Legislative Assembly

Wednesday, 18 November 2009

THE SPEAKER (Mr G.A. Woodhams) took the chair at 12 noon, and read prayers.

MOORE RIVER — HOUSING LOTS SOUTH OF ESTUARY

Petition

MR C.J. TALLENTIRE (Gosnells) [12.01 pm]: I have a petition signed by 179 people regarding urban development south of the Moore River. The petition reads —

> 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.

I table the petition.

A similar petition was presented by **The Speaker (Mr G.A. Woodhams)** (20 signatures).

[See petitions 181 and 182.]

URANIUM MINING

Nonconforming Petition

MR C.J. TALLENTIRE (Gosnells) [12.03 pm]: I have a further petition. Unfortunately, this petition does not conform to standing orders. It is regarding uranium mining, is signed by 564 people and I shall deliver it to the Premier as requested by the petitioners.

SHACK SITE COMMUNITIES

Petition

THE SPEAKER (Mr G.A. Woodhams): I present a further petition similar to several similar petitions that have already been presented in this place about preventing the loss of leased shack site communities in Western Australia as alternative family recreational and holiday destinations for people in Western Australia. The petition contains 248 signatures and conforms to the requirements of this place.

[See petition 183.]

PROCEDURE AND PRIVILEGES COMMITTEE — FIFTH REPORT — "INQUIRY INTO ALLEGATIONS ASSOCIATED WITH THE REMOVAL OF 'THE CLIFFE' FROM THE STATE REGISTER OF HERITAGE PLACES"

Correction — Statement by Speaker

THE SPEAKER (Mr G.A. Woodhams): Members, I present to the house a correction to a tabled paper. I advise members that I have received a request from the Procedure and Privileges Committee to amend that committee's fifth report of the thirty-eighth Parliament, tabled on 17 September 2009. Page 11 of the "Inquiry

into Allegations Associated with the Removal of 'The Cliffe' from the State Register of Heritage Places" contains the following statement —

> However, following the auction, plastic surgeon Dr Harold McComb bought The Cliffe, and lived in it until his death in 1995.

This is incorrect; it should read —

> However, following the auction, plastic surgeon Dr Harold McComb bought The Cliffe, and lived in it until 1995.

Under the provisions of standing order 156, I advise the Legislative Assembly that I have authorised the necessary correction to be made to the tabled paper and I table the amendment.

INFRASTRUCTURE AUSTRALIA — FURTHER SUBMISSIONS

Statement by Premier

MR C.J. BARNETT (Cottesloe — Premier) [12.06 pm]: On 5 November the Liberal-National government submitted a further round of proposals to Infrastructure Australia. The submissions have a strong focus on strengthening our regions and include transport upgrades, cities in the Pilbara, common-use infrastructure to encourage private enterprise and improving the capacity of existing infrastructure. While indicative project costings have been provided, the government sees each project being funded through a combination of Infrastructure Australia, state government and private industry funding.

Seven priorities have been identified, of which Gateway WA, a new airport, is a priority for Western Australia. The consolidation of the domestic and international terminals will require an upgrade to the roads around the airport and will also provide an opportunity to create a more efficient and attractive entry to Perth city. This project was in our 2008 submission to Infrastructure Australia and is in the Infrastructure Australia proposal pipeline. It is now our number one priority at an estimated cost of $600 million, with funding being sought to contribute to much needed upgrades to Tonkin Highway, Orrong Road and interchanges along Tonkin and Leach Highways.

The Pilbara region accounts for 35 per cent of the nation's mineral and petroleum production and around 23 per cent of its merchandise exports. The strategic importance of the area warrants investment to create vibrant, sustainable regional cities that can support and deliver a skilled workforce, while offering high standards of living to local communities. The Liberal-National government has committed $300 million to a Pilbara revitalisation plan and is seeking Infrastructure Australia funding totalling $471 million for urgent works for airport upgrades, wastewater services, serviced land and some accommodation.

Inpex Corporation is conducting feasibility studies on the construction of a supply base at Point Torment near Derby in the Kimberley. A supply base would support commercialisation of Browse Basin gas reserves by Inpex and others. It would include an appropriate port, port-related infrastructure and industry land. The construction phase of the project has an estimated total cost of $550 million. The bulk of that expenditure will be borne by the private sector, with funding being sought for common-use infrastructure.

The Liberal-National government has announced that it will build a 330-kilovolt powerline from Pinjar to Eneabba in the mid-west. Infrastructure Australia funding is sought for the second stage to Moonyoonooka. This will provide reliable supply to Geraldton, the Oakajee port and industrial developments; allow renewable energy projects to feed into the grid; and support the Square Kilometre Array project. This mid-west energy project is estimated to cost $280 million.

The Western Australian grain industry is a major exporter, with more than half the grain traditionally moved by rail. The Liberal-National government has been examining the needs of the grain freight rail network. Infrastructure Australia funding has been requested for two key components of the network, including re-sleepering the Avon-Albany rail line at a cost of $43 million, and upgrading Chester Pass Road—a six-year program with a cost of $129 million.

With increased growth in industry, the single-track south west rail line and port land-side infrastructure is approaching capacity. This project looks to expand the capacity of rail to facilitate the export of increased volumes through Bunbury port by removing an existing bottleneck between Brunswick Junction and Bunbury. The cost of this project is estimated at $63 million.

Finally, Port Hedland inner harbour: the port at Port Hedland requires enhancements to cater for the increased capacity required by existing and new projects. The port specifically needs to have the channel widened and dredged to cater for more large ships.

Ms M.M. Quirk interjected.

The SPEAKER: Member for Girrawheen!

Mr C.J. BARNETT: The estimated cost of this work is between $500 million and $1 billion, much of which will be met by private port users over time.

The Infrastructure Australia council will now review submissions. An updated list of national priority projects will be identified and further discussions will be entered into with proponents. I commend the project and I thank members for their indulgence.

Several members interjected.

The SPEAKER: Minister for Commerce, before you begin your brief ministerial statement, let me say that I realise that these are brief ministerial statements, and that I have some discretion over that. I formally call the member for Girrawheen for the first time.

PERTH TOURISM PRECINCT EXPANSION

Statement by Minister for Commerce

MR T.R. BUSWELL (Vasse — Minister for Commerce) [12.11 pm]: I am pleased to update the house on the government's determined approach to create a more vibrant city with greater convenience and choice for the people of Perth. This government is committed to carrying out moderate reforms to shopping hours in the Perth metropolitan area. Disappointingly, the opposition has failed to make the decisions necessary to let both the people of Perth and visitors to this state have access to greater choice and flexibility in their shopping hours. The opposition has refused to stand up for Perth consumers and back the government's bill to extend weeknight trading to 9.00 pm in the metropolitan area.

Several members interjected.

The SPEAKER: It might be the case that some people in this place do not want to hear what the minister has to say. I at least would like the chance to hear him. Member for Girrawheen, I do not want to call you again today. I do not want to call you at all, member for Forrestfield, but I want to hear from the minister.

Mr T.R. BUSWELL: Thank you, Mr Speaker. I will repeat that paragraph, and I may run over time by a second or two.

The opposition has refused to stand up for Perth consumers and back the government's bill to extend weeknight trading to 9.00 pm in the metropolitan area. In light of this failure by the opposition, the Premier and I have indicated that the government will investigate other options to extend trading hours in the Perth metropolitan area. One means by which at least some degree of extended trading can be provided is through the use of regulation-making powers to expand the current boundaries of the Perth tourism precinct. This will incorporate into the Perth tourism precinct selected localities in suburbs surrounding the Perth CBD, extending to them the benefits of tourism precinct status.

I recently met with a number of the mayors and officials of the local governments that surround the current Perth tourism precinct to explain the government's plan and seek their feedback. It was a very positive and informative meeting; I was encouraged by the level of support they displayed and found their insights to be of great value in developing the new expanded precinct. The amended regulations, which I intend to table before Parliament rises this year, will extend the Perth tourism precinct to include significant areas within the surrounding suburbs of Subiaco, Mt Lawley, East Perth, West Perth, North Perth, South Perth and Victoria Park.

These areas reflect the concentration of retail, dining, sporting and entertainment attractions enjoyed equally by tourists and the general public of Perth. The expansion of the tourism precinct into these surrounding areas will serve to further enhance their status as drawcards for visitors from near and far. This modest expansion is some solace to the great number of people who have no doubt been equally frustrated and disappointed by the opposition's decision to deny the Perth public the basic right to choose when and where they shop.

In addition to the expansion of the precinct, I also intend to make orders under the Retail Trading Hours Act to amend the trading hours of all general retail shops in the Perth and Fremantle tourism precincts, effective from 1 January 2010. The new orders will provide for trading on weeknights to 9.00 pm. Saturdays and Sundays will retain their current 5.00 pm closing time. The house should also note that the government has introduced a bill to establish a third tourism precinct in Joondalup and will also consider the case for Midland and Armadale following a consultation process. These changes will mean greater vibrancy, greater convenience and greater choice. Let us hope that the opposition will come to its senses and take a more progressive stance on this issue and support the government as it makes decisions that improve the lives of Western Australians.

Several members interjected.

The SPEAKER: Members!

AUSTRALIAN AWARDS FOR TEACHING EXCELLENCE

Statement by Minister for Education

DR E. CONSTABLE (Churchlands — Minister for Education) [12.14 pm]: I am pleased to advise the house about the outstanding outcomes for Western Australian teachers, educators and schools at last month's Australian Awards for Teaching Excellence. The top national award for excellence by a teacher was won by Tracey Anthony, from Aranmore Catholic College in Leederville. Tracey was acknowledged as an exemplary teacher of English as an additional language or dialect who contributes significantly to the educational success and life chances of the multicultural student population at her school, particularly the large Sudanese community.

Three other Western Australian teachers received high commendations in this section. Jessine Bonzas, from Safety Bay Senior High School, was acknowledged as an exceptional teacher with outstanding skills in sports education and student engagement, using soccer to develop students' sense of belonging, pride, leadership and achievement. Louis Cheeseman from Mindarie Senior College was recognised for drawing on his outstanding knowledge of health and physical education to establish a dynamic and high-quality department, including a professional fitness centre. Charissa Quartermain from Queen of Apostles Primary School was honoured for her ability to establish rapport with children and partnerships with their families.

Majella Catholic Primary School in Balga received the top award for excellence by a school and its community. A sudden influx of African refugees prompted the school to make major changes to meet the special needs of these new members of its community. As a result, the school has achieved significant improvements in student wellbeing, behaviour and academic achievement by providing these children with language, emotional, social, health and educational support.

Other WA schools to be highly commended in this section were Orange Grove Primary School, for using technology to produce significant improvements in student engagement, attendance, behaviour, creativity and academic achievement; Presbyterian Ladies' College, for developing a flexible and effective education environment through the extensive use of information and communication technologies; and Shenton College, for creating a culture of innovation, creativity, participation and success through its extension and enrichment program.

Scotch College's Andrew Syme received the top award for excellence by a principal, and Marli van der Merwe from Ellenbrook Christian College won a high commendation in the "Excellence by a Beginning Teacher" section. I would also like to acknowledge Badgingarra Primary School teacher Allan Whittome's success in winning the Prime Minister's prize for excellence in teaching in primary schools. Thanks largely to Allan's passion and commitment, Badgingarra Primary School has embraced science and the investigative process. Allan believes that primary science should be all about the experience. One of his favourite quotes is by Nancy Rothwell: "Trying to teach science without practical experience is akin to trying to teach art without any drawing or painting." The sculptures of native animals and the model of the solar system in limestone that line the entry to school, and the model racing cars designed and manufactured online by students, are testament to this approach.

APPROVALS AND RELATED REFORMS (NO. 3) (CROWN LAND) BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr B.J. Grylls (Minister for Lands)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR B.J. GRYLLS (Central Wheatbelt — Minister for Lands) [12.18 pm]: I move —

> That the bill be now read a second time.

The Approvals and Related Reforms (No. 3) (Crown Land) Bill 2009 will provide efficiencies in the processes for giving notices, applying for approvals and doing various other things under a number of acts that relate to the use and development of, or dealings with, crown land and freehold land held in the name of the state. Western Australia is on the cusp of another period of significant economic activity and growth. The Liberal-National government is committed to ensuring that this is a sustained period of economic development over at least the next 20 years.

It has been clear for some time that the approvals system in Western Australia is in need of reform, as it has become fragmented, which has led to uncertainty, inconsistency and delays in development approvals. The importance of resource development in Western Australia cannot be understated. It is the cornerstone of the Western Australian economy. We have begun to address these issues through the establishment of a high-level task force that is reviewing the approvals system. By reviewing and streamlining approvals, the government is

ensuring that resource development in WA occurs in a more efficient and sustainable manner. Our approach is to implement a system that ensures timeliness and certainty, and meets proper environmental, heritage and other legislative requirements. The Liberal-National government pledged to strengthen and streamline the approvals system, and we are delivering on that pledge. The amendments within this bill have four principal objectives.

Authorisation to act in relation to crown land or freehold land in the name of the state: The first objective of the bill is to allow officers of the Department of Regional Development and Lands, and in some cases other persons, to be authorised to act on behalf of the Minister for Lands in relation to applications or certain other actions relating to crown land or freehold land held in the name of the state, arising under acts other than the Land Administration Act 1997. There is currently no power to formally delegate or authorise functions of the Minister for Lands arising under acts, other than under the Land Administration Act 1997. To date, departmental staff have been operating under "alter ego" principles, which allow officers to act on behalf of the minister in routine matters. Formal powers of authorisation or delegation would remove doubts about the right of departmental officers to act on the Minister for Lands' behalf, and to what extent they may do so. In some cases, there may not even be any good administrative or legal reason for the relevant departmental officer to do these things on behalf of the Minister for Lands, such as applying for development approvals. In these cases, it would be most efficient to allow another person, such as a lessee or management body, to make the application without any undue risk to the state's assets or position.

Accordingly, the bill includes a specific authorisation power in each relevant act, with an appropriate limitation as to whom the authorisation can be given, depending on the nature of the power or powers to be exercised. The affected acts are the Aboriginal Heritage Act 1972, Environmental Protection Act 1986, Mining Act 1978, Petroleum Pipelines Act 1969, Planning and Development Act 2005, Transfer of Land Act 1893, and War Service Land Settlement Scheme Act 1954.

Usual provisions relating to legal protection for things done, or not done, in good faith in the performance of statutory functions have also been amended to extend the protection to persons acting under any such authority or delegation. A similar amendment to the Aboriginal Affairs Planning Authority Act 1972 allowing delegation of certain functions of the Aboriginal Lands Trust is included to improve operational efficiencies under that act.

Authorisation to act on behalf of the minister of relevant mining or petroleum act: The second objective of the bill is to enable officers of the Department of Mines and Petroleum to approve the simultaneous existence of licences and profits a prendre granted under section 91 of the Land Administration Act 1997 with mining or petroleum rights over the same area of land. Currently, section 91 of the Land Administration Act 1997 requires agreement to be reached between the Minister for Lands and the minister responsible for the relevant mining or petroleum act.

Under the bill, approval will now be able to be given by a person authorised by the minister of the relevant mining or petroleum act to do so, instead of the relevant minister personally. This will expedite the issue of such licences, which are commonly used in site and other preparatory investigations and geotechnical studies for proposed development projects.

Disclosure of personal details of crown land interest holders: The third objective of the bill is to allow the release of the name and contact details of crown land interest holders, including pastoral and other lessees, where there are good public policy reasons for doing so. The amendment is needed to provide legal certainty that the release of this information does not breach privacy or other confidentiality principles or laws.

The contact details held by the Department of Regional Development and Lands are often the most recent and up-to-date source. This information is often required by commonwealth, state and local government agencies and public utility providers for their normal business, such as rating and planning purposes, provision of public utility and emergency services, national security and biosecurity, pastoral inspections, lease rent reviews and the like. In addition, the information is also required by mining tenement holders and applicants and others so that they can comply with their obligations under the Mining Act 1978, which requires them to give various notices to crown land interest holders of rights they may have under that act, including a right to claim compensation.

Accordingly, the bill will allow the release of this personal information to a range of specified authorities for these purposes, and in any other cases prescribed in the regulations. Consideration is being given as to whether, and, if so, on what conditions, such information may be provided to tourists and other persons travelling in remote pastoral areas for safety reasons.

Improve power to grant petroleum pipeline easements: The fourth objective of the bill is to improve the efficiency with which petroleum pipeline easements can be granted under the Petroleum Pipelines Act 1969. Currently, easements for petroleum pipelines over unallocated crown land are granted by the Governor in Executive Council, and over managed crown land by the relevant body that has the care, control and management of the relevant land.

The bill will allow the Minister for Lands, or an authorised departmental officer, to grant petroleum pipeline easements over any crown land, instead of the Governor and any management body. It will mean that only one such easement, on one set of terms and conditions, needs to be granted to a pipeline operator over the whole length of the pipeline that is on crown land, rather than a number of easements being granted by various management bodies over the different parts of crown land managed by each of them, and possibly on different terms and conditions.

I commend the bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.

APPROVALS AND RELATED REFORMS (NO. 4) (PLANNING) BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr J.H.D. Day (Minister for Planning)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR J.H.D. DAY (Kalamunda — Minister for Planning) [12.26 pm]: I move —

That the bill be now read a second time.

The purpose of this bill is to amend the Planning and Development Act 2005 in order to streamline and improve the planning approvals process. The proposed legislative amendments are part of a series of changes to planning, environmental, mining and other legislation which have been steered by the Premier's task force on approvals, development and sustainability.

The Liberal-National government is committed to ensuring that economic growth and activity in Western Australia is not unduly hindered by an unwieldy or unresponsive approvals process. The proposed amendments will create greater efficiency and consistency for state government priority projects, and certainty for investors who are considering new ventures in important economic infrastructure, industrial development and urban land and housing.

The proposed reforms are consistent with the state's undertaking at the Council of Australian Governments to reform Western Australia's planning system. These reforms are also in line with resolutions of the Local Government and Planning Ministers' Council and the advice of the Development Assessment Forum, which is a national body dedicated to research into planning reform. Further information about the forum is available via its website—www.daf.gov.au.

One of the 10 practices outlined in the Development Assessment Forum's leading practice model is that most development applications should be assessed by professionals, with an option to establish expert panels to make determinations. These practices have had bipartisan support by all governments across Australia.

The reforms will provide an opportunity to streamline approvals in strategic areas of the state. For example in Karratha and Port Hedland, the reforms could provide a way for the state to better address the high cost of housing and delays in approvals for key infrastructure. Where local government approvals are required for strategic state infrastructure, these amendments will ensure that approvals will be in accordance with consistent state policies and planning standards.

Existing processes which involve dual approvals—both of the local government and the Western Australian Planning Commission—also need to be rationalised.

This bill also makes it possible for local governments to be directed to amend or update their schemes to be consistent with applicable state planning policies.

The government is committed to ensuring that the approvals system will encourage a mix of housing forms, and there is scope to increase urban densities without adding to the cost of higher density development. The government also needs to ensure there is a good supply of conventional housing in the future. These reforms will provide a sounder legislative foundation for this process. For the metropolitan area, this commitment is guided by the recently released "Directions 2030: Draft Spatial Framework for Perth and Peel", which estimates that by 2031, the Perth and Peel region will need 328 000 more dwellings to accommodate an additional 556 000 residents.

These amendments will ensure Western Australia has timely planning outcomes of a high quality which integrate environmental, social and economic objectives.

This bill introduces significant planning reforms while also including minor and clarifying amendments to the planning act.

The key elements of the bill are to —

establish development assessment panels which will provide more effective and efficient processes than is currently the case for applications to build large-scale urban, industrial and infrastructure developments;

significantly extend the use of existing strategic instruments such as improvement plans to strengthen state and regional planning throughout the state;

provide exemptions from planning approval for projects funded through the nation building and jobs plan stimulus package to facilitate meeting the commonwealth's funding requirements;

enable the state to collect data on local development decisions to monitor the effectiveness of reforms to the approvals process;

provide a mechanism for local planning schemes to be updated to implement state planning policies; and

streamline and clarify existing provisions and processes to improve the efficiency of the approvals process.

The bill has been the subject of targeted consultation with state agencies, local government and industry. In addition, most of the key substantive amendments were in a discussion paper entitled "Building a Better Planning System", which was released by the Department of Planning earlier this year for public consultation. Submissions revealed wide community, industry and other stakeholder support for the proposed amendments, which have been included in the follow-up document released by the Department of Planning entitled "Planning Makes It Happen: a blueprint for planning reform". There are significant benefits to the state government, local governments, stakeholders and the general community arising from the proposed amendments. These are as follows: first, more flexible, transparent and cost-effective mechanisms to implement state and regional planning policy; second, more transparency in decision making on development applications with planning merits based on technical expertise and local representative considerations; and, third, more streamlined and clear legislative provisions to facilitate the approvals process.

I will now turn to the provisions of the bill in more detail. The bill contains five parts.

Part 1—Preliminary: This contains the short title of the act and its commencement, which is to be by proclamation.

Part 2—Improvement plans and schemes: This part sets out an amendment to enable the Western Australian Planning Commission—WAPC—to more effectively use improvement plans as a tool for strategic regional planning. This will be achieved by removing the restriction in the current section 119 of the Planning and Development Act 2005, which limits the use of such instruments to areas in respect of which the WAPC has resolved to prepare a region planning scheme. The importance of regional planning was first recognised in Western Australia in the early 1950s when the population of metropolitan Perth had grown to about 370 000 and the state government appointed Professor Gordon Stephenson and J. Alistair Hepburn to prepare a master plan for the Perth metropolitan region. The master plan approach to regional planning was in line with the approach of other jurisdictions post-World War II, such as the United Kingdom. The Stephenson-Hepburn plan and the subsequent metropolitan region scheme aspired to establish a long-term strategic framework for metropolitan growth and development. Since then, region planning schemes have been prepared only for metropolitan areas to manage growth and transport corridors in the Perth, Peel and greater Bunbury areas. There is a continuing need for effective planning at the regional level, which extends beyond metropolitan areas. Targeted regional-based policies are needed for issues such as population growth and urban expansion, coastal planning, planning for regional transport and infrastructure, water resource management and so on. Regional planning is important to implement state policy and assists more detailed planning at the local level. Regional planning has become a key focus of the planning systems in other states and countries, with the primary purpose being to decide the general distribution of new activities and developments.

Given the cost and time involved in preparing regional planning schemes, the department and the Planning Commission now consider that frameworks and strategies in the regions, combined with state instruments such as improvement plans and planning control areas, will be more effective in achieving desired outcomes for state and regional land-use planning. It provides an alternative measure for implementing state and regional strategies to the use of ad hoc redevelopment legislation or ministerial call-in powers. The need to improve regional planning was highlighted in the discussion paper "Building a Better Planning System", and the subsequent blueprint document expressly referred to the option of extending the use of improvement plans. This option has also previously been the subject of consultation in the preparation of a synopsis undertaken by MacroPlan in 2007 and 2008.

The amendments regarding improvement plans do not give the state any more power than it currently has under the existing legislation. Currently, the state government may declare a redevelopment scheme anywhere in the

state for any purpose. Such redevelopment schemes may be created in a vacuum from regional and local planning frameworks. Unlike redevelopment schemes made under separate legislation, WAPC improvement schemes will be declared only when there are clear state and regional planning imperatives to do so, and will be implemented having regard to local, regional and state planning objectives. Improvement plans may be used, for example, to implement regional strategies such as the Cockburn coast strategy, to facilitate industrial use of appropriate land such as in Kwinana, and to ensure that land use surrounding major infrastructure or resource projects is consistent with state objectives. In order to declare an improvement plan, the WAPC must still certify to the Minister for Planning in writing that for the purpose of advancing the planning, development and use of any land within the state, the land should be made the subject of an improvement plan, and if the minister accepts the recommendation, it must be forwarded to the Governor for acceptance. Such instruments will be used only when considered necessary to meet clear state and/or regional planning needs, after careful consideration of local issues in consultation with local governments. This part of the bill also includes provisions to enable an improvement plan to provide for an "improvement scheme" to be prepared to the extent necessary to implement the objectives of an improvement plan. An improvement scheme will have statutory effect and will override the provisions of any local planning scheme or regional planning scheme that might otherwise have applied to the area.

Historically, there has been some confusion as to the priority of improvement plans in areas where local planning schemes and region planning schemes also apply. In order to clarify that the provisions of an improvement plan prevail over the provisions of improvement schemes with respect to development and subdivision control, the mechanism of an improvement scheme, which will have statutory effect, has been recommended. The preparation of improvement schemes will follow the same transparent process as the preparation of local planning schemes and be subject to the same consultation and advertising requirements. For the duration of an improvement scheme, any region planning scheme and/or local planning scheme that otherwise would have applied to the area, ceases to apply. Upon the expiration of an improvement scheme, the local and region planning schemes will immediately come back into effect, as amended to be consistent with the improvement scheme objectives. To date, examples of improvement plans include the Kwinana industrial area, the Cockburn coast precinct and the Northbridge urban renewal strategy area. Improvement plans have often been revoked or not fully implemented, partly because of difficulties in implementing the objectives without the available statutory tools. In the case of industrial areas at Kewdale or Canning Vale, for example, or the East Perth redevelopment area, new and separate legislation was required to implement the strategic plans, which also required the establishment of additional authorities. In other cases, attempts have been made to implement the improvement plan through amendments to the local planning scheme and region planning scheme, such as in Port Coogee and Huntingdale. Improvement schemes will allow the WAPC, as the expert planning authority, to carry through an improvement plan to implementation, having regard to the local, regional and state planning frameworks.

Part 3—Development assessment panels: This part introduces new provisions into the Planning and Development Act to provide the heads of power for the establishment of development assessment panels—DAPs—in Western Australia. Regulations will contain details on trigger thresholds for DAP assessment, sitting fees for panel members, and other administrative and operational details. Development assessment panels are panels comprising a mix of technical experts and local government representatives with the power to determine applications for development approvals in place of the relevant decision-making authority. The Minister for Planning will create a panel for each local government area, and these panels will determine development applications made under local and region planning schemes. They will be required to make decisions in accordance with the existing planning framework, and take into account any local or state planning policy or other matter that the responsible authority would ordinarily be required to take into account.

The introduction of development assessment panels is one of the fundamental principles of the national Development Assessment Forum's leading practice model for development assessment. Leading practice model 8, professional determination for most applications, promotes the principle of development assessments being determined by professional staff or private sector experts against known policies, objectives and rules. In addition, leading practice model 5, single point of assessment, promotes a single point of assessment for applications using consistent policy, objectives and rules. This model also promotes limiting referrals to agencies with a relevant role for advice only, avoiding the need for separate approval processes. South Australia and New South Wales have already introduced development assessment panels into their planning systems in accordance with the DAF model. Victoria has also recently passed legislation to implement development assessment commissions to perform the role of development assessment panels.

In Western Australia two types of development assessment panels will be created—local development assessment panels and joint development assessment panels. The two different types of panels are proposed to best cater for the varying degrees of development within local governments in this state. Local development assessment panels will be created to determine applications made in one local government area. As such, these

panels will be created only for high-growth local governments. Joint development assessment panels will be created to determine development applications made in two or more local government areas. The majority of panels created will be joint panels, as they will support small metropolitan councils and regional local governments. The classes of applications that will be determined by these panels will be prescribed in new regulations made under this part. Consultation with local governments is currently being undertaken to determine the appropriate level of development that should be determined by these panels.

The introduction of development assessment panels in Western Australia will have significant benefits for local governments, the development industry, landowners, the general community and other stakeholders. They aim to help to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications. As regulations prepared under this part will clearly identify what classes of development applications are to be determined by development assessment panels, applicants will be well aware of who will be determining their application. The determination of complex applications will also be improved by the involvement of experts with technical knowledge on the panel. The involvement of independent experts will also help to strike an appropriate balance between local representation and professional advice in decision making by ensuring that decisions made by the panel are based on the planning merits of an application. Finally, the use of development assessment panels will help to address issues with dual approvals by making the relevant panel the single decision-making authority under both local and region planning schemes.

An example of a project that demonstrates the benefits that DAPs will contribute to the approvals process is the Binningup desalination plant development. With the desalinisation plant, under a DAP process, the development application stage would have been streamlined, as only one decision would be required by a DAP, as opposed to separate dual approvals under both the Shire of Harvey local planning scheme and the greater Bunbury region scheme. This was a large, complex and technical matter that would have benefited from the input of appropriate experts. Given the sensitivity of local politics, a more transparent process than internal council processes and delegations would be appropriate to inform stakeholders of factors being considered in the decision; that is, proper planning merits.

Division 2 of this part of the bill also provides a call-in power for the Minister for Planning in relation to development applications that the minister believes are for "significant development". This call-in power will be used by the minister only in relation to development proposals of key state or regional significance. The criteria to be used by the minister to determine that a development application is for a significant development will be prescribed under new regulations. Any applications that are called in by the minister will be assessed by the relevant development assessment panel, but determined by the minister. The panel will prepare a report containing its advice and recommendations that the minister will take into consideration when determining the application. The decision of the minister is final and there will be no right of appeal. The criteria for current ministerial call-in powers, such as the ability to call in a matter that is before the State Administrative Tribunal for review, are flexible and minimal. For example, the current power allows the minister to call in a planning appeal if the minister is of the view that the application raises issues of state or regional importance. Although the broadness of this power has not led to it being overused, the criteria upon which a minister may call in a matter that would otherwise be determined by a DAP will be more defined and narrow. It will focus on a list of particular impacts to consider. These will include effects on key infrastructure; effects on the natural environment, including areas of state or regional significance; effects on the local or regional economy, including the amount of investment necessary and the employment opportunities that will be provided by the project; the strategic significance of the project to the locality, region or the state; and whether the project will further the regional planning objectives for that part of the state, as set out in published WAPC and local government policy.

Part 4—State planning policy amendments: This part sets out an amendment to be inserted into the Planning and Development Act to enable the minister to direct a local government to amend its local planning scheme to be consistent with an applicable state planning policy. Under existing legislation, local governments are already required to have due regard to state planning policies in amending their schemes. This amendment will improve the implementation of this requirement. This amendment is to be distinguished from a proposal of the previous government that state planning policies have automatic statutory effect as soon as gazetted. In this proposal, such policies will not override the provisions of a local planning scheme, which will retain its primacy. Rather, only in circumstances in which there is a clear conflict between a state planning policy and a local planning scheme that has not been updated to reflect the provisions of the policy, will the minister direct an amendment. This provision will benefit stakeholders by providing greater efficiency in achieving government policy objectives by strengthening the effectiveness of state planning policies.

Part 5—Other amendments: This part sets out all other amendments to the Planning and Development Act including all minor and clarifying amendments.

Exemption for development funded through the commonwealth stimulus package: In line with amendments taken in other jurisdictions, provisions have been included to exempt developments undertaken through funding from the nation building and jobs plan stimulus package from the requirement to obtain planning approval. The exemptions will apply only to projects funded by the commonwealth under the NBJP stimulus. In Western Australia the only works that would otherwise have required planning approval are primary school works and social housing. Proponents will still be required to consult the relevant authorities. Although the bulk of the projects have already been facilitated through delegation arrangements with the WAPC, the legislative provisions will ensure all outstanding works proceed in a timely manner.

WAPC gazettal of schemes: To ensure the timely gazettal of scheme amendments approved by the Minister for Planning, section 87 will be amended to transfer back to the WAPC the responsibility for gazetting local planning schemes. The previous government amended the Planning and Development Act to transfer to local government the responsibility for gazetting schemes. Since this amendment came into effect, there have been a number of cases in which gazettal of an approved scheme has been delayed. This amendment will reduce the uncertainty in the approvals process resulting from the delays in gazettal of approved scheme amendments.

Planning control areas: A similar amendment to that for improvement plans is proposed for the use of planning control areas. Planning control areas will now no longer be restricted to those areas for which a region planning scheme has been prepared. As planning control areas are already given clear priority under the current planning act, no further changes have been made in this regard.

Concurrent scheme amendments: A further proposed amendment provides for the concurrent amendment of local planning schemes to be consistent with a region planning scheme amendment. Currently, the Planning and Development Act provides that, where a region planning scheme is inconsistent with a local planning scheme, the region planning scheme prevails to the extent of any inconsistency, and the relevant local government is to take action to redress the inconsistency within 90 days of any amendment to the region planning scheme. Where a region planning scheme amendment will result in the local planning scheme in the relevant area being inconsistent with the region scheme, local governments currently have the discretion to choose that amendment to their scheme occur concurrently with the relevant region planning scheme. This amendment will reduce delays to the development of land in urban areas by effectively facilitating a single amendment process whereby the local planning scheme amendment will occur automatically with the region planning scheme amendment without the need for a separate process to be initiated by the relevant local government or local governments.

Local government reporting: Finally, an amendment is included to enable the state government to collect approvals data from local governments. Several Australian jurisdictions have sought to review the effectiveness of their planning systems by monitoring local government performance. Data is collected regarding the development applications lodged with each local government. The state department responsible for planning analyses this information and prepares a report on the performance of local governments across the states. In Western Australia, there is no centralised collection of information on the administration of the planning systems by local governments. Therefore, the state is impeded in monitoring performance and identifying where inefficiencies need to be improved. This amendment will enable the state to collect data from local governments. This will allow more effective monitoring on the efficacy of the current planning system and identification of areas in need of further reform. This built-in improvement mechanism is also consistent with the leading practices recommended by the national Development Assessment Forum, DAF.

Before I conclude, I commend the officers of the Department of Planning and also my staff who have worked very hard in the development of this bill. I commend this bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.

CRIMINAL CODE AMENDMENT (IDENTITY CRIME) BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr C.C. Porter (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR C.C. PORTER (Bateman — Attorney General) [12.52 pm]: I move —

That the bill be now read a second time.

The Criminal Code Amendment (Identity Crime) Bill 2009 provides for an important reform proposed by the Liberal-National government. This bill will protect all Western Australians against a relatively new and most invidious and sophisticated criminal activity. I am referring to the misappropriation and misuse of another person's identity, often with the aid of new and increasingly sophisticated technology.

Perhaps the most high profile element of such crimes is the occurrence of automatic teller machine skimming. With the increasing proliferation of ATMs and the growing technical aptitude of various criminal elements, new opportunities have arisen for crime. Skimming is the act of electronically capturing information that can be used to confirm another's identity, often at a point of contact with an ATM, and for the purpose of stealing money from victims' bank accounts. However, while skimming may presently be the most high profile example of identity-related crime, the continuing advancement of technology—for example, through the development of the internet with online services and retail—along with increasing criminal technical aptitude means that there will be more and more opportunities for other forms of identity crime to become more prevalent. This bill will address this situation by amending the Criminal Code to create offences for the making, using, supplying or possession of identification material with the intent that the material be used to either commit, or facilitate the commission of, an indictable offence and the possession of equipment capable of making, using, supplying, or retaining identification material with the intent that that equipment be used to either commit or facilitate the commission of an indictable offence.

Members will be aware of the recent skimming operation conducted in this state in a number of suburban outlets of a well-known fast food chain. The facts with respect to that matter are relatively clear. Customers who used their debit cards and personal identification numbers at some electronic funds transfer at point of sale, EFTPOS, machines within these outlets had their account and personal identification number, PIN, details surreptitiously recorded by external criminal elements. The skimmed identification material was then used to access personal bank accounts and misappropriate funds from those customers. The economic impact of this type of crime cannot be underestimated. For example, this recent skimming operation is believed to have involved around $2.5 million, while the Australian Crime Commission and the Australian Payments Clearing Association estimate that skimming and credit card fraud costs the Australian economy between $100 million and $145 million per year.

Other states and other countries have implemented legislative responses to counter and deter such identity crime. Therefore, the government has analysed, strengthened and improved upon the legislative developments in other jurisdictions. Even so, at the National Identity Crime Symposium held in Queensland last month, a prominent speaker from Europe expressly indicated that Australia was a prime target for international criminal syndicates engaged in skimming and related identity crimes. He articulated that this may be the case for several reasons, including a lack of public awareness over appropriate security measures and a perception that lenient sentences made Australia internationally appealing. It is this second aspect which the bill will address.

The proposed bill deals with three separate issues. First, definitional and interpretative provisions in the bill are drafted in a manner that ensures that the criminal behaviours that constitute essential elements of the proposed offences are effective, broad and robust. Secondly, the bill will make it an offence to make, use or supply identification material; possess identification material; or possess equipment capable of making, using, supplying or retaining identification material, for the purposes of committing or facilitating the commission of an indictable offence. Importantly, the bill will impose some of the most rigorous penalties in Australia for the commission of these offences. This reflects the government's appraisal of the seriousness of this type of offence. Finally, the bill will assist victims of identity crime. As with provisions found in legislation in other jurisdictions, the bill will provide the courts with the power to issue certificates to victims whose identity has been misused in the commission of these offences to act as proof of their identity being misused and so assist with any subsequent problems they may experience in either a personal or business capacity as a result of these crimes.

I will now briefly outline in more detail the second aspect of the bill, being the proposed offences. The first proposed offence relates to the illicit making, using or supplying of identification material. As amended, the Western Australian Criminal Code will, for example, ensure that anyone who makes, uses or supplies identification material with the intention that the material be used for an indictable offence will be guilty of a crime. The government believes that offences of this nature, which go to the heart of what identity means to an individual on both a legal and a personal level, when combined with an understanding of their economic significance and the fact that these offences will be associated with other indictable offences, a penalty of seven years' imprisonment is appropriate. However, in instances where identification material is used to attempt to commit an indictable offence where the penalty to attempt to commit that offence is greater than seven years' imprisonment, that higher penalty will apply. To illustrate, the seven years' imprisonment penalty might apply to a person who illicitly uses identification material to pay a hotel bill. However, the greater penalty option could be applicable where it is proven that the material was to be used directly in the commission of a more serious offence—for example, murder or attempted murder. The bill also addresses the issue of someone knowingly and willingly providing their identification material to another person with the knowledge that the other person will use it to commit a serious crime.

The second proposed offence relates to the illegal possession of identification material. As such, it will attract a penalty of five years' imprisonment. A summary conviction penalty of 24 months' imprisonment and a fine of $24 000 also will apply to the offence of possession.

The third proposed offence relates to the technological aspects of identity crime. As such, the bill will make illegal the possession of equipment that can be used to make, use, retain or supply identification material. The proposed offence makes clear that the possession of such equipment will be illegal only when it is intended to be used to commit, or facilitate the commission of, an indictable offence, and as such the government has been mindful to ensure that legitimate owners of such or similar equipment, such as financial institutions and information technology companies, are not adversely impacted by these provisions. This possession of equipment offence will also carry a penalty of five years' imprisonment as well as a summary conviction penalty. In creating these offences the government's intention is to target preparatory behaviour to the offences of fraud and stealing. Apart from its economic impact, identity crime leaves behind victims who can be deeply affected by the misuse of their identity. Consequently, the bill empowers courts to issue certificates to individuals whose identity has been illegally used for the commission of an offence to assist with any subsequent problems they may experience in either a personal or business capacity as a result of these crimes.

Identity crime is a fast evolving criminal issue, but this bill further illustrates the government's commitment to effectively deal with the new and complex elements of criminality so that Western Australians may feel confident both in using their own identification material and in the administration of law and order in this state.

I commend the bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.

CRIMINAL CODE AMENDMENT BILL (NO. 2) 2009

Introduction and First Reading

Bill introduced, on motion by **Mr C.C. Porter (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR C.C. PORTER (Bateman — Attorney General) [1.01 pm]: I move —

> That the bill be now read a second time.

The Criminal Code Amendment Bill (No. 2) 2009 (WA) amends the Criminal Code as it relates to conveyances and in relation to certain minor matters of drafting.

Members will be aware of a number of reported incidents where projectiles have been thrown at vehicles, particularly buses, and other similar incidents where laser pointers have been pointed at persons operating aircraft. In many instances, attacks on vehicles will result in serious injuries to passengers or drivers. However, any attack that results in alarm or fear to motorists will carry with it some prospects that a person's safety will be jeopardised. The government views these incidents as a serious form of criminal conduct. People should not have to fear for their safety due to what frequently amounts to entirely senseless acts of violence and stupidity.

Clause 4 of the bill puts into effect laws that will make it a crime to cause fear or alarm to a driver either by causing an object or substance to be directed at or near, or placed in or near the path of a conveyance; or directing a laser pointer or a narrow beam of light at a conveyance.

By definition, in proposed section 74B(1) of the code the word "drive" is defined to include the operation of conveyances, aircraft and vessels.

Proposed section 74B(2)(a) provides that a person who, without lawful excuse, causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance in circumstances that are likely to cause fear or alarm commits a crime. Under proposed section 74B(2)(b) if the person directs a laser or a narrow beam of light at or near a conveyance without lawful excuse, this will also constitute a crime. In both cases the maximum penalty will be seven years' imprisonment.

Proposed section 74B represents the government's attempt to cover a wider range of criminal conduct than is represented by actual or likely endangerment to the life, health and safety of a person. Where actual or likely endangerment does result, logically the penalty for such an offence should at least be commensurate. Accordingly, to ensure that parity exists between the statutory penalties for the proposed section 74B and the existing section 304(1) of the code, which deals with acts likely to endanger the life, health or safety of any person, the penalty for charges under section 304(1) is increased to seven years on indictment or three years and a fine of $36 000 when dealt with summarily.

The other relevant amendment is made by clause 5 of the bill, which amends section 284 of the code. Section 284 of the Criminal Code makes provision for the offence of culpable driving causing death or grievous bodily harm in a vehicle other than a motor vehicle. The section was included in the Criminal Code by the Criminal Law Amendment (Homicide) Act 2008. It was intended that this provision would reflect the dangerous

driving provisions of sections 59 and 59A of the Road Traffic Act 1974, following the recommendations of the Western Australian Law Reform Commission in its review of the law of homicide.

The author of the Law Reform Commission report has brought to the attention of the government the fact that while a defence to dangerous driving is available to an offender under section 59B(6) of the Road Traffic Act, it is not available to a prosecution under section 284 of the Criminal Code. This could result in a miscarriage of justice whereby a person charged with the section 284 offence could be found guilty in circumstances where the injury caused was in no way attributable to their dangerous driving; that is, strict liability applies in cases where a vehicle other than a motor vehicle is used, which was not the intention of the commission.

The opportunity has also been taken to make some miscellaneous short amendments to the code that will modernise the code's remaining old-form cross-references. These amendments do not affect the substance or policy of the law. For example, clause 10 provides that section 28 is amended to delete the reference to "the last preceding section" and insert a reference to "section 27". Some amendments are also made to include section numbers for provisos in the code.

I commend the bill to the house.

Debate adjourned, on motion by **Mr M. McGowan**.

PUBLIC SECTOR COMMISSIONER — MALCOLM CHARLES WAUCHOPE

Motion

MR C.J. BARNETT (Cottesloe — Premier) [1.06 pm]: I move —

> That in accordance with sections 18(6) and 28 of the Public Sector Management Act 1994, this house authorises Malcolm Charles Wauchope to continue to hold the office of Public Sector Commissioner, being an office referred to in part 1 of schedule V of the Constitution Acts Amendment Act 1899, upon an appointment by the Governor of him as Acting Commissioner for Public Sector Standards, and requests the Legislative Council to agree to a similar resolution.

This is quite an unusual situation and I shall take a few moments to explain the circumstances giving rise to it. Members may recall that one of the first decisions of the Liberal-National government was to set up the Public Sector Commission with the position of Public Sector Commissioner. That was announced by the government on 30 September 2008. It meant, in effect, splitting the previous Department of the Premier and Cabinet into two; the Public Sector Commission and the Department of the Premier and Cabinet.

The role of the Public Sector Commission and of the commissioner himself was for all purposes to be the head of the public service in Western Australia. It was part of a commitment to rebuild, if we like, the professionalism and the independence of the public service. The Department of the Premier and Cabinet, headed by Mr Peter Conran, now performs a role in policy direction across government. We have separated that policy role, I suppose, of delivering the policy agenda of the elected government from the role of heading and overseeing the public service. I consider that to be a fundamental reform and it is one that I have held a view about for many, many years. I must say that I am very pleased that we were able to put that in place virtually straight upon coming into government.

Mr Malcolm Wauchope was transferred to the office of Public Sector Commissioner on 28 November 2008. Members opposite and all members know Malcolm Wauchope well; he has been a long-term senior public servant who has served governments of either political persuasion with distinction. The second chain of events set off by the creation of the Public Sector Commission is that there were several areas of overlap between the Public Sector Commission and the Public Sector Standards Commission. As a result, the government announced on 13 July 2009 that we would remove those areas of overlapping responsibility by amalgamating the two bodies into the Public Sector Commission; in other words, the Public Sector Commission and the commissioner would subsume the responsibilities of the Public Sector Standards Commission. I think that is appropriate and it brings all the issues to do with the oversight of the public sector under the Public Sector Commission.

To do that requires legislative change; in other words, amendments will need to be made to the Public Sector Management Act 1994 to give effect to the amalgamation of the Public Sector Commission with the Public Sector Standards Commission. Members will be aware from the announcement yesterday that Dr Ruth Shean, who is the Commissioner for Public Sector Standards, has been selected to head the new Department of Training and Workforce Development. She will be the inaugural director general of that department. That means that someone will need to take over the role of Acting Commissioner for Public Sector Standards until such time as legislation is passed for the Office of the Public Sector Standards Commissioner to be merged with the Public Sector Commission. That legislation has been drafted and is about to be considered by cabinet. All going well, I expect that legislation to be introduced into the Parliament if not this year, at the beginning of next year. If possible, we may well introduce it into Parliament before this house rises this year.

That is the situation. There are some complexities with the actual Public Sector Management Act as it is. Section 18(6) of the Public Sector Management Act 1994, when it is read together with section 28 of that act, stipulates that an Acting Commissioner for Public Sector Standards cannot hold any other office, as referred to in part 1 or 2 of schedule V to the Constitution Acts Amendment Act 1899, without being authorised to do so by both houses of Parliament. The logical thing for the government to do, and what the government wishes to do, is to appoint Mr Wauchope, the Public Sector Commissioner, to the position of Acting Commissioner for Public Sector Standards; in other words, he will hold both positions. When legislation is hopefully passed by this Parliament, the Office of the Public Sector Standards Commissioner will disappear. Therefore, he will simply be the Public Sector Commissioner, but carrying out what are currently the responsibilities of the Public Sector Commissioner and the responsibilities of the Commissioner for Public Sector Standards.

Those sections to which I have referred mean that at the moment he is precluded from being the Public Sector Commissioner and the Acting Commissioner for Public Sector Standards. The only way through that is for both houses of Parliament to pass a resolution, as I have moved, to allow that to take place. It would be disruptive, illogical and unfair, in my view, to appoint someone else to the position of Acting Commissioner for Public Sector Standards in the meantime, because it is a job that is going to disappear. Indeed, much of the practical morphing of the departments is happening in any case, so this is certainly the most preferable way of proceeding. If no change were made and no appointment were made of a Commissioner for Public Sector Standards, we would not be able to proceed with advertising for applications for the appointment of chief executives or directors general, nor could we deal with any disciplinary matters. Therefore, it would basically put the function on hold, and I do not think that is an acceptable state of affairs.

The Public Sector Commissioner has been performing a number of functions that were formerly administered by the minister. I also took the decision that many of the functions that were handled by the minister—in this case it would have been me—should be handled directly by the Public Sector Commissioner. They include functions relating to overall public sector operational efficiency, chief executive officers, senior executive service management, public service classification and appointment processes, and redeployment and voluntary severance arrangements. All those matters are to do with the ongoing operation and management of the public service. They are matters that should not be handled by a politician, even if he happens to be the Premier; they should be handled by the head of the public service in a truly professional and independent way. Therefore, I have delegated those responsibilities to Mr Wauchope as Public Sector Commissioner, and I think that is appropriate.

The Commissioner for Public Sector Standards, as it exists at present, is an independent statutory office that reports directly to Parliament—that is a significant difference—on the performance of his or her functions. For example, the Commissioner for Public Sector Standards has the functions set out in section 21 of the Public Sector Management Act 1994. These include establishing and promoting codes of ethics and codes of conduct; assisting public sector bodies to develop codes of conduct and to comply with established codes of ethics and standards; monitoring compliance with codes of ethics, standards and codes of conduct; and, importantly, reporting to Parliament on compliance and non-compliance. In addition, under section 45 and section 48 of the Public Sector Management Act 1994, the commissioner has a statutory involvement in the appointment and removal of chief executive officers. Indeed, one of the prime responsibilities of the Commissioner for Public Sector Standards is the process of advertising for chief executive officers, conducting interviews and appointing chief executive officers; and, in disciplinary matters, or whatever it might be, removing those officers. That is one of the prime responsibilities that Dr Ruth Shean has had. Obviously, that is also a function that needs to be independent. The Commissioner for Public Sector Standards also has responsibilities under the Public Interest Disclosure Act 2003.

As I said before, Dr Ruth Shean, who is currently the Commissioner for Public Sector Standards, announced on 24 August 2009 that, given that the position of Commissioner for Public Sector Standards will not exist in the future, she wished to continue to serve the state government and to do this in a senior capacity. It was therefore her intention to apply for suitable chief executive officer positions as they became vacant. I am very pleased that she applied and was appointed the incoming Director General of the Department of Training and Workforce Development. Dr Shean has delegated her responsibilities under section 45 and section 48 of the Public Sector Management Act to Mr Wauchope. As I said, our preference is, and I think it is fundamentally important, that Mr Wauchope continue in the position that he substantially holds, which is Public Sector Commissioner, and that he take on the position of Acting Commissioner for Public Sector Standards until such time as legislation is introduced and hopefully passed, at which time the position of Commissioner for Public Sector Standards will no longer exist, and all those functions will be with him. To do so requires this resolution to be passed by both houses of Parliament.

Obviously, some issues might arise. Is there a conflict? I do not believe there is. Mr Wauchope will be required, in a sense, during this transitional period, and, in fact, for an ongoing period, to wear two hats. He is the Public Sector Commissioner. In that sense, he reports to me as Premier. However, in those functions for which the

Commissioner for Public Sector Standards currently reports to Parliament, Mr Wauchope in his combined role, when permanently established, will continue to report to Parliament on those matters. In other words, he will report in his existing Public Sector Commissioner role to the Premier, or whoever holds that portfolio, but in the current functions of the Commissioner for Public Sector Standards that he will take on, he will report independently to Parliament. Members might find that odd. I do not. I believe that anyone who was appointed Public Sector Commissioner, and certainly Mr Wauchope, would have the ability and the experience to be able to distinguish between those two functions. In most cases the commissioner would report to the Premier of the day, but on certain matters, as laid down under the existing act, he would report independently to Parliament. I think that is totally acceptable and preferable to the confusion of having two bodies or the confusion of having some other person appointed as the Acting Commissioner for Public Sector Standards. This is all about allowing a transition to a smooth merger of these two entities, with Mr Wauchope having both responsibilities under his title long term as Public Sector Commissioner.

However, it goes a little beyond that. This is also about governments and Parliaments trusting the public service, and placing trust in a person who is appointed to head the public service. We trust that person to be able to report to the government of the day and, on other matters, to report to the Parliament of the day. There is nothing unusual in that role. Indeed, public servants can in other capacities be asked to report to Parliament. I believe this sends an important message to the Western Australian public service, and I hope members opposite will support this resolution, because it is saying that we have confidence in the most senior public servant in Western Australia, the Public Sector Commissioner, to perform most of his functions, as he does now, and report to the government of the day; to have independence in the oversight and management of the public service within that function, which is why I have delegated those responsibilities; and also, on specific matters, to be able to report independently to the Parliament itself. If we say that that cannot be done because there are conflicts of interest, we are implicitly saying that we do not have trust in that person who holds the position of Public Sector Commissioner to carry out those two responsibilities. That is not unusual.

We as members of Parliament are always balancing and performing dual roles. We do that as local members and as ministers. We do that even in our political party roles. That is the nature of democracy. That is the nature of holding high office.

I urge members to support this motion. It will be a transitional arrangement only. Amendments will be made to the Public Sector Management Act to bring, on a permanent basis, the functions of the Commissioner for Public Sector Standards into those of the Public Sector Commission. That legislation will, hopefully, be introduced before Parliament rises this year; if not, it will certainly be introduced on day one when we return next year. That will make these changes permanent. The purpose of this resolution is to bridge the gap until the legislation is introduced and passed through Parliament. It will allow Mr Wauchope to continue as Public Sector Commissioner and to take on the role of Acting Commissioner for Public Sector Standards. That will mean that there is no confusion in the public service, because there will be no overlap of responsibility, and there will be no break or disruption to the orderly process of managing the public sector, in particular the advertising and appointment of senior executives. It will mean also that there will be a smooth transition and Dr Ruth Shean will be able to take up her appointment as the new, and first, head of the Department of Training and Workforce Development.

If this resolution is not agreed to, it will frustrate the operation of the public service, and it will delay appointments. It will also prevent the reporting of public sector issues to Parliament. That includes the reporting of any inquiries or disciplinary measures. What I am saying is that if this resolution is not agreed to, there will not be a Commissioner for Public Sector Standards who reports to Parliament. This is in every sense a transitional provision for perhaps two to three months to allow the public service to perform its functions properly. It will enable one person to hold two roles, but those two roles will be treated separately until they are properly merged. Once those two roles are merged, there will still be independent reporting to Parliament. It will also allow Dr Shean to take up her appointment.

Mr M. McGowan: You are saying that you are going to bring forward the legislation for the Public Sector Commissioner. Will the Public Sector Commissioner be an independent statutory officer in the same way that the Commissioner for Public Sector Standards is an independent statutory officer?

Mr C.J. BARNETT: The legislation—which hopefully will come forward before we rise this year—will morph the Commissioner for Public Sector Standards into the Public Sector Commission. That will mean that the office of the Public Sector Standards Commission will be no more. The functions on which the existing Commissioner for Public Sector Standards reports to Parliament independently will still be reported to Parliament independently, but they will be reported by the Public Sector Commissioner. Those functions will still be independently reported, but not to the Premier or the minister of the day; they will be reported to Parliament.

Mr M. McGowan: But that individual will still be answerable to the Premier of the day in relation to other issues, rather than to the Parliament?

Mr C.J. BARNETT: As he is currently, yes. The exception to that is that I have delegated to him a lot of the functions that were generally performed by the minister. I have done that on the basis that I think he should be given more authority to deal with internal matters within the public service, rather than have those matters dealt with by the minister. That is just a value judgement that I have made. I am not making any political point here. I am not being critical of previous governments, be they Liberal or Labor. It is just that our government has taken that view. The Public Sector Commissioner will be in charge of all issues to do with the internal management of the public service, such as appointments, disciplinary matters and inquiries. The Public Sector Commissioner will report to the government of the day, and it will report independently, on selected matters, to the Parliament. I believe we will then have, for the first time in many, many years of successive governments, a truly independent and professional head of the public service. Why does that matter? It matters because we need to ensure the day-to-day integrity of the public service and its operations. It matters also because it will help attract talented and ethical people to a long-term career in the public service, because they will be given that independence. Again, I am not making a political comment, but I think we have some serious issues in the Western Australian public service. There has been a loss of professionalism over the years. One of the reasons for that is that there has been a confusion about the roles of ministers and heads of departments. I want to try to make a very clear distinction between those roles. To do that, we need to as a government, and I hope also as members of Parliament, be prepared to trust the head of the public service to take on those roles that were formerly often performed by ministers and, therefore, political representatives. I hope that will enable the public to have greater confidence in our public service, and, indeed, that when we have a change of government we will not have this sense of oh, well, he worked for the Labor government or he worked for the Liberal government. That sort of undercurrent has been a feature of Western Australian politics and the Western Australian public service for a long time. That is not a feature of the public service in Canberra. The public service in Canberra has a far more natural shift from one government to another, and any appointments, if they are political or so-called term of government, are seen as such. That is important.

There are other changes that have been foreshadowed. Again, looking to the commonwealth, we tend to have a pattern in this state where a person takes on the position of, say, director general of a department and stays in that position for a long time. In the commonwealth public sector, the position of director general is far more of a professional role. There is also movement in the commonwealth public service, where a person may take up the position of director general in one area for six or seven years and then move to another area. I think that is healthy. That does happen in the WA public service. Dr Ruth Shean will be an example of a person who has taken on different roles in the Western Australian public service. However, that does not happen to the degree that it perhaps should. These changes will enable the Public Sector Commissioner to manage not only the public service on a day-to-day basis, but also the long-term professional development of the senior people in our public service.

I commend this resolution to the house. It will need to be passed by both houses of Parliament to be successful.

MR J.C. KOBELKE (Balcatta) [1.26 pm]: I am not the lead speaker for the opposition on this motion. However, I want to point out that the opposition will be opposing this motion. We are not opposing this motion because of the personalities. Mr Mal Wauchope and Dr Ruth Shean are highly respected public servants. They are respected right across the public sector. They are held in high esteem by members on both sides of Parliament. Our opposition to this motion has nothing to do with the personalities involved. It also has nothing to do with the intention of the government as laid out in its pre-election commitments. Even though the government has flipped and flopped around on its commitments, it has laid out that this is its intention, and I believe this intention can be justified as a good move. This issue comes down to the way in which the government is seeking to implement this commitment. That is what is causing the opposition grave disquiet.

The Premier has said that we need to put trust in people. I think what the Premier is really saying is that it does not matter how bad a system may be; good people can make it work. Good people can make a bad system work. But why should we require good people to make a bad system work? Why should we put good people in a position of potential jeopardy and compromise? What we should be doing is protecting the excellent officers in whom the Premier is saying we should put our trust. That is what we should be doing. But we should not be doing that on the run, by flipping and flopping, a bit here and a bit there. That is what we are seeing from the Premier in this particular area. The changes that the Premier is proposing were based on a Liberal Party election commitment. I do not have a copy of the actual commitment, but I do have a copy of the Public Accounts Committee report that was tabled in June this year and that refers to that policy. That report states at page 1 that —

> … the 'independence' of the public sector needed to be restored, in part through the appointment of a 'Public Sector Management and Standards Commissioner,' independent of the DPC. The position was intended to recommend suitable persons to appointment as Chief Executive Officers (CEOs); oversee ethics and standards; and provide leadership, to the public service. The Liberal Party committed to appointing a Public Sector Management and Standards Commissioner within 100 days of successful attainment of Government.

What the Premier is seeking to do is in keeping with that commitment. The general thrust of that commitment can be substantiated as an improvement and a reform of the public sector. I do not have an issue with that. But when we look at that promise and the way the government is seeking to deliver on it, the government is not dealing with it in the detail that is required to make it work. As anyone who understands that commitment would know, the government could not have honoured that commitment within 100 days, because legislation will need to be enacted to bring it into effect. The Liberal Party said that it would have both a Public Sector Commissioner and an Office of the Commissioner for Public Sector Standards instead of its promised public sector management and standards commissioner. The Liberal Party dropped that aspect of it and said that it would do it by delegation; that is, it would have a Public Sector Commissioner delegated and appointed by the Premier, and have a Commissioner for Public Sector Standards, who would be an officer of this Parliament. As the Premier said, that led to an overlap of roles and to increased complexity. When the Public Accounts Committee looked at that and made its recommendations, it pointed out that the government was just confusing things. I will take just one element of that because I cannot cover all the issues in the time available.

When speaking to the motion, the Premier talked about the importance of the Public Sector Commission to which he had delegated powers. That puts the whole situation in great jeopardy because a delegation can be revoked or changed at any time. If the minister of the day, who is the Premier, were not happy with something, he could simply withdraw or vary the powers. The minister should have the right to do that, but the problem is that the change would not have to be gazetted or publicly announced. The Premier has announced this change, which is great; he was not seeking to hide it. However, we must have good systems with good people working in them, not bad systems that we expect good people to make work. That is what the Premier is trying to do. The issue of delegating Mal Wauchope as the Public Sector Commissioner is that there is no transparency or accountability. We trust that Mr Wauchope is a good officer. However, things could happen. The minister of the day, who might not be this Premier, could withdraw or vary the delegation and we would not even know about it. A decision could be made and it could hit the fan, and we would not know whether it was made by the commissioner or the minister.

Further, it is a clear point of law that when a minister delegates to an officer, the minister still has all the powers. The Public Sector Commissioner—the delegated officer—has no independence; the minister still has all the powers to do as he or she wishes. It is a total furphy for the Premier to say that it is an independent role. We have a good, trusted officer and therefore we expect him to uphold the appropriate standards, and I have confidence that he will, but that is not the way the system should operate. The system that is in place and that the minister is seeking to perpetuate is full of overlaps and potential jeopardy because we are not sure what is happening and who is responsible for what. It is a bad system. I understand that the Liberal Party initiated going down this path in its first 100 days in office. However, the government is continuing to use these types of stop-gap measures, with all the potential problems that go with them, to try to get to where it wants to go. I have no problem with where it wants to go, but it should be done by a proper process.

The Liberal Party's policy on this matter was very thin. Its further announcements consisted of two media statements. Was there a position paper? We could not discover one. Did a policy paper lay out how the details would fit together? Not to our knowledge. It is just policy on the run in a very important area of public sector management. Again, the government is expecting that good officers will make a bad system work. That is not the way that it should be done. It is a total furphy to say that the Public Sector Commissioner is independent. There is no independence as the system is currently structured. The Commissioner for Public Sector Standards has independence by being appointed as an officer of this Parliament, but the Public Sector Commissioner is a director general who is given the title of "commissioner". We must make sure that the system is transparent and accountable so that the position of the good officers is not undermined because what they are supposed to do is not clearly set out.

The Public Accounts Committee made a number of recommendations in its report, one of which was that the government should not continue to have an overlap of responsibilities between the Commissioner for Public Sector Standards and the Public Sector Commissioner. There is also a potential conflict because, as an officer of the Parliament, the Commissioner for Public Sector Standards conducts the process for recommendations for senior executives or directors general, and instead of the position being appointed by the minister, there is some confusion about whether that power has been delegated to the Public Sector Commissioner. The Public Sector Commissioner now makes a recommendation based on the work done by the Commissioner for Public Sector Standards. Good people can make that work, but there are processes that need to be clearly set out and delineated so that people will know how this works. The Public Accounts Committee recommended the amalgamation of the Public Sector Commissioner, as an independent officer of the Parliament, and the Commissioner for Public Sector Standards; that was the original idea. That report was released in June, and in July the Premier said that the government would do that. That raises the problem of how it can be managed, given the good officers who are there, and it leads us to what we have here.

Another of the committee's recommendations that the government has not taken up to my knowledge is that while we are trying to make this ramshackle system work, there is no clear requirement to provide transparency and accountability. The third recommendation of the report states —

> For as long as the Public Sector Commission exists without its own statutory foundation, any variation or intervention in delegated powers by the Minister for Public Sector Management should be subject to a requirement for timely public disclosure.

If there is a change to the delegation, or if the minister overrides a decision, we should have an absolute clear commitment that we will be informed quickly so that we will know who is responsible in this cobbled together system.

Mr C.J. Barnett: If Mr Wauchope is appointed Acting Commissioner for Public Sector Standards, he is bound to comply with the act as it is, to the letter; nothing will change. The only change will be that he will be wearing two hats.

Mr J.C. KOBELKE: The first part of what the Premier said is correct, but the part that the Premier is skipping over is that Mr Wauchope will also be the Public Sector Commissioner.

Mr C.J. Barnett: He wears two hats. That is the only change.

Mr J.C. KOBELKE: There is a conflict between the two. There was a classic example in the media recently regarding Mr Dave Caporn's appointment to a senior position at the Fire and Emergency Services Authority. When wearing his Public Sector Commissioner hat, Mr Wauchope said that we had a problem and that mediation might be the way to go, whereas the Commissioner for Public Sector Standards, who was doing the report, said that mediation was not part of the tools that she was supposed to use. What they were trying to do under their various roles was in conflict. The government will put Mr Wauchope in conflict with himself. I am sure that that has happened in the past. Mr Wauchope is a very experienced and competent officer and I am sure that he can handle that, but why would the government put him in that position in the first place? That puts Mr Wauchope in a position whereby he can be attacked by one side of politics or the other for being in conflict because he is wearing two hats at the same time. That is the issue, and the means by which the Premier seeks to progress this matter has created a considerable problem.

There were nine recommendations in that report, but I will not go through them all. I note that the committee pointed out that it was quite silly to have two positions. The government has backflipped and has decided to amalgamate them, but how they will be amalgamated involves a lot of detail. How will the person who takes on this role manage the delineation of the various roles and the various conflicts that will arise? As I indicated, the government has been very light on detail about how that is supposed to be done. It will leave it to the excellent officers to sort out for themselves. The Public Sector Management Act 1994 is too prescriptive in some ways. It is seeks to lay out these matters so that we can know how these officers should operate and how the standards should be set. What the government is doing now with this cobbled together change-it-on-the-run policy is leaving it in limbo; it is leaving it to the officers to sort out. The government is undermining the Public Sector Management Act. There has been a range of reviews of the Public Sector Management Act. When I was the Minister Assisting the Minister for Public Sector Management, I was very keen to get through some changes, and I must acknowledge my failure. I put in place another review based on a review that was based on another review to try to get some of the problems fixed, but then I lost the portfolio and we did not see those changes come through.

There is need for reform, and I support the Premier and wish him well in undertaking that reform, but it needs to be done properly. The Premier has now said that we are going to have that legislation and we are going to have one commissioner. However, the answers he gave to the questions of the member for Rockingham did not make it clear how that will be managed. No matter how we manage that conflict between the role of the Commissioner for Public Sector Standards in ensuring the codes and standards are met in the selection process for senior officers in the day-to-day management, and the role of the Public Sector Commissioner in delegating powers, people will be critical; it does not matter what we do. What matters is how we achieve a balance. I suspect that the Premier will find that his idea of balance is different from my idea of balance, but that is his right and he must act accordingly. The issue is: will that balance be achieved by making major changes or will it be achieved simply by making some minor realignments?

I was a bit surprised when the Premier said that legislation had been drafted and would be introduced soon. That caused me a bit of surprise because an issues paper had been put out by the Public Sector Commissioner on this reform process. If this is the approach that has been taken, I would find it very difficult to believe that input from the issues paper could have been addressed in such a short time. It could be that this is just a front and the ideas have been sorted out; and that is okay, because I spoke to the Premier and said, "Get some good people together and just do it because we have had too many reviews already." This is about root and branch restructure. I am very surprised that the government could go through all those issues and sort them out in such a short time and

draft legislation. If the government has done so, great praise to it. However, I suspect that it has gone for a more minimalist model, which is good because that is what I recommended.

This opens up many issues. Some of the 11 points raised in the issues paper include flexibility in recruitment and employment practices, management of employee performance and exit arrangements, and improving whole-of-sector performance. The issues paper states at chapter 7, "Termination of employment" —

> … to provide for PSC to approve compulsory retrenchment …

Compulsory retrenchment in the public sector is a very thorny issue, so perhaps that has been left out of the package. The issues paper goes on in that same chapter to state —

> Amend the PSM Act to provide the capacity for all public servants … appointed on a fixed-term contract, to have their contract terminated on four weeks notice

Those are just a couple of the thorny issues in this document that the government needs to address if it is to properly consider all the issues. My advice to the Premier, which is not necessarily worth much, is that there is a need for reform. The Premier has an agenda and the government needs to get on with it. Extensive reform, as is suggested in this issues paper, would drag on for too long. Perhaps it has been done quickly, or, alternatively, it has dealt with only a subset of the issues raised.

Mr C.J. Barnett: An enormous amount of effort has gone into this over the past month. Robert Cock, as special counsel to the government, has worked on this. There has been a big effort. I am not saying that every issue has been dealt with.

Mr J.C. KOBELKE: The Premier has good people working in this area. I will wait and see which way they have gone. As I have said, I would be surprised if they have done a thorough review in such a short time, as opposed to having clear targets and fixing those problems. I support the Premier in doing that. I might not totally agree with his solution, but I think it needs to be done and I give him support for taking the road that he wants to take. My problem is that the method that the Premier is using simply has not been substantiated in a way that gives confidence to people. The officers have our confidence, but the Premier's use of these means of delegation and these stop-gap measures causes opposition members great concern.

As I have already indicated, when powers are delegated to the Public Sector Commissioner, it does not provide independence and it removes transparency. When the roles of the minister and the commissioner or public servants are delineated, people know where they are. But when all those powers are delegated, it is hard to know who is pulling the levers and who is responsible for various things that need to happen. We do not object to the outcome; we object to the means by which the government is seeking to achieve it, because it undermines the independence of the Commissioner for Public Sector Standards. We will wait to see whether the legislation addresses those concerns, but if the government does so by using stop-gap measures, there will be a real problem. We on this side of the house are also concerned that when a good officer is placed in this situation, that officer will be placed in some jeopardy. There will be different views on the rules and what should happen because the rules are not clearly set out. There is too much overlap and the structure has not been well formulated, and that will lead to potential problems.

[Member's time extended.]

Mr J.C. KOBELKE: The Premier talks the talk but he does not walk the walk. He talks about politicisation, but in his contribution to the debate on the motion, he said that he would rather go to the federal system. Plenty of academic commentators would clearly state that under the Howard government, the federal public sector was politicised like never before. The Rudd government has kept people in the sector, but the Howard government had huge clean-outs and put its political people into the public sector. The Premier brought one of Howard's political people to Western Australia to head the Department of the Premier and Cabinet, yet the Premier talks about not politicising the public sector. There is no doubt that Mr Conran is a very competent and capable officer, but section 73 of the Public Sector Management Act makes it absolutely clear that a person who is a political appointment on contract cannot apply for a permanent job, yet that is what Mr Conran did. He was brought to Western Australia by the Liberal Party after the election, he was given a contract position to work for the Premier, and he was then allowed to apply for and was appointed to the most senior public sector job in the state. The reason that Mr Conran got away with doing that is that there was a legal loophole because he was employed on a contract as a company instead of as a person. Because he was employed as a company, he was not caught by the provisions of section 73 of the Public Sector Management Act. However, the intention of section 73 of the act is absolutely clear: people should not be parachuted into a position by appointing them on a contract and then allowing them to apply for that position. The act is very specific: a person on a contract for service must terminate that contract before he or she applies for a position. Mr Conran did not do that. The Premier talks about greater independence and depoliticising the public sector, but what he is doing means that there will be less independence and greater politicisation.

I turn to the provisions of this motion. As the Premier has pointed out, the motion applies to both section 18(6) and section 28 of the Public Sector Management Act 1994. Section 18(6) places a prohibition on the Commissioner for Public Sector Standards holding any other position. It states —

> The Commissioner shall not, except so far as he or she is authorised so to do by resolutions of both Houses of Parliament —
>
> (a) hold any office or place referred to in Part 1 or 2 of Schedule V to the Constitution Acts Amendment Act 1899 (other than the office of Commissioner) or be a member of any commission, council, board, committee, authority, trust or other body referred to in Part 3 of that Schedule; or
>
> (b) engage in any occupation for reward outside the functions of the office of Commissioner.

That leads to the motion before the house. We can get around that restriction on the Commissioner for Public Sector Standards holding any other position by a motion of both houses. The government is using this device so that the Commissioner for Public Sector Standards, who will be Mr Wauchope, can also perform the job of Public Sector Commissioner—that is, as chief executive officer or director general with the title of commissioner—and look after the management issues of the public sector. One can see that there is sense in bringing the two together. The issue is how one does it under the very special provisions contained in section 18(6) that do not allow that.

Mr C.J. Barnett: Will you take a brief interjection? One option that was obviously looked at was just to appoint another person as Acting Commissioner for Public Sector Standards. That is a fairly specialised and senior role. It would be very difficult to find somebody who did not have another public sector job that precluded it. For example, it would be very unfair to have gone out and found a lawyer, or a retired judge, for a contract and job that that person would be in for a matter of a couple of months. That is part of the dilemma.

Mr J.C. KOBELKE: I understand that, and I had that dilemma when I needed to appoint someone as President of the Western Australian Industrial Relations Commission, because we were going to abolish that body, but I needed someone in the interim, so I understand the problem. It can be fixed by the same means. Somebody could be taken on who was in an independent position, such as the Ombudsman, Auditor General or the like, and the provisions of section 18(6) could be used to allow the person to do it in the interim. Particularly because, as the Premier says, the legislation will come on quickly, another officer could be used to try to sort out the greater conflict that I believe the Premier is creating by this method.

The second reference in the motion is to section 28. Section 28 relates to an Acting Commissioner for Public Sector Standards. There is clearly an issue about the appointment and how it is approached, because, as I have already indicated, the Commissioner for Public Sector Standards is an officer of the Parliament. The appointment is covered in the statute, as would be the means of dismissal. There are very special provisions for this position—provisions that we do not generally have for senior officers of the public sector. It even goes, as I am commenting on section 28, to having special provisions around an acting commissioner. That legislation is quite specific and restrictive. There is not even a loophole by which a government of the day could drag in an acting commissioner without having to meet the requirements in the statute. That certainly binds any government, as it does this, in how it deals with this sort of matter.

The provision also says that because of the importance and independence of the Commissioner for Public Sector Standards as a statutory position and as an officer of this Parliament, an Acting Commissioner for Public Sector Standards cannot be in that position for more than 12 months. That is covered in section 28(4), which reads —

> An acting appointment subsists until —
>
> (a) the relevant leave of absence, inability, absence, suspension or vacancy ceases;
>
> (b) the term of that appointment expires; or
>
> (c) the expiry of 12 months from the day of that appointment,
>
> whichever is soonest.

It even goes on in another subsection, which I will not read, to point out that a government cannot get around this by having multiple appointments of acting commissioners that go for more than 12 months. The point is that those provisions are there to guarantee that independence of the Commissioner for Public Sector Standards. If we read them and see the restrictions that are put in the legislation, it is absolutely clear that it was the intent of the statute that the Commissioner for Public Sector Standards should have that authority and independence as an officer of this Parliament. The whole point of what the government is seeking to do is to blur that with the role that currently sits with the Public Sector Commissioner as an officer working largely under delegated powers. As I have indicated, those delegated powers simply mean that that officer becomes a foot soldier of the minister of the day. Regardless of the integrity—that is certainly there with the officer—the delegation can be changed or

varied at any time, and the minister of the day does not yield those powers because of delegation. If there were a day, for example, when the minister was a bit absent minded, the minister could go off and do a whole lot of things quite contrary to what the Public Sector Commissioner was doing, and the things done by the minister would have effect because the minister would still have the power.

We see within this that the government is seeking to achieve a particular outcome. I believe that outcome is laudable, and we do need to see reform in this area. The government has set a course for that objective, and again I think that is laudable. However, when we start to look at the detail of what the government has done and how it has done it, it causes grave disquiet. The one example I used, and there are others, is that Mr Conran is an officer of experience and standing but the means by which he was appointed to that position has caused more disquiet in the public sector than anything else for about 10 years. I have talked to public servants. They are all of the view it was a political parachute job.

Mr C.J. Barnett: Do you say that of the Prime Minister as well? Mr Moran was appointed to head up the Department of Prime Minister and Cabinet. There was no selection process; he was just told, "You are it".

Mr J.C. KOBELKE: That is because that is how the public sector is organised in Canberra. The Premier in his contribution beautifully illustrates the point that he says one thing and walks in a totally different direction, because in his contribution to this very debate, if I heard correctly, he applauded the fact that in the commonwealth system, which he claimed was less politicised, people were appointed to a position or an office for a period and were then moved around. Again, that is a good move, but the point is that that system it is far more politicised than the system we have here. If the government wants to move in that direction and take the arguments, it could. In fact, our report suggests in part that the government should do that. However, the issue is that that is not the system we have. The Premier, as the minister for public sector management, is seeking to change the system by the patch-up, botchy job of how to get there. That is the real concern. People want to have confidence that if we are going to change the Public Sector Management Act and the way it operates, we do it by legislation through the Parliament and not by this little motion, by delegation and by a whole range of shifts and shuffles that mean that even though we have good officers there, we lose the transparency and we lose the accountability. If the Public Sector Management Act is about anything, it is about having accountability in the public sector. It is so much there in belts and braces that it perhaps overdoes it in some ways and it needs to be changed. The Premier has the right to do that. But we do not do it by this backdoor means of simply making delegations and changes in this motion that will authorise a situation under which we will have continuing overlap and a lack of transparency and accountability that would then undermine confidence in our public sector.

Debate interrupted until a later stage of the sitting, on motion by **Mr R.F. Johnson (Leader of the House)**.

[Continued on page 9342.]

CRIMINAL CODE AMENDMENT BILL (NO. 2) 2009

Declaration as Urgent

MR C.C. PORTER (Bateman — Attorney General) [1.57 pm]: In accordance with standing order 168(2), I move —

> That the bill be considered an urgent bill.

This bill has gone through a number of drafts. The reason that is the case and the reason the drafting has taken some considerable time is that this bill deals with a very fundamental matter in the criminal law; that is, how the criminal law assigns criminal responsibility. The situation that it seeks to cure and the mischief that it seeks to address are the incidents of projectiles being thrown at vehicles—or what the Criminal Code might call conveyances. One of the statistics that have been quoted to me, which is merely with respect to recorded incidents with public transport, is that between January and November of this year there have been 1 170 such incidents. Obviously, there have been a number of calls for legislation to be drafted to try to ensure that the field is covered in this area, and that is what the government has sought to do. The reason that has taken some time is that getting that legislation right is not necessarily a simple matter. The primary reason for that is that we already have an offence on the statute books of this state, which is the offence under section 304, which provides that in essence when a projectile is thrown at a vehicle in circumstances when the throwing is likely to endanger the health, life or safety of any person, a crime is committed and a penalty ensues. As difficult as it may be to comprehend, it has been identified that there may be circumstances in which it is very difficult to argue beyond reasonable doubt that, even though there was inherent risk in the situation, the throwing of the rock occurred in circumstances in which it was likely to result in endangerment to health, life or safety. Therefore, the government has looked at various other models.

Debate interrupted, pursuant to standing orders.

[Continued on page 9322.]

QUESTIONS WITHOUT NOTICE

SIR CHARLES GAIRDNER HOSPITAL — MORBIDITY AND MORTALITY RATES — LEAKED DOCUMENTS

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

I refer to the failure by Sir Charles Gairdner Hospital to release the morbidity and mortality rates for its cardiothoracic unit in response to a freedom of information application made by Channel Nine, and the subsequent leaking of this material to Channel Nine.

(1) Can the minister confirm that the Department of Health has launched an investigation into the leaking of these documents?

(2) Can the minister confirm that the Department of Health has advised the Corruption and Crime Commission of this investigation?

(3) Who authorised the investigation?

(4) Does the minister approve of his department using valuable resources to search for whistleblowers who attempted to expose a serious failing of the hospital?

Dr K.D. HAMES replied:

(1)-(4) I know of some details, having seen a copy of the question that was sent out by Dixie Marshall last week; the member has obviously used a copy of the question she sent out to a large number of members. I have discussed the matter with staff within the hospital system. My understanding about the freedom of information application is that the details that were subsequently leaked were not related to the information that was requested, and that the leak in fact contained a lot of private information that could not have been released anyway, particularly details including patient names and circumstances. We need to understand that I am the first health minister in this state to get all the cardiothoracic surgeons to actually agree on anything, which is that they hate me! It has taken a bit of work on my part to get to that stage. The former minister had similar difficulties trying to work out what should happen with cardiothoracic surgery in this state. They all agreed that I had got it wrong. However, there have been significant disputes between cardiothoracic surgeons in Western Australia. Members may be aware that at least one of the surgeons is suing one of the others. There were also considerable disputes between some of the cardiothoracic surgeons at Sir Charles Gairdner Hospital and another surgeon, who subsequently left and went to another state. A committee was involved in the discussion of those figures. I forget the name of the doctor, but one of the doctors ended up doing leading cardiothoracic surgery in another state, and this leak related to specific information about his performance and his patients.

Mr R.H. Cook: This is more about the FOI application.

Dr K.D. HAMES: I am just saying that the information that was leaked came from a committee review of information about that particular doctor and the work that he was doing.

Mr E.S. Ripper: If these documents existed, why couldn't the FOI people find them?

Dr K.D. HAMES: That is what I am explaining. The documents related not only to the doctors, but also to specific incidents involving specific patients. Under FOI rules, those things are not meant to be made publicly available anyway. I asked the department what was happening and whether it was true that this investigation had been referred to the CCC, and I got two responses. One was that the department had requested that there be a degree of investigation because what had been leaked was totally inappropriate; there were no details about whistleblowing. Members should remember, when they talk about whistleblowing, that this was one doctor's views on what another doctor was doing. However, patients' names were involved, and it is totally inappropriate to leak patient details. If the names had been scrubbed out, it would have been a different matter, but it was totally inappropriate to release those names.

I said to the person from the hospital with whom I discussed these matters that, following any suggestion of some CCC review and detailed investigation, and particularly as Dixie Marshall was very unhappy with what was being done, the person was on a hiding to nothing and that it was not worth the person following the matter up to the extent that has been suggested today by the member for Kwinana. If it is an issue to do with patient confidentiality and details, it would be reasonable to undertake some sort of review, but I do not think that a major review or a detailed witch-hunt is necessary. My suggestion was that the person should do the necessary job, but not make a big deal out of it.

Mr R.H. Cook: Has it been to the CCC?

Dr K.D. HAMES: I do not know whether it has been to the CCC. When did Dixie send that thing out? Last week? The member must have received it; it was copied to him just as it was copied to me.

Mr C.J. Barnett interjected.

Dr K.D. HAMES: Sorry; the Premier is right. I am not to know, in effect, whether it has gone to the CCC or not. I had forgotten that that was the case with anything referred to the CCC.

Ms A.J.G. MacTiernan: You'd forgotten what you're not supposed to know!

Dr K.D. HAMES: The reality is I do not know whether it has, which is good, because I am not supposed to know whether it has! That settles the question!

The SPEAKER: I know nothing!

SIR CHARLES GAIRDNER HOSPITAL — MORBIDITY AND MORTALITY RATES — LEAKED DOCUMENTS

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

I have a supplementary question. Is the minister therefore conducting a review into the freedom of information unit of Sir Charles Gairdner Hospital, which failed to produce any information or even reveal that documents were not there to be discovered?

Dr K.D. HAMES replied:

The response to me was that the FOI request did not seek the particular details that were leaked, and that the information provided was in accordance with the FOI request. If the member for Kwinana has some evidence to the contrary, I am happy to have another look at the matter. In fact, Dixie Marshall is quite welcome to come to me with any suggestions that questions have not been answered. My understanding is that even if the FOI request related to that specific meeting and those specific details, the information could not have been released because it included details about individual patients that could not be released under FOI provisions.

The SPEAKER: Before question time advances any further, I draw members' attention to the presence in the Speaker's gallery of a group of educational specialists from Beijing led by Mrs Zhou Xan. I welcome them to Western Australia and the Parliament of Western Australia.

EXTENDED RETAIL TRADING HOURS

898. Mr W.R. MARMION to the Minister for Commerce:

I took a significant interest in the minister's recently tabled map displaying the extension of the Perth tourism district into my electorate and also into parts of South Perth, East Perth and East Victoria Park. This is a significant step towards giving people a choice about when and where they shop. Given the Labor Party's refusal to support 9.00 pm weeknight trading across the metropolitan area, what else can the government do to bring Perth shopping hours into the twenty-first century?

Mr T.R. BUSWELL replied:

I thank the member for the question. I sense from the way he asked the question the member's obvious excitement and support for the government's reforms in this area! The government has been buoyed by the front page story of a local newspaper in the electorate of the member for Nedlands—that fantastic publication, the *Western Suburbs Weekly*! The front page shows three small business owners from Subiaco rushing to put up "Yes, we're open" signs in their front windows, because they are just as excited as the member for Nedlands about the government's plans for Subiaco. Why are they excited? Because they know that the changes we are talking about will bring more foot traffic along Rokeby Road into Subiaco. They know that it will create greater vibrancy in the area and that it will be good for their businesses. The past few months have been a bit of a sorry time for retail reform in Western Australia. As we all know, the government suggested an extension of trading hours to 9.00 pm on weeknights—not a major change; a few hours. Of course, as history will now show, the Luddites and flat-earthers of the opposition did not support it, led by the member for Cockburn, the shadow Minister for Consumer Affairs.

Ms A.J.G. MacTiernan interjected.

The SPEAKER: Member for Armadale!

Mr T.R. BUSWELL: The member for Cockburn, as we all know, is happy to buy his Beluga caviar 24/7 at the Boatshed in Cottesloe, but is denying the people of Cockburn any choice, as we have seen many times. He is denying shoppers in Western Australia the right to enter the twenty-first century. The government is determined to push forward, introduce more choice and support Western Australian shoppers. Yesterday we introduced a bill into the house that creates a special trading precinct in Joondalup. We did that because of great advocacy from

the recently elected mayor of Joondalup, Troy Pickard, and his council. We are very happy to support them. I heard the member for Armadale barking on a second ago. We are going to look at Armadale, because we know that she wants extended trading in Armadale. We are right behind the member for Midland as well.

Several members interjected.

The SPEAKER: I do not want you injuring yourself, Treasurer; that would not be nice. I thought we were making splendid progress there for a while, member for Armadale and Premier.

Mr T.R. BUSWELL: Thank you, Mr Speaker. I have been interested to see the comments of the member for Joondalup on this matter. Five months ago, in June, the member opposed weeknight trading in Joondalup, describing the move as a "back-door push for deregulated trading." Subsequent to that, he put out a survey, decorated with his smiling face, to the people of Joondalup asking what they thought. Overwhelmingly they said they were right behind the government. This week, on the front page of the *Joondalup Times*, we see the member for Joondalup claiming single-handed credit for introducing the measure. The article states —

> Joondalup is all but certain to get extended trading hours after … Tony O'Gorman backed the State Government's plan to designate the town centre as a special trading precinct.

What a supporter! I love them—conviction politicians of the highest order. The other side is full of them. This map shows what we announced today. It is in big print so even the member for Albany can see it. It is called an expansion to the Perth tourism precinct, and it is a very exciting initiative. This means that the footprint will be bigger. More shops will be able to trade for extended periods. They will be able to trade until 9.00 pm on week nights, until 5.00 pm on Saturdays, and from 11.00 am until 5.00 pm on Sundays. It is a great outcome. Some people have said that it means that only six additional stores may be able to open. I have an answer to that. I did some research, and this is my response to those who say that it is only piecemeal —

> The direct vibrancy from extended hours is not having supermarkets staying open, but in being attractors in prime tourism districts like the CBD to encourage supermarket shoppers to come early or stay in the district and enjoyed other shopping, eating, cinema and leisure activities.

That is what we are about. I got that statement from one of the very great inspirations for me in the retail trading debate, the member for Perth. He used those words when he wrote to me and asked me to keep Perth open until midnight. We cannot do that, member for Perth.

Mr C.J. Barnett: He has broken away from his Stalinist colleagues; he is out there on his own now.

Mr T.R. BUSWELL: I know he is our great supporter.

As I close, I say to the Leader of the Opposition that it is a challenge for him now. This government supports reform and choice for the shoppers of Western Australia.

Mr E.S. Ripper interjected.

Mr T.R. BUSWELL: The Leader of the Opposition has got his voice back.

When he was in government, he supported reform, and he still does. He promised the world when he was in government in relation to retail trading reform. Now that he is in opposition, he has changed his tune. He promised the world in relation to reform when in government, but in opposition he has delivered an atlas. This is a big test for the Leader of the Opposition because we have outlined a way forward and we wait for his positive support.

CLARKSON COMMUNITY HIGH SCHOOL — EXPERT REVIEW GROUP REPORT

899. Mrs M.H. ROBERTS to the Minister for Education:

In asking this question I acknowledge the presence in the gallery of students from Langford Islamic College, in the electorate of the member for Cannington.

(1) Has the minister read the Expert Review Group report on the Clarkson Community High School; if not, why not; and, if yes, what actions are being taken as a result of its findings?

(2) Does the minister acknowledge the findings in the report that the cumulative effect of reduced proactive whole-of-school pastoral care, the loss of some long-term staff, and ineffective behaviour management has created a spiral of diminishing behaviour standards and reputation of the school?

Dr E. CONSTABLE replied:

(1)-(2) I have certainly received that report. I have not studied it in detail, nor have I been briefed on it in detail. The Expert Review Group reports are extremely important for the accountability of government schools, and they are not undertaken lightly, although one or two more recently have looked at schools that are performing really well. They are not always about schools that have problems. The Clarkson

findings are of course very worrying and the school will have assistance in working through those recommendations and findings to improve on the performance of the school and the work that it is doing. It is vitally important in all our high schools, and in fact all our schools, to have good pastoral care processes in place.

Mrs M.H. Roberts: What about maintaining long-serving staff?

Dr E. CONSTABLE: Maintaining long-serving staff in schools is very important. In fact, I have had a close look over the years at school staffing, and what we really need is to have some long-serving staff, with a gradual turnover, so that new blood is coming into schools with new ideas to encourage schools to move forward. A loss of high standards of pastoral care is very worrying, and having ineffective pastoral care that is not helping students in schools is a great worry to me. I will certainly go back and look at that report in more detail, but I know that over the next few months extra help will be given to that school through the district office to help it improve. I will personally look at the staffing profile of the school and make sure that next year we have the best possible staff to start the school year.

CLARKSON COMMUNITY HIGH SCHOOL — EXPERT REVIEW GROUP REPORT

900. Mrs M.H. ROBERTS to the Minister for Education:

I have a supplementary question. Is the minister aware that up to 34 fixed-term teachers at the Clarkson Community High School have been advised that they will no longer have jobs at Clarkson next year, despite having served some four or five years or more in that school?

Dr E. CONSTABLE replied:

With the half cohort in schools, we know that there will be some changes to staffing in high schools as the half cohort moves from year 7 into year 8. All permanent teachers' jobs are obviously secure because they are permanent employees in schools. A number of people who are on one-year contracts in schools will not have their contracts renewed.

Mrs M.H. Roberts: Thirty-four of them at this one troubled school—teachers who have been there for four or five years or more.

Dr E. CONSTABLE: I am not aware that there are 34 at that one school. I imagine that some of those teachers are part time and some are full time, so it is not necessarily 34 full-time equivalents. Many of our fixed term teachers will have jobs, although maybe not in the schools in which they are currently employed, but in other schools, particularly if they are teaching in areas that are difficult to staff, such as maths and science, and design and technology. I do not know the details of the school. At the present time the department is working through the placement of teachers for next year. I am sure many of those teachers will be looked at as that process goes forward over the next three months.

PRISONS — ACCOMMODATION

901. Mr M.J. COWPER to the Minister for Corrective Services:

I refer to the Liberal-National government's record allocation of funding to address the issue of lack of accommodation in the state's long-neglected prison system. Can the minister please update members on any progress on the expansion program?

Mr C.C. PORTER replied:

I thank the member for his question and acknowledge his long involvement and deep understanding of the criminal justice system. As of 20 October the Liberal-National government has placed 353 beds into the prison system that were not there when we took government not that long ago. One of the recent announcements that the Liberal-National government made was that we had set aside $186 million for a 387-bed expansion for Acacia Prison that would involve the building of two entirely new wings inside the perimeter fence at Acacia. What we have found, fortuitously, through the procurement process with respect to the Acacia program is a cost saving of about $60 million, which as a government we have announced we will redirect into further accommodation in the prison system—indeed, a further 640 beds. A decision is being made at the moment about precisely where they will go, but the candidates are Casuarina, Albany and Greenough prisons. It is likely that there will be a mixture of numbers between those three prisons. We are also looking at Hakea because, of course, being a remand prison, it is under some significant stress at the moment.

I might also add to this—and I say this with respect to the member for Warnbro's recent media statement titled "WA prisons flooded with mentally ill, poor and indigenous"—that the member for Warnbro and I are on a journey of learning with respect to the prison system, because it is a very complicated system. However, I might just, with all respect, make a couple of points about that media statement. The first point is that it is mostly wrong. That is actually an important point, because putting out statements like this really does stymie any

realistic ability to have sensible debate. The member said in his statement that more than 34 per cent of prisoners were in prison for no other reason than they did not have enough money to pay a fine. I know that the member based that assertion on answers to a question on notice.

Mr M. McGowan: So they were wrong!

Mr C.C. PORTER: No, they were right; they just were not read properly. It stated —

> (d) Of the distinct adult persons who became sentenced prisoners during the period 1 November 2008 to 30 September 2009, 1423 had at least one sentenced period of imprisonment that was for fine default ONLY. (Note that Remand Warrants may have been current at the same time; also, they may have served a term of imprisonment at a different time during the period 1 November 2008 to 30 September 2009 …

That means the overwhelming majority of those people were actually serving their fine default days whilst they were on remand—that is, arrested and charged for another offence.

Ms A.J.G. MacTiernan interjected.

Mr C.C. PORTER: What was stated in the media statement is not at all a reflection of the answer that was given.

Several members interjected.

The SPEAKER: Members!

Mr C.C. PORTER: I am happy to tell the member that the correct question to ask is: at a fixed date, how many people in the prison system are there for only fine default, excluding remand? As at the last date of calculation, which was in September, it was about 14 people, which is about 0.35 per cent of the population. Therefore, the member is only 100 per cent wrong, but I understand the point he was trying to make.

Also, with respect to intellectual disabilities, the member is quite right. In answer to the question I think we noted that about 14 per cent of the prison population had flagged on entry some form or other of mental difficulty or psychiatric problem. I think an important point to note here, though, before we get too hyperbolic about that figure, is that in 2007 the Australian Bureau of Statistics did a complete review of interviewed people about mental disorders. Maybe the Minister for Mental Health is aware of this study. Interestingly, 45 per cent of all Australians responded, based on the sample size, that at some time they had had some form of mental disorder and 22 per cent said that they had experienced that in the past 12 months. Therefore, based on that data, which is not an unreasonable comparison, we actually have fewer mentally unwell people in the prison system than we do in the population at large. Also, the Indigenous population as a total percentage of the overall population has decreased under this government compared with the previous government. Therefore, not only are we decreasing rates of reported crime quite significantly and not only are we investing in the prison system, but we are being accurate.

Mr P. Papalia: What is the percentage?

Mr C.C. PORTER: At the moment it is 40.8 per cent and that is of the entire population. That is something that would have been highly desirable to decrease —

Mr P. Papalia: Of the increase?

Mr C.C. PORTER: No, that is 40.8 per cent of the entire population.

Mr P. Papalia: I was referring to the increase, which was quoting from a response to question —

Mr C.C. PORTER: I understand that, but of the overall population, I understand that figure to be lower than what it was under the previous government.

Several members interjected.

Mr C.C. PORTER: It is lower than under the previous government. Therefore, of the total people we have policed —

Several members interjected.

The SPEAKER: Members!

Mr C.C. PORTER: I think that the overall point, if I could make it, is that we need to exist in the real world. The reason people are in prison is not that they are poor or because of the colour of their skin; it is because they have committed serious offences against —

Several members interjected.

The SPEAKER: Thank you, members!

Mr C.C. PORTER: — the laws of Western Australia. When members opposite start understanding that, they will have their eyes open to the reality of the prison system.

METROPOLITAN HEALTH SERVICE — SPECIAL PURPOSE FUNDS

902. Mr E.S. RIPPER to the Minister for Health:

I refer to the minister's authorisation of the raid of $25 million from special purpose funds to pay the bills at the metropolitan health service.

(1) When was the minister first made aware of his department's intention to use these funds?

(2) Was the minister aware of the explicit advice from the Economic and Expenditure Reform Committee that commonwealth funds were not to be used for anything other than the specified purpose?

(3) Given the highly unusual nature of those fund transfers, why did the minister not seek the advice of the Treasurer or his department?

(4) Why did the minister, as Deputy Premier, ignore an instruction from the Economic and Expenditure Reform Committee not to raid funds quarantined for special purposes?

Dr K.D. HAMES replied:

(1)-(4) Once again the member opposite is taking too much notice of what he reads in the paper. I have to say that I myself have been guilty of that —

Several members interjected.

The SPEAKER: Thank you, members!

Dr K.D. HAMES: However, I say quite clearly that the money was not taken from commonwealth funds. It was not taken from commonwealth funds. The reporter who wrote the article that said that we did do that failed to ask either me or the health department if commonwealth funds were contained in those special purpose account funds from which the money was taken. It is true that the Economic and Expenditure Reform Committee said that if we needed extra funds at the end of the financial year to pay our bills, we were not to take them from commonwealth funds, and we did not. The SPA funds are a totally different source of funds; they are funds that accumulate over time, some donated, that go into the different hospital funds and are then available for —

Mr E.S. Ripper: The donors will be happy!

Dr K.D. HAMES: It is available for research and often used for travel, particularly for medical staff who, as part of their contract, are allowed to take trips related to study for their profession. That is what those funds are used for.

What did we do? Remember that we are talking $25 million, which is a 0.5 per cent variation in our total budget of roughly $5 billion. We got towards the end of the financial year and nobody —

Several members interjected.

The SPEAKER: Members!

Dr K.D. HAMES: Nobody in any department has ever been able to land —

Mr R.H. Cook interjected.

The SPEAKER: Member for Kwinana!

Dr K.D. HAMES: — exactly on the spot of exactly how much money we have and exactly how much we have spent. We had some bills that needed to be paid. I must say that it was my view that it was very important for us as a government to pay those bills, given that the funds were sitting there in Health—they were not commonwealth funds—and they certainly did not need to be used in that particular month. There is more than $60 million in funds altogether and they are used throughout the year for those purposes to which they are allocated. I took the view that I would rather pay the bills. We were three weeks away from the end of the financial year, and as soon as the financial year ended, those funds were repaid with the corresponding interest. Therefore, I feel that when, as a government, we owe money to small businesses that have provided either a service or a product to government, it is our responsibility to pay those bills on time. I did not feel comfortable with leaving those bills —

Several members interjected.

The SPEAKER: Members!

Dr K.D. HAMES: — for a further three weeks, particularly because that meant that at the end of their financial year those people would not have had the money that they should have been paid. Sure, I was quite happy to support —

An opposition member interjected.

Dr K.D. HAMES: I do not remember the exact timing; I think it was about three weeks before the end of the financial year—about the time that I was made aware of that and I was quite comfortable with it. I have to say that I did not know that it was improper, as the Auditor General referred to in his report. We have been slapped on the wrist for that. We will accept the Auditor General's report. We will not do it again. But I have to say I feel quite comfortable with the fact that I paid the bills when they were due.

METROPOLITAN HEALTH SERVICE — SPECIAL PURPOSE FUNDS

903. Mr E.S. RIPPER to the Minister for Health:

I ask a supplementary question. Minister, if it is all okay, why did the Under Treasurer say publicly today that the action was wrong and pretty much against the law?

Dr K.D. HAMES replied:

I rang Tim Marney, because I was advised that he had made comments along the lines that it was illegal. He said that he did not say that. He said that he agreed with the Auditor General —

Mr E.S. Ripper: Pretty much against the law is what he said.

Dr K.D. HAMES: It is not against the law, otherwise the Auditor General would have said that it was against the law. He said it was not illegal.

Several members interjected.

The SPEAKER: Order, members!

Dr K.D. HAMES: I am willing to take the rap over the knuckles. However, as members will see, I do not feel devastated by the concept. I feel good about paying the bills.

Mr E.S. Ripper: You are a cowboy! You do not care about financial management!

Dr K.D. HAMES: Every dollar of that money was paid back, with the interest that it would have accrued, three weeks later.

Mr E.S. Ripper: You are worse than the Leader of the National Party!

The SPEAKER: Order, Leader of the Opposition!

Dr K.D. HAMES: The money was always going to be paid back. It was always going to be paid back on this day. Remember, those reports came out a long time after we had already paid the money back. Someone put it to me that we took it out of one pocket and put it in the other. The reality is that we paid our bills, and I am happy that we were able to do that.

LAW AND ORDER — CRIME REDUCTION

904. Ms A.R. MITCHELL to the Minister for Police:

The suburb of Kingsley has seen a more than 20 per cent decrease in burglaries when the January to September 2008 statistics are compared with those for the same period this year. I am certainly very pleased that this government has a strong record on law and order and that we are making a significant difference in reducing crime in our communities. Can the minister please update the house on what other measures have been taken to tackle crime in our inner city, suburban and regional areas?

Mr R.F. JOHNSON replied:

I thank the member for Kingsley for the question. I could not help but think what a great question this is, because it really does highlight what we are doing in government and what the previous government did when it was in power. We have seen a reduction in burglary in many areas. We have also seen a reduction in the number of car thefts and so on and so forth. I think we will continue to see a reduction in the number of crimes committed.

On Sunday, while I was having breakfast, I was shown a press release that the Leader of the Opposition had put out. I nearly choked on my Weeties when I saw that. The Leader of the Opposition said in that press release that it is time to get back to basics, because community policing counts. He said also that he has a new plan for community policing. Well, I looked very carefully at that press release, and I could not see a plan anywhere. All it was was a bit of paper that basically attacked me and the government in many areas.

For the benefit of the house, I want to put clearly in the public arena what we have done since we were elected to government. We have introduced and passed legislation to increase the penalties for hoon drivers. We have introduced and passed legislation to provide medical support for injured police officers. We have introduced and passed mandatory sentencing legislation. That is something that all police officers and their families wanted. That is something that the Labor Party voted against. It tried to gut it at every stage. It did not support it.

Mr P.B. Watson interjected.

The SPEAKER: Order, member for Albany!

Mr R.F. JOHNSON: We have also introduced legislation, at the request of the Commissioner of Police, for the appointment of auxiliary police officers. The Leader of the Opposition was saying that we have not kept our promise to appoint 500 additional police officers. I do not know what he thinks. The promise was 500 officers over five years. After one year, he seems to expect us to have taken on those 500 police officers. What an absolute nonsense! We are undertaking a review of the Misuse of Drugs Act. We have introduced legislation to repeal the Cannabis Control Act, and we are proposing to make amendments to bring in harsher penalties for dealers and those who endanger children, and to ban the sale of drug paraphernalia.

The Leader of the Opposition has accused us also of closing police stations and reducing the police motorcycle fleet.

Mr A.P. O'Gorman interjected

The SPEAKER: Order, member for Joondalup!

Mr R.F. JOHNSON: We will be reopening that next month, my friend. That is due to be reopened in December.

Mr A.P. O'Gorman interjected.

The SPEAKER: Order! Member for Joondalup, I formally call you for the first time.

Mr R.F. JOHNSON: Thank you very much, Mr Speaker. I can tell members that everywhere I go, I meet many, many police officers, and they all come up to me and say "Good on you, Rob. You are doing a great job."

Several members interjected.

The SPEAKER: Thank you, members!

Mr R.F. JOHNSON: Even on a recent holiday that I had overseas, some police officers who were on holiday came up to me and said, "Good on you, Rob. You are doing a great job. You and the Liberal-National government really support the police." That is what we do.

What else have we done? We have reinstated the rural crime squad. That is something that the previous government abolished. We have reinstated the Graffiti Taskforce. That is something that the previous government abolished. We have approved funding of $113 million for the Perth police complex. We have committed $24 million to upgrade police stations across the state.

Ms M.M. Quirk interjected.

The SPEAKER: Order, member for Girrawheen!

Mr R.F. JOHNSON: We have reopened some rural police stations that members opposite closed when they were in government.

There are two or three other things that I want to quickly cover, and I will then conclude my comments. The Leader of the Opposition talked about the mobile phones that he said have been taken off police officers. I inquired with the commissioner about the reduction in the number of mobile phones. He advised me that it is all part of an internal review and is not affecting front-line services.

Mr P.B. Watson interjected.

The SPEAKER: Order, member for Albany!

Mr R.F. JOHNSON: He has assured me that every police officer who requires a mobile phone has a mobile phone. There are hundreds and hundreds of mobile phones out there.

The Leader of the Opposition also talked about Hilton Police Station. I thought: what hypocrisy! Hilton Police Station is situated in the electorate of the former Premier, Alan Carpenter. He allowed that police station to go to rack and ruin. He allowed that police station to be run down to one police officer and one support staff.

Several members interjected.

Mr R.F. JOHNSON: It is a bit embarrassing for members opposite, I know. They let it go to rack and ruin.

Several members interjected.

Mr R.F. JOHNSON: There is nothing much left of it now. It is now in such a state that there is no point in keeping it open, so we have had to close it. That is because of the former government's inaction on this matter. The former government also let Ballajura Police Station go to rack and ruin. Members opposite had nearly eight years in government. If they felt that both those police stations needed renewal, why did they not build them when they were in government? All they did was make promise after promise. We are keeping our promises. We will continue to keep our promises. We will continue to ensure that we always keep law and order as a huge

major initiative. We know what the people of this state want. We know that people were not feeling safe under the former government. We know that they are feeling a lot safer now.

Several members interjected.

The SPEAKER: Order! Before we go any further, and before I give the call to the member for Collie-Preston, I formally call to order for the second time the member for Girrawheen and the member for Joondalup, and also for the first time the member for Perth.

GENETICALLY MODIFIED CROPS FREE AREAS ACT — REVIEW

905. Mr M.P. MURRAY to the Minister for Agriculture and Food:

I refer to the submissions relating to the review of the Genetically Modified Crops Free Areas Act 2003.

(1) Does the minister recognise that this legislation fails to provide mechanisms for local governments, such as the Shire of Manjimup, which has declared itself GM free, to have a rightful input into the state's decisions on GM crops?

(2) Does the minister concede that the state government has ignored the choices and decisions of local governments, which are made up of local landowners, producers and citizens around Western Australia who oppose GM crops?

Mr D.T. REDMAN replied:

(1)-(2) I thank the member for the question, and, of course, for his strong interest in this matter. I find it a really interesting question in the first instance. I say that because the member is drawing my attention to the shortcomings of the legislation. It was the member's government that put that legislation in place. Therefore, how can I stand with any confidence and answer a question about the shortcomings of this very legislation that the former government put in place in 2003?

The issue of genetically modified crops and the issue of GM policy are contentious. There is no doubt about that. I attended a rally that was held at the steps of Parliament at 12 o'clock today. I had a chance to say a few words at that rally. There were people at that rally who have strong views about GM crops. There is also a strong sense in the farming community that farmers want to take up the opportunities provided by this technology to assist their farm businesses to become profitable, to maintain a level of profitability and to compete against international markets, which are extremely competitive.

The member referred to the legislation's failure to recognise shires and their viewpoints. I have maintained from the outset that this is not a local government issue; it is a state government issue. If the member thought it was a local government issue, he would have insisted in 2003, when the legislation was drafted, that it refer to a local government decision.

Mr M.P. Murray: So local people don't have a say?

Mr D.T. REDMAN: This is not a local government decision; this is a state government decision.

The SPEAKER: Member for Collie-Preston!

Mr D.T. REDMAN: We have taken a very cautious approach to the matter in Western Australia; we have taken a science-based approach to it. We have lifted the moratorium on growing genetically modified cotton in the Ord River irrigation area. It would be good to ask ourselves whether the garments we are wearing are made of GM cotton. It would be a huge hypocrisy if we maintained a strong position against GM crops, yet we wear clothes that may well be made of GM cotton. Of course, we have also initiated trials of GM canola in Western Australia. We have taken a cautious approach to those trials. They are being done very carefully; there are strong protocols for the management of those trials. The progress of those trials this year will be reported to me in the near future, and of course I will consider decisions for next year.

The member also referred to the review of the Genetically Modified Crops Free Areas Act. That review, which is provided for in the act, is happening as we speak. The reviewer, Mr Greg Calcutt, will base his review on the submissions that are made and a range of viewpoints that he seeks, and he will present his report to Parliament on 24 December this year. People have the opportunity to make submissions. The member for Collie-Preston, along with other members, has a chance to put his particular viewpoint.

I am sure the member asked the question today on the basis that a representative group held a rally at the front of Parliament. At the end of the remarks made by the shadow Minister for Agriculture and Food, he thanked Greenpeace. I thought it was an interesting comment to come from the member.

Mr M.P. Murray: It is our social conscience!

Mr D.T. REDMAN: I am sure it would have caused some mixed feelings in the member, who stands by the coal industry!

The SPEAKER: Member for Collie-Preston, before I allow you to ask a supplementary question, and I will allow you to ask a supplementary question, I suggest that if you are going to interject—people in this place know that I give some leniency on interjections to members who ask questions—you do it in a more appropriate manner. I formally call you for the first time. Now you can ask your supplementary question.

GENETICALLY MODIFIED CROPS FREE AREAS ACT — REVIEW

906. Mr M.P. MURRAY to the Minister for Agriculture and Food:

As a supplementary question —

Several members interjected.

The SPEAKER: Members to my right!

Mr M.P. MURRAY: Nearly 89 per cent of the submissions to this review oppose GM crops. Will the minister not listen to the Western Australian community, including the shires in his heartland that oppose GM crops, such as Manjimup and Nannup?

Mr D.T. REDMAN replied:

I thank the member for the supplementary question. I concur that there is a range of viewpoints and people are making submissions at present. I certainly will not speculate on a review that is yet to happen —

Mr M.P. Murray interjected.

The SPEAKER: Member for Collie-Preston, I gave you the opportunity to ask a supplementary question. I want to hear the minister's answer. I do not want to hear further interjections from you. I formally call you for the second time.

Mr D.T. REDMAN: I simply make the point that the review is underway. I will not speculate on the findings of the review or on my response to the review. The review has been triggered by the act. A process is underway. I certainly encourage the member to read the submissions that are made. It is interesting that a range of submissions that have come from the eastern states are standardised letters from people who have nothing, and should have nothing, to do with the decisions that we make in Western Australia. The opposition's position on GM crops is interesting. Some interesting comments have been made by Hon John Brumby, the Victorian Premier.

Several members interjected.

The SPEAKER: Thank you, members. Members on both sides of the house have heard me say this before. If you want question time to be successful, I ask that ministers being asked questions be more efficient in their presentation of information—that is, shorten the answer a little. For those members who continue to interject, you make question time inoperable at times. Minister, I ask you to reach a rapid conclusion to your answer.

Mr D.T. REDMAN: I will not embarrass the member any further by referring to comments made by people in other states and/or the federal government, except to say that the opposition stands alone on this matter and it needs to have a close look at its policy position.

SWAN AND CANNING RIVERS — WATER QUALITY

907. Mr M.W. SUTHERLAND to the Minister for Agriculture and Food:

As the minister will be aware, my electorate of Mount Lawley has a boundary on some impressive parts of the Swan River, which is an important part of the lifestyle of many of my constituents. As the minister with responsibility for natural resource management in this state, what steps are he and the government taking to address water quality concerns in the Swan and Canning Rivers?

Mr D.T. REDMAN replied:

I thank the member for Mount Lawley for the question and for his interest in the water quality of our river systems.

Point of Order

Mr M. McGOWAN: Standing order 75(1) states that ministers may be asked questions on matters related to their administrative responsibilities. I realise that the member for Mount Lawley indicated that this minister is responsible for natural resource management, but surely issues concerning the Swan River would have to be directed to either the Minister for Environment or the Minister for Water.

Several members interjected.

The SPEAKER: Members! I am hearing a point of order.

Mr M. McGOWAN: The member is asking the Minister for Agriculture and Food about areas that are clearly outside his administrative responsibility.

Dr K.D. HAMES: As the former minister for water resources in the previous government, the member for Rockingham will be aware that a large number of the problems in the Swan and Canning Rivers relate to agriculture practices. I think the question is entirely relevant.

The SPEAKER: I will allow the question. Minister.

Questions without Notice Resumed

Mr D.T. REDMAN: Thank you, Mr Speaker, for your direction.

Mr J.N. Hyde interjected.

The SPEAKER: Member for Perth, obviously you did not hear what I said earlier about question time. I formally call you for the second time.

Mr D.T. REDMAN: Members will be aware that water quality improvement plans are in place for the Swan-Canning, Peel-Harvey and Vasse-Wonnerup waterways. As the member for Rockingham highlighted, the core responsibility for those waterways is with the Minister for Environment, but I will talk about the role of natural resource management funds, for which I am the responsible minister. One of the key components of the water quality improvement plans is our target to reduce nutrient run-off, responsibility for which falls within my portfolio area. Reducing nutrient run-off into our waterways has the ensuing impact of reducing eutrophication and its impacts. The government has put in place a fertiliser action plan, which is important in reducing nutrient run-off into those waterways.

Earlier this year I made an announcement in Harvey about the Fertcare program. The Fertcare program is a national industry program that aims to improve water quality by reducing the nutrient levels in coastal catchments through the sustainable use of fertiliser. It is a very important program. We need to acknowledge the support that the agriculture industry has for this program. The dairy cattle industry in particular is very supportive of the program. The dairy cattle industry is taking ownership of nutrient run-off. It has an industry-supported process under Fertcare to manage the use of fertilisers. If this is done properly, there are significant improvements in reducing input costs. There are also developments in the evaluation and adoption of low water-soluble phosphorus fertilisers and the adoption of soil amendments to increase the ability of sandy soils to retain phosphorus. These are steps that the Liberal-National government is taking and supporting to reduce fertiliser run-off into our waterways. On top of that, in May this year the Minister for Environment, the Minister for Water and I announced state government funding of $610 000 from the natural resource management fund for field trials aimed at minimising the effect of highly water-soluble phosphorus fertilisers under the fertiliser action plan. The state Australian Labor Party failed, because of lack of funding, to implement those plans.

Mr M.P. Murray interjected.

The SPEAKER: Order, member for Collie-Preston!

Mr D.T. REDMAN: We have stepped up to the plate and we are supporting and backing the importance of maintaining reduced nutrient run-off into those particular waterways. In October, I also announced funding of $500 000 to continue best practice fertiliser management demonstration for grazing and horticultural industries under the fertiliser action plan.

To respond directly to the question that the member for Mount Lawley asked, we have also allocated $3.19 million to improve water quality in the Swan and Canning Rivers. It is the largest single allocation under the natural resource management program, and I am sure the member will be very supportive of that. From a phosphorus perspective, the Swan-Canning improvement plan identified that the main source of phosphorus entering the river system was from farming activities in the Ellenbrook subcatchment, and of course the main source of nitrogen was residential and recreational activities from the subcatchment in the urban areas. This funding will be utilised to conduct a feasibility study for the installation of nutrient-stripping wetlands in the Ellenbrook catchment, which includes the construction of three nutrient-stripping wetlands on Southern River, nutrient intervention remediation, removal of contaminants in a basin in the Mill Street drain and the application of nutrient-binding material in the Canning River, as well as other waterway restoration projects. The Liberal-National government is supporting natural resources through this $30 million program, a large part of which will be spent on work done on the Swan-Canning catchment, and, of course, we will support significant improvements in that regard.

SCHOOL GARDENERS — PAY DISPUTE

908. Mrs M.H. ROBERTS to the Premier:

I refer to the plight of school gardeners, many of whom are completing all duties with the singular exception of raking sandpits, a task which may take approximately 10 minutes to complete in the course of a working day. In light of the Premier's comment last week when he stated, "I will stand on my record of being fair" —

(1) Does the Premier believe that a gardener's pay should be stopped for refusal to rake the sandpit, or should the worker only be docked for the time taken to complete the task?

(2) Is it the government's policy to completely stop pay when a worker fails to undertake a single duty; if so, is that fair; and, if not, what is the government's policy?

Mr C.J. BARNETT replied:

I thank the member for Midland for the question, which is very similar to a question I was asked last week, as I recall. Not surprisingly, the answer has not changed.

(1)-(2) I repeat that if employees, whether they be in the private or public sector, refuse to do their duties, they can expect to have their pay docked.

Mrs M.H. Roberts: What about stopped?

Mr C.J. BARNETT: I am answering the question. I do not regard it as a trivial matter if a gardener refuses to rake a sandpit. Sandpits can be a source of risk to children. There have been cases of glass, syringes and other materials being placed in sandpits; therefore, I would regard the raking of those sandpits to make sure they are safe as one of the most important duties at a school or any playground. I do not regard that as a trivial matter at all.

As I said, I think on Thursday of last week, I spent 10 or 15 minutes speaking to a group of employees—teachers assistants, gardeners and others—who were outside my office, during which time a number of them made the same point that the member has made; that is, not only had their pay been docked, but also they had been told that they would not be paid for that week, or whatever it might be. I said to them that if that was true and that was the case—I did not doubt their word—I would regard that as unfair. My understanding is that it was the case in some instances, and that has been corrected. Those people may have had their pay docked, but they will not have their pay stopped, and that has been put in place.

SCHOOL GARDENERS — PAY DISPUTE

909. Mrs M.H. ROBERTS to the Premier:

I have a supplementary question. Is the Premier now aware that that matter has not been rectified and that there are 98 education assistants, gardeners and cleaners who have actually had their pay stopped?

Mr C.J. BARNETT replied:

I am aware that the issue has been corrected, and that they will be paid.

BARNETT GOVERNMENT — WAGE INCREASES, AND REDRESS WA

Matter of Public Interest — Motion

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

> I wish to raise the following as a matter of public interest today.
>
> "That this House condemns the Barnett Government for its lack of care and compassion towards those Western Australians most in need including:
>
> 1. Its failure to support the state's education assistants, gardeners and cleaners secure a fair pay increase; and
>
> 2. Its decision to cut Redress WA funding at a time when the Federal Government and opposition has apologised and recognised the struggle of those abused in care."

Members, I am going to rule this particular matter of public interest in order, but I would direct all members' attention in this place to standing order 145, which determines that a matter of public interest should be about only one subject. I have had a good look at this, and I believe that it is possible that both these subjects could be argued in the same context. I direct all members in this place to standing order 145, which states that a matter of public interest should be about just one subject. Having said that, I am going to ask if there are at least five members who will stand in support of the matter being discussed.

[At least five members rose in their places.]

The SPEAKER: At least five members having stood in support of this matter being discussed, the matter can proceed.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [2.56 pm]: I move —

> That this house condemns the Barnett government for its lack of care and compassion towards those Western Australians most in need including —

(a) its failure to support the state's education assistants, gardeners and cleaners to secure a fair pay increase; and

(b) its decision to cut Redress WA funding at a time when the federal government and opposition have apologised to and recognised the struggle of those abused in care.

There is one overriding subject of this MPI, in my humble view, and that subject is that of a government that simply lacks care and compassion and does not care about those most in need in our community. It imposes harsh, unfair and discriminatory rules against those in our community who earn some of the lowest wages in this state. This is a government that has doubly betrayed those people who had firstly been betrayed by the state by being abused in care, when the state had an obligation to look after them as little children and to prevent them suffering further abuse.

Let me first of all come to the circumstances of the education assistants, the gardeners and the cleaners. These workers are being restricted to a 2.5 per cent wage increase this year; that is a 44c an hour wage increase. These people earn about the same amount of money as the Treasurer receives for his travel allowance alone, so they are not well-paid people. They do an important job, but they have never been very well rewarded. This government has a discriminatory, unfair policy, and to give members an idea of why these people feel so discriminated against and why they feel the policy is unjust, I need only go to the wage increases awarded to people who work alongside them in the schools. I quote from one of the government's press releases on teachers' wage increases, which states —

> Most teachers and school administrators will receive increases in excess of 20 per cent, with 5,000 experienced teachers receiving an increase of 22.75 per cent.

Again, members need only look at the police wage outcome to understand why cleaners, gardeners and educational assistants feel so unfairly treated. The police received an eight per cent increase over two years; that is four per cent a year, not 2.5 per cent, which is what the education assistants are being asked to accept.

Let us look at the teachers' wage increase to see what is actually happening now whilst education assistants are being asked to accept just 2.5 per cent. There was a five per cent pay increase for all teachers and school administrators in October this year. At the very same time that the campaign was running and the education assistants were being restricted to 2.5 per cent, teachers in the same workplaces were receiving a five per cent increase in their pay packets. I have no doubt that the education assistants campaign will still be running in February next year, and in February next year the teachers in the same schools will get a further increase of five per cent. Two increases of five per cent will have occurred for teachers, whilst education assistants working in the same classrooms with the same children, doing an important job, will still not have received a fair resolution to their wage claim being restricted to just 2.5 per cent.

Salt will be rubbed into the wound later on in 2010 when teachers receive a four per cent wage increase. It is quite possible that in the duration of this campaign teachers will have received three wage increases—two at five per cent and one at four per cent—while the poor old education assistants, school cleaners and gardeners are still struggling, restricted by the government to a just 2.5 per cent wage increase. No wonder the government is having trouble settling this dispute. Authority cannot be exercised if there is no moral basis for it. There is no moral or fair basis when the government is saying to teachers what they can get and paying them and saying to police officers what the outcome is for them, and then turning around to the education assistants and applying a completely different rule to them. I know what the government will say. It will say that there is a global financial crisis. The global financial crisis is the government's excuse for everything. Never ever forget that the teachers' wage settlement was reached after the global financial crisis; never ever forget that the police wages settlement was reached after the global financial crisis struck. There is therefore no justification for the government to pretend that there is a reason for one rule to be applied to professionals and another rule to be applied to some of the lowest-paid workers in the state.

Another aspect of this is very disturbing. In pursuit of their democratic rights in a free society, education assistants, school cleaners and gardeners have applied modest industrial bans—very, very modest industrial bans. What has happened to those people? They have had their entire pay stopped. Quite contrary to what the Premier says in this place, the pay has been stopped. I think that there is some doublespeak here on the government's wages policy. It is doublespeak in two ways. I go back to the *Hansard* of Wednesday, 11 November, when the Premier said —

> I recognise that an offer of two and a half per cent is a small increase for people already on low wages. I urged the people to whom I spoke to accept that, and we would continue to discuss with them, in good faith, their salary and conditions of employment.

Here was the Premier saying, "Accept two and a half per cent and we will discuss with you in good faith giving you more afterwards." The written policy and the publicly announced industrial relations policy of the government does not allow for that to happen. Who is right? Who is running the show? Is the Premier running

the show with his off-the-cuff, shoot-from-the-hip comments in this place, or is the show really being run by the Treasurer, the Minister for Commerce, who does not worry about what comments the Premier might make when he is under pressure and who simply puts out a written document that the public servants follow because they do not necessarily read the *Hansard* and listen to what the Premier said. From listening to the reports from the union negotiators, there is no negotiation in good faith. The Premier is saying, "Accept two and a half per cent and we will negotiate with you in good faith." It is not negotiation in good faith to simply reject the entire union set of demands and to say what the wages policy is and that is all they will get. Who is running the show? Is it the Premier when he is under a bit of pressure and wants to be seen to be fair, or is the hard-line Treasurer, the Minister for Commerce? That is one issue where there is doublespeak.

The second issue where there was doublespeak was raised again in question time today. On Wednesday of last week the Premier said —

> I will conclude by repeating that the government has taken measures to reassure those employees that while they may see some docking of their salaries, their salaries will not be stopped …

That is not what is happening, and that is not what is in the written instructions. If the Premier wants that to happen, he must get his Minister for Commerce to put out a new statement to all the principals who are charged with administering this matter, because what the principals have in their hands is the official written instruction from the Minister for Commerce, which tells them to stop the pay. This is resulting in quite serious circumstances. My colleagues will deal with some of them, but I just want to quote the case of Daryl House, a gardener at West Busselton Primary School in the Treasurer's electorate. He lost $609 from a fortnightly pay of $900. He has worked at that school for 34 years. As a result of almost all his pay being stopped, he cannot take his wife out to dinner for their forty-fifth wedding anniversary. That is the type of action that is actually occurring on the ground in the Treasurer's electorate pursuant to the Treasurer's instructions, conveyed in writing to public servants, regardless of what the Premier says at a press conference, demonstration or in the house when he is under pressure. There is real unfairness, there is real discrimination and there is real doublespeak when it comes to the question of these low-paid workers and how their legitimate demands, in the face of skyrocketing electricity bills and other bills, for a fair wage increase are being dealt with. The Premier is sending the living standards of these workers backwards. By the time one takes the impact of the government's increases in family bills and its miserable wage offer into account, these workers are going to go backwards. They are not very well paid; in fact, they are some of the lowest paid workers in our community. The government has a special obligation to these workers and it is sending their living standards backwards.

I do not want to speak at length on Redress, but this is still a running sore and it will not go away. I was present with the Premier for the Prime Minister's public apology to the forgotten Australians—those who were in care and the child migrants. I saw the Premier's Minister for Child Protection, the Minister for Communities, presented with yet another teddy bear. That minister and the Premier will continue to be presented with teddy bears until they start to recognise the gross injustice and unfairness of the decision they have made to halve the maximum Redress payment. What has happened is this: the government has not had more applications for Redress than it expected. What it has had are applications that reveal a more serious level of abuse than was previously expected by the administrators of the scheme. The government is dealing with people who are more severely damaged than was expected. The government's response has been to cut the payout that the most severely damaged people could expect to get. It is a completely wrong and unfair decision, which reflects very badly on the government's credentials when it pretends to care and be compassionate. It is unfair and discriminatory and, given what the government is spending in other areas and its phenomenal rate of spending growth, this decision on the Redress and this wage issue with education assistants, school cleaners and gardeners, needs to be dealt with. The government cannot on the one hand shovel money out the door as it is for everything else, with massive expense growth, and then turn around and unfairly discriminate against some of the neediest people in our community.

MRS M.H. ROBERTS (Midland) [3.09 pm]: It is certainly true that some of the lowest paid workers in the educational system are bearing the brunt of the Barnett government's brutal policies—policies that have seen them offered only a 2.5 per cent wage increase. The Leader of the Opposition has made some comparisons with the teachers that they work alongside. I want to make a comparison with those people at the top of the Department of Education. What we found, through an upper house committee hearing, was that 23 senior officers at the then Department of Education and Training were paid in 2007-08, $2.738 million; now 18 officers are being paid a total of $3.275 million, which is over half a million dollars more for five fewer workers. When that is equated to a percentage, it is a 23 per cent pay rise across the board for those most senior people in the Department of Education.

The government says that these are tough economic times and that it cannot let wages escalate, but there are two sets of rules: one set of rules for the lowest-paid workers in the state and another set of rules for those who are at the top of the tree. Sharyn O'Neill and the other 17 highest-paid people have had a massive salary increase; at

the same time, the lowest-paid workers are being kept to a 2.5 per cent increase. The government responded to that by saying, "Their wages were set by the Salaries and Allowances Tribunal." It also said, "This was Labor's policy in government and it's nothing to do with us." It has everything to do with the government; it has been in government for a year. The government could easily have set a policy for the highest-paid workers in the same way that it has set a policy for the lowest-paid workers. It could have set a cap on salaries in the senior executive service if it had wanted to; it could have done it a year ago, but it did not. It has let the wages of the highest-paid people in the public sector escalate while at the same time pushing the most poorly paid workers down and offering them a wage increase that simply will not meet the inflationary pressures of electricity bills and other household costs of living.

The Premier has been too cute by half; he has said, "If they do not perform some duties, we would not stop their pay. I don't think that's fair. I stand on my record of being fair." He ignores the policy of his own government. A letter was sent out by Cliff Gillam, the executive director of workforce in the Department of Education, on 30 October 2009, with an attached copy of the government's industrial relations policy. It went out to all principals, registrars, business managers and so forth. The policy statement is dated October 2009, and it comes complete with attachments of recommended correspondence that has gone out to principals for use in the workplace. I refer to attachment one. It states —

> You … (name of employee) are instructed to resume … (specify duty/ies) which is/are within the range of duties appropriate to your regular position or for which you are qualified within your classification.
>
> If you do not report to … (name of supervisor) within 30 minutes, ready and willing to perform … (specify duty/ies) and thereafter resume the performance of any or all of your full range of duties in accordance with the direction of … (name of supervisor) you will not be paid until you demonstrate your preparedness to comply with the foregoing instruction.

There are further attachments for different stages of the process. Attachment 2, for example, states in part —

> As a result of this failure, your pay has been stopped and will remain so until such time as you demonstrate a preparedness to perform the above mentioned duty/ies in the appropriate manner.

Attachment 3 states in part —

> As a result of this failure, you have been taken off pay and will remain so until such time as you demonstrate a preparedness to perform the above-mentioned duty/ies in the appropriate manner.

This is the Liberal government policy, and I seek leave to table it for the remainder of this day's sitting.

[The paper was tabled for the information of members.]

Mrs M.H. ROBERTS: This is the policy that is being implemented. I am advised that as of today, 98 people have not received their full wages. Their wages were not just docked for the time that they did not perform a duty. Perhaps they did not do some photocopying or some other duty that would have taken a small amount of time, but their wages have been stopped from the time that they commenced industrial action. There are 98 people who have been affected over the last fortnight's pay. Some of them have not lost the entire pay; some have lost only six or eight days' pay, but it is based on the day that they started the industrial action on which they determined to not perform a specific duty. Taken on a 14-day payment cycle, if someone commenced industrial action on day eight, it means that they will not have been paid from that day onwards. Despite the assurances of the Premier, there has been no change to that; in fact, I understand that the union representing these workers met with the Department of Education yesterday and was told that there has been no change to the policy.

The Treasurer likes to say that that was the policy of the previous government. My challenge to the Treasurer is to give one example of when the previous government stopped the wages of a worker in accordance with a policy such as that which the government is now implementing. I ask him to show me attachments such as the ones that have been sent out to schools by the government in such a heavy-handed manner.

This is a mean and nasty government; it has no heart, its policies are brutal, and it is determined to squash the lowest paid workers in this state—education assistants, gardeners and cleaners. Frankly, school registrars and a range of other government workers are not much better off. The government has two standards: one standard for itself and other high-paid workers, and a quite different standard for those who rely on their wages from week to week to look after their children and pay their bills.

MR F.M. LOGAN (Cockburn) [3.16 pm]: I draw the attention of members to the number of people who work in this sector. There are 21 000 teachers working in public schools in Western Australia and 10 000 school support workers. Of the total population of school staff in Western Australia, more than half are school support workers—registrars, office workers, school gardeners, cleaners and education assistants. They have been offered a measly pay increase of 2.5 per cent for the first year and eight per cent over three years. The Leader of the Opposition compared that with the increases paid to teachers of six per cent for the first year and 20 per cent

over three years. Police were paid increases of four per cent for the first year and eight per cent over two years. The unions that represent both those organisations encouraged their members to take out work bans and strike action. The police carried out work bans as part of a wage campaign to get a decent pay offer. Was their pay docked as a result of those work bans? No. Was teachers' pay docked as a result of the work bans they put in place over a significant period? The previous government did not dock their pay. The dispute continued into the term of the current government until it was resolved with a significant pay offer, but the current government did not dock their pay. As the member for Albany pointed out, the police implemented work bans. Was their pay docked? No, it was not. Half the population of public school staff in Western Australia include some of the lowest paid public servants in this state, whose average yearly pay is $35 000. They put in place the smallest and least reactionary work bans possible, such as refusing to rake sand or to perform yard duty, and what happens? They get crushed by their principals with the full support of the Minister for Education and the Director General of the Department of Education.

I have some examples; the Leader of the Opposition referred to one, and I will refer to a few more. Rachael Teriaki is the head cleaner at Gilmore College; she lost five days' pay while continuing all other duties. These are minor work bans, not people taking strike action. They are undertaking very minor work bans to put a little pressure on the Department of Education to come up with a decent offer. Rachael has four children and her husband is not working because he is recovering from a knee injury, so her income is the family's main income.

The Leader of the Opposition has already referred to Daryl House. Robert Ingram is a gardener at Yanchep District High School; he lost $1 072.12 from his pay. These are three examples from amongst the 98 staff whose pay has been docked. The Premier has said that that is not right, and that the government will ensure that those people will not have their whole pay docked, because it is unfair. They have had their pay docked, and they have not had it paid back.

Mr C.J. Barnett: People said to me that that had happened, and I said that it was not fair.

Mr F.M. LOGAN: I think the Premier and the Minister for Education will find that they still have not had that pay paid back to them. It may well have stopped, as per the Premier's instructions.

Dr E. Constable: It will be paid back.

Mr F.M. LOGAN: I am sure the people will be very pleased to hear that, because, of all people, they need it more than anybody else.

Figures from the Reserve Bank of Australia show that the increase in average earnings for 2009 is 4.7 per cent across Australia year on year. The average annualised wage increase, if it is just limited to enterprise bargaining agreements, is 4.1 per cent. The wage price index from the Reserve Bank of Australia shows an increase of four per cent year on year Australia wide; the average increase under this index in Western Australia is 5.1 per cent across all workers. I will look at some comparative job classifications. According to Hays—a company that undertakes assessment of the salaries of a whole range of workers—people who work in low-paid, back-office administrative processing in Perth received pay rises of 11 per cent this year. I am comparing like with like in terms of skills and standards. The government's offer of 2.5 per cent, compared with similar types of work undertaken by people with similar skill levels in Perth is miserable. It is absolutely miserable when compared with the average wage increase offered around Australia, particularly in Western Australia. It is half of what is being offered to other workers in Western Australia. This is a shocking state of affairs. The minister should immediately go back and place on the table a decent pay increase for these low-paid but vital workers.

DR E. CONSTABLE (Churchlands — Minister for Education) [3.24 pm]: I would like to begin my brief remarks by correcting, or rather explaining, some information that was included in the annual report. The 2007-08 figures compared with the 2008-09 figures for the salaries of senior executives in the department compares apples with oranges. I heard the discussion and the report on that, as did the director general, and we both said that it could not be right. When the department went back over those figures, it was discovered that the 2007-08 figures are just salaries, whereas the 2008-09 figures are salaries plus all the on costs of superannuation and so on. They were actually comparing apples with oranges. The Director General of Education did not receive any pay rise at all. Her salary and conditions are governed by the Salaries and Allowances Tribunal. In fact, when staff in the department looked into what she was being paid, they discovered she was being underpaid by $1 800 a year. She has not had a pay rise. The other executives accounted for in those figures were covered by public sector agreements and education agreements. Whatever those awards and agreements had in them was what those executives received. The information in the annual report was misleading because it presented apples in 2007-08 and oranges in 2009-10. I will make sure that information is properly corrected and at least footnoted in the annual report.

Mr C.J. Barnett: I am sure the member for Midland will apologise for her error.

Dr E. CONSTABLE: It was not her error at all. I think it is very important that that is explained so that we understand the level of awards and increases received by those people. They are no different from anyone else.

Mr E.S. Ripper: When you do the apples-with-apples comparison, do you get any increases? Are there any reclassifications or restructures?

Dr E. CONSTABLE: There are increases according to the awards those people come under. Some are under public sector agreements and some are under education agreements.

Mr E.S. Ripper: Did you have upward reclassifications or creations of new positions at a senior level?

Dr E. CONSTABLE: I am not aware of that detail, but it is certainly worth looking into. I know that a large number of executive positions have not changed, so I do not think that would have happened—certainly not across the board. That is a good question.

With regard to the motion now before the house, I am in agreement with the comments made by the Speaker earlier that we are probably looking at two different subjects here. I will address only the first of those, which concerns those very valuable people working in our schools—cleaners, gardeners and education assistants. I want to say categorically that this government values those people, and I as the Minister for Education value those people very highly. Without them, our schools would not work at all.

Mr F.M. Logan: Why don't you offer them the same as you offered the teachers?

Dr E. CONSTABLE: I have been thinking about this a lot in the past couple of weeks. Members opposite were in government for seven and a half years. What did they do for these low-paid people? Not an awful lot, it would seem. These people were lowly paid for seven and a half years under the previous government, and the Labor Party has suddenly noticed, after seven and a half years, that they are lowly paid. That is very cute.

I want to speak about each of those groups of people, because I want to demonstrate that I truly value the work that they do.

Mrs M.H. Roberts: Is that why you are getting rid of 450 education assistants?

Dr E. CONSTABLE: No-one is getting rid of 450 education assistants. We are overstaffed by 500.

Mrs M.H. Roberts: You're cutting jobs.

Dr E. CONSTABLE: We are not cutting jobs. The member for Midland does not understand; she is always full of half-truths.

School cleaners have a very important job in our schools and in school communities. Without clean working environments, there are obviously health issues. A tidy and clean workplace is very important for teachers, students and others working in our schools. Cleaning is a very important task, and should be recognised as such.

Gardeners play a very significant role in ensuring that schools are very welcoming places. I have visited well over 100 schools in the past 12 or so months. The first thing I notice in a school that I have not been to before is the surroundings and the gardens. The standard we see in our schools is exceptional. Those working on the gardens and surroundings take enormous pride in the work they do, and that also enhances the general community. Very often members of the general community are able to use the ovals, for example, for their children to kick a ball at the weekends, so the benefits go far beyond just those working in a school. Very many education assistants do an amazing job working with the most vulnerable children in our schools, including children with disabilities.

Mr P.B. Watson: They do all the hard work.

Dr E. CONSTABLE: Lots of people do hard work in schools.

Mr P.B. Watson: But they get the hardest stuff.

Dr E. CONSTABLE: They do; and they do it with such willingness and skill. It is quite amazing to see the work that those people do. Did the Leader of the Opposition go to Malibu School the other day?

Mr E.S. Ripper: Yes.

Dr E. CONSTABLE: We had the most extraordinary set of circumstances there. The principal of Malibu School—the education support centre—had to tell parents that their children should not come to school on Friday because their educational support staff would not be there. In fact, they turned up, and guess who else turned up? The Leader of the Opposition—he was part of that situation whereby those children were not able to come to school and parents probably had to take a day off work because their children —

Mr E.S. Ripper: That is terrible—the school should not have been closed!

Dr E. CONSTABLE: But they were informed that the education assistants would not be there. However, the Leader of the Opposition knew and he was there. I found that one of the most despicable things I have ever —

Several members interjected.

The DEPUTY SPEAKER: Members!

Dr E. CONSTABLE: The Leader of the Opposition was party to that. I think that was a despicable action on his part.

Mr E.S. Ripper: I do not think it was despicable at all. I think it was defending low-paid workers and exposing the stupidity of a government that unnecessarily closed a school!

Dr E. CONSTABLE: The Leader of the Opposition was a part of those children being kept home from school and not being able to go to school that day, and I think that was a pretty terrible action on his part to take.

Several members interjected.

The DEPUTY SPEAKER: Treasurer!

Dr E. CONSTABLE: I just want to conclude with this last comment. Following the Premier's comments last week, I have had discussions with the Department of Education about the controversy over the stopping of pay to people in our schools—cleaners, gardeners and education assistants—and I have told the department that it is to rectify that situation. If the 98 people mentioned by the member for Midland have had their pay stopped, they will be recompensed for that and they will find that they will be paid that money. However, if they do not do certain duties, they will be docked for not doing that part of their duties but their pay will not be stopped.

Mrs M.H. Roberts: Why did the department tell the union yesterday that the policy still stood?

Dr E. CONSTABLE: I have categorically discussed that with the department on two occasions now. The situation is that those people will be paid the pay that was stopped.

MR T.R. BUSWELL (Vasse — Treasurer) [3.32 pm]: I will contribute a few comments to this matter of public interest debate. I start by saying that at an aggregate level the government faces some major challenges in terms of wages growth. The wage bill is one of the single largest line item components of total government spending. This year it is around $7.95 billion and that accounts for about 40 per cent of recurrent spending in the general government sector. The wage bill this year on budgeted figures will contribute a large percentage of the increase in spending in the general government sector. As a government we have a fundamental challenge to rein in the rate of growth and spending in the general government sector. It is a challenge that we acknowledge and accept and will be tackling. However, wages comprise a big part of it and we have had to adopt a range of strategies to try to rein in the rate of growth of wages. It has not been easy. Perhaps just to put it into historical context, in the 2002 financial year, the wage bill in this state was $4.2 billion; by 2008 that had risen to $6.9 billion—that is $2.7 billion of extra spending by way of wages. It is a significant increase. It is not a sustainable increase. Some of the ways we are tackling these issues are around attempting to drive broader efficiencies and changes in practice through government agencies, but we have to do more. Specifically, as it relates to the wage bill, there are two factors that force the wage bill up—namely, the percentage increase in full-time equivalents, which is the percentage increase in the workforce; and the percentage increase in what we pay people. The sum of those two effects together will approximately give the percentage wage increase.

What are some of the strategies that we have adopted at a broad level? There is the FTE headcount, or ceiling, that we put in place last year. Again, I think it is an important guide to the total size of the general government public sector workforce. I have to report to the house that it is difficult to encourage some agencies to stay within those headcount caps.

Mr E.S. Ripper: How are you going with health?

Mr T.R. BUSWELL: Health and education in particular are over their caps at the moment. With health we have a strategy in place to attempt to get back to the FTE headcount and in education we face some major challenges. Off the top of my head, the education FTE in the past 12 months has increased by about 1 000 FTE. The school population has increased by about 4 000 students. I find it unacceptable that a 4 000 increase in the student population requires a 1 000 increase in FTE. That is an issue that we have to work through with the agency. We have an FTE headcount cap in place to attempt to give us one of the tools that we need to work with the agencies. We have committed $48 million funding to fund 500 voluntary redundancies. That program is in place and has been working very well. I expect that program will conclude in the not too distant future. Again, it is a tool designed to help rein in the rate of growth of expenses at an aggregate level.

Mrs M.H. Roberts: Are you declining to let people take their long service leave in any numbers as part of the strategy?

Mr T.R. BUSWELL: It is not a factor that I am aware of.

The third area that we have looked at is the government wages policy—that is, the percentage increase in wages. Some time ago cabinet on behalf of the government took a decision to adopt a wages policy. The wages policy is clear and I as the Minister for Commerce have been charged with implementing it. We all know what the wages

policy is. It says that we will make an offer that in the first instance is equal to the consumer price index or Treasury's estimate of the consumer price index. There will be some capacity to negotiate over the —

Mr F.M. Logan: So it remains at 2.5 per cent?

Mr T.R. BUSWELL: Two-point-five per cent, 2.5 per cent and three per cent at the moment; it is eight per cent over three years. The wage price index is higher than that and we can negotiate by way of efficiencies up to that nine per cent. I acknowledge that that is a tight wages policy and the negotiations that we are having with the Liquor, Hospitality and Miscellaneous Union are—how would I term them?—difficult negotiations. It is a difficult time.

Mr E.S. Ripper: If the government is paying less than the wage price index, it is effectively paying public sector workers lower wage increases than the private sector is giving, so the government is being tougher.

Mr T.R. BUSWELL: We are not saying that we will pay less than the wage price index; we are happy to negotiate—as we did with the police and as I hope we do as we negotiate in good faith with the miscellaneous workers' union—up to the wage price index.

Mr E.S. Ripper: If the government pays less than the wage price index, it is being harsher than the private sector.

Mr T.R. BUSWELL: I have said that we are happy to negotiate up to the wage price index. We did it with the police and I hope we can do it with the miscellaneous workers' union. I do not have a problem with that. I think that is a fair wages policy for the time that we find ourselves in.

I want to comment on a couple of other things, perhaps by way of comparison. Let me give members opposite an example. They talk about the lowest paid workers. The lowest paid workers in Australia are on the minimum wage. Recently the Australian Fair Pay Commission, a commonwealth body, conducted its annual review of the minimum rate of pay in Australia. Do members know how much increase the commission gave to the lowest of the lowest paid? Does the Leader of the Opposition know how much?

Mr E.S. Ripper: You'll tell me.

Mr T.R. BUSWELL: The opposition accuses us of being unfair —

Ms J.M. Freeman: The year before it made a very big increase —

Mr T.R. BUSWELL: Hold the bus! I do not know, member for Nollamara. I know that the member is flat out opening this northern suburbs outpost of the miscellaneous workers' union, parading as the Labor Party's Nollamara branch, supporting it through there, but I am not interested in that. What I am telling members is that in the current climate I think we have made a fair offer. It is a fair offer.

Withdrawal of Remark

Mr M. McGOWAN: I request that the Treasurer withdraw what he has just said. He implied the misuse of electorate resources on the part of a member.

Mr C.J. Barnett: No, he didn't!

Mr M. McGOWAN: Hold on, let me finish, please. The Treasurer has implied that a member uses her office as an outpost for an external organisation, rather than as her electorate office and I ask that he withdraw the allegation that he made.

Mr T.R. BUSWELL: To that point of order, Mr Deputy Speaker, there are two options. I can withdraw, or I can table the membership application with the fax number of the member on it! I do not mind; I can do it either way. I will not withdraw based on what the member said because I am sure that I can find the membership applications with the fax number on top of them!

The DEPUTY SPEAKER: Treasurer, any allegations of improper motives are to be made by substantive motion, so I think you should go down that route if you will, please.

Mr T.R. BUSWELL: Thank you, Mr Deputy Speaker. I take your advice on that.

Mr P. Papalia: Are you going to withdraw?

Mr T.R. BUSWELL: I withdraw.

Debate Resumed

Mr T.R. BUSWELL: I withdraw the comment, but I will collect some evidence in due course. Anyway, let us move on.

Mr C.J. Barnett: It is a serious matter.

Mr T.R. BUSWELL: It is a serious matter, Premier. There is a great website in Western Australia called The Western Patriot. Often, we on this side have reason to scroll the pages of The Western Patriot. That is where we are alerted to this sort of information. I am sure that a quick phone call to the person who provides some of the commentary in The Western Patriot will see us furnished with information. It is probably not appropriate that we deal with that today, but these things can be done.

I get back to the point. The opposition has accused us of making an unfair and miserly pay offer to low-paid workers in this state. The commonwealth Fair Pay Commission offered a zero per cent pay rise to the lowest of the low-paid workers in this country. The opposition needs to take note. We made a submission to that process. We asked in that submission for a pay rise at the rate of the consumer price index. We made that submission. That has been our policy for the past little while. I think that was fair. The commonwealth Fair Pay Commission ignored us. The proof is in the pudding. When members opposite were in government, their wages policy was that the government would neither lead nor lag —

Mr F.M. Logan: That was talking about the private sector.

Mr T.R. BUSWELL: Well, there are a lot of people in the private sector who have not had a wage increase this year. I can tell the member that right now. If I were to apply the former government's policy of neither lead nor lag, am I to take it that we would have offered these workers nothing? It is all very well for members opposite to criticise, yet what was their policy? What outcome would that have thrown up for those workers? Who knows? It possibly would have meant no pay rise whatsoever.

The member for Midland talked about pay rises for government executives. The member is right. Some of those pay rises have been quite outrageous. However, when we dig down, we find that the mechanisms by which those pay rises have been delivered are mechanisms that were signed off by the former government.

Mrs M.H. Roberts: Are you doing anything to change that?

Mr T.R. BUSWELL: Yes. We will be doing something to change it.

Mrs M.H. Roberts: What are you doing? Tell us!

Mr T.R. BUSWELL: Changes will be made—the Premier has alluded to this—in due course to how some of these statutory bodies that operate at arm's length from government are allowed to set their salaries. I will give the member an example that occurred in an area for which I have responsibility. It concerns the chief executive officer of the Government Employees Superannuation Board, Michele Dolin. Michele Dolin is a very well credentialled person. She is doing a good job with a difficult transitional process. I do not blame her for this, but on 1 January 2008, her salary went up in one fell swoop by $160 000. Why was that the case? It was the case because the then Premier, Alan Carpenter, had signed a document in December 2007 that allowed the board of that body to set her salary, and the board promptly awarded her that increase of $160 000.

Ms J.M. Freeman: Was that not done on the basis that they had expected that by the time she would get that increase, GESB would be a public entity?

Mr T.R. BUSWELL: I think a fair bit of water has run under the bridge on this one. I do not think that the fact that GESB might have been mutualised was worth an extra $160 000 a year, and I have made that view very clear to the chairman of the board.

I want to move on. The point I want to make is that these cases will come up from time to time. When we drill down, we generally find that the pay rise was because of the contractual or other arrangements that the former government had put in place.

Mr F.M. Logan: You made the pay offer to the teachers and the police.

Mr T.R. BUSWELL: I did not put up Michele Dolin's pay. That was done by Hon Ljiljanna Ravlich. She would not have had a clue about what happened—not a clue at all!

I want to close with some discussions about the ongoing negotiations with the miscellaneous workers' union. My agency, the Department of Commerce, and our bargaining team, are currently engaged with the miscellaneous workers' union. They are working through a process. I have a suspicion, without presupposing, that we may end up with an arbitrated outcome. What is wrong with that? The independent industrial umpire can look at the case that the government has put and the case that the union has put. There is a big difference between eight or nine per cent, and 20 per cent. The independent industrial umpire can make the decision on the matter. I do not have a problem with that. We will present our case fairly, but thoroughly. I can assure the union of that.

Dr M.D. Nahan: Has the miscellaneous workers' union come up with an alternative request? A pay rise of 20 per cent is exceedingly large in this environment.

Mr T.R. BUSWELL: Not at this stage. I expect that will come in due course. However, the government certainly is happy to move through that process if that is where we end up. I imagine that, if the union is so keen,

and the opposition is so adamant that our offer is so miserly and the union's offer is so right, we will move into a process in which the independent industrial umpire can make a decision. I am not sure whether we will get to that stage, but I have a suspicion that we may well do.

Before I close, I want to talk about Malibu School. That in my view was the lowest of the low. The tactic that the miscellaneous workers' union employed at that school was disgraceful. It was a tactic that in my view took advantage of vulnerable young Western Australians and their families. What happened at Malibu School was that for a couple of days, a variety of work bans were imposed. Those work bans meant that for some of the kids —

Mr M. McGowan: Have you been there?

Mr T.R. BUSWELL: No, I have not.

Mr M. McGowan: Have you met the staff?

Mr T.R. BUSWELL: No. I am not blaming the staff. I am blaming the union. There is an education support centre in my electorate—the Geographe ed support unit. It is a fantastic school. This is what happened. The day before the work bans were imposed, the union let it be known to the principal that it would be withdrawing certain services from that school, and that certain work bans would be put in place that would make it fundamentally impossible for the principal to open the school in good faith and be able to guarantee a safe environment for those kids. That point was clearly made to the principal. Therefore, the principal made what I think was the right decision. It was a courageous decision. She said, "We have to shut the school tomorrow". A principal does not say that lightly in that environment. That has a huge impact on the families and the children. What happened the next day? Under the guidance of the miscellaneous workers' union, the staff turned up and said, "We are here to do all the jobs that we are supposed to do. Where are the kids?" That was absolutely outrageous. The Leader of the Opposition went to that school, with his good mate Dave Kelly, and tried to defend —

Several members interjected.

Mr T.R. BUSWELL: The reason the school shut was that they tried a cheap con, using vulnerable young kids—and it stinks! I know why the Leader of the Opposition went there with Dave Kelly. Last week, a document from the Electoral Commission was tabled, detailing donations to political parties in Western Australia. I am going to close on this. Who was, last year, the largest single donor, as reported in this document, to the Australian Labor Party? Appendix 3 of this document states that the miscellaneous workers' union donated $100 000 to the ALP, and appendix 4 of this document states that the miscellaneous workers' union donated $68 000. The Australian Liquor, Hospitality and Miscellaneous Union donated $168 000 straight into the coffers of the Labor Party!

Mr F.M. Logan: Who is your largest single donor?

Mr T.R. BUSWELL: It is probably the 500 Club! They are a great bunch of people!

Ms A.J.G. MacTiernan: They remain hidden! You will not tell us who they are! Who is in it?

Mr T.R. BUSWELL: I am! I donate to myself! It is awful! It breaks my heart! A lot of people on this side are in the 500 Club. Does the member for Armadale want to join? Does she want some cash? Does she want some help in Armadale?

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Ms A.J.G. MacTiernan: That is because you are being dishonest about the membership of that!

Withdrawal of Remark

Mr R.F. JOHNSON: Mr Deputy Speaker, the member for Armadale has just accused the minister of being dishonest. That is totally unparliamentary and I ask that she withdraw.

Ms A.J.G. MacTIERNAN: I withdraw.

Debate Resumed

Ms A.J.G. MacTiernan: You are being secretive! You are concealing who is donating to the Liberal Party! It is an absolute disgrace!

Mr T.R. BUSWELL: I am not sure who is a member of the 500 Club. But I can tell the member one person who used to be a member of the 500 Club. That is the Labor Party candidate for the seat of Fremantle—a former mayor of the City of Fremantle! I would go to these breakfasts, and there he would be—the Labor candidate for Fremantle, donating to the Liberal Party!

Ms A.J.G. MacTiernan: Will you table a full list of the members of the 500 Club?

The DEPUTY SPEAKER: Order!

Mr T.R. BUSWELL: It has obviously touched a raw nerve! It has touched $168 000 worth of raw nerves! That is the amount of raw nerves that has been ignited! The miscellaneous workers' union wanted to run the member for Armadale out of her seat—or was that the Transport Workers Union, or was it the Construction, Forestry, Mining and Energy Union? Who had it in for the member for Armadale last time? The 500 Club will be right there, backing up Donny Randall out on the beat!

I know that the Premier wants to say a few words. I just say this: while we understand that it is a tough negotiation, and we understand the position faced by hundreds of these workers right across the state, many of whom I have met in my ministerial office and in my electorate office, our view is that our wage offer, in the current climate, is fair. We have committed to working through, in good faith, a long-established negotiation process with the union.

MR C.J. BARNETT (Cottesloe — Premier) [3.49 pm]: I was going to speak about Redress WA, but Labor members said very little about it. I am quite happy to speak about Redress WA, but I was very concerned by the comments of the Treasurer. That is the first I have heard from him and, indeed, from the Minister for Education about what may have happened at Malibu School. If I understood it correctly, Treasurer, the description of the event —

Mr E.S. Ripper: You're right on top of the issue!

Mr C.J. BARNETT: I would not smile too much if I were the Leader of the Opposition. I understood the Treasurer to say that the miscellaneous workers' union and Dave Kelly basically tricked a principal of a special education school into closing that school for a day, putting obvious stress on children with severe disabilities, and their parents. One could infer from that description that the Leader of the Opposition not only was present at that school, but also may have been involved. I wonder whether the Leader of the Opposition had any knowledge of or played any role in a contrivance to trick a school principal to close a school for children with severe disabilities. I give him the opportunity now to say that that is not the case; or, if it is the case, I invite him to explain his actions. If there is any truth to it, I find it absolutely deplorable. But I will not prejudge the Leader of the Opposition. When this debate finishes, he will have the opportunity to stand in this house and give a personal explanation.

Mr E.S. Ripper: I will do so by interjection right now.

Mr C.J. BARNETT: If I am wrong, the Leader of the Opposition can stand and give an explanation, because I want to know what role he played in the closure of Malibu School. I want to know, the public wants to know and the parents want to know what role he played. A parent from that school rang me while I was doing talkback radio and told me the absolute distress and anguish it caused to her and her child because her child could not go to school. If the Leader of the Opposition had any knowledge of or played any role in the closure of that school, he is answerable to Parliament, to the public and to that school. If the Leader of the Opposition gets up and tells me that that is not true, I will accept that.

Mr E.S. Ripper: It's not true!

Mr C.J. BARNETT: That was a bit too quick.

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr C.J. BARNETT: The Leader of the Opposition says that it is not true. He might also explain why he was at the school with Dave Kelly, the head of the miscellaneous workers' union. He may well explain his knowledge of that apparent trick on a principal to harm children and parents. I am concerned. I do not prejudge the Leader of the Opposition, but I want to hear from him an explanation of what happened at Malibu School.

MR R.F. JOHNSON (Hillarys — Minister for Police) [3.53 pm]: I have listened very carefully to the debate and have watched it unfold, and I share the view of the Premier that if the Leader of the Opposition, when he visited that school with Dave Kelly, had anything to do with the disgraceful and outrageous closure of that school and with the principal being tricked, he needs to stand in this place after the debate is concluded and explain himself and give his account of the matter. In view of the motion before the house, I cannot let it stand.

Amendment to Motion

Mr R.F. JOHNSON: I move —

To delete all words after "house" with a view to inserting the following words —

> supports decent and fair pay rates for education assistants, gardeners and cleaners employed in cleaning government buildings and offices and also supports the fair and equitable distribution of the funds allocated for the original Redress WA scheme to all eligible applicants.

MS J.M. FREEMAN (Nollamara) [3.54 pm]: I will take your guidance, Mr Deputy Speaker, on whether I am speaking to the amendment or to the original motion.

Several members interjected.

Ms J.M. FREEMAN: I have been told just to speak, so I will just speak. I want to put some rationality into this very emotive issue. The Treasurer said that in industrial disputes such as these, there is always the capacity to go to the independent arbitrator and seek arbitration on the prosecution of an industrial negotiation. That was the case with Malibu School. If the Department of Education and the Department of Commerce were aware that a school was going to close—I do not know what happened at Malibu School—it would have been a decision of the education department, as it has been in any other dispute with teachers, or a decision of the principal. The matter could have been taken to the Western Australian Industrial Relations Commission. Then an order could have been issued for those workers to work if that was thought appropriate. That is how people undertake bargaining.

Mr T.R. Buswell interjected.

Ms J.M. FREEMAN: Treasurer, people have taken matters to the commission within an hour. That is why the commission has been set up—so that those sorts of disputes can be taken to the commission. The Treasurer has never entered into good-faith bargaining. He has come into this place with a wages policy, but it is not a wages policy; in no way is this a wages policy. A wages policy is a framework; it is not an ultimatum. It is a framework under which the government enters into good-faith bargaining. That is not what the Treasurer has done with these people. This is not about compassion. This is not about valuing the workers. If the Treasurer valued those workers, he would acknowledge what they do and acknowledge some wage comparison with the people who work next to them, to whom the Treasurer was willing to give a 20 per cent increase.

Mr T.R. Buswell interjected.

Ms J.M. FREEMAN: I was not in government then. When the Labor Party was in government, it delivered to those workers. It made sure that it respected those workers.

Mr T.R. Buswell interjected.

The DEPUTY SPEAKER: Treasurer, let the member for Nollamara continue.

Ms J.M. FREEMAN: At one stage the Minister for Education put to the house what occurred under previous governments. Under previous governments, these people were given significant increases; classification rates that accept and value what they do; recognition of skills, particularly special education; and permanency, which had never been available before. The executive wages are just galling.

Amendment (deletion of words) put and a division taken with the following result —

Ayes (28)

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

Noes (23)

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

Amendment thus passed.

Motion, as Amended

The SPEAKER: Members, despite the circumstances that prevail at the moment, I do note the time, and I would ask members to note the time as well. This business is interrupted and adjourned until a later stage of this day's sitting. Members, we have held this division, but at this point we cannot take this business any further. I do advise and repeat that this business will be adjourned and suspended until a later stage of this day's sitting. Under standing order 61, we will take private members' business.

Debate adjourned, pursuant to standing orders.

PORT INFRASTRUCTURE — PUBLIC FUNDING

Motion

MS A.J.G. MacTIERNAN (Armadale) [4.04 pm]: I move —

That this house calls upon the Premier to explain —

(a) his contradictory position on public funding of the state's critical port infrastructure; and

(b) his government's clear intention not to proceed with the publicly owned Fremantle outer harbour container facility, a decision that imposes an unsustainable traffic burden on the local communities and jeopardises the state's economic growth.

I do note that, once again, as happened, I think, the last time we had a matter of public importance directed towards the Premier, the Premier is not in this place.

Dr K.D. Hames: He's gone for a few seconds. He will be back, but I am sitting in his place.

Ms A.J.G. MacTIERNAN: That presents a very real difficulty, because we actually wanted to outline a fairly comprehensive argument to the Premier, and if he is not available to listen to the argument —

Dr K.D. Hames: I think he has just popped out for a second.

Ms A.J.G. MacTIERNAN: Is he just having a rest break? Perhaps, then, we might wait.

Dr K.D. Hames: If you talk, I will take notes and pass them on to him.

Ms A.J.G. MacTIERNAN: We wish to set out a detailed argument, and, obviously, if we start that argument in the absence of the Premier, we will not be able to have the Premier understand the points that we are making, which of course will be a bit of a waste of time. We do not have a great deal of private members' time and we gave notice of this; and, as I say, it is an important issue that none of the other ministers in this place is really able to address. This is a matter that can be dealt with only by the Premier.

Mr R.F. Johnson: He will deal with it, don't you worry!

Mr J.M. Francis: By interjection, just so I am clear: do you support the federal government's contribution of $339 million to Oakajee?

Ms A.J.G. MacTIERNAN: I will tell the member what I do support: the federal government allocating money to Western Australia. I also recognise that it creates difficulties for the federal government if the state government puts forward only a couple of projects. The federal government has had to make a decision about whether it will provide Western Australia with any funding and whether it will support projects that have caveats around them. I do note that there are caveats around them, and we are asking about a very important issue to the people of Western Australia—that is, to understand the grave inconsistency of government policy. I am going to keep waffling on until we get the Premier back in this place.

Mr M.P. Murray: Would you like us to page him?

Ms A.J.G. MacTIERNAN: Yes, we could! It is just so disrespectful of Parliament that he is not in this place to answer this motion. It is not as if it is an issue that any other member of this place can determine. When we had a motion some months ago in which we were seeking his explanation of how we were going to meet the energy targets, the Premier again vacated his seat and left the defence of the state government's position to the member for Riverton. We got quite an extraordinary set of responses from the member for Riverton, who referred to wind turbines as windmills and made the point that he did not think that windmills were the way of the future, and that an energy policy underpinned by windmills was not one that was going to deliver Western Australia's energy needs. Those responses displayed that we have, in the member for Riverton, a member who is guided by outdated arguments.

Quorum

Mr T.G. STEPHENS: Point of order, Madam Acting Speaker. Can I draw your attention to the state of the house, in the hope that if the numbers are insufficient and the bells need to be rung, the Premier might return.

Bells rung.

The ACTING SPEAKER (Ms L.L. Baker): A quorum is now present.

Debate Resumed

Ms A.J.G. MacTIERNAN: Let the *Hansard* note that the Premier is still absent during this debate.

Mr P. Papalia: He is already in the bar!

Ms A.J.G. MacTIERNAN: Maybe we should have adopted Alan Carpenter's proposal to close the bar. We might get the Premier in here occasionally to answer the serious issues. We will not drop this. We will wait until we get the Premier here to answer the case. We have made it very clear that we require an explanation from the Premier of his inconsistent approach to port infrastructure.

Mr J.M. Francis: We are concerned about where you stand.

Ms A.J.G. MacTIERNAN: I am more than happy to articulate where we stand. The federal government is trying to cooperate with the state government. We think it important that the state government actually articulate what its view is, because from what we can see, it is entirely and utterly inconsistent. It is an absolute contempt of this place that the Premier, having been given 24 hours or more notice that we were going to have this debate, leaves in here the Minister for Health to answer these issues. The Minister for Health will have to answer an important parliamentary debate on port infrastructure. It is absolutely extraordinary.

Ms M.M. Quirk: The Premier is scared.

Ms A.J.G. MacTIERNAN: I think the Premier is scared; the member for Girrawheen is absolutely correct. He is so conflicted. There is no logic in his presentations so he is too scared to come here and argue his case. He will possibly come in after this debate, and after we have had an opportunity to present it, not having heard the arguments but absenting himself and being not prepared. It is an absolute abuse of Parliament. The Minister for Health said that he was filling in for a few minutes. What is the intention of the government here?

Dr K.D. Hames: I do not know why the Premier is not here, but he does know that this debate is on. I assume that he has important business that he needs to deal with. He is probably waiting for you to make your points. He has everybody waiting for you to actually say something, so we can take detailed notes to present to the Premier.

Ms A.J.G. MacTIERNAN: It is an absolute contempt and disgrace that he has done this. We gave notice of this motion. What did we see tabled this morning in an effort to complicate the debate? The Premier tabled a draft ministerial statement, obviously whipped up and not even set out in the proper format, to try to muddy the waters about infrastructure by revealing some of his latest submissions to Infrastructure Australia. It was not a very comprehensive description of the document, but, nevertheless, a statement was made. Given that it is now just after quarter past and the Premier has still not appeared in the chamber, we will begin this argument.

The Premier has recently come out in support—indeed, over the weekend he made some announcements about this—of Inpex developing a major new port at Point Torment near Derby. Inpex, of course, is a Japanese-owned company. The member for Rockingham asked him in this place if he could reconcile that with his view that it was improper for Oakajee to be a privately owned port, and a port owned by foreign interests. The Premier said that this was completely different. He said that Oakajee will be a multi-user facility that a variety of people will want to use, which is possibly true. I would imagine that we would see three or four users ultimately. In the first instance, only two or three companies have indicated that they want to use it, but ultimately there will probably be more that will want to use it. But, of course, exactly the same thing applies to the port at Point Torment. I will list the projects and companies that it is proposed would also use the port that the Premier wants for Inpex. He has not gone out with any tender process. He has gone to Inpex, the Japanese company, and asked it to build what he has described in every media release as a major port. According to an article recently published in *The West Australian* under the heading "Barnett pushes for the Derby plan", the projects that would be likely to use it, in addition to Inpex, are the Woodside Petroleum-led Browse liquefied natural gas venture, the Royal Dutch Shell Prelude floating LNG project, the Nexus Energy Crux liquids field and ConocoPhillips. In addition, a company called Rey Resources wants to export coal from the site at Point Torment. It sees the export of coal from its Duchess-Paradise project through Derby as a starter project and intends to share a new port at Point Torment that the gas operators in the region may build.

Therefore, at Point Torment it is proposed to build what has been described as a major port that would cost in the order of $500 million. I suspect that it will cost a lot more than that. I think there has been an underestimation of the difficulty of the marine conditions at Point Torment. However, we would be looking at a project that would cost at least $500 million. That is a major project. The Premier, on his own costings, which, quite frankly, I think need to be updated, has said that Oakajee will cost only $700 million. There is therefore not a great deal of difference. One is a $500 million port and the other is supposedly a $700 million port. The government would not let a Japanese company build one, but with the other it has actually gone to the Japanese company—it did not even have a bidding process—and asked it to build it! When we ask what the difference is, the Premier says that one is multi-user and bigger. The quantum of bigger between $500 million and $700 million is not great. Indeed, both of them would be multi-user ports, and far more companies have been listed as utilising the port at Point Torment than have been listed as utilising Oakajee. We therefore have a situation in which the argument just does not stack up.

I need to go back and point out that the whole premise upon which the Premier is saying that he needs to intervene in the Oakajee project is not only inconsistent with his whole position on Point Torment, but also based

on a complete misrepresentation of the package of rights that Oakajee Port and Rail won when it was selected to build the port. It was never, ever going to be a foreign-owned port; it was never, ever going to be a foreign-operated port; it was never going to be a privately owned port; and it was never going to be a privately operated port. The whole arrangement that OPR contracted or bid for in a competitive process was one that required it to hand over the facility to the Geraldton Port Authority. It would be paid a prearranged capital user charge when any third party used the port. It would have the right to use the port itself without the capital user charge, but any third party would be required to pay a capital user charge, which would then go to OPR to recover its costs for the construction of the port—exactly the same arrangement that applies to BHP at the Port Hedland port.

That was a complete and utter fabrication of the circumstances around Oakajee. Oakajee was never going to be privately owned or operated. It was going to be funded and built by a Japanese company, handed over to the state government and operated and regulated by the Geraldton Port Authority to ensure proper, transparent third party access. There is an extraordinary inconsistency between the position that has been taken on Point Torment and the position taken on Oakajee. The overriding paradox is that the Premier's claims about Oakajee do not make any sense; they are completely and utterly untrue. When pressed on that point he will not concede, but he claims that the project would not get up without state funding. Why is that? Can *Hansard* note that the Premier has finally put in an appearance? I have just outlined my arguments; would the Premier like me to start all over again?

Dr K.D. Hames: You've outlined exactly that same argument in the past.

Ms A.J.G. MacTIERNAN: It is unbelievable. Is there an explanation for why Point Torment should be treated so differently from Oakajee? Is there an explanation for why Oakajee needs to be funded by the state government, if the rationale used over and again by the Premier is that Oakajee cannot be foreign owned or privately operated? The opposition is not saying that Oakajee should be foreign owned or privately operated. Oakajee Port and Rail's proposal was that the project should be handed over to, and owned and managed by, the Geraldton Port Authority.

The Premier then claimed that the previous government had set the Japanese against the Chinese, so what did he do? He gave OPR the $3 billion exclusive right to build the rail without any competitive process having taken place at all. The previous government was blind to the nationalities of the parties; we did not care what they were, but the Premier said that we had pitted the Japanese against the Chinese. The Premier then handed over the $3 billion exclusive right to build the rail without any tender going out or any competitive process having taken place at all. It was originally understood that OPR would have the right to build the rail, but it was not an exclusive right. We wanted to keep some competitive tension and maintain the prospect of OPR dealing in good faith with all the companies that would be utilising that facility.

When the Premier was talking about Point Torment, we listed the very many companies that would be using that facility. We also talked about the fact that there were companies that wanted to use it as an export facility, so that it would, absolutely without doubt, be a multi-user facility. It is apparently all right for this facility to be owned and operated by foreign interests. If there was any credibility to the Premier's argument—there is not, because it is not factually correct that Oakajee was going to be privately foreign owned and operated—his approach to Point Torment tells us what is really going on here. It is all about changing the Oakajee project so that it is the Premier's project. He could not possibly proceed with the process that the previous government had started, not because there was a problem between the Japanese and the Chinese, but because it was not his project. He now has a completely inconsistent port policy, and there is now no capacity for anyone who wants to invest in Western Australia to understand where we are going.

The great irony is that the state government is now contemplating and encouraging the interests aligned with its 500 Club member Mr Len Buckeridge to proceed with his plans for the development of a container facility in Kwinana.

Mr C.J. Barnett: No; incorrect.

Ms A.J.G. MacTIERNAN: Is the Premier not encouraging him to do that?

Mr C.J. Barnett: Your statement is incorrect.

Ms A.J.G. MacTIERNAN: Okay; this is very interesting. I want to make it clear that the opposition understands that we are not talking about stage 1.

Mr C.J. Barnett: There is no stage 1 and stage 2.

Ms A.J.G. MacTIERNAN: Of what?

Mr C.J. Barnett: Of the Buckeridge proposals.

Ms A.J.G. MacTIERNAN: There is not? What is there?

Mr C.J. Barnett: You carry on with your speech; I'm just correcting your errors as we go along.

Ms A.J.G. MacTIERNAN: I take it that the Premier has renegotiated the operating agreements. Is that the case? All the agreements that have been entered into include stage 1 and stage 2. Have these documents been changed?

Mr C.J. Barnett: I'm saying there is no stage 1 and stage 2. It's not the way Liberal governments do business.

Ms A.J.G. MacTIERNAN: Is that not interesting? It is important to make the point that the Premier was a very senior member of cabinet in 2000 when the Court government entered into this agreement with the Buckeridge interest to allow it to proceed with the development of stage 1 and stage 2 of an outer-harbour development. Stage 1 was a relatively modest bulk facility and stage 2 was a container facility. I find this really quite extraordinary; I think this is one of the most interesting revelations we have had today—that there is no stage 1 or stage 2. This has quite clearly not been communicated to James Point Pty Ltd. I point out that it was the only tenderer. Can members imagine there being only one company—a company that had never before built port facilities at all, anywhere around the world—tendering for a project of this scale under the Court government? I think that tells us something about the way in which the tender was submitted.

An article in *The West Australian* of Saturday, 14 November reported that James Point Pty Ltd had announced that it had redrawn its plan for stage 2. It said that the project had been expanded and reference was made to the two stages. It was reported that this was a new proposal for stage 2. I have seen the operating agreement and the lease agreements. The article refers to stage 2 and the fact that the agreement provides for a seabed lease of approximately 70 hectares in stage 1 and 270 hectares in stage 2 for a mere $500 per annum. There is also an option to purchase a freehold title of two reclamation areas for $10 each, and an imposition on the state government to provide specific road and rail upgrades, possibly costing well in excess of $30 million.

Mr C.J. Barnett: That sounds like the seabed you sold at Port Coogee.

Ms A.J.G. MacTIERNAN: It is very interesting that the Premier raises Port Coogee, because we were extremely unhappy about the arrangement at Port Coogee. Quite frankly, I had a very difficult time negotiating a much better deal for the community because of the agreement that was entered into when the Premier was a senior minister in the Court government. They entered into an agreement on Port Coogee with an unbelievably generous arrangement for the proponents. They did that and we were locked into it. We came into government to find yet another secret agreement on Port Coogee, and I had to, personally and at great political cost, negotiate around it. I had to stand firm and try to renegotiate the disgraceful conditions and price that the government of which the Premier was a minister had agreed to and signed off on. Under the agreement, the land values at associated projects, which were inland and not on the seabed, would be indexed according to the consumer price index. Who has ever heard of land values in Perth being adjusted according to the CPI, rather than by an index that reflects the market value of that land? Of course, by the time the proponents came to purchase this land, they were getting it for probably a quarter of its market value.

It is extraordinary that the Premier comes in here and says that there is no stage 1 and stage 2 of the James Point agreement. That in itself requires very full explanation, because I have seen the agreements, and I have read the press releases put out by the company. The company thinks there is a stage 1 and a stage 2, but the Premier seems to be the only person in the state who does not actually think that there is a stage 1 and stage 2.

Mr C.J. Barnett: I don't.

Ms A.J.G. MacTIERNAN: Does the Premier not think that there is a stage 1 and a stage 2?

Mr C.J. Barnett: No, there isn't.

Ms A.J.G. MacTIERNAN: So can we then say categorically that stage 2 is dead? Is that what the Premier is saying?

Mr C.J. Barnett: You can say whatever you want; I'm just correcting you.

Ms A.J.G. MacTIERNAN: The Premier has an obligation here. He was party to this secret agreement with a leading member of the 500 Club. No one had any idea of the terms of this agreement until we came into government and made a declaration. Just as with Oakajee, it was all kept secret and no-one could know what was in it. Now it has been made public—there is stage 1 and stage 2—but the Premier is telling us there is no stage 2.

Mr C.J. Barnett: You got it in one.

Ms A.J.G. MacTIERNAN: That is quite incredible, is it not? The flippancy and glibness of it—not telling us how it will work. Let me get this right. Is the Premier saying that the operating agreements and the various lease agreements do not refer to stage 1 and stage 2?

Mr C.J. Barnett: I'm not here to answer questions. You're making a speech.

Ms A.J.G. MacTIERNAN: Right; okay.

Mr C.J. Barnett: You started off talking about Point Torment, then you're talking about Buckeridge's proposed development, and then you're talking about the City of Cockburn. You can't focus for more than half an hour.

Ms A.J.G. MacTIERNAN: I know the Premier would rather just talk about one thing, but why we have to talk about various projects —

Mr C.J. Barnett: What is your motion on?

Ms A.J.G. MacTIERNAN: Let me explain—read it.

Mr C.J. Barnett: I've lost track of your motion.

Ms A.J.G. MacTIERNAN: The Premier has not even read it. He comes in here, and he has not even read the motion.

Mr C.J. Barnett: I've heard this speech three times.

Ms A.J.G. MacTIERNAN: Why then does the Premier not understand why we need to raise all three ports? When we examine what the Premier is saying on each of these facilities, we find it is completely inconsistent. Of course, we cannot just talk about one port to show that inconsistency. We have to go and set out the government's attitude on all of these different ports to demonstrate this inconsistency. There is no cogency in the government policy; the Premier makes it up as he goes along. It is all about Colin Barnett; it is not about the infrastructure or how we do it. The Premier was the one who raised Port Coogee, but, as I pointed out, it was the Court government that actually signed that agreement and made us sell that land at that price, and put in no protections for the community in that project, just as he put in no protections for the community in the James Point project.

Mr C.J. Barnett: Protection for the community? You dare to say that after the legacy you left at Esperance. The legacy you left at Esperance was an absolute disgrace.

Ms A.J.G. MacTIERNAN: Is that the only point the Premier can raise?

A very interesting development here today is that there has obviously been a change in policy, again in a secret direction, on the James Point port. The Premier needs to explain to the public where we are going. One of the points that we need to make is that there has quite clearly been a decision about a process that, although it has been dressed up as an optimum port planning agreement process, was supposed to finish in June but has not yet been completed. It is quite clear that the proposal to build the Fremantle outer harbour, regardless of what the government is doing with Buckeridge, will not proceed any time soon. Our commitment followed the freight network review, which was not just three or four people getting together to come up with their particular plan. In fact, it was one of the most comprehensive planning processes that have ever been undertaken in this state. We brought industry, local government and community groups together with regulators to work out how we were going to manage freight through the metropolitan area, and we came up with a six-point plan. We recognised that Fremantle just could not grow exponentially. At some point a new facility had to be developed, and the only place that new facility could be located was the Kwinana outer harbour. Although Fremantle harbour technically has a capacity to handle growth up until 2017, the pressure on the road and rail infrastructure is such that the constraints of getting products in and out mean that we will need to develop new facilities to handle the future growth by 2015. That is not saying that that is the only thing we would do. When we came into government, the number of containers going into Fremantle port by rail was only two percent of the total. We turned that around and got the figure up to something like 15 or 16 per cent by investing in the rail into that port, putting a range of management process into place and providing a subsidy for the containers. We need to manage the freight on road and rail. We got on with building the Kewdale terminal. We improved the roads and built Roe Highway stages 4, 5, 6 and 7, so that we could actually start moving trucks around.

Mr C.J. Barnett: And then you stopped!

Ms A.J.G. MacTIERNAN: And then we built!

What came out of this process was that the government would never get environmental approval for Roe Highway stage 8. We actually went to the Environmental Protection Authority first and asked it to give us an advisory opinion on this matter. We did that first so that we would actually have the parameters. We said that. I think it was under section 16 of the Environmental Protection Act. The resulting advice was that it was unlikely that we could make it work; it was unlikely that we could make it environmentally sound. With the development of the Hope Valley-Wattleup industrial area and the development of the outer harbour, it was becoming evident that there was a movement of industry out of Fremantle. I can just imagine what the cost of Roe Highway stage 8 will be! The idea of building that road to move product into Fremantle, all that planning, occurred at the same time that Sir Charles Court decided not to build the western suburbs highway that was planned to go through Dalkeith but to build the Fremantle eastern bypass instead. Fremantle, and the area immediately south of Fremantle, was an industrial hub. Now the city has changed; the city is growing. That industrial product is moving a long way further south. We have already seen that virtually all the bulk cargo activities that went out of Fremantle are now down in Kwinana. We know that it will simply not be possible to continue to have all the container facilities in Fremantle. Although there is more opportunity for growth or managing the growth within

the actual basin, we do not have the capacity to get that product in and out. It cannot be done by zeppelin; we looked at whether we could use zeppelins. We need to ensure a new, modern facility is available by 2015. We were very surprised after contacting the EPA, because we knew that we had started this process in 2007 ,and I think we got approval to proceed —

Mr F.M. Logan: I remember 2004.

Ms A.J.G. MacTIERNAN: But it was in 2007 that we as a cabinet signed off on the decision that we would proceed to gain planning and environmental approval for the outer-harbour container facility. That duly commenced and the scoping document was prepared. It was published by the EPA some time in late 2007, with the finalisation date for public comment being, I think, 4 February 2008. What has happened since then? Nothing! There has been a decision by the government—we put two proposals forward; two options in case one did not get approval—to simply go with one proposal. We do not have a problem with that. It made the decision to simply go with that one proposal, but it has actually done nothing. Not even the scoping document was published. We had prepared it and it was out for public comment, and one would have thought that by the end of 2008 it would have been published and that the next stage of the documentation would have been ready for comment. However, what we hear is that since February 2008 there has not even been a single further document lodged. Therefore, quite clearly, the instruction has gone to the Fremantle Port Authority to not proceed with this matter and to not proceed with the environmental approval. Looking at that and the fact that the money for the port in the 2008 budget for the next two years had been delayed two years, I would not be surprised if we see in the midyear review that that money has come out for even those years. The money for the associated road and rail infrastructure has been totally taken out of the budget. Now that our submission to Infrastructure Australia for support funding for the project has been taken out of the Infrastructure Australia budget, there is no way that —

Mr C.J. Barnett: The member needs to understand that the previous government's submissions to Infrastructure Australia are formally redundant; they have no status.

Ms A.J.G. MacTIERNAN: I know that. They have no status because —

Mr C.J. Barnett: Who cares about your policies any more, apart from you? They are redundant! It is called an election.

Ms A.J.G. MacTIERNAN: Premier, I am using this as evidence of the fact that it is quite clearly the case that this government has no intention in the foreseeable future of proceeding with the new container facility in the Fremantle outer harbour. Quite clearly, a decision was made, and although we will hear the answer that we have to wait for the Fremantle Ports Optimum Planning Group to report, the fact is that the government has taken all the money out of the budget for the road and rail infrastructure and deferred all that money that is in the budget for the Fremantle Port Authority for two years. As I say, I would be surprised if it actually survives into next year's budget. The fact is that the government is not seeking any Infrastructure Australia funding for the support infrastructure for this project, and it has taken no action to advance the project in the year or so that it has been in government—no steps have been taken. The proponent has not proceeded with the environmental application, and it is quite clear that the government has no intention of proceeding with the outer terminal within the foreseeable future. That means that even if the government builds Roe Highway stage 8—I bet that the government will not build Roe 8—it will not solve the problem. Roe Highway stage 8 will have to end at Stock Road. If it ends at Stock Road, we still have to take that traffic up Stock Road to Leach Highway and High Street right through the centre of Fremantle. We will still have all those congestion points coming in. The government can say that it will manage it better. We had the freight network review, which came up with every possible permutation of how we could better manage it—a one-stop shop, a booking system, all of that stuff, which we implemented. That was giving us better results. We put in all the strategies that we could to actually get boxes off the road and onto rail and, as I said, we took it from two per cent on coming to government to something in the order of 15 per cent. There is no magic solution that no-one has thought about, because for two years we analysed this process absolutely. There can be no building of the Fremantle eastern bypass; that is gone. That land has been sold, so unless the government proposes —

Dr M.D. Nahan: You ruined Fremantle harbour accordingly.

Ms A.J.G. MacTIERNAN: No, we did not ruin Fremantle. We recognised that because of Fremantle's location, it has a finite capacity. I say it has a finite capacity for this reason. Because of the creation of the Hope Valley-Wattleup industrial area, because of all the other industrial land that has been created further south, and also because of the fact that since, as I said, Sir Charles Court put the Fremantle eastern bypass into the planning scheme, there has been a massive change in the bulk cargoes, and the bulk cargoes now no longer come out of Fremantle harbour, we have to accept that the Kwinana outer harbour is going to increasingly become the locus. However, we are committed to retaining Fremantle as a working port. We do not want Fremantle to be just a boutique port, as the Minister for Transport had in mind before the last election. He wanted to move the whole

thing. We recognise that there is some $5 billion worth of investment in the Fremantle port. That investment needs to be sustained. But we have to admit that it has a finite capacity; it has a limit.

As I say, what we have now is a completely inconsistent approach to the planning of port infrastructure. Very interestingly, an application has gone in today for common-user infrastructure at Point Torment. I will be very interested to know what that common-user infrastructure will be, and whether that is yet another permutation on the policy variants. I say that because a couple of days ago, this was going to be a privately funded port.

Mr C.J. Barnett: No. A road from Derby to Point Torment might be one thing that is worth doing.

Ms A.J.G. MacTIERNAN: Yes. I think that is right. If we are going to have a port there, that is right—just as we will need a road to Browse Basin.

Mr C.J. Barnett: We don't build roads across oceans!

Ms A.J.G. MacTIERNAN: Sorry—to the Browse Basin gas hub.

Mr C.J. Barnett: We will build a road to Beagle Bay Road.

Ms A.J.G. MacTIERNAN: Just as a matter of interest, why did the Premier select the Point Torment project as the one for federal funding, rather than the Browse hub?

Mr C.J. Barnett: There is a big difference.

Ms A.J.G. MacTIERNAN: What is the difference between a hub and a basin?

Mr C.J. Barnett: There is a big difference.

Ms A.J.G. MacTIERNAN: Okay. Well, whatever it is the Premier will be building at James Price Point —

Several members interjected.

Ms A.J.G. MacTIERNAN: I am interested to know why the Premier selected that site. I am also interested to know why the Premier did not see the need to fund the Fremantle outer harbour. That might have been one of the government's submissions to Infrastructure Australia. Obviously, the Premier is in government, and it is for the government to make its decisions. But I would be interested to know why the James Price Point —

Mr C.J. Barnett: Precinct.

Ms A.J.G. MacTIERNAN: — precinct, as the Premier might call it—rather than a gas hub, as we have called it—was not part of an application to the feds, yet this new, possibly privately owned port —

Mr C.J. Barnett: It is because the state and the commonwealth have already committed their funding to James Price Point.

Ms A.J.G. MacTIERNAN: Have they? In what way? In a separate agreement?

Mr C.J. Barnett: Just read the papers. It has been in the papers. Keep your research up.

Ms A.J.G. MacTIERNAN: I thank the Premier for that.

Several members interjected.

Mr C.J. Barnett: It is true. It has been written about about 50 times.

Ms A.J.G. MacTIERNAN: I would like to use that to segue into taking this opportunity to correct the Premier.

Mr C.J. Barnett interjected.

The ACTING SPEAKER: Order, members! The member for Armadale has the call.

Ms A.J.G. MacTIERNAN: I think it is important that we all keep up with our research. I agree with the Premier. However, the Premier obviously has not kept up with his research on Geraldton. I say that because last week, the Premier was railing against the fact that we had proceeded with the modest—we agree—proposal to expand the Geraldton port.

Mr C.J. Barnett: You spent over $100 million. It was not that modest.

Ms A.J.G. MacTIERNAN: The Premier said that it was a disgrace, because it could not take panamax vessels.

Mr C.J. Barnett: Not fully loaded, no.

Ms A.J.G. MacTIERNAN: The Premier did describe it as modest. He said that it is a joke—it is only $100 million!

Mr C.J. Barnett: It was modest in terms of the extra water depth that you got.

Ms A.J.G. MacTIERNAN: What we got is a project that will actually pay for itself. It halved the cost for the grain exporters in that area, because they no longer have to double load. They are quite happy to pay a special

port levy, because it is so good for them. Also, we were able to start the iron ore industry in Geraldton. I really want the Premier to understand this, because the Premier obviously has not done his research about the mid-west. It has been really interesting to read the statements that the now Premier made in 2000 about his vision for Oakajee. All the nickel would be going through Oakajee. The vanadium mine would be feeding down into Oakajee. The reality was that the Premier ran the Kingstream project. He flogged that project over and over again. But at the end of the day, it was a dead duck. Oakajee was, as we said, not ready to go. We were never anti-Oakajee.

Mr C.J. Barnett: Yes you were!

Ms A.J.G. MacTIERNAN: We said that it was a project whose time had not come. We got the iron ore industry started in Geraldton. The iron ore companies in the mid-west were really enthusiastic for us to do that expansion at the Geraldton port. That is because in the first instance they had only small deposits. If a company has a small deposit, it has to trade with the smaller steel makers that are based on the river ports of China. When a company is not producing $50 million tonnes of iron ore per annum, it does not need a panamax. In fact, if we had tried to burden these companies with the massive cost infrastructure of a deepwater port that could take panamax vessels, it would have meant that these companies would never have kicked off. However, what we were able to do by the enhancement of Geraldton port—which was known before we came to government as the National Party port, as opposed to Mr Barnett's Liberal Party port—was enable that industry, in a very cost-effective way, to be kick-started. We enabled those companies to get their small deposits to those river ports in China, and that enabled them to develop the cash flow and the credibility and the expertise to start working on these bigger projects that will ultimately, hopefully, feed Oakajee. We need to do one before the other. The other was a very cost-effective way of getting that industry kick-started. I cannot believe that, to this day, the Premier still cannot understand that and still cannot see that that was the necessary sequence that had to occur to enable that industry in the mid-west to thrive and to go forward and to in fact underpin, hopefully, the eventual development of Oakajee. I am glad to see that the Premier has backflipped on the port cap at Geraldton.

Mr M. McGowan: What has he done now?

Ms A.J.G. MacTIERNAN: He has publicly acknowledged what he has been telling the companies; that is, they can put their stuff out over Geraldton, even though there is, in fact, no public statement about that. The member has caused me to lose my train of thought!

Mr M. McGowan: Go back to the start!

Ms A.J.G. MacTIERNAN: It is really important to understand that Oakajee is not a project that, realistically, will be up and running by 2015. It is very optimistic to think that it will be up and running by 2015. We know that the environmental approval process will probably start early next year. An interim decision has been made on the level of environmental assessment. That is now open for appeal. We imagine that there probably will be a few appeals. We image that, all things being equal, those appeal processes will be completed in January or February next year, and the environmental assessment can then start. It is a full environmental assessment on both the terrestrial and the marine side of that project. That will be at least a two-year process. It will be at least a three-year process to construct this port. So, we need to be realistic about the time lines. It would be very useful if the Premier could give us an update on what the latest cost projections are for the Oakajee port. The Premier made some estimations of, I think, $700 million about a year and a quarter ago. I would imagine, now that the project is moving forward and more work is being done to try to get a bankable feasibility on this project, that the Premier would have had various submissions made to him to update the costing of that project. I think we would all be extremely interested to hear from the Premier the reports he has received and for him to give us some idea of the expected cost.

We are certainly interested in the Premier giving us further insight into how he will reconcile these various competing policy stances, given that Point Torment will be a multi-user facility and will not necessarily be just a supply base; it may well be something more. We would like the Premier to at some point acknowledge that, under the proposal, Oakajee Port and Rail won the right that the port would be neither foreign owned nor privately operated; it would be operated by Geraldton Port Authority.

Mr C.J. Barnett: Navigation lights.

Ms A.J.G. MacTIERNAN: No, it was not navigation lights. That is ridiculous. I will give the Premier the example of Port Hedland. At Port Hedland, there is a common-user berth that is owned and run by Port Hedland Port Authority. BHP Billiton Ltd has its own berths and it operates those berths. That arrangement was going to apply in this case. The management of the channel and the basin, not just the navigation lights, was going to be the responsibility of the port authority. Certainly, the company would manage the first one or two berths that it built, just as BHP manages its berths and just as Rio Tinto manages its berths at Dampier port. It was going to be no different; it was going to be exactly the same. Indeed, the models at Dampier and Port Hedland enabled us to come up with this solution. We have plenty of questions to be answered by the Premier. I think that we are

entitled to some explanation for the Premier's statement that there is no stage 2 of James Point port, when the operating agreement quite clearly says that there is and quite clearly the company, from its myriad recent press releases, is still of the view that there are two stages.

MR W.R. MARMION (Nedlands — Parliamentary Secretary) [5.02 pm]: I will make a few contributory remarks on the motion of the member for Armadale and, in particular, on the importance that this government places on ports as the most important economic infrastructure in Western Australia. This government recognises that without ports, our economy would probably be shot to pieces. It is not only the ports, but also the strategic network of infrastructure around the ports, including the roads and rail. This government recognises that ports are key pieces of infrastructure that play an important part in our economy. We have a number of ports in Western Australia. The most important one is probably Port Hedland port. Port Hedland port wins on turnover. The turnover of Port Hedland port is $38 million. In 2007-08 it returned a net profit to the government of $4.2 million. There were 1 027 vessels that went through Port Hedland port in 2007-08. Port Hedland port has some interesting problems. I think ships have only a five-hour window of opportunity to access the port because of the tides. Port Hedland port is getting overcrowded because of the number of berths, and it looks as though we have to plan for some outer harbour berths.

Mr T.G. Stephens: The statement from the Premier indicates that Port Hedland is proposing to have expenditure of between $500 million and $1 billion for the much-needed increase in capacity. Can you tell the house what the government will buy with $1 billion; and, if it does not get the $1 billion and gets only $500 million, what will be excluded from the purchase if it is to spend only $500 million rather than $1 billion?

Mr W.R. MARMION: I think the Premier would like to address some specific questions asked by the member for Armadale.

Mr T.G. Stephens: Aren't you his parliamentary secretary?

Mr W.R. MARMION: No, I am not.

Mr T.G. Stephens: You're not?

Mr W.R. MARMION: Sorry; I am the Premier's parliamentary secretary, but I am no longer the Parliamentary Secretary to the Minister for Transport. I am drawing on some limited knowledge that I got in my brief time as Parliamentary Secretary to the Minister for Transport.

Mr T.G. Stephens: Don't tell me that we're just going to have a travelogue around Western Australia with no detail or content?

Mr W.R. MARMION: No; I am going to concentrate on the same ports that the member for Armadale referred to.

As I was saying, one of the problems with Port Hedland port is the entry to the port. I think it is a three-kilometre dredged channel out to deeper depths. That is an issue that the government will have to look at. The channel constrains the number of vessels that can enter the port. Also, if a problem arises with a ship grounding or blocking the port, there could be drastic consequences, certainly for the iron ore export trade in Western Australia.

Mr F.M. Logan: Earlier on the Premier referred to the fact that there is going to be no stage 1 and 2 of James Point port. Are you going to address that?

Mr W.R. MARMION: Yes, I certainly will.

I will talk about Fremantle port, because I think that is one of the points that the member for Armadale was trying to make. The member for Armadale also mentioned Geraldton port. Geraldton port is another very important port in Western Australia, and I acknowledge that. We all know that a fair bit of dredging was done at great expense some years ago. I recall receiving a briefing on that in my previous capacity as chairman of the Engineering Excellence Awards Committee. Indeed, Geraldton Port Authority won an excellence award for the dredging of the harbour.

Mr T.G. Stephens: That would have been the work done under the leadership of the former minister.

Mr W.R. MARMION: It was indeed.

Of course, that expenditure has put a big dent in the capital of Geraldton Port Authority and it obviously needs to be repaid by a reasonable amount of trade through the port. Geraldton port turns over $48 million, so it has a higher turnover than that of Port Hedland port. In terms of volume, 130 million tonnes were exported from Port Hedland port in 2007-08 and 7.6 million tonnes were exported from Geraldton port.

I will touch on Esperance port, because that is the only port I visited as Parliamentary Secretary to the Minister for Transport. As members of the house will know, the government had to move in fairly quickly at that port. We

made a reasonable amount of capital expenditure on Esperance port to get rid of the lead and to help clean up some of the problems caused by the lead deposits. We thank the member for Eyre for getting involved in that.

Dr G.G. Jacobs: Thank you for that.

Mr T.G. Stephens: It's a pity he didn't get involved when he knew the problem was occurring.

Mr W.R. MARMION: I am sure he did.

Ms A.J.G. MacTiernan: He was on the group that was receiving reports.

Mr W.R. MARMION: So he did get involved. Well done, member for Eyre.

Several members interjected.

The ACTING SPEAKER: Order!

Mr W.R. MARMION: Thank you, Mr Acting Speaker.

Getting back to Fremantle, which is probably where we should be at, the port of Fremantle's turnover is $128 million. I stand corrected in that the port of Fremantle is the biggest driver in annual turnover, but not in tonnage and exports of iron ore. Fremantle Port Authority has $128 million worth of turnover, which is well above that of the ports at Geraldton and Port Hedland. Last year, the port of Fremantle generated $13.7 million of net revenue to the state, 1 800 vessels went through the port, and its total tonnage was 26 million tonnes, of which 14 million tonnes were exports and about 12.5 million were imports. The port of Fremantle has a good turnover of both imports and exports, better than most of the other ports in Western Australia.

Ms A.J.G. MacTiernan: That's right, which is what makes it so weird that you have given it such low priority.

Mr W.R. MARMION: We have given it a high priority. Members have only to open the current annual report from the Fremantle Port Authority to see that.

Ms A.J.G. MacTiernan: They were all projects that were approved and funded under us; the inner harbour deepening was approved and funded under us. The issue we're talking about is the outer harbour.

Mr W.R. MARMION: The port of Fremantle, as I have just said, is the number one port in terms of imports and export in Western Australia. It is a very good port. Kerry Sanderson, the former chief executive officer, has moved on, but I must congratulate her on the wonderful work she did when she was the CEO. We have a new CEO, Chris Leatt-Hayter, who has done a wonderful job in taking over from Kerry Sanderson, and who is looking at the importance of delivering a holistic approach to Western Australia's ports' export and import system.

Mr J.E. McGrath: They said the same about Kerry Sanderson when they were in government.

Mr W.R. MARMION: Did they?

This debate is about the port of Fremantle and the Fremantle outer port. As the member for Armadale mentioned, the Minister for Transport has asked the Fremantle Ports Optimal Planning Group, which was established earlier this year, to report to him on five important items. The group is looking at the optimal facilities in the outer harbour to cater for container and other trades into the future, including an examination of Fremantle Ports Kwinana Quay and the James Point private port proposals. Both those port options are being looked at.

The group is also looking at the optimal road and rail transport links, which are most important for the operation of a successful port. It is also looking at the land requirements in the outer harbour area to support long-term port needs for services such as intermodal terminals and container parks. Indeed, it will also be looking at the Latitude 32 land, because one of the important things about the transport links is that the port links to the industrial areas, including Henderson. The group is also looking at the cost of providing the optimal facilities, and also the likely time frames and an appropriate delivery strategy. The government is seriously looking at the port of Fremantle.

Mr F.M. Logan: Member, now that we've gotten to this point, can you answer the point that was made by the Premier earlier about there being no stage 1 or stage 2 James Point proposal?

Mr W.R. MARMION: I actually cannot answer that question because I am not across that issue, but I am sure the Premier will be able to.

Mr F.M. Logan: He wouldn't inform the house what he was talking about!

Mr W.R. MARMION: I am sure the Premier will, but I cannot answer that, unfortunately, member.

Another important issue I wanted to mention about the inner Fremantle port is that, most importantly, the first panamax ship came into the port in April 2009. The member for Armadale mentioned panamax, and the ship that came in, in April this year, was 275 metres long and 40 metres wide; it was an absolutely massive ship. The

member for Fremantle is obviously interested in this. It could only come into the port loaded to 80 per cent capacity. If it had been loaded beyond 80 per cent, it would not have been able to get in. We are looking at the issue of dredging. I know that the member for Fremantle probably has an issue with dredging.

Ms A.J.G. MacTiernan: But the dredging has been approved; the deepening of the inner harbour has been approved.

Mr W.R. MARMION: Correct.

Ms A.J.G. MacTiernan: That was never seen as a substitute for the outer harbour, that is something that had to be done, as well as the development of the new facility.

Mr W.R. MARMION: I agree. As the port of Fremantle stands now, it will not be able to cope with the projected total import and export capacity of Western Australia in 50 years, so we have to look at other strategies. The outer harbour is obviously a strategy that both the commonwealth and state governments are looking at.

The Fremantle Port Authority's annual report states that, on current indications, the inner harbour is likely to reach optimal capacity by about 2018 or 2020. That will be the end of its life, so we will have to have something in place by then if we are to maintain our current port capacity.

Those are my comments on this subject, and I am sure the Premier will make his points in due course.

MR M. McGOWAN (Rockingham) [5.17 pm]: I rise to speak on this motion as the second speaker for the opposition. I am disappointed, considering that today private members' business goes for two hours and we are now one-and-a-quarter hours into it, that the Premier has not responded to the motion. I left open the opportunity for the Premier to respond to the member for Armadale's address, but he declined to. The way it is going, he will not even respond to what is a very significant public policy and public expenditure issue in Western Australia. I find that extraordinary, and I know for a fact that former Premiers Geoff Gallop and Alan Carpenter would not have done that; they would have responded. The Premier should have responded to what the member for Armadale had to say.

Mr C.J. Barnett: I may well do; there are at least 45 minutes of the debate remaining.

Mr M. McGOWAN: Yes, there are. I will make my point, and I hope that the Premier will respond. I was hoping that the Premier would respond and I would have been able to listen to what the Premier had to say and then I would have responded to what he had to say. I will not, now, have that opportunity.

Mr C.J. Barnett: It doesn't work that way.

Mr M. McGOWAN: That is the way it is supposed to work.

Mr C.J. Barnett: No, it's not at all.

Mr M. McGOWAN: That is the way it is supposed to work. The motion moved by the member for Armadale is a good motion.

Mr C.J. Barnett: For the third time.

Mr M. McGOWAN: She has raised this issue continually; that is true.

Mr C.J. Barnett: There's no doubt about that!

Mr M. McGOWAN: But new facts have come out along the way. For instance, last week two new things came out about these very important issues. One was what the Premier was doing in Derby, and the arrangements that he wants to put in place in Derby, and the second new fact that came out last week was that the Premier had changed his position on the export cap for iron ore through Geraldton. Two new pieces of the puzzle have come out in the past week, which is why we have raised the issue. It is undeniable that there are two new pieces of the puzzle.

Mr C.J. Barnett: That had been done before; it was not changed. It had been done before you raised it. We actually haven't removed the cap; we have a flexible situation in place until Oakajee is in operation, and the proponents knew that well before you raised the issue in this place. It had already been agreed and they had been advised.

Mr M. McGOWAN: I will get back to the central point, and I will address that point in a moment.

The central point that the member for Armadale raised was that there was an arrangement in place on the construction of the Oakajee port, which had taken some time to get to and which would have resulted in the construction of a port for the use of the iron ore industry and other industries in the mid-west that would not have cost taxpayers anything. That is the point that she made: there was an arrangement in place for a port that would not have cost taxpayers anything. The port was to be constructed by a private company.

Mr C.J. Barnett: Which company was that?

Mr M. McGOWAN: Oakajee Port and Rail, in fact.

Mr C.J. Barnett: No, it was not.

Mr M. McGOWAN: It was a consortium of Mitsubishi —

Mr C.J. Barnett: Who?

Mr M. McGOWAN: — and Murchison Metals, as I recall.

Mr C.J. Barnett: Okay. Do you think Murchison Metals is capable of funding 50 per cent of a port and rail development?

Ms A.J.G. MacTiernan: What you have done is just given them a $3 billion rail project. You did not think they were capable of doing a $700 million port. Why did you, unilaterally, without a competitive tender process, give them a $3 billion project, which you did?

Mr M. McGOWAN: Mitsubishi is a big company.

Mr C.J. Barnett: Yes, they can do their part.

Mr M. McGOWAN: It was part of the consortium. The Liberals should listen to this. We had an arrangement under a Labor government under which the private sector was engaged by the state to construct a port and harbour project with common-user infrastructure at no cost to the state, which would revert to the control of Geraldton Port Authority and which would export product out of that harbour. Does that not sound like a good outcome? That was the arrangement that was in place, signed up at a Geraldton cabinet meeting that I attended in early to the middle of last year by the then Premier and the then Minister for Planning and Infrastructure. I know that we had been in office for seven years or so when it happened, but I was here when the previous arrangements were being negotiated by the then Minister for Resources Development, the member for Cottesloe, when he sat in a different seat and I sat in a seat in the corner. I recall the arrangements that were put in place in 1997 that all folded and came to nothing. They had been around for a long time as well. These things do not come along easily.

An arrangement was entered into with a major consortium, with a big company, to construct the port at no cost to the state. That is the point that the member for Armadale keeps making. She makes it because $700 million of public money is now being ploughed into a project. It did not have to be spent. What we say is that $700 million of public taxpayers' money could have been spent on other projects. It really is a simple concept. That is what the member for Armadale says. However, the Premier changed the parameters of the earlier project, based on the fact that he said that there should be no private involvement in the construction of a port.

Mr C.J. Barnett: That is untrue.

Mr M. McGOWAN: I will read out what the Premier had to say.

Mr C.J. Barnett: That is not what happened.

Mr M. McGOWAN: Maybe the Premier was not telling the truth when he said it, but this is what he had to say a bit over a year ago in October last year —

> I have a view that the State has a strategic and economic responsibility to bring on port projects. If the State takes on responsibility for the outer harbour it will in my view anchor the project and the project is then likely to proceed …

Mr C.J. Barnett: So it is not what you said a moment ago at all; it is quite different.

Mr M. McGOWAN: I will find another one. The Premier should hold his horses. I will quote from *Hansard* of 11 March 2009, which reads —

> The state will own, control and charge fees for the use of that infrastructure. This, like every other common-user port in Western Australia, will be a Western Australian port; it will be an Australian port. We will not have any overseas country or interest own a port as critical as that to the development of this state and this nation. We have found a balance, and the private proponent, Oakajee Port and Rail, will develop the private facilities for its customers and investors.

The central point is that we would not have overseas investors and that it would be a publicly owned port and that that should be the arrangement for major ports. The Premier therefore does not want ports overseas-owned and nor does he want private involvement in their construction. I disagree with that.

Mr C.J. Barnett: No, that is incorrect. The majority of the funding will be private.

Mr M. McGOWAN: The Premier says that the reason for the change is that Oakajee Port and Rail could do it. The company never withdrew from the project, nor said that it could not do it; that was merely the Premier's

assumption within a week or two of arriving in office. He did not want the port to be associated with the member for Armadale; the former Premier and member for Willagee; or Geoff Gallop. The Premier wanted it associated with him. The way to do it is to remove that private involvement that we had negotiated and to put public money into it. The world has turned on its head. Once upon a time Rex Connor would have been saying what the Premier is saying and we would have been saying the opposite, but now we say that if the private sector wants to build it, why not? We have Rex Connor over here, the member for Cottesloe—a "Connorite" in our midst. I think his name was Rex Xavier Connor.

Ms A.J.G. MacTiernan: But, member for Rockingham, we had got the best of both worlds, because we were actually going to get them to build it and we were going to own it and run it.

Mr M. McGOWAN: It was fantastic.

Ms A.J.G. MacTiernan: They had agreed to do it.

Mr M. McGOWAN: It was going to come back to us. That is the base of the argument. What we then get to is what was revealed last week when it comes to Point Torment. Staff from the Shire of Derby/West Kimberley came to brief me earlier this year on their proposal for Point Torment. I thought it was a good idea. I understood that they were also going to see the Premier about it. It is a good project. They obviously do not have the capacity to do it, but they are supportive of it because they think that having a bigger port than the one they have would be good for the economic activity of their community. What did the Premier have to say about it? His belief is that Inpex would pay the vast majority of the cost.

Mr C.J. Barnett: That is correct.

Mr M. McGOWAN: The Premier said —

> Inpex would pay the vast majority of that, the state government may well assist by building roads and other infrastructure …
>
> Essentially this would be a private sector supply base, and when I say supply base this it's a major port in itself.

Mr M. McGOWAN: We have learnt since this that there are others.

Mr C.J. Barnett: It is not a deepwater port.

Mr M. McGOWAN: The distinction of whether or not it is deepwater is the basis for whether taxpayers pour in $700 million.

Ms A.J.G. MacTiernan: He said multi-user the other day.

Mr M. McGOWAN: That is what he said the other day. Now we discover that Rey Resources wants to export coal through Point Torment port if it becomes operational. I have a copy of its proposal here. It is working on 2 million tonnes per annum of thermal coal exports through the port of Derby. We know other oil and gas users might access some of those reserves in that part of the world. The Royal Dutch Shell Prelude floating LNG project is one, the Nexus Energy Crux liquids field is another, and in total there are four other users apart from Inpex. That takes it to five.

Ms A.J.G. MacTiernan: More than Oakajee.

Mr M. McGOWAN: The first plank of the Premier's line on this is that if it is going to be multi-user, the public must own it. However, that has been exploded because we now know there are five users—four others apart from Inpex. The second plank is that it must be Australian owned. We now know the Premier's proposal is that Inpex, which is Japanese, should put in $500 million. The third plank—the new plank that has emerged in the past couple of minutes—is about the depth of the water. I know it is tidal in Derby. I have been there in patrol boats. The member for Warnbro would know a lot more about it than I, but I have been there.

Mr T.G. Stephens: He never took a ship into King Sound, because it was too tidal.

Mr M. McGOWAN: The man's a coward!

The ACTING SPEAKER (Mr J.M. Francis): Member for Rockingham!

Mr M. McGOWAN: I meant that in the nicest possible way! The third plank is whether or not it is a deepwater port. The point that we are making here is that this is a multi-user port, and a major port, as described by the Premier. It will have multi-users and it will be internationally owned. Maybe it is something to do with the twenty-sixth parallel. Below the twenty-sixth parallel ports have to be state owned; above the twenty-sixth parallel they can be privately owned! The rationale behind all this is hard to explain. The point we are making is that state intervention for no reason in Oakajee has cost taxpayers a fortune, and the same approach is not being taken with Inpex. We are asking why the Premier does not have a consistent policy. If he speaks on this, the member for Riverton, who prides himself on being a bit of an ideologue and an intellectual, would have to

acknowledge that there is a major discrepancy in the logic between these two proposals that is costing the taxpayers of Australia at least $700 million.

I want to talk about a couple of the other issues that have been raised. The line has been run that there was some sort of failure in the Oakajee project because the previous government pitted Japan against China. The Premier actually said that he had to fly to China and Japan to sort it out; apparently, they still think it is 1945. Maybe it is the reverse—maybe the Premier still thinks it is 1945.

Mr W.J. Johnston: They didn't recognise him because they saw the photo on his website!

Mr M. McGOWAN: The photo of the Premier in the *Parliamentary Handbook* is of an impostor!

The opposition realises that the major companies and the governments of Japan and China have got past the idea that somehow they are still at war. The war finished in 1945; they are mature countries engaged in business.

Mr C.J. Barnett: Do you ever watch Chinese television?

Mr M. McGOWAN: I have been to China.

Mr C.J. Barnett: Have you ever watched free-to-air television there?

Mr M. McGOWAN: I have, but I did not understand much of it. I did not realise that the Premier is a Sinophile; maybe he has been hanging around with the Prime Minister so much that he has learned Chinese!

I know that people in that region have memories, as indeed do those in Australia. If I go to the RSL club in my electorate, I know that people there have memories about those events. However, it is ridiculous to suggest that senior business and government people in China and Japan would consider it outrageous or a huge mistake for a Chinese company to bid against a Japanese company. That is a suggestion that offends the maturity and intellect of the people running companies in those countries—as though they care whether they are competing against a Japanese company, a Norwegian company or a German company. If the Premier's logic holds firm, British or Russian companies would be offended by competing against German companies, and it would somehow be a huge mistake for them to tender, of their own accord, against one another. We could go through a whole list, perhaps. Turkey and Australia should not be able to bid against one another. Britain was once at war with America—twice, in fact. Perhaps they cannot tender against one another. Maybe it is offensive to the people of Britain to tender against American companies. That logic is just ridiculous.

Mr C.J. Barnett: That shows your lack of understanding of modern China.

Mr M. McGOWAN: I have a far greater understanding of the history of those countries than does the Premier. I know more about the history of this part of the world, including its recent history, than does the Premier. If the Premier wants to compare historical knowledge at any time, bring it on. It is ridiculous to suggest that China and Japan do not have the maturity to compete against one another and that the entire process would have to be suspended and taken from the hands of the winning tenderer because of some false understanding of the capacity of the people engaged in the tender process to deal with what happened 64 years ago. The Second World War ended 64 years ago; the Premier's logic is flawed.

Mr C.J. Barnett: My comments had nothing to do with the Second World War.

Mr M. McGOWAN: The hostility that the Premier claims exists between China and Japan goes back to that period. He said a moment ago that the animosity is apparent on Chinese television; I know that protests have appeared on television. There may still be memories for many people, just as there are in any RSL club, but it is insulting to suggest that the people who run Mitsubishi or Yilgarn Infrastructure cannot compete in a fair bidding process against another company on the basis that the company is Japanese or Chinese. British Aerospace would not care about competing with Daimler—as if there is anything wrong with that, or that the people who run these companies do not recognise that the world has moved on. The fundamental basis of what the Premier has done is flawed. If the Premier wants to try to defend his imagined animosity between Japan and China, it should be remembered that he flew to Japan and China, prostrated himself before them and said, "I'm sorry you actually had to compete against one another." Can the Premier defend that?

Mr C.J. Barnett: I've never said that in my life. You've got a responsibility to actually try to tell the truth. I've never said that in my life.

Ms A.J.G. MacTiernan: Oh, my God! Lead by example!

Mr C.J. Barnett: Give me an example of when I haven't told the truth in this Parliament.

Ms A.J.G. MacTiernan: When you said that the Oakajee port was going to be foreign owned and foreign run!

Ms R. Saffioti: When you said that there was no stage 1 and stage 2.

Mr M. McGOWAN: And that is just today!

On 11 March the Premier stated —

> One of the reasons I went to Japan two weeks ago, and one of the reasons I will be going to China in a few months, is to try to smooth over the damage that was done to our international standing.

That was apparently because companies from those two countries were competing against one another.

[Member's time extended.]

Mr M. McGOWAN: I will be brief.

Mr C.J. Barnett: This is interesting, because I have not heard a thing from a single Labor member over the past month about the asylum seekers on the *Oceanic Viking*—not a word from one of you.

Mr M. McGOWAN: What asylum seekers on the *Oceanic Viking*? The Premier is out of touch; he is living in the past.

Several members interjected.

The ACTING SPEAKER (Mr J.M. Francis): Order!

Mr M. McGOWAN: I challenge the Premier to respond; I understand that there are other members seeking the call. It is important that he respond to those two, perhaps three, significant issues. He needs to explain the difference between Port Torment and Oakajee, and why he has taken a different approach to them; perhaps the deepness of the water will be an argument. The other issue is that the Premier has changed policy, in a secretive way, on the Geraldton cap as a consequence of something that the member for Armadale has done. There was no press release; the opposition has taken up this issue before, and the Premier defended the 12 million-tonne cap. It is a cap with flexibility, apparently. The third matter is the Premier's theory about China and Japan. I will wait to hear him defend his line that they are somehow too immature to compete against one another. The Premier also said on 11 March —

> The previous government also set in place a tender process, which it restricted to two proponents, and set up competition between China and Japan, the two most important markets for our exports. The previous government set our two major customers in competition with each other. How stupid was that?

Mr C.J. Barnett: That's what I said.

Mr M. McGOWAN: Yes, that is what the Premier said—and what a stupid thing to say.

MR I.C. BLAYNEY (Geraldton) [5.38 pm]: My perspective on this is probably a little different because I actually went through the negotiations to deepen the Geraldton port as a grains councillor for the Western Australian Farmers Federation, which was the main negotiator on behalf of farmers. Geraldton is the second largest grain port in Australia. I well remember the trouble that the general manager of the Geraldton Port Authority had in convincing the then government to allow the port to be deepened. It took an enormous amount of time. Farmers had to agree to continue to pay the two-port loading charge if extra tonnage could not be obtained by deepening the port. Thankfully, not long after that the iron ore industry got involved, so the port got its extra tonnage. However, the farmers never got any credit for the fact that they were prepared to underwrite the $100 million loan to deepen the port. It has often been said that success has a thousand fathers and failure is always an orphan, but I think we should perhaps get some credit for being prepared to do that. The grain handling side will have to stay at Geraldton port because it will cost $1 billion to shift it. Farmers cannot pay for it; neither can the government.

Ms A.J.G. MacTiernan: We actually said that the farming —

Mr I.C. BLAYNEY: The member has claimed all the credit for deepening that port; she gave us no recognition for the fact that we were prepared to underwrite the loan. We underwrote it.

Ms A.J.G. MacTiernan: I actually said that.

Mr I.C. BLAYNEY: We underwrote it. The member tries to grab all the credit for herself.

Ms A.J.G. MacTiernan: No, sorry; you're just being ridiculous, seriously.

Mr I.C. BLAYNEY: Here we go.

Ms A.J.G. MacTiernan: The Premier is obviously then attacking you, because he said that Geraldton port should never have been expanded. That is what he said: Geraldton port was a mistake. That's why we were just explaining why we did it.

Mr I.C. BLAYNEY: I am saying that, as a grain farmer, I was in favour of the port being deepened, and as a grain farmer I was prepared to underwrite the loans.

Ms A.J.G. MacTiernan: Tell the Premier he is wrong. Even you think he is wrong.

Mr I.C. BLAYNEY: No, not at all. I will accept the opposition's argument that, prior to the global financial crisis, Oakajee Port and Rail could have funded the port itself. What I have been told since is that now it probably would not be able to borrow the money without the government putting in $780 million.

Ms A.J.G. MacTiernan: That is not what the proponents said when we spoke to them in October 2008, when the Premier had already made his decision.

Mr I.C. BLAYNEY: That is what they are saying to me. They might know something. I am also told that the previous government gave Oakajee Port and Rail the first right to build a railway line in the agreement.

Ms A.J.G. MacTiernan: No; they had a right to build a railway, but not an exclusive right.

Mr I.C. BLAYNEY: What is the point of having the right to build one railway line? Does the member really think that people are going to build another railway line alongside it? It is only $6 billion instead of $3 billion, I suppose; it would not really matter to the member for Armadale.

Ms A.J.G. MacTiernan interjected.

The ACTING SPEAKER: Order! Are you finished, member for Armadale?

Mr I.C. BLAYNEY: The member is a bit out of touch, I think. The fact is that for the government to build the harbour is actually a good business proposition, and I put this to the member. The previous government was going to do it in such a way that Oakajee Port and Rail could build it, operate it, and then hand it over to the government, lock, stock and barrel, in 20 years. The builders could get back their capital, their operating investment and their interest, and perhaps a bit more as well. I put it to the member for Armadale that it is a better business proposition for the government to build and operate the port. It is straight commonsense, and it comes from a group of people on this side who know what it is like to risk their own money, and are used to doing budgets. The opposition is not, because all it is doing is looking after the Liquor, Hospitality and Miscellaneous Union. The Labor Party spent a fortune trying to hold the seat of Geraldton, but its candidate got thrown out. It either had a dodgy candidate or it did not spend the money in the right place. It was unable to buy the seat; it does not work. We feel quite strongly that the Oakajee port is a good investment by the state government. If it was borrowing the money on the commercial market, it would make money doing it. Mr Rudd obviously agrees with us.

The issue of the port cap is an interesting one. There will be a good investment there by Asia Iron. Oakajee Port and Rail is quite happy for that cap to be lifted for that proposal, because the economics of loading a small ship in Geraldton are better than loading a small ship at Oakajee. This shows good, sensible business-minded government, and it is another reason why the opposition is where it is today and we are in government.

MR C.J. BARNETT (Cottesloe — Premier) [5.44 pm]: Mr Speaker —

Mr J.R. Quigley: It's a joke!

Mr C.J. BARNETT: I have only just started, and the member for Mindarie is insulting me.

Mr J.R. Quigley: No; I was looking at the latest news on the internet. All refugees off the boat at 5.15.

Mr C.J. BARNETT: That is good; I am pleased. I hope the *Oceanic Viking* can now return to the duties it is meant to be carrying out—looking after customs, fisheries and security issues—and the crew can return to their professional duties. I found it interesting, because I remember, when the *Tampa* issue and the so-called children overboard affair was going on, how outraged Labor members were, one by one. Now, here we have a situation, under a Labor federal government, and not one of them has the integrity, courage or compassion to speak out; not one of them. I will not forget that. Not one of them.

Mr M. McGowan: It is not relevant.

Mr C.J. BARNETT: It is not relevant! The Sri Lankans are not relevant, according to members opposite.

Point of Order

Mr M. McGOWAN: We have 15 minutes remaining, with a very serious motion before the Parliament about ports. I have not heard the Premier even mention the subject so far.

The ACTING SPEAKER (**Mr J.M. Francis**): I am sure the Premier will now get on to the topic at hand.

Debate Resumed

Mr C.J. BARNETT: Thank you, Mr Acting Speaker, I will now move into the second minute of my address. Let us talk about ports, and we will start at the top. One of the issues that came up was James Price Point. Members will remember the circumstances of what happened with Inpex. It found a very significant gas and oil resource in commonwealth waters, under joint commonwealth and state jurisdiction. It was looking for a site in Western Australia, but could not find one. The Labor government gave a public right of veto to Aboriginal people. The Aboriginal people certainly have a legitimate interest in the process, but they were given a right of

veto. In desperation, Inpex came to see me during the 2008 election campaign and said that the government would not even pick up the telephone.

Mr M. McGowan: The Premier went to Japan and met them. How can you say that?

Mr C.J. BARNETT: This is during the election campaign, when the issue was coming to a crunch. This government would not pick up the telephone. Inpex came to us in absolute desperation and said it had a $15 billion project but it could not get any response out of the Labor government. It asked what our position would be, and I said that if we were elected we would work with Inpex to find a location for its project and others, and immediately we made it clear that there would be no right of veto for any citizen of Western Australia, be they Aboriginal, Italian, Greek or whatever else. No one would have a right of veto; it would be a publicly made decision. Much to the annoyance of members opposite, a Liberal government negotiated with the Kimberley Land Council and reached agreement with that council and the commonwealth on James Price Point. Those negotiations continue on the detail. In negotiations with Aboriginal people, we as a Liberal-National government have done what Labor could not do. That is probably the leading example, along with the Ord River, of real economic opportunities for Aboriginal people in the Kimberley. That is what is happening in the north today. James Price Point is the location.

Mr W.J. Johnston: You voted to cancel native title in Western Australia, and the High Court challenge cost $7 million.

Mr C.J. BARNETT: For goodness sake! Is the member for Cannington the only member who is a has-been at the beginning of his career? He was a has-been before he came into this place. He is not even worth looking at.

Mr W.J. Johnston: Why did you vote to cancel native title in Western Australia?

The ACTING SPEAKER: Member for Cannington!

Mr C.J. BARNETT: For goodness sake! The member should make his own speech, if he is competent.

The ACTING SPEAKER: Member for Cannington, be nice. The Premier has the call.

Mr C.J. BARNETT: James Price Point is identified, negotiations have gone on in good faith and further detail has been finalised and will become public shortly. James Price Point is a liquefied natural gas facility; a site where Woodside's project and perhaps one or two others may co-locate in due course. It is not a deep-sea port. It will have a jetty structure for LNG tankers to come and go—probably three a week. It is not a bulk products port in the sense of taking bulk mineral products. It is a precinct, and if members opposite want to know the difference, the previous government's proposal, if they remember, was at one stage to have a third party process the gas. The idea the previous government had was of a hub where gas producers would bring gas inshore and a third party would process it and then, presumably, sell it back as LNG. That just shows the previous government's complete lack of understanding of the LNG industry and its complete commercial naivety if it thinks that the world petroleum industry operates on that basis. That is completely naive. However, that is the way that the previous government was going. That policy plus the veto given to Aboriginal people is why the previous government went nowhere. The only thing that moved was Inpex—it moved to Darwin! It was the only thing that moved. Can members think of the enormity of that decision? Deciding to build an 800-kilometre pipeline at deep-sea depth for at least $4 million a kilometre—Inpex was willing to spend more than $3 billion to get away from a Labor government!

Ms A.J.G. MacTiernan interjected.

Mr C.J. BARNETT: That is what it was willing to do—spend more than $3 billion to get away from the previous government and travel 800 kilometres to Darwin to the nearest jurisdiction it could find. That is how bad the previous government was. It is unprecedented.

Mr F.M. Logan: We would not hand the Japanese government an island—that is what it wanted. It wanted the entire island to itself. The Premier knows that and I know that. You wanted to give them the island. It wanted to bulldoze the top of the island off and you were going to give it to them!

Mr C.J. BARNETT: That is wrong.

Mr F.M. Logan: It is a wholly-owned subsidiary of the Japanese government.

Mr C.J. BARNETT: Hang on! A moment ago it was private enterprise; now it is a wholly-owned subsidiary of the Japanese government.

Mr F.M. Logan: You know that and I know it.

Mr C.J. BARNETT: In fact it is not. It is 30 per cent Japanese government-owned, from my memory.

Mr F.M. Logan: It is controlled by the Japanese Treasury! You know that—of course it is.

Mr C.J. BARNETT: Just for the record, no, it would never have got an island under a Liberal-National government.

Mr F.M. Logan: It put in an application for it!

Mr C.J. BARNETT: Never! What Inpex would have got and what is available for it is James Price Point, a good location where it can develop, if it wishes to, and expand. James Price Point is an LNG facility; it is a precinct for bringing gas onshore, cooling it down to LNG and exporting it. It will not handle bulk minerals; it is not a deep-sea port in any sense.

Let us go back along the coast towards the Northern Territory, if we like, to Derby. Although she is not in the chamber, I know that the member for Kimberley is at least supporting the aspirations to have a supply base built at Derby and I thank her for that. She has said that publicly. Good on her! Because this means jobs, perhaps hundreds of jobs, for people in the Derby area including, obviously, Indigenous Australians. It is a great opportunity. This supply base is not an insignificant project, and that is the point I made the other week. The project is currently estimated to be about $550 million. It is not insignificant. It has to have a long jetty—probably a jetty, rather than a causeway structure—to reach water of sufficient depth to take supply vessels that service offshore rigs. We are not talking about panamax, capesize bulk carriers or LNG tankers; we are talking about vessels that service offshore oil and gas rigs. It is a supply base; it is not a deep-sea port. It will be a specialist facility for servicing the offshore oil and gas industry. It will require not only the jetty structures, pipelines, navigation aids to get through King Sound and all the rest of it, but also a significant amount of land nearby for lay-down areas for pipes, equipment and machinery, and, indeed, sites for Western Australian businesses to be established that will provide services and equipment to the offshore oil and gas industry.

Ms A.J.G. MacTiernan: Premier, can you answer this question?

Mr C.J. BARNETT: No—I have had only nine minutes!

Therefore, that is a significant project. It is not a little jetty such as members might see on Rottnest Island; it is a substantial structure, but it is not a deep-sea port and it is not a bulk cargo port. It will not take panamax, capesize or handymax vessels or anything else. It will be for the service boats that take machinery and equipment backwards and forwards to the rigs—that is what it will be for. It will also be a storage area and a dedicated facility for the oil and gas industry.

Ms A.J.G. MacTiernan: Is the Premier saying that there will not be a tender process?

Mr C.J. BARNETT: Oh!

Ms A.J.G. MacTiernan: Don't groan—I'm just asking. Normally —

Mr C.J. BARNETT: Did I talk about a tender process? No. I am having my speech; the member had her speech. One hour we endured of it! I have had only 10 minutes now.

Ms A.J.G. MacTiernan: But the Premier decided not to come in and address this.

Mr C.J. BARNETT: For goodness sake! I am not going to answer any questions.

Ms A.J.G. MacTiernan: Come on! No tender—just hand it over!

Mr C.J. BARNETT: Hand it over?

Ms A.J.G. MacTiernan: So there is going to be no competitive process as to who gets the right —

Mr C.J. BARNETT: Only the member for Armadale would get herself so tied up that she was incapable of making decent decisions—only she would!

To build the supply base at Derby will be a stretch because of the long navigation through the sound, the high tidal movements and the strong currents for relatively small vessels. It is very, very difficult. As a government we are basically leaning on Inpex to do the studies to see whether it can be done within a reasonable price range. To its great credit Inpex is doing that work; it is doing all that sort of preliminary assessment to see whether it can be done. I cannot say whether it will actually come to fruition because until we understand all the technical issues that are associated with Point Torment, no-one is in a position to say whether it will go ahead. I will tell members—I do not apologise for this—that I am giving it a fair crack to try to get some of this development for Derby. Derby is a town that has missed out along the way and it needs a break.

Mr T.G. Stephens interjected.

Mr C.J. BARNETT: Derby needs a good break! It is a town that members opposite did nothing for when they were in government. This government is doing all it can to bring some economic prosperity and opportunity to Derby and we will give it our best shot.

Mr T.G. Stephens: You blocked them from having tidal power when you were the Minister for Energy!

Mr C.J. BARNETT: Here we go! What an intellectual giant we have opposite! Block it—and what happened to the Derby tidal power project? The Labor Party supported Derby tidal power, if anyone can remember that name, until the financial sponsors of the project said, "It's not viable; we're pulling out."

Mr T.G. Stephens: No, you killed it off!

Mr C.J. BARNETT: I killed it; okay, right. Here is a man who has represented the Pilbara for more than 20 years and does he have an achievement to his name? Not one that I can think of. He lives in Shenton Park, he shops in Shenton Park, he parks his car in Shenton Park, he sleeps in Shenton Park, and for more than 20 years he has represented the Pilbara badly. Badly!

Those projects have some work to be done. Let us come south along the coast a little further to Oakajee. As it happens, Oakajee is not an easy project for a host of reasons, including the physical one—that is, it is a very exposed, open coastline. To build a breakwater at Oakajee is a major task. It has to be armoured and all the rest of it; a very, very difficult and very expensive process. What is Oakajee about? Oakajee is a deep-sea port on Australia's west coast. It can take handymax, panamax, fully laden capesize vessels and even the super capesize vessels, which are currently being talked about. If built, it will be one of the most important ports in Australia—probably parallel to Gladstone. They will be the two great ports of Australia. What else does Oakajee do? There is no parallel between Oakajee and James Price Point and certainly no parallel with a structure at Derby to take supply boats that would service the offshore rigs.

Ms A.J.G. MacTiernan: One is going to be only $700 million and the other is going to be $500 million, so how could the government get Oakajee for $700 million?

Mr C.J. BARNETT: Because! Please listen, do not fly off the handle again, and concentrate. What the state government with the commonwealth will fund at Oakajee will be the breakwater, the channel and the turning circle. The private sector will fund the rails, the conveyors, the berths, the unloading and loading equipment—all that common-use infrastructure will be private. The private investment on the port part will actually exceed the public investment. This project will be more private than it is public. However, the critical infrastructure, which will guarantee it is an Australian and a government port, will be funded jointly by the state and the commonwealth. This port will be an Australian port. This port will unlock the vast mineral resources of the mid-west and the north-eastern goldfields. No overseas government or overseas company will control, own, charge and operate, both in a physical sense and a commercial sense, a great deep-sea port on the Australian west coast. I do not apologise for that! I do not apologise for standing up for Australian interests into the future—for the next 50 years. If there is a point of difference on this side of the house it is that we are proud to be Australian, we are proud to have Australian investment and we are proud to develop the national resources of the mid-west. Members opposite do not want to do it! That is how Oakajee will be developed and even then it will be a tough call. It is very, very difficult to do. I am critical of the way members opposite went about it, but that is history—as they are as a government. Members opposite need to come to grips with the fact that their policies and whatever they did or did not do in government are now consigned to history—they are irrelevant. The previous government's submissions to Infrastructure Australia are by definition redundant and play no role at all except in the memory of members opposite.

Mr T.G. Stephens: You started pinching ours! You've just started putting them all in! You just put all our submissions in.

Mr C.J. BARNETT: The previous government's submissions were cancelled the day we came into government. They were torn up, thrown out and we selected our own priorities, Mr Member for Shenton Park! He ought to go up to the Pilbara a bit more often.

Oakajee is a hard project to pull together. The engineering of Oakajee is complex. The number of different participants in Oakajee is complex. We, both the state and commonwealth governments, are doing all that we can to bring that project to fruition and even then it will be very, very hard.

Debate adjourned, pursuant to standing orders.

Sitting suspended from 6.00 to 7.00 pm

CRIMINAL CODE AMENDMENT BILL (NO. 2) 2009

Declaration as Urgent

Resumed from an earlier stage of the sitting.

MR C.C. PORTER (Bateman — Attorney General) [7.03 pm]: I was speaking to the motion that the bill be declared urgent. In essence, it is a short bill in length but a complicated bill in principle. No doubt the member for Rockingham will speak to the fact that there should be extraordinary reasons for a bill of this nature to be urgent. Obviously, it has been given to Parliament very late in the sitting of this year's Parliament. The government side believe that it is—

Mr T.G. Stephens: When was it given to Parliament?

Mr C.C. PORTER: Last night.

It is highly desirable to pass the bill by the end of the year, given the number of incidents and the mischief that this bill seeks to address—being rocks thrown at vehicles. The bill has gone through many drafts because the principle is very complicated, and that has taken some time. No doubt a number of individuals will speak to the bill raising many of the issues that were raised in the drafting of the bill, which simply has taken some time because of the complicated issues. Indeed, the bill provides a principle of criminal responsibility that goes back to the Statute of Northampton of 1328, which no doubt will be raised during the second reading debate. It is for those reasons that the bill has taken some time to draft, which explains why it has been given to Parliament late in this sitting. Nevertheless, it is also accompanied by urgency because it should be passed before Parliament rises for the summer break.

MR M. McGOWAN (Rockingham) [7.04 pm]: I speak to this motion to declare the bill urgent because I want to put on the record what has gone on here. I appreciate the tone of the Attorney General in that he recognises that little notice has been given with this legislation.

This is what is commonly known as the rock throwing legislation, which is designed to deal with the problem that has arisen by which people are throwing objects at vehicles—trains and the like. It is no doubt an important issue. It is an issue that has been on the agenda for a considerable time. Recently the opposition introduced into Parliament its own legislation on this matter, using the meagre resources of the opposition to draft legislation. The member for Mindarie has second read that legislation.

The problem that we have comes down to how a Parliament should operate. The Attorney General gave the second reading speech on this bill in this Parliament, and the bill was provided today to the opposition spokesperson, the shadow Attorney General, the member for Mindarie. This rock throwing legislation can potentially jail a person for seven years. If a Parliament is going to debate legislation that potentially will jail a citizen of our state for seven years, surely the government should provide a little more time for Parliament, and an eminent lawyer like the member for Mindarie, and a junior but fairly eminent lawyer like the member for Bateman, more than a couple of hours to debate the legislation.

Several members interjected.

Mr M. McGOWAN: An older lawyer—like the member for Mindarie. Surely the government should give this bill more than a few hours—part of a forenoon and an afternoon—for the opposition to consider it? I know that the Attorney General will say that it is an important issue. I agree—it is an important issue.

Mr T.G. Stephens: Imagine what the member for Churchlands would have said if it we had introduced legislation like this at short notice! Can you image it?

Mr M. McGOWAN: I could pull out the quotes on what she has said. For the government to introduce legislation that could jail a person, and give the bill to the opposition in the morning and expect it to be debated and passed through all stages of Parliament that afternoon or evening, frankly, is an abrogation of the role of the Parliament. That is the opposition's view. That is a fair view, and fair-minded people would think that that is right. This is an important issue. As it is an important issue, the government has had the resources of the state for the past 14 or 15 months and the resources of the Parliamentary Counsel to draft this legislation. Although it might be complex and the principles might go back to the 1300s, with the resources of the state available, the government could have done better than this.

This bill is not the only such example. We are going onto the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009, which the shadow Attorney General has not yet received. We will deal with the Mines Safety and Inspection Amendment Bill 2009, and I understand that the government has not even consulted industry on that measure. That is no way to run a Parliament. I put that on the record.

The opposition has been cooperative. Yesterday the Higher Education Amendment Bill 2009 passed through this house. Yesterday we had a condolence motion that naturally took some time. Yesterday we also passed the gas legislation. Last week three pieces of legislation passed through this house, one of which, I admit, we were difficult about—we voted against it, but it was legislation for which we had a significant objection. The Leader of the House cannot say that we filibuster, but he does say that—regularly. The record shows that that is not the case. I offered to the Leader of the House that we would deal with this now, and we will allow this legislation to be dealt with in the way the Leader of the House is requesting, but I want to put on record that it is a very unfair and unfortunate way to run a Parliament.

MR J.R. QUIGLEY (Mindarie) [7.10 pm]: I rise to support the comments of the member for Rockingham. The bill before the chamber this evening is not lengthy, and it does not have many clauses by number. But it does introduce some new concepts that require some thinking about and discussing with my parliamentary colleagues.

It is instructive to look at why this legislation has been introduced. This legislation has been introduced to deal with a problem that we have been facing in Western Australia, particularly in the metropolitan area, both last year and this year. That problem has been a growing problem. I do not know what is causing this problem, or what are precipitating factors for it. I did notice, however, from a freedom of information request that we put to Transperth, that the highest incidence of this problem occurs in the electorate of Hillarys. I do not make any particular comment about that. Who knows why there are so many people throwing rocks off the bridges in the electorate of Hillarys? But it is a burgeoning problem.

It is because of the anxiety and fear, and ultimately the danger, that is involved in these events that we called upon the government to introduce legislation to deal with this problem. We gave the government about one month's notice of that. Then, when nothing was forthcoming, we second-read a bill that we had introduced. We were prepared go ahead with that bill, which largely replicated the law in another code state—namely Queensland. What happened is that yesterday, the government gave notice of its own bill, and it was first-read today. It was during the luncheon period of the day that I was handed the second reading speech for that bill.

Mr R.F. Johnson: What—today?

Mr J.R. QUIGLEY: It was today that I got the document.

Mr R.F. Johnson: You had it last night at six o'clock!

Mr J.R. QUIGLEY: I had the rock throwing bill at six o'clock last night, but I did not have the second reading speech. I was handed the second reading speech today. At that time, just as a matter of interest, I was having lunch with the vice-chancellor of Notre Dame University and the dean of the law school at Notre Dame university, and I commented that this is instructive, because they can now watch how this process will go and how it will be declared an urgent bill and will be debated and concluded within a matter of hours and be on the statute book forever. I made the comment that to watch this government make legislation is a bit like watching sausages being made at the butchers—we need to have strong guts, because the process is not too pretty.

There are elements of this bill that we will deal with in consideration in detail that introduce new concepts to this particular offence. This legislation will be on the statute book forever. This bill provides for a maximum penalty of seven years' imprisonment. The government is bringing into this place a bill in response to a problem that has been before the community for a considerable time. The opposition has been urging the government for months to address this problem. I am not at all happy, and I do not think it is at all satisfactory, that the government is bringing in this bill now and wants it to be declared an urgent bill. The government has realised that the parliamentary year is nearly over and summer is upon us. Summer will soon be upon all of us. The incidence of rock throwing from bridges and from other places is more prevalent in summer. That was certainly the case last summer, when youths and others went out and about at night during the warm summer weather—rather than during the inclement winter weather—and engaged in this behaviour. The government has now suddenly said, "Oh gosh! We'd better do something about this problem now. Let's rush the bill in, and let's deal with it as an urgent bill, and if there isn't sufficient time for the opposition to discuss it among themselves or to be briefed on the matter, that's not our priority." I do not believe that is the way legislation should be developed.

MR R.F. JOHNSON (Hillarys — Leader of the House) [7.13 pm]: I had not intended to enter the debate on the motion that the Criminal Code Amendment (No. 2) Bill be declared an urgent bill, but I have heard some of the comments from the manager of opposition business, and, indeed, from the shadow Attorney General, the member for Mindarie, and I felt that I should make some comments. The first comment I want to make is that the opposition is criticising us for bringing in a bill that we believe is an urgent bill. I want to explain. We have actually apologised, I believe, for the fact that this bill has come in so late in the year. We would have liked to have brought in this bill earlier. But, as the Attorney General has said, there have been seven drafts of this bill. We wanted to make sure that we got it right. We did not want to do a ham-fisted job and bring in a bill like the private members' bill that was introduced by the opposition. Believe it or not—I hate to pay the member for Mindarie a compliment—I think the member for Mindarie is more than competent to understand the bill and debate it in this chamber. He would certainly be able to do that in a court of law, which he has been used to. As I understand it, he is the opposition lead speaker on this bill.

This is not unique. We are not orphans when it comes to bringing in a bill that we want declared an urgent bill. I will give members a classic example. I remember a bill that was brought in when the opposition was in government —

Mr T.G. Stephens: And what did you say about that?

Mr R.F. JOHNSON: I agreed to do it. I was the manager of opposition business at the time.

Mr T.G. Stephens: What bill are you talking about?

Mr R.F. JOHNSON: I think the member probably knows what bill I am talking about. I think that, to put it in a nutshell, it was to deal with the Nyungah camp, where there had been allegations of child abuse. It is a bill that

Geoff Gallop brought in when he was Premier. We debated that bill without even having the bill in front of us. It was explained to me that that was an important bill. This is where the difference lies. I tried to cooperate when I was doing that job over there—genuinely.

Mr P. Papalia: What happened in the upper house?

Mr R.F. JOHNSON: I am telling members what happens in this house. I cannot dictate what happens in the upper house, and nor could members opposite when they were in government.

Several members interjected.

The ACTING SPEAKER: Order!

Mr R.F. JOHNSON: The interjections are totally irrelevant to the point I am trying to make. What I am saying is that it has happened before—it has happened under the government of members opposite, and it has happened under worse circumstances. But, at the end of the day, I was convinced at that time by the then Premier, who had carriage of that particular legislation in relation to that Aboriginal camp, that because of the problems at that camp, the bill was urgent; and, quite frankly, I thought, yes, that should happen. We did the same thing at that time—well, I did not, but one or two of my colleagues did—as members opposite have done today and said it is not right; we should be given proper notice and all the rest of it. That is what happened at the time. But at the end of the day, as manager of opposition business, I agreed for the bill to come on without any obstruction at all, other than a few comments from the opposition, as the opposition is doing tonight. I put to the house that this is a similar situation. Some people would say it is not as serious as children being abused. I can understand that argument.

Mr P. Papalia: What about when it goes to the upper house?

Mr R.F. JOHNSON: The member for Warnbro should be quiet and listen for a change, and he might learn something!

Mr W.J. Johnston: Not from you!

Mr R.F. JOHNSON: We certainly learn nothing from you, sunshine! You do not even know how to run a campaign! You lost the election—you, you, you!

The ACTING SPEAKER: Order!

Point of Order

Mr J.R. QUIGLEY: The Leader of the House cannot address the member as "sunshine". All he can say is he looks like sunshine, he is so bright, and he can compare him with the warmth of sunshine—just as I am allowed to say that the member for Hillarys sounds like Lord Haw-Haw, but I am not allowed to call him Lord Haw-Haw.

The ACTING SPEAKER (Mrs L.M. Harvey): I take your rather elaborate point of order, member for Mindarie. Leader of the House, please refer to members by their electorate.

Debate Resumed

Mr R.F. JOHNSON: Madam Acting Speaker, I will be very happy to do so. But I would also like to point out that it is unparliamentary and against standing orders to make interjections, especially when they are stupid interjections. What I hear from the member for Cannington is like verbal diarrhoea; it really is. He cannot help himself.

Mr W.J. Johnston interjected.

The ACTING SPEAKER: Order, member for Cannington!

Mr R.F. JOHNSON: Madam Acting Speaker, he cannot help himself. I think you should name him and throw him out, because that would do the whole house a favour.

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: For goodness sake! Go and do something useful!

The ACTING SPEAKER: Order! Member for Cannington, I call you to order. The Leader of the House.

Mr R.F. JOHNSON: I will conclude my remarks, but I point out that this is not a unique situation. It happens from time to time. We believe that loss of life could occur because of people throwing rocks at not only a driver of a vehicle but also others involved, or pointing a laser beam at someone's eyes. This legislation falls into the same category as the legislation dealing with serious problems that were occurring in a particular Aboriginal community.

Mr P. Papalia: And you held it up in the upper house.

Mr R.F. JOHNSON: For goodness sake!

Mr P. Papalia: You had control of the upper house. You now have control of both houses of Parliament.

Mr R.F. JOHNSON: I only work in this house. I can assure members that I have no control over what happens in the upper house.

Ms R. Saffioti: Or this house!

Mr R.F. JOHNSON: It is very difficult to control a rabble. I have given the reason that we have moved to declare this an urgent bill.

MR J.C. KOBELKE (Balcatta) [7.21 pm]: This is an absolute travesty of the Parliament. The Attorney General has indicated that the Criminal Code Amendment Bill (No. 2) 2009 is a very complex bill that provides for a penalty of seven years' imprisonment. It is so complex that it has taken weeks and weeks to draft. He gave the second reading of this bill this afternoon. We will not oppose this being declared an urgent bill. However, this motion shows how incompetent this government is. If errors get through in this legislation, the blame will be totally on this government's head because it will not have given sufficient time for members to consider it. When we rushed legislation through this house when we were in government, we usually at least gave notice before it came into the house so that it could go to the opposition party room. This bill has not been to our party room; its second reading was given this afternoon. This government is totally incompetent.

Question put and passed.

Second Reading

Debate resumed from an earlier stage of the sitting.

The ACTING SPEAKER (Mrs L.M. Harvey): The question is that the bill be now read a second time.

Mr R.F. Johnson: Wake up, member for Mindarie.

MR J.R. QUIGLEY (Mindarie) [7.22 pm]: Hello, Mindarie; this is Berlin broadcasting.

Mr R.F. Johnson: You really are a prize, but I will not say a prize what.

Mr J.R. QUIGLEY: Thank you.

Mr R.F. Johnson: All you need is a moustache and we could mistake you for somebody else, my friend.

Mr J.R. QUIGLEY: Who would that be?

Mr R.F. Johnson: You have a good imagination, my friend. It's your time we are taking up. The member should use his imagination, which is obviously very bizarre.

Mr J.R. QUIGLEY: I do not know whether being likened to Clark Gable is a compliment. However, I will not take a point of order; I will just get on with it.

The Criminal Code Amendment Bill (No. 2) 2009 introduces an amendment to the Criminal Code to provide an offence punishable by seven years' imprisonment upon indictment or three years upon summary conviction for throwing objects at or near vehicles that cause fear and harm. I have only encapsulated that in short form because when we pick the clauses of the bill apart there are some serious concerns with them.

I will refer to proposed section 74B, because we are dealing with only one proposed section here. Other proposed sections amend miscellaneous sections of the Criminal Code. Clause 4 of this bill inserts proposed section 74B. It is proposed subsection (2) to which I draw the house's attention. Proposed subsection (1) states —

> In this section —
>
> ***drive*** a conveyance, includes to pilot an aircraft and to navigate a vessel.

The government has sought to cast a very wide net, because proposed subsection (2) states —

> A person who, without lawful excuse —

That is pertinent in relation to what follows —

> (a) causes an object or substance —

We are moving away from rocks and hard objects to substances. The member for Collie-Preston said water. Of course, water is a substance, and the Attorney General nods in agreement. We are coming to a new concept of encountering water on the road while we are travelling. Proposed paragraph (a) goes on to state that this water or other object —

> to be directed at or near, —

It does not have to hit the vehicle. It can be near it, but we do not know how near or how proximate to the vehicle, but I will come to that in the final proposed paragraph. Proposed paragraph (a) continues —

> or to be placed in or near the path of, —

Once again, directed at the vehicle or placed in or near the path of the vehicle. To continue —

> a conveyance that a person is driving;

Be it a plane, motorbike or car. Therefore, we have this new concept of it being more than rock throwing, but substance throwing at a vehicle or placed on the road. I will return later to proposed paragraph (b), which deals with portable lasers.

We are dealing with a fairly simple concept—

> … causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance …

Then, as opposed to the private member's bill that the opposition introduced into the chamber and reflected the legislation in at least two other states—Queensland and New South Wales—and was directed at imperilling the safety of a vehicle, this legislation does not talk about endangering the safety of a vehicle. It talks about doing one of two things: throwing the object or substance, or placing the object or substance, near a vehicle in circumstances that are likely to cause fear or alarm that may be caused without the vehicle actually being endangered. The bottom line conduct being struck at here is that which is likely to alarm a motorist or to cause fear or alarm in a motorist. This raises a lot of areas for consideration.

One can see what the bill is seeking to strike at; that is, things that are thrown or capable of being thrown at or directed at a vehicle in motion might not on strict reading be classified as an object. I am thinking here of paint. Is paint poured from a bridge an object or a substance? I have not had the time to do the legal research on this word, given the lateness of the notice the opposition was given and the limited time to research this bill and think about the issues involved. However, a liquid is probably not an object; it is probably a substance. The Attorney General seems to be nodding in consent, but obviously he will address this in consideration in detail. Pouring red paint from the Warwick bridge into the path of an oncoming bus will certainly present to the driver of the bus a safety hazard. One can see what the drafter was trying to strike at, but there might be things other than rocks that could imperil the safe passage of a vehicle on our roads and should be banned just as equally as rocks.

The way in which this definition is drafted could include a number of other things that are not of themselves normally regarded as hazardous—for example, water. Water was the first thing that came to my mind. For example, if one of two neighbours who are arguing drives across the verge lawn of the other neighbour and then onto the road and the neighbour whose lawn was driven over squirts the hose at the driver's windshield, theoretically that is captured by this legislation. The government tells us to trust the police that such conduct would not be prosecuted under proposed section 74B of the Criminal Code, even as a summary offence, which has the reduced penalty of three years' imprisonment or a fine of $36 000. That is commonsense. On the other hand, one would not have expected a 12-year-old Indigenous boy to be charged with receiving a stolen 70c Freddo Frog. Members cannot stand in this chamber and say that I am talking about an extreme example that will never come to pass. I had lunch in the parliamentary courtyard with Mr Steytler, QC, when he was the Honourable Mr Justice Steytler, President of the Court of Appeals. He is now the Parliamentary Inspector of the Corruption and Crime Commission and Queen's Counsel. I would like to think that he is also a happily and contented resident of the electorate of Mindarie. I certainly hope that he is well represented.

Mr C.C. Porter: Do you take them all to lunch?

Mr J.R. QUIGLEY: I try to. It depends how long our term in opposition goes for. I took the P&C of the Quinns Rocks Primary School to dinner tonight.

Mr Steytler was here during the estimates hearings and we were talking about the development of law. I did not think that the Attorney General had bought him lunch and so I offered him a sandwich in the courtyard over which we were talking about the development of the law and he said, "Surely the test of the integrity of any law is how easy it is for someone to abuse that law." A good law will be hard for a law enforcement officer to abuse, while a wide and laxly drawn law can almost invite abuse. Although this one does not invite abuse—we will get to it in the consideration in detail stage—is squirting a hose at a neighbour's car during a dispute as the neighbour drives off captured by this legislation? We have got to go back to the first sentence of proposed section 74B(2) "without lawful excuse". Is a person charged with squirting a car with a hose able to plead lawful excuse because he was not assaulting anyone and no other offence was being committed? It is not just a matter of squirting it at the neighbour, because proposed section 74B(2) also states "or to be placed in or near the path, of a conveyance that a person is driving". This proposed section is a particular concern to me because since 1994—I am touching wood at the moment—I am a surviving motorcyclist, and I hope that continues; I have always enjoyed large motorbikes. I still have the "cream dream" for those who are interested—the 1 200 cubic

centimetre BMW. A particularly dangerous hazard that motorcyclists face, which certainly causes alarm and fear—it certainly has caused me alarm and fear—and for which I have acted for clients, including two policemen, is when people recklessly set their sprinklers to spray water onto the road. That normally occurs during summertime. The member for Collie-Preston is nodding because he is a motorcyclist as well. It is particularly dangerous to allow a sprinkler to spray water onto a road, especially for motorcyclists who enter a bend. I know that council regulations require the council's reticulated sprinklers for its verges to be set so as to not spray water onto the road. A particularly hazardous area for this, one that has caught me out and requires me to be on my tippy-toes every time I travel the road, is on West Coast Highway just north of the Special Air Service Barracks and immediately south of Indian Ocean Drive where there is a long sweeping bend. The member for Nedlands is nodding; he would know. Unfortunately, the Town of Cambridge has not set its sprinklers properly, and around 10 o'clock every summer's night, water is sprayed onto the outside lane—the lane that is closest to the median strip. That is a real hazard. I have acted for police officers who have fallen off a motorcycle when they have turned a corner. I have sued a developer because the sprinklers at a display home where not set correctly. An officer came around the corner on his Honda patrol cycle and hit the wet patch. There was no warning that the water would be on the road and he was unseated from his motorcycle and suffered very nasty injuries. I acted for another constable to whom that happened also.

Is that caught by the legislation? Is a person who has not attended to his sprinkler system properly and who does not have a lawful excuse to pump bore water onto a road to be regarded as a person who, in the second half of the sentence of proposed section 74B(2)(a), causes a substance to be placed near the path of a conveyance that a person is driving? Can a person be prosecuted for that? It is not the intent, I suggest, of this chamber to capture such conduct and impose on a householder a penalty of three years' imprisonment and a fine of $36 000. I will be interested to hear what the Attorney General has to say during the consideration in detail stage. Why could someone not be prosecuted for causing an injury similar to that which my client suffered when he went around the corner at a display home and the sprinklers had not been set in accordance with the requirement of the local shire? Is it in the public interest for that sort of conduct, without any criminal intent, to be captured by this legislation? That is something that I would have liked more time to research and delve into. However, we understand the exigency that the government is faced with regarding the parliamentary air about to run out and this legislation having not been attended to yet.

I support the intent of the legislation where it seeks to strike at wilful conduct by people who commit antisocial offences. The conduct that was caught in Queensland and New South Wales—they were both the same—is "endangering the safety of a vehicle". I will read out what the other states have. "Throws an object"; it does not include "substance". I am in a bit of a quandary about throwing black or red paint at the window of a bus, but that is probably contained in something that could be described as an object. However, leaving that aside for the moment, the Queensland legislation refers to "places an object in or near to the path a vehicle, vessel or aircraft is using." Therefore, it is very, very similar to the private member's bill that was introduced by Labor. It is almost exactly the same.

Mr C.C. Porter: Is that from Queensland, member?

Mr J.R. QUIGLEY: That is from Queensland. However, I have to say that the private member's bill is a hybrid, because it struck only at safe use of a vehicle, whereas the New South Wales legislation went to "likely to endanger the life and safety of a person".

Mr C.C. Porter: Risk.

Mr J.R. QUIGLEY: Yes. Our effort was a hybrid of both to cover both circumstances, prescribing a penalty of two years' imprisonment for when the safe use of a vehicle is threatened and five years for the higher offence of endangering health or life. We do not quibble with the Attorney General's two to three years' imprisonment, but what I am concerned about, and will be very interested to hear from the Attorney General on during consideration in detail, is that most people in the community who would debate this as laypersons would say that throwing something at a bus, a car or a taxi is endangering the safety of that vehicle and perhaps the people within it. In this legislation, the test seems to be far broader; that is, "likely to cause fear or alarm". As written with "likely", I suppose I can anticipate that the Attorney General will say that that is an objective test: what is going to be a likely outcome as seen by the reasonable person in the back seat of the Clapham omnibus? That is an objective test rather than a subjective test. But inevitably for the fact finder, and especially for the jury, it imports an element of subjectivity, because the question for the fact finder is: rather than an objective outcome, is that likely to induce a mental state, a mental response, in the driver of the vehicle? This is where it becomes pretty iffy, because one of those mental responses that are being captured by the legislation is actually an emotional response: is it likely to induce fear in the bus driver, pilot or my neighbour driving across my verge?

Therefore, my next criticism of the legislation would be of the phrase "circumstances that are likely", whereas the other states have "likely to endanger the safe use of the vehicle, vessel or aircraft". There is no quotum of emotional judgement in that or judging a person's emotional reaction, but, rather, objectively determining

whether the propulsion of the object or substance was likely, which is objective—the Attorney would agree that that would import an objective test—to endanger the safe use of a vehicle, and people can objectively determine what is the safe or unsafe use of a vehicle. But how do we determine whether it was likely to cause fear in a person? There are all sorts of different thresholds for fear.

Mr M.P. Murray: In that case, what about if someone is jumping off a Fremantle traffic bridge when a boat is passing by underneath? That happens nearly every summer. Where would that fit in?

Mr J.R. QUIGLEY: It would be a question to ask the Attorney, but my understanding of that is that if the person was jumping from the traffic bridge into or near the path of a vessel, and that was—we get to it again—likely to induce fear in the skipper, then the person would be guilty. But that is the question for the fact finder. If it were likely to endanger the safe use of the vehicle or vessel, there is a more objective test: did the person jumping off the traffic bridge near the path of the vessel actually imperil the safe use of the vessel? I do not know whether that helps the member. However, in the bill before the chamber, it is a different test. It is not whether the vessel was actually endangered; it is whether the skipper felt fearful or was likely to feel fearful; or there is another emotional response in the bill; that is, fear, and if he was not actually scared, was he alarmed?

We are dealing with some pretty iffy areas. I know that the Attorney likes consistency throughout the code and to keep it tightly consistent. I just do not know about "alarm". I am alarmed that we are going to pass legislation under which a person will face up to seven years' imprisonment upon conviction. I will give another instance of that. When I take my little dinghy on the Swan River to take the kids up towards the vineyards, there is a pipe—I think it is a water pipe—that crosses the Swan River at Guildford. Kids jump off there all the time, and people have to keep a close eye out. I have never actually been endangered, but I have been alarmed when I have looked up and seen one coming. Those kids have never endangered my vessel, but they could be convicted and sentenced to seven years' imprisonment if it caused alarm. Therefore, when the judge charges the jury, he will say that it is an objective test. The jury has to go away and decide whether the reasonable person would be alarmed. That is inevitably a subjective test, because the only way that anyone in the community could decide whether someone else would be reasonably or unreasonably alarmed in a given set of circumstances would be to put himself or herself in that situation and say, "Would I be alarmed at someone jumping off the Fremantle traffic bridge?" It depends. I know the speed of my vessel and I know the length of my vessel. Alarmed for what? That is the next question that this raises, and I hope the Attorney addresses this. I changed from a sailboat to a powerboat because I could not find a crew. I do not know whether they thought I was a bit of a tough skipper, but I changed to a powerboat, mainly for the diving amenity of it. If someone jumped in front of my boat, my alarm might not be for me at all. My alarm might be that when this idiot comes to the surface, he could be shredded by the prop. So I could be alarmed and I could be concerned and hold some fear out for the person who actually committed the offence rather than for me, the passengers on my vessel or the vessel itself.

Despite the many weeks that have been taken to draw this section, I believe it is problematic. We are not here to frustrate the government. We have indicated that the legislation can be dealt with on an urgent basis, and we have put forward our criticisms. I hope that this speech has thrown up some of the problems that I would have liked more time to research and think about before we had this debate in the chamber tonight. What does "lawful excuse" mean when, in the context of this legislation, the Queensland and New South Wales legislation did not include "without lawful excuse"? A person might say, "There was no sign prohibiting me from jumping from the traffic bridge into the water. I was doing what generations of Australians have done on a hot summer's day—jumping off a bridge into the Swan River. Do I need any lawful excuse?" The provision in the private member's bill was not predicated by those words; it just said that a person who throws something and endangers the safety of others is guilty. In this bill it is referred to as "without lawful excuse".

I would be interested to hear from the Attorney in consideration in detail, especially in relation to water on a road where a council may have a restriction about putting water on a road. If a householder has a sprinkler that does that, where does that leave him or her?

On the whole question of fear and alarm, I am alarmed that we are passing legislation, the test of which is almost subjective because a fact finder will have to say, "Would that have caused me to be fearful or would that alarm me in those circumstances?" There is no other way around it. Although I have to apply the reasonable test, at the end of the day this legislation is prescribing an offence if a certain emotional threshold is reached by the victim rather than the certainty that is in the other states relating to throwing something or placing something that endangers, or is likely to endanger, the safe use of a vehicle. There we are standing on firm ground. I am sure members would know what I mean because we can objectively assess whether that action endangered the safe usage rather than whether it induced in the driver of the vehicle an emotional response of fear and alarm, which is captured by the legislation.

Perhaps I could move on to subclause (b). It also raises some serious concerns. In the other states the conduct is prescribed as —

> … directs a beam of light from a laser at or near a vehicle that … endangers or is likely to endanger the safe use of the vehicle.

We all know what that means. Anyone pointing a laser light at a plane or a car could hit a person in the eye and that is likely to endanger the safe use of that vehicle. Here a wider course of conduct is sought to be captured by "uses a portable device"—I do not know why it was necessary to put in "a portable device" as presumably all laser lights are portable—"to direct a visible laser". I never knew lasers to be visible but that might just be me. I know that if a red spot is directed at me, I would put my hands up but I do not know that I would see the red light in between the policeman's Taser gun, which has a laser pointer, and the red dot coming on my chest. As soon as I get the red dot, I would freeze.

Mr J.M. Francis: A visible light is in the spectrum that the human eye can see. There are lasers that a human eye cannot see.

Mr J.R. QUIGLEY: I do not know that that is the point that the Attorney wants to make; we will wait until we hear what he says. I take the member's point that there are some lasers that we can see and some lasers we cannot see. If that is the case, lasers that we cannot see are not captured by this legislation because it is only talking about —

Mr J.M. Francis: If you can't see it —

Mr J.R. QUIGLEY: If the laser hits one in the eye, it can cause one to go off the road. In other words, the laser light might not be visible in between the gun and one's eye but once the laser hits one in the eye, it might do damage and cause a problem. I take the member's comments on board but the difficulty is that neither he nor I have had sufficient time to research that point. That is the truth of it.

Then we go to "or other narrow beam of visible light". There is no definition proposed as to what a narrow beam of visible light is other than a laser. How narrow does the beam have to be? Some European cars now have squirty little lights that throw out a very narrow beam of light. If a person gets hit by one, it would just about blind that person. I do not know whether they are quartz halogen.

Mr J.M. Francis: Xenon.

Mr J.R. QUIGLEY: I thank the member. We have other narrow beams of light that are not laser lights. If one of these other narrow beams of visible light, being one of these xenon beams, hits one in the eye whilst driving a car, is that likely to induce a response of alarm? If one becomes alarmed after being hit with a xenon beam, one is caught by the legislation. What we hitherto regarded as the offence of failing to dip one's high beam, punishable by a couple of demerit points and $100, suddenly one could be looking at seven years in the clink. I do not know and the Attorney General has not informed the house yet whether the legislation that the judges will have before them will stipulate how narrow the beam of visible light needs to be before one has committed the offence. I know we could say that it has to be narrower than a headlight but some of the lights on these European cars look a bit blue and are not much bigger than half my fist. They have a piercing beam on them. I understand that some of those lights may be unlawful. I also understand that European cars that are certified for driving on our roads certainly come with those lights fitted. That person could say, "The vehicle was licensed, I had a lawful excuse for causing the other motorist alarm." On the other hand, if a third party device has been retrofitted, I know that the police have put out an advice that those lights are illegal and should not be fitted. That is another area that this chamber should be concerned with.

I know we do not have the numbers. We are not here to frustrate the government. The people of Western Australia have had their say and now the government will have its way and pass the legislation with this form of wording because it has never done anything else. I urge the government and the Attorney to revert to what is used in the other states and not have as the threshold for a criminal offence the state of emotional reaction by the driver inducing fear or alarm but the safe ground of being likely to endanger the safe use of the vehicle because that is what the community is concerned with.

Finally, the Attorney seeks to introduce other clauses as a matter of consistency between punishments prescribed for offences to be captured by proposed section 75B and a similar offence under proposed sections 284 and 304, which relate to actions likely to endanger life, so that there is parity between the offences for head sentences. My only comment is that it keeps on going up. Whenever governments seek parity, it is for the higher figure and not the lesser. I have not heard people say that section 304 is inadequate because the maximum penalty is five years. No-one has made that complaint. I have not heard judges make that complaint. I did not hear the Attorney or any member of the government when in opposition say that we were soft on crime because the penalty in section 304 was five years rather than seven years. Proposed section 74B will make the penalty of seven years tougher than the penalty of five years in the private member's bill that the Labor opposition introduced. The other penalties will need to be cranked up to seven years. I am a bit disappointed because that gives the appearance of a law and order auction, and I think that is a regressive step in our community. I will strive to fight against a law and order auction because I do not understand what the phrase "law and order" means. I understand only what the rule of

law is. I do understand that law and order is a political chant that can bring political dividends through votes. But, as a legal concept, I have no idea what it means. However, I do understand what the rule of law is as, obviously, does the editor of *The West Australian*, because whoever wrote the comment on the Freddo Frog case in the "Opinion" column this morning said that the application of the law should see the same result for a 12-year-old white boy in Dalkeith as for a 12-year-old Indigenous boy in Northam, because everyone must be equal before the law. The law applies applicably to everyone. Another rule of the rule of law is that the police should not arbitrarily prosecute one person and not others. That was the whole problem with the prostitution laws: the green light was given to some and others were convicted. The rule of law requires the law to be evenly applied across the community.

I am using this opportunity to once again decry the notion of "law and order" as meaning anything other than "vote for me". I do not understand it at all. I think it is a regressive political catchcry. Although I understand that it is part of the political lexicon, I will rail against it at every opportunity and always speak in favour of the rule of law, toughly applied—nonetheless, it is the rule of law and all that that encompasses for those who have been trained in its application. When I read this bill, I see that the penalty increases from five to seven years because this government might be able to say, "We are tougher on crime." But there is no rhyme or reason for it other than, "Ours is a bigger penalty than yours." I will not quibble with the government on that. There is nothing in it because it is not a mandatory sentence.

I regret that we do not have time to further research matters that I regard as problematic. No doubt the Attorney will seek to clarify some of those issues during consideration in detail. Thank you very much.

MR W.J. JOHNSTON (Cannington) [8.04 pm]: I am sure your wise chairing of this debate will be of assistance to us all, Mr Acting Speaker (Mr P.B. Watson). It is always a great joy to follow the member for Mindarie because he continually demonstrates his capacity to analyse in great detail and with great rigour a piece of legislation at very short notice. It is a clear demonstration of the quality the Labor Party is so proud of in the member for Mindarie and why he adds such great weight to the front bench of the Labor Party. I am not able to make a contribution in the same way as he does, but I want to make a contribution on the aspect of rock throwing at motor vehicles because that is a very important issue for many people in the electorate I represent.

I point out that on 8 August this year, Hon Ken Travers, MLC, the Labor Party spokesperson on transport, put out a press release regarding bus safety. Bus safety is an issue that clearly came to a head in the middle of the year with some very unreasonable and disgraceful attacks on bus drivers. In his statement on 8 August Hon Ken Travers went through a number of issues about protecting transport drivers, both bus and taxi drivers. He pointed out that he had called for a parliamentary inquiry into the issue of planning for safety on public transport. Whether it is the legislation in the form of the bill presented by the Attorney General or the previous bill introduced by the shadow Attorney General, the member for Mindarie, that is passed by the Parliament-we assume, given the numbers, that it will be the government legislation—we hope that that is not the end of the issue of safety on buses. Whether a parliamentary inquiry will be established remains to be seen. However, there are many other aspects of safety on public transport that need to be looked at. This legislation is not the end of the matter on that safety. It is very important to consider that, for many of the constituents I represent in the eastern suburbs of Perth, public transport is the principal means of getting around. Having security on the buses is very important. I am not trying to be disrespectful to members of western suburb seats, but it is probably true that eastern suburbs constituents often—the member for Nollamara says "northern suburbs constituents" —

Ms J.M. Freeman: We are in the eastern suburbs.

Mr W.J. JOHNSTON: She is in the eastern suburbs now—very good. It is a very critical issue that is raised with me in my office on a regular basis. I think that is why the community was so pleased that the Labor Party proposed tougher laws for people who throw rocks at cars and buses. I think we must particularly emphasise the need for them on public transport. We have seen photos of the horrific injuries suffered by drivers due to stupid people inflicting inexcusable violent acts on drivers and the vehicles they are using. It is a disgrace and we need to make sure it is clear that these offences are serious and offenders will be punished. I see there has been a 37 per cent increase in rock throwing and other incidents on Transperth vehicles over the past 12 months. I note also that that is since the new government took office, albeit I will not blame it for that. Crime rates go up and down regardless of who is in power. I do not draw any political conclusion from the fact that there has been a 37 per cent increase in those types of crimes over the 12 months the government has been in power. I point out that it is easy to make these types of commentary about someone being soft on crime or being tough on crime based on things that have nothing to do with the behaviour of a government. I also note that on 9 November, in a joint statement between the Leader of the Opposition and Hon Ken Travers, Hon Ken Travers explains that under freedom of information requests these types of laws have been under consideration since January this year. Although the opposition has already explained that it is happy to have this legislation dealt with as an urgent bill, it is interesting that it has taken the government 10 months, to the last couple of days of the parliamentary session, to bring the laws in. Nevertheless, these are worthwhile issues to deal with. The Labor Party will not

oppose the government's legislation. I notice that in that media statement, Hon Ken Travers went on to explain that in June this year the Attorney General promised to bring in these laws and that he drafted them during the winter recess. We are very pleased that they have now, at the last minute, come into Parliament.

It is interesting that we had World Cabbie Day last week. Cab drivers are another group of people that put their lives unnecessarily on the line to provide a service to the community. It is unacceptable that these criminal actions are affecting people who provide a service to the community.

It is also important to note the work of the Transport Workers Union in representing drivers of public transport buses, private buses and trucks—all of whom provide services to the community. The Transport Workers Union of Western Australia, led by Jim McGiveron, assistant secretary Paul Aslan and its seven organisers, including Rick Burton, who is married to my electorate officer Carolyn Burton, provide a great service to its several thousand members. I think the TWU has about 8 000 members in Western Australia. The union represents owner-drivers as well as employed drivers. These people will benefit from the laws we are discussing tonight.

It is pleasing to see that the Transport Workers Union has been at the forefront of campaigning for this type of legislation. After attacks on drivers in the middle of the year, it was the Transport Workers Union that led the campaign that the government responded to in bringing these laws in and upgrading safety measures for drivers of buses and other vehicles. The Transport Workers Union does a sterling job in representing its members in matters such as wages, unfair dismissal and workers' compensation. It is interesting to note that it is a union that represents not just employees, but also owner-drivers. It continually raises issues that are directly related to the matters in this bill. I am glad to see the government responding to that campaign by introducing these types of laws.

The member for Mindarie commented, at the end of his comments to the chamber this evening, on the question of what is law and order. I am pleased that the Premier has come into the chamber for part of this debate. I make the point that the Premier has sat in his chair and chanted at the Labor Party that we are soft on crime and somehow or other we are supposed to be the party that —

Mr C.J. Barnett: You are!

Mr W.J. JOHNSTON: He interjects that we are; that we are the party that supports criminals, apparently. This is the sort of degrading debate that occurs on the issue of law and order. Last week we saw that —

Mr J.R. Quigley: As the vice-chancellor said—a race for the bottom!

Mr W.J. JOHNSTON: It is a race for the bottom.

Mr C.J. Barnett: You won!

Mr W.J. JOHNSTON: It is interesting that this accusation against the Labor Party is not based on the issues when we see it from the perspective of the community. The Labor Party is interested in ordinary people; it is interested in working people—like the people who live in the electorate of Cannington. They are the people who are most severely affected by crime. It is natural that we are the ones who are most interested in not just a headline but an actual solution to reduce the crime rate. That is why we had policies to crack down on a range of crimes when we were in power, and we had policies that led to a reduction in rates of crime in this state. Of course, there is always more to be done.

Last week we had some contributions to the debate. The member for Southern River tried to explain, perhaps clumsily, what his mother told him about what occurred during the rise of Nazi Germany. The member for Southern River and I have had an exchange of emails. I accept the apology that he has given to me arising from those comments he made. I am not standing here to make any disparaging or disrespectful remarks to the member for Southern River. I accept the apology that he has given to me. What I do say, though, is that it is very important to focus on the proper lessons of history.

Last week during that debate, the member for Cockburn was making comments about South Africa's apartheid era. A number of MPs interjected—it was not recorded by Hansard—and said words to the effect that the crime rates in post-apartheid South Africa have somehow gone up. Apparently—I do not know exactly because those members will have to speak for themselves—they gave the appearance of saying that apartheid South Africa had lower crime rates than post-apartheid South Africa. There is a very important point to be drawn from that—that is, apartheid itself was a crime. There could not be lower crime rates after apartheid was removed than prior to it because every day that apartheid took place in South Africa was a crime. It was a crime against every person in that country. It was not just people like Steve Biko, who was beaten to death by the South African police force; it was every South African who suffered because of the crime of apartheid. Just as the Brownshirts or SAs in Nazi Germany in the 1930s and 1940s were the vehicle for oppression, the vehicle of violence and the vehicle of crime, a community can of course be oppressed so that symptoms are not evident. But that does not mean crime does not occur. No-one can stand in this place, or any other place, and say that there was not a high level of

crime in South Africa, in Stalin's Russia, in Mao Zedong's Communist China or in the Nazi period of Germany because the very regimes themselves were applying crimes every day to every single citizen.

The member for Southern River is entitled to his opinion, but, quite clearly, as the member for Warnbro said to me in an aside last week, the Anzacs did not fight for security. Security is the inevitable result of democracy. The Anzacs fought for freedom. I am proud to be part of that tradition. The Premier is entitled to interject—and I am sure he will—to say, "You're soft on crime" because I suppose that is what the focus groups tell him to say. The Liberal Party conducts its focus groups and asks, "What do you feel about these words?" The focus group replies, "This is how we feel about these words." The Premier comes along here and repeats the words that he is told to say, not because they have any meaning but because they are effective in focus groups. We understand that. He is entitled to do that. It is not a fair way to present the debate.

Several members interjected.

The ACTING SPEAKER (Mr P.B. Watson): Treasurer, it was an interesting debate until you came in. You have interjected twice. I hope you are going to keep your voice down a little bit.

Mr C.J. Barnett: We heard what the member for Cannington said on the radio; he was outraged —

Mr W.J. JOHNSTON: Bloody oath I was outraged! Bloody oath!

Withdrawal of Remark

Mr I.M. BRITZA: Mr Acting Speaker —

Mr J.M. Francis: Were you outraged when your members put a Nazi salute across the floor of this house?

Mr W.J. JOHNSTON: Nobody did that.

Mr J.M. Francis: Were you outraged at that?

Mr W.J. JOHNSTON: Nobody did that.

Mr J.M. Francis: Are you saying I am wrong?

Mr W.J. JOHNSTON: That is right. I am saying you are mistaken.

The ACTING SPEAKER: Members, there is a point of order and I am on my feet!

Mr I.M. BRITZA: The member clearly swore, and it is not honourable to use that kind of language in the house and the member should retract.

The ACTING SPEAKER: I think the member should withdraw.

Mr W.J. JOHNSTON: I am happy to withdraw the word "bloody".

The ACTING SPEAKER: No. I want you to withdraw, and no preamble, please.

Mr W.J. JOHNSTON: Certainly.

Debate Resumed

Mr C.J. Barnett: Member for Cannington, I am not offended by your comment. Were you offended last week when your colleagues in the Labor Party did a Nazi salute in this chamber?

Mr W.J. JOHNSTON: That did not occur. Who did that? It did not occur. It is not true. It is a fabrication.

The ACTING SPEAKER: Members, can we get back to the debate.

Mr W.J. JOHNSTON: I will make it clear: it is unacceptable that members opposite said in this chamber that crime in South Africa was lower when apartheid was in place. Those MPs know who they are. I am not trying to verbal them. They know who said it. They were wrong. It is not true. It is a misunderstanding of history in the same way —

Mr F.A. Alban: Who cares, member, what happened in South Africa!

Mr W.J. JOHNSTON: With respect, member for Swan Hills, I care. I care what happened in South Africa. I care what happens in Australia. I care what happens in many parts of the world. I am very happy that the member has interjected in that way. I am making a very important point.

The ACTING SPEAKER: I am sure the member will get back to the bill.

Mr W.J. JOHNSTON: It is easy to throw these sorts of lines around and say that the Labor Party is soft on crime. That is not an accurate representation of the facts. That is a political story. That is the sort of thing that does not contribute to the debate in Western Australia. Western Australia was in the news around the world this week because of the kid up in Northam. WA was on the front page of the CNN and BBC websites, and not in a positive way. We need to be careful. Members should be aware that on 96FM, 73 per cent of callers supported

the jailing of a 12-year-old boy for receiving a stolen Freddo Frog! Is that a positive way for us to frame the debate? I do not think it is.

Mr C.C. Porter: What are you listening to them for?

Mr W.J. JOHNSTON: I am like most people in Western Australia, I listen to FM radio. I am sorry if the Attorney General is not part of the majority, but I do listen to FM radio. I make the point that it is important that people should not use these types of debates as an opportunity for political name-calling, because it does not contribute to the debate. These are serious issues. There is no question that the issue of rock throwing impacts more on people in Cannington than in any other electorate in Western Australia. It is not right for people to come into this place and make these assertions that somehow or other the Labor Party is soft on crime, because it is not true. I am aware that Mr Acting Speaker (Mr P.B. Watson) understands the point I am making.

MS J.M. FREEMAN (Nollamara) [8.22 pm]: I briefly want to —

Mr T.R. Buswell interjected.

The ACTING SPEAKER: The Treasurer might think that this is a fun place, but the member is on her feet and wants to speak on this bill.

Ms J.M. FREEMAN: I am trying to think who is presenting the morning program on RTR radio. It will come to me.

I am also concerned about the short notice in bringing on the Criminal Code Amendment Bill (No. 2) 2009 for debate, but I support it. I do so based on the experience of a friend of mine some years ago when we were much younger and with fewer grey hairs. She was driving home quite late at night and had an experience of a rock thrown into her windscreen. I know how terribly that affected her. Thankfully she was not injured.

I am not so aware of this being an issue in the electorate of Nollamara. Perhaps it is because we do not have many bridges. Hopefully, once my electorate gets the overpass at Alexander Drive and Reid Highway we will not have rock throwing episodes from there, but we will have a bridge. Let us hope it will be in this term of government. Certainly, the last Labor government and the federal Labor government committed to it.

Mr C.J. Barnett: Committed to it, but did not do it! There is a big difference.

Ms J.M. FREEMAN: Hopefully, it will get done under the Premier's watch.

Mr C.J. Barnett: I hope so.

Ms J.M. FREEMAN: That will be great for my constituents, which is what we are here for.

I endorse the comments of the member for Cannington, in particular about public transport and buses. Bus security and those sorts of issues are major issues in the electorate of Nollamara, in particular at the Mirrabooka bus station, which is the largest bus transit station in the north, if not in the whole of the metropolitan area. A large number of buses go through there and it has a number of security issues. The redevelopment of that site will assist to reduce those issues.

I endorse the member for Cannington's call for a parliamentary inquiry into safety on public transport. If I heard the member correctly, he raised that because of Hon Ken Travers' comments on this issue. On the basis of those two issues, I endorse the bill.

I also want to recognise the Transport Workers Union, in particular Kevin Starr, who worked so tirelessly to ensure the security and safety of bus drivers after the incident in which the bus driver unfortunately lost an eye, so that security of bus drivers was as paramount as security for people travelling on trains. It is difficult, when one is not in an area that has a train line and one is reliant on bus transport, to recognise the seriousness of safety both for the passengers and for the drivers. The public service provided by those people who work in those areas needs to be recognised and their safety needs to be guarded. That goes beyond just penalising offenders; it also goes to having much more regular public transportation in the areas that I am lucky enough to represent so that there is a quantum of people using that transport because it is easy, affordable and accessible. I endorse the bill.

MR C.C. PORTER (Bateman — Attorney General) [8.26 pm]: I thank the member for Mindarie for his very thoughtful and intelligent contribution to the second reading debate, and in this second reading response I will seek to address some of the matters he raised. I also thank the member for Nollamara for her contribution, which was also very thoughtful. I also acknowledge that the member for Cannington spoke on the bill.

There was some criticism of the government for the lateness with which this bill was presented. Yes, it has been presented somewhat late in this year. It is interesting though, when we think about the "urgency" of the bill, that one comment by the member for Cannington was to the effect that this was a problem that had been highlighted during the course of this year—boldly highlighted in a press release from an opposition member in the other place. I will read an extract from *Hansard*; in fact, it is a comment by the member for Midland, who said —

> One of the major security challenges that has arisen over the past decade is dealing with individuals who throw rocks at buses and other vehicles.

Can members guess what year that was? It was 2001. It is an issue that has been around for some time. It has been acknowledged to be an issue, but the previous government, with respect, did not move to amend the law despite there being agreement, and it seems that agreement was achieved some time ago that this was an area in which law reform was necessary. Why is that?

This goes to the issues raised by the member for Mindarie. The reason for that is the way in which we can go about criminalising this behaviour, which is best summarised by four possible options. We can make it an offence whereby someone intends to cause damage or harm, and they do something that is, objectively speaking, likely to cause damage or harm. That is the first way. Secondly, we can create an offence whereby someone does something that is likely to cause damage or harm, but with no intent. Thirdly, we can create an offence whereby we criminalise the behaviour based on the fact that any risk accompanies the behaviour. Fourthly, we can do what has been done in this bill, which is create an offence whereby what we are doing is based on an objective test of someone's response to the action—in this case, alarm or fear. We are debating this legislation now because as it presently stands in our Criminal Code we have an offence of that second type; that is, an offence that says if a person commits an act or an omission in circumstances in which it is likely to cause damage or harm, that is a criminal offence. That comes under section 304 of our code. To give a flavour of how that offence works, section 304 states —

> **Acts or omissions causing bodily harm or danger**
>
> (1) If a person omits to do any act that it is the person's duty to do, or unlawfully does any act, as a result of which —
>
> (a) bodily harm is caused to any person; or
>
> (b) the life, health or safety of any person is or is likely to be endangered,
>
> the person is guilty of a crime and is liable to imprisonment for 5 years.

Leaving aside the scenario in which bodily harm is actually caused, section 304 criminalises behaviour, an act or omission that is, objectively speaking, likely to endanger the life, health or safety of any person.

Mr J.R. Quigley: Only if you can demonstrate, firstly, that is an unlawful act.

Mr C.C. PORTER: The member is quite correct. I will come to that in a moment. The member raised the point quite properly—that is, that it is not authorised, justified or excused at law. The member would agree with that as a matter of principle. Yes, a safeguard is built into that provision.

I will go to the issue of likely to endanger life, health or safety. We are debating this bill because there is an acknowledgement that that provision is not adequate to cover the range of behaviour that we see in terms of projectiles being thrown at vehicles. The reason simply put is: it is conceivable that a prosecution would struggle to convince 12 people on a jury to unanimity and beyond reasonable doubt that an act that we might, as a matter of common sense, see as inherently dangerous or risky or which causes alarm or fear in a driver was an act that was likely to endanger life, health or safety. It is not inconceivable to say, for instance, an object such as a small rubber ball, which one gets from the 20c machine at the deli, could be thrown at a vehicle and that a jury would have great difficulty, beyond reasonable doubt to unanimity, agreeing that the throwing of that "harmless object" at a vehicle was such that it was, objectively speaking, likely to endanger life, health or safety. They may reach that standard or they may not. We are debating this bill because of some shared view, however inelegantly put in a press release by Hon Ken Travers, that section 304 of the code is inadequate and does not quite cover all of the criminality. Also, instances might arise in which we could charge someone with behaviour that we, as a matter of commonsense, think should be criminalised but which would be very difficult to convince a jury beyond reasonable doubt that it was behaviour that was likely to endanger life, health or safety.

Mr J.R. Quigley: If it was likely to endanger the safe use of the vehicle, it still would not be captured under section 304? Therefore, there has to be something more than section 304.

Mr C.C. PORTER: That is exactly what I am saying. We are here because of the inadequacy of section 304. I would argue that the formulation that the member for Mindarie used in his private member's bill, borrowing as it does from Queensland —

Mr J.R. Quigley: And New South Wales.

Mr C.C. PORTER: New South Wales to an extent, but I will get on to that in a moment. The Queensland provision is slightly better that section 304 but in some way it replicates the same problem. I will come to that in a moment.

First, I will go to the New South Wales provisions. It has gone down the path of basically saying "any risk". Therefore, the offence in New South Wales is under section 49A, which states —

> **Rocks and other objects at vehicles and vessels**
>
> (1) A person is guilty of an offence if:
>
> (a) the person intentionally throws an object at, or drops an object on or towards, a vehicle or vessel that is on any road, or navigable waters, and
>
> (b) there is a person in the vehicle or vessel, and
>
> (c) the conduct risks the safety of any person.

That would be a standard at law, which is a lower standard than is likely to endanger life or safety, but rather simply causes risk. The opposition's private member's bill seeks to cure the section 304 problem by putting in offences under what would have been new section 304A. Proposed new subsection (2) of that new section would have included offences as follows —

> A person who —
>
> (a) throws an object at a vehicle, vessel or aircraft that is in the course of travelling; or
>
> (b) places an object in or near to the path a vehicle, vessel or aircraft is using or may use in the course of travelling; or
>
> (c) directs a beam of light from a laser at or near a vehicle, vessel or aircraft that is in the course of travelling,
>
> in a way that endangers or is likely to endanger the safe use of the vehicle, vessel or aircraft —

Interestingly, there is another offence that would carry a maximum of two years' imprisonment. The member for Mindarie's private member's bill would include another offence which would be new subsection (3), which states —

> A person who engages in the actions described in subsection (2)(a), (2)(b) or (2)(c) and as a result endangers or is likely to endanger the life, health or safety of any person is guilty of a crime and is liable to imprisonment for a maximum of 5 years.

For all intents and purposes, that is a replication of section 304 of the Criminal Code.

Mr J.R. Quigley: Perhaps not. It is not predicated by an unlawful act. You could not put something in the channel of the river, which is not an unlawful act, but nonetheless could endanger.

Mr C.C. PORTER: Indeed. Therefore, that makes it something of a risky offence. In any event, that might have come to pass in this private member's bill because the situation in Queensland is that—this is based largely on some parts of the New South Wales legislation—the offence that existed was outlined in section 467, which states —

> **Endangering the safe use of vehicles and related transport infrastructure**
>
> (1) A person who, with intent to prejudice the safe use of a vehicle or related transport infrastructure or to injure property in a vehicle or related transport infrastructure, does anything that endangers, or is likely to endanger, the safe use of the vehicle or related transport infrastructure commits a crime.
>
> Maximum penalty—life imprisonment.

The reason that Queensland brought in a provision similar to the provision in the member for Mindarie's private member's bill is that it had a provision that existed at one end of the extreme that was likely with intent. It brought in a provision that, I would argue, looks much like section 304 of our Criminal Code. I would argue that although this is some improvement on section 304, it still does not cover the mischief and legal problem that we are trying to deal with; that is, that some acts as a matter of commonsense we would say are inherently dangerous, but nevertheless might not, objectively speaking, be said to be of such a quality that they would endanger life and safety. That brings us to the formulation that we have —

Mr J.R. Quigley: Or the safe use of a vehicle. If it is inherently dangerous, we have to cover the safe use of a vehicle. It is inherently dangerous; it comes down to safe use.

Mr C.C. PORTER: Not necessarily. I will take the example I gave of a rubber ball being dropped from an overpass onto a car. Would that be an act that endangers or is likely to endanger the safe use of the vehicle, vessel or aircraft? I would argue that in front of a jury we would suffer the problems that we would with section 304: it might by risky and we might think it is stupid, and we might see that there are certain potential consequences—remote in some instances—but it would be very difficult to convince 12 people to the degree of

unanimity of beyond reasonable doubt that dropping a harmless object on a car would be activity that endangers, or is likely to endanger, the safe use of the vehicle.

Mr J.R. Quigley: Wouldn't that be just as applicable to trying to convince a jury that a harmless object dropped—a light rubber ball—is likely to produce fear and alarm?

Mr C.C. PORTER: This is exactly the point. We have considered the matters the member raised, and after many, many drafts we determined to go to the course of characterising the criminality in the response, or potential response, of the driver. That is because that although it might be argued by a defence counsel that the dropping of a rubber ball onto a car is not, objectively speaking, likely to endanger the safe use of the vehicle, it would be somewhat simpler to argue that that is something that, objectively speaking, could cause alarm or fear in the driver. The reason is that clearly the mischief we are trying to cover is that some people might react in a fashion that others might view as a slight overreaction. Person A might swerve more violently than person B. Nevertheless, an obstruction to a vehicle of that nature—a rubber ball or whatever it might be—becomes inherently dangerous. That is why we have gone down this path.

Mr J.R. Quigley: You're not saying it is inherently dangerous; you're saying that it is likely to induce fear or alarm.

Mr C.C. PORTER: I will use the colloquial language of "inherently dangerous" to bring our colleagues along so that they see the mischief that we are trying to cure. The legal test to try to capture that inherent danger would be the test of whether it was likely to cause fear or alarm in the driver.

Mr J.R. Quigley: If the driver is cross-examined and says, "I wasn't fearful," that is not an absolute defence is it, because it is whether it is "likely to cause fear"?

Mr C.C. PORTER: The measure would be whether the act was, objectively speaking, likely to cause fear and alarm. The member would of course concede that if the driver got in the witness box and said that he had not been caused fear and alarm, that would be powerful evidence indeed that it was not an act of an objective nature, unless the person was Rambo or the Terminator or someone who we knew had a particularly high threshold for fear and alarm.

Mr J.R. Quigley: Or who was, unfortunately like too many drivers, on amphetamines and was just not worried about those sorts of things.

Mr C.C. PORTER: It is always interesting to hear the member treatise on the criminal law. It is the evergreen truth that each case turns on its own facts. The member is quite right to raise extreme examples because they are the good and proper tests of the law. I will address some of those now, and no doubt they will be addressed further in consideration in detail. The point the member raises is that the legislation we have produced talks about object and substance. The member for Mindarie's private member's bill talks merely about object. The member for Mindarie said that logically speaking he might consider an object to be something that is contained. That is a relatively fair assessment, although they are not legal terms.

Mr J.R. Quigley: I have not had the time to look at it.

Mr C.C. PORTER: I believe that the member knows they are not legal terms, because of his experience of law. I suspect that the member is correct and that a jury, as a matter of commonsense, would say that a substance might be paint or water in certain circumstances, whereas water contained in a balloon that was dropped from an overpass would be an object. That is correct. It is important to extend the definition to "substance" as well as "objects" because, as the member pointed out, it may be that pouring red paint over the windscreen of a bus travelling on a freeway would be an action that, we would argue, was likely to cause fear and alarm in a driver and, by virtue, is a risky or a dangerous type of behaviour that might not necessarily be covered by the concept of an object. It may be considered an object if the law were tested, but to be sure we have inserted the word "substance". I will come back to the idea of substance because the member raised the issue of sprinklers being turned on. There are certain ways in which that behaviour would be protected in most circumstances, but conceivably not all.

I will now raise the issue of the objective nature of the test of alarm and fear. The member for Mindarie is right, to an extent, that a jury might consider some element of subjectivity in that test, although at law it is an objective test; that is, whether a reasonable person in these circumstances has experienced alarm and fear.

Mr J.R. Quigley: With the judge telling the jury, "Apply your own commonsense experience in life to interpret the evidence," which imports the subjectivity.

Mr C.C. PORTER: That is absolutely correct. The member would argue that that is a problematic way to approach the mischief that we are trying to solve. I must say that I disagree. As I intimated in the debate on the urgency motion, although the member called it a new way of reaching criminal responsibility, it exists already in the Criminal Code. We might be reviving it in a different context but it exists in the Criminal Code under section 68, which is "Being armed in a way that may cause fear".

Mr J.R. Quigley interjected.

Mr C.C. PORTER: That is right. Section 68(1) states —

> A person who is or pretends to be armed with any dangerous or offensive weapon or instrument in circumstances that are likely to cause fear to any person is guilty of a crime and is liable to imprisonment for 7 years.
>
> Summary conviction penalty: imprisonment for 3 years and a fine of $36 000.

That is the same penalty that we have instituted for this offence. Section 68 continues —

> (2) It is a defence to a charge under subsection (1) to prove that the accused person had lawful authority to be so armed in such circumstances.
>
> (3) A court that convicts a person of an offence under subsection (1) may make an order for the forfeiture to the Crown, or the destruction or disposal, of the thing in respect of which the offence was committed.

A provision in the Criminal Code criminalises an action by the response of the recipient of the action—in this case being armed in public. It is very interesting that that type of offence goes all the way back to a 1328 statute. It is traceable directly to the statute of Northampton, which states that persons should not —

> … ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure.

That is something that the Minister for Police would have very much liked, I am sure!

It is an old concept that is being used in a slightly different way to cure a problem that we see is developing in the criminal law.

I refer now to lawfulness, whether authorised, justified or excused at law. The member mentioned headlights. I will deal with that example first. All these matters would need to be tested. The member would know that it is always a difficult matter to draft legislation to capture the mischief that we want to capture and to exclude the reasonable and appropriate behaviour that we do not want to capture. We argue that the member's bill is too restrictive and does not necessarily capture all the mischief or cure the problems that we have identified in the criminal law. This legislation strikes the appropriate balance. Let us use the example of a person with particularly sharp headlights. As the member noted, the device must be portable. There would need to be a very strong argument to suggest that a headlight is not a portable device, whereas "portable" might be something that is more portable than a "car"; that is, something that can be held in the hand, such as a flashlight, a laser or a laser pointer or something of that nature.

Mr J.R. Quigley: It is arguable either way.

Mr C.C. PORTER: It is. That would allow the commonsense of the jury to prevail. I note that the member raises his eyebrows every time I use the word "commonsense". All these matters would have to be determined by a police prosecutor or a deputy prosecutor, considering what a jury would consider eventually in determining whether there was a reasonable prospect of a conviction of the charge. Was it portable? That is a matter for debate. It is very difficult to envisage a circumstance that it could be argued that the beam of a headlight is narrow enough to be considered to be a narrow beam of light.

Mr J.R. Quigley: I wasn't talking about a headlight; I was talking about the tiny lights. They fit into the bumpers. They are not even as big as my fist.

Mr C.C. PORTER: Let us assume for a moment that an eventual —

Mr J.R. Quigley: I think that fog lamps are illegal.

Mr T.K. Waldron: It is an offence to drive with them on.

Mr C.C. PORTER: They are not illegal; that is correct. It is an offence to drive with them on, unless there is a fog, funnily enough.

Of course, the final protection in those circumstances is whether the narrow beam of light was on lawfully and if it was considered to be portable and that it was a narrow enough beam of light to meet the terms of the definition —

Mr J.R. Quigley: There is no definition for a narrow beam of light.

Mr C.C. PORTER: No. We were hardly likely to describe a narrow beam of light as being three millimetres or three centimetres in diameter —

Mr J.R. Quigley: You could do it by degrees.

Mr C.C. PORTER: That cannot be done. If the member had read *A Brief History of Time*, he would know that light travels in a light cone. Light moves from a point—even a laser—and spreads out over its path. That is why we are building the Square Kilometre Array. We should be able to see back to the beginning of the world because we are at the end of the light cone. However, that is a story for another time.

Mr J.R. Quigley: I might find my hair back at the beginning of the world—I am interested!

Mr C.C. PORTER: It would, as the member would appreciate —

Mr M. McGowan: It doesn't go that far back!

Mr C.C. PORTER: The member would appreciate that it is almost impossible to define the width of a beam of light. We would imagine that commonsense would prevail in those circumstances. The example the member raised about water is interesting. It is not inconceivable that it could fall within the ambit of the legislation in some circumstances. Proposed section 74B(2) states —

> A person who, without lawful excuse —
>
> (a) causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance that a person is driving; or
>
> …
>
> in circumstances that are likely to cause fear or alarm …

Is water a substance? Arguably it is. I imagine that it would be considered to be so. Is a person who is watering their garden doing so with lawful excuse? Generally speaking, yes, unless the person is acting contrary to the Minister for Water's watering bans during winter. Is it likely to be argued beyond reasonable doubt, to the satisfaction of 12 people, or to the satisfaction of a magistrate if it is dealt with summarily, that the water on the road is likely, objectively speaking, to cause fear or alarm? That is not inconceivable, but I think that it would be very unlikely. Nevertheless, it is a quite proper example to raise, because it is the sort of thing that would test the edge of the law. Of course, it would depend upon the particular and peculiar circumstances of each individual case. It is certainly not the primary mischief that we are designing to cure. But, then again, if we define substance, or redefine it, to say "any substance excluding water", then an idiot who tips a large bucket of water from an overpass onto an oncoming bus would not be caught by the legislation. So it is always difficult to try to find those exact dividing lines.

I think I have summarised at least some of the reasons why there is difficulty with the law, why the legislation has been presented, and some of the issues that we went through in drafting. No doubt the member for Mindarie may raise more examples and issues in consideration in detail.

Mr J.R. Quigley: Just on that, Attorney, if I may interrupt, I am minded not to go into consideration in detail, because you have addressed all the points that I have raised. I do not intend to hold up this chamber by moving amendments that you have signalled are going to be defeated anyway because you have given the government's position. It would seem to hold up the chamber unnecessarily. Apart from the hosepipe, I think you have covered all the points that I have raised, and I will address them further in the third reading debate. I just do not see it as productive to go into consideration in detail just to reargue the points that you have dealt with in detail in your reply.

Mr C.C. PORTER: Member for Mindarie, that is one interjection that I am very pleased to take. I have noted what the member said in that interjection. I will now conclude my second reading response, sit down, and then stand and move that the bill be read a third time.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

MR C.C. PORTER (Bateman — Attorney General) [8.52 pm]: I move —

> That the bill be now read a third time.

I thank members for their contributions, particularly the member for Mindarie, who raised a number of issues, some of which were raised during the drafting stages of the bill. However, as is always the case with these matters, I must confess that the water example was not raised, and it is a very interesting example. We had any manner of examples raised, including the example of a person who might pretend to throw an object but not actually have an object in his hand. We considered that that might end up in our criminalising the act of waving, which is not something that we would be terribly keen to do.

Mr J.R. Quigley: I'm surprised that the Liberal Party wouldn't do that. Perhaps it was in deference to Her Majesty, because she could have been done for waving to her subjects.

Mr C.C. PORTER: There are always cautious aspects with the legislative process. I thank members for their contributions and look forward to a further contribution from the member for Mindarie.

MR J.R. QUIGLEY (Mindarie) [8.53 pm]: The reason that I said there is no need to go into consideration in detail is that the Attorney has addressed those matters that I raised in my second reading contribution and has given the government's position on those matters. However, we in the opposition are still not satisfied. But it is not a question then of moving amendments that will inevitably be defeated, and moving them for the sake of holding up this chamber to defeat them.

I will just go through and express my concerns again. I should preface my remarks by saying this: the rush with which this legislation has come on has put undue pressure upon the opposition in trying to effectively contribute to this debate. Therefore, I hope that the chamber is a little patient with me as I revisit some of those areas that the Attorney has addressed.

The Attorney raised four possibilities of how to criminalise the conduct, and said at the end that we can do it by criminalising an unlawful act done with intent that is likely to endanger safety or an act that is done without intent that is likely to endanger safety, or, as we have done, by seeking to criminalise actions that induce in the person in charge of the vehicle, plane, vessel, or whatever, a fearful or alarmed reaction that itself can be dangerous. We all arrive back at the same point, and the Attorney General arrives back at the same point, because it is not punishing the person so much for the emotion that the driver suffered—punishing the person for throwing something that caused the driver to suffer an emotion of fear—but, rather, the question is: how will that vehicle be controlled once the person is alarmed or fearful? The Attorney says that that will induce danger. As an opposition, we still believe, although we are not going to oppose this legislation, that it is going down the wrong course; that the conduct that should be criminalised is that which endangers the safe use of the vehicle.

The Attorney General then took the chamber to section 304 of the Criminal Code and said that something more was required. I will now read from section 304 of the code —

> (1) If a person omits to do any act that it is the person's duty to do, or unlawfully does any act, as a result of which —
>
> (a) bodily harm is caused to any person; —

We are not talking about that —

> or
>
> (b) the life, health or safety of any person is or is likely to be endangered,
>
> the person is guilty of a crime and is liable to imprisonment for 5 years.

The Attorney General said to the chamber this evening that something more is required, because that does not capture all rock throwing. We agree. Section 304(1)(b) more closely reflects the opposition's proposed section 304A(3) in the Criminal Code (Rock Throwing and Laser Pointing) Amendment Bill 2009, and the shortcoming in section 304 was made good by criminalising the behaviour that had the effect of endangering the safe use of a vehicle. Therefore, the analogy with section 304 fails, because what we are seeking to do is criminalise behaviour that endangers the safe use of a vehicle, which is a lot different from section 304(1)(b) of the code, the result of which is that the life, health or safety of any person is likely to be endangered. It is a much lower test. Therefore, to argue that section 304, as it stands in the code, was insufficient and we had to have a wider capture than section 304, and our only alternative to a wider capture was to capture that behaviour that induces an emotional response in the driver, is, in the opposition's opinion, not the way to go and is not a sustainable argument, nor is it sustainable by reference back to section 68 by saying "carrying a weapon that is likely to induce fear". That is an entirely different situation—going armed in public in a way that is likely to induce fear. When we see some of the ways the police arm themselves today—I am talking about the tactical response group—it would induce fear in any reasonable person in the street. The police are lawfully entitled to carry that heavy weaponry. We do not think that to make good the legislative deficiency that existed in section 304, we need to criminalise anything that induces fear in a driver. As the Attorney General conceded in the remarks he made during his reply to the second reading debate, it might be that we have a robust driver who, under cross-examination says, "Dropping a tennis ball on my windscreen or on the bonnet of my vehicle did not induce any fear at all, nor did it alarm me. I just thought, 'Silly buggers who did that'." Nonetheless, even though that driver said he was not scared, that is not the end of the matter for the person charged because the judge will ask, "Was it likely to induce fear in a normal person?"

We are getting into such a problematic area when we are to judge criminality on what is basically another person's emotional response to one's action rather than the bedrock test that applies in New South Wales and Queensland of whether the actions of the accused endanger the safe use of the vehicle, vessel or aircraft. I made

that point during my speech in the second reading debate. We are not satisfied with the Attorney's explanation. However, it was pointless to move the amendment given that our private member's bill was pushed aside and this one brought back into the chamber as a substitute.

Once again, I come back to my second area of concern. My concern about water remains. When neighbours and the police become involved and there are all these hassles, it will be surprising to find that people will be charged with offences that we in this chamber did not regard we were legislating against. The Attorney says he understands the situation with water and that might require some more thought. There can be no more thought. As they say, once the vote is had on the third reading, the dogs might still be barking but the caravan will have moved on. The bill will go to the Council and then to the judges on St Georges Terrace. It will have passed our further consideration. I remain very worried about that wide capture of "any substance".

I now turn to lasers and narrow light. The Attorney says that it is problematic whether one of these xenon ray lights fitted into the bumper of a European vehicle should be called portable or not. This is the problem with rushing legislation like this through because it does not say "hand-held narrow beam"; it just says "portable". I have always regarded anything on a vehicle that is being driven around, contained in or attached to as something that is highly portable. That is just me. We are passing this law this evening. This law will be passed this evening without any of these clarifications inserted into the legislation. I believe that is poor legislation.

In the eastern states, pointing a laser at anyone in charge of a vehicle is criminalised. Both the beam of light and the laser are defined. As I said, under our private member's bill, which was taken from the Queensland and New South Wales legislation, it would be unlawful to direct a beam of light from a laser at or near a vehicle, vessel or aircraft that is in the course of travelling. "Laser" is defined as meaning "laser pointer, laser scope or other laser device" and "beam of light" is defined as "from a laser, means the beam of radiation produced by a laser device". Radiated illumination is different from incandescent illumination. In the legislation before the chamber this evening we have "to direct a visible laser" which is not defined but perhaps in the twenty-first century has such common meaning both in science and in the English language that that would produce a problem for the courts. It then goes on to say "or other narrow beam of visible light". That is not defined; it is not said to be laser light or light produced by radiation but a narrow beam of visible light, a torch light, just a torch, to flash a torch at a car. One is criminalised if caught flashing a torch at a car on a country road. One might be doing it to attract attention to get a lift to get more petrol but if one flashes a torch and that flashing of the torch does not induce fear in the car driver but causes the car driver to become alarmed, what is that? If it causes alarm, it is captured by the legislation and the person flashing the torch is a criminal. I believe that is beyond the intent of this Parliament.

This is how wide this legislation is drawn. Dare I say it? This is how loosely this legislation is drawn. I cannot believe that it is the final product of months and weeks of serious contemplation. If this is the final product, and there have been many drafts, the other drafts must have been a little unedifying for the Attorney to read. I believe that we are doing the courts a disservice as a Parliament by passing legislation that gives the courts and the judges no assistance as to how narrow this beam of light should be or what colours this light might be. I say that not to say that pink is okay and blue is a no-no but with some of these new fog-piercing lights, I am not quite sure whether that is normal incandescent illumination or whether there is an element of radiation or what sort of light it is. If we just leave it to the courts as "narrow beam of light", people will sit in this place and say the judges have gone silly because they are not interpreting the law right. That is what is being said here on a regular basis. This is the loosely drafted legislation that the government is sending along the Terrace for judges to deal with.

We agree with the government that the time has come for laws to be passed urgently before summer so that the conduct of rock throwing, laser pointing and endangering vehicles can be dealt with. We thought it urgent enough to trouble the Parliament to introduce a private member's bill some weeks ago. We do not quibble with its urgency. We do, however, once again in conclusion, complain that to get legislation that has these difficulties within it at lunchtime today for debate tonight is unreasonable. I conclude with those comments.

MR C.C. PORTER (Bateman — Attorney General) [9.09 pm]: There are submissions that cannot be improved with repetition. I certainly disagree with many of the matters raised by the member for Mindarie. I believe this is excellent legislation and, unlike the rather narrow version that did not cure the problem that was sought to be cured by the private member's bill, this will do the job. Of course, it reflects the great faith the government has in the ability of not merely the courts but also police prosecutors and Director of Public Prosecutions prosecutors to interpret appropriately whether provisions are broad enough to take into account a range of behaviours we have not yet contemplated in this Parliament but would nevertheless be appropriately criminal in certain circumstances.

Question put and passed.

Bill read a third time and transmitted to the Council.

PUBLIC SECTOR COMMISSIONER — MALCOLM CHARLES WAUCHOPE

Motion

Resumed from an earlier stage of the sitting.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [9.10 pm]: As the member for Balcatta has indicated, Labor will oppose this resolution proposed by the Premier. I want to go into some detail for why we oppose it. But I want to say right at the outset that the opposition is not considering this on the basis of the person proposed to be appointed as Acting Commissioner for Public Sector Standards. We are not making observations about his capacity in that role; he is a very senior public servant indeed and, quite clearly, a person who has the capacity to perform the role. I want to go to some of the concerns we have about the confusion of roles that this resolution embodies.

Let me say at the outset also that Labor supports the proposal that the government has implemented on an administrative basis and proposes to implement permanently. Labor supports the government proposal for a Public Sector Commissioner. In Labor's view there is a need for someone to be responsible and accountable for the overall management of the public sector. In particular, there needs to be a person who is responsible and accountable for the overall management of the senior executive service. Under previous arrangements, the Premier was the employer of chief executive officers. In effect, the Premier has been responsible for the overall management of CEOs. In my view, that is an unsatisfactory arrangement that does not really work. The system needs a senior public service manager who is responsible, and who is held responsible, for the overall performance of the public service and for the overall management of the public sector. We need someone who can take action when a CEO is in trouble and when a department is beginning to fail. Too often in our system, all the attention is focused on the minister, who is held accountable for administrative failures even though the minister does not have the direct power to intervene down the line and to demand, for example, that someone who, in the minister's view, is not competent be shifted out of a public service position. We have a circumstance in which the minister might be held accountable but does not have the direct power to intervene lower than CEO level to ensure arrangements are made to overcome the problem.

What is needed to avoid suggestions of politicisation of the public service, while maintaining some focus on performance and a capacity to deal with emerging problems, is a senior public servant who can intervene in a non-political way to fix up management issues or to deal with CEOs who are struggling or departments that are struggling. In the previously existing set of arrangements there was no-one to whom the government could turn and say, "You are accountable for the overall performance of the public sector, and it is about time you did something about this department or that department because that department is not performing." The Commissioner for Public Sector Standards is in part responsible for CEO selection, which is a strange blending of roles with her accountability role, but she is not responsible for the continuing management of the senior executive service or the CEOs. On the other hand there is the Director General of the Department of the Premier and Cabinet, who could be regarded as the most senior director general and, therefore, someone who might be looked at to deal with the management of other CEOs; or, as a pinch hitter, there is the Under Treasurer, who is also a very senior public servant.

I regard the present government's proposal to seek to appoint a Public Sector Commissioner a good proposal. I think we need someone who has overall management responsibility for the entire public service and who can be held accountable for the performance of the public sector. In the past, the Commissioner for Public Sector Standards has had a large responsibility for CEO selection, but no continuing responsibility for management. The Director General of the Department of the Premier and Cabinet, who might be regarded as the most senior director general, and the Under Treasurer, who might also be regarded as having that status, have been pitching in and exercising management responsibilities without having the full authority or the full accountability for the exercise of those responsibilities.

It is an issue from which, in a large public sector employing 100 000 people, management problems will emerge from time to time. Performance of the state public sector is a key factor in the performance of any government. Many of the issues that arise in state politics are not necessarily ideological or policy differences between government and opposition; they are management issues dealing with failures to deliver services that both sides of politics want delivered in an effective and efficient manner. We all, on both sides of politics, have an interest in measures that will ensure that the public sector can perform. We all have an interest in there being some capacity inside the public service to intervene and self-correct if problems emerge, rather than all those issues escalating to a political, media and parliamentary level. The problem I see with the proposal before the house is that there is to be at least a temporary amalgamation of that management and leadership role with the accountability role that the Commissioner for Public Sector Standards embodies.

The Premier has made some assertions about alleged politicisation under Labor, and I reject them absolutely. I do not want to engage in a ding-dong debate with the Premier, but I regard that assertion as a straw man. I do not

think any significant evidence has been presented to back that particular argument. In fact, the Premier, who has advanced that argument, is responsible for the appointment of a no doubt very competent person, the Director General of the Department of the Premier and Cabinet, who is nevertheless strongly identified with the conservative side of politics. The Premier has advanced that argument in pursuit of his view that the correct path forward is to ensure that we have a completely impartial and non-political public service and that that can be assured by making it impossible for any politician to direct the public service on personnel matters. I see a difficulty with that particular approach. In the end, the government—any government—is accountable for what happens in the public sector.

The difficulty for a government when it has no power to direct is that it is held accountable for things that it cannot actually control. This government has experienced that very phenomenon. Mr Caporn was appointed to the Fire and Emergency Services Authority and that appointment was, in my view, and I think in the view of most members of the public, entirely inappropriate. I believe that under the current legislation there is no capacity to issue a direction for that appointment to not proceed. It is a situation in which there needs to be political accountability. The government has to answer for what has happened. The only answer that the government can give the public is an answer that the public finds unacceptable; that is, "We don't like it, we're not happy, but we don't have the power to do anything about it." With the best will in the world, with the best public service in the world, there are nevertheless going to be times when the public service demonstrably makes the wrong decision and when the public wants a different decision to be made or the matter to be remedied. How is the government, which is accountable to the people who elected it, to deal with that if the legislation does not provide any power to intervene?

We live in a democracy. I do not think that means that we should have a public service that is so independent that it can do what it likes and no politician can intervene to correct it. Any power to direct would have to be seriously limited. We do not want behind-the-scenes, opaque, untransparent direction. The model that I would like to see would be one where there could be only a written direction. That direction would have to be published in a relevant annual report and tabled in Parliament. In that situation any direction given by the government would be well and truly open to the Parliament and to the public. I would suggest that in those circumstances the power to direct would be used very rarely, but it would be there so that no government would be in a position of having to argue, "We don't like this; we're not happy. We know the public doesn't like it, we know they are not happy, but we can't intervene because the law does not allow us to do that."

This takes us back to the Burt Commission on Accountability, which I think reported in 1990. The authors of that report were very, very concerned about any circumstance in which ministers could not be held accountable in the Parliament for things that were happening in the public sector because they were denied or had denied themselves the power to intervene. The Burt commission was very clearly of the view that every government agency—I suppose there would be some exceptions, such as the Office of the Auditor General—should be subject to the power of direction. If that is not the case, we cannot have ministerial accountability to the Parliament for the actions of government agencies.

A power to direct is a possible way of dealing with these problems of management and accountability. If there is not to be a power to direct, the only other alternative that I can see to instil some accountability into the system is to have an independent servant of the Parliament, like the Commissioner for Public Sector Standards. There are two models: one in which the government can intervene but in a very accountable and open manner; and one in which the government cannot intervene but there is an independent servant of the Parliament, the Commissioner for Public Sector Standards, who can blow the whistle, who can produce a public report and who can have matters scrutinised fully and revealed to the public in circumstances where things have not been handled properly. The government probably needs both, but we at least need one of those mechanisms, otherwise the government is saying, "We're going to hand it all over to the public service. We have trust in the senior public servants that they will always do the right thing." I have a great regard for the quality of the public service and for the advice that I was given by the public servants who worked with me when we were in government, but I do not agree that they are always going to make the right decision. I do not agree there should be no power over or no accountability for the actions of senior public servants.

What the government is planning to do ultimately, I understand, is amalgamate the positions of Commissioner for Public Sector Standards and Public Sector Commissioner. I hope that the government reflects on the Caporn experience as it prepares its final public sector reform measures. If the government does not reflect on that, the government will probably experience more embarrassments, when it will be made to look either uncaring or weak in dealing with the various public sector scandals that will undoubtedly emerge from time to time.

The government's proposal to amalgamate these positions creates a short-term issue. That short-term issue is that the Commissioner for Public Sector Standards knows that her job is going to be abolished and that she therefore needs to make other arrangements. If she makes other arrangements and achieves a public sector appointment —

Mr C.J. Barnett: She has. She has moved on.

Mr E.S. RIPPER: I was not sure whether that was public or not. She has had to make other arrangements because her position has been abolished. She has applied for a senior position. I understand that she has been appointed the Director General of the Department of Training and Workforce Development. We are in a position where there needs to be an Acting Commissioner for Public Sector Standards. I can see the problem that the public sector has. This position will presumably last for only six months, possibly 12 months. The government is in a position where it needs an Acting Commissioner for Public Sector Standards. That person cannot be, generally speaking—unless there is a resolution of both houses of Parliament—the holder of another public service position. If the government were to go outside the public sector, it would be asking a senior person to take on a very senior and initially unfamiliar role for a very short period. The government's public sector reform agenda has created this issue.

At one level I feel I am letting the government off lightly. I know what would have happened if Labor had been in power and we had come to the Parliament and announced in effect that we were abolishing the position of the independent Commissioner for Public Sector Standards. We would have been accused of a tremendous lack of accountability, of abolishing a very important service of the Parliament and of covering up or seeking to cover up the way in which we were dealing with the public service. I think the opposition is letting the Premier off lightly with his proposal to in effect abolish the position of independent Commissioner for Public Sector Standards. In other circumstances I am sure that if we had proposed a similar move, it would have been made into a major political issue by the opposition.

I take all these thoughts and put them together. Whatever the quality of the individual—we have no qualms at all with the quality of Mr Wauchope—it is wrong to combine the two roles. The way this will work is that Mr Wauchope will be the Public Sector Commissioner. In that role he will be responsible for the selection and the management of chief executive officers. He will also be the Commissioner for Public Sector Standards. In that role he will be responsible for investigating breaches of public sector standards by the same public servants that he is responsible for selecting and managing. There is a blending of the management role and the accountability role. I think it will be to the detriment of the accountability role if that happens.

I again cite the Caporn example. In the Caporn example, the Commissioner for Public Sector Standards produced a robust draft report. What was the response of the Public Sector Commissioner? The Public Sector Commissioner's response was to try to arrange mediation between the aggrieved CEO and the Commissioner for Public Sector Standards, who had produced the robust report. In other words, what he sought was a managed solution and no public dissent to the issue that had arisen. The same man will be occupying both roles, and I imagine the mediation will be a lot easier if he is occupying both roles. However, the fact that he sought to mediate demonstrates the difference between the two roles and the danger of which I am talking.

The other issue that concerns me is that the Public Sector Commissioner can be still subject to direction by the Premier as minister responsible for public sector management. I know that the Premier has delegated his public sector management ministerial responsibilities to the Public Sector Commissioner, but when the Premier delegates in our system it does not mean that he gives up the power.

[Member's time extended.]

Mr E.S. RIPPER: The Premier could make a decision tomorrow using his powers, and as the member for Balcatta has pointed out, we would not necessarily be any the wiser as to whether the decision had been made by the Premier in his role as minister responsible for public sector management or by the Public Sector Commissioner using his delegated powers. There is no need to withdraw the delegation in order make a decision; the two powers coexist—the delegated powers and the original power.

The other issue is that one person will perform one role in which he is capable of being directed, and another role in which he is an independent servant of the Parliament. The two roles cover some of the same territory. I do not think that works from an accountability point of view. It seems to me that the Public Sector Commissioner will be in a legal position where he could be directed on public sector management issues while, at the same time, if this resolution is carried and the government proceeds, he will be an independent servant of the Parliament required to report without fear or favour, regardless of direction. He will be one man dealing with common territory, albeit with two different roles. I can understand the problem that the government has. I can understand the general issue that requires public sector reform, and I support the need for public sector reform and for better management and leadership of the public sector. I am concerned about the direction that the government is going, where there may be no power to direct the Public Sector Commissioner and no independent servant to report to us if there are problems in the public sector and breaches of standards. I understand the government's short-term problem in that it needs an Acting Commissioner of Public Sector Standards, but I do not agree with the particular solution that the government has reached. What I think should happen is that the government should find a way for the Auditor General, for example, to be the Acting Commissioner for Public Sector

Standards or for the Ombudsman to be the Acting Commissioner for Public Sector Standards during this interim period. I would be very interested in the Premier's comments on whether those options were investigated and what the outcome of the investigation was.

With regard to the longer-term issues, I urge the government to reflect deeply on the experience and the politics of the appointment of Mr Caporn to the Fire and Emergency Services Authority and to work out a way in which an appointment like that, or some other wrong action by a CEO, can be corrected in an open, accountable and transparent manner. The government has an interest in that, and the alternative government has an interest in a satisfactory arrangement being reached there.

For all of those reasons, the opposition will be voting against this resolution. I want to emphasise, in conclusion, that in doing so we make no negative judgement whatsoever on Mr Wauchope. Mr Wauchope is a senior public servant who has worked with governments from both sides. He worked with us for seven and a half years. He is clearly a very suitable person to be either the Public Sector Commissioner or the Commissioner for Public Sector Standards but we do not agree that any one person should occupy both of those roles.

MR M. McGOWAN (Rockingham) [9.34 pm]: I turn to some of the arguments that have been raised and will quote the original intent of the Public Sector Management Act in my remarks. First of all, I want to join with the member for Balcatta and the Leader of the Opposition in indicating that whatever I say is no imputation against either Mr Wauchope or Dr Ruth Shean. I know them both well. Indeed, in 2005, for a period of six weeks, I was Dr Shean's minister, so I know her well, and I have no difficulty with either her or Mr Wauchope as public sector officers.

Mr E.S. Ripper: Together you completed a substantial reform program.

Mr M. McGOWAN: We were together in the Disability Services Commission when I was Minister for Disabilities for six weeks, and we succeeded in not treading on any landmines in that period, for which I was grateful!

We are dealing with a motion to do with what is happening in the short term, but the Premier in his address referred to the longer-term intentions for the roles of the Public Sector Commissioner and the Commissioner for Public Sector Standards. In his remarks, towards the end, the Premier indicated that new legislation will come forward under which the responsibilities of the Commissioner for Public Sector Standards will be rolled in under the Public Sector Commissioner. We will have one person undertaking the two roles, which, as other speakers have said, raises two difficulties: the first is that one person will be responsible for standards and for enforcement. The other difficulty, which is greater, is that the so-called independent Commissioner for Public Sector Standards will be subject to direction by the Premier.

Mr C.J. Barnett: Not in the public sector standards commissioner role.

Mr M. McGOWAN: Exactly. I hope Hansard picked that up. The Premier said that one person will fulfil the two roles. In one part of his responsibilities he will not be subject to direction and he will be answerable to the Parliament. In the other part of his responsibilities, he will be subject to direction by the Premier as the minister responsible for public sector management. That is untenable. It is an untenable arrangement. If one is an officer of the Parliament, one is an officer of the Parliament. It is like saying that the Auditor General, who is answerable to the Parliament in one part of his role, is also answerable to the Premier. The government cannot have a schizophrenic arrangement: the person is either answerable to the Parliament or to his minister. It is one or the other.

I will tell members who it was that recognised that schizophrenic arrangements cannot exist. The person who recognised that was the person who passed the Public Sector Management Act—none other than Richard Court, when he brought forward the Public Sector Management Bill in 1993 and in 1994. Richard Court recognised that the Commissioner for Public Sector Standards, the person responsible for standards across the public sector as opposed to enforcement, had to be an independent statutory officer—independent of the direction of a minister, in the same way that the Auditor General and the Ombudsman are. I will quote what Richard Court said in his second reading speeches, because it is enlightening. He made two second reading speeches, funnily enough. On 30 September 1993, he said —

> The Commissioner for Public Sector Standards will be required to act independently in relation to the performance of his or her functions. He or she will report on compliance or non-compliance of any particular public sector agency to the Minister responsible and to Parliament. The commissioner will also report annually to each House of Parliament on compliance across the public sector.

He also said —

> He or she will establish minimum standards of merit, equity and probity in regard to specific human resource activities and monitor these standards, consistent with general human resource principles such as fair treatment and freedom from nepotism or patronage.

Therefore, what he said at page 5025 of *Hansard* on 30 September 1993, and in his second reading speech of 31 March 1994 is that —

> It creates an independent statutory office of Commissioner for Public Sector Standards responsible for establishing sector wide codes of ethics, and setting out minimum standards of conduct in a variety of human resource management areas;

Further in his second reading debate, Richard Court said that the commissioner has responsibility for setting the standards. He is not there to enforce them. The secondary issue for me is that he is not there to enforce the standards. Again, the two officers are being brought together.

At page 1074 of *Hansard* of 7 June 1974 Richard Court said —

> The Government has no direct control over the statutory office of the commissioner, who is responsible for establishing and monitoring standards, a code of ethics and compliance with the general principles and is charged with reporting directly to this Parliament.

That sums this up entirely.

The Premier is saying that Mr Wauchope will be able to be independent and will be subject to direction at the same time. That is not possible. The Premier might think that he can separate the right side of his brain from the left side of his brain. On the one hand, the Premier can tell him what to do in relation to some of his responsibilities but, on the other hand, he can say that he is completely independent of the Premier. That is not how the real world works. He will be subject to the direction of the Premier in some things and, being a loyal, longstanding public servant, he and his successors will no doubt see themselves as part of that Westminster tradition whereby they are subject to the direction of their minister. My view is that when Richard Court brought in his legislation, he never intended for this to be the outcome 15 years later. He never intended the head of standards in the public sector to also be subject to direction from the minister.

I suggest to members that they examine the tenor of the debate on the Public Sector Management Act. One of the more significant achievements of the Court Liberal government was the establishment of this body, which imposed standards on the operation of the public sector. People who work in ministerial offices might rail against some of the measures in this legislation, but, overall, it has been an effective tool for creating a less partial and more effective and efficient public sector because of the independence of that office. That is what Richard Court wanted to see happen. I suspect that if he were to bother to read this motion, he would say that the same person cannot fulfil both roles, because those roles cannot be separated. The commissioner cannot be independent as well as be subject to direction. That is where this motion is wrong. That is the broader policy issue.

This motion is designed to overcome a short-term issue because Ruth Shean has another job in the Department of Training and Workforce Development. The government had not introduced the relevant legislation, which, as I indicated to the Premier, I have grave doubts about, and, therefore, the government is finding a replacement for Ruth Shean, who is subject to direction. That person who is subject to direction as Public Sector Commissioner is also supposed to be independent under the Public Sector Standards Act. The long-term problem is also the short-term problem, because it will come into effect if and when this motion is passed. There must be better ways to manage this.

I have difficulty with the splitting of education and training. I have already outlined to the house the reason I have difficulty with that—namely, thousands of students at high school are currently undertaking training through TAFE courses. They are starting in year 10. They will have a separate department administering their education, while the Department of Education will be administering those students who are undertaking the traditional schooling courses. We amalgamated both agencies in 2003 to ensure that the management of education and training was seamless. If it is not seamless, there will be difficulties down the track. I have heard the government's explanations for its actions. The government is big on rhetoric but small on substance. The Premier correctly acknowledged what was achieved by the previous government, including the doubling of the number of people undertaking apprenticeships and traineeships. The government has made a mistake by splitting education and training. I do not know where the division of resources between the departments is at the moment, but I suspect that there is a war going on inside Silver City. I have not spoken to any of the public servants because I have not kept acquaintances there. There will be a war over the division of the staff, the assets and the budget. When agencies like that are divided, it creates a big problem. When they are amalgamated, it is not such a great problem.

Mr E.S. Ripper: If you listen to the public service, the sum of the parts will always be less than the whole that preceded it.

Mr M. McGOWAN: That is very wise.

That would have been the better way to manage it from the outset. The government did not have to do this. There should be one director of education and training, because those roles are seamless.

The best solution to what the government has created has come from the member for Balcatta and the Leader of the Opposition; that is, another independent statutory office holder should be appointed to fulfil the responsibility of Commissioner for Public Sector Standards. In that way there will not be the problem that has been created of the same person being subject to direction as well as being independent. Be that as it may, that will be the long-term problem.

It seems to me from reading Richard Court's second reading speech in 1993 that this is a bit of *Back to the Future*. If members go to Richard Court's second reading speech on page 5025 of *Hansard* of 30 September 1993, they will see that the position of Public Service Commissioner—who appeared to have similar responsibilities to those of the Public Sector Commissioner, a position that the government created—was abolished. That was undertaken by the government of which the present Premier was deputy leader. This government has now reinstated an arrangement that Richard Court abolished in 1993 and is in the process of removing the independence of the Commissioner for Public Sector Standards, which was one of the most significant achievements of the Court government, of which the Premier was a minister. I know the Premier says that the commissioner can be independent and subject to direction. However, it is difficult, if not impossible, for one person to serve two masters.

I do not support this motion. I do not support the longer term trend of what the Premier is trying to do.

MR C.J. BARNETT (Cottesloe — Premier) [9.49 pm]: I thank the member for Balcatta, the Leader of the Opposition and the member for Rockingham for their comments. I understand the points they make and I understand that they in no way reflect on either Mr Wauchope or Dr Ruth Shean. Although the opposition members made their points with some validity, they overlooked the fundamental reform. The fundamental reform is to take responsibility for the oversight and management of the public service away from the minister—in this case it is the Premier, which is usually the case—and to have the public service truly headed by a senior public servant with independence, and to then leave the Department of the Premier and Cabinet to do what it should be doing, which is driving the policy agenda across government, whatever that policy might be. That was the fundamental conflict. Previously, the head of the Department of the Premier and Cabinet had responsibility for driving the policy and political agenda of the government, while at the same time he was trying to perform the mental gymnastics of being the head of the public service with all the independence, leadership and propriety that are required to fulfil that role. I believe that was a more fundamental conflict than the one we are being accused of and that is why one of the first decisions this government took was to establish the Public Sector Commission and the Public Sector Commissioner, who would be the head of the public service.

The Department of the Premier and Cabinet is to perform a policy and political role to serve the elected government of the day. That to me was the most fundamental and important reform. Having established the Public Sector Commission, there was immediately an overlap and a conflict between the role of the newly created Public Sector Commissioner and the role of the Commissioner for Public Sector Standards. Both of those officers would agree that they recognised the overlap and conflict. They and other senior public servants believed that the roles should be combined. There will be an issue in the future because the Public Sector Commissioner will have to wear two hats. Although on most issues as the Public Sector Commissioner he will report to the Premier, on certain other issues he will be accountable and reportable to the Parliament. The opposition points to the dilemma, and no doubt that will be an exacting task for the commissioner from time to time. However, I think that is far less of a conflict than having the head of the public service also heading the Premier's department for policy and the agenda of the government of the day. This is a consequence of that. The best minds within our public service are of the view that this is the way to proceed. I believe, on balance, that this is a far preferable situation than the arrangement under the previous government. I have no doubt that Mr Wauchope and those who will succeed him in that role will be able to exercise that function. It is no different from the types of dilemmas that court personnel, lawyers and company directors might have in distinguishing their role on one board from another. As politicians, we must also do that. It is not unusual for people to have to make clear distinctions about their roles. It is not an intellectual step too high or too far for someone who is senior enough to be the Public Sector Commissioner. In any case, the Leader of the Opposition talked about the ability to direct and so on. That will be very rare. Do not forget that the minister and/or the Premier are ultimately accountable to Parliament and the people. That check and balance is still there.

We are seeking to have this resolution passed through both houses. I appreciate that the opposition will oppose it and I understand the opposition's reasons for opposing it. This resolution is a mechanism to deal with a short-term transitional issue. The legislation to amend the Public Sector Management Act will, among other things, get rid of the Commissioner for Public Sector Standards and put that function into the Public Sector Commission. That is about to go before cabinet. Assuming that it gets through that hurdle, it will be introduced into Parliament. It is wide, encompassing legislation. It has not been rushed; it has been worked on over the past two

or three months. A lot of work has gone into it and the people involved with it have been involved closely with the drafting of the legislation.

I recognise that there is some merit in the opposition's argument for appointing another independent public officer, such as the Ombudsman or the Auditor General. That could be done. My understanding is that that would probably be acceptable because that person is not employed under the Public Sector Management Act. However, that would mean we would be introducing another agency. It would also effectively unnecessarily put on hold the merging of the functions, the staff and the physical locations, which is already starting to take place. I have absolute confidence, as I know does the Leader of the Opposition, in Malcolm Wauchope, who is a long-term and experienced public servant, managing the transition. I see no value to the state, the public service or the taxpayer in having a temporary unsatisfactory arrangement when everyone knows that it will end up in the home of one position and one person—the Public Sector Commissioner.

We looked at this issue and at the ways that it could be done. We received advice and input from Robert Cock, special counsel. That was the level of intellect that was applied to the issue. It included also the pragmatism of the officers involved who thought that this was the best way to proceed. Let us go on with it and pass this resolution through both houses to let Malcolm Wauchope head the Public Sector Commission for a temporary time and also assume the role of Commissioner for Public Sector Standards. That will basically occur over the summer period when we would not expect a great deal to happen in the public service. The legislation would be introduced and dealt with early in the autumn session and it would then be in place. Let us look at the legislation during the consideration in detail stage when the opposition might have other points to raise. The government is getting on with this process.

I conclude by reiterating the point on which I began. The fundamental and important reform was to take the oversight of the public service away from a politician, the Premier, and have the public service truly headed by the most senior public servant now, the Public Sector Commissioner, and for him to be in every sense the leader of and responsible for the public service. Why? It is because that gives true independence and professionalism to the public service. That is an important reform. When the government announced that reform, it was applauded throughout the public sector and by the media and commentators. Indeed, to its credit, the opposition also recognised the merit of that change. The Leader of the Opposition and I probably agree on the end point but we have a difference of opinion about how to get there. Perhaps that is a bit crude but that is basically where we are at. We agree that there is to be a Public Sector Commissioner —

Mr E.S. Ripper: There does need to be a Public Sector Commissioner. I am worried about the accountability side.

Mr C.J. BARNETT: I take that point. In fairness, that point and how it is dealt with can be raised when we deal with the amendments to the Public Sector Management Act, which will be the substantive legislation. This evening I am proposing a transition mechanism so that those changes can be put in place and so that it will be properly reflected in the Public Sector Management Act. I assume that at least part of the resolution will get the agreement of Parliament. I recommend this resolution to the house. I think it is sensible and practical. It is basically a transitional arrangement over the summer months and maybe into a couple of months next year.

Question put and a division taken with the following result —

Ayes (24)

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

Noes (20)

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

Pairs

Mr B.J. Grylls	Mr B.S. Wyatt
Mr J.H.D. Day	Mr J.N. Hyde
Mr V.A. Catania	Mr D.A. Templeman
Mr G.M. Castrilli	Ms R. Saffioti
Mr D.T. Redman	Mr R.H. Cook

Question thus passed; the Council acquainted accordingly.

BILLS

Returned

1. Land Administration Amendment Bill 2009.

2. Valuation of Land Amendment (Assessed Value) Bill 2009.

Bills returned from the Council without amendment.

House adjourned at 10.00 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

GOVERNMENT DEPARTMENTS AND AGENCIES — PAYMENTS TO HON CHERYL EDWARDES

1663. Mr M. McGowan to the Treasurer; Minister for Commerce; Science and Innovation; Housing and Works

Could the Treasurer advise:

(a) has the Hon. Cheryl Edwardes received any payment from any agency within the Treasurer's portfolio or the Treasurer's Office since 23 September 2008 for any service provided by Ms Edwardes, including any leadership or career workshop conducted by Ms Edwardes;

  (i) if yes to (a), what is the cost associated with any payment or payments made to Ms Edwardes and for what service was she paid;

(b) since 23 September 2008 has the law firm Minter Ellison received any payment from any agency within the Treasurer's portfolio or the Treasurer's Office for any service provided by the firm; and

  (i) if yes to (b), what is the cost associated with any payment or payments made to Minter Ellison?

Mr T.R. BUSWELL replied:

Ministerial Office

(a)-(b) No

Note: Only the following agencies had a response to this question;

Department of Treasury and Finance

(a) No.

  (i) Not applicable

(b) Yes. There have been a total of 347 payments made to Minter Ellison in the period since 23 September 2008. Nearly all of these relate to legal advice associated with building lease agreements.

  (i) $287 974.19

Department of Commerce

(a) No.

  (i) Not applicable.

(b) Yes.

  (i) $32 056.60.

Department of Housing

(a) No.

  (i) Not applicable

(b) Yes.

  (i) $74 916.94

GOVERNMENT DEPARTMENTS AND AGENCIES — PAYMENTS TO HON CHERYL EDWARDES

1666. Mr M. McGowan to the Minister for Planning; Culture and the Arts

Could the Minister advise:

(a) has the Hon. Cheryl Edwardes received any payment from any agency within the Minister's portfolio or the Minister's Office since 23 September 2008 for any service provided by Ms Edwardes, including any leadership or career workshop conducted by Ms Edwardes;

  (i) if yes to (a), what is the cost associated with any payment or payments made to Ms Edwardes and for what service was she paid;

(b) since 23 September 2008 has the law firm Minter Ellison received any payment from any agency within the Minister's portfolio or the Minister's Office for any service provided by the firm; and

  (i) if yes to (b), what is the cost associated with any payment or payments made to Minter Ellison?

Mr J.H.D. DAY replied:

Department of Planning; Landcorp; Department of Culture and the Arts; State Records Office; Perth Theatre Trust; ScreenWest; State Library of Western Australia; WA Museum; Art Gallery of Western Australia and the Ministerial Office advises

(a) No

(i) Not Applicable

(b) No

(i) Not Applicable

Armadale Redevelopment Authority

(a) No

(i) Not Applicable

(b) Yes

(i) $2 601.00 GST Exclusive

East Perth Redevelopment Authority; Subiaco Redevelopment Authority

(a) No

(i) Not applicable

(b) Yes

(i) The law firm Minter Ellison has received a total payment of $703 284 (GST inclusive) from EPRA since 23 September 2008.

Subiaco Redevelopment Authority

(a) No

(i) Not applicable

(b) Yes

(i) The law firm Minter Ellison has received a total payment of $208 377 (GST inclusive) from the SRA since 23 September 2008.

Minister Ellison was appointed for EPRA and SRA after open tender for legal services awarded in March 2005, before Cheryl Edwards was appointed Special Counsel in August 2008 and whilst Alannah MacTiernan was Minister for Planning and Infrastructure.

Midland Redevelopment Authority

(a) No

(i) Not applicable

(b) Yes — Property transactions and ad hoc legal advice on environmental matters.

(i) $134 593.61

GOVERNMENT DEPARTMENTS AND AGENCIES — PAYMENTS TO HON CHERYL EDWARDES

1668. Mr M. McGowan to the Attorney General; Minister for Corrective Services

Could the Attorney General advise:

(a) has the Hon. Cheryl Edwardes received any payment from any agency within the Attorney General's portfolio or the Minister's Office since 23 September 2008 for any service provided by Ms Edwardes, including any leadership or career workshop conducted by Ms Edwardes;

(i) if yes to (a), what is the cost associated with any payment or payments made to Ms Edwardes and for what service was she paid;

(b) since 23 September 2008 has the law firm Minter Ellison received any payment from any agency within the Attorney General's portfolio or the Attorney General's Office for any service provided by the firm; and

(i) if yes to (b), what is the cost associated with any payment or payments made to Minter Ellison?

Mr C.C. PORTER replied:

Commissioner for Children and Young People; Corruption and Crime Commission of Western Australia; Department of Corrective Services; Equal Opportunity Commission of Western Australia; Law Reform Commission of Western Australia; Legal Aid Commission of Western Australia; Office of the Director of Public Prosecutions; Office of the Information Commissioner advise:

(a) No

(i) Not applicable

(b) No.

(i) Not applicable.

Department of the Attorney General

(a) No.

(i) Not applicable.

(b) Yes.

(i) $24,422.

"ONE YEAR REPORT TO WEST AUSTRALIANS (A STRONG START)" — PUBLIC SERVANT INVOLVEMENT

1680. Mr M. McGowan to the Treasurer; Minister for Commerce; Science and Innovation; Housing and Works

Could the Treasurer advise:

(a) has any employee of an agency within the Treasurer's portfolio, or the Treasurer's ministerial office, been involved in the preparation, collation or dissemination of material associated with the recently produced 'One Year Report to West Australians (A Strong Start)' publication;

(b) if yes to (a), which agency or office does the employee or employees work for;

(c) if yes to (a), what is the title and level of the employee or employees; and

(d) if yes to (a), what was the nature of the contribution of the employee?

Mr T.R. BUSWELL replied:

(a)-(d) No employee of an agency or Ministerial Office within the Treasurer's portfolio has been involved in the preparation, collation or dissemination of the publication..

"ONE YEAR REPORT TO WEST AUSTRALIANS (A STRONG START)" — PUBLIC SERVANT INVOLVEMENT

1683. Mr M. McGowan to the Minister for Planning; Culture and the Arts

Could the Minister advise:

(a) has any employee of an agency within the Minister's portfolio, or the Minister's ministerial office, been involved in the preparation, collation or dissemination of material associated with the recently produced 'One Year Report to West Australians (A Strong Start)' publication;

(b) if yes to (a), which agency or office does the employee or employees work for;

(c) if yes to (a), what is the title and level of the employee or employees; and

(d) if yes to (a), what was the nature of the contribution of the employee?

Mr J.H.D. DAY replied:

Department of Planning: Landcorp; Armadale Redevelopment Authority; East Perth Redevelopment Authority; Midland Redevelopment Authority; Subiaco Redevelopment Authority; Department of Culture and the Arts; State Records Office; Perth Theatre Trust; ScreenWest; State Library of Western Australia; WA Museum; Art Gallery of Western Australia and the Ministerial Office advises

(a) No

(b)-(d) Not Applicable

GOVERNMENT AGENCIES — FREE TRAVEL OR ACCOMMODATION ACCEPTANCE

1691. Mr M. McGowan to the Minister for Housing and Works

I refer to the Minister's response to Question on Notice No. 1151 concerning the acceptance of free travel and/or accommodation by a public officer, and ask:

(a) what is the title of the officer who accepted two nights' accommodation at Caves House in Yallingup as a guest of the Commonwealth Bank;

(b) on what dates was the officer a guest of the Commonwealth Bank at Caves House;

(c) who approved the officer's acceptance of the accommodation;

(d) was the officer a guest of the Bank for an official function; and

(i) if yes to (d), what was this official function;

(e) what is the date when the contract with the Commonwealth Bank for the provision of banking services to government agencies was last approved; and

(f) on what date is the contract up for re-negotiation?

Mr T.R. BUSWELL replied:

(a) Acting Director, Financial Operations, Department of Treasury and Finance.

(b) 6 and 7 March 2009.

(c) Executive Director, Infrastructure and Finance, Department of Treasury and Finance.

(d) Yes.

(i) Leeuwin Concert.

(e) 29 April 2008.

(f) 29 April 2011.

HOMESWEST PROPERTIES — BUNBURY AND SOUTH WEST

1692. Mr M. McGowan to the Minister for Housing and Works

Could the Minister advise as of 30 September 2009:

(a) how many houses are owned by Homeswest in Bunbury;

(b) how many houses are owned by Homeswest in the South West;

(c) how many of the Homeswest houses in Bunbury are tenanted;

(d) how many of the Homeswest houses in the South West are tenanted;

(e) how many people are on the Homeswest waiting list for Bunbury;

(f) how many people are on the Homeswest waiting list for the South West; and

(g) how many people are on the Homeswest waiting list for the State?

Mr T.R. BUSWELL replied:

(a) 1 135

(b) 2 422

(c) 1 111

(d) 2 351

(e) 636

(f) 1 455

(g) 22 418

PUBLIC HOUSING — RENT INCREASE FOR PENSIONERS

1693. Mr M. McGowan to the Minister for Housing and Works

I refer to the Minister's announcement that public housing rents for pensioners will not increase for 12 months following the recent aged pension rise, and ask:

(a) is the Minister aware of any aged pensioners who have received letters from the Department of Housing and Works announcing an increase in their rent due to the aged pension increase;

(b) if yes to (a), can the Minister guarantee that no aged pensioner has paid any rental increase that he or she should not have paid;

(c) if yes to (a), how many aged care pensioners received such a letter;

(d) if yes to (a), what steps have been taken to correct any errors; and

(e) if yes to (a), will the Minister table copies of such correspondence with personal information deleted?

Mr T.R. BUSWELL replied:

a) There have been no increases in rent resulting from the single rate pension increase announced in the Federal budget. I am, therefore, not aware of any letters having been issued informing single pensioners their rent has been increased as a result of the pension increase.

(b)-(e) Not applicable.

OAKAJEE PORT AND RAIL PROJECT — STATE CONTRIBUTION

1706. Mr B.S. Wyatt to the Premier

Have the Premier's plans for the State's contribution to the Oakajee development, as outlined in the 2009-10 Budget estimates, been considered by the Expenditure and Economic Review Committee (EERC); and

(a) if the above answer is yes, did the EERC consider detailed costings of the Premier's Oakajee proposal?

Mr C.J. BARNETT replied:

No.

FIRST HOMEBUYERS — STAMP DUTY CONCESSION

1776. Mr B.S. Wyatt to the Treasurer

For the following months, how many first home buyers received a full exception or partial concession on the conveyance and transfer of stamp duty on the purchase of their homes:

(a) March 2009;

(b) April 2009;

(c) May 2009;

(d) June 2009;

(e) July 2009; and

(f) August 2009?

Mr T.R. BUSWELL replied:

(a) 1 708

(b) 1 762

(c) 2 030

(d) 2 135

(e) 2 093

(f) 1 800

ONE MOVEMENT FOR MUSIC FESTIVAL — PAID AND FREE ATTENDANCE TOTALS

1812. Mr J.N. Hyde to the Minister for Tourism

As One Movement Pty Ltd has already received $250,000 from Eventscorp before the One Movement Festival has begun, I ask:

(a) what expected paid attendance totals of patrons for ticket-entry performances were offered/agreed to in negotiations with Eventscorp; and

(b) what expected attendance totals of patrons for free performances were offered/agreed to in negotiations with Eventscorp?

Dr E. CONSTABLE replied:

(a)-(b) Nil

PILBARA — ROADSIDE VERGE CLEARING AND NEW STATION ROADS

1815. Mr T.G. Stephens to the Minister representing the Minister for Environment

(1) How many applications have been received for clearing roadside verges in the Pilbara Region for the following calendar years:

(a) 2005;

(b) 2006;

(c) 2007;

(d) 2008; and

(e) as at 1 September 2009?

(2) How many applications have been received for the establishment of new station roads in the Pilbara Region for the following calendar years:

(a) 2005;

(b) 2006;

(c) 2007;

(d) 2008; and

(e) as at 1 September 2009?

(3) Of those, how many have been referred to the Environmental Protection Authority for environmental impact assessment?

Dr G.G. JACOBS replied:

(1) Since 2005, the Department of Environment and Conservation has received 13 applications to clear native vegetation for road construction and maintenance in the Pilbara Region:

(a) 4

(b) 3

(c) Nil.

(d) 4

(e) 2 for the period from 1 January to 1 September 2009

(2) Nil.

Under the Environmental Protection Act 1986, clearing of native vegetation is an offence unless undertaken under the authority of a clearing permit or the clearing is subject to an exemption, including clearing on pastoral leases.

Activities that are associated with the maintenance and management of a pastoral lease that are a requirement under the Land Administration Act 1997, such as clearing to construct a road and other pastoral improvements, would be exempt from requiring a clearing permit, in accordance with Schedule 6 of the Act.

(3) Nil.

PILBARA — NATIVE VEGETATION CLEARING IN ROAD RESERVES

1817. Mr T.G. Stephens to the Minister representing the Minister for Environment

(1) How many notifications have been made under the *Soil and Land Conservation Act 1986* to clear native vegetation in road reserves in the Pilbara region since 2005?

(2) What are the statutory provisions that govern the clearing of native vegetation on pastoral leases?

(3) What agency within your portfolio is responsible for ensuring compliance with the statutory provisions that govern the clearing of native vegetation on pastoral leases?

Dr G.G. JACOBS replied:

(1) The Department of Agriculture and Food is responsible for administering the Soil and Land Conservation Act 1945.

The regulation under the Soil and Land Conservation Regulations 1992 requiring the notification of intention to clear more than one hectare of land to the Commissioner of Soil and Land Conservation

was repealed with the commencement of the clearing provisions under section 51 of the Environmental Protection Act 1986 on 8 July 2004.

Since 8 July 2004, all clearing of native vegetation requires a permit under the Environmental Protection Act unless the clearing is subject to an exemption, including clearing on pastoral leases.

Since 2005, the Department of Environment and Conservation has received 13 applications to clear native vegetation in road reserves in the Pilbara Region.

(2) The Environmental Protection Act and the Land Administration Act 1997 (LA Act).

Under section 51C of the Environmental Protection Act, clearing of native vegetation is an offence unless undertaken under the authority of a clearing permit or the clearing is subject to an exemption, including clearing on pastoral leases.

Exemptions for low impact routine land management practices are contained in the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Exemptions in the Regulations do not apply within environmentally sensitive areas declared under section 51B of the Act.

Activities that are associated with the maintenance and management of a pastoral lease that are a requirement under the Land Administration Act, such as clearing to maintain or reconstruct existing fences (and other pastoral improvements), would be exempt from requiring a clearing permit.

(3) The Department of Environment and Conservation is responsible for ensuring compliance with the clearing provisions under the Environmental Protection Act.

GOVERNMENT CONTRACTS — SUCCESSFUL COMPANIES OR INDIVIDUALS

1818. Mr M. McGowan to the Treasurer

(1) Could the Treasurer advise, since 23 September 2008, have any of the following companies or organisations or individuals been successful in receiving any State Government contract or tender:

(a) HBF;
(b) Joondalup Hospital Pty Ltd;
(c) Carnegie Corporation;
(d) Laing O'Rourke;
(e) The Water and Carbon Group;
(f) Chamber of Minerals and Energy;
(g) OZ Minerals;
(h) Coca Cola Amatil;
(i) Allia Venue Management;
(j) Consolidated Press Holdings;
(k) RBS (formerly ABN Amro);
(l) Capricorn Timber;
(m) Bilfinger Berger Project Investments;
(n) Alba Capital Partners;
(o) SAP (Australia);
(p) Australian Finance Group;
(q) Satterley Property Group;
(r) Extension Hill Iron Ore and Asia Iron;
(s) Market Force;
(t) ERM Power;
(u) Aviva Power;
(v) Government Relations Australia;
(w) Probuild;
(x) Competitive Foods Australia Ltd;
(y) Inpex Ltd;
(z) Babcock & Brown Power & Alinta;
(aa) Perdaman Chemicals and Fertilisers;
(bb) FerrAus Ltd;
(cc) Perth Energy;
(dd) TFS Ltd;

(ee) Tenix;
(ff) Pacific Industrial Corporation;
(gg) Australian Food and Grocery Council;
(hh) Hansol PI;
(ii) Macarthur Minerals;
(jj) Sasol Chevron Consulting Ltd;
(kk) Cobham (National Jet);
(ll) Forum of Regional Councils;
(mm) Corrs Lawyers;
(nn) Sanori Development Pty Ltd;
(oo) New Sonic Pty Ltd;
(pp) Ian Campbell;
(qq) Clive Palmer;
(rr) Tom Harley;
(ss) Pacific Energy;
(tt) Murdoch University;
(uu) Zernike Australia;
(vv) Kimberley Metals Group;
(ww) BP;
(xx) First Solar;
(yy) AEGIS Consulting;
(zz) SERCO (Australia);
(aaa) The Gull Group of Companies;
(bbb) North West Iron Ore Alliance;
(ccc) Glew Corporate Communications;
(ddd) AnaeCo Ltd;
(eee) BP Australia;
(fff) Open Mind Research Group;
(ggg) Minerals & Metals Group;
(hhh) West Australian Rock Lobster Fishers' Federation Inc;
(iii) Sensear;
(jjj) Aurox Resources Ltd;
(kkk) ConocoPhillips;
(lll) National Insurance Brokers Association; and
(mmm) Wunan Foundation?

(2) If yes to (1), which companies or organisations were successful in receiving the State Government contract or tender?

(3) If yes to (1), what was the tender or contract number?

(4) If yes to (1), what was the cost associated with the tender or contract?

(5) If yes to (1), what date was the relevant contract or tender awarded?

Mr T.R. BUSWELL replied:

(1)-(5) The only centrally held and readily available information is for contracts awarded over the value of $20 000. This information is published on the Tenders WA website managed by the Department of Treasury and Finance..
