within a matter of seconds, the burning paper was carried to a bush, and the bush caught fire. Given the way this legislation is drafted, I could in that circumstance have been subject to a charge. I had no knowledge that the piece of paper had caught fire and had escaped the corridor, but if it had happened to go a bit further, I would have been in breach of this legislation and subject to a fairly stiff penalty.

I am keen for the Attorney General to address some of these issues. As the legislation stands, the accidental escape of an ignition source that results in damage to a piece of property—in this legislation "property" includes vegetation—could result in people being subject to a penalty through no fault of their own. There are many tradesmen out there who will never be aware of this legislation, because it is just not something that they would ever think about. They will be welding in tight corners and sparks will get away from them; I have seen it happen many, many times. The example I gave is just one instance in which a small fire got away from me. Luckily, I had my trade assistant with me and he was able to switch my welder off, which told me that there was a problem and that I had to get out of there really quickly. We also had the appropriate equipment in place—we had a fire extinguisher on hand—and we put the fire out. However, even a fire extinguisher is only a first response; it is not a comprehensive firefighting tool. It is designed for a quick response, and if the fire is small enough it can be extinguished. If the fire had happened to get away from us, would we have been liable to prosecution under this legislation? These are the sorts of issues we need to address. We need to put this on the record in this place so that if people get into these situations, it will be quite clear how they should be dealt with by the law. I do not think it is the intention of the government or the Attorney General to catch people in situations like that, where they may receive a particularly harsh penalty through no fault of their own. That is where the element of recklessness comes in.

There are times of extreme fire danger in the wheatbelt and pastoral areas, and during these times, harvesting and the use of machinery in paddocks are not permitted. Under this legislation, will such bans extend into the metropolitan area? For example, will it be the case that, during times of extreme fire danger, welding will not be permitted even in enclosed situations such as workshops? Again, sparks can get away; one cannot see where the spark has gone, and it can sit and smoulder for a long time before there is a flare-up. I will be interested to hear what the Attorney General has to say about how we will deal with those situations. These are practical situations that happen every day with plumbers and electricians on building sites. Quite often there is a lot of rubble and rubbish on building sites that can quite easily be inadvertently set alight without anyone being aware of it, and fires can easily break out after people have left a building site in the evening.

My colleague the member for Kimberley has raised the issue of the land burning practices of Indigenous people. The burning of land by Indigenous people is a land management tool that was used long before the white man ever came to this country. That tradition was explained to me when I visited the Kimberley a number of years ago. From my understanding of Indigenous culture, it is incumbent upon senior people in Indigenous communities in certain areas to burn their land so that it can regenerate. I am concerned that this traditional land management practice may be caught by this legislation. The Attorney General is not in the chamber at the moment, but I ask him to address this issue.

Members in this place have raised a number of valid issues. We need to be cognisant of the fact that, even though this may not be the intention of this legislation, people may be caught by this legislation by pure accident and may have a sentence of life imprisonment imposed upon them.

MR J.N. HYDE (Perth) [5.31 pm]: I have two areas of concern about the Arson Legislation Amendment Bill. I hope the Attorney General will address these issues in his second reading response. As with the Indigenous use of fire, many festivals that are held in multicultural WA also use fire or naked flame. One of those festivals is the Japanese Shinju Matsuri festival that is held in Broome. Another very important Japanese festival is the Obon festival. That is a ceremony that is used to send spirits on their journey. It is an annual event. It is traditionally held on Town Beach in Broome. During that festival, candles are lit and are put into small boats that are sent out from the mangroves and float on the water. It is very feasible that an accident could take place and one of those candles could cause a fire to occur. We need to be given some reassurance by the Attorney General that some allowance will be made for accidents that may occur during one of these multicultural festivals that uses fire or naked flame. Obon is traditionally held in August or September, depending on when the full moon occurs.

Two months later, in October or November, again depending on when the full moon occurs, the Thai community celebrates Loy Krathong. During this festival, a small candle is placed inside a paper lantern. It works on the same principle as a giant balloon. The hot air makes the paper lantern rise. The lantern is usually sent off from the beach and flies away over the ocean. When all the oxygen inside the lantern has been used up, the candle usually burns out. Members may have seen these paper lanterns on the news, or occasionally at the Loy Krathong festival in Perth. I am not aware of any situation in which a burning paper lantern has suddenly dropped one kilometre out of the sky and has still been burning by the time it reaches the ground or the ocean. However, it is feasible that such an accident could occur—perhaps because of a sudden wind gust, or because the Channel 7 chopper has been flying by too closely—and the candle, which might be only 20 or 30 metres off the ground, might fall into an area that is covered in scrub or winter growth, as would be likely in October or November, and cause that area to burn.

The third multicultural festival that I want to talk about is the Indian Diwali festival. Recently, I joined the member for Nollamara; the member for Riverton; the mayor of the City of Stirling; the deputy mayor of the City of Stirling, John Italiano; councillor David Michael; a number of other councillors; and about 15 000 Indian residents of Perth, to celebrate this festival. Diwali is known as the festival of lights. Those people who have been past my office will have noticed that I do not have naked flame there —

Mr M.P. Whitely: Where do you keep your naked flame?

Mr M. McGowan: Good question!

Mr J.N. HYDE: I am not taking any interjections!

I keep a considerable number of lights at my office to celebrate the Diwali in multicultural Northbridge. The Diwali festival does not often involve the use of candles or naked flame. However, after that festival at Stirling, a fireworks extravaganza was held at Herb Graham Reserve. There are houses that back onto that reserve. That creates the potential for an accidental fire to occur. I have given the example of three multicultural events—the Obon Japanese festival, the Loy Krathong Thai festival and the Diwali Indian festival—in which fire or naked flame is used as a part of those festivals.

I also have a concern about clause 11 of the bill. This clause proposes to amend section 444 of the Criminal Code to delete the words "imprisonment for 14 years or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 20 years" and insert the words "life imprisonment". I believe we need to look at this in the context of the events that were taking place at the time section 444 was inserted into the Criminal Code. What the Parliament of Western Australia was saying at that time was that when the motivation for arson is racial aggravation, that offence should be treated as 50 per cent more serious than when the motivation for arson is for a commercial purpose, such as to make a dodgy insurance claim. I think that was a fair statement from the Parliament of Western Australia about how we need to deal very severely with people who use arson to terrorise others, as we saw with the arson convictions of Jack van Tongeren and other people associated with his racist group. It was considered important at the time that our legislation make such a statement.

The query that I have for the Attorney General is about the reality of a sentence of a life imprisonment. I say that because, in a number of cases, a sentence of life imprisonment could be less than a sentence of imprisonment for

20 years. In effect, by deleting the provision whereby Parliament has said that a racially aggravated arson attack is 50 per cent more severe than a commercial attack, we are actually downplaying the severity of racial aggravation. I am sure that that is not the intent of this amendment, but I think it is fair to ask whether that will be the effect. I think that would send a very poor message to the multicultural community. Those of us who were around at the time of the fire bombings of the Chinese restaurants knew not only the persecution of, but also the genuine fear felt by people in the various multicultural communities in Perth. Let us remember the time when the fire bombings were happening and before the perpetrators were caught. In that atmosphere of fear, I think there was a lot of justification for Parliament to say, "Yes, those attacks were 50 per cent more severe than run-of-the-mill commercial arson." That is an issue that I would like to be addressed. I would like some guarantee that the judiciary will use the Attorney General's second reading speech when deciding on terms of sentences or trying to understand the intent of Parliament when it amended legislation to recognise the severity and the horror of racial aggravation and deleted that provision from the legislation. Those two areas are my main concerns with this legislation. I look forward to the Attorney General addressing those concerns in his speech.

MR C.C. PORTER (Bateman — Attorney General) [5.41 pm] — in reply: I thank all the members for their contributions. They have raised a number of issues. The great majority of issues were considered in the drafting of this bill. I will start by saying that a criticism that is often levied in this place is that a bill takes too long to get to Parliament—why could it not have been done more quickly; it is only four or five pages or seven or eight clauses?—yet we have expensive and sometimes exhaustive debate on bills such as this. Let me say to all the members who made contributions that there were only one or two matters that were raised that were not matters of specific contemplation in the drafting of this bill. They were matters upon which we sought advice, received advice and asked for subsequent advice. We went through numerous drafts and tried to find the best balance to ensure that all the issues were addressed and that all the factual scenarios, of which there have been an enormous number in this debate, were understood as we drafted the legislation.

I will take the opportunity in this second reading response to go through as many of the concerns that have been raised by individual members as time will allow. No doubt there will be further time for those matters to be raised during the consideration in detail stage. After I have gone through the matters raised by each individual member that warrant some response, I will look at the clusters of issues that were raised and give some legal address to each of those issues. Secondly, we have heard example after example after example that fall into different categories of issues, and I want to address those as a group. Thirdly, I intend to go through the legislation as it is presented and try to explain it in context and to explain what it seeks to achieve and the matters in the Criminal Code that it seeks to improve upon.

I might work somewhat backwards and consider first of all the contributions that were made towards the end of the second reading debate by the member for Alfred Cove and the member for Fremantle. I understand the point that the member for Fremantle made in her contribution. It is a point that we gave some consideration to—that is, whether or not life imprisonment should attach to the penalty for what is, effectively, a property crime. The point I make, and it has to be absolutely clear for all members, is that the way in which we have structured these new offences, the brand-new negligence offence—I will use that as a shorthand way of referring to the offence to which a penalty applies if a person breaches a duty to take reasonable care and reasonable precaution with a fire that already exists or an ignition source—does not attract the life imprisonment penalty. A civil servant who is in some way grossly culpable or negligent will not face the life imprisonment penalty. Many members made a mistake in reading the bill and complained about the idea of a negligent person facing life imprisonment. That is not the case. The penalty for the negligence offence is set out in proposed section 445A. Proposed section 444A sets out the duty, and proposed section 445A sets out the offence and the penalty for breaching the duty, and that penalty is imprisonment for 15 years.

Yes, our code will now carry a life imprisonment penalty for property damage. First of all, members must keep in mind that the life imprisonment penalty will attach to a person who wilfully and unlawfully destroys or damages any property, in this instance, by fire. Members may agree or disagree that a penalty of life imprisonment is appropriate for a property offence. It is not a decision that this government has made lightly. It is a decision that this government has made in contemplation of the incredible devastation to property that can occur through lighting a fire, and having regard to how other jurisdictions in this Federation have dealt with that issue. Our penalties for the offence of wilfully and unlawfully damaging property were nowhere near the penalties of other jurisdictions. It is 25 years in the Australian Capital Territory, New South Wales and Victoria. Notably, it is life imprisonment in Queensland and the Northern Territory for an offence of, if I might paraphrase it, unlawfully and intentionally setting fire to structures, vehicles, stacks of cultivated vegetable produce or mines. Notwithstanding the interjections from the member for Mindarie, humorous as they were, this government considers that it is appropriate to levy a penalty of life imprisonment on the intentional, wilful and unlawful destruction of property by fire. No doubt we will have this debate in consideration in detail when the member for Fremantle moves her amendments. However, I stipulate now in my response why the government felt it necessary to take that step.

The member for Alfred Cove raised a number of issues that go to a range of examples referred to by many members. She spoke quite properly about the fact that there are mental elements or fault elements to offences. It is useful to provide an overview to address each individual member. The member for Alfred Cove was quite right. I will read from the "General Principles of Criminal Responsibility" report on the Model Criminal Code, which report was released in December 1992. Undoubtedly, the critical question is: are we giving a person who normally lights a fire, but it gets out of control in circumstances in which that person did not take reasonable care and reasonable precaution, greater protection at law by having as the standard criminal negligence, as we propose, or recklessness? It is a question that the member quite properly raised. The report on the Model Criminal Code lists fault elements in order. The fault elements required for a particular physical element may be intention, knowledge, recklessness or negligence. The report states —

> (1) A person has intention with respect to conduct if he or she means to engage in that conduct.
>
> (2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.
>
> (3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

That is the standard that attaches to wilful and unlawful damage when life imprisonment follows. The report continues —

> A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

It goes on to state —

> (1) A person is reckless with respect to a circumstance if:
>
> (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
>
> (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

The report then states —

> A person is negligent with respect to a physical element of an offence if his or her conduct involves:
>
> (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
>
> (b) such a high risk that the physical element exists or will exist;
>
> that the conduct merits criminal punishment for the offence.

They then talk about how those relate to each other. Of those four fault elements, on the face of it, from the way they are listed in this report, there is a consideration that recklessness is a higher standard than criminal negligence, but that very much depends on how criminal negligence is defined in each jurisdiction. What I would argue, and what my initial view in drafting this legislation was, and what is echoed in the advice that has come to me from the State Solicitor, is that the Western Australian code version of the definition and standard of criminal negligence is very high.

Dr J.M. Woollard: Are you then stating on the record that this definition includes both subjective and objective elements?

Mr C.C. PORTER: I will come to that in a moment, because that was a point given some consideration in the Law Reform Commission's review into the laws of homicide, which was undertaken by the previous government. I might just jump the gun, although I will consider that, and say that the commission considered at some length whether our code should adopt a subjective element. In offences such as manslaughter, where the duty exists, it is not subjective; it is objective. We have had a very lengthy review of the criminal law in this jurisdiction to establish that, with manslaughter, which is the section we are borrowing from here, it should stay objective. There are a number of reasons that that is said to be the case. The advice that I have is that the objective standard of criminal negligence is so high that it is indistinguishable from recklessness. In its outcome, it is in effect the same standard. I return to the report I have been quoting from, which prima facie says that recklessness is a higher standard. It goes on to state —

> The idea that recklessness is a more culpable state of mind than criminal negligence is put to the test when one defines criminal negligence as requiring a judgment that the falling short of community standards be so great as to warrant criminal punishment whereas recklessness is found by a mere decision to take a substantial and unjustifiable risk. This would have been even more of a problem had recklessness been defined in terms of foresight of possibility and the taking of an "unreasonable" risk.

The commentary on the recklessness provision says that the idea that recklessness is a more stringent standard actually gets put to the test depending on how criminal negligence is defined. If criminal negligence is defined as a falling short of community standards being so great as to warrant criminal punishment, the situation arises in which negligence—failure to take reasonable care and reasonable precautions—becomes, if not the same standard of recklessness, perhaps even slightly higher. This is the point that the member for Mindarie was making. He said that it may even be harder to prove, and offers greater protection.

Dr J.M. Woollard: What case law is there in Australia in relation to these definitions?

Mr C.C. PORTER: I will absolutely come to that. Before I go into those general principles of criminal law as they relate to a whole range of examples, I will go through, in chronological order, some of the more pertinent and important examples that came from members opposite. First of all, the member for Mindarie properly focused on situations in which, if I can describe it this way, a fire is lit in normal or acceptable circumstances. Those are the terms I will use for present purposes. The member for Mindarie's proposed amendments are meant to try to achieve a higher level of protection for the normally or acceptably lit fire than exists in the bill that we are putting forward. I would argue that they do not in fact do that, and in fact might make the protection less, or indeed, when read in the context of the way the member has gone about it, become circular or nonsensical. I will get to that in a moment as well, but the important point to make is that, while the debate has focused largely on the issue of normally or acceptably lit fires, the point is that this legislation, in setting out an offence of criminal negligence for lighting fires, is not meant to address only the situation in which a normally or acceptably lit fire gets out of control due to negligence. It is also meant to take into account fires that are not normally or acceptably lit that go on to do damage, but go on to do so in circumstances in which it is objectively difficult or not able to be proven beyond reasonable doubt that the damage was likely.

We already have an offence of lighting a fire in circumstances in which it is likely to do damage, which is the Bush Fires Act offence. However, a very important point, to which we gave careful consideration—in fact the very reason for bringing this legislation forward—is that it is quite possible to imagine a situation in which someone damages property by lighting a fire in circumstances in which he did not mean for that damage to occur, and even though the damage did occur it would be very difficult to argue that the damage was, objectively speaking, likely. A person who throws a cigarette butt out the window engages in an act that we would not describe as an acceptable or normal use of an ignition source. That butt may go on to cause a great amount of property damage, but it would be very difficult in many circumstances to argue beyond reasonable doubt that, even though that damage did happen, it was an objectively likely outcome.

The member for Gosnells gave the example of a person who sets fire to a car for insurance fraud purposes or something of that nature. That person might do that in circumstances in which it appears that all reasonable precautions have been taken to stop the fire from spreading, but nevertheless it does. The fire might be lit in circumstances in which damage actually occurs to vegetation or property, but it is hard to argue beyond reasonable doubt that that was likely. The point I am seeking to make is that, although a great deal of focus has been placed upon the normally or acceptably lit fire, and about how we protect people in that circumstance, the offence we are creating with proposed section 444A is not about just that situation. It is about a situation in which a person might light a fire in what we would not describe as acceptable or normal circumstances, and the fire goes on to do an enormous amount of property damage. In those circumstances, even though the fire did cause the damage, it is very hard to argue that the damage was, objectively speaking, the likely result. A person who breaks a beer bottle or wine glass and drops it into bushland could conceivably have a source of ignition that could cause an enormous amount of damage, but it would be very hard in front of a jury to argue that that damage, if it did occur, was likely from the first instant. We are also trying to catch the cigarette butts thrown out the window—the very small fires that, contrary to all expectations, and as unlikely as it might be, go on to cause enormous damage, but were lit in circumstances that showed a lack of reasonable care and precaution. I want to make that first distinction about the fact that the legislation tries to take into account not only the normally or acceptably lit fires, but also fires that are not lit in normal or acceptable circumstances.

The point that the member for Mindarie raised in a number of statements, and also by placing his amendments on the notice paper, is that we all seem to agree that even with a fire that is normally or acceptably lit, a person must behave with respect to that fire according to some standard. Whether that standard is to not be reckless with the fire or is, as we suggest, to take reasonable care and precaution with the fire, the question we are asking is: where does the bar sit on either of those standards?

Dr J.M. Woollard: Reasonable care?

Mr C.C. PORTER: Exactly. What gives more protection? Criminal negligence is a situation of what we call gross or wicked negligence—the highest level of negligence. I will cite some of the case law. Recklessness, as the member for Mindarie pointed out, speaks to knowledge and taking unacceptable risk in circumstances of knowledge as they are taken to be at that time. The advice that I have from the State Solicitor is to the effect that,

given the definition of criminal negligence in the Criminal Code, the two standards are indecipherably the same; they are the same standard, given our definition of criminal negligence.

Dr J.M. Woollard: So are you saying that your definition of criminal negligence covers both the objective and the subjective test for any fire that is lit?

Mr C.C. PORTER: I will pre-empt that argument by reading the definition. I want to look at that definition in the light of all the examples that members opposite and the member for Alfred Cove have raised. Here is the definition of criminal negligence as it stands in this jurisdiction —

> The degree of negligence required to establish an offence relying on s 266 of the Criminal Code is described as gross or criminal negligence.

Section 266 requires a person to take reasonable care and precautions with dangerous things. It is the offence that works to give operation to the crime of manslaughter. The document continues —

> Criminal negligence is, in turn, described as recklessness involving grave moral guilt and as being of such a degree as to warrant the sanction of the criminal law: see *Callaghan v R* … *In R v Bateman* … Lord Hewart CJ defined negligence in the following terms:

Sitting suspended from 6.00 to 7.00 pm

Mr C.C. PORTER: Before the dinner adjournment I was reading from a case with respect to the issue of what constitutes criminal negligence in this jurisdiction. I had reached the point in reading from R v Bateman where Lord Hewart defined negligence in the following terms —

> In explaining to juries the test which they should apply to determine whether the negligence, in the particular case, amounted or did not amount to a crime, Judges have used many epithets such as 'culpable', 'criminal', 'gross', 'wicked', 'clear', complete'. But, whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment.

Lord Hewart further stated —

> … Subsequent attempts to reformulate the test have included reference to the high risk of endangering the life, safety or health of another —

That is Nydam v R, and R v Taktak —

> In Pacino v R … Kennedy J stated … that it would have been desirable to make some reference to "risk" in the context of describing the degree of negligence necessary to be found to sustain a conviction. In R v EMJ … French J observed:
>
> > Although reference to such a high degree of negligence lacks precision, it is clear that this is an evaluative process that must of necessity amount to a judgment based on all the circumstances attending the individual case.

That is a very high standard, and a standard which involves the concept of risk, but which also attaches to ideas of culpable, criminal, gross, wicked, clear, complete negligence. It is a very high standard, and a standard which is based on all of the circumstances attending the individual case.

Dr J.M. Woollard: Those are his comments, but, again, his comments said all of the factors involved in negligence must be taken into account.

Mr C.C. PORTER: This is the point that the member sought to have me explain to her; that is, whether this is a purely objective or a subjective test. It is largely and fundamentally an objective test, but the fact that criminal negligence involves the trier of fact looking at the behaviour of the individual, based on all the circumstances attending the individual case, means that it is primarily objective but it has elements of subjectivity to it. The judge would take into account, for instance, one of the issues that the member for Mindarie was concerned about, it being the state of knowledge of the person at the time.

Dr J.M. Woollard: And the mental capacity of the person?

Mr C.C. PORTER: No; it is not infinitely elastic, and it stops at that point. I will go on to explain how that works. But it does take into account matters such as that that the member for Mindarie has assessed as being important to have taken into account—that is, the state of knowledge; the state of available knowledge; and, the care that could have reasonably been taken to increase one's knowledge given the state of knowledge.

The member for Alfred Cove asked if it took into account the mental state or status of someone; no, it does not. When I look at the final report of the "Review of the Law of Homicide", which was project 97 undertaken by the

Law Reform Commission of Western Australia, it went into some great detail in looking at whether or not the objective test of criminal negligence should be retained in Western Australia, or whether we should move to an objective test. This was in the context of looking at the offence of manslaughter. I will read from page 92 of that report —

> The objective test for criminal negligence has been criticised because a person might be held criminally responsible even if he or she was incapable of meeting the applicable standard of care. The Law Reform Commission of Victoria recommended that it should be a defence to manslaughter if the accused was 'unable to meet reasonable standards because of physical or mental deficiency'.

That is the member for Alfred Cove's point, but there is an alternative point of view. The report further states —

> In Lavender, Kirby J noted the theoretical argument that the objective standard for criminal negligence may hold a person criminally responsible even where that person was unable to meet that standard because of physical or mental incapacities. Nonetheless, Kirby J maintained that the objective standard was appropriate, emphasising that the high degree of negligence required under the criminal law means that criminal responsibility for negligence will only be imposed where there is 'very serious wrongdoing'.

Western Australia's Law Reform Commission was asked by the previous government to produce this report. In its report the WA Law Reform Commission stated —

> … if an accused was incapable of meeting the standards of a reasonable person (due to youth or mental impairment) the defences of immature age and insanity may relieve an accused from criminal responsibility for causing death by criminal negligence.

Footnote 58 on page 92 states —

> The importance of maintaining a minimum objective standard was emphasised by the majority of the Canadian Supreme Court in Creighton … The majority did not favour the approach of taking into account personal characteristics such as inexperience or lack of education. It was explained that the standard of care required should not vary on the basis of the personal characteristics of the accused but may vary depending upon the nature of the activity. For example, a high standard of care is required when undertaking brain surgery. The majority also noted that mental impairment leading to incapacity would deny criminal responsibility.

The point is that, yes, criminal negligence is primarily an objective test. It has some elasticity in some matters that we might consider, colloquially, to be subjective, such as the state of knowledge at the time of the matter, the nature of the activity, what knowledge was reasonably available and so forth. But it is not infinitely elastic and it is not crossing the line into a primarily subjective test. The member for Alfred Cove may still hold the view that she held when she contributed to the second reading debate, but I am putting an alternative view that the standard is so high that having a base minimum objective standard is appropriate in all the circumstances. I think, whether the member agrees or not, it addresses the point she raised.

I cannot put it any clearer, I think, than to say that the debate has centred on this question: as a matter of law, is it going to be more likely, on the very same facts, to secure a prosecution under the standard of criminal negligence or recklessness, which is the higher standard. Ceteris paribus—all other things being equal—on the same facts on the same matter, if it were tried in front of the same judge alone, if I can use that example —

Mr J.R. Quigley: A judge alone, yes.

Mr C.C. PORTER: I will get to juries in a moment, because that was a point that the member for Mindarie made. But if it was tried as a matter of law on the same facts, on which charge is it more likely that a conviction would be secured; criminal negligence or recklessness? The advice available to me—I must say that it is a view I share—is that they would be equally likely to secure a conviction, and that the same standard applies. I agree with that advice.

The member for Mindarie made a point that irrespective of the legal similarities between criminal negligence and recklessness, it may be that it is simpler to secure a verdict of guilt in front of a jury for recklessness because the way the offence is structured kind of leads a jury through. That is a view that I cannot measure. It strikes me as being dependent on all of the circumstances of the matter, but it is not a legal view. That is a view of instinct about how juries operate and what the psychology of juries is. But even if the member for Mindarie is right, he is suggesting that we take away the criminal negligence standard and put in a recklessness standard, which, in his view—not as a matter of law but as a matter of practice—is more likely to secure a conviction.

Dr J.M. Woollard: I disagree with that.

Mr C.C. PORTER: You may disagree; I do not know the answer to that question. I say to all members of the house that the standard of recklessness or criminal negligence is very much the same. In practical terms, we are talking about the same type of standard.

Dr J.M. Woollard: But it is not the same, Attorney General, when you have just said that it doesn't have both this objective and subjective test, and, therefore, whilst you said that knowledge might be taken into account, 25 per cent of the community is currently suffering from a mental illness. This could be a person with a mental illness, and that will not automatically be taken into consideration.

Mr C.C. PORTER: I accept the point, but neither would it be, in my view, taken into consideration under the recklessness standard. The recklessness standard is not a subjective standard either; it is an objective standard. The member is asking for something quite different from what I —

Dr J.M. Woollard: English case law now has both. That's why maybe I need more time to look at the cases that you have cited to see —

Mr C.C. PORTER: That will require a lot of photocopying and I can give that to the member. The member for Mindarie is proposing that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk, or is aware that the circumstance either exists or will exist, or, having regard to the circumstances known to him or her, it is unjustifiable to take the risk. A person is reckless with respect to a result if he or she is aware of a substantial risk, or is aware that the risk will occur, or, having regard to the circumstances known to him or her, it is unjustifiable to take the risk. There is no subjective assessment of the person's mental capacity in that test of recklessness. Recklessness is not meant to be a subjective test. The member for Alfred Cove wants something that neither side of the house is offering.

Dr J.M. Woollard: I would have been quite happy if you had stood and said that in relation to our definition of "criminal negligence", the way we are looking at this legislation, we would expect the courts to take into consideration both a subjective and an objective measure, but you are not saying that, Attorney General.

Mr C.C. PORTER: They are not the subjective measures that the member wants. The court will not take into account that someone might argue he has a lower mental capacity or has a lower IQ or is suffering from a mental illness that does not constitute the definition of "insanity" under section 27 of the Criminal Code.

Dr J.M. Woollard: That was the case I cited from the UK in which a girl was charged when she had a known mental illness and was not aware that her actions would lead to that fire.

Mr C.C. PORTER: We will agree to disagree. All I am saying to the member is that neither side will make the member happy on that.

The member for Girrawheen mentioned the issue of vegetation and whether it would apply to peat fires, and the member for Kimberley asked about a fire that was normally or acceptably lit by an Indigenous person in the circumstances of traditional custom. The member for Balcatta talked about technicalities and whether we would be needlessly prosecuting firefighters. The member for Midland asked whether a person who had lit popcorn on a stove and burnt down a house would be liable to life imprisonment. I explained that unless a person wilfully or intentionally burnt down the house, the person would not be within the auspices of the life imprisonment penalty. The issue for the member for Midland is where the standard is set, and I will come to that in a moment. The member for Forrestfield talked about ordinary people who did ordinary things but did not do them carefully. That is the nub of the problem that we are dealing with. Someone mentioned the example of a person who falls asleep with a cigarette in his mouth while in bed. A person who does so is not wilfully or intentionally trying to burn anything but would potentially have behaved in a negligent fashion.

They are the matters raised individually by members, and I will go through them under the cluster of the types of issues that they give rise to. Firstly, there was a contention—one that I do not accept—that the bill could inappropriately criminalise acceptable or normal activities, particularly those undertaken by firefighters or farmers. Secondly, it was contended that the bill should thereby adopt the fault element of "recklessness" rather than "criminal negligence", which goes to the member for Mindarie's amendments. Thirdly, it was asked whether the bill will apply to peat fires, which is an important issue. Fourthly, there was the issue of whether the definition of "property" in the bill might differ from that used in the Bush Fires Amendment Bill. It does ever so slightly, but there is a reason for that, which exists in the context of the Criminal Code.

I will deal firstly with the issue of criminalising acceptable or normal activities, which was raised variously by the members for Mindarie, Kimberley, Balcatta and Midland. Specific examples were raised of firefighters or emergency service workers who attempt to extinguish a fire, farmers who conduct a back-burn on their property, the spiritual or cultural burning of country by native title holders, and various domestic incidents such as using candles or stove tops. Proposed section 444A imposes "a duty to take reasonable care upon persons who have charge or are in control of a source of ignition or fire". Those words have a plain, ordinary meaning. The *Oxford English Dictionary* states that "to have charge of" is to have a task, a duty, a commission, or to be in the care or

the custody of something. It also states that "to be in control of something" is to have the power of directing or commanding, to have the ability to restrain, to have the means of restraint, and to be able to check. Cases exist to show that there already are duties at common law with respect to property owners and fires on their property. One case that was brought to my attention was that of Goldman v Hargrave. Lightning strikes had set fire to a tree on Mr Goldman's property. He made some partially successful attempts to douse the fire and left it smouldering. Some days later the fire spread from the tree to the rest of the property and then to the neighbouring property owned by Mr Hargraves. The High Court found that Mr Goldman was liable for the damage to Mr Hargrave's property. One of the judges in that matter said that Mr Goldman's liability arose from his knowledge of the fire and the fact that he could have rendered it harmless or reduced the danger to his neighbours by exercising reasonable care. It was noted in that case that it was important that mere knowledge of the fire and some theoretical ability to extinguish it were insufficient. Merely owning the property upon which a fire started would not be sufficient to attract liability; there must be some attempt to either use the fire for one's own purposes or some attempt to extinguish the fire such that the person got it under his charge, control or care. Simply being the owner of a property where there was a fire would not mean that the owner would be liable under this offence. The owner would have to take charge, control or care of the fire.

Mr J.R. Quigley: Or start back-burning?

Mr C.C. PORTER: If the person doing the back-burning started the fire, yes. I will say to the member for Mindarie that a person could, prima facie, come under the terms of this provision in terms of charge or control if the person started the fire, whether that be in normal or acceptable circumstances or in abnormal and unacceptable circumstances, or whether the person tried to use a fire that was started by someone else for one's own purposes, such as for back-burning. If a person took measures to extinguish a fire that was not started by that person and the fire was brought to a level whereby the person who took measures to extinguish the fire was able to extinguish the fire, that person would take ownership and charge of and responsibility for that fire. They are the prima facie circumstances that we are looking at.

The following factual scenarios, I agree, could primarily give rise to the types of liability that we are talking about. If a firefighter was attempting to extinguish a fire that was lit by another person and the firefighter brought the fire to a level whereby it could easily be extinguished entirely, the duty might be activated. If a firefighter or a farmer lit a fire to create firebreak or back-burn, then, prima facie, that is a situation whereby the firefighter or farmer would be in charge or control of the fire. If a firefighter or another person undertook a prescribed burn under the Bush Fires Act 1954, the firefighter or farmer would be in charge or control of the fire. If an Indigenous person or persons lit a fire on land under which they had native title rights as part of the spiritual or cultural burning of country, they would be considered to be in charge or control of that fire. If a person uses a source of fire ignition within the home, such as a candle or a stove top, that person is in charge, care and control of that fire. I will stop there and say that all of those scenarios apply equally to the offence of manslaughter. In any of those scenarios, whether it is a traditional custodian of the land or a firefighter, the person who is in charge of and care of the dangerous element in "manslaughter" has the duty to take reasonable care and precautions. If when lighting a fire or being in charge of the fire or the source of ignition the person fails to take that care, he could be liable for manslaughter, as the law presently stands. All these people and scenarios are caught within the offence of manslaughter, which establishes a duty as the law presently stands. It is important to again stress that the Criminal Code, which will impose the duty to take reasonable care of and precaution with the fire for which a person is in charge or has control, places a very high standard. One has to be grossly negligent, wickedly negligent or culpable. We take into account circumstances such as the person's state of knowledge and all the circumstances accompanying the case.

It is necessary to remember also with respect to all the firefighting examples that were raised that there are statutory safety standards that will always be considered by a court when determining whether someone took reasonable precautions. Those standards already exist. The procedures contained in the Bush Fires Act, the Fire and Emergency Services Authority of Western Australia Act and the delegated legislation made under those acts will all influence a court because they are the circumstances that constitute reasonable care or "reasonable precaution". The view is, and the advice I have received is, that members of fire and emergency services authorities who comply with the usual procedures when they are in charge and in control of a fire could not be found criminally negligent. Compliance with those procedures would not even get them close to the standard of culpable or reckless criminal negligence.

Again, we must have some regard to proposed section 445A of the Criminal Code. This is very important and critical to the member for Mindarie's amendment. Proposed section 444A creates the duty; proposed section 445A imposes the liability for breaching the duty. The liability is imposed only when a person unlawfully omits or refuses to do any act that it is the person's duty to do under proposed section 444A. To do something unlawfully is to do it without lawful authority. Therefore, with a firefighter or a Department of Environment and Conservation worker or someone undertaking a prescribed burn, a prosecutor is going to have to prove beyond reasonable doubt that the firefighter was acting without lawful authority and had been grossly negligent. It is the

word "unlawfully" in proposed section 445A that adds the extra protection on top of criminal negligence for people undertaking a lawful duty. The reason we have sought to not specifically exclude DEC and Fire and Emergency Services Authority workers is that, unfortunately, history tells us that it is sometimes the case that those workers, acting outside their lawful authority, light fires, because they have a predilection to light fires. There have been a number of cases in which the successful convictions have been against FESA officers in this jurisdiction and others when they have lit fires and later taken great gratification in putting them out. We have been unable to frame the protection around simply excluding categories of people who might otherwise have a lawful authority to be dealing with a fire. However, the way that that proposed section works is that it must be shown that they were acting without lawful authority and reached a standard of criminal negligence that is gross or wicked or morally culpable.

Mr M.J. Cowper: Minister, I have a real concern about the fuel loads in my electorate and the prescribed burning that you are talking about. I hope there is no provision in the legislation that would inhibit the decision makers within DEC from embarking on prescribed burns. At the moment, trying to do prescribed burns in sections of the forest so as to reduce fuel is somewhat difficult. I would hate to think that any legislation could be interpreted as being detrimental to that objective.

Mr C.C. PORTER: Indeed, it is difficult now. All the legislation and the regimes, such as the Bush Fires Act and the Fire and Emergency Services Authority of Western Australia Act and other acts and delegated legislation, have set up the circumstances in which a prescribed burn can be undertaken—controlled back-burning and so forth. The standards are quite high. The point is that if a person is lawfully acting under the authority of those acts and is meeting the requirements in those acts, it would be impossible, on my advice, for that person to be held guilty of the new offence that we are creating, because it could not be said that that person was acting without due reasonable care and reasonable precaution.

I might stop here and say that one of the difficulties that exists in adopting the type of amendment that has been put forward by the member for Mindarie is that our code does not have a concept of recklessness. That is not a fault element that our code uses at any point.

Dr J.M. Woollard: You can put this in. Other acts have "reckless" in one or two places only. Therefore, we could follow the Model Criminal Code and put "recklessness" in the legislation in relation to arson.

Mr C.C. PORTER: If there is no practical difference between the two standards of recklessness and criminal negligence, the first question is: why do it? The second question is: what are the unintended consequences of that? If we had a brand-new concept in criminal law of a fault element, it would be completely foreign to our very old, well-working, well-reviewed code—a concept of fault that was rejected by the review of the law of homicide with respect to manslaughter. What we would be doing is potentially vandalising our code and upsetting a very fine balance in the way that the code works. If we codify the requirements for recklessness, how does that bear upon what are very well understood principles of negligence? The answer is that we just will not know until that goes to the courts. There is no benefit to be gained from that in the circumstances.

Dr J.M. Woollard: But that becomes the third tier then, doesn't it, so that there would be intent, recklessness and criminal negligence?

Mr C.C. PORTER: It is a completely foreign idea to our code, with no jurisprudence in this jurisdiction to attach to it. I will add something else about the member for Mindarie's amendments. I understand that those proposed amendments are put forward in the spirit of trying to create a better legislative result. But one of the acute difficulties with the way in which the member for Mindarie has gone about them is that a reading of proposed section 444A would have the new section read as follows —

> Any person who has charge of or is in control of a source of ignition recklessly fails to take reasonable precautions to avoid lighting a fire …

Not only do we have recklessness as a standard, but also we still have criminal negligence as a standard, because the terms that activate the standard of criminal negligence are reasonable precautions and reasonable care. Therefore, the member for Mindarie's amendments, well meaning though they are, would mean that we have a piece of legislation that says that a person cannot light a fire in circumstances in which that person recklessly engages in criminal negligence. It would be unheard of, not only in the code, but also in any state or territory in Australia, and it would, in my view, create enormous amounts of confusion if that had to be dealt with by the courts. Although I understand the concerns that have motivated that type of change, it does not achieve any shifting of the bar in terms of the safety net that exists for people who might light a fire in statutory or normal or acceptable circumstances and who are protected by the concept of the word "unlawfully" in proposed section 445A, and also protected by virtue of the very high, commensurate standard to recklessness that is criminal negligence. I will stop there. No doubt there will be other matters to be addressed in consideration in detail.

Question put and passed.

Bill read a second time.

Leave not granted to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 9 put and passed.

New clause 10 —

Mr J.R. QUIGLEY: I move —

Page 5, after line 6 — To insert —

10. Section 442A inserted

After section 441 insert:

442A. Recklessness

(1) A person is reckless with respect to a circumstance if:

(a) he or she is aware of a substantial risk that the circumstance exists or will exist; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(2) A person is reckless with respect to a result if:

(a) he or she is aware of a substantial risk that the result will occur; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

I listened with interest to what the Attorney General said. Of course, I take no issue with everything he has said in relation to the test for a person having a duty to take reasonable care to the criminal standard and the dissertation that the learned Attorney has given us as to what those cases tell us about that. That is not the issue that I raise. My issue is that it is not intuitive. From a practical perspective, we have seen this time and again in the courts when juries are set the task, member for Alfred Cove—and it is not the judge who is the fact finder—of taking on board this academic dissertation. I am not putting the Attorney down by saying "academic dissertation", but that is what it is; often a judge's charge to the jury on this sort of law amounts to an academic dissertation. When it comes down to a jury embracing the concept of an accused breaching the standard and the judge starts talking about "grossly breaching it" and the "moral culpability deserving of criminal sanction", this all becomes subjective for the jury. It is the jury that goes away to the jury room with those instructions and with the facts of the case. In defence work I used to take the code to court for juries. My old mentor, the late Brian Singleton, said, "Mate, if we're going to worry about the law, we've already lost. What we're dealing with in jury trials is fact and how juries will accept the facts. We'll leave the Criminal Code and those law books to the appeal lawyers." That is how the jury will accept the facts and how they will interpret those facts and measure them against what are often difficult legal charges that the judges are required to deliver. I take the Attorney's point that elsewhere in the code the concept of criminal negligence in manslaughter cases is used consistently, not this definition of recklessness, but that is no argument against codifying the behaviour and the standard in this particular case as reckless.

Ms M.M. QUIRK: I am very interested in what the member for Mindarie has to say.

Mr J.R. QUIGLEY: Therefore, that is no reason in itself to strike down this amendment to insert a new clause.

Another very important reason that I brought this amendment forward is that the law, member for Alfred Cove and member for Fremantle, also has to be accessible to the people. I do not think many constituents on reading these new provisions for the arson laws and the insertion of section 444A and the duties that people have in relation to lighting fires and controlling fires would readily understand or have access to the case law cited by the honourable Attorney in his reply to the second reading debate. Look at the definition of "reckless"; there would be few people in the member for Alfred Cove's constituency, or in Western Australia I expect, who would have any doubt as to what was required of them when they were controlling a fire.

Dr J.M. Woollard: The definition that the member will put in states —

(a) he or she is aware of a substantial risk …

I believe that would be the subjective test. It also states —

(b) having regard to the circumstances known to him or her …

I emphasise the words "known to him or her". That would be the objective test. That is why I believe that this definition is a better definition to use. The Attorney General is saying that there is no object element within this definition, but with the words "known to him or her", if someone had a mental illness or —

Mr J.R. QUIGLEY: The objective test, member for Alfred Cove, is that one would have to objectively judge whether it was unjustifiable to take the risk. It could not be that the accused says that it is unjustifiable or not; there would be this objective test, so that the jury members, bringing together their common experience in life, would have to say, "What he did was unjustifiable."

Dr J.M. Woollard: But it would be unjustifiable because again, if we go back to the person with the mental illness, he or she would not have been aware of the risks.

Mr J.R. QUIGLEY: That is right. Under proposed new section 442A, people would need to be aware of the substantial risk that the circumstances exist or will exist.

Dr J.M. Woollard: That is the subjective.

Mr J.R. QUIGLEY: That is right and that is subjective for the person himself. Can we show that that person knew that danger existed or was about to exist? That is why I cited the Boorabbin bushfire, because the fire officers who opened the road looked at a weather report and did not understand the potent danger that that weather report presented to the highway, because the weather report, as we heard from the Coroner's Court, said there was likely to be a wind shift in about an hour and a half's time. That did not settle in their minds. Before people are liable for prosecution or conviction under this legislation, they have to be aware of that substantial risk or that it will exist—that is, that a wind shift will come. Then, having been aware of the fact and in the certain knowledge of that, if they start the back-burning—I will come to unlawful in a moment—in other words, if a farmer takes the unjustifiable risk knowing and being aware that a wind is coming —

Dr J.M. WOOLLARD: I am happy to hear more of the member for Mindarie in support of this new clause.

Mr J.R. QUIGLEY: Thank you very much, member for Alfred Cove.

The Attorney raised another point and that was if we go to proposed section 445A, the punishment section, it will not happen unless it is unlawful in starting the fire. Offences would not be created for Department of Environment and Conservation officers or people back-burning. I have seen so many times in my life that when the facts are examined ex post facto, with the benefit of the rear vision mirror looking back on the event, it can actually be picked up that it was unlawful. Perhaps the back-burning was not properly gazetted, as it is required to be. If the back-burning was not published in the *Government Gazette*, then it is unlawful. It might not have been known to the fire officer or the DEC officer at the time that the back-burning had not been properly gazetted. We saw a potent example of that in the most publicised criminal trial this year, and that was the trial involving the McLeods and the victim Constable Butcher, in which it was argued by the defence that the use of a Taser was unlawful, because when it was examined with the wisdom of hindsight and against the Commissioner of Police's operation instructions it could only be fired when a person was under threat of immediate injury and, in that case, the fellow was walking backwards when the Taser went off. The defence used that; it argued whether it was lawful or unlawful use of the Taser.

Whether it was lawful or unlawful to start the fire can be tested against a whole lot of things. It is not just that the DEC officer will be protected because he is the DEC officer who started the fire; it is whether the whole back-burning procedure had been properly gazetted and was lawful. In the case of a farmer, had he been listening to ABC Radio or Radio National or whatever radio station fire bans are broadcast on? Did he hear that there was a total fire ban? If there was a total fire ban and even though he was back-burning his property, which is in other respects lawful, and he had not heard about the total fire ban perhaps it could be argued that the ignition of the fire was in itself unlawful.

The Labor Party has said that it is better on balance. We are not here to produce academia. Not withstanding that this terminology has not been used in another section of the code, is it better on balance to lay out the obligation clearly and effectively in proposed section 442A? We are not beating our hairy chest and saying that we thought all this up. As the member for Alfred Cove has observed, we have gone to the commonwealth Model Criminal Code for Australia. There is no reason why we should not do that. It spells out how a person is reckless.

I take the Attorney's point that in criminal negligence cases a precedent is put to juries—they do not put the cases to the juries, but the judges derive from the cases the principles that they put to the juries. It is not easy for juries. That is why often the prosecuting authorities avoid that charge. It is harder to convict. It is like that chap who last week got only two years for driving down the wrong side of the freeway whilst full of cannabis and amphetamines and killed a lady. It was devastating. They did not prosecute for manslaughter, because this test is often very hard in cases involving motor vehicle accidents. The reason they use dangerous driving causing death so often is because it is codified. That is the reason we are moving this amendment. Labor does not resile from moving this amendment and is unshaken by the Attorney's criticisms of the amendment.

Mr C.C. PORTER: I certainly appreciate the motives pursuant to which the member for Mindarie has proposed this amendment. I simply do not think that the result is superior to what will be the result under the existing legislation. I will address a number of the comments the member for Mindarie made.

In giving an example in my second reading response about what would happen if a judge were determining the same matter on two different standards, I asked what would be the difference. Of course, I understand that the trier of fact is generally a jury, although not always. It is not inconceivable that a judge could try such a matter as a trier of fact on application. The point that I was seeking to make was that as a matter of law, is the standard any different? Could a judge looking at the same facts with a recklessness standard and the same judge looking at the same facts with a criminal negligence standard, as a matter of law, reach a different result under one or other standard? My view is no. The best advice that I have received is no; that his determination as a trier of fact would have to be exactly the same. Of course it is the case that, generally speaking, juries try these matters. Regardless of whether the legal standard is the same it could, as a matter of psychology or witchcraft, be such that a jury would make a different determination.

Mr J.R. Quigley interjected.

Mr C.C. PORTER: Apparently so. I am not subscribing to all of the views and psychology on which a jury might find it easier to convict under or less easy to convict under. If the member for Mindarie is right—that is to say, that the structure of the recklessness offence as opposed to the structure of the criminal negligence offence has such a pleasing vista to the eyes of jurors or is, generally speaking, easier for them to understand. However, under the amendment as a matter of practice rather than law or psychology rather than law they would be more likely to convict. Is it not clear to the house what that means. It means that the people they are seeking to protect—the firefighters, the Department of Environment and Conservation back-burners and the mothers lighting the candle in their room—are more likely to be convicted based on the assertions that the member made?

I am not sure whether the member is right or wrong. However, if he is right then the form of words he is proposing, even though it establishes essentially the same standard, will produce a different result, and the result is more likely a conviction and the protections are less. There is a certain sophistication and complication to the tried and tested method of determining someone's guilt or innocence under the offence of manslaughter pursuant to the standard of criminal negligence. It is a hard thing to reach, and appropriately so. When juries hear words such as "moral culpability" they will often take into account, I guess and assume, the matters that the member for Alfred Cove raised. Those matters are what we might colloquially term "subjective matters".

I ask the member for Alfred Cove to not let the member for Mindarie hoodwink her into believing that recklessness is a subjective test, because it is not. Each test—recklessness and criminal negligence—is objective, but each takes into account circumstances, such as knowledge that can be reasonably obtained. What is reasonable in terms of obtaining knowledge? Things which are subjective as a test are things like one's ethnicity; mental capacity, however one might define that; level of intelligence; mood; race; family background, and whether one was going through a divorce at the time.

Mr J.R. Quigley: Or proposed subsection 1(a); that is, whether a person is aware.

Mr C.C. PORTER: Indeed, but the point is that in the criminal negligence test—I have tried to labour this point—although references to such a high degree of negligence lack precision, it is clear that it is an evaluative process that must of necessity amount to a judgement based on all the circumstances attending to the individual case. A judge would say to a jury, "You have to evaluate all the circumstances attending to the individual case", which takes into account precisely what the member for Mindarie is concerned about. What the member for Mindarie is proposing in this amendment does not take into account, and what it should not in my view, the particular circumstances of the individual—their race, colour, creed, whether they are going through difficult family times and their mental capacity. Please do not be hoodwinked into believing that either of these tests provides that, because neither does, and I personally consider that they should not.

Mr A.P. JACOB: Madam Acting Speaker, I would very much like to hear more from the Attorney General.

Mr C.C. PORTER: The point is that this is a test, whether it is recklessness or criminal negligence. What the jury is being asked to determine in effect is, given the standard—it is the same: what would the average reasonable person, the man on the Clapham omnibus, have done in that situation? What would he have done, given all the circumstances—given his state of knowledge; given knowledge that could be reasonably obtained. What either the test of recklessness or criminal negligence does not ask a jury to do is ask: what would a particular person of this ethnicity, traditional background or mental fragility have done in the circumstances? Both tests are objective. Both tests take into account all the circumstances: the state of knowledge and the state of knowledge that might be reasonably obtained.

The point that goes to the issues raised by the member for Mindarie is that the types of concerns he has, and the examples he raised, apply equally to the offence of manslaughter as it exists at the moment. In those

circumstances, he is quite right. What first of all has to happen, what must trigger a government employee facing even the possibility of being held guilty under this offence or guilty under manslaughter, is that he must be acting unlawfully. It may be a matter that may be in some instances as simple as not having regard for the legislation that allows government employees to act in a certain way. Even if that occurs, the additional feature is that they must have acted in a grossly negligent way. It is a very, very high standard. The protection is two-fold, but certainly the substance of the protection is such that the standard is very high. But that standard is not even activated for a government employee unless he is acting outside his lawful authority. That is the case for manslaughter, because whether a person is a government employee or not, he must adhere to certain standards when he does do a back burn or a controlled burn, because they are immensely dangerous things to engage in, as we have all seen from the Victorian experience.

As to the issue of whether it matters if we have a recklessness test for this offence and a criminal negligence test as we have had for 100 years for manslaughter, under the member for Mindarie's government a very long report was commissioned that considered this very issue: should we move to a recklessness offence with respect to manslaughter? The answer was no. I refer to page 103. When the commission was looking at whether or not there should be offences of criminal negligence or recklessness with respect to manslaughter, the commission did not consider that there was any need to excluded criminal negligence from the offence of manslaughter in Western Australia. The report states that the test for criminal negligence ensures that only extremely culpable negligence will suffice to establish criminal responsibility, and that, bearing this in mind, the two categories of unintentional manslaughter are essentially comparable in their terms of moral culpability. The juries are engaging in the same processes: objective with consideration for circumstances, but not subjective—never subjective under either. It states further that any difference in culpability can be taken into account during the sentencing because all sentencing dispositions are available for manslaughter.

The question of whether recklessness or criminal negligence should be the code standard was exhaustively examined. Due to the particular way in which this has been drafted, it is not even clear that it is recklessness, because it is a reckless failure to have reasonable precaution, so it is a kind of hybrid. I cannot be an Attorney General who vandalises the Criminal Code and changes from a point of clear consistency and application over 100 years to a muddled line of drafting that produces two different tests in the same circumstances.

Dr J.M. WOOLLARD: The Attorney General has stated that it is his belief that I am hoping that this amendment will ensure that the definition encompasses both the subjective and the objective test. But it is his belief that it is not covered in the member for Mindarie's amendment. I appreciate that the member for Mindarie is suggesting that any case is more likely to succeed using recklessness, which is in the member for Mindarie's amendment, but that the Attorney General does not necessarily agree with him on that. I do not agree with the member for Mindarie that it is more likely to succeed, because if we use recklessness based on the English cases that I referred to earlier, it is a higher level, and both those elements have to be proved in the court, and the jury would look at both the subjective and the objective test. The Attorney General is not accepting this amendment because he believes that the legislation that was debated in this house in relation to manslaughter did not include recklessness, and the words he used were "it would be vandalism" to insert this term into the Criminal Code. I do not believe it would be vandalism. As I said before, in other states the term "recklessness" has been used for just one or two clauses. I would have liked an opportunity to see what cases have been tried in the other states using the definition of recklessness to see what elements the courts or the juries took into consideration. The Attorney General has not put forward those cases this evening. Possibly there needs to be some further homework done on this. I hope that the Attorney General's department will look into that during the transmission of the bill from this house to the upper house.

I refer again to the English cases. Proposed section 444A refers to reasonable care and reasonable precautions. In the case I referred to earlier, the 14-year-old girl of low intelligence was convicted because the risk would have been obvious to a reasonable person. It was changed so that it would have cover both the subjective and the objective test. I do not feel that proposed section 444A is adequate.

Mr C.C. Porter: Under recklessness.

Dr J.M. WOOLLARD: Then it was changed to include both elements. That is the other case I referred to. It was felt that that was not satisfactory so it now has two limbs. I think it is preferable to have a definition that has both those limbs. Because of that I will be supporting this amendment moved by the member for Mindarie, although not for the reasons he has put to the house. Based on the English cases, I believe this is a more appropriate definition.

Mr J.R. QUIGLEY: I was very interested in what the member for Alfred Cove was saying. Does she not want to criticise my reasons any further?

Dr J.M. Woollard: No.

Mr J.R. QUIGLEY: I want to make it clear to the chamber that if on division this proposed amendment is lost, I will not be moving the other amendments standing in my name on the notice paper, as they are more to do with the word "reckless". However, I would like to address the point that the Attorney General makes. It is a cute point of debate more than anything else. He is rendering this proposed amendment meaningless by saying that it should read "recklessly fails to take reasonable precautions". He would therefore import the phrase again. The Attorney General is saying the same in his legislation: "use reasonable care and take reasonable precautions". It is the trigger point really. Are we going on "reasonable care and take reasonable precautions" or "reckless"? I do not see that that presents any difficulty at all for a judge charging a jury. However, what appealed to me is that it is set out in the commonwealth Model Criminal Code. We are not dealing with manslaughter here; we are dealing with people who in the ordinary course of their lives start fires. The fires may be unlawful because of a fire ban or because of the failure of the Department of Environment and Conservation to properly gazette an area that is being back-burned. It may be that the back-burning is going further than the gazetted area and the person has unwittingly gone outside that area. People who are considering arson need not refer back to the body of case law to interpret their duty. Their duty is set out here in these proposed amendments. The citizens of Western Australia who read the new clause in this proposed amendment, if it is adopted by the chamber this evening, will not flounder around asking, "What does this duty of reasonable care involve? I will have to go and see a lawyer to give me an opinion comparable to the Attorney General's dissertation tonight." People can read this new clause, if it is adopted, and know that if they undertake ignition, being aware of a substantial risk and having regard to that substantial risk, it is unjustifiable to proceed. They will know that they will be charged if property gets damaged. Equally, if they have lit a fire that has got away for some reason that they were unaware of, such as a sudden wind shift, they will know of the risk, whether or not they were aware of the existence or likely existence of that circumstance.

I therefore very much agree with the member for Alfred Cove. Just because this concept is not used in the offence of manslaughter, it should not preclude us as a chamber this evening from agreeing to this amendment. By the way, "reckless" is not a word that is alien to criminal law. It is also referred to in motor vehicle cases—reckless driving, dangerous driving and careless driving. For those reasons I commend this amendment to the chamber, but if it is lost on division, I will not move the balance of the amendments.

Dr J.M. WOOLLARD: Following on from what I said earlier, in common law the concept of "recklessness" requires the accused to foresee the consequence of his or her actions. Under common law "recklessness" has both those limbs. It has both the subjective limb and the objective limb; the subjective limb being the foresight of the risk and the conscious decision to take the risk, and the objective limb being the taking of a risk that is unreasonable or unjustifiable. That is the current common law definition of "recklessness". I believe that if we include "recklessness" as set out in the Model Criminal Code, as stated by the member for Mindarie earlier, we will be codifying that criminal law. Although I disagree with the member for Mindarie that it would make it easier to convict someone, I think it would give more of an assurance that someone with a mental illness who was involved in an event of arson or who was unaware of what was happening would not be given a life sentence in jail.

Mr I.C. BLAYNEY: I preface my questions to the Attorney General by saying that I was a member of a bush fire brigade for 25 years and attended a reasonably large number of fires started by arsonists. Around Geraldton about 200 fires a year are started by arsonists. I want to ask the Attorney General about burning land in the Kimberley for what is called traditional or cultural reasons. Does a person starting such a fire need a permit; does that person need to notify neighbours that such an activity is going to take place; and is that cultural reason an out clause that enables arsonists to get off?

Mr C.C. PORTER: First, much turns on whether the act of lighting a fire by an Indigenous person is lawful. An Indigenous person who is trespassing on a property to which that person has no native title right and has lit a fire may well have started a fire in unlawful circumstances. That would be shown, but we would still have to show that that person was negligent in the circumstances of lighting the fire. For the purposes of this particular offence, bearing in mind that under the Bush Fires Act that person was lighting property that did not belong to that person, the person might be liable for that offence.

However, the point raised by the member, if I understand the question, is whether this is providing incentive to fire lighting by Indigenous people who have a native title right to land. Their right to light a fire, on my understanding, exists pursuant to their native title rights. If they have a right to move across land, use water and hunt, fish and gather in traditional circumstances and those traditional circumstances involve fire, they will have the right to light a fire. That right exists independent of this legislation.

Mr I.C. Blayney: Do they need a permit?

Mr C.C. PORTER: On the spot it is very difficult for me to answer that question. It would depend upon the land that they are going on. But I would envisage that it might depend on whether the native title holder's Indigenous land use agreement—for a person who holds native title to a pastoral lease—sets out whether that

person has a right to engage in fire lighting. The point is that whether the right exists—which is a matter of ILUAs and native title law—the fire would have to be lit in circumstances that were lawful. That might be any number of circumstances. I am not sure whether this is answering the member's question.

Mr I.C. Blayney: Would they be subject to a fire ban, for example?

Mr C.C. PORTER: Yes. It is a conflict-of-laws question: which prohibition trumps someone's right? If an Indigenous person has a right to light a fire on certain property, just like a farmer has a right to light a fire on his property in certain circumstances, there are other legislation and prohibitions that go over the top of that right. That right can be overridden by those other matters. Therefore, an Indigenous person's native title rights to light a fire are not at large; they are subject to a range of other laws that exist, just as a native title holder's rights to enter into property is subject to the other laws of the state. It is not a right to go onto property and break a criminal law, for instance. That is a form of words that I have seen used both in consent determinations of native title and Indigenous land use agreements. The right exists. The right is granted to the native title holder, just like a farmer has a right with respect to his or her property or a pastoralist has a right, but it is subject to all other obligations that exist at law.

If I can put it this way: it may be that native title holders have a prima facie right to light a fire on a pastoral lease pursuant to the terms of the native title as determined in the consent determination and Indigenous land use agreement with the pastoralist. But not every fire they may light would necessarily be lawful. Whilst they have the prima facie right to light a fire, just as the pastoralist has, on the land, if either of them lights a fire during a total fire ban, the lighting of the fire is unlawful and then becomes subject to a standard of gross, culpable or criminal negligence. I hope that goes some way to answering the question.

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

Ayes (24)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Ms A.S. Carles	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Mr R.H. Cook	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Ms J.M. Freeman	Mrs C.A. Martin	Mr E.S. Ripper	Mr M.P. Whitely
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Dr J.M. Woollard
Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr T.G. Stephens	Ms R. Saffioti *(Teller)*

Noes (26)

Mr P. Abetz	Mr G.M. Castrilli	Dr G.G. Jacobs	Mr D.T. Redman
Mr F.A. Alban	Mr V.A. Catania	Mr R.F. Johnson	Mr A.J. Simpson
Mr C.J. Barnett	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr I.C. Blayney	Mr J.M. Francis	Mr P.T. Miles	Mr T.K. Waldron
Mr J.J.M. Bowler	Mr B.J. Grylls	Ms A.R. Mitchell	Mr J.E. McGrath *(Teller)*
Mr I.M. Britza	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr T.R. Buswell	Mr A.P. Jacob	Mr C.C. Porter	

Pairs

Mr D.A. Templeman	Dr E. Constable
Mr B.S. Wyatt	Mr W.R. Marmion

New clause thus negatived.

Clause 10: Section 444A inserted —

Dr J.M. WOOLLARD: I move —

Page 5, line 31 — To delete "vegetation" and substitute —

bush and fauna

As I mentioned earlier, the Bush Fires Amendment Bill 2009 was recently passed through this house. In that bill, under clause 11 the definition of "property" is defined as —

property means personal or real property, including Crown land, and includes the bush and fauna.

I believe that the legislation before the house should be consistent with the Bush Fires Amendment Bill. If the government accepts this amendment, I will also move to delete the word "vegetation" on page 6, line 17 and substitute the words "bush and fauna". This would mean there would be consistency between the two bills that have come through this house.

Mr C.C. PORTER: Again, I understand why the member seeks the amendment. Perhaps she will be convinced by my explanation of why it is an unhelpful and unnecessary amendment. I preface my comments by saying that the member for Girrawheen raised questions about peat fires and also this same question. I might address them

collectively. Would peat be considered vegetation under the definition that we have in the Criminal Code? The member for Girrawheen is quite right; it is different from the definition under the Bush Fires Act. The member for Girrawheen's concern was that peat might not be considered vegetation in the proposed —

Ms M.M. Quirk: Animal, mineral or vegetable.

Mr C.C. PORTER: Exactly; it is very difficult. Peat is formed from partially decayed vegetable matter often combined with other organic material such as animal remains and water. It forms when plant matter is prevented from fully decaying by acidic and anaerobic conditions.

Ms M.M. Quirk interjected.

Mr C.C. PORTER: Exactly; that is the problem. When partially dried or under low moisture conditions, peat is easily lighted and can smoulder for very long periods of time. Peat is partially decayed vegetable matter and that may suggest an argument that it is vegetation. One piece of advice that I have is that it could be considered vegetation on the basis that it contains vegetable matter. There is some authority in England to the contrary. Therefore, whether peat is vegetable, animal or mineral, if it is embedded in the ground and capable of ownership, then it would constitute property under the Criminal Code.

Ms M.M. Quirk: But it is encompassed by the word "vegetation"?

Mr C.C. PORTER: It might or might not be, but, in any event, it will certainly be classed as property under the definition.

Ms M.M. Quirk: It is capable of being owned.

Mr C.C. PORTER: That is right. That brings me to the point about why the definitions are different. The definition of "property" that the member read from the Bush Fires Act is a narrower definition of property than in the Criminal Code. The definition of property in the Criminal Code is an extremely broad definition and covers everything, animate or inanimate—fauna, birds, lizards; whatever it was the member for Gosnells was speaking about. The definition states —

> … everything, animate or inanimate, capable of being the subject of ownership;

The definition of "property" in the Criminal Code is very important to many, many clauses in the Criminal Code and has existed for an extraordinarily long period of time. We looked at whether or not we would amend the definition of "property" or amend the definition in these particular sections to specifically state "flora and fauna", or specifically state "bush", or specifically use the wording "whether or not on Crown land". The advice I received was that by specifying "vegetation", we would cover absolutely conceivably everything that can be burnt, and not run any risk. The risk was said to be that there is a rule of interpretation called the sui generis rule, which means that if something is specifically stated somewhere, it may mean that it has been deliberately omitted somewhere else. Importantly, one thing that the drafters did not want us to do, and which State Counsel advised us against, was to pick up the definition from the Bush Fires Act, being "whether or not on Crown land", because all of the case law and precedent suggests that property —

Mr P.B. Watson: Point of order! Where's my book?

Mr C.C. PORTER: Has the member ever owned a book?

Mr P.B. Watson: You're turning your back on the Speaker is what I said.

Mr C.C. PORTER: I am addressing the member for Alfred Cove; I am sure Mr Speaker understands.

The point is, whether or not on crown land, the longstanding definition of "property" is that it does not matter whether or not it is on crown land. If the words "whether or not on Crown land" were inserted into this section, it might mean that for every other section, people will be concerned that it should be specified as well.

Dr J.M. WOOLLARD: I was not seeking to have "whether or not on Crown land" inserted by way of this amendment. The amendment was that "Property that is capable of being destroyed or damaged by fire includes", and the wording I had suggested was that it includes "bush and fauna". In view of the Attorney General's comments about the classification and definition of peat, I accept that the word used should be "vegetation", but I still believe that for consistency with the Bush Fires Act, it should then be includes "vegetation and fauna". That would then keep the consistency. In that case, I would like to move an amendment to my amendment. Rather than to delete "vegetation" and substitute "bush and fauna", I would like my amendment to read —

> Page 5, line 31 — To insert after "vegetation" —
>
> and fauna

The SPEAKER: Member, I am just going to give you the opportunity to get your words on paper. The best instruction, perhaps, is that you seek the leave of the house to withdraw the amendment that you have in front of the house.

Dr J.M. WOOLLARD: I seek leave to withdraw the amendment I have in front of the house.

Amendment, by leave, withdrawn.

Dr J.M. WOOLLARD: I move —

Page 5, line 31 — To insert after "vegetation" —

and fauna

This amendment does not affect the issues that the Attorney General was concerned about in relation to crown land, but it does mean that the Arson Legislation Amendment Bill 2009 is consistent with the Bush Fires Amendment Bill 2009.

The SPEAKER: Member, we will need a written copy of that so that it can be copied and circulated to those who might like to have a copy. Please continue, member.

Dr J.M. WOOLLARD: That would then mean that there is consistency, because both the Bush Fires Amendment Bill 2009 and this bill consider whether property is, for the sake of the Bush Fires Act, bush, but because of the peculiarities in relation to peat with this act, it would be "vegetation", and then both would also then include "and fauna".

The SPEAKER: Member for Alfred Cove, just for the benefit of everybody in the house, could you just read aloud your new proposed amendment?

Dr J.M. WOOLLARD: The amendment reads —

Page 5, line 31 — To insert after "vegetation" —

and fauna

Amendment put and a division taken with the following result —

Ayes (24)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Ms A.S. Carles	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Mr R.H. Cook	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Ms J.M. Freeman	Mrs C.A. Martin	Mr E.S. Ripper	Mr M.P. Whitely
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Dr J.M. Woollard
Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr T.G. Stephens	Ms R. Saffioti *(Teller)*

Noes (27)

Mr P. Abetz	Mr G.M. Castrilli	Mr A.P. Jacob	Mr C.C. Porter
Mr F.A. Alban	Mr V.A. Catania	Dr G.G. Jacobs	Mr D.T. Redman
Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr A.J. Simpson
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.M. Francis	Mr P.T. Miles	Mr T.K. Waldron
Mr I.M. Britza	Mr B.J. Grylls	Ms A.R. Mitchell	Mr J.E. McGrath *(Teller)*
Mr T.R. Buswell	Mrs L.M. Harvey	Dr M.D. Nahan	

Pairs

Mr D.A. Templeman	Dr E. Constable
Mr B.S. Wyatt	Mr W.R. Marmion
Mr J.N. Hyde	Dr K.D. Hames

Amendment thus negatived.

Clause put and passed.

Clause 11: Section 444 amended —

Ms A.S. CARLES: My amendment seeks to delete the proposed penalty of life imprisonment in section 444. I move —

Page 6, lines 7 to 12 — To delete the lines.

It is unprecedented in this state to have life imprisonment as a penalty for a property crime. It is a matter of principle for the Greens (WA) that life imprisonment, which is the harshest criminal penalty of all, be quarantined for the worst crimes against people—that is, for murder and armed robbery. The Greens agree with the view of the Law Society of Western Australia, the state representative body of lawyers. Its view is that life imprisonment is not an appropriate penalty for this crime. We believe that a more proportionate response, in keeping with our Criminal Code, would be 20 years' imprisonment, in addition to a pecuniary penalty of $500 000.

The SPEAKER: Members, by way of explanation, I indicate that we also have a proposed amendment from the member for Mindarie, part of which coincides with the amendment moved by the member for Fremantle. Quite simply, we will put this to the house as a test amendment. I am going to put to the house, as a test vote, that all the words down to and including "insert" be deleted. If that is successful, I will put the second part to the house—that is, the words after "insert". That is to cover the proposed amendment by the member for Mindarie. If it is not successful, the member for Mindarie will be free to put his amendment as a proposed amendment after that.

Dr J.M. WOOLLARD: The clause notes that the Attorney General has provided us with state that the maximum penalty for an offence under section 444 is to be increased from 14 years, or 20 years if the offence is committed in circumstances of racial aggravation, to life imprisonment. This is consistent with the maximum penalties in Queensland, South Australia, Tasmania and the Northern Territory for similar offences. With this change to insert life imprisonment, can the Attorney General remind me, and maybe other members of the house, what that means in terms of the number of years and when a person can be released when he or she is charged with life imprisonment?

Mr C.C. PORTER: Under the Sentencing Act, life imprisonment is defined in section 95, I think. I seem to recall that the minimum non-parole period is 15 years. However, I could be wrong. If I get a copy of the Sentencing Act, I will be able to answer that question during the course of debate.

Dr J.M. Woollard: Whereas at the moment the clause refers to imprisonment for 14 years or 20 years, that is being changed to life imprisonment. What number of years would be set before the person would possibly be able to be released after 15 years?

Mr C.C. PORTER: I understand the point. Assuming that it is a minimum non-parole period of 15 years—I will check that in a moment—the way in which the offence would be structured is that if a person wilfully and unlawfully destroyed or damaged any property, that person would be guilty of a crime. If that person destroyed the property by fire, there would be a minimum non-parole period, but that could be exceeded. Therefore, the judge could sentence above that 15 years, above 20 years or above 25 years, depending on the circumstances of the case. However, in circumstances in which the property is not destroyed or damaged by fire, the set maximum would still be 10 years; or if property not damaged by fire is damaged in circumstances of racial aggravation, the set maximum would be 14 years. Therefore, the effect would be that there would be a minimum non-parole period, but it is one that could be exceeded upwards.

Dr J.M. WOOLLARD: The proposed amendment to section 444 that we are dealing with states —

> in paragraph (a) delete "imprisonment for 14 years or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 20 years; or" and insert:
>
> life imprisonment;

I still did not quite follow. The Attorney General was a bit too quick for me then. The Attorney General is saying that for some offences under this legislation, it would be a minimum term of imprisonment of X years, and for other offences it would be a maximum term of Y years. Yet the Attorney General is deleting 14 years and 20 years and inserting instead "life imprisonment". Can life imprisonment can go from X years to Y years? I am seeking clarification from the Attorney General.

Mr C.C. PORTER: The way in which the Sentencing Act is structured is that section 90 reads —

> **Imposing life imprisonment for murder**
>
> (1) A court that sentences an offender to life imprisonment for murder must either —
>
> (a) set a minimum period of at least 10 years that the offender must serve before being eligible for release on parole; or
>
> (b) order that the offender must never be released.
>
> (2) Any minimum period so set begins to run when the sentence of life imprisonment begins.

So there is life imprisonment for murder, and there is an indefinite sentence for murder when the minimum non-parole period is higher. I might have given the member for Fremantle wrong advice previously. It seems to me that there would not be any minimum non-parole period whereby one could dip down under that 10 years, but it is elastic upwards. Therefore, a person could be sentenced to any period of time, just as life imprisonment for murder allows a person to be sentenced to any period of time, but there would not be a minimum non-parole period and there would not be a minimum sentence that a judge would be obliged to apply.

Dr J.M. Woollard: Therefore, in fact, by putting in "life imprisonment" it could be fewer years that someone was imprisoned?

Mr C.C. PORTER: Less than life?

Dr J.M. Woollard: Haven't you just said it would be 10 years before they could be released?

Mr C.C. PORTER: No, I am correcting that error; that is life imprisonment when it is imposed for murder. The scenario would be this: section 444(1)(a), as it would be amended, would read —

> if the property is destroyed or damaged by fire, to life imprisonment; or

That does not mean that there is an upward ceiling. Section 444(1)(b) would state —

> if the property is not destroyed or damaged by fire, to imprisonment for 10 years —

That is the upward the ceiling; the maximum —

> or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 14 years.

The point about life imprisonment is that there would not necessarily be a ceiling on the number of years of imprisonment that a person could get.

Ms A.S. CARLES: I seek leave to withdraw my amendment because I understand that the member for Mindarie is proposing an amendment that effectively removes the life imprisonment penalty.

Amendment, by leave, withdrawn.

Mr J.R. QUIGLEY: I move —

> Page 6, line 12 — To delete "life imprisonment" and substitute —
>
> 25 years

The Labor opposition moves this amendment on the basis that life imprisonment should be reserved for those cases in which, essentially, a life has been taken. Once a sentence of life imprisonment is imposed, we accept what the Attorney General says; that is, there is a statutory minimum for life, but the person remains under sentence for the rest of his or her life in that there is no requirement for the parole board, there is no finite term and there is no ending of the sentence. We believe for a number of reasons that the maximum penalty for an arson offence that involves the destruction of property should be less than life imprisonment. Substituting "25 years" would put that arson offence in those categories of offences that are very serious, such as drug trafficking, and right at the top of the calendar of criminal offences, but just below life so that there would be a finite term. I can imagine cases in which someone who has lost a loved one to murder says that the murderer got no more than someone who had burnt down a portion of state forest in circumstances whereby it was unlawful. We just think that the balance in the Criminal Code overall is best preserved by making it a finite maximum of 25 years' imprisonment. That would give ample scope to any sentencing judge to impose really condign punishment—if the offence was committed in circumstances that started a bushfire that wrecked townships et cetera, the offender could get 25 years. It would be different if it were bushfires, such as those Victoria suffered and experienced earlier this year, where people died, because the offence charge would not be burning property; the offence charge would either be manslaughter or murder, and different penalties would be imposed. I think we have the support of the member for Fremantle—which is why she withdrew her amendment—to this as an objection to life for destruction of property. Life should be reserved for the destruction of life. That is our basic principle.

Mr C.C. PORTER: I understand again the point, but it is not a point with which the government agrees and it is not an amendment with which it will join. To address the member for Fremantle's issues, it is unprecedented to have life imprisonment for a property offence in this jurisdiction; that is correct. I am sad to say it is not unprecedented in all Australian jurisdictions; two other jurisdictions that I have mentioned already have life imprisonment. In the government's view the term of life imprisonment provides a scope beyond the period of 25 years, which may in the most extreme circumstances be necessary. What we have seen in recent times in Victoria is the possibility of a fire lit wilfully to damage property going so far as to damage enormous amounts of property and cause enormous suffering to a range of individual property owners. That can justifiably be the subject of a term of life imprisonment, and this legislation offers the sentencing judge scope to give life imprisonment.

I inadvertently misled the member for Alfred Cove, because section 96 of the Sentencing Act does provide a minimum non-parole period for non-murder life imprisonment, which is seven years. Section 96(1) states —

> A prisoner serving a sentence of life imprisonment for an offence other than murder is not to be released before he or she has served 7 years of the sentence.

What is very interesting about that section, member for Fremantle, is that the Sentencing Act contemplates the possibility that this body will provide a sentence of life imprisonment for an offence other than murder, and in this case it will be for the offence of unlawfully and wilfully lighting a fire that destroys property. With respect to the member for Mindarie, we simply respectfully disagree and consider that in extreme circumstances, with a potential for enormous damage to property by virtue of the fact that bushfires can become so prevalent and get

out of control so quickly, this would be appropriate. In practice, for instance, in the most extreme case of an unlawfully and wilfully lit bushfire that caused enormous damage, a 25-year sentence would mean, given the M minus two rule at parole, that the person must spend 23 years incarcerated before he could be considered for parole. Interestingly, the same person who got life imprisonment could be considered for parole much earlier but could potentially stay in jail much longer. I advise the member for Fremantle that it works a little bit both ways. In some ways it provides the flexibility for the Prisoners Review Board and, indeed, the Attorney General of the day, to consider each person on a case-by-case basis and to be more humane. It also provides the flexibility, by virtue of the decision of the sentencing judge and the Prisoners Review Board later and the Attorney General of the day, to ensure that the punishment meets the particular circumstances of the offence.

Dr J.M. WOOLLARD: I have looked at the two sections of the Sentencing Act to which the Attorney General referred. Section 90, "Imposing life imprisonment for murder", sets a minimum period of at least 10 years that the offender must serve before being eligible for release. Section 96, "Release from life imprisonment", states —

> A prisoner serving a sentence of life imprisonment for an offence other than murder is not to be released before he or she has served 7 years of the sentence.

I agree with the Attorney General that having the stipulation of life imprisonment is probably more humane than setting the term that the member proposes; that is, 25 years.

Mr J.R. QUIGLEY: I would like to answer the points raised by the Attorney General and the member for Alfred Cove. My amendment provides the penalty that is to be struck for when the fire is intentionally lit and the damage is done by fire intentionally lit. In those circumstances the fire may not cause the enormous damage that occurred recently in Victoria. It might be much less, but it was still caused by an intentional arson.

We do not believe that if a few acres of bush are burned intentionally that the only penalty should be life. The judge should have a discretion of something less than life. We accept that if the fire got away and burnt townships, as the recent fire in Victoria did, but did not cause death but, in any event, caused substantial economic loss, there should be severe punishment. This amendment will provide for a sentence of up to 25 years.

What the Attorney has not addressed, and I hope he does, is what would happen with a fire that is intentionally lit but is extinguished before massive damage is done—when one, 10 or even 100 acres of bush is burnt. The Attorney's response so far has been predicated on the fact that the fire will be massive like those in Victoria. What about a circumstance when the fire is intentional and property is damaged, but it is on a far more limited scale than the recent Victorian fires? For example, five acres of Kings Park could be burnt in a fire that was intentionally lit. Would the sentence be life or 15 or 20 years? We have seen fires in Kings Park, and they are a tragedy, but is it reasonable to be sentenced to life imprisonment for burning five acres? That is why we are opposed to life imprisonment as a mandatory sentence in this instance. I know that members opposite have a predilection for mandatory terms. The Premier has indicated that. The member for Hillarys really wants the sentence to be life imprisonment. However, should it apply to a fire that is of a more limited nature, albeit intentionally lit?

Dr J.M. WOOLLARD: I have had another chance to look at this. I believe I took what the member for Mindarie said to the extreme. I thought his amendment was more severe in that it deletes "life imprisonment" and inserts "25 years". Under the Sentencing Act, 25 years is the maximum penalty that the courts can impose.

I was previously going to support the Attorney General, because I thought he was being more humane with seven years and 10 years. However, taking into account the way in which this legislation is worded, with the offence being termed "criminal negligence" rather than "recklessness", so that we do not have both the subjective and objective limb of that test, I think it would be more appropriate, given the current definition, to impose 25 years. The courts would then be able to determine, based on the facts, that the person should be sentenced for a minimum of five years.

Mr C.C. PORTER: I will briefly address the point the member for Mindarie raised. It is a good point. We consider that the difference between the intentionally lit one-acre fire and the intentionally lit one-acre fire that turns into a massive, raging bushfire that destroys homes and properties is a very fine line. The member for Mindarie mentioned the bushfire in Kings Park that wiped out the entire cliff side that overlooks Mounts Bay Road. There was a possibility that it could have spread to neighbouring properties—to Crawley, to Claremont and to Subiaco. It came down to a question of wind shifts, or climatic conditions.

The whole point about this legislation is that we are giving the court the ability to impose the most serious penalty that can be given in circumstances whereby somebody unlawfully, wilfully and intentionally lights a fire. Whether that fire damages one hectare or thousands of hectares is a question of good or bad luck in the circumstances. We must have the ability to recognise that the intentional, unlawful and willing lighting of a fire is one of the single most dangerous things that a person in our society can do. That is our rationale, and members opposite might disagree with it.

Mr J.R. QUIGLEY: At the end of the day, the principle of sentencing is that the punishment must fit the crime. Let us consider the case in which one hectare of land is burnt, not in Kings Park but in Mukinbudin. If somebody intentionally lit a grassfire in Mukinbudin that damaged half an acre of native bushland, life imprisonment as the mandatory term would not fit the crime. No residences were endangered and there was no damage to farms and no economic loss. However, the local sergeant comes along and says, "Sunshine, you lit a fire that damaged half an acre. You get life." That would jar with the Western Australian community. I know the government wants to be hard and extreme, but that is over the top for half an acre of grassfire. This is Western Australia, for heaven sake.

The judges must be given some discretion. Surely to goodness 25 years for the serious circumstances is ample. Why should people be given a mandatory life term for burning half an acre of bush or grass? It does not have to be trees. It could be a quarter of an acre of someone's wheat crop, but the offender would get life. The government is taking us back to the nineteenth century. It is draconian to say that that is the only penalty that can be imposed if the property is damaged by fire, no matter how small the damage—it does not say that an area of the magnitude burnt in the Victorian fire has to be damaged. Irrespective of how minor the damage, if it is damaged by fire intentionally lit the offender is sent down for life, even if only one tree was burnt. That does not have balance and the community will be jarred and will ask, "How did we get to the point whereby someone can get life for intentionally burning one tree, which is the same sentence imposed on a person who shoots somebody?" It brings the law into disrespect. People will say, "How are we going to get people to have more respect for the courts and the law?" This sort of approach does not engender respect, especially when people eventually realise that burning one tree equates to taking a human life. This is a government that has lost balance. I plead with the government, not as a matter of ego but as a matter of commonsense, to accept 25 years.

Mr C.C. PORTER: I understand the point the member is making, but his language is variable and, with respect, confused at times. Perhaps I can give the member this assurance. He used the words "Someone who lights a tree is potentially liable to life imprisonment". In other stages during that most recent contribution he talked about the penalty of life imprisonment that will appear in section 441 of the Criminal Code as being mandatory. My understanding is that that use of words "life imprisonment" is to be read as "is liable to life imprisonment"—that is, up to a maximum of life imprisonment. It is not a mandatory requirement that a sentencing judge give life imprisonment.

I will double check that with the drafters, but that has always been my understanding. If that is not the case, I will undertake to ensure an amendment is moved in the upper house that stipulates clearly that is the case. It is up to and liable to life imprisonment; it is a maximum. It gives the judge flexibility in all the circumstances to give a sentence of life imprisonment, which will have the result of a minimum non-parole period of seven years.

Mr M.P. Whitely: It has a consequence that the member for Mindarie has highlighted.

Mr C.C. PORTER: I do not believe it has that consequence.

Mr M.P. Whitely: Why not make sure of that before it leaves this place?

Mr C.C. PORTER: I am happy to give an undertaking that if it does have that consequence—I do not believe it does; the drafting instructions were quite clear on that matter—we can amend it in the upper house. These are matters of peculiar sensitivity in the Criminal Code. I understand that that form of words means it is a maximum; it is not a mandatory declaration that a judge must give a term of life imprisonment for that offence. It is a ceiling up to which he can go.

Mr J.R. Quigley: Doesn't it have to be given for murder?

Mr C.C. PORTER: They are different circumstances from these circumstances and it is different wording.

Dr J.M. WOOLLARD: I will be supporting the amendments on the notice paper. The Attorney General has said to the house that section 90 of the Sentencing Act imposes life imprisonment for murder. The Sentencing Act does not contain a section that addresses life imprisonment for arson. The Attorney General's understanding is that the interpretation of section 90 may not be the same for arson as it is for murder. In that case I believe clarification can be provided in the upper house, possibly by inserting a new section 90A that imposes life imprisonment for arson. If the Attorney General is not going to amend the Sentencing Act to address this, when this bill goes to the upper house he will change "life imprisonment" to a "maximum penalty of 25 years".

Mr C.C. PORTER: I understand the point, but the provision in the Sentencing Act that applies to the concept of life imprisonment for murder is section 90, which provides that life imprisonment must mean a minimum period of 10 years. Then there is section 96, "Release from life imprisonment", which reads in part —

(1) A prisoner serving a sentence of life imprisonment for an offence other than murder —

Dr J.M. Woollard: Subsection (2) refers to murder. That is why I was not sure. I thought section 96 related to murder as well.

Mr C.C. PORTER: My reading of it is that it applies to the offence we are considering so that the minimum non-parole period will be seven years. I understand the member for Mindarie's point. This form of drafting now means a maximum of life imprisonment because the changes the former Attorney General made were such that life imprisonment now for the collapsed offence of murder must be life imprisonment unless there are exceptional circumstances that the judge must state in sentencing. That is why, as I understand it, this form of words means it is a maximum; it is up to; it is a ceiling; it is not a mandatory requirement that a judge give a term of life imprisonment.

Mr J.R. Quigley: But you are not sure.

Mr C.C. PORTER: I am very sure.

Dr J.M. WOOLLARD: I refer again to clause 96 "Release from life imprisonment" which reads in part —

(1) A prisoner serving a sentence of life imprisonment for an offence other than murder —

The Attorney General is suggesting that that could apply to arson, but even if it did apply to arson, the minimum sentence will be seven years; whereas, with this new definition, if a fire is lit by someone who has a mental instability, it will allow the courts to impose a sentence of one or two years rather than life imprisonment.

Mr C.C. PORTER: I am having some difficulty understanding the member's question. I can say that, on my reading, the minimum non-parole period for a term of life imprisonment, which applies in this case, will be seven years. Manslaughter brings a maximum of 20 years. One of the matters we said as a matter of public record is that we are giving consideration—it is my view that it should be—to increasing the sentence to life imprisonment for manslaughter, again for consistency and for the reason that a whole range of offences that used to sit inside murder before the previous government's reforms now sit inside manslaughter. I am not sure whether that answers the member's question. I am not able to discern exactly what the member was asking.

Dr J.M. WOOLLARD: I am not sure that section 96 of the Sentencing Act will necessarily apply to arson. But if it is put on the record in the upper house, it will mean that there will be a minimum period of seven years. Nonetheless, I agree with the intent behind the member for Mindarie's amendment; namely, if arson occurred, particularly under the new definition where the objective test applies and it does not take into consideration the objective and the subjective test, someone could be sentenced for a very long period through no fault of his own. I therefore think it is more appropriate that there be a lesser term of imprisonment to take into account those circumstances.

Amendment put and negatived.

Clause put and a division taken with the following result —

Ayes (26)

Mr P. Abetz	Mr V.A. Catania	Dr G.G. Jacobs	Mr D.T. Redman
Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr A.J. Simpson
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.M. Francis	Mr P.T. Miles	Mr T.K. Waldron
Mr I.M. Britza	Mr B.J. Grylls	Ms A.R. Mitchell	Mr J.E. McGrath *(Teller)*
Mr T.R. Buswell	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr G.M. Castrilli	Mr A.P. Jacob	Mr C.C. Porter	

Noes (23)

Ms L.L. Baker	Mr F.M. Logan	Mr J.R. Quigley	Mr A.J. Waddell
Ms A.S. Carles	Ms A.J.G. MacTiernan	Ms M.M. Quirk	Mr P.B. Watson
Mr R.H. Cook	Mr M. McGowan	Mr E.S. Ripper	Mr M.P. Whitely
Ms J.M. Freeman	Mrs C.A. Martin	Mrs M.H. Roberts	Dr J.M. Woollard
Mr W.J. Johnston	Mr M.P. Murray	Mr T.G. Stephens	Mr A.P. O'Gorman *(Teller)*
Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire	

Pairs

Dr E. Constable	Mr D.A. Templeman
Mr F.A. Alban	Mr B.S. Wyatt
Dr K.D. Hames	Mr J.N. Hyde
Mr W.R. Marmion	Ms R. Saffioti

Clause thus passed.

Clause 12 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr C.C. Porter (Attorney General)**, and transmitted to the Council.

GAS SUPPLY (GAS QUALITY SPECIFICATIONS) BILL 2009

Returned

Bill returned from the Council with amendments.

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

Second Reading

Resumed from 14 October.

MS M.M. QUIRK (Girrawheen) [9.15 pm]: It is a well-established and age-old legal principle that the power to search, whether persons or premises, conferred on police is circumscribed and should be used judiciously on all occasions. In the use of these powers, it is the rule rather than the exception that the trigger that authorises such a search is the existence of reasonable grounds to suspect the commission of an offence. In the bill before the house we are asked to abandon these well-established and tested principles and, in their place, to act on trust to a large extent. We are travelling in uncharted waters.

The bill permits police officers to stop and search individuals in prescribed or gazetted entertainment areas without warrant. These searches take place in the absence of the customary reasonable grounds to suspect. The search permitted is a basic search, which is a pat-down frisk search, and I understand the use of metal detectors is permitted. The power to search extends to a motor vehicle of the person searched within the prescribed area. Police can seize anything found that affords evidence of the commission of an offence. Also, somewhat unusually, it permits the seizure of items that an officer reasonably suspects do or may endanger the place or people who enter the place, irrespective of whether there is any nexus to the commission of any offence under the criminal law.

The bill also permits the Commissioner of Police, with the approval of the minister, to declare an area without prescribing it in regulation or gazetting it. The stated rationale for this is that if intelligence is received, it enables police to quickly respond without the attendant delays created by gazettal. However, there are no criteria listed in the bill setting out the circumstances when this can and should occur, nor are any circumstances listed that could constrain when this could occur. The bill also contemplates a statutory review, but only after five years of operation.

I say that the suggested regime is highly unusual, and before going to the specific clauses of the bill, as well as provisions I believe have been omitted from the bill, I want to look at other acts under which police routinely exercise the power to search individuals, and in particular the basis upon which a search is authorised. Under section 33 of the Criminal Investigation Act 2006, officers are authorised in a public open area to search when an officer reasonably suspects that there is a thing relevant to an offence or that a person against whom an offence may have been or may be being committed is in a public open area, then the officer may exercise in the area any of the powers that could be exercised under a search warrant if it were issued in respect of the area for the purposes of searching it for the thing or person. That is under the Criminal Investigation Act 2006. That is search in a public place. Again, it hinges on the notion that there is a "reasonable suspicion". Similarly, under section 38 of the Criminal Investigation Act 2006, if a police officer reasonably suspects that it is necessary to do one or more of the following: to prevent a vehicle from being used in the commission of an offence, to aid or facilitate the commission of an offence, to provide the means for an offender to leave the place of the commission of an offence and so on, again, "reasonable suspicion" exists.

Under section 39 of the Criminal Investigation Act 2006, an officer, if he reasonably suspects, can search a vehicle and look for things relevant to the commission of an offence; if he reasonably suspects that a vehicle is carrying a person against whom an offence may have been, or may be being, committed, or that an offence is about to be committed, he may stop, enter and search the vehicle. Again, the expression "reasonably suspects" is used. Section 41 of the Criminal Investigation Act 2006 sets out the circumstances in which a police officer can apply for a search warrant. Under section 41(3)(b), the officer must set out certain details in the application for a search warrant. He or she must state the offence that is suspected to have been committed or that is suspected may have been committed in relation to which a search warrant is wanted. He must also state the grounds on which the applicant suspects that the offence has been committed and, furthermore, the grounds on which he suspects he may find certain items or certain evidence in the execution of that warrant.

Section 68 of the Criminal Investigation Act is headed "Searching people for things relevant to offences". Under section 68(1), if an officer reasonably suspects that a person has in his or her possession anything relevant to an offence, the officer may do a basic search or a strip search of the person or may, subject to section 146, seize anything relevant to an offence. It says under section 68(2) that for the purposes of exercising the powers in subsection (1), the officer may enter any place where the person to be searched is reasonably suspected by the officer to be and search it for the person. It then restricts the entry onto premises without warrant.

Section 69 is interesting in the current context. I understand that the member for Mindarie might be talking about this later. In fact it is analogous in some ways to what is sought, although much narrower than what is sought, under proposed section 70B. Under section 69, a police officer may—in a public place, if that place is prescribed; if the place is the subject of a written declaration; and, wait for it, if the officer reasonably suspects that it is necessary to exercise the powers for the purposes of safeguarding the place or people who are in or may enter the place—do certain things subject to him making records. Although it is a broader power, there is still this reference to a "reasonable suspicion".

Under the Misuse of Drugs Act, the relevant sections are sections 23 and 24. They set out the powers of police officers when things are being suspected of being used in the commission of an offence or that provide evidence of an offence. Under section 23, for a search to occur there needs to be reasonable grounds to suspect that anything whatsoever with respect to an offence which has been or is suspected to have been committed, which has been or is suspected may have been used for the purposes of committing an offence, and so on. Under the Misuse of Drugs Act, the language is "reasonable suspicion".

In the granting of a search warrant under section 24 of the Misuse of Drugs Act, the justice of the peace to whom the application is made must be satisfied, after the applicant has given the information on oath, that there are reasonable grounds to suspect that there may be, on any vehicle or premises to which the officer wants to search, things that evidence the commission of an offence under that legislation.

Interestingly, under the Road Traffic Act there are certain powers to stop people when it is believed traffic offences have been committed. I will come back to that shortly. Under the Road Traffic (Administration) Act 2008, officers can search vehicles for compliance purposes; that is, compliance on mass, dimension or loading requirements—in other words, heavy vehicles—to determine their compliance with obligations under the act. This is unique of all the sections I have talked about because there is no requirement that there be any "reasonable suspicion" that an offence has been committed.

What can be seen from all these provisions is that the preponderance of these powers, in all these various pieces of legislation, carries the necessary requirement for there to be some suspicion that an offence has been committed.

In 2005, when I was parliamentary secretary to the Premier, I was involved with another piece of legislation that I think is pretty relevant in the present context—that is, the Terrorism (Extraordinary Powers) Act. That act obviously followed the events in New York on September 11, and those in Bali and London. That act was described as wide-reaching and very broad; other people described it as draconian. In fact, it sets out the issue of a warrant by the police commissioner so that a certain area can be declared as being relevant for the purposes of the commission of a terrorist act. Persons the target of those investigations, or vehicles, or things used in the commission of that terrorist act can be sought. Even in that legislation—which was seen as being far-reaching, draconian and unlike anything that we had seen up to that point, and which talks about the commissioner issuing a warrant that authorises police officers to exercise certain powers—the commissioner must not issue such a warrant unless he or she is satisfied about certain things. He must be satisfied that there are reasonable grounds to believe that a terrorist act has been or is being or is about to be committed, and that the exercise of the powers set out in the act would substantially assist in either preventing a terrorist act, minimising the risk to health or safety of the public, finding a person who is the subject of terrorist investigation, finding a vehicle that may be connected with a terrorist act, or carrying out investigations. Even in that context, which, as I said, is generally held to be very unusual and far-reaching legislation, people have to exercise some thought and satisfy themselves that there is a reasonable suspicion that the activity that has been proposed will afford evidence of the commission of an offence.

Section 13 of the Terrorism (Extraordinary Powers) Act 2005 sets out when a person can be searched. Subsection (2) says that if a police officer reasonably suspects that a person is about to enter or is in or has recently left a targeted area, is a target person or is in a target vehicle, the officer may do a basic search or a strip search on the person for the purpose of a thing connected with a terrorist act. If we compare that provision with the Criminal Investigation Amendment Bill 2009 before the house tonight, there is no actual specification of what exactly is being searched for. There has been discussion during the second reading debate about weapons and drugs, but it is by no means clear what will be being searched for under these powers. I make that comment as a general observation. We are conferring very wide powers, but I am not altogether sure what it is that the minister, in the conferring of the authority to exercise these powers, is hoping to find.

I am sorry to have taken up the time of the house canvassing some of these issues, but I think it is very important to realise there is a common theme running through most of the legislation I have referred to, it being that there is some objective basis for the exercise of power, there is some nexus to a contemplated offence, and there is a restriction on what can be seized. They need to be things that are linked either to a suspected offence or another offence. On the periphery, in some cases it is also to prevent the commission of an offence or to preserve public safety.

As I have said, even these provisions have some objective criteria in them that can be judged after the event. It is well known that because of the need to respect the integrity of individuals and to respect private property, courts have always interpreted those provisions very strictly. This bill, however, will allow that the mere presence of a person in an area will justify a search. I digress for a moment to say that it is not unknown that even when powers are conferred, police will depart from, or expand on, those powers, even though, as I said, we know that the courts interpret such powers very strictly, not liberally, and they should be, if members like, followed to the letter of the law.

Some of these informal expansions of the power to search, I believe, are incredibly problematical. I will refer to a couple of instances that have been within my direct experience. Some years ago—it was maybe a couple of years after I became a local member—there was an issue with a gang known as the Scorpion Boys. A lot of these kids were of Vietnamese origin, and many cars in my electorate were stopped and searched merely because the drivers were young Vietnamese men. There was absolutely no basis for any suspicion—reasonable or otherwise—to be formed, other than the fact that the drivers of those cars were young Vietnamese men, as were many of the kids in the gang. I had some robust debate with the police superintendent in the area at the time about whether the police were empowered to conduct those searches. I am very pleased to say that those searches desisted, but that is, I think, a very small example of why we need to be very vigilant when we confer such powers.

The second example that I want to talk about is something that has bothered me for many years, and about which I have never been given a satisfactory answer. It is in relation to the very public searches that are usually conducted under full media scrutiny and in the glare of the media, and that is the bikie runs, whereby bikies are routinely stopped and searched. I am not sure that the police have the power to do what they do in those circumstances, because what reasonable suspicion do the police have to permit them to undertake those searches? The fact that those bike riders may be wearing bikie colours does not, of itself, I believe, lead to a reasonable suspicion that a particular offence has been committed. It is my view that there are real problems with those kinds of searches as a matter of law, yet the police are sufficiently confident to actually invite the media and camera crews along to film them doing what I actually think is an unauthorised search. I make that point to highlight that we need to, with this bill and other instances where these powers may be used, be very careful that we go back to first principles and ask whether the powers exercised are authorised to be undertaken. As I said, in those two instances I do not believe the powers existed.

I want to ask a couple of questions about the specific powers conferred under the bill. The minister might be able to answer them by way of interjection. Firstly, I think the search procedures are a little short on detail. There is a definition of a basic search, which is set out in more detail in sections 70 and 71 of the Criminal Investigation Act 2006. As I understand it, that, of course, will apply to these new provisions. Section 70(2) of the Criminal Investigation Act states that during a basic search the searcher must —

(a) identify himself or herself to the person;

(b) inform the person of the reason for the search;

(c) request the person to consent to the search; and

(d) if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search.

And section 70(3) states —

If a basic search or a strip search is done of a person —

(a) it must be done as quickly as is reasonably practicable;

(b) it must not be any more intrusive than is reasonably necessary in the circumstances;

(c) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so;

(d) the person must be allowed to dress as soon as it is finished;

(e) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized …

(f) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

Section 71(2) of the Criminal Investigation Act sets out additional rules, and is of particular relevance to this bill in that —

The searcher must, if practicable, be a person of the same gender as the person being searched, unless the searcher is a doctor or a nurse.

Section 153 of the Criminal Investigation Act states that a person has to comply with any orders given by the searcher during the search, and will be liable to a fine of up to $12 000 or 12 months' imprisonment if he or she does not comply.

There are some issues that I think are not covered by the description of basic search and the protections. If we are talking about how this legislation will operate in areas such as Northbridge and Fremantle—clearly, it will cover areas other than Northbridge—they are particularly multicultural areas, and section 10 of the Criminal Investigation Act has provisions related to non-English-speaking subjects of searches. I am foreshadowing an amendment I will move that in the context of Northbridge, in the context of other multicultural communities, in the context whereby many of the people being searched may be non-English speaking, special provision needs to be made. That is especially important in the situation of these people being searched who are not suspected of committing any criminal offence whatsoever, and who will be genuinely perplexed as to why they are being searched. It is not unreasonable that additional provisions to that which exist in section 10 should be included. For example, it may well be possible to provide to the person being searched a card, pamphlet or document that sets out, in a number of languages, the reason for the search and his or her rights and obligations under the act. Similarly, when we had a briefing on this bill, we were told that it was likely that the names and addresses of all those persons searched would be sought by police. The reason for that was that if there was any issue after the event about the propriety or otherwise of the search from an internal affairs or an integrity perspective, those records would be on hand about when and who conducted the search, and who the person was who subsequently complained.

I believe that puts the search in a different context, because it very much slows it down and it is no longer necessarily routine. People might have legitimate reasons for not giving their name or address which are not related to criminal offending behaviour but which may relate to other privacy issues. Again, although that is not prescribed in the legislation, it is seen as a procedural requirement that may make it easier for the purposes of police record keeping. However, that, to me, adds another layer of intrusion that, given that we are not talking about suspected offenders, may well not be appropriate. I would like to hear from the minister about whether there will be any added protections when children or minors and people with intellectual disabilities are searched.

In other jurisdictions in which similar operations are conducted, there is certainly an issue that ethnic profiling occurs. I would be very keen for the minister to advise us of the measures that will be put in place to ensure that these laws are applied equally and equitably, and that the outcome of the application of the laws will not enshrine systemic racism. It is very important that laws of this kind are not seen to be targeting one particular group or other, especially if they are already marginalised.

Similarly, the enforcement of this legislation will require, from a police perspective, some degree of public relations. I believe that sometimes—I am generalising, I know—the more experienced police officers, those who have seen a bit of life and have a bit of wisdom, may have better PR skills than some of the younger, less experienced officers. I would like some guidance on what the minister contemplates will be the level of seniority of officers undertaking the searches, whether he contemplates that it could be a role for auxiliary police down the track and whether the police will be armed. That is a relevant point. For example, if we are talking about people from other jurisdictions and other countries who are walking down a street in Fremantle, Northbridge, Subiaco or Leederville, or on Bay View Terrace or wherever these laws will apply, having an armed police officer search them for no apparent reason would for many of them be quite disarming and distressing. I believe that is also a matter that we should look at.

I am not sure whether anywhere in the Criminal Investigation Act it is contemplated that passive drug dogs will be used, for example, in the conduct of a search. Again, there are cultural reasons whereby the use of dogs for some groups is somewhat problematic. How will this be resolved?

Mr R.F. Johnson: Drug dogs are used at the moment.

Ms M.M. QUIRK: Passive drug dogs are used, but, as I said, it is a different situation. In that situation, it is for functions such as the Big Day Out where search is permitted as a condition of entry. It is part of the conditions of a contract that when people go to these concerts, they may well be subject to that sort of scrutiny. I am not sure that walking down the street is necessarily in the same category.

What we are talking about is proportionality. What is it that we are asking to be fixed by this legislation? What are we trying to prevent from happening? Are these laws the most effective way and the most proportional way of meeting what we see as the threat and the offending that we are trying to prevent? Similarly, I think it is a system under which displacement could occur. For example, if people are aware that this scrutiny may be used in a certain place, they may well move to another area. Then we would effectively end up having to gazette that area. Before we know it, the whole of the metropolitan area would be gazetted.

I will deal with Northbridge. I have seen the Premier's press release and I have seen the grabs on Channel Seven. I have heard the discussion on talkback radio between the various commercial interests and the police and others. I am not sure that we are really thinking holistically about what we need to do in somewhere like Northbridge. Things like designing out crime need to be much more readily deployed. For example, there has been a suggestion about better street lighting and closing off some of the roads at certain times so that people can move about more freely. Business activity could be increased during the day so that people are much more willing to go to Northbridge during the day. It should have a much more diverse business profile so that there is always passing trade, and it is not all of one kind; they are not all people who are there to get drunk, with the attendant problems that follow from that.

When we had the briefing, there was also an issue about the times that would be gazetted for the operation of these powers. We were initially told somewhere between 6.00 pm and midnight. My view is that that is far too broad and would catch people who are not really those whom this legislation is purporting to deter and prevent from carrying weapons. I was provided with some statistics for both Northbridge and Perth on carrying an article with intent to injure, possessing an article with intent to injure, carrying a controlled weapon, carrying a prohibited weapon, possessing a prohibited weapon, possessing a controlled weapon and carrying a controlled weapon. Between July 2008 and September 2009, the grand total for both Perth and Northbridge was 235 offences. In particular, the predominant age group of offenders was 18 to 24 years. In terms of arrests, there were two periods in which the greatest number of arrests occurred, and they were from midnight to 6.00 am, and from one minute past 6.00 pm to one minute before midnight, with Fridays, Saturdays and Sundays having the greatest preponderance of offences. I have a fair few statistics in front of me, but I want to make the point that when the opposition brought in some amendments last year in a private member's bill, we strongly emphasised that the use of such powers needed to be evidence based. I do not think that what has been produced adequately reflects the numbers of those kinds of offences, when they occur and how they occur. I believe that before any gazettal takes place, some more work needs to be done on refining and targeting what are scarce police resources so that they are used effectively. Given this background, we believe that for the legislation to be effective and for the public to have confidence that there is adequate scrutiny for what is the use of very broad powers, there needs to be a number of amendments to the bill. The first amendment, given the controversial nature of these laws, is that the time for statutory review should be reduced from five years to one year. Secondly, as I said, given the nature of the powers to be used and given that they are not founded on reasonable suspicion—I also think of people who come from somewhere other than Perth and who will be caught within the scope of this legislation and will face the prospect of being searched—there needs to be an adequate explanation, a provision for speakers of languages other than English, and an adequate way of communicating what is being done and why. Therefore, we want to enhance the provisions that currently exist in section 10 of the Criminal Investigation Act. I do not believe that we have seen why the so-called commissioner's declaration is warranted. I do not think the minister's second reading speech or the explanation we received in the briefing have adequately satisfied us as to why that is needed. We already have the power that exists in section 69, which we think seeks to do the same kind of thing, so we are yet to be satisfied on this matter and we do not believe there is any necessity for the so-called commissioner's declaration under proposed section 70B. We also seek to move an amendment to provide that the regulations that prescribe a place under the act do not come into effect until after the expiration of the period for parliamentary disallowance. In other words, we think that there should be thorough parliamentary scrutiny of these regulations before they come into force. Not having the regulations come into force until the expiration of the period of parliamentary disallowance means that we will not have a situation whereby they are gazetted and effectively enforced before scrutiny can occur. We will also recommend by way of amendment that we enshrine in regulation the procedures for the conduct of these searches in addition to the requirements already in the act under sections 70 and 71, and we also move to amend the time for which a place can be prescribed from 12 months to six months. All those things, we believe, will give the public greater confidence that these powers will be used responsibly. The amendments will give greater transparency about why a particular area has been selected and greater confidence about how a particular time for the use of these powers can be justified. They will also mean that those who are subjected to a search have a much better idea about why that is occurring.

The opposition understands that the imperative to deter criminal behaviour in entertainment areas is strong. We also understand that weapons can be readily concealed and that it is difficult to form a reasonable suspicion in such circumstances. However, we say that difficult does not mean impossible. We also believe that any powers conferred should be proportionate to the threat posed. We believe that the inconvenience, disruption and violation of law-abiding persons is an important consideration and we believe it is of consequence and needs to be taken into account when we consider these laws. We do not believe that the close scrutiny of the proposed laws should be interpreted as condoning criminal conduct and gang violence—quite the reverse. If the laws are a disproportionate incursion on personal freedoms of individuals suspected of having committed no crime, the amendments that we intend to move should not be interpreted as condoning criminal behaviour but rather as ensuring that those in our community who have not broken any laws are not unduly disturbed, troubled and

disrupted as they go about their normal lives. We will move these amendments after serious reflection and considerable thought, discussion and debate. I warn the minister that he should not dismiss them out of hand, because he will be saying to members of the community who have some disquiet about these far-reaching intrusive laws that their opinions and their apprehensions are of little or no worth. I have to say, minister, that that would not be good leadership. I trust that the debate that will follow will be mature and that the opposition in raising what I think are very legitimate concerns and issues will not be vilified or accused of aiding and abetting violence and crime on our streets. No-one is a greater supporter of police than I am, but clear rules and laws need to exist for them as well as for us, if for no other reason than to not expose them to baseless accusations of improper conduct.

Leadership is about bringing the community with you. Irrespective of the numbers in this place, I believe that the minister still has much work to do in convincing the public that he is not abandoning centuries of legal precedent, removing well-established checks and balances, and inserting in their place a framework where the potential exists for injustice and the abuse of persons not suspected of committing any criminal offence. In exercising powers, the minister should not shy away from providing appropriate levels of scrutiny for what I think the minister should concede are highly unusual laws. In this regard, as I said, I hope that we have the opportunity when we consider this legislation to have a very thoughtful debate that looks at these powers and really assesses whether they are necessary and effective and whether they will make entertainment areas such as Northbridge a better place and a place that attracts people who want to enjoy themselves in a law-abiding and healthy way.

There has been a lot of hyperbole surrounding this legislation. There have been references to terms like fascism, totalitarianism, and Nazism. I have to say —

Mr R.F. Johnson: They've come from you, not me! You're the ones who —

Ms M.M. QUIRK: Minister, just listen; let me finish! The minister might actually agree with me for a change.

I have to say that I do not regard that as very helpful to this debate. It does not foster what I consider a cogent argument about technical issues and an examination of what I think are legitimate matters and concerns. Therefore, for my part, I hope the minister respects the fact that I have not use terms like that. But having said that, I will refer finally to Nazi Germany, because I want to finish —

Mr R.F. Johnson: Oh, hear we go!

Ms M.M. QUIRK: "Here we go!"

Mr R.F. Johnson: I haven't as yet, but I will do now!

Ms M.M. QUIRK: I want the minister to understand what our role is and I want him not to get up and accuse us of aiding and abetting gangs, violence and thugs. When I was thinking about this debate tonight I was mindful of the words of Pastor Martin Niemöller. He was speaking of events he lived through in Nazi Germany, particularly the genocide of the Jewish population. Martin Niemöller said —

> First they came for the communists, and I did not speak out—because I was not a communist;
>
> Then they came for the socialists, and I did not speak out—because I was not a socialist;
>
> Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist;
>
> Then they came for the Jews, and I did not speak out—because I was not a Jew;
>
> Then they came for me—and there was no one left to speak out for me.

In that vein, the opposition has spoken out because it is our duty to speak out constructively and to ensure that the laws passed in this chamber are as effective, balanced and transparent as they possibly can be.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [10.00 pm]: A year ago the opposition identified the problem of people carrying weapons into Northbridge and other entertainment areas. The opposition introduced legislation into this house to deal with that issue, but the government refused to support it. A year has passed and now we have the government's response. We have discussed the response at considerable length, as the shadow Minister for Police outlined. We consider the government's bill to be badly drafted and to be disproportionate to the problem that we identified and to which the government has taken a year to respond.

This is what the opposition will do with the Criminal Investigation Amendment Bill 2009. It will support this bill at the second reading stage. In consideration in detail we will move a number of significant amendments. If those amendments are not agreed to by the government, we will then oppose the bill at the third reading. This is consistent with the approach that we took when we introduced the Weapons (Supply to Minors and Enhanced Police Powers) Amendment Bill 2008 a year ago. I will quote from the explanatory memorandum for that legislation as it pertained to clause 5. It states —

> Provides for section 13 of the Act to be amended to include subsection 13(1a). Section 13(1a) gives police the power to stop, detain and search any person who is within a prescribed area at a prescribed time to determine whether that person is carrying a weapon or otherwise committing an offence under the Act. Subsection (1a) does not require the police to have a reasonable suspicion that the person being searched is committing an offence.

That was from the explanatory memorandum that Labor introduced to the house a year ago. In arguing for the legislation the second reading speech that we presented provided the following analysis —

> As the law exists, under section 13 of the Weapons Act police must have a "reasonable belief" that a person is in possession of a weapon before they can exercise the power to search. "Reasonable belief" is a term that carries its normal legal meaning. The problem is how police can have that belief if weapons such as a machete … are secreted. This legislation removes the need for police to have that level of suspicion and enables them to search for weapons by way of frisk or metal detector.
>
> We have sought to be circumspect in the application of those extended powers. The vast majority of Western Australians are law abiding, and the problem of the carrying of controlled and prohibited weapons is not ubiquitous. We must balance the public's right to privacy with the need for greater effective powers for the police. We are also mindful that, were we to make the power broader, there would be a community expectation that the police would conduct random searching widely. This is extremely resource intensive and, in my view, largely unproductive.
>
> The bill will allow police to search without warrant in certain areas, such as night entertainment areas, gazetted by regulation at specified times, to ascertain whether persons are carrying weapons. We envisage that the areas to be gazetted would be chosen on the basis of crime statistics and would be evidence based.

That was the argument that Labor put forward a year ago for enhanced police powers to deal with the problem of weapons in entertainment areas. We have seen another year of inactivity by the government. Another year has past without any action being taken on this issue. It was Labor that identified the issue of weapons being taken into entertainment areas.

Those members who have young adults in their family would not in any way condone or support the idea that people would be carrying knives, machetes or other weapons into an entertainment area like Northbridge. Those of us who have young adults in our family and who would be concerned about the prevalence of antisocial and violent behaviour in Northbridge or other entertainment areas would not condone or support the carrying into those areas of drugs, such as ice, that apparently support, encourage or facilitate violent and aggressive behaviour.

We agree—in fact the opposition first identified the problem—that there is a problem with people taking weapons and drugs into entertainment areas. This bill provides very strong powers indeed for the police. A search can be conducted in a prescribed or declared area without the consent of the person being searched and with no requirement for there to be reasonable suspicion of an offence or a matter related to an offence. These are very strong powers indeed as the shadow Minister for Police outlined. We believe that they should only be allowed in defined areas at defined times and that those defined areas and defined times must only be as authorised beforehand by the Parliament. It is very important that we have checks and balances with regard to the exercise of these powers and it is very important that we have transparency and accountability with regard to the exercise of these powers.

This legislation is disproportionate. It goes over the top. It seems to have compensated for the delay with the excessive implementation of new powers. We do not want to see these powers exercised without reference to the Parliament and without the prior approval of Parliament.

Let us think about some of the things that could happen. An Aboriginal community could be an area that is prescribed for the purposes of the use of these powers. A workplace, which is the subject of an industrial dispute, could be prescribed for the exercise of these powers. An entire residential suburb could be prescribed for the exercise of these powers. A shopping centre or a political party conference might be prescribed as an area for the exercise of these powers.

It seems to me that the government wants the opposition to agree to the police or government being given carte blanche with regard to the areas and times these powers can be used. We do not agree with that. There must be prior parliamentary authority before these powers can be used.

There are two particular matters that I want to go to with regard to the requirement that we believe should be in the legislation for prior parliamentary authority to apply. The first of these is the proposal in proposed section 70B for the Commissioner of Police, perhaps the Deputy Commissioner of Police or perhaps an Assistant Commissioner of Police to declare an area subject only to the minister's approval. That proposal would not have

the matter come before a Parliament at all, unless, of course, the opposition asked a question of the minister about what the commissioner or the police had done. In the opposition's view it is not acceptable that for two months an area can be prescribed or declared for the purposes of the exercise of these very strong powers with no accountability other than a tick from the Minister for Police when the commissioner or perhaps an assistant commissioner decides that this is what will happen. We absolutely oppose the presence in the legislation of proposed section 70B.

The other point I wish to draw to members' attention is the possibility that the government could gazette a regulation and the powers could be exercised for a long period before parliamentary disallowance is possible. The day after the spring sittings of Parliament, the government could gazette a regulation declaring the whole suburb of Subiaco to be a prescribed place for the exercise of those strong stop-and-search powers. Those powers could be exercised using the power of that gazetted regulation for months and months before Parliament is able to debate a disallowance motion. The minister should think about it. If he were to gazette such a regulation at the end of November, it might well be March or April before the possibility arose of parliamentary disallowance of the matter. The opposition believes that the regulations should not come into effect while the time for parliamentary disallowance is not available. Those are two of the critical amendments that we will move. We will move other amendments but those are two of the most critical.

The opposition will support the second reading of this legislation. We agree that there is a problem with weapons in entertainment areas. We can see the need for these powers in certain clearly defined circumstances, but we do not agree with the over-the-top disproportionate legislation the government has brought to the house, nor do we agree that these powers should be exercised without explicit prior parliamentary approval.

I think this legislation is an example of what is wrong with the government's approach to law and order and crime. Essentially, I regard the government as lazy and ineffective in dealing with criminal matters. It talks tough but it takes no action. It is all talk; no action. It does not provide the resources the police service requires. The government is replacing 150 of the 500 extra police officers it promised with 150 auxiliary officers, it has withdrawn police cars, it has withdrawn mobile phones and motor cycles, and it has cut the police budget. There is worse to come for the police given the very difficult budgetary situation the government now faces as a result of the spending decisions it has made in pursuit of its deal with the National Party. There have been budget cuts for the police already, and there will be more difficulties for the police as they go about pursuing their budget for the next budget round because of the difficult financial situation that the government has in part created for itself. The government substitutes rhetoric for resources. The fewer resources the government makes available, the more it lays on the rhetoric about law and order. That is what it does and we are determined to expose the government for its laziness on crime, for the resources it is withdrawing from the fight against crime and for its tactic of replacing resources with rhetoric.

We will support the bill at the second reading stage, but I ask the government to look very seriously at the amendments we move. I think out there in the community there is a demand for more transparency and more accountability with the proposed use of these powers. That is what we are detecting in the community and that is what we think our community wants. We are standing on accountability with regard to this legislation and we will not support it unless there is full transparency and full prior parliamentary authority before these powers can be exercised.

MS A.J.G. MacTIERNAN (Armadale) [10.14 pm]: I think this is one of the most troubling pieces of legislation that I have seen come before Parliament in the 16 years I have been a member. This is legislation that will see us confronted with the spectacle of law-abiding citizens being grabbed in full public view by police officers and being stripped of their jackets and shoes and searched in public.

Mr P. Abetz: That happens at the airport.

Ms A.J.G. MacTIERNAN: It is quite different from what happens at the airport. If the member can imagine, a person might be walking along the street and be singled out, grabbed and pushed up against a wall and have jacket and shoes taken off and a search done in full view of potentially hundreds of people in the streets of Northbridge, Armadale or Fremantle or wherever it may be. We will not know in advance whether we have ventured into an area that has been declared one of these special areas. At any time, the police commissioner, his deputy or his assistant can make a declaration in relation to this without prior warning to the public that this is the case so stay away. Even in areas where there has been a declaration, how much freedom do many people have to avoid those areas? What is their capacity? What choice does someone have who is heading home after working in a coffee shop or a bar in Northbridge? Do they leave their job? Are we saying to people that if they do not want to be subjected to this sort of search, they should not work in Northbridge; they should leave their job? What about people who live in Northbridge? Increasing numbers of people live in Northbridge and may indeed live in any of the other areas we are proposing to declare, and, as I say, without there being any way of people knowing whether they are venturing into an area that has been so declared.

Some people are arguing that, "If you haven't done anything wrong, what do you have to worry about?" What we have to worry about is the humiliation and the personal violation that will go with such a search. I put it to members that this is a very, very different prospect from what happens at airports, for a number of reasons. First of all, everyone who is going to board an aircraft is subjected to a search. They pass through a metal detector and their bags are scanned. A certain number of people are chosen at random for an additional scan. However, there is no humiliation, no suddenness and no unpreparedness in this. People know fully what to expect; they are not singled out. There is also a question of the proportionality of this. We know that there are genuine terrorist threats around the world and the prospect of being blown up in mid-air is such that people are prepared to subject themselves to this sort of scanning process that everyone is subjected to when they go to travel on an aircraft.

As I say, this legislation will not apply to just Northbridge; it could apply to any area. We may not know whether an area has been declared. People will find themselves going about their normal business and they may be seized and subjected in this way to what will be the humiliation of a search of this order. We know the circumstances that will often prevail: alcohol will be involved, because presumably declarations will apply primarily to entertainment areas. Indeed, on the basis of the experience in England and elsewhere with terrorism legislation, a disproportionate number of people from disadvantaged or marginalised groups will probably be targeted, and their response to this targeting is very likely to be hostile. Of course, that then will escalate into violence, followed by an assault on police, which will then attract the mandatory sentence for an assault on police. When we start thinking about how this legislation might work and what in fact might happen as a result of it, we can foresee great problems with this legislation.

I want to also voice another concern that I have. I bring back the point that has been made about proportionality. There are times when we do have to curtail civil liberties because of the extreme threat that is posed to a community. We all accept that, and we have all accepted the terrorism legislation as a result of that. However, what we are proposing to inflict on the community with this bill is in my view well outside the appropriate and proportional response to the challenges we face. Once again, as the Leader of the Opposition says, we are seeing rhetoric coming in and the hang-em-high, supposedly tough-on-crime stance being taken, when in fact this legislation is very likely to lead to an escalation, rather than a reduction, of conflict and violence.

Building on that, my concern is about the police culture we are developing. We saw one troubling example of this—I think we have mentioned this before—when there was a police rally on mandatory sentencing on the steps of Parliament House. It was said at that police rally, pointing out to members of Parliament, "We know who you are, we know where you are, we know where you live, and if you don't vote for this legislation we'll be coming after you." That was an extraordinary expression by police who are responsible for upholding the rule of law in this state.

Mr R.F. Johnson: Are you saying that they threatened you by saying, "We know where you live"? Is that what you are saying?

Ms A.J.G. MacTIERNAN: Yes. I think —

Mr J.R. Quigley: It was a threat.

Ms A.J.G. MacTIERNAN: It was a threat that we should not go into the Parliament and make a decision on what we believed best represented the interests of the community, and that if we did not pass the legislation they would come after us. That is what was said. It was an extraordinary thing to be said. That gives us some idea of this government that is unable to get the balance right and make intelligent, sensible decisions about how it should fight crime. We have got to fight crime. We have got to set boundaries. We all know that there are profound problems within our community. There are many people who lack any boundaries. We also know that the prevalence of drugs within the community has created a very difficult situation to manage. However, the response we get from this government and the response we get from the police minister is an unthinking response. It is one that says that if we add on to police powers uncritically and lengthen sentences, we will get a better result. We can see from the United States that that just simply does not work. No matter how extreme the sentences, no matter how punitive the powers and no matter how civil liberties are eroded, the murder rate continues to go up and up.

My concern is that we will generate a police culture very similar to the culture in Western Australia in the 1970s. This police minister would have been very comfortable with *Life on Mars*. This police minister would be very comfortable with the way in which police conducted themselves in the 1970s.

Mr E.S. Ripper: He is more a *Police Academy* man, I would have thought!

Ms A.J.G. MacTIERNAN: "Carry on Policing", I think!

Mr R.F. Johnson: Do you support the member for Girrawheen's private member's bill, member for Armadale?

Ms A.J.G. MacTIERNAN: I am debating this piece of legislation that is before this house now. I am talking about a sort of police culture. I think our current police minister would be very comfortable in the Queensland

regime of Joh Bjelke-Petersen and Russ Hinze. That sort of level of critique is the level of complexity of ideas this police minister has. Does the minister admire Joh Bjelke-Petersen and Russ Hinze and the police culture that they presided over?

Mr R.F. Johnson: No.

Ms A.J.G. MacTIERNAN: The minister does not?

Mr R.F. Johnson: No.

Ms A.J.G. MacTIERNAN: So the minister does recognise that we can potentially have these problems with the police culture?

Mr R.F. Johnson: Does that surprise you?

Ms A.J.G. MacTIERNAN: It does surprise me!

Mr R.F. Johnson: I thought it would!

Ms A.J.G. MacTIERNAN: It does surprise me. But, quite frankly—I do not like to say this—I do not believe the minister.

I am outlining my deep concerns about this legislation that is before us today. What we are doing in this legislation is creating a massive erosion of civil liberties. That erosion of civil liberties will go well beyond the mischief that it is meant to deal with. We are creating a situation in which the more marginalised members of our community will become even more hostile and alienated. We are creating a situation in which many innocent people will be absolutely humiliated by publicly having their jacket and shoes stripped off them and being frisked by the police. Many innocent people will not have any chance of avoiding that situation. The opposition is proposing to move amendments that will certainly go some way towards mitigating the problems with this legislation. However, I urge members—I know there are reasonable members on the other side of the house—to look at this bill and understand that it is not going to solve the problems that it is intended to solve. All it will do is create a deeper level of conflict and hostility and lack of respect within our society. That is the exact opposite of the path that we should be treading. This is one of the most deeply troubling pieces of legislation that has been presented to this place in the 16 years that I have a member of this Parliament.

MR A.J. WADDELL (Forrestfield) [10.27 pm]: I also want to make some comments on the Criminal Investigation Amendment Bill. Thomas Paine said, "It is the duty of the patriot to protect his country from its government." This is a time when we need to protect our state from its government.

Mr E.S. Ripper: At least until 2013!

Mr R.F. Johnson: So did you support the member for Girrawheen's private member's bill?

Mr A.J. WADDELL: I do not believe it ever came to a vote.

Several members interjected.

Mr A.J. WADDELL: I do not tell members opposite what happens in my caucus. Do they want to tell me what happens in their caucus?

This bill will amend the Criminal Investigation Act to remove the necessity for consent for a search. It will also remove the necessity for a reasonable suspicion to be held by the police officer who is conducting the search. This bill will remove the requirement for reasonable suspicion. We will not have reasonable suspicion. In other words, a police officer will now be able to pick off any person whomsoever because of the way the person looks or because of the way the person is walking along the street, or simply because the police officer just happened to get out of the wrong side of the bed that particular morning and wants to take it out on someone. The police officer will be able to humiliate that individual and strip that individual of his fundamental civil liberties. If this bill is passed in its existing form, this will be the most fundamental single attack on civil liberties that any Parliament in this country will ever have passed. Think about that. This Parliament will be at the forefront. This Parliament will be that much closer to the sorts of regimes that we regularly criticise.

One thing that really riles me with this bill is the thought of what has been happening in this place in the past few months. It has been quite interesting. We have debated a number of really interesting topics. One of those topics is, of course, very contentious—that is, retail trading hours. The Premier tells us on this side that our view on retail trading hours is so bad that we are going to stop people coming from overseas to visit because people cannot shop after seven o'clock! Are government members going to be running advertisements that tell people overseas they can come to Western Australia, come to our entertainment precincts and expect to be tossed against a wall for looking at a police officer the wrong way? What does that do for our tourism industry? I do not think we are going to get a lot of people coming for that ride, or the kind of people that will come are not going to be that interested. This is a bill that massively exceeds the problem by such an extent that it is just inconceivable that people in a developed democracy would consider such a movement.

The Western Australian public is being sold a bit of a lemon here. People think they are getting something in return for having this right taken away from them. In fact, there is no guarantee of public safety and the streets being safer from these new search laws. This is an erosion of civil liberties. Right now, if a police officer "reasonably suspects", he or she could search somebody. If that person refused to be searched and there was a problem, the police officer could simply take his pad out, give the person a move-on notice and away that person would go. If that person refused to move on, the police officer would have the ability to arrest.

To suggest that we need this legislation in order to stop weapons entering our entertainment precincts is absurd. Quite clearly, police officers have all the powers necessary now to remove them. Why do we need this? Why do we need to go to such an extreme? I keep coming back to that question because it is just beyond belief that we will do it.

I was doing a lot of research about civil liberties and what people have said over the years. I came across a quote that I would like to read to the house —

> Our individual citizen is to have self-discipline, to have duties as well as rights, to exist not as an isolated identity but as a civilised member of a civilised society which, expressing itself through a Parliament which it has freely chosen, makes laws which bind the individual. In that sense they limit his individual freedom and control many of his actions. But in the ultimate sense they guarantee his freedom against arbitrary interference, for discipline and freedom are not enemies but friends, so long as the discipline is, under a truly democratic system of government, socially self-imposed.

We are taking that away. This is not self-discipline. This is about people walking down a street, someone not liking the way they look and their being thrown against a wall and searched for no reason whatsoever.

Mr M.J. Cowper: When did that happen to you last?

Mr A.J. WADDELL: About three months ago. I will come to that.

Mr M.J. Cowper: By a police officer in Northbridge?

Mr A.J. WADDELL: Yes. I will come to that in a minute.

That quote was in fact from Sir Robert Menzies at the inaugural Sir Robert Menzies lecture here in Perth in 1970. I think government members need to ask themselves which party they represent, because I do not believe it is the party of their founder.

As I said, this bill is a fundamental attack on civil liberties. I suppose the question we need to ask is: what are our rights as citizens? As we know, we do not have a bill of rights in Australia. Article 17 of the United Nations International Covenant on Civil and Political Rights states —

> No one shall be subjected to arbitrary—

There is that word again —

> or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

I am sorry, but if somebody grabs me, slams me against a wall and searches me, my honour and reputation are being attacked arbitrarily for no reason whatsoever.

Mr R.F. Johnson: Why do you make comments like that? You know that is not the case at all. That is not even the case in the legislation. For goodness sake!

Mr A.J. WADDELL: Let me tell the minister what happened to me about four months ago. I was walking through Northbridge with some friends of mine. A person was waiting with us at the stop lights and decided to cross the road without waiting for the green man to come on. That person walked across and the driver of a car had to suddenly brake. The driver hit the horn. The person who had walked in front of the car—and I do not deny he had done the wrong thing—gave the driver the bird. The next thing we noticed was that everybody in the car piled out, grabbed this guy and slammed him against the wall. It looked fairly certain that he was in for a beating. I did not know what to do. It was one of those ethical moments when I asked myself, "Do I get involved or do I let it happen?" I decided to intervene: "Hang on, guys; this is not necessary. The guy has just had a bit too much to drink. Calm down." The next thing I knew I was pushed away and people were screaming in my face. It was only after a minute or two that they produced their badges; they were undercover police. When I protested that they had not behaved properly, they issued me with a move-on order, and so I did. We waited a little distance away and I believe that the person who was slammed against the wall was ultimately let go. I think the police may have been worried that one day the incident would be mentioned in this place. I am not necessarily suggesting that they did anything wrong.

Mr R.F. Johnson: Did you make a complaint?

Mr A.J. WADDELL: No, I did not.

Mr R.F. Johnson: Why not?

Mr A.J. WADDELL: I did not because I did not feel it was necessary.

After experiencing an incident like that, I think to myself that it is not hard for tempers to fray; it is not hard for people to abuse power. It is not hard for a person who is slammed against a wall and who does not know that undercover police officers are trying to search him to push back and knock those officers against the wall and then, bang, that person triggers that other wonderful piece of legislation that was passed in this place, the mandatory sentencing legislation. We are giving police unfettered power to basically take ordinary citizens off the street and lock them away. I am not going to suggest what that sounds like, because I think the sort of nation that does that is fairly self-evident.

We can ask ourselves what effect this legislation will have on policy. How will it make the streets of Northbridge or any other designated area safer?

Ms M.M. Quirk: Or Bay View Terrace perhaps?

Mr A.J. WADDELL: Yes, possibly; if we get the right people, we might catch some terrorists.

I will reflect on an event that happened a year or two ago. It was an incident at the Big Day Out. I recall the furore about the police being in attendance and setting up drug bins. One girl decided that, rather than get caught with drugs, she would swallow them, and, ultimately, she died. Do we honestly believe that if we implement this stop-and-search legislation, we will curtail all activities that currently happen in nightclubs in Northbridge, or are we simply going to ensure that people, for their own safety and protection, will imbibe whatever substances they choose to take before they get there? What will happen if we end up with another Big Day Out scenario and a person takes a little too much of a substance because he does not want to be caught with it on his person? We will then have that on our conscience as well.

What will happen to the people who live in designated areas? Will they live in fear every day of being searched? How often is realistic? Let us consider some similar legislation. As I have said, this will be the worst legislation in Australia. But, of course, it will not be the worst legislation in the world. In fact, almost identical legislation exists in the United Kingdom. The UK introduced the Terrorism Act in 2000. The UK was way before its time doing it in 2000! Essentially, that act gave exactly the same powers to the Metropolitan Police Service to stop and search anybody without suspicion; they could stop and search people based on nothing. I had a look at the statistics from the British Ministry of Justice for the 2007-08 period. There was a rise of 322 per cent of black people being searched, a rise of 277 per cent of Asians being searched and an increase of 185 per cent of Caucasians being searched. Of the 8 222 people who were arbitrarily stopped and searched, eight were arrested. That is one in 1 000. Originally, this act was supposed to be used for those suspected of terrorism, but it has now become a regular power that the police use for pretty much everything. The lesson that we can learn from the British experience is that the police will use whatever tools are available to do what they think is the right thing.

The trouble is that what the police do is not necessarily always in the best interests of the state. I turned on the television this morning and heard the police commissioner in South Africa claim that it was time his officers were given the power to shoot on sight. Are we heading in that direction? Of course, I am not suggesting for a moment that we are about to move to shoot on sight, but it is a step by step by step process I guarantee members that if they had been in this place 30 years ago and somebody had suggested that we would take away these rights from people, that we would take away the ability to walk unimpeded through our streets without the fear of being stopped and searched arbitrarily, they would have laughed. They would have said that no way would this Parliament ever consider such legislation, yet today we are. Members should ask themselves what will be debated in 30 years' time; it is one step at a time.

Mr P. Abetz: Years ago they would have laughed about the airport thing, too, I am sure.

Mr A.J. WADDELL: Quite possibly, and that is the point; we need to have an appropriate response to an appropriate threat. What is the threat? What is the fear that the government is reacting to, to take away such fundamental rights? I do not think the response is proportionate to the fear.

Mr R.F. Johnson: Where've you been for the last few years?

Mr A.J. WADDELL: I know it is the Minister for Police's thing; he is tough on crime! Yes, he is tough on crime; we get that. Everyone gets that! He is tough on crime!

Mr R.F. Johnson: You are weak.

Mr A.J. WADDELL: He will not be happy until he has built a wall around the entire state and thrown everyone in prison! We get that! But there are other important things. The opposition is tough on appropriate crime. We are tough on crime when it is a realistic crime; we are not tough on imaginary crime. I think the government is taking away rights that do not need to be taken way and should never be taken away.

I do not know whether members have heard of Blackstone's formulation, also known as Blackstone's ratio. It is the principle that it is better that 10 guilty persons escape than one innocent suffers. It is a fairly basic principle and it is certainly one I was brought up to believe; that is, it is better that 10 guilty men go free than one innocent be caught. I am sure we would all agree about that if we were talking about executing people.

What will happen with the passage of this legislation? We will start profiling, and we will see classes of people targeted by these laws. I can guarantee that a young Aboriginal youth, on any given night, will be stopped and searched. Members should ask themselves what that will do to that person's psyche. Members should ask themselves how those people will ever respect the rule of law if they are harassed and treated in that way. At its fundamental core, this law will become an entirely racist law. It will attack classes of people and it will attack ethnicities. The minister probably will not be targeted.

Mrs L.M. Harvey: With that tan, maybe!

Mr A.J. WADDELL: Sorry?

Mr R.F. Johnson: I would be very happy to undergo a search at any time if I thought other people would feel safer.

Mr A.J. WADDELL: I am sure the minister would be very happy to undergo a search; he would probably enjoy a strip search!

Mr R.F. Johnson: No, I will not, my friend! Some of your members might, but I certainly would not, but I would be very happy to have the sort of search that we are proposing, because I know that it would make Northbridge a safer place.

Mr A.J. WADDELL: That is right, because the public are being led to believe that only bad people get caught up in this and only bad things happen to bad people. That is not always going to be the case. Just because someone is not a criminal, it does not mean they will not get caught up in this.

Mr R.F. Johnson: The trouble is that bad things happen to good people; it's the good people who get knifed and shot.

Mr A.J. WADDELL: What training will be given to the police who will have this extraordinary power? How are they going to learn to exercise it with appropriate discretion? What resources will the government put into that system? I somehow doubt they will receive the proper training.

Mr R.F. Johnson: They already have profile training, you know.

Mr A.J. WADDELL: That is probably why they got me!

Calvin Coolidge stated that it is much more important to kill bad bills than to pass good ones, and I suspect that is almost a corollary of the previous quote. This bill, in its current form, is an extraordinarily bad, bad bill.

Under the United Kingdom's terrorism laws, children under the age of 10 years were being searched. In fact, more than 45 children under the criminal age of responsibility—10 of them young girls—were in fact searched under suspicion of terrorism. Honestly, is that what we are trying to achieve here?

A news item on the guardian.co.uk website dated 18 August 2009 stated —

> Scotland Yard said: "Stop and search legislation covers people, not ages, there is no upper age limit and no lower age limit. … There are a number of scenarios in which a child could be searched under section 44, ie if they were with an adult who is also stopped under this power. We recognise the sensitivity surrounding these powers and are constantly looking to improve our use of the tactic.

I have a seven-year-old daughter. I cannot imagine how horrified I would be if she were stopped and searched in this way. Really, we are giving the police the power to do that. They do not have to justify themselves; no questions are asked; they will be able to do that. What kind of a society do we want to create by letting this type of law through?

I will finish with a quote from Genesis 18:23. I am not usually one to quote the Bible, but this one got me —

> And Abraham drew near, and said, Wilt thou also destroy the righteous with the wicked?
>
> …
>
> That be far from thee to do after this manner, to slay the righteous with the wicked: and that the righteous should be as the wicked, that be far from thee: Shall not the Judge of all the earth do right?
>
> And the LORD said, If I find in Sodom fifty righteous within the city, then I will spare all the place for their sakes.

I think there are more than 50 righteous people in Northbridge, and I think we should spare all for their sakes.

MR W.J. JOHNSTON (Cannington) [10.47 pm]: I was impressed by the member for Girrawheen's contribution to the debate because it was very considered and well put together. She also used a quote from Pastor Martin Niemöller, whom I was also intending to quote from, so I will not do that. I will use this famous quote —

> All that is necessary for evil to triumph is for good men to do nothing.

That is usually attributed to Edmund Burke, but it is probably a translation from Tolstoy. Having regard to the fact that the quote is often attributed to Burke, I thought I would look up some of his quotes. Modern technology led me to a couple of quotes from Burke that are very apposite to the current debate. One such quote is —

> Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.

The Minister for Police needs to think about that. Edmund Burke is considered the father of modern conservatism. He was no bleeding heart socialist. He also said a few other things that are very apposite for tonight's debate. He said, "Bad laws are the worst sort of tyranny." He also said, "Whenever a separation is made between liberty and justice, neither, in my opinion, is safe." That is the problem with the legislation that has been presented to the house

I am an avid student of *Yes Minister*. We can see the Minister for Police in the role of Jim Hacker. *Yes Minister* teaches us that public servants come to us with good intentions, but also with their own self-interest. The point I make is that, just because the Commissioner of Police asks for a power on the basis that it makes his job easier, that is no justification for this Parliament to consent. That is a ridiculous argument. Just because the Commissioner of Police will find his work easier, we are as parliamentarians to put aside our judgement, which is the thing we owe our constituents, and simply pass the legislation. The minister goes on the radio and says that the Commissioner of Police wants this, and we can trust the commissioner with these powers, because we have a good Commissioner of Police. Quite frankly, that is wrong. In the same way as the Liberals come to this chamber and say "Don't trust judges with discretion", they then say that it is okay to give the Commissioner of Police discretion. How can that be? How can the government say that the Parliament must direct the judges—we cannot trust those judges?

The minister does not interject whenever anyone in this chamber makes a proper contribution. He is happy to make personal comments about people's appearance and that sort of thing, but when we scratch the surface and ask the minister to justify this excessive and unnecessary step, he falls silent, because he is incapable of doing so. There is not proper justification.

Mrs L.M. Harvey: Will you take an interjection?

Mr W.J. JOHNSTON: No.

I will not tolerate this nonsense that people from the other side come into this chamber and say that the problem is that the Labor Party is soft on crime. There was a very good interjection from the member for Southern River. He interjected on the Leader of the Opposition and said, "You might need it for a Labor Party conference." That was about declaring a political party's conference as a place in which to apply the stop-and-search powers. That is the sort of ridiculous comment that comes from the member for Southern River. I am always entertained when he interjects in this place, because it demonstrates the absence of thought inside his head. In a moment I will quote some of the things that the member for Southern River has said in media releases and point out that what he says and what is occurring are separate issues, because they are not the things that this Parliament should do. I am not interested in, and I will not accept, being lectured by the second-raters who inhabit the cabinet of the other side of the chamber.

I make the point, because I get very upset about this, that my father fought and died for the allies. In World War II, he fought for the allies. He did not fight on the other side during the war. He did not support the fascists; he opposed the fascists. Sadly, my father died in 1965, after 20 years of illness, when I was two years old. That was reported in this place in my inaugural speech. He is buried in the war cemetery in Canberra. I will not tolerate an accusation that I am somehow not a patriot and that I am not worthy of the great duty that I have been granted by the people of Cannington. I will not tolerate for one second anyone in this chamber saying that I am soft on crime. That is a disgraceful, immature political statement. It is designed to avoid the proper scrutiny that Edmund Burke directed this chamber to do. It is designed to make it seem as though it is the headline that counts rather than the actual contents of what we are doing.

In response to the member for Forrestfield's contribution to this debate, the Minister for Police was happy to interject and say that good people get knifed and shot. With respect, nothing in this legislation will diminish the amount of crime in this state. This legislation will not have the effect that is advertised by the minister. A number of members have already pointed out that this matter will come back and bite the minister. We know that.

I will make a point now. If the Minister for Police had actually delivered on his promise to deliver 500 extra police officers to this state, rather than only 350, additional police would be on the streets to enforce the laws of the state. The minister says that this legislation is about Northbridge and other entertainment precincts. I will quote from the *Canning Times* of 20 October 2009. It states —

> "It would be of great use at big events and at Carousel shopping centre on Thursday nights, where there are groups of youths and individuals that cause problems," Sgt Cox said. "These laws would make it very easy for us to stop and search for weapons … they would be an excellent deterrent.

The quote goes on —

> "I wouldn't say they're prevalent but there is evidence some people are carrying weapons."
>
> Mr Cox said railway stations on the Armadale line, including Cannington, were crime hotspots and would be other possible target areas.

If that is the case, the minister owes us an explanation. He cannot just say, as he does on the radio, that this is about Northbridge, when the police service has made it clear that that is not what it is about. It is about the Westfield Carousel Shopping Centre on a Thursday night. The officer in charge of the Cannington Police Station has let my community know that that is what this legislation is about. That is the very point we make.

Mr M.J. Cowper: Cox is not the officer in charge of Cannington Police Station.

Mr W.J. JOHNSTON: No, that is right; he has just left. But he was at the time he made that statement, and I quite rightly, member, quoted the date—20 October 2009.

Sergeant Cox is a dedicated and hardworking police officer, and that is what he believes this legislation is about. That is his understanding of what is being proposed. If that is not what is being proposed, do not put it in the bill. Do not allow Westfield Carousel Shopping Centre to be declared a spot for stop-and-search powers. When I was an industrial officer of a union, I used to negotiate industrial agreements and my boss, the secretary, used to tell me, "Don't forget, if the employer doesn't want it, they don't need it". The point he was making to me was that often employers would say that they would not use an authority over the workers but that they still wanted it in the agreement anyway. The union's position was that if the employers did not want it, they should not put it in the agreement. An agreement should have in it only what people want to use. That is the point I am making to the Minister for Police and to every member on the other side of the chamber. If members do not want the Carousel Shopping Centre to be declared a stop-and-search spot, do not allow it. The amendments that the Labor Party are proposing will prevent that from occurring because they will require the police service to report to us to make sure that the police are acting within the restrictions and capabilities that we are setting. That is a very important issue. The amendments that the Labor Party is proposing are about making rubbish, incompetent and badly drafted legislation to be at least reasonable.

Ms M.M. Quirk interjected.

The SPEAKER: If the member for Girrawheen wants to interject, she will have to move to her rightful seat in this place.

Mr W.J. JOHNSTON: The question must be asked: what is wrong with asking the police to give a reason for stopping and searching someone? I said earlier that I would point out some things that the member for Southern River said in his media release on 15 October. He said about this legislation —

> Time and resources are often wasted in court arguing whether the officer can justify the grounds for their suspicion and offenders are getting off on technicalities.

That is not true. There is no occasion when that has occurred—not one. The member for Southern River says that he is a man of honour, and I am not going to doubt that, but why is it that he puts untruths in his media release? Why did he say that when it is not true? There has been no occasion when that was true. He goes on in his media release to state —

> The new laws would give police greater powers to stop and search people in particular areas where crime and anti-social behaviour is turning it into an unpleasant area where citizens are avoiding.

Like the Carousel Shopping Centre, which on a Thursday night is jumping so much that it is difficult to get a car park. The biggest complaint my office receives about the Carousel Shopping Centre is that people cannot park there. That is how busy the place is. What did the member for Southern River say about the Carousel Shopping Centre? He said that it is becoming unpleasant and citizens are avoiding it.

It might be said that that was not a specific reference to the Carousel Shopping Centre, but the legislation applies to the Carousel Shopping Centre and Sergeant Cox said that he will use the new powers when in the Carousel Shopping Centre. The member for Southern River has demonstrated his ignorance and his failure to do his duty

as Edmund Burke directed us to do, which is to make sure that the laws we pass are proper and appropriate. The member for Southern River also said —

> Known problem areas such as Northbridge after midnight will be targeted, as well as people who are carrying weapons, drugs or intending to create trouble.

Unfortunately, that is not what this legislation is about. That is what the Labor Party's 2006 legislation was about. This bill is about random stop-and-search powers; it is not about those who intend to create trouble. That is the entire point of this legislation. It will remove the need to target people who are causing trouble and give the police the right to exercise their powers in an unfettered way. That is not good law. The member also said —

> We hear much about the drunken and violent behaviour that is making Northbridge a no-go zone for sensible, law-abiding citizens after about 11.00 pm on Friday and Saturday nights. This legislation will make these areas more attractive to families and also to young women out alone and enable them to enjoy themselves without fearing for their safety," said Peter Abetz.

I make the point as a family man that I am not going to take my family to Northbridge at 11 o'clock at night! That is a ridiculous comment. He goes on —

> The new legislation will provide greater flexibility for the State Government and police when making a place a declared area.

That is not true; that is simply wrong. This is about the provision of authority to the Commissioner of Police. Who is the additional protection that we have? We have Jim Hacker to protect us! That is who we get—the Minister for Police.

Ms A.J.G. MacTiernan: WA's answer to Russ Hinze!

Mr W.J. JOHNSTON: I must say —

Point of Order

Mrs L.M. HARVEY: The member referred to the Minister for Police by a name that is unknown in this place.

Ms M.M. Quirk: What standing order?

The SPEAKER: Members!

Mrs L.M. HARVEY: I do not know. Who is Jim Hacker? It is unparliamentary.

Several members interjected.

The SPEAKER: Members! I am not going to accept the point of order.

Debate Resumed

Mr E.S. Ripper: Given the minister's performance, it's a compliment!

Mr W.J. JOHNSTON: We have heard about what happens in England —

Mr R.F. Johnson: What were you saying about reflections on other members?

Mr W.J. JOHNSTON: I did not make any reflection on the minister other than to say that I do not believe he is competent. In fact, that is my solemn belief, and if that is unparliamentary, I will obviously apologise for the fact that he is —

Several members interjected.

Mr W.J. JOHNSTON: The member for Scarborough says that I cannot call the Minister for Police Jim Hacker. Fair enough, I will say that he fills the role in our chamber that Jim Hacker fills in the comedy series.

Mrs L.M. Harvey: I don't know who that is.

Mr W.J. JOHNSTON: The member is demonstrating her ignorance. How can someone come to this place and not know *Yes Minister*? I suppose that demonstrates the problem we have here.

Anyway, I downloaded a document from the UK's metropolitan police service website—I thank the member for Joondalup for directing me to this—about the stop-and-search powers in London. Under the heading "Why me?" it says a number of things and states, in part —

> The police can stop or stop and search you:
>
> - As part of anti-terrorism efforts
> - If they think you're carrying a weapon, drugs or stolen property
> - If there has been serious violence or disorder in the vicinity
> - If they are looking for a suspect who fits your description

The point I make is that although that is a very wide set of criteria, they do not provide an unfettered right. As I have said —

Mr R.F. Johnson: Do you agree with those British stop-and-search powers?

Mr W.J. JOHNSTON: That is the point we keep making. We should direct ourselves to Edmund Burke and say, "Let us do our job; let us set up the proper procedures that we need." If the minister comes to us, as he has done on radio, and tells us the circumstances in which these powers can be used or will be used, let us put that in the legislation. That is what we have directed ourselves to with the amendments we propose. It may well be that people can look at this legislation, even with the amendments the Labor Party proposes, and say that it is still fundamentally flawed. Indeed, I think that is probably a reasonable position to adopt. Even with Labor's amendments it would still not be good legislation, but at least with the amendments it would have some limits placed on it.

We do not need to provide unfettered powers to the police. There is always a need for accountability. I am not a young person anymore, but I know that when I was a young person, a number of times—fortunately not me—friends of mine had difficulty with the police. Sometimes it was just because of misunderstandings. It is a reality that police officers are human beings and why we have things like the Corruption and Crime Commission, as in most states, to oversight the operation of the police. The Mallard case is clearly the most obvious example of misdirected police activity. The idea that the police get it right 100 per cent of the time is ridiculous. In the same way that judges do not get it right 100 per cent of the time, no-one can suggest that police get it right 100 per cent of the time. The problem—as outlined by the member for Forrestfield—is that sometimes, when things have gone wrong, it is too late to go back. There has to be a set of specific instructions to the police service. We cannot just say to the police commissioner, "You make up your own mind and just talk to Jim Hacker." There has to be more to it than that. The amendments foreshadowed by the member for Girrawheen go some way towards making this legislation capable of dealing with the issues that the Minister for Police says he wants to deal with, rather than providing unfettered power.

I will finish by saying that I have two teenage daughters; one is just coming up to 18. It worries me when she goes out, just as it worries any parent. Parents want to make sure that things do not go wrong for their children. We cannot be there with them all the time; they need to grow and develop, and be adults for themselves. However, this law is badly drafted, and it will not make me feel any more comfortable. It will not give me the reassurance that every parent in this state wants.

I am not interested in the minister's dishonest name-calling—"You're soft on crime." I am not going to tolerate that for one second. People can criticise me for things that I say, but they should not allege bad attitudes on my behalf. They should not allege that I am not right for the role that Edmund Burke directed me to. Members should look at this legislation and ask not what the police commissioner wants, not what police officers want, but what is actually needed, and we should pass only the law that is needed.

MS L.L. BAKER (Maylands) [11.07 pm]: I want to make a few comments on the Criminal Investigation Amendment Bill. I was pretty horrified when I read through it and realised its intent. I did some research into the ways in which similar things have played out in other countries. I draw the example of the United Kingdom as the most obvious one, and I will make a few points about the way in which the United Kingdom has progressed with section 44 of its Terrorism Act 2000. Before I talk about that, I remind members that back in the 1960s and 1970s in the United Kingdom, there were widespread riots that culminated in the 1980s with the Brixton riots. The laws that are generally attributed as being behind that civil unrest were what used to be called the "sus laws"—basically, suspicion laws. These laws led to a dreadful breakdown of trust between the police and the community at large, and caused huge problems in Britain. Anyone who has been to Brixton and seen the social issues in that area and in other parts of London will understand that this kind of legislation can only entrench distrust and a lack of confidence in the police, and will work against building strong community relationships. Section 44 of the Terrorism Act allows UK police to stop and search people with no reasonable suspicion. It also allows high-ranking officers to designate specific areas where police can stop and search, without any reasonable suspicion, vehicles, people in vehicles and pedestrians for articles that could be used for terrorism purposes.

I have previously talked about the fact that the misuse of these powers damages the credibility of the police and undermines public confidence. It may even make further requests by the police for more legitimate sources of power much more difficult. It is vital that these sorts of extraordinary measures are used sparingly and only in terrorism-related situations. I want to also mention the disproportionality issue that several speakers have already talked about. Again, I refer to statistics from the UK, and I do so only because the statistics are factual and readily available; anyone who has a mind to can go to the internet and find out the facts and realities of the UK laws. On disproportionality, the analysis I have with me states —

> Official statistics suggest that stop and search is used disproportionately, with black people two and a half times more likely to be stopped by the police than white people and seven times more likely to be stopped and searched.

That trend has accelerated rapidly in the past four years. These are not things that the opposition is making up; they are the facts that the United Kingdom has collected. They are evident for everyone to see. The analysis goes on —

> … twice as many black people are not given any reason for being stopped and searched, and two out of five (compared with one out of five whites) perceive the reasons given as inadequate.

The analysis of the way in which the stop-and-search legislation is working in the UK goes on —

> Following the attacks on the Twin Towers in New York, the number of persons of Asian ethnicity stopped and searched under Section 44 rose by 300 per cent in just one year — nearly three times the increase in the same year for white people. By 2003/04, Asian people were nearly three times more likely than white people … to be stopped and searched under the … Act … In 2006, Asians represented 15 per cent of all people stopped under the Terrorism Act … though they account for only 5.3 per cent of the total population.

I am drawing out those figures because we have an Aboriginal population who, if this is a racist piece of legislation that the government is trying to put through —

Mr P.T. Miles: What a load of rubbish!

Ms L.L. BAKER: Whether or not members like to admit it in this place, the direct impact of this legislation will be on Aboriginal people and on youth. That is a fact. I challenge members who sit in this place to look at the facts in 12 months if this legislation is passed. They will find that they will be the same as those in the UK and there will be a disproportionate impact.

Mr M.J. Cowper: Can I ask a question? How do they get these figures? If a police officer sees someone in the street and searches him, is there a recording there that says, "We stopped this person and checked that they were Aboriginal or Asian or whatever"?

Ms L.L. BAKER: As a matter of fact there is.

Mr M.J. Cowper: It doesn't exist here, so how are you going to record that?

Ms L.L. BAKER: The member did not ask that.

Several members interjected.

The SPEAKER: Thank you, members! The member for Maylands has the call.

Mr M.J. Cowper: I don't know where you got these figures. You plucked these out of the ether.

Ms L.L. BAKER: On the subject of how the statistics are recorded, the analysis states —

> Records of stops and searches can help to provide an 'audit trail' of how police officers interact with members of the public. However their effectiveness in terms of preventing specific crimes is less apparent. Stop and search has an overall 'hit rate' (ie proportion leading to an arrest) of 12 per cent overall but only half that … for black people. The hit rate for Section 44s is much lower, with less than 0.1 per cent leading to an arrest in connection with terrorism …

That is what this is about. The analysis continues —

> This underlines the importance of … relations between the police and the … communities they serve. Stop and search may add to a sense of victimisation felt by innocent people …

I am talking about people who come to our city just to walk around and have a good time. The analysis continues —

> The Metropolitan Police Authority, in giving evidence to the Parliamentary Home Affairs Committee in 2004, —

That is, in the UK —

> reported that the misuse of these powers had worsened racial and ethnic tensions, increased the level of distrust of the police and cut off valuable sources of community information and intelligence.

That is all I want to say about disproportionality. When I looked at how this bill might actually work in the community, I noted in the second reading speech that the Attorney General stated —

> Furthermore, only a basic search of a person will be able to be conducted, which includes the use of metal detectors; the removal of a person's outer clothing, such as hats, jackets and shoes; and a pat-down search of the person.

One aspect that immediately comes to mind is that we live in a community in which there is an increasing number of west African people and people from other countries who are Muslim and who wear face coverings. I

would really like to know whether the police intend to remove face coverings and the potential impact on religious significance of this bill.

Mr M.W. Sutherland: They shouldn't wear face coverings.

Ms A.J.G. MacTiernan: What about head scarves?

Ms L.L. BAKER: I really would have expected a little more from the member for Mount Lawley, but if that is what he wants to say —

Several members interjected.

The SPEAKER: Members!

Mr P.B. Watson interjected.

The SPEAKER: Member for Albany and member for Warnbro!

Several members interjected.

The SPEAKER: Members!

Mr P.B. Watson interjected.

Mr M.W. Sutherland: What? Don't call me a racist!

The SPEAKER: Member for Mount Lawley and member for Albany, the call is with the member for Maylands.

Ms L.L. BAKER: Thank you, Mr Speaker.

I want to refer again to the situation in Britain. The Greater London Authority, which is the governing body that runs the City of London, has been considering the powers that need to be put in place for the UK Police Service when it comes to the removal of face coverings. It has recommended that if a Muslim woman is wearing a face covering, the officer should permit the item to be removed out of public view. Also, where practical, the item should be removed in the presence of an officer of the same sex as the person, and out of sight of any person of the opposite sex. I am not sure what thought the minister has put into this piece of legislation, for want of a better word—this whatever it is that the minister has drafted—but it certainly does not cover those kinds of eventualities. This legislation is already racist. The minister has done nothing except write down a few pages of completely offensive nonsense. If the minister really wanted to do something democratic to help our police officers, he would get behind the police force and put some money into the police force, instead of cutting the police budget and taking resources away from the police. What will happen if there is a breach by a police officer? What will happen if a police office fails to abide by the rules or the standard operating procedures? Will the officer be subject to any disciplinary procedures? How will it work?

Mr M.J. Cowper: There will be a complaints resolution system.

Ms L.L. BAKER: Is that in the legislation? There is nothing in the legislation around that.

Processes need to be put in place, and they need to be well documented and transparent, otherwise this will be just another breach of human rights. It is not okay to write legislation that will be a flagrant abuse of people's rights.

Mr M.J. Cowper: What about the right to go down the street and not get punched?

The SPEAKER: Order, member!

Ms L.L. BAKER: I am sure the member will have his chance if he really wants to speak.

Mr M.J. Cowper: I am getting very frustrated listening to this drivel!

Ms L.L. BAKER: Perhaps I will just go slowly and the member can really get frustrated!

Ms A.J.G. MacTiernan: You would really love to go back to *Life on Mars*!

Mr M.J. Cowper: That is where I last saw you!

The SPEAKER: Order, member!

Ms L.L. BAKER: Democracy is not about the law of the majority; it is about the protection of the minority. I remind the member of that. That is an Albert Camus statement that I remember from long ago. This is not a good piece of legislation. It will not do anything for our community. It will not help our police force. All it will do is pull apart children, Aboriginal people and minority groups in our community, and cause more problems for the police. If the minister does not understand that, he needs to get out a bit more and walk around the streets with the police, when they are trying to do their job, and try to work out how he can strengthen their credibility and the respect that the community has for them. The minister cannot do that by introducing this flagrant breach of human rights. This legislation will put the police in a very disadvantaged position. The minister needs to think seriously about this piece of legislation. It is a ridiculous attempt to do something, but it is never going to succeed.

MR C.J. TALLENTIRE (Gosnells) [11.18 pm]: The Criminal Investigation Amendment Bill poses many problems. In many ways, I would love to be able to support a piece of legislation that will rid our streets of dangerous weapons. But this legislation is not going to do that. It is not going to do that in a way that is fair and equitable. It will not achieve that. What it will achieve is serious injustice on our streets. The people of the electorate of Gosnells are absolutely appalled and disgusted by the prevalence of weapons in our entertainment precincts. Yes, they want something to be done about that. But they also want something to be done about the violence that comes from alcohol abuse in our entertainment districts. They are sick of hearing about the Barnett-Johnson crackdowns on violent alcohol-induced behaviour, when what they see are actions that still leave the pubs able to serve alcohol without serious constraint, and that leave patrons who are of a more sensible mindset and of better behaviour vulnerable to the attacks of those who are drunk and disorderly. The idea of having machetes, flick knives and even handguns on our streets is abhorrent. No-one wants that. We would love to rid our entertainment precincts of those things. Likewise in the Gosnells electorate, we would love to feel that events like Gozzy Rock—a wonderful annual event that is enjoyed by many young people in the area—are totally safe events. To achieve total "safeness", we have to go about it in a way that will not remove the standard of rights of others that we would expect a citizen to enjoy in a modern society.

There is a rationale that says that if one has nothing to hide, there is nothing to fear. It is the sort of feeling that we have when we go through a random breath test. Members of this place would be almost pleased to go through a random breath test. Members would think, "I have nothing to fear; I am happy to be tested." But there is always that nagging doubt in one's mind that maybe the test machine might be out; it might go wrong. We would be dealing with something that would be manageable. One would be able to give a reason for or demand a blood test afterwards, if there were an anomaly in the result.

The fact is that when it comes to stop-and-search procedures, we are vulnerable not to a mechanical anomaly but to failings of other human beings. With our police officers, as wonderful and as committed as they are, there is the potential that someone might be caught in an "off" moment and might go too far and provoke something that could be much more serious. It could also be a matter of choice; that is, that the person who is stopped and searched makes an irrational decision or makes a decision based on a kind of rationality that others have talked about—that might be based more on a racial profile or a sociological profile. Those are the dangers with this legislation.

The opposition will put forward amendments. Adoption of those amendments is the only way this legislation could possibly be made tolerable. I would like to focus on one of those aspects; that is, in relation to provisions that would ensure that someone who did not speak English properly was given a full explanation of his or her rights, which is essential. Indeed, I recall back in the mid-1980s, when I was first living in France, being stopped and searched on the streets of Paris. I had finished work at 3.00 am. At the time, I was employed as a dishwasher, and 3.00 am was my normal finish time, but it was still unusual to see someone walking home along the Boulevard Haussmann at 3.00 am. Therefore, I was stopped and searched. I was quite intimidated by that experience. Indeed, the undercover police officers who pulled me over did not reveal their identities straightaway. They just looked like people who were perhaps about to mug me. Fortunately, reason prevailed and there was not a more sinister altercation. The event was an unpleasant one and has given me reason to believe that such powers have to be constrained in a very strong manner. That is what the amendments to be moved by the opposition are all about.

I note there will be an amendment to ensure that the legislation is reviewed in one year, and not in five years. An amendment will also be moved to delete the so-called commissioner's declaration altogether. The bill contains the idea that the commissioner, with a quick phone call to the police minister, could suddenly declare an area to be designated as one in which stop-and-search provisions will be allowed to come into effect. Yes, we would all like to rid the streets of dangerous weapons, but the important point is how we do it. What are our priorities for antisocial behaviour? Issues such as trading in illicit drugs and, more particularly, the abuse of alcohol in entertainment districts really dominate and cause all the problems of antisocial behaviour in those precincts.

I will quote John Stuart Mill's essay on liberty, which was written in 1854. He asked the question: how much of human life should be assigned to individuality and how much to society? He was wrestling with this very issue. How much individual freedom should be traded away for what might be perceived as a benefit to the whole of society? I note that many members opposite believe in the freedoms that individuals should enjoy; they believe in individual freedom. Indeed, many in the Liberal Party would defend the right of someone to pollute the atmosphere rather than constrain that individual's pollution for the benefit of society, but that is perhaps another matter. I return to John Stuart Mill. Towards the end of his essay on liberty, he pointed out —

> … a State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.

Some of the philosophical underpinnings of our modern democracy, our parliamentary system, put emphasis on ensuring that the rights of individuals do not get lost when we try to achieve things at the societal level. We must make sure that we protect individuals, especially the weaker individuals in our society—those who are vulnerable and who are likely to be pulled over on the street and stopped and searched for no reason other than their visual appearance.

This legislation is of grave concern. Should the opposition's amendments be passed, the opposition will be supporting the bill. However, without these amendments, it would be a wholly unsatisfactory piece of legislation. I believe that we have to defend the rights of individuals and make sure that our society is free of dangerous weapons, but we need to find more effective mechanisms than just pulling over individuals. There are far better ways of ridding our streets of dangerous weapons.

MR M. McGOWAN (Rockingham) [11.27 pm]: Every day is an anniversary of something. Today is 10 November. It is the day between two major anniversaries. Tomorrow, in half an hour, it will be 11 November, the anniversary of the end of the First World War. Yesterday, 9 November, was the twentieth anniversary of the fall of the Berlin Wall, the twentieth anniversary of the fall of communism and the twentieth anniversary of the fall of the police states of Eastern Europe. Interestingly, I have a copy of tomorrow's *The West Australian*. Tomorrow, 11 November 2009, is the ninety-first anniversary of the end of the First World War. Sixty thousand Australian soldiers died and 300 000 Australian soldiers were wounded in that conflict. It was a grievous event—perhaps the most grievous event—in the recent history of this land and what does the front page of tomorrow's *The West Australian* say? Its headline says, "They fought for our freedom". There is a range of reasons that those young men fought. I think the principal reason that most of them fought to the end of the First World War, throughout those dark years, and survived that conflict was, in their minds, to support those they were with. It is an unusual philosophy, but I think those men fought in support of those they were with. But if they, being young men, had looked deeper and thought long term about what they were doing there, and if they had thought about how Australia would be 91 years hence, I think they would have thought that freedom was one of the important reasons they were fighting. They were fighting for the freedom to be Australian and the freedom to live a life without arbitrary interference. If the survivors of the thousands who lie in the fields of northern France and Belgium and in the graves of Mesopotamia and Turkey, and those who lie on the bottom of the ocean, had to rationalise why their friends died, I think that they would rationalise that freedom was important.

What was it freedom from? It was freedom from arbitrary government. That is one of the things we must stand for. Throughout history, arbitrary government has killed a lot more people than anything else. It has caused a lot more trouble for societies than anything else in human history. The arbitrary nature of the state and what the state can do to its citizens and to the citizens of other states has caused immense problems throughout human history.

What was the other anniversary this week? Yesterday, 9 November, was the twentieth anniversary of the fall of the Berlin Wall. I remember it happening. On 9 November 1989 I was just about to finish university. Admittedly, I was a little preoccupied with my final-year law exams, but I remember watching the television on that occasion and seeing thousands of East Germans fleeing through the gaps in the wall, climbing the wall, knocking it over, and embracing those on the other side, because they were fleeing a police state. They were fleeing a state in which the police had unfettered powers in what they could do to those people who lived within the state. That is what they were fleeing. That is why they embraced the idea of a western-style liberal democracy. They embraced that because they liked the idea that people could live their lives without the arbitrary intrusion of police and state into their lives. If members look into the history of East Germany from 1945 to 1989, they will see that it was actually quite a logical successor, in a way, to what had gone before, which was, from 1993 to 1945, the Third Reich. East Germany had been through six or so decades of the arbitrary intrusion of the state into people's lives, and people in that society fled it as soon as they had the opportunity to do so. What took place on 9 November 1989 portended the fall of all those other states that operated in that manner, whereby people were subject to those sorts of restrictions on their individual liberty. The people in Eastern European states and the states that were the former Soviet Union wanted to escape that style of government—the arbitrary intrusion of the state into people's lives.

I happen to believe in civil liberties. When I was younger I did not realise that the things that we take for granted, such as the individual freedom to live our lives without other people, or other institutions, telling us how we have to live our lives, are important. In that period of history in Europe, in advanced countries made up of highly educated people who enjoyed a lifestyle similar in many ways to our own, it became very easy for laws to be enacted and passed that inflicted manifest injustices on people's lives, intruding into every avenue of their daily lives. We saw it in Germany in the 1930s, in East Germany from the 1930s to the 1980s, and in Eastern Europe and the Soviet Union from 1917 and 1945 through to 1989 and 1991. One of my favourite books, *The Rise and Fall of the Third Reich*, discusses at length the early days of the sorts of laws that took away people's individual liberties, and how they just rolled through society.

I am not suggesting that this government is in any way similar to those governments that ruled Europe at those points in time. However, I am suggesting that a law allowing people to be searched without any reason, and under which any area in this state can be declared an area in which people can be stopped and searched by the police, would not have been out of place in those countries at that time. Anyone who reads the history of that period will know that laws allowing the state and the police to intrude on people's lives were in place in those countries at that time. That is what all those people rushing from East Berlin to West Berlin were fleeing. They were fleeing that style of life, because that was not what they wanted to enjoy. That is not the life that they wanted. I do not want that sort of life. I do not want the kind of life in my city and my state in which the police on the street can arbitrarily stop me, my wife and my children for no reason whatsoever, take off items of our clothing and search us. That is not the type of society that is Australian. That is not the type of society that these young men were fighting for.

The Liberal Party, as a liberal party, should be ashamed that it promotes laws that inhibit and attack the individual liberties of our citizens in this way. The Liberal Party once had a dominant wing that actually believed in the liberties of our citizens. That wing of the Liberal Party is now absolutely and completely dead in Western Australia. I do not know whether it survives anywhere else throughout this land, but in this state that wing of the Liberal Party is gone and buried. It is finished. The Liberal Party has no belief in the idea of checks and balances in government. These laws remove the checks and balances that those young men fought for. With these laws, the government is eroding the freedoms that we now enjoy. I find it incredible that the government is so determined to pursue this agenda that it ignores the basic instincts and good sense of the people of Western Australia. Most Western Australians would see that these laws and this Eastern European, East German style of government and law go against everything for which Western Australia and Australia have stood for a long time. In its rush to engage with what it thinks is politically better, so that it can claim it is tough on law and order, the government is ignoring the commonsense values of ordinary Australians. I am not afraid—I am absolutely unafraid—of saying to the people in my electorate, the electorate in which I live, that I do not want areas of my electorate roped off by law, and if people step within that area, they can be arbitrarily searched and have items of their clothing removed by the police for absolutely no reason—for no suspicion whatsoever. I have no qualms about going down to Rockingham Beach, where I live, and saying to the people on the street there, "How would you like it if a police car pulled up right now and you and your friends and family were put against that wall and searched for no reason?"

Another member raised this matter. The mandatory sentencing laws were passed. How does the government think people will respond? I am talking about middle-aged gentlemen like those gentlemen over there on the other side who go out and have a bottle of wine with their spouse on a Friday night and are then subjected to these laws. Does the government exclude the possibility that they might react in a manner that they ordinarily would never have done in their entire lives? They may cause themselves to go to jail because of the fact that an arbitrary, unfair law was put in place that provoked them into taking actions that they would never have taken otherwise. The government is promoting people breaking the law, assaulting a police officer, and therefore going to jail. They fit together.

I acknowledge that the mandatory sentencing laws will apply to a tiny proportion of Western Australians—namely, those who assault a police officer, for whatever reason. However, these laws will apply to everyone. They will apply to members of the Liberal Party branches. They will apply to family members of those opposite. Wherever they may be, they can have that situation enforced upon them; and if they react in a way which is totally out of character, but which is based upon the fact that they may feel oppressed or provoked by a police officer, they, their son or their daughter, or their mother or their father, may find themselves imprisoned. I thought it was a very good point that one of our members raised.

I have a lot of faith in the state's police; I do. Broadly, I like police officers. I have worn a uniform in my life. It was not the same uniform as that worn by a police officer, but I did wear a uniform. I understand the concept of duty, and I understand the concept of being a member of an organisation that a person is loyal to. I understand that. I was very loyal and I was very proud of the uniform that I wore when I was an officer in the Royal Australian Navy. I was very proud of that, and I am still proud to be a reservist in the Royal Australian Navy. But does that mean that I think that organisation is infallible? No. Do I think that the police are infallible? No. Did we see an example not more than a year or 18 months ago in which 20 or so police officers—on what pretext or for what reason, who knows—took over a newsroom at *The Sunday Times* to secure the notepad of a journalist? Did we see that? Was it in our term of government? Yes. Did we have any knowledge? Did the parliamentary inquiry into that matter determine that we had any knowledge? It said no, we did not, and we did not. It came as a complete surprise to us. However, what does that demonstrate? It demonstrates that sometimes the police make mistakes. That raid showed that gross mistakes can be made without the knowledge of any people in power. What I am saying is that the police —

Mr R.F. Johnson: What was the mistake?

Mr M. McGOWAN: I should not respond. However, the mistake was the invasion of the newsroom at *The Sunday Times* by the police officers. It was a mistake. I thought that they acted in an arbitrary, over-the-top fashion. Can that happen? Yes, it can. There is no doctrine of infallibility surrounding our police. As I said, I have liked virtually all the police officers whom I have met, but do I think they are infallible? No. Do I think they could make a mistake under these laws? Absolutely.

I will conclude on this note. I think the government believes that the politics of this are with the government and that it can win the politics of the public by proclaiming this. However, I think that the ordinary, decent folk of this state who will be subject to this, whether they are working-class people, middle-class people or affluent people who live in the western suburbs, will be quite nervous about this. They will think about what these young men tried to protect. That is what they will think about. If the minister knew anything about the history of this country and of the events during the First World War, the Second Word War or any of the many conflicts that we have served in since, and of the history of eastern and central Europe and the Soviet Union, he would know that proper checks and balances must be put in place on police or else society is on the slippery slope to something very dangerous. Anyone who describes themselves as a Liberal should understand that. The Liberal Party is not a liberal party; it is a reactionary party. Its members should think about whether they should blindly follow this course of action or start to speak out about whether this is the right thing to do. That is what they should be doing. I know that it is not the right thing to do. I know that these laws are unwarranted and unnecessary and put our state into a position in which it has never been before, and that is a position of mirroring laws that existed in nasty, totalitarian regimes in parts of the world that have no place in modern Western Australia.

MR P. ABETZ (Southern River) [11.47 pm]: I am a little older than the member for Rockingham and I remember very well the very same arguments being trotted out when random breath testing was brought in. It was said that our soldiers had fought for freedom and that we were bringing in a terrible law that would allow the police to stop drivers for no reason whatsoever. It was said that that was an absolute abomination and would be the beginning of a police state and the demise of democracy in this country. The reality is that every one of the arguments that have been trotted out by members opposite was used when random breath testing was brought in. The question is: did those people have good reason for saying that? In a sense, we sacrificed a certain amount of our liberty; that is, that we could drive down the road. The civil libertarians were saying that the police should have the power to breath test only people who were weaving all over the road or driving erratically in some other way. In other words, if the police did not have good grounds for suspecting that a person behind the wheel was under the influence, they should have no right to pull a person over. We have come to accept that as totally acceptable. Why? It is because it saves lives. Ask the family who lost their daughter Fiona in December 2007 when a drunk drove the wrong way on a freeway and killed their daughter. What would members prefer? Would they prefer the freedom of not being pulled over unless they were weaving all over the road, or are they willing to sacrifice a little bit of freedom for the sake of safety? The question that we have to ask is whether sacrificing a little bit of our so-called liberty is worth the benefits that flow from it. If I were a person who wanted to go to Northbridge, given the fact that violence goes on there at times, having to take off my jacket and have somebody quickly run a metal detector over me would be a very, very small price for me to pay for that improved safety. By the same token —

Mr P.B. Watson: And your wife and your daughter and your son!

Mr P. ABETZ: Absolutely, because their safety is more important to me than that.

Several members interjected.

Mr P. ABETZ: The important thing that we need to keep in mind is that ultimately the greatest threat to democracy is anarchy. I was born in Germany and I can still remember when I was a teenager asking my mother, who was a teenager in the time of Hitler —

Several members interjected.

The SPEAKER: Members!

Mr P. ABETZ: I asked my mother, "How come you and so many of the German people got sucked in by Hitler?" My mother said to me, "You know when I was a teenager the streets were not safe. It was anarchy, so Hitler provided security to get people to follow him. People want security more than their liberty." That is the point. Therefore, it is always the —

Several members interjected.

The SPEAKER: Members! If you want to have conversations in this place and you do not want them to be heard by those in this place who are entitled to speak, and I am directing my comments to those behind me, I suggest that you take them out of this place before I call you.

Mr P. ABETZ: The important thing is that we need to have that balance because if we allow anarchy then people will sacrifice anything for the sake of getting their security back. What is the point of having liberty if we are going to get killed? People in South Africa live with a massive crime problem—20 000 people are murdered every year and that is considered a conservative estimate. People there would be more than willing to give up some of their liberty for the sake of not having their grandparents or whoever murdered, because safety is far more important.

Therefore, it is a balance that we need to get right but let us not go down this road of trotting out those same old arguments that were trotted out at the time of the introduction of random breath testing. Random breath testing has been so beneficial in reducing the road toll. Sure, we have lost a bit of freedom but it is well worth it. I put it to the house that the simple aspect of being searched with a metal detector when we go to Northbridge, or an area that from time to time would be declared as one of those special zones, is a small price to pay for the safety and the security of our people. As a pastor I have been with people who have lost loved ones through road deaths and other tragic events and I can tell members that they would do anything to get their loved ones back. They would rather give up a little freedom than to have lost their loved ones. Therefore, let us be a little more balanced in our approach. I fully support the legislation.

MR M.P. WHITELY (Bassendean) [11.54 pm]: I will begin by making a few comments in response to the member for Southern River —

Several members interjected.

The SPEAKER: Members!

Mr M.P. WHITELY: If I can be allowed to!

The argument that the member for Southern River made about random breath testing has superficial appeal but there are some significant differences that I ask the member to consider. It is actually not random. When people are breath tested they drive into a zone where everybody is tested.

Several members interjected.

The SPEAKER: Members!

Mr M.P. WHITELY: There is no capacity to single out individuals because the police do not like the look of somebody. Whenever I have driven through a random breath testing point I have been tested. It is universal. The second thing is that it does not involve the humiliation of actually being dragged out from a crowd and —

Mr A.P. Jacob: Yes it can!

Mr M.P. WHITELY: It does if people blow positive; otherwise they stay in their car!

It does not involve the humiliation of being singled out—as people will be in Northbridge and other designated precincts—partially stripped and patted down. The comparison is quite erroneous. Random breath testing was introduced in response to a real problem, not an imaginary or hyped problem. The Western Australian road toll was enormous because people were driving drunk in considerable numbers. There needs to be a more tempered debate about the safety of places such as Northbridge. We are again seeing something that conservatives have historically done in Western Australia, and it is one of the reasons that I am a member of the Labor Party. For the 50 years I have lived in Western Australia, I have been turned off by the attitude of conservatives who are always trying to scare us; it used to be our backyards that were under threat of land rights during the time of the Court government. Now it is the law and order threat. Frankly, the current Minister for Police is a joke; he is the worst of a very bad bunch. He is a likeable, affable fool, but the best thing he could possibly do as Minister for Police would be to do nothing. Whether he is Minister for Police for four, eight or 10 years, the best thing he could do for this state would be to take the pay, take the driver, get driven around, and open the odd police station with a few nice words. But he should not try to influence public policy, because he is a fool and he is putting this state in a worse position.

Withdrawal of Remark

Mr C.J. BARNETT: We let it go through once, but the member knows that it is unparliamentary to refer to a member as a fool.

Mr M.P. WHITELY: I withdraw, Mr Speaker.

Debate Resumed

Mr M.P. WHITELY: I will begin by talking about the way the police are perceived.

Mr R.F. Johnson interjected.

Mr M.P. WHITELY: The minister is likeable and affable, but I do not think anyone has ever accused him of being intelligent or of making a great contribution to public policy.

The police are held in high regard in Western Australia by all sections of society. I have an 18-year-old son who is just starting to experience nightlife and to get out and about. He and his mates hold the police in high regard. I have to say that that has not always been the case with young people; when I was his age, I did not hold the police in high regard. I will tell members why: it is because they behaved differently then. The member for Armadale made some allusions to the *Life on Mars* mentality, where anything went and the police could use their unchecked powers inappropriately. That was part of police culture in Western Australia in the 1970s and 1980s, when I was in my teens and twenties. They are now held in high regard for two reasons: firstly, people appreciate that they have a very difficult job to do, and in many ways it is possibly even more difficult than it was in the 1970s and 1980s; and, secondly, people understand that they do that very difficult job with a sense of restraint and personal responsibility. The police have reasonable powers and they exercise those powers reasonably.

That certainly was not the case when I was in my teens and twenties. The encounters I had with the police in my teens and early twenties did not dispose me to think well of them, because they used their powers unreasonably. I was not the sort of person who should have attracted any attention from the police, because I was a law-abiding teenager. On one occasion, when I was 15, I was waiting at a bus stop near the police station on the Manning side of Canning Bridge. I was waiting on a Saturday afternoon to catch a bus into Perth with one of my 15-year-old mates. We were going to go into a snooker hall to play some snooker. It would have been about two or three o'clock in the afternoon. We were going to play an hour or two of snooker, catch the bus and be home probably about 6.00 or 7.00 pm, but in plenty of time. As I said, it was a Saturday afternoon. Two rotund policemen rolled up, jumped out of their paddy wagon and rushed up to us. We were sitting or standing at the bus stop. They said, "What are you doing here?" I responded, "Waiting for a bus", which I thought was fairly obvious seeing we were waiting at a bus stop. The police said to me, "Don't be smart with me, son." They proceeded to take our names and addresses and they told us to leave the place and go away and stop creating a nuisance. We went home and told one of our fathers, who rang the police and who was informed by the local police sergeant that a car had been stolen across the road from the bus stop a week previously, and we were a couple of likely looking lads because we were 15-year-olds standing at a bus stop. I also had a very close relationship with a young Aboriginal person at the time who was constantly harassed by police on the basis of his race—nothing more than that. He hated police because of his encounters with police in the 1970s and 1980s. He was a young teenager finding his way in a difficult world and he had nothing but unpleasant experiences with the police—much worse than that minor harassment that I endured.

There were good police back then. My cousin is a policeman. He is a long-serving policeman. My cousin, who is about 60 years old now, is a great bloke. He has been a policeman for all his adult working life and he is a great fellow. There were many good police, but there were a lot of them that were sucked into that sort of *Life on Mars* culture at the time.

What changed? It was not that suddenly genetically better people were entering the police force. The change was the checks and balances on their power. The police culture changed because the policies and procedures that governed their actions changed. That is why we have police who are very good at diffusing difficult situations. We have police who go into lots of situations of conflict and diffuse those situations because they have a different mindset and a different culture. That culture is reinforced by policies and practices, and they are policies and practices that have evolved in response to previous abuses. So we are in a good place now and the police are respected. They are respected by the entire cross-section of the community. They are respected, not just by older people who have always tended to have more pleasant experiences with the police, but also by younger people. Younger people understand that they have a difficult job to do and they do it very reasonably. My son's generation supports the police. My son's generation respects the police because, frankly, the police have cleaned up their act.

What will we be doing by allowing this legislation to pass? What will we do to young people's perception of the police by going backwards—in fact, further backwards than we have ever been before—and allowing people, who are doing no harm to anybody, to be frisked and partially stripped simply because police do not like the look of them, or because they are chosen at random?

Mr R.F. Johnson: Did you support the member for Girrawheen's private member's bill?

Mr M.P. WHITELY: I am not familiar with what the member for Girrawheen had in a private member's bill; I really am not.

Mr R.F. Johnson: You must have supported it in caucus because it is almost the same as this one.

Mr M.P. WHITELY: I am not familiar with the contents of that bill. I only have the police minister's word for it and I really do not value it that highly.

Mr R.F. Johnson: I can give you a copy of the bill and you can have a good look at it then.

Mr M.P. WHITELY: We are going backwards by allowing innocent people, who are doing no harm to anybody, to be partially stripped, frisked and patted down by the police. It is not a reasonable power to stop people, without reasonable suspicion, ask them to partially disrobe and to pat them down. It is not a reasonable power. It is random. It will be perceived as unfair. Even if the police have a system where they pick every fifth person, the fifth person who is picked will perceive it as unfair. It will breed resentment, and it will destroy the respect that the police currently enjoy.

This legislation is typical of the approach of this government. Last Saturday night, I went to a 10-year anniversary of a small independent school in my electorate. I met some very interesting people there of various ages. They said to me that they are not impressed by this government. They asked why we are not getting the gloves off and getting into this government. They are particularly unimpressed by this Minister for Police. One guy who impressed me particularly was a man in his early thirties by the name of Anton. Anton is very interested in this legislation, because he works in Northridge. He asked me why the government is trying to scare people. Anton has worked and recreated in Northbridge for about 14 years, ever since he was 18. He said that he cannot see that the situation in Northbridge has become any worse. As I said, there was a very eclectic mix of people at that event. They all had the same concern. Anton was able to give a particularly interesting perspective, because he works as a DJ in one of the nightclubs. He outlined the steps that that nightclub has taken to deal with rowdy behaviour, such as the use of personal recognition technologies, and how nightclubs now have an increased ability to deal with that sort of behaviour. He said it is ridiculous that people are talking down Northbridge all the time when it is a vibrant and exciting place to go to.

As I have said, I have two sons. One is 18, and he has just started going to Northbridge on weekends. The other is 15, and he is a good three years away from being allowed to do that. I am proud of my sons. They are respectful of others, and they expect others to be respectful of them. I am wondering how my son and his friends would feel if they went to Northbridge or the area that will be designated—it could be any area, which is of great concern—and they were chosen at random and asked to partially strip or be padded down for no apparent reason.

Mr M.J. Cowper: Safe!

Mr M.P. WHITELY: No, they would not. They would feel absolutely resentful. They would think: why were we singled out? It will change their attitude to the police. My son is someone who respects the police.

Mr M.J. Cowper: If you were a person who was inclined to buy drugs, where would you go?

Mr M.P. WHITELY: I do not know.

Mr M.J. Cowper: If you were a person who was inclined to buy an unlicensed firearm or contraband, where would you go?

Mr M.P. WHITELY: I do not know. I would not have a clue.

Mr M.J. Cowper: I suspect that Northbridge would be the first place you would go. That is the problem. It is all driven by drugs and by the capacity to turn drugs over. That is where it is happening.

Mr M.P. WHITELY: I am not quite sure of the point the member is trying to make.

The DEPUTY SPEAKER: Order, members!

Mr M.P. WHITELY: What worries me just as much is how this arbitrary power is going to change the behaviour of the police. The great strength of the WA Police is that when they go into situations, they negotiate whenever they can. If they have to use force, they are entitled to use force. If they have to use Tasers, or even if in extreme circumstances they have to use firearms, they are entitled to use Tasers and firearms. But most of the time, when they deal with alcohol-fuelled conflict, they try to resolve it through diplomacy and skill and tact. We will put police officers in a situation where they stop people and ask them at random to partially strip. This legislation asks them to choose who they are going to do that to. It necessarily changes the way police officers behave. I think there are some potentially damaging outcomes from this. It relies totally on the trust of police officers. Largely as a result of the nature of the people who enter the police force, but also as a result of the procedures and policies that have been put in place, most police officers are trustworthy, but they are not all trustworthy. Let us not be naïve—not all police officers are trustworthy. Some will abuse this power. If we give them the capacity to single somebody out and give them grief, some will abuse that power. That worries me enormously.

I also worry about what I think is possibly a fairly common scenario—a person who has had a few drinks, who is out and about, not doing anybody any harm, but has a bit of Dutch courage. This person is approached by the police. The police officer says, "Hey you, come here. I want to search you. Take off your jacket, take off your shoes and take off your coat." The person reacts in an aggressive way. If that person had been left to go about his own business, he would do nothing. But because the police have come to him, he thinks, "You're infringing my civil liberties. Leave me alone. I am not cooperating." All of a sudden it is not too far to go and he has assaulted

police. Once a person has done that, he or she is in jail. There was absolutely no chance of that occurring previously. People could just go about their business. Suddenly people think, "I'm having my civil liberties infringed." They do not like being patted down, and react in an overly aggressive manner. It is an assault on a public officer if there is bodily harm. Bingo—mandatory sentence. That will be a consequence of this legislation.

Australians value civil liberties. The Liberal Party should value civil liberties. It is a natural reaction that I would have; I would be upset. I would be angry if there was an imposition of an unfair power upon me. If I was selected, I would be angry. I would say, "What did you pick me out for?" I am now 50 years old and would react sensibly and in a restrained manner. But I cannot guarantee that I would have done that at 21 or 22 years of age. I think this is a recipe for a conflict that we do not need. There has not been a demonstrated need for this. It is just all part of the desperate desire of the police minister and this government to do something and to appear tough on crime.

I think the member for Girrawheen in her second reading contribution warned against us using inflammatory language. She warned us against describing this as fascist legislation. I want to ask a simple question: would the capacity to stop and search without reasonable suspicion happen in a fascist state? Of course it would.

Mr C.J. Barnett: It happens at every airport we go through.

Mr M.J. Cowper: It happens at the members' entrance.

Mr M.P. WHITELY: Do we expect it to happen when we are walking down our streets in a healthy liberal democracy? No, we do not. I seek an extension, Mr Deputy Speaker.

[Member's time extended.]

Mr M.P. WHITELY: The capacity to stop and search without reasonable suspicion is not a characteristic of healthy liberal democracies. It is a characteristic of fascist states. This is a step towards a fascist state. If it is not fascist legislation, it is certainly legislation that we would expect to see in a fascist state. Australia is better than this. We do not need this legislation. The Premier has identified the fact that we do not have late-night shopping as a barrier to tourism. Of course, Northbridge is our premier tourism precinct. What will be our new slogan for Northbridge—"Come to Perth and get searched for no good reason"? That is the reality of what will happen.

Mr R.F. Johnson: That is the most stupid comment you've ever made, and you've made a few!

Mr M.P. WHITELY: That is exactly what will happen. People will get searched for no good reason—with no reasonable suspicion. People will come to Northbridge and get searched for no good reason. Frankly, this legislation is a step towards a police state.

The Premier interjected earlier and made a parallel with airports. Airports represent a real risk. People understand that there could be catastrophic consequences for hundreds of people if we do not have adequate security checks at airports. Everybody has to go through metal detectors and everybody has their luggage scanned, so it is not discriminatory. It is a risk that we accept. It is an imposition that we accept because the risk is real.

It is the position of my party to try to amend this fundamentally flawed legislation. Frankly, I think this legislation is so fundamentally flawed that we need to destroy its fundamental premise. We would have to remove the stop-and-search powers without reasonable suspicion to make this worthwhile legislation. I cannot imagine the party that I joined, the Labor Party, or me supporting this legislation at the third reading unless it is basically turned on its head. We have decided to support it at the second reading stage, so I am obliged to support the second reading, but frankly I do not want to.

Mr R.F. Johnson: Well don't! Be a man.

Mr M.P. WHITELY: I know this is bad legislation. I was desperately looking for a rationale to support it, apart from the party obligation. There is a term called "cognitive dissonance" that I am dealing with. The member for Cannington explained to me that supporting the second reading of the bill just allows it to proceed to debate. I am happy to use that rationale to support the second reading. However, I cannot imagine that there would be amendments to turn this legislation on its head that could encourage me to support it at the third reading stage. I cannot see that happening. Yes, I will support the second reading of the bill, but, frankly, in trying to amend this legislation, we are trying to fix something that is fundamentally flawed. I believe this legislation stinks. It is no good and it should be flushed away.

Debate adjourned, on motion by **Mr C.J. Barnett (Premier)**.

House adjourned at 12.18 am (Wednesday)

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

ARMADALE COMMUNITY HEALTH CENTRE — SPEECH THERAPISTS

1532. Ms A.J.G. MacTiernan to the Minister for Health

(1) What is the current level of approved positions for speech therapists at the Armadale Community Health Centre?

(2) How many of those positions are filled?

(3) How many staff are on long-term leave?

(4) What will be the length of time where the service will be under full strength as a result of such leave?

(5) What are the current lengths of waiting lists for new clients for speech pathology services at the Armadale Community Health Centre?

Dr K.D. HAMES replied:

1. 7.0 FTE.

2. 6.0 FTE.

3. 1

4. 24 weeks.

5. Speech Therapy across CDS use a 5 category priority system based on age, complexity and severity for waitlist management. Wait times for Speech Therapy at Armadale are as follows:

Category 1: 6 to 8 months
Category 2: 12 to 15 months
Category 3: 20 to 24 months
Category 4: 28 months
Category 5: 36 months

GOVERNMENT DEPARTMENTS AND AGENCIES — COMPUTERS LOST OR STOLEN

1535. Mr E.S. Ripper to the Premier; Minister for State Development

(1) How many laptop, notebook and palm computers from each department and agency within the Premier's portfolios have been reported lost or stolen for the six months to 30 June 2009?

(2) What was the total value of the computers that were lost or stolen?

(3) Did any of these computers contain information that could be regarded as sensitive?

(4) What steps have been taken to ensure that any commercial or sensitive information was not compromised?

(5) Was the loss or theft of any of these computers reported to the police?

(6) If yes to (5), when were these reports made?

(7) Of those reported, what has been the outcome?

(8) If any were not reported to the police, why not?

(9) What steps, if any, have been put into place with a view to eliminating, or at least reducing, these losses?

(10) When were these steps put into place?

Mr C.J. BARNETT replied:

Government agencies in the Premier's portfolio advise:

Department of the Premier and Cabinet (not including Ministerial Offices); Public Sector Commissioner; Office of the Public Sector Standard Commissioner; Lotterywest; Gold Corporation:

(1) Nil

(2)-(10) Not applicable

Department of State Development:

(1) Nil

(2)-(3) Not applicable.

(4) All laptop computers are of a standard build and are password protected. The Department of State Development's policy is for no sensitive data to be stored on local hard drives.

(5)-(8) Not applicable

(9) DataDot® technology has been adopted within the Department of State Development as a deterrent against theft. This is applied to all new notebook computers, PDAs and mobile phones, and has been retrospectively applied to the entire mobile fleet. DataDots® are microscopic discs laser etched with a unique identification number. They are sprayed into crevices on the surface of the item and embedded in a clear, strong glue. The difficulty of removal makes the item unattractive to thieves.

(10) 9 March 2007

GOVERNMENT DEPARTMENTS AND AGENCIES — COMPUTERS LOST OR STOLEN

1541. Mr E.S. Ripper to the Treasurer; Minister for Commerce; Science and Innovation; Housing and Works

(1) How many laptop, notebook and palm computers from each department and agency within the Treasurer's portfolios have been reported lost or stolen for the six months to 30 June 2009?

(2) What was the total value of the computers that were lost or stolen?

(3) Did any of these computers contain information that could be regarded as sensitive?

(4) What steps have been taken to ensure that any commercial or sensitive information was not compromised?

(5) Was the loss or theft of any of these computers reported to the police?

(6) If yes to (5), when were these reports made?

(7) Of those reported, what has been the outcome?

(8) If any were not reported to the police, why not?

(9) What steps, if any, have been put into place with a view to eliminating, or at least reducing, these losses?

(10) When were these steps put into place?

Mr T.R. BUSWELL replied:

In relation to the Treasurer's portfolios I can advise;

Department of Treasury and Finance

(1)-(2) Nil.

(3) Not applicable.

(4) Department of Treasury and Finance laptops are encrypted with a highly secure password protected encryption scheme.

(5)-(8) Not applicable.

(9) The Department of Treasury and Finance Mobile Device Security Policy covers the safe custody and security of mobile devices and data held therein and the Department of Treasury and Finance Information Security Policy spells out the responsibilities of information owners and users in regard to departmental data and assets.

(10) June 2007

Insurance Commission of Western Australia

(1) Nil.

(2)-(8) Not applicable.

(9) The Insurance Commission maintains a record of each laptop computer or notebook within its Fixed Asset accounting system and conducts regular cyclic physical stock checks to ensure all equipment is accounted for.

Each laptop or notebook is allocated to a specific individual member of staff who is held personally responsible for the safekeeping of the equipment.

The Insurance Commission does not own any palm computer equipment.

(10) These measures have been in place for approximately five years.

Government Employees Superannuation Board

(1) Nil

(2)-(10) Not Applicable

Western Australian Treasury Corporation

(1) None.

(2)-(10) Not applicable.

GOVERNMENT DEPARTMENTS AND AGENCIES — WEBSITE MANAGEMENT

1552. Mr E.S. Ripper to the Premier; Minister for State Development

(1) How many websites are maintained for each office or any government department, agency or publicly-owned corporation under each of the Premier's portfolios?

(2) How many new websites are set to be created for new portfolio areas and associated new departments, agencies or publicly-owned corporations?

(3) As at 31 March 2009, what is the global budget allocation for each website?

(4) What government departments, agencies or publicly-owned corporations under the control of the Minister have requested website funding increases in time for the 2009 mid-year review?

Mr C.J. BARNETT replied:

Government agencies in the Premier's portfolio advise:

Department of the Premier and Cabinet:

(1) 14 websites.

(2) None at present.

(3) Global allocation for all 14 sites was $294,797.36 for 2008/09 Financial Year.

(4) No funding increase requested.

Public Sector Commissioner:

(1) 14 active websites.

(2) Nil.

(3) For the 2008-09 reporting period the global budget allocation is in the order of $333,000. This figure includes $206,025. for the Recruitment Advertising Management System which the Commission manages for the Western Australian Public Sector.

(4) No funding increase requested.

Department of State Development:

(1) One

(2) Not applicable.

(3) $12 425 for the 2008/09 Financial Year.

(4) No funding increase requested.

Office of the Public Sector Standard Commissioner:

(1) 2

(2) Nil

(3) OPSSC has provided for budgeted cost of $40 000 for maintaining the 2 websites for twelve months. This includes provision for the planned upgrade of these sites.

(4) No funding increase requested.

Gold Corporation:

(1) Three

(2) One

(3) Website 1 — $45 500; Website 2 — $1 500; Website 3 — $1 000

(4) No funding increase requested.

Lotterywest:

(1) Two

(2) None

(3) http://www.lotterywest.wa.gov.au/ $50 000
https://retailers.lotterywest.wa.gov.au/ $22 500

(4) No funding increase requested.

GOVERNMENT DEPARTMENTS AND AGENCIES — WEBSITE MANAGEMENT

1553. Mr E.S. Ripper to the Deputy Premier; Minister for Health; Indigenous Affairs

(1) How many websites are maintained for each office or any government department, agency or publicly-owned corporation under each of the Deputy Premier's portfolios?

(2) How many new websites are set to be created for new portfolio areas and associated new departments, agencies or publicly-owned corporations?

(3) As at 31 March 2009, what is the global budget allocation for each website?

(4) What government departments, agencies or publicly-owned corporations under the control of the Minister have requested website funding increases in time for the 2009 mid-year review?

Dr K.D. HAMES replied:

Department of Health

(1) Currently WA Health has 131 public-facing websites registered with the Public Sector Commission. Of these 47 redirect customers to an active website and 84 are active.

(2) Nil.

(3) [See paper 1583.]

(4) Nil.

Office of Health Review

(1) One

(2)-(4) Nil

Nurses and Midwives Board

(1) 1

(2) Nil

(3) $50,000

(4) Nil

Department of Indigenous Affairs

(1) Two.

(2) Nil.

(3) No specific budget was allocated for each website maintained.

(4) Nil.

GOVERNMENT DEPARTMENTS AND AGENCIES — WEBSITE MANAGEMENT

1558. Mr E.S. Ripper to the Treasurer; Minister for Commerce; Science and Innovation; Housing and Works

(1) How many websites are maintained for each office or any government department, agency or publicly-owned corporation under each of the Treasurer's portfolios?

(2) How many new websites are set to be created for new portfolio areas and associated new departments, agencies or publicly-owned corporations?

(3) As at 31 March 2009, what is the global budget allocation for each website?

(4) What government departments, agencies or publicly-owned corporations under the control of the Minister have requested website funding increases in time for the 2009 mid-year review?

Mr T.R. BUSWELL replied:

Department of Treasury and Finance

(1) 9

(2) Nil.

(3) www.dtf.wa.gov.au; — $140,800.
www.contractswa.dtf.wa.gov.au; www.gem.wa.gov.au; and
www.tenders.wa.gov.au — $139,000.
www.oss.wa.gov.au — $177,000.
www.servicenet.wa.gov.au — $12,000.
www.works.wa.gov.au; — No specific budget allocation.
www.fremantleprison.com.au — No specific budget allocation.
www.ssc.wa.gov.au — No specific budget allocation.

(4) Nil.

Department of Commerce

(1) The Department maintains a total of eleven (11) websites. The Department maintains a range of additional domains, however, many of these direct to single websites (eg. www.worksafe.wa.gov.au directs to www.commerce.wa.gov.au).

(2) At this stage no new websites are set to be created for the Department of Commerce.

(3) As at 31 March 2009 the global budget for online services for websites for the Department of Commerce was $170 000.

There is no specific budget allocation for each website.

(4) There were no requests for website funding increases in time for the 2009 mid-year review.

Department of Housing

(1) 5 (Housing, Landport, Clydesdale Park, Keystart, Country Housing Authority)

(2) 1 (Brownlie Towers neighbourhood site under development)

(3)-(4) Nil

Chemistry Centre

(1) 1

(2) Nil

(3) $4000

(4) Nil

Insurance Commission of Western Australia

(1) The Insurance Commission maintains 3 websites.

(2) ICWA has no new websites planned for the next year.

(3) The total cost of maintaining all ICWA websites is approximately $225,000 p.a.

(4) There are no requests for additional website funding in the 2009/10 ICWA Budget.

Government Employees Superannuation Board

(1) One

(2) None

(3) $182,135

(4) N/a

Small Business Development Corporation

(1) The Small Business Development Corporation (SBDC) maintains nine (9) websites.

(2) Nil.

(3) The SBDC has not allocated budgets for each website. As at 31 March 2009, the global budget allocation for all websites was a total of $65 000.

(4) The SBDC has not requested website funding increases in time for the 2009 mid-year review.

WorkCover

(1) One

(2) None

(3) www.workcover.wa.gov.au $10 000

(4) None

MINISTERIAL OFFICES — PLANT HIRE AND PURCHASE

1575. Mr E.S. Ripper to the Treasurer; Minister for Commerce; Science and Innovation; Housing and Works

(1) What amount has been paid for the hiring and/or purchase of plants for the Treasurer's office since 31 March 2009?

(2) How many plants are featured in the Treasurer's office?

(3) What company is contracted to tend and water these plants?

(4) What is the cost of this contract to date since 31 March 2009?

(5) How regularly does this company tend to and water the plants?

(6) How many flower arrangements are featured in the Treasurer's office?

(7) Which companies provide flower arrangements to the office?

(8) What amount has been paid for the hiring and/or purchase of flower arrangements since 31 March 2009?

(9) How regularly are flower arrangements replaced?

Mr T.R. BUSWELL replied:

(1) $1140.36

(2) 13

(3) Indoor Gardens Pty Ltd

(4) $1140.36 incl GST

(5) Every 3 weeks

(6) None

(7)-(9) N/A

GOVERNMENT DEPARTMENTS AND AGENCIES — STAFF GENDER STATISTICS

1586. Mr E.S. Ripper to the Premier; Minister for State Development

(1) How many female staff members within each department and agency within the Premier's portfolio are currently ranked at Class 1 and above (for each class please specify)?

(2) What is the percentage of female staff members within each department and agency within the Premier's portfolios at Class 1 and above (for each class please specify)?

(3) How many male staff members within each department and agency within the Premier's portfolios are currently ranked at Class 1 and above (for each class please specify)?

(4) For each person currently employed within the Premier's office please advise:

(a) the number of female staff employed, including those on placement, secondment and attachment; and

(b) the name, position, and contract type of each female staff member?

Mr C.J. BARNETT replied:

As at 22 September 2009 government agencies in the Premier's portfolio advise:

Department of the Premier and Cabinet:

(1) Class 1: 2.

Group 2 Min: One.

(2) Class 1: 0.4% (as a percentage of total staff members)

Group 2 Min: 0.2% (as a percentage of total staff members)

(3) Class 1: 7.
Class 3: One.
Group 2 Min: 2.
Group 4 Max: One.

(4) (a)-(b) Office of the Premier:

Deidre Willmott, Chief of Staff, TOG
Narelle Cant, Principal Adviser, TOG

Renae Soutar, Principal Private Secretary, TOG
Joanne Webber, Senior Media Adviser, TOG
Chris Britnell, Office Manager, TOG
Nicole Henderson, Executive Assistant, Fixed Term Contract
Trena McDonald, Senior Appointments Secretary, Permanent
Carmel White, Executive Assistant, Permanent
Hanh Tran, Reception/Administrative Assistant, Permanent
Stephanie Eathorne, Reception/Administrative Assistant, Permanent
Naomi Hunt, Reception/Administrative Assistant, Fixed Term Contract
Nadeen Roberts, Senior Appointments Secretary, Permanent
Denise Marchant, Reception/Administrative Assistant, Permanent (on LSL to 8 January 2010 — Naomi Hunt is acting in her position currently).
Aurore Humphreys, Principal Policy Adviser Federal/State Relations, TOG

Public Sector Commissioner:

(1) 4

Class 1: 2
Class 2: one
Class 3: one

(2) Class 1: 3.03% (as a percentage of total headcount of females in the PSC)
Class 2: 1.52% (as a percentage of total headcount of females in the PSC)
Class 3: 1.52% (as a percentage of total headcount of females in the PSC)

(3) 4

Class 1: One
Class 2: 2.
PJ (Puisne Judge): One.

(4) (a)-(b) Not applicable

Department of State Development:

(1) There are four female staff members within the Department of State Development currently ranked at Class 1 and above:

Class 1: 2.
Group 2: One.
Group 4: One.

(2) The percentage of female staff members within the Department of State Development at Class 1 and above is:

Class 1: 40%
Group 2: 50%
Group 4: 100%

(3) There are four male staff members within the Department of State Development currently ranked at Class 1 and above:

Class 1: 3.
Group 2: One.

(4) (a)-(b) Not applicable

Office of the Public Sector Standard Commissioner:

(1) Class: One.
Group 3 Max: One.

(2) 66.6%

(3) One (Class 1) long term secondment.

(4) (a)-(b) Not Applicable

Lotterywest:

(1) 3

CEO — Group 1
General Manager, Grants and Community Development — Class 1
General Manager, Business Operations — Class 1

(2) 100% — Group 1; 100% — Class 1

(3) None

(4) (a)-(b) Not applicable

Gold Corporation:

(1)-(4) Although Gold Corporation reports to the Premier, Gold Corporation is governed by the Gold Corporation Act 1987. As a Schedule 1 organisation, we do not have Class 1 workers and our employee's pay scales are not of the same classification as Government employees.

GOVERNMENT DEPARTMENTS AND AGENCIES — STAFF GENDER STATISTICS

1597. Mr E.S. Ripper to the Attorney General; Minister for Corrective Services

(1) How many female staff members within each department and agency within the Attorney General's portfolio are currently ranked at Class 1 and above (for each class please specify)?

(2) What is the percentage of female staff members within each department and agency within the Attorney General's portfolios at Class 1 and above (for each class please specify)?

(3) How many male staff members within each department and agency within the Attorney General's portfolios are currently ranked at Class 1 and above (for each class please specify)?

(4) For each person currently employed within the Attorney General's office please advise:

(a) the number of female staff employed, including those on placement, secondment and attachment; and

(b) the name, position, and contract type of each female staff member?

Mr C.C. PORTER replied:

Commissioner for Children and Young People

(1) 1 (Group 1 Max)

(2) 5.6 %

(3) Nil

(4) (a)-(b) Not applicable

Corruption and Crime Commission of Western Australia

(1)-(2) Nil

(3) 2 x Class 1, 2 x Class 3, 1 x Group 1 Max SAT, 1 x Group 4 Min SAT. These figures exclude the Commissioner.

(4) (a)-(b) Not applicable

Department of Corrective Services

(1) As at 1 October 2009, two female staff members were ranked at Class 1 or above, as follows:

HEAD COUNT — FEMALE
Public Service General Agreement — Nil
Salaries and Allowances Tribunal — Group 1 Minimum — 1
Group 1 Maximum — 1

(2) As at 1 October 2009, 20% of staff at Class 1 or above were female, as follows:

PERCENTAGE OF CLASSIFICATION — FEMALE
Public Service General Agreement — 0%
Salaries and Allowances Tribunal — Group 1 Minimum — 100%
Group 1 Maximum — 50%
Total — 20%

(3) As at 1 October 2009 eight male staff members were ranked Class 1 or above, as follows:

HEAD COUNT — MALE
Public Services General Agreement — Class 1 — 5
Class 2 — 1
Salaries and Allowances Tribunal — Group 1 Maximum — 1
Group 3 Maximum — 1
Total — 8

(4) (a)-(b) Not applicable.

Department of the Attorney General

(1) Class 1 (Level 7 Specified Calling) 11.
Class 1 2.
Group 3 Minimum 1.
Prescribed Office Holders 2.
TOTAL 16.

(2) Class 1 (Level 7 Specified Calling) 46%.
Class 1 33%.
Group 1 Maximum 0%.
Group 3 Minimum 100%.
Prescribed Office Holders 20%.
TOTAL 38%.

(3) Class 1 (Level 7 Specified Calling) 13.
Class 1 4.
Group 1 Maximum 1.
Prescribed Office Holders 8.
TOTAL 26.

(4) (a)-(b) Not applicable.

Equal Opportunity Commission

(1) One, Group 1 Tenured

(2) 3%

(3) Nil

(4) (a)-(b) Not applicable.

Law Reform Commission of Western Australia

(1) None;

(2) 0%;

(3) None;

(4) (a)-(b) Not applicable

Legal Aid Commission of Western Australia

(1) Class 1 (specified calling level 7) = 2
Class 2 (specified calling level 8) = 2
Class 3 (specified calling level 9) = 1
TOTAL = 5

(2) Class 1 (specified calling level 7) = 100%
Class 2 (specified calling level 8) = 67%
Class 3 (specified calling level 9) = 100%

(3) Class 4 (specified calling level 10) = 1
Class 3 (GOSAC general division)= 1
Class 2 (specified calling level 8) = 1
TOTAL = 3

(4) (a)-(b) Not applicable.

Office of the Director of Public Prosecutions

(1) The number of female staff members at each class:

Level 5LG (Previously Class 1) -5 Substantively, 1 Acting
Level 6LG (Previously Class 3) — 7 Substantively
Level 7LG (Previously Class 5) — 0
Group 2 Minimum — 0
Consultant State Prosecutor -1 Substantively
Director Legal Services — 0
Director of Public Prosecutions — 0

(2) The percentage of female staff members at each class:

Level 5LG (Previously Class 1) 25% Substantively, 5% Acting
Level 6LG (Previously Class 3) 41% Substantively
Level 7LG (Previously Class 5) 0%
Group 2 Minimum 0%
Consultant State Prosecutor 20% Substantively
Director Legal Services 0%
Director of Public Prosecutions 0%

(3) The number of male staff members at each class:

Level 5LG (Previously Class 1) 13 Substantively, 1 Acting
Level 6LG (Previously Class 3) 8 Substantively, 2 Acting
Level 7LG (Previously Class 5) 1 Substantively
Group 2 Minimum 1 Substantively
Consultant State Prosecutor 3 Substantively, 1 Acting
Director Legal Services 1 Acting
Director of Public Prosecutions 1 Acting

(4) (a)-(b) Not applicable.

Office of the Information Commissioner

(1) Nil.

(2) Not applicable.

(3) One — the Information Commissioner is classed Group 1 minimum specified by the Salaries and Allowances Tribunal.

(4) (a)-(b) Not applicable.

Ministerial Office

(1)-(3) Not applicable.

(4) (a) 7

(b) Michele Grumont — Executive Officer — s68 Term of Government
Antoinette Martelli — Appointment Secretary — Permanent (PSC)
Ruth Brennan — Reception/Administrative Assistant — s64(1)(b) Fixed Term Contract
Margaret Lynx — Reception/Administrative Assistant — Permanent (PSC)
Aimee Jones — Media Adviser — Secondment (DotAG)
Jean-Marie Wigham — Policy Adviser — Placement (DCS)
Shelley Howe — Reception/Administrative Assistant — Permanent (PSC)

OLD WHIM CREEK ROAD — ROUTE THROUGH PASTORAL LEASES

1610. Mr T.G. Stephens to the Minister for Lands

Further to the Minister's answer to Question on Notice No. 1407 in the Legislative Assembly, 17 September 2009, I ask:

(a) in reference to the road known as the Old Whim Creek Road, will the Minister please table a detailed map that depicts the route taken by this road as it crosses the Mundabullangana and Boodarie Pastoral leases, and in particular where this road crosses the Turner and Yule Rivers and other major creeks and identify any sections of this old road which are no longer either a dedicated public road or a public access route;

(b) is the public entry route to the Old Whim Creek Road via the Boodarie Road or some other access route; and

(c) can the Minister table a map that depicts the access route to the Old Whim Creek road that is still open to the public;

Mr B.J. GRYLLS replied:

(a) [See paper 1588.] which shows the requested route details of the Old Whim Creek Road.

(b) b The dedicated portion of the Whim Creek Road is connected to Cottier Road which in turn is connected to the Great Northern Hwy. The Boodarie Road corridor is yet to be dedicated but I am advised that it connects to the Old Whim Creek Road.

(c) [See paper 1588.] which is a map detailing Cottier Road (access route open to the public) connecting to Whim Creek Road.

PORT HEDLAND — HOTEL AND RESIDENTIAL DEVELOPMENT

1611. Mr T.G. Stephens to the Minister for Lands

(1) Will the Minister provide an update on the release of land at the former hospital site and adjacent land in Port Hedland slated for a hotel and residential development?

(2) When does the Minister anticipate the project will commence?

(3) Can the Minister explain why there have been such long delays in this project's development?

Mr B.J. GRYLLS replied:

(1) In June 2007, LandCorp facilitated the request for proposals for a hotel development, over mainly vacant land adjacent to the existing hospital, on Lot 406. A proponent was selected and given preferred status in November 2007. In December 2008, the Government agreed to allow the proponent to amend their plans so the element of permanent residential development, originally planned for the balance of Lot 406, would occur on Moore Street. This was necessary to meet the coastal set- back planning policy.

(2) The proponent's proposal includes the development of 77 housing units on Moore Street land. This housing proposal is currently in abeyance pending the outcome of a study into impacts of dust over the West End of Port Hedland from Port activities.

(3) In May 2009, the Government moved to bring the outcomes from the Cumulative Impact Study over the West End to a point where residents and developers have some certainty. This will enable people to make decisions about living in, and future development of, the area. A draft report is currently being considered by the taskforce.

PORT HEDLAND — BOODARIE INDUSTRIAL LAND

1612. Mr T.G. Stephens to the Minister for State Development

(1) What plans does the State Government have for utilising Boodarie Industrial land to the south west of Port Hedland?

(2) Is the Minister aware that the land:

(a) is ideally located with access to power and gas; and

(b) is well positioned for immediate use for an industrial development?

(3) What steps is the Minister taking to ensure this land is utilised?

Mr C.J. BARNETT replied:

Department of State Development advises:

(1) The Department of State Development is working with LandCorp to facilitate the establishment of industrial projects within the Boodarie Strategic Industrial Area. Boodarie and other Strategic Industrial Areas are potentially able to access funding under the State Government's Heavy Use Industrial Land Strategy through which statutory approvals toward a basic "project ready" status for the estate could be obtained.

The State Government is also aware of proposals by iron ore miners in the region to utilise land in Boodarie for rail, conveyors, stockpiles, and other export-related infrastructure. Relevant agencies are working to identify the most suitable locations, tenure types and configurations for such developments and to facilitate these projects where appropriate.

(2) (a) Yes. Future proponents in the Boodarie Strategic Industrial Area may be able to access gas and power from the existing gas pipeline and electricity network or from other new providers.

(b) Yes. The Boodarie Strategic Industrial Area is intended for strategic industrial uses and already has appropriate zoning for this purpose. It is also advantageously located with regard to road transport and port access.

(3) See answers to parts (1) and (2).

PARNNGURR COMMUNITY SCHOOL — NUTRITION PROGRAM

1613. Mr T.G. Stephens to the Minister for Health

(1) Is the Minister aware Parnngurr Community School was advised by letter dated 23 June 2009 that the government was cancelling the Nutrition Program offered by the school as a result of 3% efficiency savings?

(2) Was the Parnngurr Community School Nutrition Program cancelled due to the requirement to meet the 3% budget reduction targets; and

(a) if not, why was the school advised this?

(3) Will the Minister provide details as to the number and names of schools that have had their Nutrition Programs cut?

Dr K.D. HAMES replied:

(1) Yes.

(2) No.

(a) The letter dated 23 June 2009 was incorrect. However, the Principal of Parnngurr Community School was aware that funding for the School Nutrition program was incorporated within a non-recurrent service agreement which expired 30 June 2009.

(3) Four schools in the listed Communities will be affected: Parnngurr Community School; Jigalong School; Punmu Community School; and Kunawarrtji Community School.

PARNNGURR COMMUNITY SCHOOL — NUTRITION PROGRAM

1614. Mr T.G. Stephens to the Deputy Premier; Minister for Health; Indigenous Affairs

I refer to the Deputy Premier's response to Question on Notice No. 1130 where he suggests the Parnngurr Community School could join Foodbank's Breakfast Program and ask:

(a) does the Deputy Premier accept Foodbank's Breakfast Program will not be able to replace a comprehensive Nutrition Program run internally by the school;

(b) does the Foodbank Breakfast Program include a meal for lunchtime as incorporated in the Parnngurr Community School nutrition program;

(c) does the Foodbank Breakfast Program provide funding and resources for before and after school sports programs as incorporated in the Parnngurr Community School nutrition program;

(d) does the Deputy Premier accept that his suggestion of replacing the Parnngurr Community School nutrition program with the Foodbank Breakfast Program will see:

(i) a reduction in nutritious food provided to students; and

(ii) a reduction in funding for sporting and activities before and after school; and

(e) has a representative from the Department of Indigenous Affairs been in contact with Parnngurr Community School to assist in providing alternative funding to keep their highly successful program operational; and

(i) if not, why not?

Dr K.D. HAMES replied:

(a) Yes.

(b) No.

(c) The Parnngurr School Nutrition Program did not include funding for before and after school sports programs.

The Foodbank School Breakfast Program does include access to a range of physical activity resources and nutrition training opportunities for the school and community.

(d) (i) Foodbank provides six staple food items which are nutritious.

The Parnngurr School Nutrition Program was a time limited initiative that utilised a broad range of activities to provide the whole community with the skills and knowledge necessary to: establish and maintain a community garden; and build the capacity of the community to choose, prepare, cook and store healthy food options for their respective families in a hygienic and regular manner.

(ii) No. The Parnngurr Community School continues to receive funding for after school activities through the Australian Sports Commission 'Active After-School Community's Program'.

(e) The Department of Indigenous Affairs (DIA) has not been in direct contact with the Parngurr Community School, but the DIA Pilbara office is aware of this situation and that funding for the Parnngurr School Nutrition Program was a one-off contract with an end date.

(i) The DIA Pilbara Office has had discussions with the Coordinator of the Martu Healthy Lifestyles Program. The Program includes a school nutrition program as a component, has funding for two years and is being implemented across the Western Desert remote communities, including at Parngurr. The Parngurr School Principal and some community leaders have excluded this program from operating at Parnngurr.

JIGALONG — HAEMODIALYSIS UNIT

1615. Mr T.G. Stephens to the Minister for Health

(1) Can the Minister confirm the Haemodialysis Unit in Jigalong, opened on the 12 May 2009 by His Excellency, Dr Ken Michael, Governor of Western Australia is still not operational?

(2) Can the Minister detail why this service is not yet operational?

(3) Is the Department of Health working with the Jigalong Council to have this service operational?

(4) When does the Minister expect the dialysis service in Jigalong to be fully operational?

Dr K.D. HAMES replied:

(1) Yes. However, it should be noted that the unit is not operated by the Department of Health.

(2) The Jigalong Haemodialysis Unit is controlled and managed through a joint venture partnership between Newcrest Mining and Western Desert Land Council, based in Jigalong within the community. It has no attachment or affiliation with the community clinic operated by the Puntukurnu Aboriginal Medical Service.

(3) No. The service is independently owned and operated and has been developed independently of Department of Health funding or other partnership arrangements. Department of Health has previously provided advice to the service partners, in terms of equipment purchase and clinical service planning during the establishment phase of the facility. This was informal, casual and infrequent and was not within the mandate of any formal commitment or collaboration.

(4) The Minister is unable to provide a specific timeframe as to when the facility will be operational as it is a privately owned and operated facility.

KEWDALE ROAD-TONKIN HIGHWAY — GRADE SEPARATION

1616. Ms A.J.G. MacTiernan to the Parliamentary Secretary representing the Minister for Transport

(1) What planning has been undertaken for the grade separation of Kewdale Road and Tonkin Highway?

(2) What is the cost of the project?

(3) What funds have been allocated to the project and when does the Government intend to construct this road?

Mr M.J. COWPER replied:

(1) Planning for grade separation dates back to mid 1970s — but now requires major revision due to changes in airport configuration and surface access arrangements.

(2) Cost to grade separate this intersection is estimated at around $85m ($2008) — however this will not solve congestion problems in this area due to deficiencies at adjacent intersections (particularly Tonkin / Leach).

(3) Whilst the current program shows an amount of $65m allocated to this interchange over the period 2009/10 to 2013/14, the intention is to incorporate the grade separation of this intersection into a much larger project to improve transport links around the Perth Airport — the subject of a current infrastructure Australia proposal.

NORTHBRIDGE HISTORY PROJECT — FUNDING

1617. Mr J.N. Hyde to the Premier

(1) Will the Premier guarantee ongoing funding for the Northbridge History Project?

(2) Will the Premier guarantee to continue the same recognition former Premiers Gallop and Carpenter placed on the positive development of Northbridge by retaining the Northbridge History Project within the Premier's department for his entire term?

Mr C.J. BARNETT replied:

Department of the Premier and Cabinet advises:

(1)-(2) The Northbridge History Project is due to conclude at the end of June 2010 as was originally intended. Until that date, both the East Perth Redevelopment Authority and the Department of the Premier and Cabinet are assisting the project team to complete the final phase of the Project.

PRISONERS — STATISTICS

1618. Mr P. Papalia to the Minister for Corrective Services

I refer to the unprecedented increase in prison overcrowding under the current government, and I ask:

(1) What is the current adult prison population?

(2) What number (expressed both as a raw figure and percentage) of adult offenders entering prison between 1 November 2008 and the present time:

(a) have a diagnosed mental illness;

(b) are intellectually disabled;

(c) have, as a component of their sentence of imprisonment, a sentence of prison time for the failure to pay outstanding fines;

(d) are serving a term of imprisonment solely for the failure to pay outstanding fines;

(e) were recorded as having no fixed abode at the time of their sentencing; and

(f) were sentenced for a crime subject to a maximum penalty of two years or less?

Mr C.C. PORTER replied:

(1)-(2) Please refer to Legislative Council Question on Notice 1222..

PACIFIC CIRCLE MUSIC CONFERENCE — FAILURE

1620. Mr J.N. Hyde to the Minister for Tourism

(1) Is the Minister aware of the failure of the Pacific Circle Music Conference (PCMC) in Sydney, which was launched in 1997?

(2) Is the Minister aware of the involvement of similar personnel from the failed Sydney music conference with the Government's $2.7m subsidy of the Perth One Movement for Music Conference, which is set up on a similar basis to the PCMC?

Dr E. CONSTABLE replied:

(1)-(2) Yes.

PACIFIC CIRCLE MUSIC CONFERENCE — FAILURE

1621. Mr J.N. Hyde to the Minister for Tourism

(1) Is the Minister aware that after the failure of the Sydney Pacific Circle Music Conference (PCMC), the 'unique' concept resurfaced as the Australian Music Week in Melbourne?

(2) Is the Minister aware of involvement of similar personnel in the Australian Music Week in Melbourne with the Government's $2.7m subsidy of the Perth One Movement for Music?

(3) Is the Minister aware of pro-Melbourne spruiking undertaken by Australian Music Week personnel, who have now received a $2.7m commitment from the Western Australian Government?

Dr E. CONSTABLE replied:

(1)-(2) Yes.

(3) No.

FITZROY VALLEY DISTRICT HIGH SCHOOL — ATTENDANCE LEVEL

1622. Mrs C.A. Martin to the Minister for Education

Given that high school attendance levels are a key factor in ensuring the best outcomes for some of our most disadvantaged children, I ask:

(a) could the Minister please outline the attendance figures for Fitzroy Valley District High School from the 2007 school year;

(b) could the Minister please outline the attendance figures for Fitzroy Valley District High School from the 2008 school year; and

(c) could the Minister please outline the attendance figures for Fitzroy Valley District High School from the 2009 school year to 31 August 2009?

Dr E. CONSTABLE replied:

(a) Based on first semester data for 2007, the average attendance rate was 63.15 per cent. In 2007, 11 per cent of the total population attended 90 percent or more of the time.

(b) Based on first semester data for 2008 , the average attendance rate was 65.95 per cent. In 2008, 17 per cent of the total population attended 90 percent or more of the time.

(c) Based on first semester data for 2009, the average attendance rate is 61.69 per cent. In 2009, 12 per cent of the total population attended 90 percent or more of the time.

OLD WHIM CREEK ROAD — PUBLIC ACCESS

1623. Mr T.G. Stephens to the Minister for Lands

Are there any reasons why the public cannot turn off the Old Whim Creek Road and drive along the course of the dry creeks and river beds that cross the Old Whim Creek Road, and use these river courses to drive to the various creek and river mouths in order to continue to gain access to the coastal areas for recreation on the beaches and for fishing on the coast; and

(a) if yes, what are these reasons?

Mr B.J. GRYLLS replied:

Yes

(a) The issues raised are legal matters which require detailed legal advice. The issues that have to be considered include the land tenure under the dry river creeks and river beds which may give rights to interest holders of that land tenure, environmental and Aboriginal heritage issues and possible liability issues of the State agreeing to the use of the proposed route. These are issues which can be discussed at the meeting proposed between you and the Department of Regional Development and Lands.

EMERGENCY DEPARTMENTS — FOUR-HOUR TREATMENT RULE

1624. Mr R.H. Cook to the Minister for Health

(1) Could the Minister please detail the number of patients and the percentage of patients that presented at Emergency Departments and were treated within 4 hours consistent with the requirements of the soon-to-be-implemented 4-Hour Rule at the following hospitals:

- (a) Sir Charles Gairdner Hospital;
- (b) Swan Districts Hospital;
- (c) Royal Perth Hospital;
- (d) Armadale/Kelmscott Hospital;
- (e) Fremantle Hospital;
- (f) Rockingham Hospital;
- (g) Peel Health Campus;
- (h) Joondalup Hospital;
- (i) all metropolitan hospitals; and
- (j) all Western Australian country hospitals?

(2) Could the Minister please detail the number of patients and the percentage of patients that presented at Emergency Departments and were treated within 4 hours consistent with the requirements of the soon to be implemented 4-Hour Rule for the following periods:

- (a) April – June 2007;
- (b) July – September 2007;
- (c) October – December 2007;
- (d) January – March 2008;
- (e) April – June 2008;
- (f) July – September 2008;
- (g) October – December 2008;
- (h) January – March 2009; and
- (i) April – June 2009?

Dr K.D. HAMES replied:

(1)-(2) [See paper 1584.]

The Member will be aware that the Four Hour Rule (FHR) Program commences in three stages, and that the Program is underpinned by a rigorous methodology. Stage One hospitals commenced in April 2009 and they are completing the detailed diagnostic phase of the Program. Little movement towards the target is expected during the diagnostic phase. Program targets are specified over a two-year period, culminating in the planned attainment of 98 per cent of patients arriving at emergency departments are to be seen and admitted, transferred or discharged within a four-hour timeframe, unless they are required to remain within the emergency department for clinical reasons.

Stage Two hospitals commenced in October 2009.

Quarterly data on progress under the FHR Program is available on the internet at: www.health.wa.gov.au/fourhourrule/home/monitoring.cfm

KWINANA SEAWATER DESALINATION PLANT — WATER INTO STORAGE DAMS

1626. Mr J.C. Kobelke to the Minister for Water

For each of the years 2006–2007, 2007–2008 and 2008–2009, what was the total volume of water pumped into hills storage dams from the Kwinana Seawater Desalination Plant?

Dr G.G. JACOBS replied:

2006/2007 Nil.

2007/2008 11,527 ML.

2008/2009 10,176 ML.

PUBLIC HOSPITALS — ASSAULTS AGAINST NURSES

1627. Mr R.H. Cook to the Minister for Health

(1) How many nurses have been assaulted by patients from 1 July 2008 – 30 June 2009 at each of the following hospitals:

(a) Royal Perth Hospital;

(b) Sir Charles Gairdner Hospital;

(c) Fremantle Hospital;

(d) Osborne Park Hospital;

(e) Joondalup Health Campus; and

(f) Graylands Hospital?

(2) How many nurses in (1) received medical attention after being assaulted by patients?

(3) What was the nature of each assault in (1)?

(4) How many nurses working in public hospitals were threatened with assault from 1 July 2008 – 30 June 2009?

Dr K.D. HAMES replied:

(1)-(2) [See paper 1585.]

(3) The nature of the alleged assaults on nurses by patients in (1) include: punching; kicking; push and shove; slapping; spitting; biting; scratching and clawing at hands; elbowed with force; alleged assault with equipment; armed with weapon; stabbed with an object; grabbing; muscular strain during restraints; hair pulling; pinching; smeared with faeces; and urinated on.

(4) Threats of assault are not recorded. There was 827 reported incidents of alleged verbal assault on nurses in Western Australian public hospitals from 1 July 2008 to 30 June 2009.

Note: Includes all reported incidents of alleged verbal assaults in Western Australian public hospitals excluding Sir Charles Gairdner Hospital (SCGH), and Joondalup and Peel Health Campuses.

SCGH is unable to differentiate between incidents reported of alleged verbal assault on nursing, medical or allied health staff.

METROPOLITAN HEALTH SERVICES — ASSAULTS AGAINST NURSES

1628. Mr R.H. Cook to the Minister for Health

How many assaults toward nurses occurred in each of the metropolitan health service hospitals in 2008–2009?

Dr K.D. HAMES replied:

The number of incidents reported of alleged assault on nurses that occurred in each of the Metropolitan Health Service hospitals from 1 July 2008 to 30 June 2009:

Metropolitan Health Service Hospitals Total number of incidents reported of alleged assault on nurses.

Princess Margaret Hospital 61
Sir Charles Gairdner Hospital 72
Osborne Park Hospital 2
Graylands Hospital 386
King Edward Memorial Hospital 1
Swan Kalamunda Health Service 101
Armadale Health Service 6
Royal Perth Hospital (including Shenton Park Campus) 163
Bentley Health Service 20
Fremantle Hospital and Health Service 109
Rockingham General Hospital 100

Note: [1] The figures above include all incidents reported of alleged assaults on nurses including verbal with the exception of Sir Charles Gairdner Hospital (SCGH).

The figure provided for SCGH is for all incidents reported of alleged assault on nurses excluding verbal assaults. SCGH is unable to differentiate between incidents reported of alleged verbal assault on nursing, medical or allied health staff.

[2] Excludes Joondalup and Peel Health Campuses.

DEPARTMENT OF HEALTH — INTERNATIONAL RECRUITMENT PROGRAM

1630. Mr R.H. Cook to the Minister for Health

(1) How many nurses were recruited under the Department of Health's international recruitment program in 2008–2009?

(2) How many midwives were recruited under the Department of Health's international recruitment program in 2008–2009?

(3) How many nurses in other specialty areas were recruited under the Department of Health's international recruitment program in 2008–2009?

(4) How many of these were for temporary visa sponsorship?

(5) How many of these were for permanent visa sponsorship?

Dr K.D. HAMES replied:

(1)-(5) [See paper 1586.]

REGIONAL ARTS DEVELOPMENT OFFICER — GASCOYNE REGION

1631. Mr J.N. Hyde to the Minister for Regional Development

(1) Is the Minister aware of the former Legislative Assembly Community Development and Justice Standing Committee's 2004 report into Regional Arts in Western Australia, and associated research showing that recruitment of Regional Arts Development Officers (RADOs) returns $4 for every $1 invested?

(2) Has the Minister made a commitment to funding a RADO in the Gascoyne from 2010, and is this to be funded under Royalties for Regions?

(3) Will the Minister support establishing RADOs in each of the regional commissions?

Mr B.J. GRYLLS replied:

(1) I am aware of the Standing Committee but not familiar with the details of its report.

(2) The Gascoyne Development Commission (GDC) has advised me it has reached agreement in principle with Country Arts WA to jointly fund a Gascoyne-based Regional Arts Development Officer for a period of four years commencing in January 2010. The GDC Board has approved funding from the Royalties for Regions Gascoyne Regional Grants Scheme for its contribution to this initiative.

(3) The advancement of the arts in the regions is generally supported. However, it is up to each Regional Development Commission to assess their regional priorities and determine whether it provides funding or other support to such positions.

ALBANY REGIONAL HOSPITAL — SERVICE QUALITY AND STAFFING ISSUES

1633. Mr P.B. Watson to the Minister for Health

Regarding Albany Regional Hospital can the Minister please advise:

(1) Are there plans to use disposable theatre packs, and if so, what will happen to the equipment from the packs that are not used?

(2) Why are support service staff now being called 'back of house services'; and

  (a) what research was done before making this decision; and

  (b) does the Minister think it will affect the morale of the support service staff?

(3) Will the laundry service in the new hospital be privatised or contracted out; and

  (a) if yes, how many staff will be affected?

(4) Will the workshop and maintenance services in the new hospital be privatised or contracted out; and

  (a) if yes, how many staff will be affected?

(5) Will the kitchen and catering services in the new hospital be privatised or contracted out; and

  (a) if yes, how many staff will be affected?

(6) Why does it take up to 5 weeks to replace a casual staff member?

(7) How long does it take to fill an administration position?

(8) Has the Minister been advised of reports that there is a purple circle between management and staff when it comes to staff promotions; and

  (a) will the Minister investigate these claims?

(9) Is the Minister aware that due to staff shortages, some staff have not been able to take meal breaks or accrued time off in lieu?

(10) What security arrangements are in place and how many staff fill security positions; and

  (a) of these, how many have accredited security training and what has that training been comprised of?

(11) What is the staff-to-patient ratio for:

  (a) dementia patients;

  (b) aged care patients; and

  (c) general admission patients?

(12) What is the number of beds and at what capacity is the hospital running?

(13) On a weekly basis, how many hours do the 'fly in fly out' general practitioners (GPs) work?

(14) How many days have the 'fly in fly out' GPs been unable to work due to illness or other reasons since they started working?

(15) What training has been provided in the last 12 months to the following staff:

  (a) registered nurses;

  (b) enrolled nurses;

  (c) doctors;

  (d) engineering staff;

  (e) administration staff; and

  (f) allied health professionals?

(16) What training opportunities are available to the staff and how can it be accessed?

(17) What are the total full time equivalent (FTE) staff numbers for each section of the hospital?

(18) What is the total FTE staff number positions that are vacant or remain unfilled?

(19) How many FTE staff positions have been acting in the past 12 months, and what are these positions?

(20) How is medical waste from the hospital disposed of currently?

(21) How will medical waste be disposed of at the new hospital?

Dr K.D. HAMES replied:

(1) Like most Western Australian hospitals, Albany Hospital will be moving to disposable theatre packs in the near future. The hospital is currently evaluating the impacts and costs of using customised packs that will include only the equipment that is required for the procedures for which they are used.

(2) Within Albany Hospital, support service staff are referred to as support services or hotel services staff. In a couple of recent documents prepared by people outside of the hospital, they were referred to as "back of house services" as this is another name commonly used for non-core services within the health industry. Albany Hospital support services' staff have stated that they would prefer to be called support services or hotel services and the Minister and management has agreed to using these terms.

(a) There was never any decision made to call support services staff 'back of house services'.

(b) No. Staff have been consulted and are aware that they are now being referred to as support services or hotel services, which are the accepted terms that have always been used at Albany Hospital.

(3)-(5) There has been no decision made regarding these services. There are various models of service delivery that need to be evaluated to determine what achieves the best value for money. The results of the initial expressions of interest will need to be reviewed before any assessment can be made as to whether it is more prudent to deliver these services in house or via the private sector.

(a) This cannot be determined at this time.

(6) Albany Hospital maintains a list of people interested in casual employment at the hospital. Casual staff members are employed on an as needs basis and do not have ongoing positions. Recruitment to the casual pool occurs on an ongoing basis. The process for employing a casual worker is administratively very efficient and can be completed in a timely fashion to suit operational priorities, often within hours.

(7) There are well established and streamlined processes in place to fill vacant positions at Albany Hospital. The timeframe for this varies from a matter of hours for filling an administrative position on a casual basis to several weeks depending on the need to comply with normal public sector processes for advertising and recruiting to a position. In this regard, processes for filling administrative positions are no different to other positions at the hospital.

(8) No. Albany Hospital follows public sector standards for recruitment and selection and if the Member is aware of specific instances where processes have not been followed he should bring these to the attention of the Regional Director.

(a) If the Member can provide evidence of specific instances where recruitment and selection processes have not been followed, then these can be investigated.

(9) The Minister is aware that where management have been advised of staff not taking meal breaks, these staff have been advised that it is a requirement for them to do so. There have been instances where greater than expected numbers of staff have been off work sick at the same time, creating some unavoidable shortages, however, staff are still expected to take their meal breaks. Again if the Member has specific instances where a staff member has been denied meal breaks or has been unable to take accrued time off within a reasonable timeframe, he should be directing these staff to refer their concerns to management for a response.

(10) There are no dedicated security positions at Albany Hospital. The Orderlies and Maintenance staff are trained in handling security issues inside the hospital and police are called if they require any assistance.

(a) Between January 2004 and March 2008, 9 Orderlies and 9 Maintenance staff received PRAXIS training. PRAXIS Aggression Response Management training, included identification, assessment, verbal and de-escalation techniques. PRAXIS was a registered training program with Australian Quality Training Framework.

Since January 2009, 11 Orderlies and 21 Maintenance staff have received Certified Verbal and De-escalation Aggression Management training, (Michael Tunnicliffe Program) which is used across the WA Country Health Service.

(11) (a)-(c) There is no 'staff to patient' ratio. As the Member has been previously advised all wards are staffed according to the Nursing Hours per Patient Day (NHpPD) standards as used throughout the State and agreed with the Australian Nursing Federation.

The NHpPD model has been agreed with the relevant industrial bodies and the Department of Health. The various wards in the hospital have been assessed and a different level of nursing hours per patient have been allocated for each ward. Patients are allocated to the wards based on various clinical criteria rather than their age or whether they have dementia.

(12) There are 30 same day and 83 multi-day active beds operating at 91.84% occupancy.

* NB Bed Occupancy is based on Multi-day Day Beds only.

(13) There are no 'fly in fly out' GPs. The health service does engage the services of a number of locum medical practitioners and emergency medicine specialists to complement local GPs to provide 24/7 medical coverage of the Albany Hospital.

(14) There are no fly in fly out GPs. On one occasion a local medical practitioner was not able to complete a rostered shift. On this occasion alternative arrangements were put in place to ensure the continuity of the medical roster.

(15)-(16) Staff are provided with training in accordance with their job needs. Mandatory training is provided for staff in the areas outlined in the attached document [See paper 1587.]

Staff have access to an application form for attendance at conferences, courses and seminars, that they can submit to their line manager if they wish to participate in additional training outside of what is standard for their job.

(17) [See paper 1587.]

(18) WA Health corporate systems do not capture the necessary information in the required format to answer this question. Work is currently in progress to enable reporting of this information on a monthly basis by the end of 2009/10 financial year.

(19) [See paper 1587.]

(20) Medical waste is buried under supervision, in accordance with the Environmental Protection (Controlled Waste) Regulations 2004. A site inspection and audit was carried out by the Department of Environment and Conservation in May 2009. The subsequent letter to Albany Hospital states "the audit identified no non-compliances with licence conditions or the Regulations."

(21) Medical waste will continue to be disposed of in accordance with the abovementioned Regulations, however, there will be the potential for new technologies to be introduced.

JIGALONG CLINIC — POWER SUPPLY

1635. Mr T.G. Stephens to the Deputy Premier; Minister for Health; Indigenous Affairs

(1) What will the Deputy Premier's portfolio agencies do to ensure the long-running phase and power surge problems at Jigalong Clinic are fixed urgently?

(2) Can the Deputy Premier advise which agency is responsible for fixing the problem which has prevented the two large air conditioners at the clinic from being used?

(3) Can the Deputy Premier advise as to whom can the Puntukurnu Aboriginal Medical Service, who operate the Jigalong Clinic, send their application to recover the cost of damage to medical and diagnostic equipment, and office and living quarters' electrical goods that have needed repair or been damaged and written-off and have had to be replaced as a result of the problems with current power supply?

(4) Will the government take steps to ensure that a permanent back-up generator is provided to the Jigalong Clinic so that:

(a) the air conditioners can be used and valued and difficult to source nursing staff are not lost because of unacceptable working conditions; and

(b) expensive refrigerated pharmaceuticals and immunisation doses are not thrown out?

Dr K.D. HAMES replied:

(1) The Department of Housing (Housing) maintains the power station, transformers and feeders at Jigalong. Under the Remote Area Essential Services Program (RAESP), Housing contracts the Pilbara Meta Maya Regional Aboriginal Corporation (PMM) to deliver this service. Over the weekend of 10 and 11 October 2009, PMM staff, with the assistance of specialist technicians, installed a new transformer on the feeder line to the clinic ensuring a consistent power supply to the clinic. The CEO of the Puntikurnu Aboriginal Medical Service (PAMS) has confirmed the power supply is operating.

(2) Housing is the responsible agency. DIA has been advised by both Housing and PAMS that the issues affecting each individual air-conditioning unit have been resolved and the units are currently operating satisfactorily.

(3) PAMS advises that it carries its own insurance and it is unlikely any claims will be lodged given the age of some of the equipment damaged. If more substantial equipment were damaged PAMS may have pursued claims with Western Power.

(4) PAMS advises that while a backup generator would be welcomed, at present there is no place to store such equipment safely at or near the Clinic. PAMS is currently investigating works to add storage facilities to the existing clinic, which at the appropriate time will be progressed with the Commonwealth.

FRIENDS OF MARY CARROLL PARK — GRANT ACCESS

1638. Mr C.J. Tallentire to the Minister representing the Minister for Environment

What Government grants will the Friends of Mary Carroll Park be able to access under this portfolio, despite the $65m cuts this financial year and $200m cuts over 4 years?

Dr G.G. JACOBS replied:

Under the Environment portfolio the Friends of Mary Carroll Park will be able to access grants from the Environmental Community Grants Program, Community Grants Scheme (for waste), Strategic Waste Initiatives Scheme, Keep Australia Beautiful Council Litter Prevention Grants and the Swan Landcare Program.

GOSNELLS COMMUNITY LEGAL CENTRE — GRANT ACCESS

1639. Mr C.J. Tallentire to the Attorney General

What Government grants will the Gosnells Community Legal Centre Inc. be able to access under this portfolio, despite the $65m cuts this financial year and $200m cuts over 4 years?

Mr C.C. PORTER replied:

In 2009/10 Gosnells Community Legal Centre will receive $95,000 in State Community Legal Services Program (CLSP) funding for a specialist domestic violence service to assist women and families experiencing domestic violence.

In addition the centre will receive $32,500 in State CLSP funding for a mediation service that assists disadvantaged clients with family and neighbourhood disputes.

GOSNELLS WOMEN'S HEALTH SERVICE — GRANT ACCESS

1641. Mr C.J. Tallentire to the Minister for Health

What Government grants will the Gosnells Women's Health Service be able to access under this portfolio, despite the $65m cuts this financial year and $200m cuts over 4 years?

Dr K.D. HAMES replied:

Funding to the Gosnells Women's Health Service, under its current contract with the Women and Newborn Health Service in financial year 2009/10, is maintained at 2008/09 levels.

The Women and Newborn Health Service is unable to comment on any grants that the Gosnells Women's Health Service are able to access because of their non-government, not-for-profit status.

HUNTINGDALE CHERUBS PLAYGROUP — GRANT ACCESS

1642. Mr C.J. Tallentire to the Parliamentary Secretary representing the Minister for Community Services

What Government grants will the Huntingdale Cherubs Playgroup be able to access under this portfolio, despite the $65m cuts this financial year and $200m cuts over 4 years?

Dr G.G. JACOBS replied:

The Department for Communities provides annual funding for a range of grant programs including seniors, volunteers, women and youth. All grants programs are advertised on the department's website throughout the year.

The Department for Communities is not taking a 'blanket approach' to any reduction in its grant programs. Instead, the department will be considering where efficiencies can be made — for example, by reducing duplication across grant program areas and ensuring that funding is focussed on the priorities of the department.

OLDER WOMEN'S NETWORK OF WA — GRANT ACCESS

1643. Mr C.J. Tallentire to the Minister representing the Minister for Women's Interests

What Government grants will the Older Women's Network of WA (based in Thornlie) be able to access under this portfolio, despite the $65m cuts this financial year and $200m cuts over 4 years?

Mr A.J. SIMPSON replied:

The Department for Communities provides annual funding for a range of grant programs including seniors, volunteers, women and youth. All grants programs are advertised on the department's website throughout the year.

The Department for Communities is not taking a 'blanket approach' to any reduction in its grant programs. Instead, the department will be considering where efficiencies can be made — for example, by reducing duplication across grant program areas and ensuring that funding is focussed on the priorities of the department.

PRISON VOLUNTEER PROGRAM — BUNBURY

1644. Mr M.P. Murray to the Minister for Corrective Services

In reference to the Prison Volunteer Program which is a program that offers emotional support for people visiting prisoners in Western Australia's correctional institutions, I ask:

(1) Can the Minister explain what is happening to the Prison Volunteer Program in Bunbury?

(2) Is the Minister considering replacing this successful program?

(3) If yes to (2), at what cost, over and above the cost of running the existing Prison Volunteer Program, will the replacement program cost?

(4) If yes to (2), what involvement will the existing volunteers have in the running of the new program?

(5) If yes to (2), can the Minister explain how many hours, and what hours per week, will be offered to support visitors in Bunbury by the replacement program?

Mr C.C. PORTER replied:

(1) The Family Support Service Centre at Bunbury Regional Prison (previously the Bunbury Regional Prison Visitors Centre) is currently supported by 38 volunteers. As visit sessions at Bunbury have recently increased with the opening of the new Pre-Release Unit, it has been difficult for volunteers solely to meet service demand.

A not-for-profit organisation has recently been contracted to operate the Centre and provide support to existing volunteers and expand service delivery to meet the increased demand.

(2) No. As this is a valuable service, the Family Support Service Centre will continue to provide and expand its service delivery to meet increased demand.

(3)-(5) Not applicable.

RAIL SERVICES — SOUTHERN SUBURBS AND BUNBURY

1649. Mr C.J. Tallentire to the Parliamentary Secretary representing the Minister for Transport

Given that the Government is actively considering a new high-speed rail service to Bunbury, as demonstrated by the Cardno Eppell Olsen survey, I ask:

(a) is the Government actively considering extending the Thornlie Line to Nicholson Road and Canning Vale;

(b) what customer research is the Government undertaking to gauge demand and impact;

(c) has the Government completed its consideration of the MacroPlan Australia Benefit/Cost Assessment prepared for the City of Gosnells;

(d) has the Government responded to the City of Gosnells on the findings and details of the Assessment report;

(e) does the Government have analysis that supports the MacroPlan assessment of $52.6m in net benefit for the State in building a new station at Nicholson Road;

(f) does the Canning Vale/Nicholson Road extension of the Thornlie Line have a higher Government priority than the South Perth train station; and

(g) when will the Government publish the draft 20-year transport master plan for Western Australia?

Mr M.J. COWPER replied:

(a) This project will be considered as part of future planning for public transport.

(b) The PTA has carried out preliminary demand analysis, which show that by 2031 less than 1,000 passengers per day would be added to the public transport system if a station at Nicholson Road was constructed, as the majority of demand lies within existing station. catchments and is accommodated by services already provided.

(c) Yes.

(d) Not as yet. Further consideration is required.

(e) These matters are still under consideration by the Government.

(f) The Government has made known that a business case must be made for South Perth station and this has not yet occurred.

(g) It is expected that the independent panel will present the Government with a final report in 2010.

PRISON VOLUNTEER PROGRAM — BUNBURY

1651. Mr M.P. Murray to the Minister for Corrective Services

Regarding the Prison Volunteer Program, which is a program that offers emotional support for people visiting prisoners in Western Australia's correctional institutions, I ask:

(a) what is happening to the Prison Volunteer Program in Bunbury;

(b) is the Minister considering replacing this successful program;

(c) if yes to (b), at what cost over and above the cost of running the existing Prison Volunteer Program will the replacement program cost;

(d) if yes to (b), what involvement will the existing volunteers have in the running of the new program; and

(e) if yes to (b), how many hours, and what hours per week, will be offered to support visitors in Bunbury by the replacement program?

Mr C.C. PORTER replied:

(a)-(e) Please refer to Legislative Assembly Question on Notice 1644..

TAXI PLATES — LEASED OR OWNED

1653. Mr J.C. Kobelke to the Parliamentary Secretary representing the Minister for Transport

What is the number of taxi plates in Western Australia for each quarter from 30 September 2004 through until 30 September 2009, with breakdown by Conventional, Peak Period, Area Restricted and Multi-Purpose Taxis, and showing for each type how many are leased or owned plates?

Mr M.J. COWPER replied:

Only annual figures are available between 2004 and 2006 per plate type:

Year (end of)	Conventional	Peak Period	Area Restricted	MPTs
2004	955	105	13	84
2005	971	138	17	87
2006	1,037	186	23	93

Between 2007 and September 2009, quarterly figures per plate type are available. These figures are further broken down into leased and owned plates:

[See paper 1589.]

PUBLIC TRANSPORT AUTHORITY — BUS SHELTER REPAIR

1655. Mr C.J. Tallentire to the Parliamentary Secretary representing the Minister for Transport

(1) Can the Minister advise if the Public Transport Authority has a grants program for:

(a) repairing bus shelters that have been vandalised in such a way that glass is shattered; and

(b) replacing the bus shelters with mesh or other shatter-proof materials?

(2) If the Public Transport Authority has a grants program for the repairing of bus shelters, how much has been allocated in the 2009–2010 budget?

Mr M.J. COWPER replied:

(1) (a) No. The Public Transport Authority's Bus Shelter Grants Scheme provides funding assistance to Local Government and schools to assist in the procurement and installation of bus stop shelters throughout Western Australia. Additional repairs required to bus shelters due to vandalism after the grant has been allocated, is the responsibility of the Local Government Authority or school to which the bus shelter belongs.

(b) As the Bus Shelter Grants Scheme provides funds to buy, build or upgrade bus shelters, it would be possible for a Local Government Authority or school to lodge an application to replace a bus shelter under their authority which may include anti vandalism measures such as mesh or other shatter-proof materials. It should be noted however that the Grant Scheme is allocated to successful applicants once per year and therefore the ongoing cost to repair the bus shelter during this time would still be the responsibility of the Authority or school to which the bus shelter belongs.

(2) Not applicable.

CENTRAL AREA TRANSIT BUS SERVICE — FREMANTLE AND JOONDALUP

1695. Dr J.M. Woollard to the Parliamentary Secretary representing the Minister for Transport

(1) How much money was spent by the State Government as part of the cost of running the Central Area Transit bus service in Fremantle in:

(a) 2007–2008; and

(b) 2008–2009?

(2) How much money was spent by the State Government as part of the cost of running the Central Area Transit bus service in Joondalup in:

(a) 2007–2008; and

(b) 2008–2009?

Mr M.J. COWPER replied:

(1) Fremantle CAT

(a) 2007-2008 $377,206.87

(b) 2008-2009 $395,844.27

(2) Joondalup CAT

(a) 2007-2008 $145,885.07

(b) 2008-2009 $416,007.76 1

1 Amount includes additional cost of operating trial extended Joondalup CAT service.

ARMADALE-KELMSCOTT MEMORIAL HOSPITAL — MIDWIFE POSITIONS

1699. Ms A.J.G. MacTiernan to the Minister for Health

(1) What were the number of midwife Full Time Equivalents (FTEs) allocated to the Maud Bella's ward of Armadale–Kelmscott Memorial Hospital as at:

(a) 1 July 2007;

(b) 1 July 2008; and

(c) 1 July 2009?

(2) How many of these positions are currently vacant?

(3) How many positions are filled on a part-time basis only?

(4) How many births took place in 2007–2008, 2008–2009 and July 2009 to present at the Armadale–Kelmscott Memorial Hospital?

Dr K.D. HAMES replied:

(1) (a) 27.15.

(b) 27.15.

(c) 32.07.

Note: The above FTE includes use of agency and casual midwives.

(2) 2 FTE vacancies.

(3) 24.41 FTE.

(4) The number of births at Armadale Kelmscott Memorial Hospital:

2007-2008: 1459
2008-2009: 1515
July 2009 until 20 Oct 2009: 521

ONE MOVEMENT FOR MUSIC FESTIVAL — HEALTHWAY SPONSORSHIP

1811. Mr J.N. Hyde to the Minister for Health

As One Movement Pty Ltd has received sponsorship from Healthway for the One Movement Festival, I ask:

(a) what expected paid attendance totals of patrons for ticket-entry performances were offered/agreed to in negotiations with Healthway;

(b) what expected attendance totals of patrons for free performances were offered/agreed to in negotiations with Healthway; and

(c) can the Minister detail the sponsorship agreement between One Movement and Healthway?

Dr K.D. HAMES replied:

(a) Not applicable. Healthway's negotiations with One Movement Pty. Ltd. were related to the non-ticketed One Movement Fringe Festival.

(b) One Movement Pty. Ltd. estimated audience attendance totals for the 3-day Fringe Festival at 20,200.

(c) Healthway provided funding of $50,000 to One Movement Pty. Ltd. through the Arts Sponsorship Program to support the One Movement Fringe Festival. The Fringe Festival was a free non-ticketed event conducted in streets and laneways throughout the Perth CBD over 16-18 October 2009.

The sponsorship provided an outstanding opportunity to promote a smoke free message to a priority population group through a major outdoor event, consistent with Healthway's strategic objective to reduce harm from tobacco.

Under the terms of the sponsorship agreement $40,000 was directed towards costs associated with the production and staging of the Fringe Festival to maximise performance opportunities for local artists and increase community engagement, conditional on the event being promoted as smoke free. A further $10,000 was allocated towards promotional strategies and implementation of the smoke free policy.

Whilst not a condition of the sponsorship contract, as a result of the relationship with Healthway One Movement Pty Ltd expanded smoke free policies to other Festival venues and activities beyond the Fringe Festival.

PILBARA — NATIVE VEGETATION CLEARING IN ROAD RESERVES

1816. Mr T.G. Stephens to the Minister for Water

How many notifications have been made under the Country Areas Water Supply Act to clear native vegetation in road reserves in the Pilbara region since 2005?

Dr G.G. JACOBS replied:

There have been no notifications under the Country Areas Water Supply Act 1947 to clear native vegetation in road reserves in the Pilbara region since 2005.

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