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

WATER POLO — FINA UNDER-18 CHAMPIONSHIPS

Statement by Minister for Tourism

DR K.D. HAMES (Dawesville — Minister for Tourism) [2.02 pm]: I advise the house that in December 2012 Western Australia will host the under-18s Fédération Internationale de Natation—FINA—World Junior Men's and Women's Water Polo Championships at Challenge Stadium. This is a wonderful achievement for the state. The championships will attract the world's best under 18s water polo players to Perth. Thirty-six junior water polo teams are expected to compete from 20 countries, such as New Zealand, Canada, the United States, Italy and South Africa.

This is the first time that a men's and women's championship will be held at the same time and in the same location. In the past they have been two separate events. The championships were secured by Australian Water Polo Incorporated, with event funding provided by the WA government through Eventscorp. Eventscorp plays an instrumental role in supporting international events in WA to increase visitation, boost the economy, add vibrancy and enhance the profile of the state. Apart from strong spectator numbers, the water polo championships are expected to attract more than 1 300 interstate and international visitors, contributing millions to the state's economy.

This state has vast experience in hosting major water-based sporting events of international calibre. WA has previously hosted FINA events, including the 1991 and 1998 FINA Swimming World Championships, and more recently, the 2008 FINA World Masters. In addition, we recently supported the Telstra Drug Aware Pro Margaret River surfing competition and in December we will host the Perth 2011 International Sailing Federation—ISAF—Sailing World Championships.

COMMUNITY RESOURCE CENTRE TRAINEE SUPPORT PROGRAM

Statement by Minister for Regional Development

MR B.J. GRYLLS (Central Wheatbelt — Minister for Regional Development) [2.04 pm]: I inform the house about the community resource centre trainee support program. The long-term sustainability of many regional towns is dependent on opportunities for skills development and employment. The CRC trainee support program aims to help create pathways to employment for regional people while building capacity within the WA community resource network. Funding of up to $20 000 per trainee is provided through the royalties for regions fund to assist with the employment of a trainee for the duration of their traineeship, which is generally a 12-month period. They are employed under national apprenticeship and traineeship employment-based training arrangements. Traineeships and apprenticeships are practical, hands-on training programs. Trainees are paid while they learn and traineeships offer a great start to all sorts of opportunities and careers. Each CRC determines its needs and the type of traineeship arrangement that will add value to the services it provides. Australian government apprenticeships incentives are available to the CRC as the employer. Age restrictions do not apply to traineeships, and a traineeship can commence at any time during the year.

There are currently 79 trainees employed by CRCs across the state, from Kununurra in the north to Walpole in the south, with the support of Liberal–National government funding. Many CRCs are going through the process of either employing a trainee for the first time or employing additional trainees. Five trainees have completed their traineeships so far. The majority of traineeships being undertaken are for either certificate II, III or IV in business or certificate II, III or IV in business administration. Other traineeships being undertaken are in community services, information technology, library and information services, tourism, financial services, and arts administration.

There has been excellent feedback from communities that are reaping the benefits of this program. At the opening of this year's Wagin Woolorama, the Wagin Agricultural Society president publicly acknowledged the assistance provided to the committee by the trainees attached to the Wagin CRC.

One of the greatest benefits of the program is that it enables young people to continue living in their home town while gaining new skills and earning an income. It is impossible to put a value on how important this is to the trainees, their families and the wider community. I recently received a letter from a trainee at one of the CRCs, outlining the great benefits that she has personally received by being a part of this program. She said the traineeship had given her the opportunity to change her life for the better, giving her greater skills and personal confidence, as well as a career with endless possibilities. If this is replicated across regional WA, then this is an extremely important investment in our young people and those who wish to retrain in a new career.

EDUCATION — ABORIGINAL TUTORIAL ASSISTANCE SCHEME

Statement by Minister for Education

DR E. CONSTABLE (Churchlands — Minister for Education) [2.07 pm]: I wish to provide additional information on the Aboriginal tutorial assistance scheme. The information that I was originally provided by the Department of Education about upper secondary ATAS has now been clarified. Previous advice received from the department was incomplete. Funding comes to the state from the commonwealth through the National Education Agreement. Funding for the primary and lower secondary Aboriginal literacy and numeracy programs for this year has already been allocated to the relevant schools for the benefit of eligible Aboriginal students. The upper secondary ATAS scheme, however, is a state-based initiative.

I am now advised by the Department of Education that the February 2011 student census data has recently been finalised and that the number of years 11 and 12 Aboriginal students who are eligible to receive the upper school ATAS program has been identified. Through their schools, years 11 and 12 students choose whether to take up the option of the Aboriginal tutorial assistance scheme. Once the number of students wishing to participate has been confirmed, funds are forwarded to schools.

The department has also advised me that it will be contacting schools before the end of this term to notify them of the upper school ATAS funding they will receive.

Mr B.S. Wyatt: Twenty-five per cent of the year is over, minister!

The SPEAKER: I formally call you to order for the first time today, member for Victoria Park. If you have questions about what a minister might say in this place, I suggest that you put them to the minister in question time.

QUESTIONS WITHOUT NOTICE

INFRASTRUCTURE INVESTMENT — STATE DEBT

210. Mr E.S. RIPPER to the Treasurer:

Before I ask my question, I note the sad passing of John D'Orazio and extend to his wife, Ailsa, and his family and many friends our deepest sympathies. I note that at a suitable stage there will be a condolence motion.

My question is to the Treasurer. I note our state's many unfunded infrastructure needs, which include the $800 million backlog in road maintenance, the increasing gap in investment in our electricity networks and the necessary expansion of the southern seawater desalination plant.

(1) How will the Treasurer meet these essential needs alongside projects such as the Perth Waterfront foreshore project, the sports stadium and the Premier's palace?

(2) Have any of these projects been cancelled or put on the backburner; and, if so, which ones?

(3) Does the Treasurer commit to staying within the Premier's debt limit of $20 billion that he set in September 2010?

Mr C.C. PORTER replied:

I thank the member for the question.

(1)–(3) I recall that the Premier said in effect that the objective of the government was to contain debt at around the $20 billion mark. That is a good rule of thumb for an economy the size of Western Australia and at this present time. I certainly agree with the Premier on that, and we are working very hard to contain debt. The Leader of the Opposition will have to wait until the actual budget to see precisely what the debt will be. Essentially, the Leader of the Opposition's question is this: at any budget cycle are there very strong demands on the government to spend large amounts of money on infrastructure? Yes, of course there are.

Mr E.S. Ripper: My point is that you are cutting back on core infrastructure to fund pet projects.

Mr C.C. PORTER: Let me just show the house a bar graph on the asset investment program of this government compared with the program of the last government, keeping in mind that the Leader of the Opposition's contention is that we are cutting back somehow an asset investment in infrastructure. The bar graph that I am holding up to show members represents the previous government's program. Members will see a black line, and after that black line the bar graph represent the asset investment and infrastructure program of this government.

Mr M. McGowan: Table the document.

Mr C.C. PORTER: I am very happy to table it. Members will note that the average annual spend in the asset investment program under the previous government was $3.2 billion.

Mr E.S. Ripper: What was the debt you inherited?

Mr C.C. PORTER: The Leader of the Opposition is asking us whether we will meet the rapid increase in demand for infrastructure spending in this state.

Mr E.S. Ripper: That's what I am asking you.

Mr C.C. PORTER: Within reason, within parameters and with a keen eye to debt, yes, we will. The reason our debt is higher than the former government's debt is that we are spending far more than the former government ever did on asset investment programs. The Leader of the Opposition gets up in this place and tries to put to us that we are not spending enough on the asset investment program and that debt is too high.

Mr E.S. Ripper: No; wrong priorities is what I am putting to you—pet projects while you can't provide lights in the Pilbara!

Mr C.C. PORTER: The Leader of the Opposition then asks us what we are going to build and what we are not going to build.

Several members interjected.

The SPEAKER: Members!

Mr C.C. PORTER: The average annual spend under the previous government was $3.2 billion. The average annual spend under this government in the asset investment program is $6.6 billion.

Mr B.J. Grylls: Double!

Mr C.C. PORTER: Double what the previous government spent, yet the Leader of the Opposition stands in this place and asks a question with the clear inference that we are not spending enough on our asset investment program. How could that possibly be right? It is not right. We are obviously looking at debt with a very keen eye and managing that issue. But, yes, there are very strong demands. The total spend of this government that we envisage over the six years and out to 2013–14 in the asset investment program is $39.3 billion. The spend over the seven years of the previous government was $22.2 billion, yet the Leader of the Opposition stands and puts to us that we are not spending enough on the assets of the state. Ridiculous!

INFRASTRUCTURE INVESTMENT — STATE DEBT

211. Mr E.S. RIPPER to the Treasurer:

I have a supplementary question. I note the Treasurer's assertion about my question. Is it not the truth that right now the Treasurer is cutting back on funding bids recommended to him by Western Power; Horizon Power, which says it is necessary to keep the lights on in the Pilbara; the Water Corporation; Main Roads; and the Public Transport Authority, which has been begging the Treasurer for two years to fund the order for new trains?

Mr C.C. PORTER replied:

It amazes me that the Leader of the Opposition, who was Treasurer for some period, now all of a sudden subscribes to the magic pudding view of economics. The Leader of the Opposition knows that not every request is acceded to in every budget cycle. It has always been that way.

Mr E.S. Ripper interjected.

The SPEAKER: Leader of the Opposition!

Mr C.C. PORTER: The Labor Party had a period in government —

Mr E.S. Ripper interjected.

The SPEAKER: Leader of the Opposition, I gave you the opportunity to ask a supplementary question. You have asked that. I gather that there is some expectation from you that you might want to hear an answer. You continue to interject.

Mr C.C. PORTER: Again, the point of the Leader of the Opposition's question is whether we are doing enough to meet the infrastructure needs—social and economic—of the state. There is one way that the government can be sure that we are doing a better job than our predecessor, and that is by us spending twice as much money on the asset investment program. That means that we are building twice as many things as the Labor Party ever did. For the Leader of the Opposition to get up in this place and tell us that we are not spending enough and that needs are going unmet is ridiculous.

Tabling of Paper

The SPEAKER: Treasurer, you indicated that you had a document you were going to table.

Mr C.C. PORTER: I did, and I shall.

[See paper 3299.]

PRISONS — OVERCROWDING

212. Mr J.M. FRANCIS to the Minister for Corrective Services:

I quickly and sincerely thank and acknowledge the Leader of the Opposition for my personal invitation to join Labor's shadow cabinet next week. But I do have a tip for him: if he wants to represent the people of WA, he should learn how to spell "Western Australians". That would be a good start.

The SPEAKER: Member for Jandakot, I have given you the opportunity to ask a question in this place. I have spoken to you about this before. I formally call you to order for the first time today. I just want to hear a question from you, not statements, not preambles and not other issues.

Mr J.M. FRANCIS: My question is to the Minister for Corrective Services. While I make no apology for the government's tough stance on law and order, I am concerned about the potential for overcrowding in our state's prison system. Can the minister please inform the house of the steps being taken in this area?

Mr D.T. REDMAN replied:

I thank the member for Jandakot for the question.

Mr P.B. Watson interjected.

The SPEAKER: Member for Albany, if you want to ask a question in this place, there are always opportunities. I formally call you to order for the first time.

Mr D.T. REDMAN: I thank the member for Jandakot for the question. He highlights a good point; that is, in November 2009 the Liberal–National government announced that an additional 640 beds would be constructed across Hakea Prison, Casuarina Prison and Albany Regional Prison. Yesterday afternoon I was at the opening of the Hakea facility. That unit has 256 beds. It is very pleasing that we have been able to respond to some pressure on accommodation within the prison system about 18 months or so ago. In the not-too-distant future we will also be looking at expansions within Casuarina and Albany—256 beds in Casuarina and 128 beds in Albany. This decision was on the back of $64 million of savings that we were able to identify within the cost structure of expanding Acacia Prison, as well as $7 million in savings to the planned Wheatbelt work camp. This has been done from savings.

I might add that Hakea Prison is the first point of contact for many people who go into our prison system. In essence, it is a clearing house. They are generally remand prisoners and also prisoners who are waiting for distribution to some of the other prisons within the state. It is for that reason that it is important that we have programs. It is important that we have a culture within Hakea to deal with its unique circumstances. We opened the new facilities yesterday. It was very pleasing to see the shadow Minister for Corrective Services there looking at the facility as well. He will agree that the nature of the facility is such that it meets the contemporary needs of prisons, prisoners and prison officers. It deals with the overcrowding issue, it deals with access to education and programs, and of course, it also deals with safer working conditions for staff. Some of the improvements include extensions to the perimeter wall to match the prison's existing perimeter. There are also purpose-built program rooms, prisoner recreation areas, prisoner common areas, prisoner food distribution areas and additional laundry facilities to deal with a contemporary prison design. In addition, it needs to be highlighted that a lot of the facilities within this particular prison unit were made by prison industries. I note that prisoners from Bunbury Regional Prison made the majority of the beds; prisoners from Hakea Prison made the ladders for the beds, the bed rails and shelving; prisoners from Wooroloo Prison Farm made the management benches, the pedestals and cabinets; and prisoners from Albany Regional Prison made the mattresses.

It is great to see the outcomes of the prison industries being able to cater and make a contribution to capital works. This is on top of a $655 million capital works program that is happening within the Department of Corrective Services, which deals with a decade of underinvestment from the Labor Party. This government is committed to taking dangerous criminals off the streets, but we do not stop there; we are also prepared to invest in better prisons, with better rehabilitation programs to break the crime cycle.

PRISONERS — MENTAL IMPAIRMENT

213. Mr J.R. QUIGLEY to the Attorney General:

I refer to the Criminal Law (Mentally Impaired Accused) Act 1996.

(1) How many prisoners in Western Australia are currently being held in custody after findings of not guilty due to insanity, and how many of those are Indigenous?

(2) How many prisoners in Western Australia are being held without trial pursuant to the Criminal Law (Mentally Impaired Accused) Act, and how many of those are Indigenous?

(3) Given the obvious failure of the system in respect to Mr Marlon Noble, who was held in prison for 10 years without trial or conviction, will the Attorney General, as a gesture of transparency, immediately

make available to me the annual reports prepared by the Prisoners Review Board for each of the two classes of prisoners, minus their names?

Mr C.C. PORTER replied:

(1)–(3) I will have to have a think about that last request, because of course, simply redacting the prisoners' names will still enable the reader to know exactly who those reports are referring to in each instance. But, I will give the member for Mindarie's request some thought. Traditionally it has never been the case that those reports are given over by the executive to anyone outside of the executive.

Mr J.R. Quigley: There is no transparency or accountability.

Mr C.C. PORTER: But that is the system.

Mr E.S. Ripper: Is that not the point?

Mr C.C. PORTER: As I said, I will give that request some thought and also look at the historical precedents that exist. The member's question is in effect that under the —

Mr E.S. Ripper: How about making a decision, rather than just relying on precedent.

The SPEAKER: Leader of the Opposition!

Mr C.C. PORTER: Unlike the Leader of the Opposition's good self, I will not make a decision about a matter of extreme importance standing on my feet after having had the question put to me for the first time.

Mr E.S. Ripper: No, don't rely on precedent; take a decision, given that it's a new circumstance.

Mr C.C. PORTER: Precedent in these matters is not without importance.

Mr J.R. Quigley interjected.

Mr C.C. PORTER: Well it is not. There are reasons under the act for things being done in a certain way under the former Labor government and our government. The fundamental point about the member's question is that in this jurisdiction, under the Criminal Law (Mentally Impaired Accused) Act, there are two categories of prisoner: those who might be found insane at a trial and those who are found unfit to stand trial. The member has asked me how many prisoners fall into each category. With some prior notice, I could have given a precise answer. I can say that I have commenced an internal audit of all of prisoners who have been declared unfit to stand trial and who are presently incarcerated pursuant to such an order. I recall off the top of my head that there are about 17 or so such prisoners, but I could be wrong about the precise number. I do not have in my head, even in general terms, the number of prisoners presently detained because they were found to be insane after a trial, but I can find that out for the member. My primary concern in conducting an internal audit has been to identify all those individuals who are presently held because a court made a determination that they were unfit to stand trial. That audit is underway internally and I will give the numbers for both those categories of prisoners in due course.

I make a general point about the Marlon Noble matter. To an extent, the case has been reported and discussed in a way that has flowed from a presumption or inference that it is an obvious injustice and that it is just so staggeringly unfair for somebody to be incarcerated without—the expression is used often—ever having faced trial. The fact is that the relevant act has similar counterparts in every state and territory of Australia. The previous government operated under it, as does the present government. In effect, it provides that if an accused is charged with a crime and the judge looks at the facts before him and considers that there is a high prospect or reasonable likelihood that the accused did what he was accused of doing, but that the accused's mental state is such that he is unable to go through a trial because he would not be able to understand the trial or give instructions to his counsel, the accused will not go through the trial process. Nevertheless, a determination has to be made as to what will happen to the accused in such circumstances. The fact is that it is not an inhumane system; it is a fair system, and it is the system that operates in every state and territory of Australia.

Mr J.R. Quigley: Except if you wanted to plead not guilty.

Mr C.C. PORTER: As I understand it, member for Mindarie, all those arguments were advanced in open court, and the submission was that Mr Noble was mentally unfit to stand trial at that time. That was the determination that the judge made. Let us just pause for a moment and consider the offences of which Mr Noble was accused. The judge, having considered the fitness to stand trial submission, must have determined that there was a reasonable likelihood that Mr Noble had committed them, and they were very, very serious offences.

Mr J.R. Quigley: Without those witnesses ever being cross-examined.

Mr C.C. PORTER: They occurred in respect of two young girls at a swimming pool complex in Carnarvon.

Mr J.R. Quigley: Without the evidence ever being tested! It is shocking to put this out about him now, without this ever having been tested! It has never been tested, and in fact you know that the victims are now saying that it was the other uncle!

Mr C.C. PORTER: I am putting to the member for Mindarie that a judge of the District Court of this state must have made a determination, as he had to pursuant to the act, that there was a strong likelihood that Mr Noble did what he was accused of doing. Would the member for Mindarie agree that that is what the judge determined in this matter?

Mr J.R. Quigley: Yes, on what was put before him, the same as the judge found that Andrew Mallard was a murderer on what was put before him! They've got to put the right stuff before the judge!

Several members interjected.

The SPEAKER: I am going to presume that the Attorney General has finished his comments at this point. I will give the member for Mindarie the opportunity to ask a supplementary question, or else I will move on with question time.

PRISONERS — MENTAL IMPAIRMENT

214. Mr J.R. QUIGLEY to the Attorney General:

I have a supplementary question. Will the Attorney General please give an undertaking to provide to the Parliament by the end of this day's sitting the statistics for those being held under the Criminal Law (Mentally Impaired Accused) Act 1996, with a breakdown of Indigenous and non-Indigenous prisoners?

Mr C.C. PORTER replied:

I will provide the figures for how many people are being held in our prison system pursuant to a declaration by a judge that they are unfit to stand trial. I will get the figures for those held in our prison system by virtue of the fact that they were declared insane—that is, they ran a successful defence of insanity under the Criminal Code. It may take me longer than the end of today to obtain that information, but the member for Mindarie knows that he can approach me at any time for that sort of data, and often does, and I think that for just about every request he has ever come to me with, I have given him the data he needed. He could go about this in a somewhat more gentlemanly fashion, but it is up to him how he wants to go about it.

Mr E.S. Ripper: Like the member for Vasse? He's a gentleman!

Mr C.C. PORTER: I will get that information for the member for Mindarie, as a request from one gentleman to another, as I always do whenever he asks me for anything.

PILBARA CITIES — GAP RIDGE INDUSTRIAL ESTATE

215. Mr V.A. CATANIA to the Minister for Lands:

I was in Karratha yesterday and noticed that civil works had commenced at the new Gap Ridge industrial estate, as part of the government's Pilbara Cities initiative. Can the minister outline details of the new estate and the opportunities it will create for new and established businesses in the region?

Mr B.J. GRYLLS replied:

I thank the member for North West for the question. Some members may not have heard it because members of the opposition continue to try to crowd out the member for North West when he asks questions, because what he is asking about is so embarrassing to them. They are so embarrassed about all the gaps they left after being in government for eight years that the member for North West, after switching sides, is now able to deliver on.

The SPEAKER: Minister for Lands, I did hear the question, but I accept that perhaps there were some people in this place who did not hear the question. I also accept that perhaps there are members in this place who cannot hear the answer. I suggest a bit of silence from some members at this point.

Mr B.J. GRYLLS: The member for North West's question was about the new Gap Ridge industrial estate, which is a vital component of the Pilbara.

Mr T.G. Stephens: There won't be any power for it! There will be no electricity! What do you do about that?

The SPEAKER: I formally call the member for Pilbara to order for the first time today.

Mr B.J. GRYLLS: I will not accept the member for Pilbara's interjection, but if he interjects again, I will be forced to respond to his interjection. I will take the Speaker's ruling, and I will not respond to the interjection unless the member for Pilbara tries again.

The Gap Ridge industrial estate is 260 hectares of zoned industrial land. The development will yield 114 industrial lots. It is eight kilometres west of Karratha on the Dampier Highway. Those who have been there recently would have seen all of the activity on the right-hand side of the Dampier Highway on the drive into Karratha. It is a huge new industrial complex that is being undertaken.

Mr T.G. Stephens interjected.

Mr B.J. GRYLLS: There is the interjection. I absolutely assure the good people of the Pilbara and the people from right across Australia who are investing in the Liberal–National government's Pilbara Cities initiative that there will be water, there will be power, there will be industrial land and there will be residential land. The reason for that is that this side is in power; the Liberal–National government is here to make sure we drive the Pilbara Cities investment. What we had for the eight years of the previous government was no power, no water, no development, no industrial land, no residential land, no service workers' accommodation and no apartment building. That is at the first level now; it is possible to stand on the first level of the apartment building and see Nickol Bay in the background. It is an outstanding achievement as we build the amenity and the livability of the community. All those projects have power; future projects will have power.

The opposition has put forward a $1.5 billion solution to power the Pilbara—the network grid it has talked about but never did anything about—using $1.5 billion of the available infrastructure spend in the Pilbara, which would mean there would be no other money for water, no other money for land, no other money for housing and no other money for service workers' accommodation. I think opposition members might need to revisit their policy position, because if they are saying that is what they are going to spend, they will find that Pilbara Cities will stop. There will be an integrated power grid, and that is it. All they will have is an integrated power grid to nowhere, to supply nothing, because there will be no industrial land. There is industrial land now because the government is funding the Gap Ridge industrial estate.

Stage 1 incorporates 60 hectares for general and light industrial use and will attract obviously new investment and jobs into the region. Stage 1 civil works include 90 hectares, of which 60 hectares will be for development. Stage 1 was released via expressions of interest in February, and more than half of the 41 lots are already under contract off the back of the Premier's vision for Pilbara Cities, driving investment in the region. It is a wonderful change from where we were previously.

Demand for industrial land has obviously been fuelled by Chevron's Gorgon and Wheatstone projects, the Pluto expansion and obviously huge investment in the iron ore sector. Gap Ridge is suitable for transport, light and general businesses supporting oil and gas and mining sectors, as well as the major industries sited on the Burrup Peninsula and the Maitland heavy industrial estate, and offshore resource facilities. A major goal of our Pilbara Cities investment is to make sure that the investment the state government makes—there is billions of dollars of it—happens at a level that ensures that there is water, power, industrial land, residential land and good social amenity. A new hospital is coming on stream and a new school is about to finish. This will make sure that the Pilbara, and Karratha in particular, becomes a destination for people right across Australia to go to and to take part in one of the most exciting developments in Western Australia's history.

COMMONWEALTH HEADS OF GOVERNMENT MEETING 2011 — HOMELESS PEOPLE

216. Mr W.J. JOHNSTON to the Premier:

I refer to comments by the police minister last week that for homeless people during the Commonwealth Heads of Government Meeting, "I will get a tent and a cushion".

(1) Are these comments acceptable, or does the Premier favour the Minister for Community Services' view that homeless people in the city centre will be put into non-government organisation accommodation during this period?

(2) What additional funds will the Premier commit to NGOs accommodating additional homeless people during this period?

(3) What security measures will the Premier put in place to ensure those most vulnerable in our community are protected when they are removed from familiar surroundings?

Mr C.J. BARNETT replied:

Before I answer the question, can I also join in expressing sympathy to John D'Orazio's family and friends. There will be a subsequent opportunity for members to express their views in that regard.

(1)–(3) With respect to comments made in debate, sometimes statements made by members in this house create a very unfair position when taken out of context. The minister recognises that. With respect to the issue, though, the Commonwealth Heads of Government Meeting will be concentrated over a three-day period. I do not anticipate it will have a significant impact on homeless people in Perth at all, but if it does, those people will be treated with respect and found accommodation. I do not expect that to be a significant issue during CHOGM at all.

COMMONWEALTH HEADS OF GOVERNMENT MEETING 2011 — HOMELESS PEOPLE

217. Mr W.J. JOHNSTON to the Premier:

I have a supplementary question. Does the Premier personally endorse the arrogant comments of the Minister for Police last week during the debate on this issue?

Mr C.J. BARNETT replied:

That is a particularly silly supplementary question. I have just answered the question. In any city, there are invariably a number of homeless people, for all sorts of reasons. Sometimes it is family breakdowns; sometimes it is mental health issues or whatever. Those people will be treated with respect and care. I meet regularly with the heads of churches through the Council of Churches of WA. They have put forward a proposal to the government for a drop-in centre in the central city area. That is something the government is looking at right now, for precisely that reason.

Mr E.S. Ripper: What have you said to the police minister? Have you told him to pull his head in?

Mr C.J. BARNETT: Would I say that to him? No, I would not. The comments were regrettable. The minister is an experienced member of Parliament. Frankly, out of frustration, after two weeks of mindless debate about the CHOGM bill, I can understand how that frustration occurred. Everyone in this chamber, including me, has made comments in the heat of debate that they probably regret. I do not endorse those comments and neither does the minister. However, the relevant issue is: will homeless people in Perth be disrupted? I do not believe they will be, but if that occurs, they will be treated with respect, and accommodation will be found for them.

JOONDALUP HEALTH CAMPUS — EMERGENCY DEPARTMENT

218. Mr A.P. JACOB to the Minister for Health:

I refer to a question the Deputy Leader of the Opposition asked on 5 April asserting that the Minister for Health had been incorrect in claiming that the new emergency department at Joondalup Health Campus would reduce ambulance ramping. Can the minister please outline to the house the real situation?

Dr K.D. HAMES replied:

We always know to take with a grain of salt what the Deputy Leader of the Opposition says about issues —

Mr E.S. Ripper: Wet behind the ears.

Dr K.D. HAMES: Yes, wet behind the ears; I like that comment!

The Deputy Leader of the Opposition put out a press statement and asked questions last week about what had happened at Joondalup hospital in relation to my comments about ambulance ramping. He put out a press release that was quite factually correct, but then he asked a question in this house —

Mr B.J. Grylls: Never!

Dr K.D. HAMES: Only factually correct in that the things he did not say were the important ones! The things he actually said were correct. However, he then got up in this house and asked a question, based on that press release, that contained erroneous comments which totally distorted the meaning of the question. The Deputy Leader of the Opposition commenced the question by saying —

> … the minister claimed that Joondalup Health Campus emergency department redevelopment would reduce ambulance ramping.

So, that is what I said. Then he asked —

> (1) Can the minister confirm that, despite this claim, Joondalup hospital still has the worst ambulance ramping statistics in WA, with 103 hours in March alone?

That is correct, but it does not say that that is a "significant" reduction on the previous month's hours! Do not bother saying that! The next question insinuates that the number of hours is actually greater and not less; the Deputy Leader of the Opposition asked —

> (2) What can the minister offer the people of Joondalup after this measure has clearly failed?

That is his comment saying that it has clearly failed. It is totally incorrect and it is the same thing that those two members opposite do all the time.

Several members interjected.

Dr K.D. HAMES: I am getting a second chance because here I am! This is my second chance. What I find with every question I get from the Deputy Leader of the Opposition is that either I know right from the start that it is wrong, so I can answer it when I am on my feet, or it is about an issue that I have not been made aware of yet, but I know damned well that it is going to be wrong, so that gives me the next chance at the next sitting of the house to get up and show it is wrong. So here I am yet again showing that it is wrong.

Can I tell members what used to happen? Joondalup hospital used to have a large number of diversions; there would be some ambulances ramped at the hospital and the rest would be diverted to all the other hospitals. Since the changes, since the opening of the new emergency department, diversions have stopped; diversions are now non-existent and 872 hours of diversions from Joondalup hospital have ceased. In that same time period—

remember we opened the new emergency department only about a month or so ago—ambulance ramping has reduced at that hospital from 153 hours in February to 103 hours, which is a 33 per cent reduction in ramping hours. What has also happened at the hospital since the new emergency department opened? Attendances to the emergency department have increased by 18 per cent, admissions have increased by 33 per cent, operations on emergency patients have increased by 28 per cent, and the total number of patients has increased by 15 per cent.

Mr E.S. Ripper interjected.

The SPEAKER: Leader of the Opposition!

Dr K.D. HAMES: At the same time that the hospital has had a huge increase in demand, it has had a significant reduction in ambulance ramping and the cessation of the diversion of ambulances. What does the hospital tell us, too, about the beds that it has? We have only just got to the creation of those new additional beds. The hospital has not yet got them all open and it has not yet got all its theatres open, so it has just started. The response from the hospital says —

Mr E.S. Ripper interjected.

The SPEAKER: Leader of the Opposition, I formally call you to order for the first time today.

Dr K.D. HAMES: In its response to me the hospital says that despite the huge increase in demand, it has stopped diversions and has reduced by one-third ambulance ramping. It expects that to improve enormously over the next few months as it gets all its hospital beds and new theatres open. Therefore, despite the inference of the question from the Deputy Leader of the Opposition, which —

Several members interjected.

Dr K.D. HAMES: Yes, outrageous is the right term. The hospital has clearly not failed and, as I said would occur, there has been an enormous improvement.

EDUCATION — ABORIGINAL TUTORIAL ASSISTANCE SCHEME

219. Mr B.S. WYATT to the Minister for Education:

I refer to the year 11 and 12 Aboriginal tutorial assistance scheme and the minister's now incomplete answer in the Parliament on 24 March 2011 in which she stated —

> This is commonwealth funding, and I understand that it is the commonwealth funding that has not come through at this point for years 11 and 12.

(1) How is this statement out of context or incomplete?

(2) In her answer on 24 March, the minister also stated —

> … that the funding has increased from 32 weeks a year to 40 weeks a year.

Is that complete or incomplete?

(3) Now that the minister has confirmed that her previous answer was not correct, will she immediately reinstate this key front-line service and apologise to the house for her misleading answer?

Dr E. CONSTABLE replied:

I thank the member for Victoria Park for his question.

(1)–(3) I must say that when I went back and read the question I clearly did not express what I was intending to express. It is commonwealth funding in the national education agreement, and when I said "come through" I meant it had been sent through to schools by the department, so I did not express that clearly at all and I apologise for that. The Aboriginal tutorial assistance scheme funding for primary schools, for year 4 and 6 students based on their year 3 and 5 National Assessment Program–Literacy and Numeracy results, had been sent to schools and schools have been informed about that funding. Similarly, for year 8 and 10 students in lower secondary school based on their NAPLAN results in year 7 and 9—the previous year—that funding had been sent through.

The funding for upper school is a state-based initiative—I had originally been told that that was part of a commonwealth initiative—to provide tutorial assistance particularly to those students doing an Australian tertiary admission rank or Western Australian Certificate of Education program in years 11 and 12. This year, that funding is based on the census data that became available at the beginning of March. School enrolment information was sent to the department and, based on that information, the students in years 11 and 12 have been offered tutorial assistance. I am told that about only one-third of students in years 11 and 12 take up that offer.

Mr B.S. Wyatt: And the 40 weeks?

Dr E. CONSTABLE: I will need to look at this for the member, but I believe the 32 to 40 weeks applies to the primary and to the lower secondary —

Mr B.S. Wyatt: But not to upper secondary?

Dr E. CONSTABLE: As I understand, upper secondary is a state-based initiative, and this year the funds will come through for second term.

EDUCATION — ABORIGINAL TUTORIAL ASSISTANCE SCHEME

220. Mr B.S. WYATT to the Minister for Education:

I have a supplementary question. In her previous answer, the minister referred to the upper secondary ATAS and said —

> … I also understand that the funding has increased from 32 weeks a year to 40 weeks a year so that it covers the whole school year.

Is that correct or incorrect?

Dr E. CONSTABLE replied:

As I understand, the funding increase from 32 to 40 weeks was for primary and lower secondary students because those numbers are known the year before.

Mr B.S. Wyatt: So not for upper secondary students. That was incorrect.

Dr E. CONSTABLE: That information is known the year before.

Mr B.S. Wyatt: But your answer is incorrect.

Dr E. CONSTABLE: This year—I do not know about previous years—the ATAS for years 11 and 12 has now been put in place for next year and schools will be informed next week of that funding.

BUSHFIRE SEASON

221. Mr A.J. SIMPSON to the Minister for Emergency Services:

Yet again, we have had a hot, dry summer that has led to widespread major bushfires across the state. Indeed, my electorate was recently devastated by one of the worst fires that has been seen in the area for a long time. I continue to work with the government and the City of Armadale to help people rebuild following the destruction caused by the fire. With this in mind, will the minister please provide the house with a summary of this year's bushfire season?

Mr R.F. JOHNSON replied:

I thank the member for Darling Range for the question and for his very keen interest in this particular area. I know that many of his constituents suffered during this bushfire season. He is quite right; we have seen one of the most devastating bushfire seasons on record in this last period. I want to pay tribute to the aerial firefighting fleet operated by FESA and the role it played in protecting and saving hundreds of homes. Can I also say that I believe that unit also saved lives during this bushfire season. FESA's aerial fleet included four Helitacs, two type 1 helicopters and an intelligence gathering helicopter. The Department of Environment and Conservation also operated fixed-wing aircraft, including eight water bombers. I ask the Minister for Environment to pass my thanks and indeed the thanks of the Parliament to the Department of Environment and Conservation for the tremendous assistance it gave while working in great cooperation with FESA during this terrible time.

The bushfire season for FESA's aircraft and six DEC aircraft will officially come to a close by the end of this week; however, two fixed-wing aircraft will remain on standby for another week. The FESA fleet was activated 348 times during the southern summer bushfire season and flew more than 530 hours. The state government invested nearly $9 million this season on Western Australia's helicopter fleet, which included bringing in additional aircraft to the state. During this bushfire season, the helicopters dropped nearly four million litres of water and foam on bushfires throughout the state, with the aircraft making more than 2 800 drops and saving approximately 300 properties. During the Roleystone bushfire, the fleet spent almost 42 hours in the air delivering over 470 000 litres of water and foam to help career and volunteer firefighters on the ground to bring the fire under control. I also want to praise our ground crew—if I can call them that—both the career and volunteer firefighters and the State Emergency Service volunteers for the tremendous work they did.

The type 1 aircraft also played a significant role in rescuing people from the widespread flooding that has occurred in the north of the state over recent months. In Gascoyne Junction, the aircraft worked with the WA Police PolAir helicopter to airlift 19 people, including four children, to safety in Carnarvon. During the recent Kimberley floods, the aircraft played a lead role in relocating 217 members of the Warmun community to safety in Kununurra.

I thank the aerial firefighting fleet, together with our ground firefighters, for the incredible job that they did during this bushfire season. I say a special thanks to Bill Ross and his team, who came from overseas with the type 1 helicopters, for the sterling job that they did this summer.

WHICHER SCARP — ENVIRONMENTAL PROTECTION AUTHORITY REPORT

222. Mr M.P. MURRAY to the Minister for Environment.

(1) Has the minister endorsed all the recommendations of Environmental Protection Authority report 1383 regarding a mineral sands application on Whicher Scarp?

(2) Does the government support the EPA's recommendation that in view of the highly significant environmental values of Whicher Scarp, the EPA is unlikely to support any further development of Whicher Scarp?

(3) What certainty can the minister provide to the other 49 tenement stakeholders that their applications for environmental assessment will be considered individually and regardless of the EPA's blanket sterilisation of mining in this area?

Mr W.R. MARMION replied:

I thank the member for Collie–Preston for the question.

(1)–(3) The EPA ruling on this matter is with me. My understanding is that it is under appeal, and I do not wish to make any comment until I have made a determination on that appeal.

WHICHER SCARP — ENVIRONMENTAL PROTECTION AUTHORITY REPORT

223. Mr M.P. MURRAY to the Minister for Environment:

I ask a supplementary question.

Mr T.R. Buswell: Gee! You nearly got the first question up for tomorrow, at that speed!

Mr M.P. MURRAY: I am just making sure that you say it is okay, Mr Speaker.

The SPEAKER: It is very much okay with me, member for Collie–Preston.

Mr M.P. MURRAY: Thank you, Mr Speaker. I was just checking.

Will the minister instruct the EPA to consider all assessments of mineral sands mining on Whicher Scarp independently of the blanket sterilisation comments made in report 1383?

Mr W.R. MARMION replied:

The EPA will assess all applications independently and without my input; and when the EPA assessment comes to me, I will make my determination.

SCHOOL CANTEENS — INSPECTION SERVICE FEES

224. Dr J.M. WOOLLARD to the Minister for Health:

Some notice of this question has been given. Last November, the minister informed the house that he had issued a direction under the regulations of the Food Act 2008 that local governments were not to charge any fees for the inspection of school canteens operated by parents and citizens associations. Some councils are not charging any fees, while others are charging P&C-operated canteens varying amounts, of up to $400, for these inspections.

(1) Was a direction issued to local governments under the regulations to stop them from charging inspection fees for P&C-operated canteens?

(2) If not, will the minister now direct local governments not to charge inspection fees to any P&C-operated canteens, and to reimburse any fees that have already been paid?

Dr K.D. HAMES replied:

(1)–(2) I thank the member for the question. This is an issue with which I have had some considerable involvement over recent months, particularly with the member for Jandakot, who raised this issue with me previously, which resulted in the original answer that I gave. No, I did not direct councils on this issue—I do not have the power to do that—and I do not think I said that I did do that, and I apologise if I did. What I did was to verbally direct the Director General of Health to talk to the Department of Local Government to make it very clear that the government is opposed to the introduction of fees to provide inspections of canteens at schools. He subsequently did that, and that information was passed to all councils. I can inform the member that all but two councils are either charging no fees, or charging significantly reduced fees. Those two councils are Melville City Council and Kwinana Town Council. I have been advised subsequently that Kwinana Town Council is reconsidering its position and is looking at either abolishing or significantly reducing those fees.

I have to say that my earlier advice as to what the state government would do was based on the understanding that under the Food Act, local governments are not required to inspect school canteens that are run by not-for-profit organisations, but they are allowed to do so. The subsequent information that I have been given from the Department of Health is that under the Food Act 2008 and the Food Regulations 2009, an inspection responsibility is placed on local governments, as the enforcement agency for food business within their district. In order to administer the provisions of the legislation, local governments need to verify that the food businesses—that is, the school canteens—meet the legislative requirements, which must be done by way of an inspection. Having said that, I remain strongly opposed to local governments charging for that inspection.

The member for Jandakot provided me with a copy of a letter he received from the City of Melville after having had, presumably, some contact with it about his opposition to the charging of fees to the local school canteen. This is a fairly long letter that is extremely critical of the state government passing responsibility to local government for certain things without providing funding to pay for those things, and the City of Melville stated in this letter that it was going to keep charging fees for inspections. I subsequently wrote a direct letter to Mr Shane Silcox asking him to reconsider his position. I do have the option of bringing in new legislation to prevent councils from charging, but given that the current legislation requires the inspection of school canteens, my view is that if the council significantly reduced that fee—or in fact abolished it—we would achieve the desired end. The council's response to my letter stated that it would reduce the fee charged to that school canteen by half—reducing it from $340 to $170.

Having considered the legislation and that letter, I think that is a reasonable outcome for the school, given that the council has to provide staff to do the required inspection. The fee has been significantly reduced, and I think I am prepared to accept that, unless members come to me and strongly express their view that that is inadequate and that I should do more; if that is the case, they can present their case to me.

SCHOOL CANTEENS — INSPECTION SERVICE FEES

225. Dr J.M. WOOLLARD to the Minister for Health:

I have a supplementary question. Is the minister aware that other local governments do not charge fees for this because they have stated that they will now actually make money from performing these inspections? Is the minister happy that the City of Melville has basically refused to listen to him, and will he now alter the regulations?

Dr K.D. HAMES replied:

As I have said, the City of Melville has listened and has reduced its fee by half to $170. I am aware that some councils charge a small fee and some charge nothing; I would prefer them all to charge nothing. Should I change the regulations for one council that charges $170? I do not think that is necessarily the best use of this Parliament's time, but if there was a strong view that I should, I am happy to reconsider.

BUNBURY WATERFRONT PROJECT

226. Mr E.S. RIPPER to the Minister for Lands:

I refer to the Bunbury waterfront project.

(1) Has the time line on this project blown out by years?

(2) Why would such a delay have occurred on this project under the minister's watch?

(3) When can the people of Bunbury expect to enjoy the redeveloped Bunbury waterfront?

Mr B.J. GRYLLS replied:

I thank the Leader of the Opposition for the question.

(1)–(3) The Bunbury waterfront project is something I, along with the Ministers for Planning and Local Government, have taken a strong interest in. We have been very determined to get an outcome for a process that, as the Leader of the Opposition rightly pointed out, started a long, long time ago and has involved lots of steps along the way. The delay in the Bunbury waterfront development occurred because the local community opposed the plans that were put forward, and the local member—the Minister for Local Government—worked very hard with the local community to come up with a compromise plan. That compromise plan has been agreed to, and I think the Minister for Planning has publicised the scheme amendments.

Mr G.M. Castrilli: Yes; there have been two amendments.

Mr B.J. GRYLLS: The two scheme amendments have been publicised and we are now in the final run of endorsing that project and getting it underway. The Leader of the Opposition has asked a very good question, but I do not think it is good for the opposition that this government has taken on a complex project, has worked closely with the local community, and has made sure that the scheme amendments were endorsed by the Minister for Planning and that the project is now on the way, hopefully, with an announcement in the near future. This is a very good outcome for Bunbury. Personally, I liked the original plan, but I am not from Bunbury. The local community made its point very clear, and that is the plan that was addressed. The Liberal–National government listens to and acts on the local community's concerns, while making sure that it delivers a waterfront development to Bunbury. Bunbury has a fantastic future. It is a very exciting, growing city, and very substantial investments are being made in that community by the government and the private sector. It has a beautiful natural environment. Koombana Bay is one of the unsung wonders of Western Australia. This waterfront development will build on that natural beauty of Koombana Bay, and the Liberal–National government will be there cutting the ribbon on the development of the Bunbury waterfront.

BUNBURY WATERFRONT PROJECT

227. Mr E.S. RIPPER to the Minister for Lands:

I have a supplementary question. Will the minister, having blamed the people of Bunbury for the project delays, now answer part (3) of my question, which is: when can the people of Bunbury expect to be enjoying the redeveloped Bunbury waterfront?

Mr B.J. GRYLLS replied:

I do not blame the people of Bunbury. The people did not like the government's plan, so we worked with them and accepted their plan. I do not call that a delay. I call that accepting and acting on their concerns and delivering a project that they wanted. I think that is a positive.

Mr J.N. Hyde: You haven't delivered anything!

The SPEAKER: Member for Perth, I am formally going to call you to order for the first time today.

PINJARRA–MANDURAH BUS SERVICE

Petition

MR M.J. COWPER (Murray–Wellington — Parliamentary Secretary) [3.02 pm]: I have a petition —

The SPEAKER: The member for Murray–Wellington has the call. I do not want to hear any other discussion across the chamber about other issues. I want Hansard to have the opportunity to hear the member and his petition.

Mr M.J. COWPER: I have a petition with 40 signatures. It is about a bus service between Pinjarra and Mandurah train station.

> To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned say that: The Murray Shire is growing at 6.5% pa and this year alone 150 new jobs have been created in the Pinjarra Industrial Estate, a new 200 place apprentice training facility has opened, a new swimming pool will open soon in Pinjarra and Indigenous training at Fairbridge is continuing to be an outstanding success.
>
> Additionally a new bus service will service those travelling to and from the Pinjarra Paceway and Race Club, new sub-divisions, schools, shopping centres, aged care and medical facilities.
>
> Residents of the Murray District, who travel to Perth for work, study, medical appointments or recreation are compelled to drive their cars and when they choose to use public transport are compelled to compete for limited parking at the Mandurah Train Station.
>
> The dual lane Pinjarra road is now WA's busiest provincial road outside of the Perth Metropolitan area and carries large volumes of traffic to and from Alcoa's Pinjarra and Wagerup Operations.
>
> Fuel prices are now making Public Transport a necessity in the Murray District, and those outlying towns such as Dwellingup, Waroona and surrounds will be able to park and ride at Pinjarra, taking further pressure off parking at Mandurah Train Station.
>
> Now we ask that the Legislative Assembly to support our campaign for the Government to provide a regular bus service between Pinjarra and Mandurah.
>
> Your petitioners therefore humbly pray that you will give this matter your earnest consideration and your petitioners, as is duty bound, will ever pray.

The petition conforms with the requirements of the Legislative Assembly.

[See petition 392.]

PAPERS TABLED

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

EDUCATION AND HEALTH STANDING COMMITTEE

Leave to Meet When House is Sitting — Notice of Motion

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

> That leave be given to the Education and Health Standing Committee to meet when the house is sitting on Wednesday, 13 April 2011, during the time allocated for private members' business.

ECONOMICS AND INDUSTRY STANDING COMMITTEE — INQUIRY INTO DOMESTIC GAS PRICES RECOMMENDATIONS

Notice of Motion

Mr M. McGowan gave notice that at the next sitting of the house he would move —

> That the house endorses the findings of the Economics and Industry Standing Committee inquiry into domestic gas prices and in particular the recommendations that the government —
>
> (1) establishes an independent gas market monitor;
>
> (2) introduces the gas market bulletin board and statement of opportunities;
>
> (3) supports separate marketing of gas from the north west; and
>
> (4) immediately begins negotiations with the North West Shelf partners to ensure gas continues to be supplied into the domestic market from the Karratha gas plant beyond 2014.

MINISTER FOR TOURISM — PORTFOLIO VISION

Removal of Notice — Statement by Speaker

THE SPEAKER (Mr G.A. Woodhams): I inform members that private members' business notice of motion 3, notice of which was given on 12 October 2010, will be removed from the next notice paper unless written notification is provided to the Clerk requiring that the notice be continued.

PARLIAMENTARY SUPERANNUATION AMENDMENT BILL 2011

Appropriations

Message from the Governor received and read recommending appropriations for the purposes of the bill.

BUILDING BILL 2010

Consideration in Detail

Resumed from 6 April.

Clause 59: Time for granting occupancy permit or building approval certificate —

Debate was adjourned after the clause had been amended.

Mr T.R. BUSWELL: So that the chamber can reacquaint itself with where we are at with the passage of the bill, we are on page 48 and we recently dealt with an amendment to lines 8 and 9. I have an additional amendment that is on the circulated paper in my name. I move —

> Page 48, after line 24 — To insert —
>
> (5) Despite subsection (2) and section 55(2), the permit authority may decide whether or not to grant or modify the occupancy permit or grant the building approval certificate, and may give the applicant written notice of its decision, after the period applicable under subsection (1), or the time specified under section 55(1), has expired, and the validity of the decision is not affected by the expiry.

For the information of the house, the purpose of this amendment is to make these occupancy permits consistent with the mechanisms that surround building permits, which are described in clause 23(6) on page 21 of the bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 60 to 65 put and passed.

Clause 66: Regulations —

Ms J.M. FREEMAN: Taking into account clause 59, clause 66(5) states that the regulations may provide that an occupancy permit is not required for a building of a kind specified by the regulations. Can the minister confirm that those regulations will state that the occupancy permits will not apply for homes owned and occupied by mums and dads, and that it is more about the occupancy for builders to enable them to have an occupant in the home, rather than for people who own the home?

Mr T.R. BUSWELL: The advice I have been given is that the term used will be "single residential equivalent". It will be anything from a single residential dwelling down. This provision is meant to exclude the mums and dads, which is the member's term, whether it be a single residential dwelling or a shed and the like. I think that is what the member is asking, and this clause will deliver on that.

Clause put and passed.

Clauses 67 to 75 put and passed.

Clause 76: No encroachment without consent or court order —

Ms J.M. FREEMAN: I understand that if consent is given or a court order is made, this clause will make it more difficult to pursue an adverse possession claim under common law. Clause 76(1)(c) refers to an encroachment that is prescribed as a minor encroachment. What is a minor encroachment? I am concerned that this clause will undermine a person's common law right with regard to land that the person has had for a period of time and believes is theirs. When subdivisions are done next door to a property, builders conduct structural and survey work that may encroach into the neighbouring property. So that it is on the record, I want some clarification from the minister about how this provision will make adverse possession more difficult and what the impact will be.

Mr T.R. BUSWELL: The member is right. If the encroachment occurs with consent or under a court order, as is discussed here, it will make it more difficult for a person to pursue adverse possession claims under common law. Under clause 76(1)(c), a minor encroachment could be a windowsill that pokes out a couple of hundred millimetres and is predominantly near a road or a footpath, I assume, of a commercial development. It could be a windowsill, a doorstep or a doorknob. I asked whether it could be an awning, but was advised that an awning would not be regarded as a minor encroachment. The advice I received was that a minor encroachment relates to something that encroaches up to a couple of hundred millimetres but no further. An awning is not a minor encroachment, but some of the other examples I gave are.

Ms J.M. FREEMAN: Given that this has such a serious impact on someone's common law rights to pursue an adverse possession claim, how will people be made aware of that? Land in Nollamara is being developed all the time. A builder may come next door and say, "We will just move in this fence for a short time while we do this building and you need to sign here and consent to it. It fits in with what we have done." If that person's land has been encroached upon and he has signed a consent agreement, how can he make sure that he is aware that he has not undermined his rights when he has had possession of the land for a significant time and has always understood it to be his? When it was first surveyed, it was his land, and therefore he should continue to keep possession of the land, not the developer. We must take into account that in many instances a developer buys an old block and subdivides it. It is in the developer's interest to get every extra centimetre of land because it makes a difference to how the land can be subdivided. The developer will sell those places, so his interest in them is purely business. However, the person next door suffers great distress and concern when his land is encroached upon when he has had ongoing possession of it and believes that it is his land because of the way it was surveyed in the first instance. How will that type of information be made available to people who would not necessarily have that information? Some people will have a lot of information and will be able to construe it so they do not undermine their rights, while others might not be well versed in this and may find that they have given away their rights to pursue an adverse possession claim, which I understand is a complex procedure. How can we protect the interests of people who are less aware of their rights and who are not well versed in this legislation?

Mr T.R. BUSWELL: That is a very good point. Our view is that this, in some ways, helps preserve the right of individuals to acquire consent. Adverse possession claims are dealt with under the Land Administration Act. I take it that the member's question is: how can we flag an individual who is giving consent who may have a lot less information than the person seeking consent about the full extent of the implications of giving that consent? That is a good question. The advice I have is that the person seeking the consent, which may be the builder or the landowner next door, for example, will have to obtain that consent using a prescribed form. That head of power is delivered under clause 85. I have not read the detail of clause 85 yet, but I can give an undertaking, which I am sure will be picked up by my advisers, that the prescribed form will indicate to the person affected that the encroachment could potentially have an impact on an adverse possession claim. That person may then choose to seek some additional advice to be better informed. It is an important issue. The fact that it will be done in a prescribed form and that the Building Commissioner–designate has indicated to me that he will pick up that issue

should give the member comfort that people will be made aware that under the Land Administration Act this may have some impact on a person's rights.

Clause put and passed.

Clause 77: Other land not to be adversely affected without consent or court order —

Mr W.J. JOHNSTON: I want to clarify that this clause does what I think it does. This relates to a specific issue in the electorate of Cannington in the suburb of Wilson. I found there was a problem when I was first elected. There were three neighbours. The neighbour in the middle did a housing development and, for reasons that do not matter, the council agreed that this person would dig into the sandbank on the edge of the Canning River. On one side of the land, that was about 1.5 metres. The neighbour in the middle dug down below the level of the neighbour on that first side, and on the second side he dug 3.5 metres into the bank. That is a very considerable piece of engineering work. Quite extraordinarily, both people with the affected land are civil engineers, so I learnt an enormous amount about retaining walls very quickly with their assistance. It is also interesting that one of those two gentlemen is the president of the local residents' association, so he is very aware of his rights. They worked through the council. However, basically, under the previous legislation, the retaining wall had to retain the earth only and not the loads.

As I understand—the minister can advise me whether my understanding is correct—the effect of this provision is to say that an adverse effect includes a reduction in the stability or bearing capacity of the land. Therefore, as I understand it, this provision will deal with that issue. The current situation is that there is a first mover's advantage. If a person builds his retaining wall first, all he has to do is retain the soil, and future loads do not have to be retained, whereas when a person wants to subdivide his land and he is the second one to do it, he might have a non-structural retaining wall that cannot bear any loads. Therefore, as I understand the advice that I have had from these residents, effectively the height of the wall is the distance from the retaining wall that the person can build his new extension or, if he is subdividing, the new premises. In that case, where the height of the wall was 1.5 metres, the person would have to be 1.5 metres in from the boundary before he could start his construction work. On the other side, where the cut was 3.5 metres, he would have to be 3.5 metres in from the boundary before he started to build.

A range of other issues arose. A swimming pool was removed, and when the sand moved, there was an argument about what was the natural wear and tear on structures already on one of the properties and what related to the movement of sand for the removal of the swimming pool. There were also problems with sheet piling that was driven into the sand to retain the sand temporarily until the retaining wall was constructed. In addition, when the sheet piling was removed when the retaining wall was complete, there was still a bit of shifting of the sand. As I understand, this provision will in fact deal with all those matters, and we will not have that situation that happened in Surrey Road, Wilson occur in the future. The person building the retaining wall will have to do so in prospect of the loads that will have to be carried by that retaining wall, so that removing the earth does not reduce the capacity of the neighbours to build on their properties. The minister might want to make some comments in response to that.

Mr T.R. BUSWELL: Again, that is a very interesting point. I am trying to conceptualise a 3.5-metre retaining wall. However, I think it is best if I read a broad definition of "adversely affect land" for the record. I think this addresses—I am sure the member will agree—the issues that the member has raised. The first thing I point out is that my understanding is that this removes the first-mover advantage and replaces it with a culture of cooperation, as it is called.

Mr W.J. Johnston: Welcome to the Parliament of Western Australia!

Mr T.R. BUSWELL: I often say to people that a lot of the legislation that passes through this place is done in a genuine spirit of making something better, and I think this is a good example of that. The definition reads —

> **"*adversely affect land*"** is defined … as including: —

This deals with the member's first issue —

- reduce the stability or bearing capacity of the land or a building or structure on the land;
- damage, or reduce the structural adequacy of, a building or structure on the land; and —

That deals with some of the issues the member raised about the swimming pool, the sand moving and structures being damaged —

- the changing of the natural site drainage in a way that reduces the effectiveness of the drainage of the land or existing or future buildings or structures on the land.

I am comfortable, and I hope the member is also, having more broadly understood this concept of "adversely affect land", that it will give a much greater level of protection, with a lot more clarity, to people whose land is negatively impacted on. A number of the stories that were shared in this house in the second reading debate on

this bill dealt with those sorts of horror stories, let us call them, because they are horror stories. The problem is that seeking a remedy has historically been very difficult.

Mr W.J. Johnston: Can I just seek clarification. One of the problems for these residents was the approval process by the council.

Mr T.R. BUSWELL: Yes.

Mr W.J. Johnston: These people had objected to the plans early on, but the council then gave approval, having amended the plans. Is there going to be some way of making sure that their rights will continue to be protected as the approval procedure goes through?

Mr T.R. BUSWELL: The advice I have is that these consent requirements will go a long way towards removing that problem, because people will be made aware of a situation a lot earlier than would otherwise have been the case.

Clause put and passed.

The DEPUTY SPEAKER: Does anybody wish to deal with any further clauses?

Mr C.J. Tallentire: I think the minister might have an amendment.

Mr T.R. BUSWELL: That amendment to clause 81 is no longer required. There are some ongoing discussions, as I understand it, between a couple of government agencies—Regional Development and Lands and Commerce, or the Building Commission. If that issue needs to be dealt with, we will deal with it by an amendment in the other place, and it will come back to this house.

Clauses 78 to 92 put and passed.

Clause 93: Changing building standards, requirements, as to existing buildings —

Mr C.J. TALLENTIRE: During the second reading debate I raised this issue with the minister. He committed to respond to the issues that I raised during consideration in detail. The matter for discussion is about a thing known as mandatory disclosure. This is, if one likes, the other side of the coin to something that the government did recently regarding new homes. This mandatory disclosure will tackle problems relating to energy efficiency in the existing housing stock. We had the announcement last week that all new homes would become six-star rated, setting a minimum standard for energy efficiency in new homes starting from 1 May 2012, with there being a phase-in period from 1 May this year—in a few days, in fact. That is commendable. I look forward to seeing the government promote this.

However, we have a problem with our existing housing stock. The energy efficiency standards of our existing housing stock are not up to scratch, so we have to do something to encourage people to improve the energy efficiency of much of the existing housing stock. How can we go about doing that? One way is to make sure that at the point of sale, or at the point at which a property is put out for rent, there is some disclosure of the energy efficiency rating of the property. That is the point of my proposed amendment to this clause. It would mean that we would be able to go into the property market, whether as renters or as potential property buyers, knowing the energy efficiency rating of a property. That seems very reasonable. We do it in many other domains. Most of us will be familiar with the energy efficiency ratings on whitegoods and the fuel efficiency ratings on motor vehicles. It is quite consistent with other policy directions that we ensure we have this energy efficiency rating, known as mandatory disclosure, in the housing sector.

How will we bring this very important thing in? There are two ways of going about it. One is through the Building Bill. The other approach that could be taken—other states are looking at this—is by going through conveyancing law. I use the term "conveyancing law" in a fairly generic sense because we do not have a conveyancing act in Western Australia. Queensland does. There was a possibility of amending the conveyancing act to include mandatory disclosure. I have alluded to the fact that other states are working on this issue. Indeed, we are seeing this development right across Australia. It has come through the COAG process. In July 2009 our Premier committed to mandatory disclosure through the National Strategy on Energy Efficiency, along with the heads of the other states and territories. This move is occurring right across Australia. COAG provides for each state to work out how its own legislation can best be used to bring this into effect. Section 3.3.2 of the National Strategy on Energy Efficiency refers to the phasing in of mandatory disclosure. By passing the amendment to clause 93 standing in my name on the notice paper, we will create the legislative provisions that will enable regulations to come in later that will enable us to have this mandatory disclosure, thereby honouring the Premier's and the government's commitment to mandatory disclosure in Western Australia. It is very important that we do not miss this opportunity to ensure that the Building Bill, soon to be the Building Act, has the legislative powers to enable the creation of regulations that will be essential to this important development in the energy efficiency of Western Australian homes. I look forward to hearing the minister's response to my points.

Mr M. McGOWAN: The amendment moved by the member for Gosnells will ensure —

The DEPUTY SPEAKER: I do not think he moved an amendment.

Mr M. McGOWAN: I am referring to the amendment on the notice paper.

The DEPUTY SPEAKER: It has not been moved.

Mr M. McGOWAN: In any event, we are dealing with clause 93. There is an amendment to this clause on the notice paper standing in the name of the member for Gosnells. It aims to give a specific head of power to put regulations into effect relating to the mandatory disclosure of energy ratings. The Premier made some statements over the past couple of years indicating his support for mandatory disclosure of energy ratings on properties. I assume that the government will deliver on the commitment made by the Premier about mandatory disclosure.

The arguments in favour of mandatory disclosure are that a party buying a new house or a property should be fully aware and informed of the energy rating of the house so that they can maximise the energy efficiency of that property. With the massive expansion in the cost of electricity and water, people who abide by or learn new techniques for minimising their use of those utilities can save themselves a lot of money. The idea is that if someone builds or buys a new house, they are advised on how to reduce their use of electricity and water. It makes some sense. I understand that there is a "tick and flick" system in Queensland whereby a form is filled out by the vendor and passed on to the purchaser. The system that is in place advises on how to minimise the use of power and so forth using the energy efficiency measures in a house. The vendor gets a piece of paper with some ticks or flicks on it which gives that sort of advice.

There are other systems around. Some of them involve a building sustainability assessor coming to the property and advising the new purchaser of the property essentially on ways in which they can minimise their use of electricity and water; that is, what sort of products will minimise the use of water and electricity, what can be put in the roof to minimise the loss of heat during winter or the loss of cool air during summer, what sort of measures can be put in place to minimise water use, what can be planted in the garden to minimise water use and what can be done when using showers, baths and so forth to minimise water use. Sometimes an ordinary person is not aware of these things. People offer that service. Mandatory disclosure can work through different techniques, whether that involves a building sustainability assessor coming to the property to give that advice or whether a form is merely handed out.

We want to know three things. First, is the government still committed to that change? Second, is a head of power—such as the quite cleverly drafted head of power provided by the member for Gosnells in the amendment on the notice paper—necessary? Assuming that the government is still committed to that, what system will the government put in place to ensure that people are fully aware of the ways they can minimise their utility use? As I said, there are different systems in different places. I understand that Queensland has a minimalist system. I understand that the ACT is moving more towards a higher level of advice for purchasers. We want to know whether the government is still committed. Does it want or need that head of power or is there a power already? Third, what system does the government propose to put in place?

Mr C.J. TALLENTIRE: I move —

Page 73, line 17 — To delete "building." and substitute —

building; and

(c) the mandatory disclosure of energy ratings whether or not an occupancy permit is required for the building.

Ms J.M. FREEMAN: There are a lot of subdivisions in Nollamara and in Mirrabooka in particular. Many of the people who purchase properties in that area are first home owners because of the affordability of some of those properties. Unfortunately, housing that used to be affordable is still quite expensive when it comes to mortgages. Whilst people think they are buying something that they can manage in relation to their income, when they add the costs of operating the house because it does not have eaves, it is not situated properly for energy efficiency and all of those things, suddenly they are faced with additional costs that they may not have had when living in other properties. This is because the new owners did not take into account the energy aspects of the house. These people may make decisions that would have an impact on the sort of properties that are built in that area, which can only benefit the consumers of the properties in these areas in the long term. I think this is a really important amendment. I thank the member for Gosnells for bringing this issue to the attention of the house.

Mr D.A. TEMPLEMAN: I had the great honour of hosting the member for Gosnells at Mandurah's sustainability house in Meadow Springs, which is a display home supported by the City of Mandurah. It has been open for over five years. It was designed according to passive solar principles. It utilises the appropriate configuration to maximise the northern sun. The north-facing orientation showcases various energy efficiency principles and appliances. It has, as I said, been open to the public for the past five years for people to look at and get ideas from. I am also very pleased to have in Mandurah Eddie Roe, who is a qualified and accredited energy rating assessor. Along with other affiliates, he has shown great interest in this bill and in the way that Western Australia needs to move forward generally in our approach to building and construction.

This amendment highlights that, at some stage, we have to get dinkum about the issue of the sorts of houses we are allowing to be constructed in Western Australia. If the minister has a chance to meet with, talk to and listen to Eddie Roe and others, he will find that much of the hysteria surrounding the supposedly outlandish costs involved in building more energy efficient homes can be put to rest. Eddie and others have highlighted to me that, in many respects, we start with the design of the home and the aspect of the block. We then use the principles of solar passive design to construct the house according to the orientation of the block. Even though a block may not necessarily have the most efficient and effective orientation, there are very simple design methods that can be used. We know that other states have moved various degrees of building requirements, and we are all conscious of not wanting to see additional expenses imposed upon first home buyers. Rather than respond to the hysteria that some sectors have engendered in the past to discredit a sustainable approach to building, we should look around the table for a real way forward. The net result will be more affordable housing and a legacy of more affordable living. If we design the houses properly according to principles that have been put in place at the start of the process, then issues of future energy costs and comfort in the home will be addressed right at the beginning. We will then have dwellings that are sustainable and will be assets that can be sold on.

[Member's time extended.]

Mr D.A. TEMPLEMAN: We will then have an asset that is actually of greater resale value. There will come a time when, because of rising energy and water costs and scarcity of resources, particularly water, homes that are built appropriately for our climate and conditions will be more desirable. Over the past 15 years there has been a trend towards building houses that do not have eaves and require significant air conditioning and artificial ventilation, rather than using principles of cross-ventilation and orientation. I actually think that they will become expensive dinosaurs in the longer term.

I hope that the minister will support the amendment moved in good faith by the member for Gosnells. I do not think it is overly controversial, and I think it will be an important step in our progress towards a greater understanding of the need to build houses that are sustainable and that will leave a legacy for the owners. The minister will have access to the statistics, but it is my understanding that things are very different today compared with 30 years ago, when it might have taken decades for the average household to change hands; my understanding is that it is now closer to every five years, on average.

Mr T.R. Buswell: It is five to seven years.

Mr D.A. TEMPLEMAN: Five to seven years. With that knowledge, it is important and sensible to have, as the amendment would provide, a mandatory aspect towards energy efficiency. I think it is a good amendment; I hope members of the government will agree, although the house is bereft of any of them, apart from the member for Darling Range, who is an exceptionally avid supporter of sustainable principles! I could not say the same for the member for Kalgoorlie, however, given that he probably lives in a five-storey mansion in Kalgoorlie! It is a bridge too far for the member for Kalgoorlie!

Mr J.J.M. Bowler interjected.

Mr D.A. TEMPLEMAN: I can see the member for Kalgoorlie pottering about in his organic garden!

I think that this is a good, sensible amendment; I do not think that it is a threat at all. Let us be dinkum about this and make Western Australia a leader rather than a state that responds very reluctantly to these issues in comparison with other states. We know that our climate has changed dramatically. The rainfall has changed, our summers have lengthened and the temperature profiles are consistently changing due to climate change. It is time to be dinkum. If the minister supports this amendment, he will be applauded for it.

Ms L.L. BAKER: While we are on the subject of mandatory disclosure, it is an opportune time for me to mention an apartment block project in the city called Square One Apartments. We have been talking about sustainability features and the affordability of housing. I want to put this project on the record because it is an amazing complex and it is directly relevant to the principles that we have been talking about. It was built in Money Street, Perth, by Colgan Industries. I will quickly run through some of the sustainability features that have already made the apartments sell really quickly. They are very competitively priced; some members are probably aware of this development. It is absolutely state of the art. It has solar gas-boosted hot-water systems rather than the traditional electric storage units. All apartments, including the commercial tenancies, are fed from a centrally located solar gas-boosted hot-water system that uses evacuated glass tubes, storage tanks and Bosch instantaneous boosters. The minister asked me whether it has edible gardens when I mentioned this a while ago. It does.

Mr T.R. Buswell: Are they on the roof?

Ms L.L. BAKER: They are actually in the central courtyard of the building. Seventy per cent of all the plants are fruits, vegetables or herbs.

Mr T.R. Buswell: Member, I do have a vegie garden.

Ms L.L. BAKER: I bet it is not as big as this one, and it will not feed all the people —

Mr T.R. Buswell: Size is not everything when it comes to vegie gardens.

Ms L.L. BAKER: An excellent comment, minister!

The communal photovoltaic system is a 9.8 kilowatt communal photovoltaic array that feeds the communal power needs of the complex—things such as lifts, lighting, mechanical services to the basement, rainwater harvesting, pumps and hot water–circulating pumps. There are also individual photovoltaic systems. Every apartment has the infrastructure to allow those systems to be installed. There is separate remote monitoring of hot, cold and rain water harvesting. The apartments have been built so that most living areas are north facing. Thirty of the 35 apartments' living areas face the north—another amazing bonus. Ninety per cent of the apartments have cross-ventilation. The apartments have lofts with mezzanine floors with electrically operated south light glazing, which allows for what we call in the business "heat dumping" in summer. Lots of louvres are used throughout this incredibly modern building. It has great insulation—that is, R3 batts and 50 millimetre Anticon—to all roof areas. All lighting is LED, including in the kitchen bulkheads and all the main entries. The original 1928 portion of the building is in place. Recycled timber has also been used all the way through. There is a component of affordable housing in the development, as the minister would be aware, with the inclusion of a number of affordable housing units in this building. I think every consideration, from both a strata perspective and an overall building services perspective, can be seen to comply with the sort of ideal we have been looking for in moving forward on this kind of sustainable building. I thank the minister very much for the opportunity.

Mr T.R. BUSWELL: I thank the member for Maylands for that description of that building. Before I make my comments on the amendment, I must say that in April last year I visited a building out near Ellenbrook. It was the suburb next door—Aveley. They had one of these new sustainable houses, quite a newfangled thing from my point of view. I saw a lot of what the member talked about, which I think is fine. I point out that technically, for members of the house, new buildings are pretty much picked up elsewhere. What we are talking about here is the requirement for mandatory disclosure of energy ratings for existing buildings. I support what the member for Gosnells is trying to deliver through the amendment. I understand exactly his intent; I do not have a problem with that. The advice I have basically comes from two directions. Firstly, the bill before us more than adequately provides the government with a head of power to do what the member suggests. It does not exactly specify "mandatory disclosure of energy ratings is required" but it gives us the head of power. I will point to the two areas. Clause 93(1)(a) and (b) provide a head of power for regulations effectively to deal with health and safety, amenity or sustainability of existing buildings. Clause 93(2)(b) also provides —

> … for an owner or occupier of an existing building to comply with a specified requirement, including the provision of information to specified persons, —

That is, the purchaser —

> in relation to the building from a specified day or when a specified event occurs;

My advice is that that covers the provision of information on areas such as, but not limited to, energy ratings or smoke alarms. The technical advice I have is that although the bill does not specify the level of disclosure the member seeks, it does provide the head of power and the capacity to make that happen. Members are correct—the ACT, as I understand it, is the jurisdiction with mandatory disclosure.

Mr C.J. Tallentire: It has been in place for 12 years.

Mr T.R. BUSWELL: Yes; well ahead of the Council of Australian Governments process. As a number of speakers pointed out, the Premier committed the state to mandatory disclosure. Again, the advice I have is that the states are still working on the detail of that mandatory disclosure regime. As that crystallises—I assume in coming months—nothing in this bill will be inconsistent with providing the head of power we need to introduce the mandatory disclosure regime that will flow out of that COAG process. I am not disputing the intent of the member for Gosnells' amendment; however, it is our view that clause 93 provides us with a head of power and the capacity to introduce mandatory disclosure at the time COAG—predominantly now the states—deals with the mechanisms for the introduction of that mandatory disclosure regime.

Mr M. McGowan: What will the mechanisms be?

Mr T.R. BUSWELL: We are still working through that with the other states. It will be disclosure at time of sale, and the various bits and bobs sitting around that.

Mr C.J. Tallentire: Why do we have to wait for the other states?

Mr T.R. BUSWELL: We are a great state of cooperation. We are always up for a good bit of national reform. We will work through that process with the other states. I think the idea here was to come up with a relatively consistent approach to the application of mandatory disclosure of energy efficiency in existing buildings. That is where we are at.

Mr C.J. TALLENTIRE: I thank the minister for those comments. I am encouraged he has received advice that the current legislation provides the heads of powers for those sorts of regulatory provisions to be developed. I will just clarify a few points relating to the COAG process. As I understand the COAG process—I think this is presented in the National Strategy on Energy Efficiency—different states may have different legislative mechanisms, and in fact there will be different forms of mandatory disclosure in different states. I do not think there really is a case to say we need to wait for total national agreement on this before we can have mandatory disclosure in Western Australia. As the minister has acknowledged, in the ACT mandatory disclosure has been in place for 12 years. Queensland is pressing on with its version of things, using quite different legislation. Queensland will probably end up with a form of mandatory legislation significantly different from what we will end up with in WA. I think WA has the potential for a much better system—a more scientifically based one. We may have a computer program involved to determine what star rating a home will have.

What the minister might be referring to, in terms of a reason for delay, is the presentation of a regulatory impact statement. I have contacted the federal government agency with responsibility for this, which is the Department of Climate Change and Energy Efficiency. I am happy to table an email from that department. It is an official email stating that it has received the regulatory impact statement relevant to WA. It is looking to release it into the public domain by May 2011—in a matter of days. They will progress things from their end. I do not think there is actually any reason for there to be a delay at this end. I am encouraged to hear the minister's full endorsement of a system of mandatory disclosure. Given the minister has given us that commitment, he should provide a far more precise indication of when the Western Australian government will move to set up our Western Australian system of mandatory disclosure, given that we have already produced our own regulatory impact statement in WA. The minister might like to produce that so we can examine it and so that it is in the public domain. Why wait for the commonwealth to release the regulatory impact statements from other states? I am encouraged by what the minister is saying, but I would like to know when mandatory disclosure will come into effect in Western Australia.

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

Mr T.R. BUSWELL: As I understand it, what the member is referring to is the Western Australian component of the commonwealth RIS process. The process will be that the RIS, and no doubt other matters that sit around the issue of mandatory disclosure, will come back to the Western Australian government. We have agreed in principle with mandatory disclosure, and I have acknowledged that our position is consistent with the commitments that have been given by the Premier through the COAG process. The government will need to formally review the RIS and run that through our own regulatory gate-keeping model, and it will then need to move through the executive processes for government approval. I accept what the member has said. However, we are not in a position to do that at the moment, because we have some further processes to work through.

Mr M. McGOWAN: I am interested in what mechanism the government intends to adopt in Western Australia to inform people about the sustainability of a property that they want to buy or sell. I understand that in Queensland, people who want to sell a house have to fill in a form that provides details about the sustainability of that house. Another mechanism that the minister might want to consider is the Association of Building Sustainability Assessors. One of the directors of that association is a woman by the name of Wendy Lamotte. That association is able to provide written reports detailing the sustainability of a property. Different types of mechanisms are in place. Considering that mandatory reporting is rapidly approaching us, the building industry, as well as the assessors, would like to know what mechanism is proposed in this state.

Mr T.R. BUSWELL: That is a fair question. It is our view that, irrespective of the mechanism we may adopt, clause 93 of the bill provides us with the head of power and the framework to deliver on the mandatory disclosure requirements. I think I am on pretty safe ground with that statement. As the member has pointed out, at one end of the scale there is a simple disclosure, whereby a person who wants to sell a house would need to produce a written report that outlines the things that have been done to improve the sustainability of that house, such as insulation. At the other end of the spectrum, an independent assessor would run the property through a computer program and determine a star rating for that property. The issue is where we are at on that spectrum; that is, whether it will be either a star rating or a written report that details certain things that must happen. I am not in a position to provide any advice to the house about which of those mechanisms will be adopted, other than to say that this matter will be considered as we work through our assessment of the RIS. We have not made a decision around that yet, and this bill does not canvass those options.

Mr C.J. TALLENTIRE: On the basis of that discussion, I am prepared to withdraw my amendment. I note that the document that the Premier signed said that mandatory disclosure would be in place by May 2011.

Mr T.R. Buswell: Member, I can assure you that that will not happen. Unfortunately, one of the problems with COAG—without being disrespectful to that collective grouping of Premiers—is that occasionally COAG sets timetables that are very difficult to deliver. The unfortunate reality is that this will not be the first of the COAG time lines that has slipped.

Mr C.J. TALLENTIRE: The minister can be sure that we will be keeping a very close eye on this. The benefits of a system of mandatory disclosure will be enormous, but we also need to make sure that the community is properly engaged in the development of that system. Therefore, now that there will be a bit more time before mandatory disclosure comes into effect, I urge the government to consult with the community on the ideal form of mandatory disclosure, and particularly on the issue of who would undertake this work. I have heard from people in the real estate industry who would like to acquire the skills necessary to conduct energy efficiency assessments of homes. However, that could present all sorts of dangers if they were also in the position of selling that home. As the member for Rockingham has indicated, a growing body of people have acquired the necessary skills to provide energy efficiency ratings of homes. In fairness to those people, and to enable them to develop professional standards and to build their numbers so that they can perform their work in a way that will be satisfactory to Western Australians, the government should give them a clear indication of when mandatory disclosure will come into effect. Now that the minister is saying that the date has slipped back from May 2011, he should present to us the new time line.

I seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Mr T.R. BUSWELL: The member has raised a very valid question about how these people will be registered or monitored. I do not have a specific answer at this stage, because that is one of the things we will need to tease out. However, although we have not decided at this stage how mandatory reporting will be dealt with, the Building Services (Registration) Bill, which we passed last week, will give the government the capacity, if it emerges that it is required, to register people who perform this activity. I point that out because it does highlight some of the benefits of the package of reforms that we have been moving through the Parliament in the past couple of weeks.

Clause put and passed.

Clauses 94 and 95 put and passed.

Clause 96: Authorised persons —

Ms J.M. FREEMAN: Subclause (4) states —

> The regulations may limit to persons belonging to prescribed classes of public service officers or employees the persons who may be designated as authorised persons under subsections (1), (2) or (3).

Will that designation apply also to people who have been contracted or privatised out; that is, to people who are not public service officers? What is intended by that designation away from people who are public service officers? My concern is that they will no longer be public officers, but officers who are contracted to private employers. I would like clarification on that aspect.

Mr T.R. BUSWELL: The advice I have is that authorised persons must be public officers in that they are employees of state or local governments or permanent authorities. Subclause (4) will enable further limitations to be imposed on and around the qualifications that a particular person has. Those limitations may be around building surveying and other types of skills.

Ms J.M. Freeman: So, they will be public officers—either of the public sector or of local government?

Mr T.R. BUSWELL: That is the advice I have.

Clause put and passed.

Clauses 97 to 132 put and passed.

Clauses 133: Prosecutions —

Mr T.R. BUSWELL: I move —

> Page 101, line 21 — To delete "jurisdication" and insert —
>
> jurisdiction

This is simply correcting an error in the spelling of "jurisdiction".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 134 to 143 put and passed.

Clause 144: Extent of duties as to certificates —

Dr A.D. BUTI: I have a small point of clarification. From my reading of this clause, it appears that there is no duty on local government to ensure the accuracy of the documents on which they base the issuing of the permit. Therefore, if the information or documentation is deficient, is anyone going to be held responsible?

Mr T.R. BUSWELL: That is a very good question. It will be the licensed building surveyor who signed the material that the local government would have dealt with as it went through the process of issuing the permit.

Clause put and passed.

Clauses 145 to 203 put and passed.

Title put and passed.

SMALL BUSINESS AND RETAIL SHOP LEGISLATION AMENDMENT BILL 2011

Second Reading

Resumed from 16 March.

[Quorum formed.]

MR A.P. O'GORMAN (Joondalup) [4.16 pm]: Today we are here to put through part of an agreement that was reached between the Premier and the Leader of the Opposition to extend trading hours to nine o'clock across the metropolitan area. Part of that agreement was to set up a Small Business Commissioner to deal with disputes between small business and government. It is ironic that as members of the Labor Party—normally the party of the workers and the party that supports unions—we are here today supporting small business because this government put in place a regime that put a lot of pressure on small business in this state; before the Labor Party would allow that pressure to apply to its full extent, it insisted on protections for small business. The Small Business and Retail Shop Legislation Amendment Bill 2011 is part of that protection. This legislation will set up the Small Business Commissioner. The deal made, and the words that are written in the letters between the Premier and the Leader of the Opposition, have the effect of putting in the Small Business Commissioner in the same vein as the Victorian Small Business Commissioner.

The ACTING SPEAKER (Mr P.B. Watson): Member for Mindarie, do not walk between the Chair and the member on his feet.

Mr A.P. O'GORMAN: The Small Business Commissioner will be set up specifically to deal with small business disputes, and is quite different from the Small Business Development Corporation. The government has failed to give a level of independence to the Small Business Commissioner, who is a person in whom small business should have a great deal of faith and should be seen as their advocate to ensure that small business continues in this state and continues to have a role in this state.

Of the more than 213 000 businesses in Western Australia, 85 per cent are small businesses; it is a huge sector. The small business retail sector probably forms the largest part of that small business sector, and it employs tens of thousands of people in this state. It is a sector that we need to protect. We need to ensure that the small business sector in this state has an equal and a fair playing field—one that is as level as possible. The attempt by the Labor opposition to install the Small Business Commissioner is designed to ensure that we level the playing field so that large corporations cannot hold it over the small business sector by continually taking it to court or to the State Administrative Tribunal, where sometimes they have corporations of lawyers to back them up. Some small businesses might not have a premises and turn over only $100 000 a year, but they are still considered to be a small business. I suspect that most of the businesses we are talking about would turn over in the region of $500 000 a year and lease their premises. Most of the disputes that have arisen in Victoria are about leasing. The creation of a Small Business Commissioner and other aspects of this legislation will provide more protection for small businesses that lease premises. Later today we will deal with another bill that deals with commercial tenancies. I hope that I do not mix up my bills, but I am sure the member for Scarborough will point out the error of my ways if I do. It is important to protect small business and to ensure that it continues to deliver services to people. That is why this legislation is so important.

Although we support the bill, I am very disappointed that instead of setting up an independent Small Business Commissioner, we have amalgamated that position into the Small Business Development Corporation. That raises a lot of issues, including conflict of interest issues. A small business operator who is in a dispute with either another small business or a small or large corporation will often go to the Small Business Development Corporation for advice about the legislation and how to conduct himself in the future. Small business owners ask the SBDC for advice on what action can be taken to remedy an issue before it blows up into a great big fight that must be resolved in either the State Administrative Tribunal or court. All those avenues for resolving disputes cost a lot of money, and many small businesses run on a hand-to-mouth existence. I have talked to small business owners who have told me that their turnover pays for their goods, their lease and their staff from week to week and month to month. It is therefore difficult for them to come up with $5 000, $10 000, $15 000 of $30 000 to contest a dispute in court or in SAT. That amount of money could send them bankrupt because they do not have sufficient turnover or profit sitting in a bank account just in case a dispute arises.

Most disputes are over leasing and others are over unfair market practices. I will be interested to hear the parliamentary secretary tell us what is an "unfair market practice". We have all seen stories on *A Current Affair*,

Today Tonight and a number of other news and current affairs programs over the years showing large corporations such as Coles or Woolies—although I am not condemning them alone; I am sure many others do it—price watching and undercutting a small operator in the same shopping centre. As soon as the small operator gets blown out of the shopping centre, the supermarket's prices go up again to reflect the true cost of the goods sold. Members will be watching the so-called milk wars that are going on. Is that the type of thing that the parliamentary secretary terms as an "unfair market practice"? If so, how is the Small Business Commissioner supposed to deal with that type of unfair market practice? It is not clear to me in the legislation how the Small Business Commissioner can take up the cudgels for small business. The dispute in the milk wars is not between the independent grocers and Coles; it is between the dairy farmers and Coles because Coles is selling milk for a lesser price than the dairy farmers can produce it for. That is a great impost on small business because it affects not only other independent retailers in the market, but also the supply chain. How do we deal with the issues in the supply chain? How will the Harvey Fresh milk supplier take Coles to task about the price at which Coles is selling the milk, particularly when the majority of the milk is sold in large metropolitan areas? Public opinion will probably be in favour of keeping prices down because that is good for competition, but is it good if competition forces our own primary producers out of the marketplace? Is that good practice? I would like the parliamentary secretary to tell me what she deems to be an unfair market practice.

I am sure all members agree that the Small Business Development Corporation is an excellent organisation. Any small business, or anyone who intends to operate a small business, should visit the Small Business Development Corporation to learn about the very basics of the legislation that will operate, impact and sometimes impinge upon that operator. Many people who run a small business are blue-collar workers or public servants. They are people who are at the point in their life when they want to slow down. They do not want a boss telling them that they have to be on deck at eight o'clock or nine o'clock in the morning and still be there at five o'clock in the evening. Many people go into small business for the freedom. They want to be their own boss and the architects of their own destiny. However, a range of legislation prevents them from being the architects of their destiny because they are funnelled in certain ways. My experience of small business has come about since I became a member of Parliament. By talking to small business owners over the years, I have come to learn about the issues they have. I have never worked for a small business; I have always worked for corporations, multinationals and government. Learning about small business was a big lesson for me and is one that I would probably have preferred to not have learned sometimes because I have seen a lot of strife over small business, including marriage breakdowns and even a suicide that was reported to me, because of legislation and the role of big corporations.

Small businesses are under constant pressure to perform to not only maintain their standard of services to the public, but also source their goods. If a small business's supply chain falls down, it is not always the case that the business can find another supplier to slot in. Often some of the large corporations have a controlling interest in the supply chain, which makes it difficult for a small business to latch onto. I will give members a personal example of that so they know what I am talking about. Everyone knows that I have a small party hire business, which my daughter started six years ago. It is a franchise and is located at Osborne Park.

Mr W.J. Johnston: Advertising!

Mr A.P. O'GORMAN: It is not advertising; I am trying to give members a practical example, but if members need balloons, they come and see me and I will sort them out! One of our suppliers had a difficulty recently in relation to another business, not the party supplies business, and has made some arrangements to trade out of his current situation. However, the party supplies business is also impacted because of the cash flow situation within that organisation. Therefore, as a small business, we are having great difficulty in sourcing some of the items that we normally source from this business. Trying to find another supplier in Australia is next to impossible. There are two suppliers of the equipment that we get from that person, and the other supplier is supplying the large retail chains. Therefore, it can be seen that it is not just business-to-business issues; it is the pressures that are constantly on small businesses in this state.

I know that other pressures arise when people try to sell their business. I have not done that yet. However, when people try to sell their business, there are steps that they must take. I am hoping that this Small Business Commissioner will be able to help in some of these steps. Quite often, a person approaches another business or a business is up for sale. A new proprietor may want to go into that business. In addition to buying the business, a lease must be assigned. Quite often, the Small Business Development Corporation gives advice to people on how to go through the process of assigning a lease and the amount of time it takes to do that. One person with whom I have had discussions has been negotiating the assignment of a lease since last October. It is now April and, in that person's view, they are no closer to having that lease assigned. One of the reasons that they are having problems is that, on top of the assignment of the lease, the landlords want to remove certain conditions before they assign the lease. When we go into consideration in detail, I hope that the advisers from SBDC will be able to sort this out for me so that I can go back to this constituent and tell them. My thought was that the original property owner or the original business owner will have signed up to a lease for a period of five years, whether

or not with options. When that person sells the business, he sells that lease, and it is assigned in the same terms. However, in the assignment of this lease, the landlords have sought to increase the rent by up to 30 per cent.

We hear the Premier saying all the time that there is no boom in this state, and he quotes the fact that retail businesses are going backwards and not growing, and that the housing market is depressed. That is correct, but we have a huge resources boom in this state, and that is where everyone gets the term that we are in a boom. However, I recognise that in retail businesses there is a downturn, and it is quite difficult for retail businesses at the moment. These landlords want to increase the rent by an extra 30 per cent. If we sit down and do an analysis of this, how much more money will it cost? If I say that 30 per cent extra works out to be approximately $15 000, how much more business turnover must I generate before I can say that I can pay that $15 000 without detracting from my net profit? That is what I would have to do. Using a rough rule of thumb, I would probably have to turn over five times as much as that. That is actually $75 000. I would have to turn over an extra $75 000 just to meet one of my expenses every month. That is a huge amount of money that any small business operator would have to find. As I said, most small business operators with whom I have spoken are operating on a turnover of about $500 000. People who are getting a bit above that are starting to get into the medium-sized businesses, and they are probably not operating just a small retail shop; they are probably operating something a bit bigger—they may have a couple of shops or something like that.

We need some of these questions answered, parliamentary secretary. How can a business that is trying to sell its products cope with selling? How can these new owners cope, taking into account that one of the terms of the assignment of the lease is an increase in rent of 30 per cent? In addition, there are other clauses in the lease about exclusivity. The particular organisation about which I am talking has an exclusivity clause to the effect that it will be the only business of this type in the shopping centre. I am not going to name the type of business, the shopping centre or the person because they are still in the throes of negotiating this matter. However, how can clauses in the lease be changed when the lease is just being rolled over? People are not negotiating a new lease; they are rolling over a standing lease to a new owner. It should be fairly simple. It should be a two-pager that makes it very simple. However, on top of that, a refit is thrown in. I have had prices of up to $450 000 for a refit of an area of about 150 square metres. It depends on the type of business that a person has, but these are the types of disputes that arise. That is a business-to-business dispute, but it involves four parties. It involves the seller, the buyer, the landlord and the owner. It is a really complex area.

The Small Business Development Corporation is the organisation to which most of these small businesses go for advice on how to deal with those sorts of issues. The Small Business Development Corporation has limited resources. I think its total budget is about $11 million—the parliamentary secretary will correct me if I am wrong—and it does all those sorts of things. On top of that, the SBDC has a role in education, not just in educating the people who go to the corporation, but also in the broader sense. It should be out there educating people. My view is that it should be in the schools. The SBDC should have an education arm that goes to the schools to educate people. As I said earlier, many people go into small business when they are a little advanced in life, and they have not thought about it until that time. If we started educating children in the schools, we may have a generation of people who have a much better understanding of small business and who are not reliant on organisations such as the Small Business Development Corporation, because early on in their lives some of this was taught to them at school when they had visits from education officers from the Small Business Development Corporation.

The Premier referred in his letters to the Leader of the Opposition to a Small Business Commissioner based on the Victorian model. The Victorian Small Business Commissioner is completely independent of Victoria's equivalent of the Small Business Development Corporation. He stands alone. He does not give advice to two businesses that may be in dispute. He works through the issues and tries to resolve them. The small business may go to the Small Business Development Corporation and the other, larger business may go to a lawyer to get advice. I believe there is a bit of conflict in that respect, and I am a bit disappointed that this legislation has not followed the Victorian model more precisely. Therefore, we will be asking why we are now moving to change the situation so that the head of the Small Business Development Corporation will also be the Small Business Commissioner.

With the number of small businesses in this state, I suspect that we will have a few thousand disputes. Under the Victorian model, I think 4 000 disputes were resolved last year.

Mrs L.M. Harvey: There have been 8 000 disputes since its inception.

Mr A.P. O'GORMAN: Since 2003?

Mrs L.M. Harvey: Yes.

Mr A.P. O'GORMAN: I suspect that a fair number of disputes will go before this Small Business Commissioner. If the Small Business Development Corporation does not have an increase in its budget, how can it continue to do the excellent job that it has been doing and, in addition, take on all this extra work? It is a lot of

additional work, and not one dollar extra is going into the SBDC's budget. Costs are also involved. Under this legislation, there is an opportunity for the Small Business Commissioner to impose costs. I would like to know what those costs might amount to. For example, if I have a dispute with one of my suppliers, what will it cost me to take that supplier to the Small Business Commissioner? The whole point of having a commissioner is that small business owners will have to pay only a very low fee. Even if small business owners do not have a large turnover and do not have large profits, they should still have enough money in their pockets at the end of the day to lodge a dispute against a larger organisation and not go to the wall. It is very important that we have this system in place. It is basically a right that all small business owners should have. No matter how big or small their landlord is, they should be able to dispute valuations, unconscionable conduct or unfair market practice, a term that is used in this place, and have those disputes resolved without being charged exorbitant fees. When we had the briefing, unfortunately, the departmental staff could not give us an exact cost of these fees—they gave us an approximate cost—because the board of mediators was not yet in place and they did not know what price those mediators would charge. We are expecting the cost of mediation to be around $190 to $200. That amount will be evenly spread out between the parties to the dispute. That is a reasonable cost. If it gets too much more than that, we have to ask whether it is worth one's while. If it is not worth one's while and if it will cost thousands, why would one do it?

The Small Business Commissioner will mostly deal with disputes relating to leases. The big question mark over leasing is when we get a market rent review. A market rent review is one of those airy-fairy terms that small business owners do not understand. Most of them think that if they have a surf shop or a sporting shop in a shopping centre of a certain size, maybe 50 000 or 80 000 square metres, and they cast their eye around the state, they can see what most people pay in annual rent for premises that have a similar type of business in a similar situation. In fact, when we get down to it, if a landlord pulls a figure out of the air and says that market rent is $350 a square metre and the small business owner's estimation was $200 a square metre, we have a $150 dispute. How is that dispute worked out? The way it has been done up to now is that both the small business owner and the landlord agree on a valuer. The valuer carries out a market assessment and puts a value on the size of the property. I have been told time and again that the majority of valuers in Perth and Western Australia generally are already contracted to the larger businesses. Therefore, they favour the larger businesses and they give a market valuation closer to the landlord's mark than the tenant's mark. When a small business owner wants to dispute that, how do they do it? They may have paid $4 000 for a valuer because their tenant bears the cost of that. If they dispute the valuation, they have to pay another $4 000 to another valuer to do the same assessment. If they have a dispute, the small business owner goes to SAT. SAT, with all its lawyers and everything else it has, makes a decision, and that decision is passed back down. Most small businesses are looking at paying $20 000 or $30 000 to go through that process. That process comes up on a regular basis—usually every five years. The minimum term of a lease in WA is five years, generally with a rollover option. That is when the issue comes up. The dispute involving the market rent comes up during the rollover.

When small business owners try to do a market rent review, they have all the stresses of whether they will get it done on time. At the moment it is done within three months of the end of the lease. If my rent goes up 30 per cent, which I spoke about earlier, what are my options? My first option is to dispute it, meaning $20 000 or $30 000 goes down the gurgler because the chances are that I will lose it. My other option is to find another premises with another landlord and sign up for five and five again, and move. I would then have to bear the cost of a de-fit. Generally part of the terms of termination of a commercial lease is that the lessee returns the premises in the same state as they were before moving in.

I can fairly solidly quote the circumstances involving an organisation that was in Lakeside shopping centre prior to its refurbishment. It came to the end of the lease, which then continued on a month-by-month basis. The owner of the business was expecting to get another premise within Lakeside. Due to the way the renovation went, the small business owner was not going to get an overhaul. The quote to de-fit his premises was nearly $70 000. It was going to cost $70 000 to take out everything he put in and put back what was there originally. The injustice of that example was that the whole place was up for demolition. He would have pulled out all his equipment, re-tiled the premises and refit it to what it was before he moved in at a cost of $70 000. A week, two weeks or a month afterwards, the builder would have put a bulldozer through that and the small business owner would have wasted all his cash. There was no benefit to the landlord because it was coming out anyway. ING was the landlord at the time. The tenant came to me. I went to ING and we brokered a deal that still cost the tenant about $25 000 to de-fit his place, which he was happy with. It did not cost him $70 000 so it was a win.

It is ludicrous that he had to come to his local politician just to get that simple piece of justice. If a small business owner has to de-fit the premises when rolling over a lease, they are the sort of costs he could be up for. When that small business owner finds his new place, he has to fit that out to a standard that his landlord accepts. He has to fit out the premises to a standard that he is happy with, that he is able to continue running his business from, that is attractive to his customers and that his suppliers think he is still running a good business from. When I fit out my shop six years ago, it cost over $40 000.

We should just think about the small business operator who is not even at the end of his lease but at the rollover of his lease. If he has a dispute about the market rent, he will lose $20 000 because of his attendance at SAT or in court. If he then decides to move out, he will be up for tens of thousands of dollars for the de-fit of the existing shop and to return it to the state that it was in before he took out the lease. Then he has to go to the new premises and fit them out. He would be up for $80 000 or $90 000 before he even gets the truck to move the boxes from the old place into the new place. It is really an impost on small business. I am glad that the legislation that will be before us later today deals with some of those issues. Hopefully, the Small Business Commissioner will be in in a reasonable period. Hopefully, this bill will get through this place this week and will be in the other place when we return so we will have some small measure to protect our small business operators in this state who are vital to the economy and vital to providing jobs and training, mostly to young people. A significant number of employees in the retail sector are females. It still pays very poorly in comparison with our resources industry and some of our higher skilled industries.

It is still vital for small retail businesses to be able to turn a dollar, to have a reasonable turnover and, at the end of the day, to be able to make a good profit so that they can plough it back into the business. In my experience, most small businesses will train staff and pay TAFE fees—not entirely for altruistic reasons, but because there are benefits for them in training up staff, from both the state government and the federal government. Ultimately, there is also a benefit to the small business. Some small businesses argue that training is an impost on them, and that quite often, after they have trained someone up, the former trainee will move off somewhere else and get a higher paid job. That is life, and it is probably a good thing, in the long term, that that happens.

The Small Business and Retail Shop Legislation Amendment Bill 2011 ties in with the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011, which we will be debating at a later date, and that is a good thing. When the parliamentary secretary makes her response, I would like her to talk about the resourcing issue, and about how the good people in the Small Business Development Corporation can continue to provide the level of service they have provided for many years while taking on these extra, very vital roles—roles that will, particularly the first instance, come under a lot of pressure. They will come under a lot of pressure to be able to delineate between SPDC business and the business of the Small Business Commissioner. I think we will see that situation developing over time. With those words, I commend the bill to the house. The opposition will support the bill, but we will ask a number of questions during consideration in detail as well.

MS A.R. MITCHELL (Kingsley) [4.51 pm]: I rise to support the Small Business and Retail Shop Legislation Amendment Bill 2010. I am pleased that the member for Joondalup has raised a number of points that I also wish to raise. I have a number of small businesses in my electorate, by which I actually mean small business—I am talking about mums and dads and families that actually own and run their own businesses. I am not talking about major shopping centres, chain stores or franchises; I am talking about small businesses. I really enjoy supporting these businesses and I have come to really appreciate what they do. They certainly get my patronage, which probably costs me quite a bit of money, actually, because I spend a fair amount of time visiting them! However, they know their products, they care about their customers, and they us give that service that we do not always get elsewhere. These businesses also support their communities; they are the ones who give to the quiz nights and do all those other things. They are actively involved and they make a great contribution.

It has been very interesting for me to learn how difficult it is for them and what they have to go through to get through some of the work they do. They are invariably very, very good at business, but it is those extra things that they have to work their way through—the member for Joondalup mentioned some of them—that make things difficult: management companies, owners of shopping centres, and state and federal legislation. It is getting far too difficult for them. Let them do their business and have support in place around them. They feel quite lost about where to go to get good, independent advice on which to base their businesses and to go forward.

The concept of independence is critical; I know the member for Joondalup is supportive of the Small Business Development Corporation, and I do not wish to downplay any of the work that it does, but I think it probably lacks in status and independence. When a decision is made by the Small Business Commissioner, even though it will still be a mediation, it should have more status than perhaps the corporations has; I mean no disrespect to the corporation.

Small business people often feel that they are operating in a vacuum, and frequently contracts have been signed because small business people did not know what to do or where to go. I know that that issue will come up under the leasing arrangements, so I do not want to go there. The comment is made quite often, "I just signed over because it was easier to do it than not do it, and deal with the issues afterwards." I agree that many of these businesses cannot afford standard legal fees; even going to the State Administrative Tribunal is a significant cost and takes a long time. A lot of these people are working on month-to-month propositions, and it is easier to just close their eyes, shut their ears and get on with it. I believe that the introduction of a Small Business Commissioner will provide tangible support for these businesses. Evidence of the success of the Victorian Small Business Commissioner is most reassuring. Although there may be some variations, the fact is that because the

West Australian commissioner will be based on that model, we will see some similar results in Western Australia in a very short time.

I will go through some of the issues that small businesses come to me about; again, I will not go into the issue of leases. Something like the changing of retail trading hours may seem simple enough to us, but many businesses whose leases were signed under the previous retail trading hours legislation are finding themselves in a bit of a pickle. Their contracts say one thing, but the legislation now says something else. I will try to avoid specifics on that issue, but it is actually quite confusing for them and they think that their contracts override everything else that goes on. They can go to other places, but this is an area in which the commissioner could make a couple of rulings so that they will all know exactly what they can do and where they stand. The promotion of information that comes out of a mediation case will actually assist them greatly; they can go and check on frequently asked questions and things like that.

They have also indicated to me that management companies still require them to open when they have chosen to not open, and that situation has other implications. Small business people are seeking support to respond to management companies, and they are concerned about future renewal of leases. This is a grey area for small businesses, even though it may be clear to us. I regularly hear about situations in which costs are immediately passed on to small businesses when they probably should not be. It is now common for electricity and security costs to be passed on, even if the business chooses not to open. Once again, we know that that should not occur, but some small business people do not. It takes too long for them to go through SAT to address what I would say is a fairly basic issue. They want support and they want an independent voice to interpret the legislation for them.

It is even more concerning when a cost has been passed on to a small business and they are forced to pay very quickly. Even if they can finally get the management company to agree that that cost should not have been passed on, it can take months for a management company to even consider repaying the cost, and it can be a significant amount of money for a small business; they had to pay it quickly, but they do not get it back quickly. Cash flow is very important for these businesses and they are often disadvantaged by the decisions made by management companies.

Another issue I hear about frequently is disclosure of information, particularly in respect of marketing. All operators need to contribute to the marketing of a shopping centre, but when they ask for details about what marketing has occurred and how the money has been spent, they do not get any information on the money they have submitted. They would be quite happy if they could get that sort of information so that they could see what is going on.

As I stated earlier, I have a number of small businesses in my area. These are the people who put their houses up as collateral to take on those businesses. They are not part of the retail chains, and they are not franchisees; they are owner–operator family businesses. They are hardworking and proud, and they provide a valuable service to the residents of my area and, I am sure, many other areas. We must support these people and their businesses; they make a valuable contribution to the community and to the economy, and I believe that this legislation will make a difference to these businesses. I commend the government on this bill.

MS M.M. QUIRK (Girrawheen) [4.58 pm]: I had not intended to contribute to debate on the Small Business and Retail Shop Legislation Amendment Bill 2010, but having looked at it, I decided that it might be the end of the SBDC as we know it. As a former Minister for Small Business, it would be remiss of me if I did not at least record my appreciation of its excellent endeavours in facilitating small businesses in Western Australia. During the course of consideration in detail, we will possibly get a better idea about whether this legislation will be a means of closing down some of the activities of the SBDC by stealth. We will explore those matters somewhat during consideration in detail.

There are 196 000 or thereabouts small businesses in Western Australia. They account for 35 per cent of all employment. It is a very important sector in Western Australia and one that I think is frequently overlooked. Over my short ministerial career I had a number of portfolios and dealt with a number of agencies. I always found the Small Business Development Corporation acted incredibly professionally. It punched above its weight. I wish to acknowledge two managing directors I had some dealings with; namely Stephen Moir and Jacky Finlayson. Jacky is now the acting managing director, although she acted in other capacities when I was minister. Stephen and Jacky, and the staff to whom they exercised leadership, were always highly professional and very committed to what they did. I think they performed a very valuable role.

The SBDC has—it may well not continue to have—a number of important roles to play in Western Australia. It facilitated the creation, maintenance and growing of businesses. It advocated on behalf of small businesses. It ran training workshops. For example, during the global financial crisis the SBDC ran workshops on building resilience and providing small businesses with the means to insulate themselves from the rigours of the global financial crisis. It was also useful in assisting businesses to manoeuvre through red tape, and provided advice on licensing issues. Many businesses are required to have a multiplicity of licences, and for individuals who are not

familiar with the ways of bureaucracy, this can be incredibly difficult and complicated. Another valuable role of the SBDC was acknowledging best practice and celebrating excellence in small business in Western Australia. In my time as minister I certainly attended a number of small businesses throughout the state. What some enterprises were doing was remarkable. That was a very valuable role of the SBDC. Of course there are small business centres and networks that tap into local small businesses—again a very important role.

One of the SBDC's less well known roles was that of advocy. It looked at what impact any proposed government legislation would have on small business. During my time, and that of my predecessors, a small business impact statement accompanied a cabinet submission on legislation when it was thought that the proposed legislation would impact on small business. That is a very valuable thing. Quite often in this place those impacts are not necessarily predicted. In the past members have come into this place and raised anomalies or, worse still, after the legislation has passed and been implemented, the unintended consequence on small business then becomes apparent. A recent example of that kind of situation is of course the so-called yellow Lamborghini case. It became apparent that deficiencies in the legislation exposed businesses to a level of red tape to ensure that they were not impacted upon if someone borrowed a car, hired a car or took a car that belonged to a business for a practice drive, and that car was seized under the hoon legislation. That impact on small business was not anticipated. That is a very important role of the SBDC. People setting up a small business are quite often pushed for time. If they are in paid employment elsewhere and trying to set up a business, the workload is very intensive in the initial years. People are very time poor. To this end, there are a number of online services that the SBDC provides: the Young Business Network, the Home Based Business Network, the Women in Business Network, the Business Migrant Network and the Small Business Exporters Network. They are all very good online services. I am very happy to say those services have received very positive feedback. It was nothing to do with me, but a couple of those networks were certainly set up during my time as minister. The SBDC also targets particular needs; for example, the creation of the Aboriginal business unit within SBDC was an excellent idea. There is much concern in our community about Aboriginal employment. Many good enterprises have been set up throughout the regions, but the existing services do not necessarily cater to the needs of Indigenous Western Australians. The idea of a unit targeting the particular needs of Indigenous small businesses so that they can grow and prosper is an excellent one. The general mentoring role is incredibly important.

All these things need to be acknowledged. We suspect this legislation means that the new so-called independent commissioner—I say "so-called" for obvious reasons—will be weighed down dealing with all the responsibilities conferred by this bill. SBDC dealt with over 2 200 commercial tenancy issues during 2009–10. I am concerned that what is required to be done under this legislation may displace some of the good work I have described previously. I would be very sorry if that were to happen.

In consideration in detail we will explore some of the concerns and queries. As I noted earlier, the way the commissioner's position has been set up as the new head of the SBDC is, to put it kindly, an interesting way to deal with it. I perhaps would not have done it that way. We would have preferred a model closer to how the Victorian system operates. The commissioner will be wearing two hats. That will be an unhappy turn of events. It will not permit that person to exert the level of leadership and focus on those very important roles of SBDC I have outlined. We will be vigilant to ensure the SBDC, in whatever form it takes, remains viable and is still able to perform those functions. In consideration in detail we will be vigilant to ensure that this legislation is not a way of abolishing SBDC by stealth. It is quite well known that a previous minister in this government was not committed to the idea of a Small Business Development Corporation at all. His view was that in his business life he never needed the assistance of government. He queried the need for businesses, if they were really viable and successful, to similarly call on the assistance of the bureaucracy. I hope this legislation is not some method of diverting the efforts and resources of the SBDC to perform the functions under this legislation as a full-time endeavour. I hope there is still the capacity for the SBDC to continue its excellent work. We will be supporting the legislation but not without some significant queries during consideration in detail about the policy direction and underlying rationale for drafting the legislation the way it is.

MR W.J. JOHNSTON (Cannington) [5.10 pm]: Before I begin my comments on the Small Business and Retail Shop Legislation Amendment Bill 2010, I want to acknowledge that the member for West Swan has ceded her time to me so that I can speak now before the dinner break. I make the point that she is a fine woman, and she provides great representation for the people of West Swan.

Mr I.C. Blayney: That's a sexist comment!

Mr W.J. JOHNSTON: Why? She is a woman, and she is a fine woman. It is not sexist to say that a person is a fine woman. I am a fine bloke.

Small business is very important to the electorate of Cannington. There is very little business enterprise in the district of Cannington other than retailing. As we all know, retailing is mostly dominated by small businesses. In my conversations with people who operate businesses in Cannington, they have raised many issues. I want to highlight an issue that is very important to the people who operate businesses in the food hall at Westfield

Carousel Shopping Centre. Because of extended trading hours, there has been a shift in trade, and Thursday nights are no longer the strong trading nights that they used to be. These people are not getting any additional trade on Tuesday and Wednesday nights, because even though Coles and Woolworths, and Kmart and sometimes Target, are open, the other retail businesses in the food hall precinct are not open, so people are not bringing their families to the food hall on Tuesday or Wednesday nights; and now fewer people are doing that on Thursday nights. That is directly impacting on those small businesses in the food hall, because they are not getting the same volume of trade. On Tuesday of last week I mentioned a particular guy, Gary, who is running the pizza operation in the food hall. But all the other food hall operators are having problems as well.

Westfield is the world's largest shopping centre operator. I am not going to criticise its ability to run shopping centres, but I will say that Westfield needs to be more sympathetic towards these retailers. I understand from some of these retailers that they are subject to an annual market review as their leases come up for renewal, and that their rent will be going up by two per cent for inflation, and by another two per cent of top of that. That is an additional four per cent, and sometimes even higher, that is being added to their rent at a time when their turnover is going down. I am raising this issue on behalf of those retail businesses, because this is an important issue for them.

These large shopping centres act as sponges, because they draw in all the economic activity from surrounding suburbs. That means that supermarket businesses in suburbs such as Beckenham and Langford are not able to survive, because all the trade is being transferred to the large shopping centres. There is a very large IGA supermarket across the road from Carousel Shopping Centre, but there are no other supermarkets nearby. The same thing is happening around the world. Some cities in America have had to introduce special rules to ensure that the retail businesses in the central business district do not collapse because of the flight of people and trade to the suburbs. It is interesting that the New York city government will not allow big-box retailers to open up in New York. A lot of the things that are being done around the world to help small businesses are things that we are not looking at in Australia. I have seen the work of Associate Professor Frank Zumbo, who has suggested that the floor space of retailers should be restricted so that there cannot be an over-build of retail businesses in a particular location. I do not know how that would work, and I am not advocating for it. All I am saying is that there needs to be a review of how we regulate businesses.

I do not want to get myself mixed up here. Clearly we need to allow businesses to fail. Businesses that fail are as much part of the free market as businesses that succeed. We all recognise that. If every person who set up a business succeeded, the market could not operate. A free market is exactly that—people make decisions about where they want to go and what retailing they want to do. However, as I have said, there are some issues that we need to look at. One issue is the dominance of very large big-box retailers, whether that is Bunnings or the proposed Woolworths big-box hardware, or very large shopping centres such as Westfield.

Another issue is the relationship between these very large shopping centres and the community. Large shopping centres want people to focus, naturally, on their internal space, so the outside of the building is generally just concrete walls, with a couple of doors. There is no main street–style shopping opportunity. We need to think carefully about these issues.

In the couple of minutes before I sit down, I want to raise one other issue, and I look forward to the parliamentary secretary commenting on this in her reply. Proposed section 15A of the bill states —

> ***small business dispute*** means a dispute about —
>
> (a) an unfair market practice that affects a small business; or
>
> (b) the actions of a public sector body that affects the commercial activities of a small business.

I understand paragraph (b). However, I am concerned about what is meant by the words "an unfair market practice". I suggest that there will be an opportunity for very large businesses to argue that there is no foundation for the Small Business Commissioner to enter into a dispute resolution, because they are not involved in an unfair market practice. How will a decision be made about what constitutes an unfair market practice, and will the parties to the dispute be heard on that issue? The meaning of the words "unconscionable conduct" is a matter that has gone all the way to the High Court of Australia. Therefore, I am interested to know what procedure will be used by the Small Business Commissioner to determine that a practice is an unfair market practice.

The dispute resolution procedure that is provided for in this bill requires that both parties to the dispute need to agree to the use of that procedure. Therefore, if the commissioner is minded to join other parties to the dispute, those other parties will need to agree to do that. I am interested in knowing whether there are any statistics so that we can get a bit of a picture as to how many issues are likely to get to a resolution through this alternative dispute resolution procedure.

Proposed section 15A states also —

> ***alternative dispute resolution*** means —

(a) a conciliation; or

(b) mediation; or

(c) another form of dispute resolution that, in the opinion of the Commissioner, is appropriate to assist in the resolution of a dispute;

I am interested to know whether any thought has been given to what that might include. Would it include, for example, shotgun arbitration?

I would also like some clarification of what is meant by the words "small business", and what definition will be used by the Small Business Development Corporation in dealing with these matters. These are just some technical issues. I want to emphasise that there are always disputes in business. Business-to-business disputes are as old as commerce itself. It is important that we establish an alternative dispute resolution procedure. However, we need to compare these dispute resolution procedures with the procedures that are used in industrial relations matters. In industrial relations matters, a clear power is provided to the commissioner, and it is not necessary for both parties to agree. Even though there are often court challenges to the jurisdiction of tribunals—that is understandable—the dispute resolution procedures are very clear. I am sure that, over time, that will also be the case for the procedure that will be established under this bill. However, it is important that we provide a clear picture of what is being offered to small businesses in this state. The last thing in the world that we would want is for the commissioner to be sold as the solution to the problems of the retailers in the food hall at Westfield Carousel Shopping Centre, for example, only to find, when they raise those problems with the Small Business Commissioner, that the commissioner has no power to resolve those problems.

DR M.D. NAHAN (Riverton) [5.20 pm]: I would like to say a few things in support of the Small Business and Retail Shop Legislation Amendment Bill 2011 just to highlight its importance. It initially arose, if my memory is correct, when we started the process of further deregulation of shopping hours. It was clear to us at the time that in the process of stripping away certain restrictions on who could and who could not open, there would be potential for shopping centres to exploit their positions and to force shops to open, or to force shops that chose not to open to pay to meet the cost of opening. In the various legislation that was put through this house, it was agreed, I think, by both parties that that behaviour would be ruled out. The concern was that the imbalance of power between small business and shopping centres was such that the shopping centres could extract these liens on the small companies just because of their superior negotiating ability. Therefore, we needed a third party to come in and have the power to assist small businesses and to look at the disputes that they would have with the shopping centres and other business partners and assist them at low cost and to ensure they had access to some sort of mediation and justice. That is what the Small Business Commissioner is, and that is the major intent of the bill.

The model in this legislation is derived from Victoria, where the Victorian Small Business Commissioner has been in place for a number of years. It was put in place by the Bracks government, and it has been highly successful. Of course, the deregulation of shopping hours in Victoria took place many years before the introduction of the Office of the Victorian Small Business Commissioner; nonetheless, the issues of the imbalance between the shopping centres and small business remained, and Victoria responded to the ongoing problem of access to justice for small business, which, as we have heard from many of the speakers, are usually mum and pop businesses. They enter into business and they are highly geared. They focus on operating their businesses and they simply do not have the cash or the skills to access justice. Justice is very expensive. The Office of the Victorian Small Business Commissioner was set up to assist small business in disputes. In Victoria, this was set up in a certain way so that the Victorian Small Business Commissioner acts to assist small business but in a neutral manner. It is not a judge. It is not the final arbiter of the decision; it assists. The data coming from Victoria shows very high rates of resolution of disputes; it was very positive, and therefore it was a good model for us to use.

I now want to comment about the Small Business Development Corporation. It is evident that when people enter into small businesses, whether it be franchises or other small business, they have a great deal of optimism. Some people have a great deal of experience and knowledge of the industry, the franchise and the business in which they are entering into—maybe they buy it and have done this before. In fact, most members in this place would know people who have had long careers in small businesses because they have the skills, they have learned the business and they buy one business after another; they sell them and make a quid on top. However, many people enter into small business with a lack of information. Many people enter into small business excessively geared, with their houses as security. Many people enter into small business, whether it is a franchise or other business, without a great deal of knowledge about the business, and therefore the failure rate of small business is very high. I understand that the failure rate of franchises is lower, which is one of the benefits of franchising, but there are other problems in getting into franchising. One of the important things that the SBDC has done in the past, and hopefully will continue to do, is to provide an information and advisory service to small business. You can lead a horse to water, but you cannot necessarily make it drink: we cannot force small businesses to acquire

information, particularly legal information, in advance of buying it, but at least we can have it there for them and encourage them to take it and develop the skills necessary to be a successful business. That is what the Small Business Development Corporation has done historically, from its origin, as one of its major focuses. I hope that when the Small Business Commissioner becomes the chief executive officer of the Small Business Development Corporation, that body is funded to continue to provide those allied services. I am sure it will be.

I also want to emphasise that we have had debates in this house about the specific problems of franchisees and franchisors. I am the Chairman of the Economics and Industry Standing Committee, and the Legislative Assembly has instructed the committee to inquire into the Franchising Bill 2010, so I will not talk very much about that because the inquiry is underway. All I can say is that from the public hearings, one of the major ways of resolving whatever comes of the bill is for the Small Business Commissioner to play a major role, addressing not just small business generally but also the imbalance of power between the franchisor and franchisee.

I hope and trust that the process of deregulation of shopping hours will continue further. As we unroll and peel back the regulation that has acted as a barrier to competition, it will expose anomalies and therefore there will be problems of the nature that the member for Cannington outlined. I would hypothesise—I do not know—that perhaps one of the problems in Carousel Shopping Centre is the trading precincts elsewhere that are absorbing people. That is occurring in my area, and people are going to other areas to shop, particularly from my area to the city. Whatever we do as we peel back and change the regulation of shopping hours, the competitive tensions will change and will impact on different small businesses in different ways in different places. Therefore, as those regulations are peeled back, there will be tensions, and this provides the capacity for exploitation and for disputes to arise. Therefore, it is very important to have the Small Business Commissioner in place during the process of deregulation.

I congratulate the government for this piece of legislation. I encourage the government to keep some of the Small Business Development Corporation's advisory capacities going, and, on evidence from Victoria, this legislation will make a great contribution to small business in Western Australia.

MS R. SAFFIOTI (West Swan) [5.27 pm]: I follow on from the member for Riverton and also that fine man, the member for Cannington. As has been outlined by members on this side, the opposition will be supporting the Small Business and Retail Shop Legislation Amendment Bill 2011. However, we will be asking questions in debate at the second reading stage and also during consideration in detail. As has been outlined, the Small Business and Retail Shop Legislation Amendment Bill 2011 is part of the overall agreement that was reached between the opposition and the government on retail trading hours' reform, and is a very positive addition to government, in a sense.

We were all a little shocked to see the way this process has been put in place with the role of the managing director of the Small Business Development Corporation disappearing, and that role being taken on by the Small Business Commissioner. As outlined by the member for Joondalup, his view is that this is a bit different from the Victorian model. The Victorian Small Business Commissioner is independent, whereas the Western Australian Small Business Commissioner will not have that degree of independence.

The other key issue is the funding of this new body and the new roles it will play. Clause 14 refers to the new functions that are enabled under this legislation, which include to investigate and report to the minister on the impact of legislation and government policy on small business and on the actions of public sector bodies that affect the commercial activities of small businesses. The bill includes a number of other things, such as facilitating and encouraging the fair treatment of small businesses by other businesses, promoting informed decision making by small business, and investigating and reporting to the minister on emerging market practice trends that adversely impact small business. A number of new functions have been added to the current role of the Small Business Development Corporation. The question is: how much additional funding has been allocated as part of this process? I would like the parliamentary secretary, in her response to the second reading debate, to tell us how much additional funding has been given to the agency to reflect this additional role, which is an expanded role.

I will highlight some of the points made by the member for Cannington, that fine man, about small business disputes and what is unfair market practice. Proposed section 15A states —

> ***small business dispute*** means a dispute about —
>
> (a) an unfair market practice that affects a small business;

Can the parliamentary secretary clarify the definition of "unfair market practice" and how it is assessed and applied?

As I said, we support the Small Business and Retail Shop Legislation Amendment Bill 2011, and we want to clarify the powers of the commissioner. However, we are disappointed that the relevant body has not been given additional funding even though the roles and functions of that body will increase significantly under this

legislation. I have not checked the budget papers, but from the parliamentary secretary's speech, it does not appear that the agency has been given any additional funding even though it will be undertaking significant additional functions.

I believe that the issue of deregulation has been poorly handled. Some of the evidence suggests that not a lot of people are utilising the 9.00 pm closing time. Labor's proposal for a 7.00 pm or 8.00 pm closing time would have been a fairer and more progressive step towards total deregulation. It is disappointing that a game of brinkmanship was played and that there was no real negotiation on this issue early on. From the Premier's point of view, it was my way or the highway, which has been to the detriment of small business.

Small business operators have contacted me and told me that the additional cost to their lease contracts is a significant issue, as is the changing market share. The question is: how much extra retail spending has occurred and where is it going through deregulation? The evidence so far suggests that it is going to the major retailers and not small businesses. Small business is facing the significant challenge of trying to open more hours without having more customers. Some businesses in the Sunday trading precincts opened on Sunday in the hope of getting more business, but the patronage just is not there and they are closing as a result. Probably more market share is going to the majors. I think the 9.00 pm closing time was a case of going too far too quickly. I do not believe it has been as well utilised as was expected or stated by the government.

I would have liked to have seen the 9.00 pm closing, the trading precincts and the small business protection measures brought on simultaneously. Another element of the reform package that the Labor Party agreed to is the trading of durable goods and electrical stores being open on Sundays. That is a big part of the package. Some businesses in Malaga have contacted me about that issue, including one retailer in Malaga who contacted me late last year. That business rang the government and asked when it would be able to open on Sundays. The retailer was told by someone from government that it was the opposition's fault that that could not happen. That is not the case. The opposition put forward a proposal, and the government agreed to it, to allow durable goods and electrical stores to open on Sundays. We are still waiting for that part of the package. It would have been better and cleaner to have had an entire package. However, for political purposes, this has been rushed through in separate legislation, and now we are dealing with the key legislation that protects small business.

Another issue is the staff cap, which this legislation was never intended to address. However, that issue is affecting small business and it has been raised with me. There are limits to how big a small business can grow in order to open on a Sunday and weeknights while other businesses do not have any staff caps and can operate until 9.00 pm on weeknights and on Sundays. That issue is affecting small businesses throughout my electorate because they are losing market share and revenue. I have spoken to a number of small business owners about this. They cannot do much to compete in this instance because they are very limited by the size of the shop and the services and scope of what they can provide in their stores. An IGA in Wembley, which is not in my electorate, although the owners live in my electorate, is over the 13-employee cap and is therefore unable to open on Sunday. However, the Coles supermarket, which is not very far away in the Subiaco precinct, can open. We are talking about small business, and that is a major element for them. We are stopping small business from being able to take on the majors, which is not what we want. We want to ensure that the market share is diversified and does not go all one way. I know that some government members have acknowledged and discussed this issue but I do not know whether cabinet has considered it or whether it will be part of the overall package. We need to hear what the government intends to do about the 13-employee cap. Given where we are at with the amount of deregulation that has occurred, stopping businesses from being able to compete is a very bad thing. In a sense, we are putting them behind the eight ball. By deregulating the trading hours but not increasing the staff cap, people's purchasing practices are changing. They are going to stores other than the IGAs and the other small businesses that are affected. This affects me in particular because there are a number of IGAs in my electorate. They are competing with stores that are allowed to open to 9.00 pm while IGA is not allowed to do that because it has more than 13 employees. IGA cannot expand or compete properly with the majors. I would like the parliamentary secretary to provide feedback on where the government is at on the 13-employee rule.

MR V.A. CATANIA (North West) [5.38 pm]: I have been caught out because I thought the opposition would speak for longer. I rise with a few concerns about the Small Business and Retail Shop Legislation Amendment Bill 2011, particularly when the consumer price index is currently under 2.5 per cent and over the past three or four years it has been around three per cent. The minimum term of a shop lease is around five years. Usually, shop leases have increased by between 2.5 and three per cent each year over the past five years. However, history shows that when a lease is due for renewal or renegotiation, the lease has gone up by another 30 per cent. Therefore, small businesses are being hit twice by not only the CPI increase, but also another 30 per cent when they renegotiate their lease with the shopping centre landlord. Therefore, when we look at what small business owners pay, we see that mums and dads are paying themselves less than the award rate. These mums and dads who are paying themselves less than the going award rate often have their house on the line; they have mortgaged themselves to the hilt to ensure that they can have a business and have employment, but, as I said, they are paid less than the award rate.

This bill should protect those mum and dad retailers. In Western Australia, small business proprietors employ between five and six times the number of workers employed by all the big retailers. That is approaching 200 000 people in Western Australia. The number of bankruptcies has increased significantly, according to the Insolvency and Trustee Service Australia, known as ITSA. About 170 retailers have gone down this path. If people go to any major accountancy association such as the Institute of Chartered Accountants, or CPA Australia, which is the association of certified practising accountants, they will find that the number of businesses going into administration vastly outnumbers those that are going through bankruptcies.

The problem mentioned most frequently by mums and dads in the independent small business sector is retail rents. I know that members of this place, including me, have spoken about rents for accommodation in the north west. People can pay $1 500, $2 000 or more a week to rent single accommodation in the north west. We may think that that is a lot of money, but when it comes to retail shops, it regularly costs small businesses more than $10 000 a month to rent between 70 and 80 square metres.

How does a prospective small business retailer find out about that? If people want to purchase or start up a small business, is there a lease register in Western Australia that can be consulted? At the moment, no, and I believe that this bill—the parliamentary secretary will correct me if I am wrong—does not provide for such a register to be set up in the future so that prospective small business owners could do a search to find out how much rents are for a business in a particular shopping centre. It would not work if such a register were placed in a centre manager's office, as has already been stated by the shopping centre managers. I refer to an article in *The West Australian* of Wednesday, 29 September 2010, headed "Shopping centres object to plan for lease register". The article refers to Milton Cockburn from the Shopping Centre Council of Australia and states —

> The SCCA believes maintaining leases would be an extra financial and administrative burden on shopping centre managers at a time when Government is trying to find ways to reduce unnecessary and costly regulatory burden on businesses.

I ask the parliamentary secretary to look at that issue. If the Shopping Centre Council of Australia is raising concerns, that should start alarm bells ringing for those people who want to start a small business and go into a shopping centre.

It has been said that the Small Business Commissioner would facilitate low-cost, speedy mediation between mums and dads and multinational companies. However, as these major multinationals are often represented by senior lawyers, barristers and Queen's Counsel, it very much looks as though this idea is set to fail spectacularly before it even starts. It is said that this new commissioner will be the head of an enhanced Small Business Development Corporation. That is surely not a good sign for this mums and dads group either. I say that because small business tenants have been looking for a proper champion, not someone to continue a track record of these people losing out to corporate landlords and their lawyers. As I said, often these multinationals have their lawyers, their barristers and their QCs, and the mums and dads have to go in and tackle those people who would probably earn more in a week than those mums and dads would earn in a year as small business owners. Often, the mums and dads who own these stores earn less than the award rate and probably less than what they pay their employees, if they are able to employ people.

The past record of the SBDC shows that the relevant legislation has been the Commercial Tenancy (Retail Shops) Agreements Act 1985 and its amendments in 1998, and also the Retail Shops and Fair Trading Legislation Amendment Bills in 2003 and 2006, both of which were defeated in the Legislative Council. If this bill is passed, the legislation will mention unconscionable conduct. That is an area in which no case has been won against the shopping centre landlords and corporations. Despite all the administrations and bankruptcies that have occurred, no-one has been able to win such a case.

Retail rents are increasing, as is the number of bankruptcies. People are concerned about the huge imbalance out there, which is often caused by trading hours. The multinationals such as Coles and Woolworths and other anchor tenants put pressure on the small businesses that operate in the remaining area of these shopping centres. Often, when Coles and Woolworths go into a shopping centre, they pay a set rate per square metre, yet a small business owner will really provide the cream for the shopping centre to make a buck. These shopping centres make a buck, and they turn over small businesses quite regularly. It seems as though there is a lack of advice for these small business owners. If we had a registry, those people who are thinking about going into a small business in a shopping centre would be able to see what the rental rates are around the state. I hope that the parliamentary secretary will look at that issue, because there are concerns about this bill. It seems to be creating more of an imbalance and going down the path of total deregulation, which of course the National Party does not support. If the opposition supports this bill, I am concerned that it will be providing the opportunity for total deregulation in the future. However, businesses will not be provided with the necessary support and protection, because I do not believe that the Small Business Commissioner will be able to provide the support needed by small business.

I have concerns, and I will be monitoring closely the consideration in detail debate. I will be interested to hear the answers so that I can decide whether I can support this bill. As I said, I have concerns, and I do not want to see any further deregulation. Trading hours in this state are a mess. There is huge confusion about who can and cannot trade, and that is a great shame. The only party that has clearly stuck to what it believes in and to the policy that it took to the last election about no further deregulation is the National Party. It seems as though the major parties have moved towards total deregulation. It is disappointing that the Labor Party has fallen for that total deregulation scenario, because that is how things will end up if this legislation is passed. Small business will lose out in this state. It is the backbone of our economy. We should be protecting our small businesses as much as possible to ensure that they prosper, especially when our economy also prospers. We need to provide that protection. How do we provide that protection? I believe in the intent of having the Small Business Commissioner. I firmly believe that we need to control trading hours to ensure that we can keep those multinationals at bay and reduce their market share, which I believe leads to choice for the community.

I have often engaged in some bantering with the member for Vasse in this place over what happens in Karratha. Karratha allows deregulated shopping hours. When people go shopping at 5.30 pm, they will find two gates at either end of the shopping centre. Coles is at one end and Woolworths is at the other. They are the only two stores trading until late in the evening. The same happens with Woolworths in Carnarvon. All the other retailers are shut. Why? It is because there are not enough people around. People do not want to do that sort of shopping in the specialty stores simply because they believe there are enough trading hours. We only have deregulated shopping hours for those big companies to gather their market share, which reduces small business, which I believe reduces choice.

I have grave concerns about where we are going and for small business in this state. I am disappointed that the major parties have got together and are colluding, saying that they are trying to protect small business. If members go through the detail of this bill, they will see that there are concerns. Hopefully, those concerns will be raised during consideration in detail. Hopefully, we can get a piece of legislation that truly protects small business but is not seen in the eyes of the major parties as smoke and mirrors, saying that they have the Small Business Commissioner but without delivering the protection that small businesses deserve.

MR D.A. TEMPLEMAN (Mandurah) [5.52 pm]: I always find myself in this situation—standing in this place to make some comments just before the dinner break, when everyone disappears and no-one comes back afterwards. Speaking of small business, we will have an important gathering of members of the tourism industry in the courtyard during the dinner break this evening. We all know that the tourism industry is one of the very vulnerable industries in Western Australia, and Australia generally, particularly when there is an economic downturn or, as we have seen in Queensland after the recent major floods, which impacted on its tourism industry. I am sure that members in this place will enjoy the hospitality of the tourism industry and listen to the former member for Carine, Katie Hodson-Thomas, who is emceeing the evening. She was a great member. I was really pleased when she was a member of this place. Although she was on the opposite side, she was always a voice of reason. There are very few voices of reason in this government.

Mr J.E. McGrath: What about me?

Mr D.A. TEMPLEMAN: I do not put the member for South Perth in that category, being an amicable man who should be on this side of the house; that is, he should be a member of the Labor Party. He was born in Hamilton Hill. The pedigree of the member for South Perth would fit with a template of Labor Party membership.

Mr J.E. McGrath: I went to John Curtin school, too.

Mr D.A. TEMPLEMAN: There you are! Yet the member absconded to the Liberal Party. We all know that the member for South Perth quite often thinks that the arguments put forward by members on this side of the house are far more persuasive and are ones that he agrees with more than those from his own side. I would never divulge private conversations between the government Whip and me.

I need to warn the Parliamentary Secretary to the Minister for Small Business that the handling of the Small Business and Retail Shop Legislation Amendment Bill 2011 is her apprenticeship. It is her interview for entry into cabinet. I believe that all eyes will be on her during her handling of this bill. I look forward to her sitting at the table during consideration in detail while being interrogated by members such as the member for North West, who has just spoken. The member for North West seesaws.

Mr I.C. Blayney: What's his pedigree?

Mr V.A. Catania: Don't set him up!

Mr D.A. TEMPLEMAN: I am glad the member asked that question. Indeed, what is the pedigree of the member for North West?

Point of Order

Mr V.A. CATANIA: Madam Acting Speaker, the member for Mandurah must return to the bill that we are debating.

The ACTING SPEAKER (Ms A.R. Mitchell): I will accept the member's point of order. We have only a short time remaining.

Debate Resumed

Mr D.A. TEMPLEMAN: That is probably appropriate for me—a short time. I was going to say something very, very cutting but I am a nice person so I will not do that until later on in my speech after the dinner break when the member for North West will not be here to defend himself because he will be outside having a few drinks with the members of the tourism industry.

I want to commend the member for Joondalup. Not only is he a successful party hire businessperson in his own right, and if ever one wants any type of entertainment north of the river —

Mr A.P. O'Gorman: Not any type.

Mr D.A. TEMPLEMAN: Yes, not any type because there are some types that the member for Morley and I, both being very staid —

Mr I.M. Britza: Staid?

Mr D.A. TEMPLEMAN: The member knows what I mean. We are pure and reserved and we would not go to some of the parties that the member for Joondalup might cater for. If one lives north of the river and if the Liberal Party is holding a massive function in the northern suburbs and perhaps needs some paraphernalia such as seats, chairs, trestles or marquees, the member for Joondalup is the man to see, or his daughter actually because she runs the business. The member is more of a figurehead, and what an interesting figurehead it is.

I want to congratulate the member for Joondalup. The one thing that has always impressed me about the member for Joondalup ever since I entered this place 10 years ago in February is his passion for small business. I cannot divulge the business of the caucus. The member for North West—he can probably attest to this happening on the rare occasion he attended caucus—would know that the member for Joondalup has always championed small business men and women in Western Australia. He has argued extensively for ensuring that the rights of small business owners in his electorate and those throughout the state are protected. This bill is before us because of the tenacity of the member for Joondalup. I do not think anyone in this place, particularly those who have been here since I have been here, would deny that.

Ms R. Saffioti: I deny it.

Mr D.A. TEMPLEMAN: The member for West Swan has not been a member as long as I have.

I want to congratulate the member for Joondalup. As I was saying to the parliamentary secretary, this is her litmus test in terms of the ministerial application form. The eyes of the world will be on her to see how she performs.

Sitting suspended from 6.00 to 7.00 pm

Mr D.A. TEMPLEMAN: I am very pleased to continue my comments on the Small Business and Retail Shop Legislation Amendment Bill 2011, but I am very disturbed that members from my own side, apart from you, Mr Acting Speaker (Mr A.P. O'Gorman), are not here to listen to the continuation of my contribution! Obviously members from my side are more interested in the free food out there in the courtyard, and they should be admonished for it! If I wanted to take a great risk, I would call for a quorum to be formed, but I will not do that because we may actually end up with an early night, and I would not like to be responsible for highlighting to the government that it cannot maintain numbers in the house!

This bill is, indeed, a litmus test for the member for Scarborough and her application form for the cabinet, because I have to say that the quality of ministers in the current cabinet is not high. She has a number of competitors at the moment; the member for Jandakot was a challenger, but I feel that, as in the old horseracing term, he is one out and one back; he has drifted back in the field. My very good friend the member for Murray–Wellington, who I used to describe as one of the most disgruntled members of the government, has been overlooked, but he is still in there; he is probably one out and two back.

Mr V.A. Catania interjected.

Mr D.A. TEMPLEMAN: That could be argued; I would not argue that, but it could be argued. This legislation is very important for the parliamentary secretary because the member who sits in front of her and to her right is the one who looks shaky—the Minister for Environment. He is on very shaky ground, I feel. I think that the member for Scarborough is just one hop away from being on the front bench, and I am her biggest advocate, as she knows! I do not know whether that is very helpful; it may not be, because I do not have great form, but all I can say is that I am out there advocating for her!

We have all attended the tourism industry function in the courtyard, and that is very important. The tourism industry in the Peel region comprises a number of small businesses, and there are a number of representatives of

small businesses in Mandurah here as part of that function. The Peel region, like many regions in Western Australia, relies very heavily on a productive and effective small business community. Traditionally, small business in the City of Mandurah has been very much at the forefront of employment. The bigger mining operations are in other areas, such as the mining operations in Boddington and further south in Waroona. However, the small business sector in Peel continues to be the key employer in the broader region. A healthy and effective small business sector is absolutely crucial to the Peel region. One of the problems for the Peel region is that when we have a downturn—whether on the scale of the global financial crisis or more localised—it is the small business sector that feels the pain. A lot of the smaller businesses in Mandurah and the Peel region very much felt the impacts of the GFC. The interesting thing about the two-speed economy is that even now, when there is a downturn in regions such as Peel, it takes a much longer time to recover. The member for Murray–Wellington may agree or disagree with me, but there are a lot of small businesses in the Peel region that continue to operate in a relatively flat environment. That really is of concern to us as members and advocates for our region. The economy of the Peel region is still in many respects very narrow in its capacity. There is a heavy reliance in the Peel region on retail and service industries, so when people stop spending, those businesses begin to feel the effects. We are seeing that every day in Mandurah and the Peel region; when people close their wallets and discretionary spending becomes constrained, our small and medium-sized businesses in the region experience the effects in employment and employment creation.

This bill, which sets up a commissioner, is an important move forward. Before the dinner break we were about to delve into the pedigree of the member for North West; I will not do that. I was tempted, and the member for Morley was goading me on to go into that, but I will not. The member for North West in his presentation highlighted a number of his concerns, including issues relating to the impacts and experiences of retail trading in the North West. Although I acknowledge that there are some concerns, one of the important things that we need to look at during consideration in detail is exactly what teeth this commissioner will have. That may be one of the member's concerns: what teeth will this commissioner have? In other words, are we just setting up a toothless tiger, a toothless establishment, and when push comes to shove the position will not really do what we hope it will? I hope that does not occur. The member for North West said that he is concerned about this bill leading to further deregulation; I will need to be convinced of that situation during consideration in detail. I therefore look forward to the member for North West's contribution, even though he quite often asks the government Whip whether he can leave early. I hear stories about the member for North West.

Mr V.A. Catania: It is all untrue!

Mr D.A. TEMPLEMAN: The member for South Perth and I speak often about the member for North West's keenness to leave this place and go home. I would love to go home early; I cannot, of course, given my role.

The parliamentary secretary is probably being coached now by the Leader of the House. May I finish—someone said, "Yes, please!"—by saying this: it is very important that the parliamentary secretary performs well during consideration in detail. This is the member for Scarborough's application form for cabinet. I think that if I was Premier—god help the state of Western Australia if that was the case—I would look favourably upon the member for Scarborough as the next filler of any vacancy that may occur in the cabinet between now and Christmas.

Mrs L.M. Harvey: Your advocacy does not help me.

Mr D.A. TEMPLEMAN: I know. If the member for Scarborough can tell me who her major competitor is, I will perhaps advocate for them more stridently to help the member with her cause. I see the member for Scarborough as the next minister in the cobbled-together Barnett–Grylls–Bowler–Woollard alliance; I think that will be the case. The member for Scarborough should replace the member for Hillarys as not only minister but also Leader of the House. I think the member for Scarborough has the capabilities for that role. I will be watching very, very closely during consideration in detail as the member demonstrates her skills and offerings as a minister.

The ACTING SPEAKER: The bill, please.

Mr D.A. TEMPLEMAN: Yes, the bill—my kingdom for the bill! I will be watching very carefully. This is the parliamentary secretary's chance and it could be the only one she has, so she should take it with both hands. When we go through consideration in detail, government members will obviously not speak on this bill, as they are always told not to, but members on this side of the house will have a number of questions and queries on some of the clauses, as will the member for North West. I hope that we will hear from the parliamentary secretary in answer to those queries and questions that we may have on some of the clauses. I will leave it there, and I look forward to dealing with this bill during consideration in detail.

MR P. ABETZ (Southern River) [7.14 pm]: I am glad to rise and speak to the Small Business and Retail Shop Legislation Amendment Bill 2011. Small business is vital to the economy of Western Australia. A very large number of small business owners in my electorate not only run businesses, but also make very significant contributions to the economy of Western Australia. Indeed, I think that we often underestimate the importance of

small business. Small businesses are generally family-based, and in times of economic downturn they often have the capacity to weather the storm quite well; they tighten their belts and get through the tough times. However, small business owners often do not have much knowledge of the laws and regulations that pertain to business. Therefore, I am sure that many in people my electorate will very much welcome the provisions in this bill that facilitate the appointment of the Small Business Commissioner.

Many small businesses are started from a sort of idealistic basis and the excitement of "running your own business", which often means that people who start these businesses do not have as much background as we might wish them to have to navigate the sometimes turbulent waters of dealing with bigger players in the field and government departments. In any relationship there is always the potential for conflict. To have to resort to legal action to get things sorted out is costly and often simply not done.

The Victorian Small Business Commissioner model certainly has runs on the board; some 80 per cent of disputes brought to the Victorian Small Business Commissioner are resolved through mediation. In fact, apparently 34 per cent of matters are resolved before going to mediation simply by providing the necessary information to both parties in the dispute to say, "These are the laws. These are the issues that are at stake." Most people then recognise their obligations and act accordingly, and the issue can be amicably or at least tolerably resolved.

I also see the provision in this bill for the appointment of the Small Business Commissioner as a very valuable facility for the franchising industry. A number of small franchisees in the business world encounter problems in dealing with their franchisors, but, as it is an ongoing relationship, there is often a reluctance to deal with the issue. Franchisees often hope that the problem will go away, but it becomes very costly to tolerate something that is not right in the commercial relationship. Therefore, the provision of the Small Business Commissioner to address the situation and clarify the obligations of both parties will be a very positive contribution to making franchising work more effectively. In that way, I think the Small Business and Retail Shop Legislation Amendment Bill is a great supplement to the Franchising Bill 2010 that I introduced into this house last year.

The Franchising Bill simply requires that parties to a franchising agreement act in good faith to one another. One would hope that all businesspeople do that anyway, but having it in legislation certainly makes that obligation very clear. The other thing the Franchising Bill does is provide penalties for breaches of the Franchising Code of Conduct. In a way, it provides a second step; if mediation has not resolved the issue, the Commissioner for Consumer Protection can deal with the issue and, if appropriate, launch a prosecution against the person who is in breach of the code. In that way, we would have, in a sense, a policeman. Having a Small Business Commissioner who is able to deal with the bulk of the conflicts that arise in a positive, mediatory way is a wonderful step forward for small business in this state, and certainly supplements what the Franchising Bill 2010 also hopes to provide.

The other very positive aspect of the Small Business and Retail Shop Legislation Amendment Bill is the protection it will give retail tenants in shopping centres. A lot of things go on in the leasing of shops or the renewing of leases that are really a misuse of power by shopping centres. I have some knowledge of the pharmacy industry as my daughter owns a pharmacy. Pharmacies cannot relocate easily, because there is a whole process that they need to go through. Because of that, some shopping centres try to double the rent when it is time for a pharmacy to renew its lease, because they know the cost involved in relocating a pharmacy is so great. It is predatory-type behaviour that is simply unacceptable.

I add my support to this bill. I certainly look forward to the implementation of this bill. I believe it will bring great benefits to the small business sector in Western Australia. I am sure that my constituents in the electorate of Southern River will greatly appreciate this legislation coming into effect.

MR M. McGOWAN (Rockingham) [7.22 pm]: I do not want to speak for very long on the Small Business and Retail Shop Legislation Amendment Bill 2011. I have listened to some of the debate. I listened particularly to your contribution to the debate, Mr Acting Speaker, as member for Joondalup. You spoke about the necessity for a mechanism to resolve issues involving small businesses. I also listened to some other contributions to the debate. It has been a fairly friendly discussion of this legislation. I am pleased that there is agreement on progressing the idea of having a Small Business Commissioner in Western Australia.

The genesis of this legislation goes back to the agreement made between the opposition and the government during discussions on trading hours. The idea was put to the government by the Leader of the Opposition, by you, Mr Acting Speaker, and by others that if the government wanted to extend trading hours, it had to provide some additional support and protection to people involved in small business in Western Australia. The government agreed to that. That is a good move. We are now dealing with this legislation as a consequence. Further legislation on commercial tenancies is the other part of that agreement between the government and the opposition. There are some difficulties around the detail of the legislation, but in broad terms, both pieces of legislation are agreed between the government and the opposition. This legislation provides a way for small business people to negotiate or resolve issues, particularly with their landlords, in a non-litigious and simpler way than they perhaps can at the moment. That is a good thing.

I have a lot of sympathy for people in small business. Various members have told stories about their involvement with small business, including for some their role as small business people before arriving in the Parliament. My general experience is that most members have not been small business people. Most members have come from government jobs or have been teachers, lawyers, economists, lobbyists or farmers. Funnily enough, there are probably more former small business people in the Liberal Party than the Labor Party, but some members of the Labor Party have come from that background. I think it is a good background for giving people an understanding of the nature of work and effort. As I said, I have a lot of respect for people who get into small business. A great many people who get into small business probably should not do so. That is the reality. About 70 per cent of small businesses do not survive. That is a huge number. A large number of people invest their money, take out loans and mortgage their homes to set up small businesses and it does not work for them or their families. Depending on how they structure it, they often lose everything as a consequence. A lot of people should not go into the field. This is perhaps overstated, but there needs to be more education for people so that they can understand what they might be getting themselves into when they think it is a good idea to go into business. Seven out of 10 people who do that will not make it. That is sad. I find it a very sad experience to walk through my shopping centre and see empty shops. People had bought a franchise or invested money to open a clothing boutique, home wares shop or something of that nature and those shops are now closed. It is a shocking thing to see, because those people have generally lost most of their life savings as a consequence. I hate the idea that people who have had a go have had that outcome.

Policy initiatives or ideas that governments can undertake to try to rescue people in that area are limited. This initiative is one. It will help to resolve some disputes and issues, particularly between landlords and tenants. That is a good idea. The other initiative—the lease register arrangement—will help people understand rental arrangements for others in retail, so that they can understand how they compare. It will provide transparency for people who are taking up a lease, so that they can understand what they are getting themselves into vis-a-vis other tenants. That will allow people to be more educated. Irrespective of that, a number of businesses will still fail.

I have had some experience with small business. My father and mother ran a small business virtually the entire time I was growing up. My father was a wool classer, funnily enough, when I was born. He then worked for BHP in a steel mill. After that, he wanted to go into business on his own. He ran a milk run and an instant lawn business before running squash centres, which we owned. I grew up predominantly in a squash centre. Running a small business is a hard life, particularly when running squash centres, because squash is now pretty much finished. In the late 1970s and early 1980s it was very popular, fortunately for my parents.

Mr W.R. Marmion: Were you any good?

Mr M. McGOWAN: I played in the Australian titles as a junior. Unfortunately, when I was competing in the Australian titles there were people around like —

Mr W.R. Marmion: Dean Williams?

Mr M. McGOWAN: No; he is 10 years older than me. There were fellows by the name of Rodney Martin and Rodney Eyles and a few other people of that stature. I think they both went on to become number two in the world. As a 15-year-old, it was not pleasant to play them. I realised I was never going to be a professional squash player so I concentrated more on my studies, which I think was the best outcome for me considering that most of those players can barely walk these days!

What I did learn from growing up in a small business was that running a small business is hard. Money does not always come in and life can be very difficult. As parliamentarians, we need to be sympathetic and understanding of that. Policy initiatives for us to help people in business are limited. One policy initiative we can use is to try to keep tax levels as low as possible, but there is never a huge small business tax impost or reduction on either side of Parliament—I have not seen one anyway. Most small businesses do not pay payroll tax. The other two taxes, land tax and particularly stamp duty, do not generally apply to small businesses either, unless business owners dispose of their businesses and make money from that process. Capital gains tax is another tax, but that applies to the end of the business process when there has been a success made of it. While it is in operation, company tax is an opportunity for government to make life better for businesspeople. Big tax cuts in that regard are periodically put in place by the commonwealth, but I do not think they will ever be enough for the small business sector. I would like to make their tax situation better, but I am not exactly sure that taxes are what makes or breaks a small business. Therefore, the things we can do are limited, but we can make sure that the economy is successful. A successful economy is generally the best thing. If there is money being spent, that is generally the best thing for small businesses to be successful.

On my side of Parliament, I, and most of my colleagues, always advocate on behalf of people who want to take the initiative and have a go. I believe in that. I do not want to impose restraints or red tape on people who want to take initiatives, have a go in small business and have that experience. I have a great deal of sympathy for people in that area. I also have a lot of empathy and understanding for people who work for people in small business,

the employees, and I want to support them as well. Although I express my support for people in small business, I also express my support for people who work for small businesses. As I said, I hate walking through shopping centres and seeing an empty shop. At the same time, people who work in small businesses, not just the business owners, have long, hard days as well. It does not matter if it is in retail or other forms of business—light industrial and so forth—a lot of people have hard lives in this field, whether they own the business or they work for the business. Therefore, I do not hold the view, which some people in the small business lobby hold, that it is all about wage rates for people who work for the small business, particularly in Western Australia, a state with a competitive labour market. If the lives of people who work for small businesses are made difficult because of their pay, far fewer people will be willing to work in the field. We might be slightly different to other states in that regard, but the success of our economy means that there is competition for labour.

People who run small businesses have to make sure that their employees are properly remunerated or those employees might choose to work elsewhere. That may well be damaging for people attempting to obtain and keep good staff. In any event, there is an imbalance in bargaining power and there is an imbalance in the relationship, particularly for people who run small businesses, with those people who they might deal with in their leasing arrangements. Anything that allows those disputes, and other disputes covered by this legislation, to be resolved more simply and easily, particularly considering people in small business are very time poor, is a good thing. People in small business do not often have time to deal with these sorts of issues; they do not have the time, they do not have the inclination, they do not have the patience and they often do not have the skills. Therefore, I support anything that allows simplicity and I hope that this legislation has the ultimate outcome of giving people in small business the opportunity to resolve their issues more simply, easily and cheaply than is currently the case.

MR P.T. MILES (Wanneroo) [7.34 pm]: I would like to put on the record the valid reasons for bringing in the Small Business Commissioner. The small committee that I am on within our party asked the former Treasurer, the member for Vasse, to put this legislation on the agenda. He took the initiative to look at the Victorian model, bring it back and take it up further. One of the primary reasons I like the legislation is because everybody knows that legal action in any form or place costs a minimum of $5 000 to $10 000. I like the very low-cost mediation session that can be driven through the Small Business Commissioner. As noted in the parliamentary secretary's second reading speech, up to 80 per cent of matters that come before the Small Business Commissioner in the Victorian model are mediated out. That is a great plus and is one of the reasons that I truly support the legislation. I also support it because my electorate of Wanneroo is unique in that it is surrounded by two major light industrial parks—Wangara Park and Gnangara Park industrial estates. In the northern section of the area, in Neerabup, there is a new park, Meridian Park, that LandCorp is currently expanding to 600 hectares. The feedback I am getting from all businesses, ranging from a one-person business in a house through to a factory that employs 400 or 500 people, is that they are looking for this sort of support from a government. I am glad to be part of a government able to put this bill up. It is not before time, and it is great to hear the opposition supporting small business and retail amendments that will come forward later tonight and this week.

I hesitated, when the Minister for Small Business, Hon Simon O'Brien, presented this legislation to me and others, over the fact that the Small Business Development Corporation was going to look after it. I think everybody was a bit concerned about that. The fact that the commissioner will be a new person at a higher level within that entity makes me quite confident that the minister has been able to iron out and fix any of the issues that we presented to him—I guess time will tell. We have to give this a try; we have to make sure that it works. We can always come to this place with grievances, and, through that process, let the parliamentary secretary and the minister know that the legislation is not working. But I am quietly confident, after my discussions with the public servants in the minister's office, that this will be a very successful program. I know that a lot of small businesses in my electorate will take good advantage of it and I will make sure that they have full access to anything that they need.

There have been some small business issues recently in my electorate of Wanneroo. I have not checked to see whether this bill will help those people. We have some mum and dad small business people running very small businesses in their homes and unfortunately in some cases they fall foul of the local authorities by being just on the outskirts. I hope that the Small Business Commissioner will liaise with these businesses a bit more effectively than the local authorities can, and maybe smooth over some of those relationships that need to be there.

The Wanneroo Business Association was very happy to see this bill come forward. It basically said it was long overdue and should have been in place years ago. But things take time and we need to get these things up in due course. I commend both ministers—the previous minister, the member for Vasse, and the current minister, Hon Simon O'Brien, along with the parliamentary secretary, the member for Scarborough, in getting the Small Business and Retail Shop Legislation Amendment Bill to us in about 12 months. We have been working on it for that time. It is great to see that if everybody lends their will and puts their nose to the grindstone, we can get bills up in this place relatively quickly and trouble-free. I thank everyone involved for that and support the bill.

MR I.M. BRITZA (Morley) [7.40 pm]: I want to add my voice in support of the Small Business and Retail Shop Legislation Amendment Bill 2011 because there is no doubt that right across the chamber there is general support for the fact there is great need for some definitive action to be taken to protect small businesses.

When I was doorknocking in my electorate to find out how my constituents would respond to changes to the retail trading hours I heard about the plight of small businesses. I ran into several small business owners and began to really desire to do something to assist them to gain some kind of protection. Therefore, I was delighted when this bill came onto the floor in the party room and we began to discuss it among ourselves, because our small businesses definitely need protection.

This legislation will allow owners of small businesses to have a voice of authority. When they are going forward in a dispute situation, it will be wonderful to have the Small Business Commissioner, who will give direction on what appear to be unfair business practices by landlords over some small businesses. It is this house's right to protect those people. We often hear rhetoric about representing small businesses, but oftentimes legislation appears to do the opposite. I am delighted to have a piece of legislation before us that gives small businesses access to hope in the resolution of some very difficult situations. I was very happy to hear the member for Rockingham use the word "simplicity", because sometimes even small business owners find it very difficult to understand the legislation that covers them. I believe simplicity is at the core of what we intend to achieve with this bill tonight. I commend both ministers, and of course, the parliamentary secretary who will present this bill tonight. I add my support to this bill with great joy that it has finally come on.

MRS L.M. HARVEY (Scarborough — Parliamentary Secretary) [7.42 pm] — in reply: I will keep my comments short in summing up the debate on the Small Business and Retail Shop Legislation Amendment Bill 2011 because I understand that we will go into consideration in detail to examine some of these issues more closely. I thank members for their contributions to the debate and their support of the bill. I reiterate that the concept of a Small Business Commissioner or a small business advocate has been around for quite some time. I acknowledge the work of the former ministers, the member for Vasse and the member for Nedlands, in helping to bring this legislation to a point at which we can present it to Parliament in this fashion.

As I mentioned, I am pleased that we will enjoy bipartisan support for this bill. A wide range of topics have been brought up in this debate, some of which I think need to be addressed. This legislation will not address the retail trading hours issue on its own, nor will it address the issue of lease registers. Other issues brought up as concerns by members will not be addressed by this legislation either, such as the predatory pricing issue raised by the member for Joondalup. That will always remain the province of the Australian Competition and Consumer Commission; it has legislation specifically designed to deal with those sorts of issues. Issues to do with competition and anti-competitive behaviour between businesses once again fall under the province of either the ACCC or federal consumer law. This bill does not seek to encroach upon areas that are already enshrined in legislation federally.

The Small Business Commissioner will be an independent statutory authority. Questions were raised about why we have set the commissioner model up in the way that we have. We enjoy a great advantage in this state in that we have a very active and productive Small Business Development Corporation. A lot of the activities of the SBDC have crossover with the roles that will fall under the realm of the Small Business Commissioner. We are privileged in a way that the main comparison of this bill seems to be with the Victorian legislation. Victoria had a government agency that covered small business and a wide range of business and economic matters for that state, but it did not have a department or a departmental area that looked after advocacy and advisory services for small business, so Victoria in effect had to start from scratch.

Our SBDC is to be congratulated for the way that it has taken on looking at how it will readjust some of its processes to fall under the realm of the work of the Small Business Commissioner and mediation service. It has already identified three full-time equivalents who are acting in an advisory capacity on commercial tenancy issues and retail tenancy issues. There is no need to duplicate those services because those people can perform that role under the commissioner. We expect that the commissioner will deal with a variety of disputes. Much has been said about unfair market practices, but really the bulk of the issues dealt with by the Victorian commissioner fall under the retail tenancy banner, particularly retail tenancy disputes. We do not really expect that our range of activities will differ much from the role of the Victorian commissioner, which also deals with business-to-business disputes, contractual disputes and, increasingly, issues to do with franchising disputes. It will also help small businesses as they work their way through scams, advertising scams and all sorts of other things in trying to empower small businesses around their rights in dealing with those issues.

We also perceive that an educational role will be involved in this. A lot has been said about the failure rate of small businesses. It is tragic when small businesses go belly up because those people usually lose everything, but quite often small business owners do not necessarily get the right kind of advice or information when they are setting up their business. I believe 49 per cent of the franchising disputes that come before the ACCC involve

franchisees who failed to get legal advice before they signed their contracts. Therefore, we perceive that there is definitely an educational role to be played.

Most importantly, the most successful aspect of this legislation will be the mediation role that the Small Business Commissioner and a panel of mediators will undertake. Eighty per cent of disputes in Victoria are resolved through mediation; 34 per cent of disputes are actually resolved at the investigative stage at which, with just preliminary information requests from the two parties, the parties end up coming to some kind of resolution themselves without even needing a mediation service. That is actually where we want to be; we want businesses to treat each other appropriately and we want businesses to try to work together to resolve disputes. I see the commissioner's role as a way of facilitating that kind of environment in our business community. It has certainly happened in Victoria. I cannot see any reason that we need to reinvent the wheel here in the west to arrive at a different and potentially less successful outcome than the model that we are copying.

The member for Cannington mentioned some issues with food hall tenants at Westfield shopping centres. The Small Business Commissioner will not be able to help increase the volume of trade for businesses, and I do not imagine that the Small Business Development Corporation will involve itself in planning issues around the right design for shopping centres and whether they should be a main street or a big box set up, or those kinds of issues. But certainly if a theme emerged of issues with a particular style of shopping centre, that would be one area on which the Small Business Commissioner would report to the minister and government that a trend has developed in a particular industry that may need a policy reaction of government to intervene to protect small businesses from unfair practices.

I will not spend too much more time summing up; I expect we will drill down into the finer details when we go into consideration in detail. Once again, I thank members for their contributions to the debate. It has been very interesting to listen to people's stories about small business; I think every member in the house holds small business very close to their heart and has great relationships with the small businesses in their electorates, and that is exactly what this legislation is all about. It is about creating a system that can support our small businesses and help them move through sometimes very difficult circumstances as they try to negotiate their way through legislation that is not at the heart of their core business and try to find a resolution that works for them.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Long title replaced —

Mr A.P. O'GORMAN: Clause 4 deals with the long title of the bill, which describes the purpose of the act. Could the parliamentary secretary explain the purpose of the bill so that people reading *Hansard*—small businesses owners will hopefully read this—do not have to wade through the Small Business and Retail Shop Legislation Amendment Bill 2011? Can the parliamentary secretary explain the exact intention of the bill and the purpose of creating a Small Business Commissioner and a Small Business Development Corporation, and how that will benefit small business? Also, can the parliamentary secretary explain how the operations of the SBDC will be distinguished from the operations of the Small Business Commissioner? During their contributions to the second reading debate a number of opposition members raised the possibility of a conflict of interest, and although we are supporting this bill, we would have preferred the Small Business Commissioner to be completely independent of the Small Business Development Corporation. The reasons for that are that the SBDC, as good an organisation as it is, will provide information and advice to small businesses, and at a later stage of a dispute may be to asked adjudicate on an issue about which it has provided advice to both sides. That would cause a bit of a conflict, and my view is that we would be much better off if the Small Business Commissioner was completely independent and had his own department and people to advise him so that he could look, completely independently, at each side of the dispute, having not provided advice to either side and being fresh to the dispute. Can the parliamentary secretary explain briefly the intention of the bill? I have asked these questions because when small business owners read bills and acts and things, they go way over their heads; it is too hard. It is not that they are not educated enough or enlightened enough, but they just do not have the time, sometimes, to sit down and nut out what we are doing in this place. It needs to be very simple for them, and it need to be easily explained. Could the parliamentary secretary answer those questions?

Mrs L.M. HARVEY: The purpose of the bill is to provide a low-cost, non-litigious mediation service to assist small business in disputes. I do not see that there is necessarily going to be a conflict in having the Small Business Commissioner sit within the Small Business Development Corporation; indeed, the Victorian model has advisers and case managers who deal with each case as small business owners present themselves to the

commission for help. Those case managers act in an advisory capacity in the beginning. The difference between our SBDC and the Victorian model is that the SBDC does not have the power to investigate or to deal with the other parties to a dispute; they can act only in an advisory capacity. This legislation empowers those officers who currently act in an advisory capacity to also give advice to the other party and to try to find a solution that way. Thirty-four per cent of issues that come before the commissioner in Victoria are resolved at the initial stages just by the officer making a preliminary investigation, getting both sides of the story, and having the parties understand each other's point of view.

With respect to the mediators, Victoria has a vast raft of private operators in the mediation area. The bill has a clause that we will come to later that relates to confidentiality of what is discussed during the mediation process. The issues discussed between the parties cannot be later used if they end up taking the dispute to the State Administrative Tribunal. I hope that answers the issues the member raised.

Mr A.P. O'GORMAN: The fourth dot point under clause 4 states that the act will —

> … provide alternative dispute resolution services in respect of small business disputes and disputes referred under any other Act;

It is clear to me what that is about, but can the parliamentary secretary put on record exactly what it means so that, rather than having to read the whole thing, a small business operator out there—at the click of a mouse, if the parliamentary secretary likes—can see, when this stuff gets up on the website, that this is an alternative dispute resolution mechanism available to them? Can the parliamentary secretary explain what the alternative dispute resolutions are, and the process of instigating one?

Mrs L.M. HARVEY: The alternative dispute resolution is basically mediation, so instead of having to engage lawyers to go to court and present their case, people will sit in a room across a table with a mediator to try to work out their differences and come to an acceptable compromise for both parties. That is what alternative dispute resolution is, basically, in a nutshell.

At the moment, the commercial tenancy act covers disputes. Later in this bill, there is a direct reference to the Commercial Tenancy (Retail Shops) Agreements Act, and I believe that the Small Business Commissioner will be the first port of call for disputes that arise out of that act. Any disputes that arise between tenant and landlord will, under that act, go, as the first point, to the Small Business Commissioner with an attempt at mediation. Obviously, in certain circumstances mediation will not work, and those disputes will then go through to the State Administrative Tribunal to hear the dispute. At the moment, the only coverage is that of the commercial tenancies act.

Mr A.P. O'GORMAN: Thank you. I refer again to alternative dispute resolution. Will the parliamentary secretary provide just a little more detail. I know that alternative dispute resolution is not just a case of two small businesses with a dispute before the Small Business Commissioner that is unable to be resolved through mediation or by the Small Business Commissioner. The Small Business Commissioner does not have the power to adjudicate which party is right and which party is wrong. The parliamentary secretary then referred in her answer to the dispute going before the SAT. Will the parliamentary secretary tell us the mechanism to move the dispute from the Small Business Commissioner to SAT? Is it by referral by the Small Business Commissioner or do the parties involved in the dispute have to approach SAT? I know that we will get to this later in the bill, but it is relevant to the long title. Will the parliamentary secretary explain the process once mediation is exhausted? How is the alternative dispute resolution process escalated to SAT? Could the parliamentary secretary also outline the costs involved in doing that? I know that she will not have the exact costs, because she has not tested the market in Western Australia yet. I assume the costs, as mentioned by the parliamentary secretary earlier, will be about $200 per mediation. Will the parliamentary secretary confirm whether that is the correct amount—approximately?

Mrs L.M. HARVEY: We are not sure what the costs will be; however, we envisage it being similar to those charged in the Victorian model. In Victoria, each party pays $195 for the dispute resolution process. The total cost of that process is set by the commissioner, and at present that is set at $900. The balance, about $500, which is not picked up by the parties to the mediation, is subsidised by the government under the commissioner-funded model.

A matter is escalated from ADR—alternative dispute resolution—to SAT once the parties who have been through the mediation process cannot resolve their dispute. The commissioner will issue a certificate that basically says the dispute could not be resolved through mediation. The commissioner has some ability to get people to sit down, to be sensible and to resolve their disputes because he can specify on the certificate whether the parties to the dispute have been acting in good faith or if one party has been reluctant to participate in mediation or has been obstructionist. Those kinds of issues can be included on the certificate that is presented to SAT, which then uses that information about a party's willingness to participate in the process of mediation to arrive at an acceptable outcome in its judgement.

Mr A.P. O'GORMAN: I have two issues around the costs. First, the parliamentary secretary said that the costs in Victoria are approximately $900, of which roughly $400 is shared equally by the parties to the dispute. Is that per mediation or per session or is that for the whole of the dispute mechanism? Can the parliamentary secretary take advice on that? Second, the parliamentary secretary mentioned that on the certificate from the commissioner forwarded to SAT the commissioner can include adverse findings against one party or the other. Is it expected or anticipated that an adverse finding by the commissioner suggesting that Mr X did not participate or did not cooperate will be taken into consideration by SAT when any further costs are allocated one way or the other at the resolution of the dispute?

Mrs L.M. HARVEY: In Victoria, the cost is $900 per mediation, and 95 per cent of disputes are resolved in one session of mediation. Bear in mind that when an issue comes into the realm of the commissioner, a caseworker will be assigned and most of the work between the two parties is done prior to sitting down to mediation; that is, the working out of the nuts and bolts of the agreement to resolve the dispute.

The members other question was about the commissioner's ability to include comments on certificates. Certainly, the Victorian Small Business Commissioner uses the threat of a notation on a certificate indicating that one or other of the parties is not willing to negotiate, is being obstructionist or is unwilling to participate in mediation. Quite often that is enough to get the parties to work out that they should sit down and speak to each other to try to arrive at a compromise. SAT is empowered by legislation to award costs and damages to either party. In the event that that this process ends up before SAT and becomes a long and involved process requiring additional costs to both parties, SAT can award those costs against a recalcitrant party if it deems it appropriate to do so.

Mr V.A. CATANIA: Winding back to the establishment of the Small Business Development Corporation and a Small Business Commissioner, the member for Swan Hills raised the matter of the cost of establishing a Small Business Commissioner. What resources will the Small Business Commissioner have? Will they be greater than those of the Small Business Development Corporation? What will be the qualifications of the Small Business Commissioner? Will the position require qualifications greater than those of a first-year lawyer? As the parliamentary secretary knows, when dealing with the various shopping centres, they pull out all guns—their senior lawyers; their barristers; their QCs—to try to intimidate and blow out of the water small businesses with a dispute requiring mediation. Speaking of the mediation process, is that between the landlord and the tenant or if the landlord brings a solicitor, will the tenant have to bring a solicitor to the mediation process?

Mrs L.M. HARVEY: I thank the member for North West for the question. In actual fact, the mediator has the right to send counsel away during the mediation process if he so chooses. With respect to any lawyers who may be in the chamber, this process is designed to prevent small businesses being drawn into costly legal battles. The government hopes that, if we follow the same path as Victoria, most of these issues—80 per cent of them—will be resolved via mediation and without the need to bring in legal counsel. If one or other of the parties chooses to have legal counsel, that is a cost they will bear. The price for the mediation service is to be set by the commissioner, and the parties to the mediation will be levied the appropriate cost set by the commissioner at the time of the mediation.

Mr V.A. Catania: And what will be the qualifications of the Small Business Commissioner?

Mrs L.M. HARVEY: That is an interesting question. This process has been in place for quite some time in Victoria and a wide range of people have a background in mediation and advocacy services. We expect to draw people from that pool; that is, people with experience in mediation services or people who have been involved in advocacy services for small business. However, it is a matter of having a skilled set of people who are willing to sit down to try to work a pathway through to resolution. I do not know that there is any specific qualification for the role; it is a matter of choosing the right people for the role of trying to get the two parties to engage with each other in good faith.

Mr V.A. CATANIA: Will the Small Business Commissioner provide legal advice to tenants with disputes or who are seeking advice in general about their leases and so forth?

Mrs L.M. HARVEY: The mediators will be well versed in the rights and responsibilities under the commercial tenancies act. They will not provide what would be called written legal advice to parties to a mediation. They would advise each party of their rights and responsibilities under the act and try to get them to see where they stand in that dispute within the range of the act. Does that answer the member's question?

Mr V.A. Catania: Yes.

Ms L.L. BAKER: I have an inquiry of the parliamentary secretary about this clause, which deals with the long title. This is called the Small Business and Retail Shop Legislation Amendment Bill. One of the areas that mostly concerns me is micro-enterprise and, in particular, home-based businesses, which run into the same kinds of disputes—but perhaps at a different level—that small businesses do, by definition. I would be really interested to hear the parliamentary secretary's observations or comments about how the government could, firstly, make sure

that home-based businesses, many of which are owned by women—but that is increasingly changing as more people take advantage of being able to locate themselves at home and work out of their home, such as IT businesses or whatever—are aware of this legislation. Traditionally, lots of these businesses have been owned by women. I am interested in the whole area of micro-enterprise and home-based businesses and how the government will get to that part of the market in Western Australia and promote to those people what I believe is a really good development.

Mrs L.M. HARVEY: The advantage of the service that we are offering is that it is a lot more hands on. The Small Business Development Corporation also has very developed networks through its business centre, its online networks and its connections with business enterprise centres and other organisations, which also help to represent home businesses and micro businesses, as the member said. I can certainly see a very important role for the commissioner to play in dealing with disputes between those home-based businesses, which do not necessarily have the capacity to go out and source the information on their own. I can see that this legislation will empower them in their disputes. Indeed, a lot of the disputes resolved in Victoria, outside the realm of its commercial tenancy legislation, are to do with contractual issues between small businesses when they cannot quite agree on the interpretation of the contracts that they have signed. The mediation service certainly assists them in coming to a compromise.

Ms L.L. BAKER: That is really good to hear. When we get to the clause later, I will pursue the issue of the education role that the government intends to play.

Mr A.P. O'GORMAN: The issue the member for Maylands raised, which was also mentioned earlier by the member for Wanneroo, concerned a dispute between a home-based business and a local council. Clearly, a lot of local councils—my own local council is one of them—do not permit home-based businesses to just operate. In many instances, local governments have a policy that home-based businesses must have a permit to operate. That is how they keep control of them. They maintain traffic regulations and things like that around a small business. However, many small businesses or home businesses do not realise that they need a permit, and when council pounces on them, as they like to say, they dispute it and say, "It's my house; it's my backyard. I can do what I want. I'm not generating any extra traffic or anything like that." Can the parliamentary secretary tell us how the Small Business Commissioner might be able to mediate in a situation like that? I am mindful of the fact that the member for Wanneroo raised this issue, because I know that it is an issue in Wanneroo, it has been an issue in Joondalup, and I am sure it is an issue in many other local governments around the place. The explanatory memorandum also explains that the Small Business Commissioner is to mediate disputes between government bodies as well as business-to-business disputes.

Mrs L.M. HARVEY: Certainly, the SBDC already plays a role in helping smaller businesses in their negotiations with government and in wading their way through the regulations and various other forms of red tape imposed upon them by our different levels of government. The area in which this bill differs from the Victorian model is that we specify later in the bill, under proposed section 14A(c), as follows —

> to receive and investigate complaints by small businesses about the actions of public sector bodies that affect the commercial activities of small business;

The Victorian legislation was not specific. We have made it very, very clear that our Small Business Commissioner, our service and our panel of mediators are empowered to act on behalf of small businesses in those negotiations.

Dr A.D. BUTI: I return to an answer that the parliamentary secretary gave to a question from the member for North West about legal representation. Can the parliamentary secretary clarify that there is no statutory power for a mediator to bar legal representation? That is one part of the question. Is there or is there not power to exclude legal representation? Secondly, is there power to award costs?

Mrs L.M. HARVEY: Further on, proposed section 15H(1) of the bill states —

> A party may be represented by a lawyer during an alternative dispute resolution proceeding but the facilitator may, if the facilitator considers it appropriate to do so, meet with the party, either alone or with another party, without the party's legal representative being present.

So, yes, we have provided an opportunity in this legislation to have the facilitator or the mediator meet with the parties separately from their legal representation. The Small Business Commissioner does not have the power to award costs, but the State Administrative Tribunal does.

Dr A.D. Buti: But does that give the right to exclude legal representation for the whole process or for just part of the hearing—that is, they can go outside and —

Mrs L.M. HARVEY: It is intended to be broad, and this is where I come back to choosing the appropriate mediators.

The member will probably agree in time that sometimes two parties in a dispute can have a different kind of conversation from one they would have when they have legal representation, and that sometimes that interest might be best served by reaching an efficient and timely outcome. If the mediator perceives that they can achieve that outcome in a timely fashion and that both parties will be satisfied by excluding the legal representative, I would say that they will choose that path. We empower them to do that with this bill. Should either party choose to have legal representation and take the issue to SAT, they would be issued with a certificate by the commissioner; that would be detailed as the outcome of the mediation and the matter would go before SAT. SAT could award costs to either party if it deemed an action was vexatious or not in good faith or whatever was appropriate under the SAT legislation.

Mr V.A. CATANIA: Could the Small Business Commissioner in providing that mediation between the landlord and the tenant—the landlord being the owner of the shopping centre and the tenant being a lessee—access the floor plan and the cost per square metre for each business in that shopping centre? As I said in my contribution to the second reading debate, the Coles and Woolworths of the world are given a fixed square metreage every time they occupy space in a shopping centre. While the poor small business person, who might have a party hire place or a food store might pay $7 000 a square metre, Coles and Woolies could pay around $200 a square metre. Will the commissioner be able to access that information to assist in the mediation process?

Mrs L.M. HARVEY: Strictly speaking, the ability to compel either party to produce comparative information like that is not the idea of the mediation service. The idea of the mediation service is to deal with two parties to a dispute, not necessarily in a way that compares the position of every other person in the complex. Changes to the Commercial Tenancy (Retail Shops) Agreements Act will cover some other aspects of the member's question, but the purpose of this bill is to get people to try to resolve disputes through mediation. Generally speaking, once we start demanding information from either party, mediation tends to break down and people feel that they are not being dealt with appropriately. The commissioner will not be empowered to demand any information. But should either party choose not to provide information that might lead to a mediated outcome, that obstructionist behaviour would be recorded on a certificate that would then go to SAT for determination.

Mr V.A. CATANIA: I understand what the parliamentary secretary is saying. This is a concern I have about the Small Business Commissioner being a toothless tiger, if we like. Most disputes between a landlord and a tenant are about their lease—the cost per square metre. As I said in my contribution to the second reading debate, a retailer might have a five-year lease, with his rent increasing at the consumer price index rate on an annual basis, and with the renegotiation of his lease, suddenly there is a 10, 20, 30-plus per cent mark-up on what was previously negotiated, so there is a double hit. At the same time, the tenant knows that the multinationals can negotiate a lower rate per square metre. My concern is that the Small Business Commissioner is a toothless tiger when the majority of problems with the small business sector in shopping centres are about leases and the costs per square metre. I imagine that 90 per cent of the disputes are about the cost per square metre of leases. If the Small Business Commissioner is unable to access that information to assess what is fair and reasonable under the objective of "to enhance a competitive and fair operating environment for small business in the state", it is pretty pointless when the advantage is clearly in the court of the multinationals and the landlord, who can hide that information, because the real income for those landlords is from the small business owners. As the member for Rockingham said, 70 per cent of businesses do not survive. Landlords and shopping centres rely on those statistics to make their money to make the shopping centre work. They do not make money from the Coles, Woolworths or Big Ws, although they would argue that they attract people into the shopping centre. I would have thought it was important that the Small Business Commissioner have the ability to tell the landlord, the shopping centre owner, to provide evidence of how much is charged per square metre, from the big boys of business—the Coles, Woolworths, Big Ws and Kmarts—to the people who have the newsagency or the Chinese store or the kiosk that sells phones. I would have thought that was an integral part of what we are all trying to do—that is, protect small business. If we do not have that, most of the disputes will end up going to SAT through the legal process.

The ACTING SPEAKER (**Mr J.M. Francis**): I am tolerating a very broad debate on this clause, but I point out to members that we are dealing with clause 4, which is purely about the long title, so I suggest members direct their more detailed comments to the relevant parts of the bill.

Mrs L.M. HARVEY: I guess the best way to answer the member's concerns is to point to the success of the Victorian model, where 80 per cent of disputes are resolved through mediation. That is a pretty high figure. I expect that, once the commissioner has been established, a range of small businesses who had not felt as though they would be heard and have their disputes addressed will step into this space and bring those disputes before the commissioner. This will especially be the case once they know that someone will help them through the process and that it is a practical, hands-on non-judicial process. Most people are in small business because they love selling, say, balloons or they love being in an environment that provides the sort of atmosphere that inspires them, and that does not usually involve legal challenges to their contracts. I bring the member back to the Victorian example, where 80 per cent of disputes are resolved through mediation. Most small businesses want

something practical, and hands on—a mediation service that is non-litigious and, therefore, a less frightening environment to resolve disputes in.

Some of the other issues the member raised are more in the province of a lease register. This Small Business Commissioner legislation does not address lease registration. I understand the arguments for and against a lease register, but we are not addressing that in this bill. This is designed to provide a mediation service for small businesses to empower them to resolve disputes.

Mr D.A. TEMPLEMAN: The parliamentary secretary indicated that the Victorian experience has had an 80 per cent success rate of resolutions in the past year. What is the number of mediations that went before the commissioner in Victoria? It would be helpful to have an idea of the sorts of numbers the commissioner in that state is dealing with. That probably also may give an indication of the resourcing requirements, which is a concern that has been raised; that is, we are going to see a flood of requests for mediation when this Small Business Commissioner is set up in Western Australia. It will be interesting to know what the experience was in Victoria. We have heard the 80 per cent figure mentioned, but what number of requests does that figure represent and what are the resourcing implications of it?

Mrs L.M. HARVEY: In 2009–10 the Office of the Victorian Small Business Commissioner received 1 338 disputes; 74 per cent of these were retail tenancy–related matters and 26 per cent were unfair market practice matters. If we adjust that figure for the number of retail tenancies in Victoria, as opposed to Western Australia, the figure for WA could be around 548 disputes. Many of the disputes that are currently received by the Small Business Development Corporation would have a crossover with that figure, as the SBDC provides an advisory service to some of those disputes.

Clause put and passed.

Clauses 5 to 8 put and passed.

Clause 9: Section 5 amended —

Mr A.P. O'GORMAN: Clause 9 deals with the make-up of the board of management of the SBDC and the Small Business Commissioner. Proposed section 5 reads as follows —

> (1) The Corporation is to have a board of management consisting of —
>
> (a) 2 members who represent small business in the areas of the State outside the metropolitan region;
>
> (b) 5 members who represent small business in the metropolitan region;
>
> (c) the Commissioner ex officio.

Could the parliamentary secretary give us a bit of an insight into how the members outside the metropolitan area will be chosen? Which parts of small business will they come from? Will they be voted on and who will get to vote them on? Will they be ministerial appointments? I would ask the same questions for the five members who represent the metropolitan region. Will they be drawn from the Chamber of Commerce and Industry of Western Australia? Time and again the CCI claims to represent small business, but I have yet to meet any small business that says it is represented by the CCI. Small businesses usually say the organisation that represents them is one of the business associations or the WA Small Retailers Association, whose CEO, Martin Dempsey, is in the Speaker's gallery this evening. Will the members be drawn from the Council of Small Business Organisations of Australia? Where will those members be drawn from? Can we expect that small businesses will have a say in how those members are elected or appointed? Will they be drawn from a public process or will they be drawn within the department so that people in the small business arena will not have any input into how those members are chosen?

Mrs L.M. HARVEY: This clause basically reconfirms that two board members must represent regional areas, and five must represent the metropolitan area, and that out of the total of seven members, one can be the chair. The status quo basically prevails on how board members are chosen; they are ministerial appointments. Other board members will sometimes nominate people who they believe will be suitable and who will provide a suitable skills set. That is something for the consideration of the minister. Some members are recommended by the SBDC and some are recommended by other sources. When the period of appointment draws to a close, the minister makes the choice to try to get a balance of skills sets on the board to represent a broad cross-section of small business interests.

Mr A.P. O'GORMAN: Primarily the parliamentary secretary is saying that the minister has final veto on the members who are nominated. However, there does not seem to be any opportunity for people in the small business arena to put up their champions or the people they want to represent them. How does small business get input into the composition of the board? I have jumped over the other clauses in this bill that deal with the chairman, the managing director and all those positions, but this is really the important part. This is the part that

gives the small business community an opportunity to get their people into the board so that the Small Business Development Corporation and the Small Business Commissioner will hear the concerns of small business and will be able to adjust the regulations that will come with this proposed act to make sure that it will do what it is intended to do. It is really important that we have people on this board who are good operators in the field, not just people who the minister chooses and appoints. We all have mates and we all like to appoint mates and help out our mates, but it is really important to get the composition of this board correct so that small businesses have input right at the top level, so that that input can filter down, and so that the small business community can have confidence that the commissioner will be working in their best interests. That is really important. Although the minister will have the final veto, could members be drawn from the small business community aside from the minister appointing them?

Mrs L.M. HARVEY: In essence the appointment of board members to the SBDC will not change from the process that predated this amendment. The board's role is to provide strategic direction to the minister, and the appointments will therefore remain ministerial appointments. I do not know whether the member for Joondalup has been on the SBDC website, but, if he has, he will see that the board members are listed on the website and they all have very good small business credentials. I can foresee a potential conflict of interest to have one representative of a particular small business organisation. There are thousands of small business organisations out there. To appoint only one representative from one organisation to that board, I would put to the member, might create an issue with a wide range of other organisations. My experience of board members is that they are accessible to small business owners who choose to call them and express an issue that they are having, and that they can ask the SBDC to address that issue and to highlight it to the minister. I do not foresee that changing. The system has been running very well for quite some time and there are some people of a very high calibre on that board at present. I therefore do not perceive that changing. I certainly do not perceive any change in the direction of board appointments of people who must have small business experience. Although it is not a requirement of a board member, if the member looks at how things were run in the past and at the members of that board at present, he would be satisfied that they are representative of small business.

Ms L.L. BAKER: I want to follow up on my colleague's questions and ask whether the parliamentary secretary could fill the house in on a few details about the membership of the SBDC board in recent years. I am particularly interested in the gender mix because of the representation of women in the sector. Given that it is a government board, I assume there will be some strategies to make sure that there is an equal and fair representation of women-owned businesses, and also some diversity laterally in the sector as well as horizontally. I would therefore like to know whether the minister will put some emphasis on making sure there is representation for home-based or micro-enterprises as well as for small businesses on the board. I know from a long time back when I used to do a lot of work with the SBDC that it has historically had such representation, but I would like some current information so that I know what might happen in this new role. It is important that, if the role of the SBDC is expanding into this important area, there is a good gender representation on it.

Mrs L.M. HARVEY: The appointment of the board at the moment has a predominance of female representation when the ex officio representative, the acting director of the SBDC, is taken into consideration. If the member looks at the backgrounds of the people on the board, she will see that one member has run what is a called a microbusiness, which is a home-based business with one employee.

One of my pet hates is formulas for boards. The only formula we have is for regional and metropolitan representation. I do not perceive that we will legislate for a specified gender mix within the metropolitan and regional mix that we already have.

Ms L.L. Baker: The government has a policy on representation and gender diversity on government boards.

Mrs L.M. HARVEY: I hear what the member is saying, but I think that for the composition of this board it is more important to have a broad representation of business experience from microbusinesses right through to the more upper end of the small to medium business enterprises. I put to the member that that level of experience and the regional–metropolitan mix would take higher precedence over the gender of any particular person who might be invited to be on the board.

Ms L.L. BAKER: While I completely respect the parliamentary secretary's opinion on this, I beg to differ, because women have a very strong representation in smaller micro-enterprise. I would argue that to set up a board and get into a situation in which there are no women on that board is absolutely unrepresentative of the small business sector in WA. I understand our opinions differ, but I would like to make sure that that is on the record.

Dr K.D. Hames: What if they were all women?

Ms L.L. BAKER: That is absolutely fine; I do not have a problem with that! If we want to tap into the most intelligent and best people for the job, I am strongly supportive of the minister's suggestion.

Mrs L.M. HARVEY: To address the member for Maylands' concerns, she might be aware that the previous chair of the board was a woman called Patria Jaffries. Given the strong representation of women in small business, it is highly unlikely that we will see a board comprising only men. That said, in trying to get the composition of this board in place, we have legislated for a metropolitan and regional balance. If we start to throw formulas into the mix, we will make life difficult for ourselves in trying to get adequate representation and a good skill set on a board.

Ms L.L. Baker: I understand what you are saying, but you do have a policy on government boards.

Mr V.A. CATANIA: I refer to proposed section 5(1)(a) —

> (a) 2 members who represent small business in the areas of the State outside the metropolitan region;

I seek clarification on what is "outside the metropolitan region", because I think that it should be "regional WA". I note that the member for Mandurah is not here, but he often debates whether Mandurah is in regional WA or in metropolitan Perth. From my reading it would be easy to say that two members from Mandurah can comprise the regional component, although it does not really state it here. What is the definition and the boundary for what is "outside the metropolitan region"? Is it Mandurah?

Dr A.D. Buti: Byford!

Mr V.A. CATANIA: Or is it Byford? What are the boundaries? I would like some clarification on that. I note that the member for Mandurah is not present in the chamber; he may have given himself a pair and gone home. May I say to the parliamentary secretary that she is doing a superb job in the chair and that shows the member for Mandurah that she is ready to take that next step?

Mrs L.M. HARVEY: To give the member an indication of the regional representation on the board at present, the chair is from Busselton and there are also members from Kalgoorlie and the Pilbara. The "metropolitan region" definition is the definition given in the Planning and Development Act 2005. Some big regional centres have flourishing small business communities and I would expect that we will be able to find a representative from one of those areas should we need to replace regional members on the board.

Dr A.D. BUTI: I will follow up some of the issues mentioned by the member for Joondalup. In regards to determining the composition of the board of management—which is, of course, selected is at the minister's discretion in the end—will the emphasis be on having representatives who represent a small business organisation, or individual small business people? That is my first question. My second question is: will it be made clear to those people that they are on the board to represent the interests of the corporation, which is their legal duty, and not the interests of any organisation that they may come from? Will the parliamentary secretary ensure that those people are provided with the appropriate board training to ensure that they know their legal obligations?

Mrs L.M. HARVEY: Board members get training on their responsibilities in discharging their duties. As I said, their role is to provide strategic advice to the minister. With that in mind, while some of the representatives may have held leadership roles or been members of other small business organisations, we do not have a mandate that determines that a member would need to be specifically part of an organisation to be invited to represent the small business community on the board. If we go by the present representation on the board, the skill set of those members is more broadly representative of the range of small businesses that are out there; home-based businesses and a range of trades and industry sectors are represented. For instance, we would not want our Small Business Development Corporation board comprising only people from the retail sector when only six per cent of small businesses are in the retail industry. We need a broad representation of business representatives from various industries.

Mr A.P. O'GORMAN: The two members from the regions who are on the board are outside the metropolitan region. It is a long distance and I am wondering whether financial assistance is provided to get them to the metropolitan region for board meetings? How often is the board expected to meet? Is it possible for the board to use other means to meet, such as web-based meetings or videoconferencing? I am conscious that there are only two members from regional areas on the board. Our regional areas are vast and, as the parliamentary secretary said, already three members on the board are from the regions; one member is from Busselton and I think she mentioned Kalgoorlie and the Pilbara. If there are so few regional representatives on the board, it is important that they are represented at each and every meeting so that they can represent the views of the non-metropolitan areas. Is some assistance given to get them to board meetings?

Mrs L.M. HARVEY: In response to the member for Joondalup's question, the costs of meetings are covered for the regional members. Generally, the board meets once a month. There may be 12 meetings a year or 11 meetings a year; I am not quite sure. I cannot tell the member whether the board meets in December and January, which is often when people defer meetings. From what I can gather, the meetings generally run for about four to

five hours. The board has a long list of agenda items to go through each meeting. Occasionally, I believe, the board goes to a regional area for a meeting and those costs are borne by the SBDC.

Mr V.A. CATANIA: The current board of the Small Business Development Corporation has three regional members—one in the Kimberley, one in the Pilbara or Kalgoorlie and one in the south west. Why has the government changed the number of regional members from three to two, given that this is a vast state? Western Australia could probably warrant three regional members—one from the north of the state, one from the Pilbara and one from the Mid West. The board could probably even have a fourth regional member—say, from the south west. Why has the number of regional members been reduced to two? As I said, I am still concerned that we do not have truly defined the regions. The bill states "the areas of the state outside the metropolitan region". I believe that wording should be replaced with the term "regional Western Australia" and that we should look at increasing the number of regional members on the board from two to three. The number of members who represent the metropolitan region can be reduced from five to four.

Mrs L.M. HARVEY: The balance of the board members is representative of the concentration of small businesses across the state. Keeping that in mind, that is how the formula of five members from the metropolitan region and two members from regional areas has come up. There are presently three, what we would call, regional members on the board; however, one of those members, who previously ran a business in Kalgoorlie during his time on the board, has left Kalgoorlie and now resides in the Perth metropolitan area. This clause clarifies the composition of the board because the chair of the board of management is a regional member. It is a bit of housekeeping, if we like. This clause makes it very, very clear, given that the costs are being borne by the SBDC, how many members of the board should be regional members, and that that regionality, if we like, of representation is distinct from the chairmanship.

Clause put and passed.

Clause 10: Section 6 amended —

Dr A.D. BUTI: Clause 10(2) inserts section 6(3) to provide that the commissioner may nominate a person employed or engaged by the corporation to represent the commissioner. It seems to be quite obvious from the wording that that provision applies to someone who is currently employed or engaged, not someone who might be prospectively employed or engaged. Is there any level that the commissioner can nominate? Does the person nominated have to be someone who is in a managerial role within the corporation or can a lowly employee of the corporation act as the commissioner's representative?

Mrs L.M. HARVEY: We value all our employees at the SBDC regardless of their status in life, member for Armadale. This clause is more a piece of housekeeping to insert the word "commissioner" and to have the commissioner empowered to nominate another person to stand in their stead as an ex officio member at a board meeting should they be unable to attend. In the past, that person was the acting commissioner should the commissioner be on leave.

Dr A.D. Buti: Does the liability remain with the actual commissioner or does it transfer to the acting commissioner? The acting commissioner might have the powers of duty, but who has the liability?

Mrs L.M. HARVEY: We can clarify that with the member at a later time, but my advisers tell me that someone acting as an ex officio member of the board is protected in their decision making.

Clause put and passed.

Clauses 11 to 13 put and passed.

Clause 14: Section 11 amended —

Mr A.P. O'GORMAN: One of the corporation's functions, as stated in proposed section 11(2)(fa), to be inserted by clause 14(2)(c), is —

> to investigate, and report to the Minister on, the impact on small business of legislation and government policy of this jurisdiction, the Commonwealth or any other State or Territory;

I assume that means—I hope the parliamentary secretary will clarify this—if we introduce a bill in this place, for argument's sake, if this legislation was in play before we were to extend trading hours, the Small Business Development Corporation would have the power to do an economic impact statement on small business as to the effect of extending trading hours. For argument's sake, let us say that we intend to move to 24/7 trading, although I know that is not on the table. Is that the type of investigation that the Small Business Commissioner should undertake to ensure that, at the end of the day, extended trading hours would not have an adverse impact and that he would report to the minister who then would report it, I assume, to this place so that we could take steps to mitigate a negative impact, if there were one? Would it be mandatory to undertake an investigation into the impact on the small business sector of any legislation in this place or, indeed, the commonwealth or local government? I think local government would be affected as well because the clause states "of this jurisdiction,

the Commonwealth or any other State or Territory". Although the clause does not specify local government, local governments often make up local laws that affect small businesses. Does the commissioner have the power to investigate all those things?

Mrs L.M. HARVEY: This provision is designed around the commissioner collating information in response to issues that have been raised in the course of the duties of the commissioner. Should a trend or theme emerge in a particular area of government regulation and legislation at any level of government, the commissioner would report to the minister about the adverse or other effects of that legislation on small business. This provision is actually designed around the commissioner having a role in identifying areas of red tape that cost businesses time and money and complicate matters that they need to deal with. It is not mandated. It is basically designed around the commissioner reporting to the minister about issues that have been raised with the commissioner.

Ms L.L. BAKER: Proposed section 11(2)(e) states —

> to provide operational funding, grants and financial assistance to non-government organisations working with, or on behalf of, small business in accordance with the guidelines referred to in subsection (4);

My very simple question is: are the grant fundings to NGOs all indexed?

Mrs L.M. HARVEY: This is more of a housekeeping-type clause. A question was raised about whether the SBDC had the power to give grants to some of our small business enterprise centres and some of those other organisations that might fall under the not-for-profit banner. Therefore, we used the opportunity of this amendment to make it absolutely crystal clear that the SBDC is empowered to administer funding to whichever small business organisation or service it sees fit.

Ms L.L. Baker: Can I just make sure that that indexation complies with the state government policies on indexation of funding grants to NGOs? I want to ensure that the SBDC will put indexation into all the grants that it makes over a 12-month period.

Mrs L.M. HARVEY: As I understand it, this clause pertains purely to the small business centres that presently receive funding. With respect to indexation of grants and all such things, that is actually more of an issue to be raised around budget discussions and budget estimates because it is not really in the realm of this clause. This clause clarifies that the Small Business Development Corporation has the power to administer those funds to a not-for-profit organisation. Some of the legal advice that came through was that we may have been on shaky ground with that aspect, so this provision tidies it up. It is not to do with indexation of grants or anything like that; this is about enabling the SBDC and empowering it to administer grants as they come through.

Ms L.L. BAKER: I understand that this is not about how grants are made. Given that the capacity to make those grants has now been enshrined in this legislation, I was just anxious to ensure that that is in line with other government policies concerning the making of grants, one of which is that grants are indexed.

Mrs L.M. HARVEY: We provide funding to the business enterprise centres that would not be regarded by them as grant funding.

Ms L.L. Baker: Is it operational funding?

Mrs L.M. HARVEY: Yes, it is operational funding.

Ms L.L. Baker: It should still be indexed.

Mrs L.M. HARVEY: As I said before, this is about ensuring that the commission and the commissioner are empowered to distribute that funding. If the member has a question about indexation of grants or funding, I recommend that she puts that on notice to the minister so that he can provide a written response.

Mr A.P. O'GORMAN: Proposed section 11(2)(fe) outlined on page 10 of the Small Business and Retail Shop Legislation Amendment Bill 2011 states —

> to investigate, and report to the Minister on, emerging trends in market practice that have an adverse effect on small business;

I have been unable to locate in this or the Victorian legislation the definition of market practice. Could the parliamentary secretary provide the definition of market practice? We have had the milk debate over the past few weeks about Coles undercutting the manufacturing price of milk and bringing it down to $2 a litre in the marketplace, a market practice which would seem to have had an adverse affect on small business. Will this clause give the commission the authority to investigate that type of thing in its own right and put a recommendation to the minister that he can either bring to this place or about which he can effect a regulation preventing large organisations undertaking that type of market practice, which undercuts small business and really badly affects their bottom line?

Mrs L.M. HARVEY: Certainly in Victoria, if market trends emerge in a particular sector that are having an adverse impact on the operations of small businesses, the commissioner would report to the minister on that trend with the expectation, I would anticipate, that the minister would act in some way to try to mitigate that effect. In the example of the small dairy farmer versus the big corporation, certainly the Small Business Commissioner would step in on behalf of a small business operator who approached it regarding unfair market practices. However, I would put to the member that the Small Business Commissioner would not step into the overarching authority of other government institutions such as the Australian Competition and Consumer Commission, for instance, which has the role of investigating predatory pricing behaviour, which is perhaps more at play in the member's example. But certainly if a trend was emerging and a number of small business operators reported that they had been treated in a particular way by a particular organisation, the commissioner could step in on behalf of those businesses, and I would wager that they would report that activity to the minister as well.

Mr A.P. O'GORMAN: Maybe I picked the wrong example; maybe if I can pick up on an example that the member for North West raised earlier, which was the notion of burn and churn. This trend seems to have emerged in the shopping centres over time. As the member for North West said, large anchor tenants—namely, Coles, Woolworths and Kmart, which are all part of that large group of operators—are in there on a relatively low price a square metre arrangement, and sometimes they do not contribute to the outgoings because of various agreements that have been reached. A small operator may be taking up anywhere between 40 square metres if they are in a food hall–type situation, and usually up to about 100 square metres if they are a small shop, and they may be paying an excessively large amount of dollars a square metre, plus their outgoings, plus anything else. Sometimes advertising levies may be included and all sorts of things. Under this clause, can the commissioner undertake to look into this burn-and-churn trend? This issue has been brought to my attention a number of times by a number of small business organisations and a number of people who have been involved in small business and who have been burned and then churned out. All that happens in that situation is that another mum and dad business goes in there and survives maybe six months to 12 months, and then they get burned and churned. If the owners of small businesses want a retail lease in a shopping centre, they have to put up a significant amount of cash as a bond, and the only way they can do that is to mortgage their house and give a bank guarantee that they will be able to pay a full year's rent to the landlord. That is usually the form it takes. Then, of course, once they get burned and churned, they have no opportunity to make an income anymore and the landlord says, "Thank you very much", and takes its bond, which usually amounts to about 12 months' lease on a premises. Then the bank comes back to the mum and dad organisation and tells them they still have to pay back the extra $100 000 mortgage that they put their house up to secure. However, as they are out of the shopping centre and are now on Centrelink payments, if they are lucky, they do not have the income to service the mortgage.

Is that the sort of trend that this clause will pick up, enabling the commissioner to investigate and advise the minister? I am well aware that the commissioner has a responsibility to advise the minister, and that the minister will then have the option to come into this place and amend the legislation to prevent the burn and churn and to prevent that adverse business practice being perpetrated on small business. Will the commissioner have the power to do that, because it is one of the things that is hurting small businesses? I think every speaker during the second reading debate mentioned that they have some businesses in their electorates that are going out of business because of excessive imposts by some of these larger organisations, particularly in relation to leasing and the costs of the leasing.

Mrs L.M. HARVEY: The member covered a couple of issues in that question. This is all designed around being inclusive, not exclusive, of businesses, and to not exclude businesses from negotiations. When we are talking about the commissioner's power to investigate and report to the minister, that is the power of the commissioner to advise the minister on issues affecting small business that may need a ministerial response with respect to government policy change, or indeed influence that may need to be applied to change legislation federally, so there is certainly a role there.

If there was an emerging trend or perhaps a change in business behaviour with respect to landlords and tenancy, I would expect that the commissioner would report to the minister on a change in trend. I do not know whether that answers the member's question. It is not a matter of the commissioner being able to write legislation and to bring legislation to this place to change things. This bill covers businesses in Western Australia; it does not cover businesses in the whole of Australia. Some of the influences that the member is talking about may well be better served by changing federal legislation, in which case the commissioner would report to the minister, who would, I expect, be working fairly hard to try to get that onto a Council of Australian Governments or ministerial council agenda of some sort. That is really what this is about.

Dr A.D. BUTI: What about a dispute between a small business and a small business enterprise that has provided to the small business advice that is the subject of the dispute. Does the commissioner have a role to play in such a dispute?

Mrs L.M. HARVEY: If it is a business-to-business dispute, the commissioner can step in and act in a mediation capacity between the two enterprises. I would put to the member for Armadale that if a small business had a dispute, an argument or an adverse outcome due to advice given to it by a small business enterprise—I do not know whether the member means another small business or a business organisation—I would expect that the advice that it provided would be covered by some kind of indemnity insurance. If the dispute was between two small businesses, we have deliberately kept this legislation fairly broad so that the commissioner can mediate whenever an opportunity may be seen for a mediated, rather than judicial, outcome.

Clause put and passed.

Clause 15: Section 11A amended —

Mr A.P. O'GORMAN: This is the clause that gets to the nub of the dispute resolution powers of the Small Business Commissioner. It is really important to get the clause very clear and in plain simple language so that small businesses out there can understand exactly what they are doing when they go into a dispute resolution mechanism. Would the parliamentary secretary mind explaining again—I know she explained some of the dispute resolution when we debated the long title—the process for getting into the dispute resolution, how to get through the facilitation part of that dispute resolution and, at the end of it, if there is still a dispute between businesses, what the mechanism is to go forward? My understanding is that the commissioner issues a certificate before it is possible to go to the State Administrative Tribunal. Is it possible to bypass the commissioner and go straight to SAT and say, "I'm not interested in all your namby-pamby mediation and talking; I'm going to go straight to SAT." Can the parliamentary secretary explain how that particular part of this clause works? I then have a couple of other questions about market practice and things like that in other provisions.

Mrs L.M. HARVEY: This is dealt with in proposed section 25C, in which the Small Business Commissioner can issue a certificate in certain circumstances that will then enable the parties to the dispute to go straight to SAT. The circumstances are that the matter is unlikely to be resolved, it would not be reasonable in the circumstances to commence alternative dispute resolution or the alternative dispute resolution has failed to resolve the matter. Those would be the circumstances in which the matter would be seen to very quickly by the commissioner, with the certificate issued and the parties then able to go straight to SAT.

Mr A.P. O'GORMAN: Proposed section 15A defines the facilitator. I think we all understand what a facilitator is, but the proposed section states —

> ***facilitator*** means a person appointed under section 15E(3) to conduct an alternative dispute resolution proceeding;

Can the parliamentary secretary explain to the chamber from where these facilitators will be drawn? This is new to this state. We have not had facilitation of mediation for commercial disputes before, and it is important that people out there understand where mediators are to come from. Small businesses need to be able to trust that the mediator appointed by the commissioner understands small business, and in most cases understands leasing, because as the parliamentary secretary said, 75 per cent of the cases in Victoria were about lease disputes. Where do we find these mediators or facilitators that will be used by the commissioner to mediate between the parties to these disputes?

Mrs L.M. HARVEY: There is a wonderful organisation called the Institute of Arbitrators and Mediators Australia. People who act in these capacities as arbitrators, mediators or facilitators call themselves by various names, which is why we kept our definition quite broad. There is a wide range of skill sets. In Victoria, a number of people with legal training who have specialised in mediation training have taken on that role. About 100 mediators work for the Victorian Office of the Small Business Commissioner, but they are private contractors. Of those 100, about 20 regularly get the opportunity to work through the Victorian Small Business Commissioner. A wide pool of people can be drawn from. Some have formal training in mediation, some have legal training and some just have broad business experience, and negotiation is one of their strengths. That is where we perceive they will come from.

Dr A.D. BUTI: Parliamentary secretary, 15G is about the cost of alternative dispute resolution proceedings, and it states —

> The costs of an alternative dispute resolution proceeding, including the fees and expenses of the facilitator, are to be determined by the Commissioner.

Is there going to be some guideline or schedule of fees on which the commissioner will base the determination on, and is there ability for the taxation of those costs?

The ACTING SPEAKER (Ms L.L. Baker): Just before the parliamentary secretary attempts to answer that question, I need to double-check that the member for Armadale is on clause 15 of the amendment bill, which, according to my notes, refers to section 11A of the act and has only three subclauses, (a) (b) and (c). The

member may in fact be discussing proposed section 15G, which comes later under clause 16. We are about to get to it but we are not quite there. Could the member hold that question for just a minute?

Mr A.P. O'GORMAN: Again, in clause 15A—I am specifically talking about the top of page 14 where it refers to an unfair market practice that affects a small business—I am seeking an idea about what an unfair market practice is because it is not in the definitions. Could the parliamentary secretary give us an idea of what she anticipates an unfair market practice that affects a small business is, because this could be a problem if, as a small business —

The ACTING SPEAKER: I am terribly sorry to interject yet again, but I am on page 11 of the amendment bill looking at clause 15, "Section 11A amended"—that is, amending section 11A of the principal act.

Mr A.P. O'Gorman: I thought that we had gone past that; we have already passed clause 14.

The ACTING SPEAKER: No; the member for Armadale stood and asked to speak to clause 15 of the amendment bill. If members would like me to move on to clause 16, which includes proposed sections 15C and 15G, I am happy to do that.

Mr A.P. O'Gorman: I am sorry, Madam Acting Speaker; I had thought that we had covered that.

The ACTING SPEAKER: You were a bit eager!

Clause put and passed.

Clause 16: Sections 11B, 11C, 13 and 14 deleted and Part 3 inserted —

Dr A.D. BUTI: Thank you for your clarification, Madam Acting Speaker. I refer to page 12 and proposed section 14C. I am probably seeking clarification of the previous question I asked about the non-delegation of the legal liability of the commissioner if the commissioner delegates his duties and responsibilities. I think the proposed section clears the matter up. It would seem that, although the commissioner can delegate his powers and duties, he cannot delegate his legal liability. Can the parliamentary secretary confirm that is a proper reading of this proposed section?

Mrs L.M. HARVEY: The member for Armadale is correct; proposed section 14C formalises that any person stepping up to act in a capacity delegated by the commissioner is covered by the act.

Dr A.D. Buti: And the liability remains with the commissioner?

Mrs L.M. HARVEY: Yes.

Mr A.P. O'GORMAN: I refer to page 13, clause 16 of the bill and proposed section 15A, which refers to unfair market practice. I referred to this earlier. I am seeking a definition or a description of an unfair market practice. I used the milk issue as an example, but, as the parliamentary secretary said, that matter might be better dealt with by the Australian Competition and Consumer Commission. I am struggling to pull out an example at the moment, but it would be great if the parliamentary secretary could possibly provide an example so that we all understand what an unfair market practice is. I think it is important for small business owners to know what they are dealing with in the term "unfair market practice". Could this proposed section possibly be used by a corporation to not go to conciliation or mediation by the commissioner by the corporation merely saying that it is not an unfair market practice and that what it is doing is normal, everyday business and not an unfair practice? It would be really helpful for a pleb like me to understand what an unfair market practice is.

Mrs L.M. HARVEY: We have deliberately kept this very broad. Broadly speaking, an unfair market practice covers breaches of contract and misrepresentations. Increasingly in Victoria, a number of franchising disputes, which are business-to-business disputes, come under this banner. A small business operator may feel subject to an unfair market practice, but that definition of unfair market practice might not necessarily fit what we call as something reportable to the ACCC; for example, the member spoke about predatory pricing et cetera in the dairy industry. We have kept the definition broad. The Victorian Small Business Commissioner builds business relationships, certainly with lots of the major players in industry—in commercial tenancies and areas like that. Quite often, the influence of a Small Business Commissioner helps to facilitate an outcome for a smaller player in a dispute with a larger operator. We do not want to narrow the definition of unfair market practice and what it might be, because we are dealing with operators in an industry sector that are, by definition, perhaps not as sophisticated or as enabled by the power of their organisation to deal with disputes. Therefore, we have kept the definition broad because small business operators might call a practice that they are subject to unfair, although it may not necessarily fit the definition under the federal jurisdiction. Does that answer the member's question?

Mr A.P. O'GORMAN: It does, to a point. The parliamentary secretary mentioned the franchisor–franchisee relationship in her answer. I wonder if the term "unfair market practice" corresponds to what the member for Southern River put in his franchising legislation and whether this is, I suppose, a more subtle way of putting it into legislation; that is, instead of unconscionable conduct, we have unfair conduct. However, I have a reasonable understanding of it. Proposed section 15A refers to —

(b) the actions of a public sector body that affects the commercial activities of a small business.

That is a very wide definition. I have many times been called out by a small business owner who has bitterly complained about the local council and the local council health inspector who has picked up something and who is now hounding the small business owner. Whether the local council is hounding the small business owner is probably a dispute in itself. However, I have been called to one particular bakery at which a hair was found in a custard tart. When the operator of the business looked into his processes, he was firmly of the view that it is very difficult for a hair to get from somebody's head into a custard tart because of the health and hygiene policies he operates. However, he was pursued through the courts by the local government and was, in fact, fined a significant amount of money. In his view, local council or the local government health inspector was pursuing him because the inspector came back on a regular basis to inspect his premises. In the view of the operator, the local government health inspector was, in the operator's words, "working for some of the other bakeries in the shopping centre—persecuting me, but turning a blind eye to some of those other organisations." This is very, very broad. Will it address some of those issues? On at least three occasions, in the time that I have been in this place, I have had to walk around a kitchen of a fast-food place or bakery or some such business because the belief is that the inspector has been, shall we say, overenthusiastic about making sure a particular operator is adhering strictly to the letter of the law. Can the parliamentary secretary comment on that?

Mrs L.M. HARVEY: The commissioner will not interfere in any judicial process or in any kind of legal process in train between a small business operator and any authority; that is not the province of this legislation. However, the commissioner could step in, in the interest of both parties getting an appropriate outcome and a low-cost mediated outcome that is acceptable to both parties. The Small Business Commissioner could certainly step in on behalf of both small business operators and, indeed, local governments, which should have an interest in saving costs for the ratepayers and taxpayers of the state. To my way of thinking, the Small Business Commissioner could step in as a very useful facilitation mechanism to try to get the two parties to find some common ground and arrive at an acceptable outcome that does not involve a court process and a business shutting down.

Dr A.D. BUTI: I am referring to proposed section 15G on page 16, and to the question of costs, which I mentioned previously. As we can see, the commissioner can determine fees and expenses. My question was: is there a schedule of fees that will guide the commissioner and is there any possibility that costs or fees will be subject to taxation?

Mrs L.M. HARVEY: This proposed section seeks to empower the commissioner to set a fee schedule for the services that the commissioner will provide. Our intention is to follow the Victorian model and to provide a significant government subsidisation of this service to assist our small businesses to access the service and, indeed, to get on with what they want to do. I expect there will be a prescribed fee for the participants in the mediation service similar to what is in the Victorian model. At present we do not know what that will be. With regard to taxation, I suspect a lot of the work will be subject to the normal GST applicable to any kind of service charge, particularly if we are dealing with the private sector providing a lot of mediation service. We would not expect it to be exempt from GST.

Dr A.D. Buti: When I said taxation, I did not mean that sort of tax. In legal proceedings a client can go to the registrar of the court, for instance, and contest the cost of the fees. That is what I meant by taxation.

Mrs L.M. HARVEY: The model that works—the model we intend to follow—is a prescribed fee set at the start of mediation. We are not talking about fees plus, plus, plus. We are talking about what mediation services will cost, and what government will subsidise. Two parties will pay a prescribed fee.

Dr A.D. Buti: What if a party disputes that?

Mrs L.M. HARVEY: If the mediated outcome is not satisfactory, they will go through to SAT and SAT can award costs against either party as it sees fit.

Dr A.D. Buti: If a party disputes the fees or the costs, both parties have the right to contest that at SAT?

Mrs L.M. HARVEY: I suggest that unless the parties are prepared to pay the fee for the mediation service, they will not participate in the service. We are talking about a heavily subsidised mediation service that will be there to assist small businesses in resolving their disputes. If they choose to not pay that fee and not participate in that service, the next course of action for them, depending on the dispute, will be to go to the State Administrative Tribunal and talk about costs and dispute fees.

Dr A.D. Buti: Will all the costs and fees be predetermined for the process?

Mrs L.M. HARVEY: Yes, for the mediation service. Should it escalate to a civil dispute or the State Administrative Tribunal, that is a completely different ballgame when it comes to costs.

Mr A.P. O'GORMAN: Proposed section 15C, "Providing assistance", reads in part —

(2) On a request to provide assistance the Commissioner may provide such assistance to attempt to resolve the dispute or matter as the Commissioner considers is appropriate.

I am interested in why the word "may" is used and the commissioner does not have to provide assistance. If both parties go to the commissioner seeking dispute resolution, should his involvement not be automatic—not that he "may" but that the commissioner "will"? Why have we given an out here? In what circumstance would the commissioner consider not invoking a dispute resolution procedure if both parties have agreed to seek mediation from the commissioner?

Mrs L.M. HARVEY: This proposed section will give the commissioner discretion to participate or refuse to participate in providing assistance. The circumstances when that might occur would be if a judgement has been made and one of the parties is perhaps choosing to raise the dispute in another court to try to get a different outcome from the one already agreed to; if it is a vexatious dispute; or a dispute that is better resolved in a completely different court or jurisdiction. For instance, the commissioner will not waste people's time by taking on a dispute that, realistically, cannot be resolved through the mediation service.

Mr A.P. O'GORMAN: In that case, would the commissioner issue a certificate to say that the parties have come and he will not join in the dispute resolution procedure and therefore say, "Here's your piece of paper, off you go to SAT, the High Court or wherever you want to go"?

Mrs L.M. HARVEY: If it is a commercial tenancy dispute, yes; if it is another dispute that does not require a certificate for SAT to engage in the dispute, no. The certificate from the Small Business Commissioner is required only in commercial tenancies' disputes that go to SAT. That certificate will prove to SAT that the parties have made an attempt at mediation, but for whatever reason it has failed and they need to settle their argument in a court.

Dr A.D. BUTI: Proposed section 15H(1) on page 16 indicates that "A party may be represented by a lawyer". The parliamentary secretary indicated earlier that it is her view that we should try to keep lawyers away from alternative dispute resolutions as much as possible because lawyers may escalate the problem rather than solve it. Why does the bill refer to them being represented by lawyers but not non-lawyers? There is a long history in industrial tribunals, for instance, for an industrial advocate to be used. But proposed section 15H(1) refers to a lawyer. I notice in other proposed sections that non-lawyers can be used.

Mrs L.M. HARVEY: I need to clarify a couple of things. I did not say that I thought lawyers needed to stay away from all alternative dispute procedures.

Dr A.D. Buti: I said that jokingly.

Mrs L.M. HARVEY: This is recorded in *Hansard* and in 10 years' time when someone reads what the member said, I do not particularly want lawyers to pursue me for being on some kind of anti-lawyer bent. That is not how I meant to portray my view of this issue. We need to see why this legislation has been introduced. It has been introduced because small businesses have said that they want a non-litigious, low-cost mediation service so they can feel empowered to resolve their issues. That says that the lawyer-driven process does not suit resolution in all disputes and that is what this legislation is designed around. Should the presence of a lawyer in the ADR process help facilitate an outcome, that will be fantastic, and of course a lawyer will be there. However, there may be other facilitators or arbitrators from other organisations that can help facilitate an outcome in a mediation. It will be up to the commissioner or the mediator involved in that dispute to make a ruling. We should remember that the ultimate goal is to get a quick resolution to an issue.

Dr A.D. Buti: I understand what you are saying. It makes perfect sense, but my question is: why does proposed section 15H(1) refer only to representation by a lawyer and not a non-lawyer advocate?

Mrs L.M. HARVEY: This allows one of the parties to a dispute to be represented by basically any other person. On the day that mediation is arranged, it may be that, due to illness or travel or for whatever other reason, that particular person who is a party to the dispute cannot attend. They can nominate to have somebody else attend mediation on that day to help fight for the outcome that they desire.

Dr A.D. BUTI: That may be the case, but where in proposed section 15H does it say that that is able to take place? Yes, the facilitator may request the attendance of another person, but where does it say that a party—I am talking about a natural person—can seek the assistance of a non-lawyer?

Mrs L.M. HARVEY: If the member reads it, he will see that it states that a party "may" be represented by a lawyer. It is giving a party the option to have a lawyer representing them.

Dr A.D. Buti: Can they have a non-lawyer?

Mrs L.M. HARVEY: Yes. They can have another person.

Dr A.D. Buti: Where does it say that?

Mrs L.M. HARVEY: Proposed subsection (3) states that a facilitator —

Dr A.D. Buti: That is a facilitator; I am talking about a party requesting, not the facilitator.

Mrs L.M. HARVEY: It does not exclude anybody else. For the sake of this process, which is a non-litigious process, it is basically clarifying that, should either party choose to be represented by a lawyer in that mediated process, they can.

Dr A.D. BUTI: I would argue, therefore, that proposed subsection (1) is very badly drafted, because it should not include the words "may be represented by a lawyer" and then say that it is open to other parties. It should say either "lawyers only" or "may be represented by a lawyer or other persons". The proposed subsection should not say "may be represented by X", but then say in the next breath, which has not been included in the proposed subsection, that they can have anyone. That is not how a section under an act is interpreted.

Mrs L.M. HARVEY: I think it is perfectly clear. It states —

> A party may be represented by a lawyer during an alternative dispute resolution proceeding but the facilitator may, if the facilitator considers it appropriate to do so, meet with the party, either alone or with another party, —

Dr A.D. Buti: By way of interjection—

The ACTING SPEAKER (Ms L.L. Baker): Excuse me, member. The parliamentary secretary is on her feet.

Mrs L.M. HARVEY: It concludes —

> without the party's legal representative being present.

Dr A.D. BUTI: I understand that. The parliamentary secretary said that the facilitator can determine that the party may be represented by a non-lawyer. I understand that. I am asking: can the party decide they want to be represented by a non-lawyer? It would seem that the party can decide that they want to be represented by a lawyer, but can the party decide that they want to be represented by a non-lawyer?

Mrs L.M. HARVEY: This is designed around allowing a party to a dispute to be represented by a lawyer if they choose to be. It does not exclude representation by anybody else. This is designed around allowing a party to have a lawyer present as part of that dispute-resolution process. It may well be that they might choose to have somebody else there. This entire process is designed around getting, in the shortest possible time, a mediated outcome that is acceptable to both parties. The facilitator or the mediator is going to have present whomever they deem, to help facilitate that outcome in any particular circumstance.

Mr A.P. O'GORMAN: What is the mechanism for bringing in another person? For example, the member for Armadale and I may be in dispute. I say, "I want the member for Mandurah to represent me at the mediation." What is the mechanism for doing that, because in this provision it clearly says that it is a lawyer? I know the parliamentary secretary is saying that the commissioner can bring in anybody they want. Is it a request to the commissioner? Is it by agreement of the parties? What is the mechanism for bringing in somebody else besides a lawyer? Clearly, this provision says that it is a lawyer whom people can have representing them. Maybe that would be an easier way to answer the question.

Mrs L.M. HARVEY: Nothing in this bill excludes anybody from being party to a mediation process. This is all about a mediated outcome; it is not a court of law. It is not about legislating who can or cannot represent anybody. It is the antithesis of that; it is about providing a non-litigious forum for small business owners that enables them to get an outcome to their dispute. This is not about excluding anybody from that mediation process; it is about getting a mediated outcome.

Mr A.P. O'GORMAN: Is the mechanism that one of the parties puts to the commissioner that they want another person present, and the commissioner either agrees with the consent of both parties or denies that permission? I assume they would consent in most cases.

Mrs L.M. HARVEY: I would envisage in that kind of circumstance, if two parties were in dispute, that it might be a husband and wife, for instance, who are in dispute with another husband and wife who happen to own another business. They may choose to represent themselves singly or as a couple. It may be that a valuer or an independent assessor or somebody like that is brought into the mediation session to help get the desired outcome. This is all about a mediated outcome—businesses working together, trying to build a business relationship that is workable in the context of their dispute being resolved. It is not about excluding anybody; it is about getting an outcome that is not a litigious mechanism.

Dr A.D. BUTI: Proposed subsection (2) states —

> A party who is not a natural person may be represented … by an officer, employee or agent of that party.

From what the parliamentary secretary just said, would that mean, therefore, that a party who is a natural person—which is, of course, contrary to what proposed subsection (2) says—could also be represented by an officer, employee or agent of the party?

Mrs L.M. HARVEY: This is basically a party that is not a natural person; it is about a company, a partnership or an entity, if you like, being able to delegate representation in a mediation to somebody who can represent that non-person in a mediated process.

Dr A.D. BUTI: I thank the parliamentary secretary. I understand the natural reading of that, but, from the parliamentary secretary's previous answer, a non-corporation can also be an employer, and an employer is a natural person. However, from reading that proposed subsection, one would think it is saying that only a party who is not a natural person can be represented by an officer, employee or agent. My question is: if a person has an employee, can that person be represented by that employee?

Mrs L.M. HARVEY: I think we are displaying the need for mediated outcomes in our discourse! This proposed subsection is about ensuring that any party to a dispute can be represented in that dispute. If that party happens to be a person, a company or whomever, they need an appropriate person representing them at mediation. I would put to the member that most small businesses have relatively small corporate structures, which is part of the reason they need this non-litigious, low-cost mediation service. They do not necessarily have a lot of people they can call upon.

Dr A.D. Buti: A lot of partnerships are not corporations.

Mrs L.M. HARVEY: I accept that. This proposed subsection allows for that partnership to delegate representation to another person. The proposed subsection states that an officer, employee or agent of that party can be part of the mediation process. It is about allowing people to be represented at mediation and to be supported through mediation in a manner that is comfortable for them and that allows them to have their interests best represented to get the desired outcome.

Mr A.P. O'GORMAN: Just dealing with this issue, quite a lot of times in a shopping centre—for argument's sake—a small retail business has a dispute with the centre management. Very often the centre management has been issued an order to deal with certain businesses in a certain way and then that causes a dispute. The parties go to mediation and there is the same centre manager who has an instruction from management to deal with the tenant in a certain way. Clearly, even through mediation they will not come to a satisfactory resolution because the centre manager does not have the authority to say that he can change the policy because it is a policy that has been handed down to him. How do we ensure that we get at the mediation table the person who has the authority, who can agree to mediation, who can agree to an outcome and who can go out there and enforce it? Many times I have been told about that issue. I can give an example. I will not identify the people in the example, as lots of small businesses do not like to be identified. A small business owner got to the end of his lease. He entered into negotiations for another five-year lease and was happy with the terms of the lease except that he was required to do a complete refit of his clothing store. The refit was going to cost $150 000 and in his opinion it was not necessary. During the course of that dispute, the lease terminated and he said he would walk away from the business. An offer was made to him to continue on a month-by-month basis until after the Christmas period because the shopping centre management did not want empty shops during the Christmas period. He therefore came to that verbal agreement. Then the centre manager was instructed to get him out of there. The centre manager therefore had made a verbal agreement with him that he could stay on month by month to get over the Christmas period, but then the owner of the property found an alternative tenant and he was told to go. That was a dispute that he wanted to take somewhere and he came to me about it. We had a discussion about it, and the only option he had at the time was to go to the State Administrative Tribunal. However, if this legislation were in place and that dispute came in front of the Small Business Commissioner today, he would still have the issue of a centre manager who has an instruction from a board. How will the legislation make sure that people can go away from the mediation and actually enforce the outcomes of that mediation?

Mrs L.M. HARVEY: I can call only on what we hear anecdotally happens in Victoria and indeed the way the Victorian Small Business Commissioner has operated in the past. Quite often that kind of behaviour is addressed by the Small Business Commissioner calling the shopping centre management or calling the advisory board and saying, "We don't like what you're doing here. We think we're going to take this on." Often that fixes a lot of those disputes before they even get to mediation. The member needs to bear in mind that quite a lot of these issues are resolved in the investigation stage. Part of the process we need to address in small business with respect to verbal agreements is small businesses thinking these days that a verbal agreement is a binding contract. That is an issue. Certainly, someone could bring that kind of dispute before the Small Business Commissioner, but I suggest to the member that the "he said, she said" kind of mediation will probably be difficult to resolve. The Small Business Commissioner in Victoria resolves a lot of these disputes just through saying to a shopping centre that is behaving in that fashion, "We're going to take a close look at all of your tenancies because we've heard you're doing this." Quite often that is enough to fix the problem.

Dr A.D. BUTI: I have a quick question on proposed section 15I, "Evidence of certain things inadmissible". Will the alternative dispute resolution proceeding be the subject of a recording? I am just wondering about the recording of evidence. Is there a provision or anything preventing the proceeding from being recorded?

Mrs L.M. HARVEY: This proposed section is designed to be a non-threatening process and to be a little more negotiated and consultative. It is designed basically to protect the integrity of the mediation discussions and around maintaining the confidentiality of those discussions should the issue not be resolved at mediation and then progress to another court. Obviously if people are sitting down in an informal setting in mediation, not only are they more likely to come to a resolution, but also they might offer information that they would perhaps not offer in a court setting. This is therefore designed around getting an outcome in the shortest space of time. If information does become available as part of that mediation and both parties agree to that being released for further discussion in a different judicial setting, with the permission of both parties that information will be released. But it is designed to be confidential to get the best outcome.

Clause put and passed.

Clauses 17 to 21 put and passed.

Clause 22: Sections 18A to 18C inserted —

Dr A.D. BUTI: I refer to page 20, proposed section 18C, "Minister to have access to information". I presume that legal privilege will still remain. For example, if a corporation sought legal advice on a matter, would the minister have the right to that legal advice? It would probably be a rare occurrence, but it is a possibility. Could the corporation through the commissioner use the legal privilege argument to prevent the minister from having access to any information?

Mrs L.M. HARVEY: If it is legal advice on a specific complaint, we expect the usual rules of confidentiality would apply.

Mr A.P. O'GORMAN: My question is about the minister's access to information. What is the purpose, the envisaged reason, that a minister would actually need information that comes out of a resolved dispute? If the dispute is not resolved, the next step is to get the parties to go to the State Administrative Tribunal. What is the purpose of the minister having that type of information, or will the minister have some other sort of information? If it is a dispute that is resolved, why does the minister need information about it? Can the minister intervene in a dispute? My understanding is that the minister does not have any opportunity to intervene in a dispute. If a dispute is not resolved by mediation by the commissioner, once there is a certificate, it goes to SAT; therefore, why is it necessary to have this clause for the minister to gather information?

Mrs L.M. HARVEY: This is another one of those housekeeping-type clauses that changes the references from the managing director of the previous SBDC to the commissioner. With respect to the minister having information on a specific matter, proposed section 18C(5) states —

> The Minister is not entitled to have information under this section in a form that —
>
> (a) discloses the identity of a person involved in a particular application, complaint or proceeding; or
>
> (b) might enable the identity of any such person to be ascertained …

Therefore, the minister does not have powers to request information about a specific action and a specific person; that is excluded under proposed section 18C(5).

Mr A.P. O'GORMAN: I understand that; however, my understanding is that the minister should not interfere in any of these disputes. Proposed section 18C(5) also states "unless that person has consented to the disclosure". Again, I take the example of the member for Armadale and I having a dispute. We have a lot of those. If the member for Armadale were to go to the commissioner or have access to the minister and he puts the dispute to him and says, "You can use my name or you can get information that is about my dispute that does not give information about the person I am in dispute with", that could identify what the dispute is about and may cause a direction from the minister in some cases. I wonder where the protection is. Do both parties have to agree that the minister can have access to that information? Do both parties have to consent to that disclosure in proposed section 18C(5), or if one person went to the minister and had his ear without providing the other person's name, can the minister get all the details of the case? Is that a possibility?

Mrs L.M. HARVEY: The minister cannot intervene in a specific dispute. Therefore, in that context there is no requirement to get the permission of two parties to a dispute before the minister can have access to the information, because the minister is not entitled to intervene in a dispute. Proposed section 18C enables the minister to have access to general information. There might be 10 cases, for instance, that come before the commissioner and the commissioner has identified an issue to the minister. The minister would need to go back to the commissioner to get the general details of those 10 cases so that he can look at that issue and look at forming a policy or a response or whatever it might be. The minister cannot intervene in an individual dispute; this is about the minister having information so that he can perform his ministerial functions.

Clause put and passed.

Clauses 23 to 34 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MRS L.M. HARVEY (Scarborough — Parliamentary Secretary) [10.05 pm]: I move —

That the bill be now read a third time.

MR A.P. O'GORMAN (Joondalup) [10.05 pm]: I take the opportunity presented by the third reading of the Small Business and Retail Shop Legislation Amendment Bill 2011 to thank the parliamentary secretary; it was an experience and I know it was her first time and it was my first time—I will not use that other terminology! I think we managed to get through it okay. I wonder whether the member for Mandurah will give a score.

This is really important legislation for the small business community. I know that it is late, so I will not speak for long. It is very important that we protect our small business community from predatory practices and from practices that sometimes may not be predatory, but because our organisations get very large, they do not actually see some of the things that impact on small business because they are looking at their bottom line and how they want to operate and trying to make that work. Sometimes that affects small businesses. As the parliamentary secretary and everybody in this house knows, the majority of our small businesses are run by mums and dads, partnerships and small business trusts and the effect of what happens when a small business goes pear-shaped is that we have people who lose not only their business but also their income. In extreme cases—the timer just went!

Mr B.S. Wyatt: You've got a free five minutes!

Mr A.P. O'GORMAN: See, time flies when we are enjoying ourselves!

Mr R.F. Johnson: You're on the seconds—you've got nothing now!

Mr A.P. O'GORMAN: The impact is that sometimes, as I said, not only the small business is lost, but also marriages are destroyed, family relationships—not only husband and wife relationships, but also relationships between brothers and sisters, parents and children—are destroyed, and in extreme circumstances in which the organisation insists that the bond is paid over because of the termination of a lease ahead of its time, the family home can be repossessed by the bank and sometimes that can lead to bankruptcy.

That creates more issues for the state. A number of people over the years have found themselves in the situation that they have lost their small business, lost their income and subsequently lost their home, so they go on to the state's housing list or receive Centrelink payments—the welfare system. That is not a good outcome for our state or our country. Therefore, it is really important that we get this legislation as right as possible. I reiterate that I think it would have been better to have had a Small Business Commissioner independent of the Small Business Development Corporation, but we have what we have and we will support it. Hopefully, we can watch this legislation over the next two years and make sure that it works, that small businesses are protected and have an appeal or dispute resolution mechanism that is relatively cheap, so that we can actually save some lives, save some marriages and ultimately save the state some money without having to pay out for social welfare, housing and things like that.

I commend the bill to the house. I congratulate all members; I thought it was a very well conducted debate. We took a bit longer than the Leader of the House would have liked, but that is how it goes in politics; we have to get our points across and we have to ensure that the people who may read this *Hansard* at a later time understand what we tried to do in supporting this legislation. With that, I terminate my remarks and hope that we get through the rest of the night easily.

MR D.A. TEMPLEMAN (Mandurah) [10.09 pm]: Seven and a half—a fine performance!

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 10.10 pm

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QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

STATE ALERT SYSTEM — EVALUATION

4752. Ms M.M. Quirk to the Minister for Emergency Services

(1) Can the Minister advise, since the announcement of the trial of the State Alert system in February 2009:

- (a) has any evaluation been undertaken of the system; and
  - (i) if so, what were the findings of the evaluation(s);
- (b) have any modifications or enhancement of the system been made since February 2009; and
  - (i) if so, what were those enhancements or modifications;
- (c) what is the current capacity of the system; that is, how many calls can be made per hour;
- (d) can the Minister confirm the name of the third party carrier involved in the Western Australian State Alert system;
- (e) was that third party carrier the successful tenderer; and
  - (i) if so, what is the term of the contract;
- (f) what mechanisms are there in the Western Australian State Alert System to monitor congestion;
- (g) what are the ongoing maintenance costs for the Western Australian State Alert system; and
- (h) is there the potential to extend the capacity of the Western Australian State Alert system?

(2) How does the Western Australian State Alert system differ from those which operate in other states and form part of the national system?

Mr R.F. JOHNSON replied:

(1)
- (a) Yes, as reported previously (Parliamentary Question 3967 of 2010), both internal and external assessments of the technical performance of system have been conducted.
  - (i) As reported previously (Parliamentary Question 3967 of 2010) the assessments identified capacity benchmarks for the delivery of messages based on messaging provider capacity and system configuration considerations
- (b) Yes
  - (i) The enhancements related to the capacity of the system to deliver messages and involved reducing the length of messages and increasing the number of distribution ports in the telecommunication networks
- (c) The system is currently configured to handle 200-300 voice calls per minute. During the recent incident at Roleystone though, the system was delivering 800-900 calls per minute.
- (d) Whispir Pty Ltd
- (e) Yes
  - (i) Whispir Pty Ltd, currently have a 12 month contract for the supply of messaging services, due to end in June 2011.
- (f) StateAlert does not monitor network congestion. Whispir in conjunction with their service providers and the telecommunication carriers monitor network congestion.
- (g) StateAlert will cost approximately $218,000 to maintain this year. It will cost a further $200,000 to operate.
- (h) Yes, however, there is a cost and potential technical limit.

(2) Operations of other States system is not known however, StateAlert differs from the Emergency Alert system used in other states in that it is a stand-alone system, developed by the Government of Western Australia, managed by FESA.

COUNTER-TERRORISM INITIATIVES — POLICE FUNDING

4753. Ms M.M. Quirk to the Minister for Police

I refer to special funds given to Western Australia Police for counter-terrorism initiatives, and I ask:

(a) what is the annual amount earmarked to Western Australia Police for these activities;

(b) are those funds sourced from State or Federal Governments; and

(i) if so, please specify which Governments and the amount each contributes;

(c) please specify the various activities which are funded, the source, and the amount allocated to each; and

(d) please specify which business areas are responsible for expending this allocation?

Mr R.F. JOHNSON replied:

(a) In 2005/06 the State Government provided $14.649m for capital acquisitions to WA Police as part of the Increased Counter Terrorism and Emergency Response Capability Project. Annual recurrent funding of $2.887m continues to be provided to maintain such capability ensuring preparedness in the event of potential terrorist incidents and other major incidents.

(b) All direct funding is sourced from State Government.

The Federal Government pays for some operational equipment, expendables, training, exercises and specific initiatives in the realm of counter terrorism. WA Police has no control over these funds.

(i) Not applicable.

(c) Recurrent State funding is divided amongst capital maintenance and operational expenditures. The operational expenditure component comprises of tactical equipment upgrades, specialist training, critical infrastructure security patrols and maintaining bomb response and emergency response capability and capacity. WA Police is not able to provide detailed information on Counter Terrorism initiatives and/or activities due to the associated sensitivities.

(d) The Counter Terrorism and State Protection, Specialist Enforcement and Operations and Asset Management Portfolios are responsible for expending the allocated funds.

CHILDREN'S CROSSINGS — POLICY

4754. Ms M.M. Quirk to the Minister for Police

(1) Have there been any changes in policy as to how school crossings are assessed since April 2009; and

(a) if so, what are these changes?

(2) How many school crossings are currently under consideration to lose their status enabling that crossing to be supervised by a traffic warden?

Mr R.F. JOHNSON replied:

(1) Yes (please note it is children's crossings and not school crossings)

(a) The warrant criteria for a Type A crossing where the applicant school is a High School only, has been revised. The minimum vehicle count was revised from 1,250 to 700 the hour immediately before and the hour immediately after school.

Type B warranted crossings have been given formalised criteria. The criteria is half of a Type A warranted crossing.

Criteria has also been introduced for schools that are combined. That is the school location has both primary aged and high school aged students. The criteria for a Type A warranted crossing is the same as Primary School criteria.

(2) None. All children's crossings are reviewed every 5 years as part of their Warrant. They are not reviewed specifically to "lose their status enabling that crossing to be supervised by a traffic warden". To keep a warranted children's crossing the crossing must meet the required criteria.

DEPARTMENT OF REGIONAL DEVELOPMENT AND LANDS — STAFF

4800. Mr M. McGowan to the Minister for Regional Development

I refer to the employees of the Department of Regional Development and Lands, and ask:

(a) how many staff does the Department of Regional Development and Lands have;

(b) what percentage of staff work outside the metropolitan area;

(c) in which regional cities or towns do the employees working outside the metropolitan area work; and

(d) what is the number of staff in each of these regional cities or towns?

Mr B.J. GRYLLS replied:

(a) 252

(b) 7.5%

(c)–(d)

Regional City or Town	Number of people
Albany	1
Boddington	1
Bunbury	4
Carnarvon	1
Dowerin	1
Dalwallinu	1
Kununurra	6
Karratha	3
Williams	1

BUNBURY — SPORTING AND RECREATION FACILITIES

4809. Mr M.P. Murray to the Minister for Lands

Given that Hay Park, Bunbury's main sporting complex, and the Leschenault Leisure Centre in Australind are both operating at full capacity, I ask:

(a) has any land for the purpose of building another complex in the region been allocated and set aside; and

(i) if not, can the Minister advise what land is available that would be suitable and could be utilised for such a project; and

(b) is the Minister aware that there is land available opposite the regional prison and adjacent to the airport that could be suitable for a recreation centre?

Mr B.J. GRYLLS replied:

(a) I am not aware of any land being specifically allocated to establish a new sporting complex.

(i) The Department of Regional Development and Lands works in partnership with relevant local governments, sporting associations and other government agencies to identify suitable land for such projects if and as required.

(b) This land is currently under the management of the City of Bunbury for the purpose of 'Recreation and Parklands'. The land is reserved for 'Regional Open Space' under the Greater Bunbury Region Scheme and is identified as forming part of the Preston River to Ocean Regional Park.

LANDS — VACANT LOTS OWNED BY GOVERNMENT IN REGIONAL AREAS

4811. Mr J.N. Hyde to the Minister for Lands

(1) How many vacant lots are owned by the State Government in regional Western Australia and in which towns/cities are they found?

(2) How many are development ready?

(3) What is the reason for non-sale and/or non-development?

(4) How many are vested with Landcorp?

(5) How many vacant lots are being levied or are paying back to Treasury rate-equivalent land tax, council rates, emergency services levy, and/or water authority service charges?

Mr B.J. GRYLLS replied:

(1)–(5) A list of vacant lots owned by the State Government is not available. The status of Crown land is shown on electronic map databases maintained by the Western Australian Land Authority (Landgate) but not recorded in a tabulated format.

The Department of Regional Development and Lands along with LandCorp both work closely with all Local Government Authorities in relation to Crown land issues. Each request is considered on a case by case basis.

I am not prepared to dedicate crucial resources and departmental time in answering such a broad question. If the Member wants to ask a question about a particular Crown land parcel or land issue I would request that he identify this matter to enable proper research to be conducted.

POLICE — CHARGES FOR NON-PRODUCTION OF IDENTIFYING INFORMATION

4814. Ms M.M. Quirk to the Minister for Police

(1) What are the specific guidelines that are given to police in relation to the laying of charges and/or arrest for refusal of persons to provide officers with name and address?

(2) In the last calendar year, how many persons were solely charged with that offence?

(3) In the last calendar year, how many persons were placed in police custody for the offence of refusal to give name and address?

(4) In the last calendar year, how many persons were placed in police custody at the East Perth lock up for the offence of refusal to give name and address when no other charges had been laid?

Mr R.F. JOHNSON replied:

(1) The authority for police officers to request a person's personal details is contained in Section 16 of the Criminal Investigation (Identifying People) Act 2002 (the Act) subsections (2) and (3), which state:

> *(2) If an officer reasonably suspects that a person whose personal details are unknown to the officer --*
>
> *(a) has committed or is committing or is about to commit an offence; or*
>
> *(b) may be able to assist in the investigation of an offence or a suspected offence, the officer may request the person to give the officer any or all of the person's personal details.*
>
> *(3) If an officer reasonably suspects that a personal detail given by a person in response to a request is false, the officer may request the person to produce evidence of the correctness of the detail.*

The offence of Refusing to Provide Personal Details is committed when there is a breach of sub-section (6), which states:

> *A person who, without reasonable excuse, does not comply with a request made under subsection (2) or (3) commits an offence. Penalty: Imprisonment for 12 months.*

The following is the instruction provided to recruits and serving officers that attend Academy training courses with a legal component:

There is no power of arrest in the Criminal Investigation (Identifying People) Act 2002 for failing to supply details.

Each element of the section is explained with particular emphasis on the need to form a reasonable suspicion before being authorised to ask for a person's personal details, as stated in sub-section (2) and (3) of the Act.

In other words police in training are instructed that there is no power to demand a name, and therefore no power to arrest for a failure to provide the name unless that reasonable suspicion is in existence.

Examples of what might constitute "without reasonable excuse" under the provisions of section 16(6) of the Act is discussed to provide guidance on when a person may not be committing an offence under this section.

Section 128(3) (a) & (b) of the Criminal Investigation Act (CIA) provides the powers of arrest for offences that fall outside the scope of "serious offences" as determined by Section 128(1) of the CIA, this includes Section 16(6) of the Act.

(2) In 2010, 588 persons were solely charged with an offence under Section 16 of the Criminal Investigation (Identifying People) Act 2002.

(3) In 2010, 1092 persons were placed in police custody as a result of incidents that included an offence under Section 16 of the Criminal Investigation (Identifying People Act 2002.

(4) In 2010, 58 persons were placed in police custody at the East Perth lock up for an offence under Section 16 of the Criminal Investigation (Identifying People) Act 2002 when no other charges had been laid.

KIARA POLICE STATION — VEHICLE ALLOCATION

4842. Ms R. Saffioti to the Minister for Police

With reference to Kiara Police Station, how many police vehicles has this station been allocated for the following years:

(a) 2007;

(b) 2008;

(c) 2009;

(d) 2010; and

(e) 2011?

Mr R.F. JOHNSON replied:

(a)–(e) Western Australia Police advises that due to operational sensitivities, specific information relating to resourcing levels, including number of vehicles assigned to individual police stations is not released. Resources are principally allocated at a District level and District Superintendents deploy these resources within their District to provide the best possible policing service to meet operational requirements and the varying needs of the community.

It should also be noted that vehicles and officers, other than those attached to Kiara Police Station, assist with patrolling and attending to tasks within the Kiara Police sub-district in response to community needs.

BALLAJURA POLICE STATION — CLOSURE

4845. Ms R. Saffioti to the Minister for Police

I refer to the Minister's decision to close the Ballajura Police Station, and ask whether the Government has conducted a formal review of law and order issues in Ballajura since the closure of the station; and

(a) if not, why not?

Mr R.F. JOHNSON replied:

Law and order issues in Ballajura are subject to constant review by the Western Australia Police.

(a) Not applicable.

BALLAJURA — CRIME STATISTICS

4846. Ms R. Saffioti to the Minister for Police

What are the monthly reported crime statistics for the suburb of Ballajura from July 2010 to February 2011 for the following crime categories:

(a) assault;

(b) burglary (dwelling);

(c) burglary (other);

(d) graffiti;

(e) robbery; and

(f) motor vehicle theft?

Mr R.F. JOHNSON replied:

(a)–(f) Below statistics are available on the WA Police internet site.

Monthly Verified Offences for locality of Ballajura from July 2010 to February 2011:

	Offence Category						
Month	Assault	Robbery	Dwelling Burglary	Non-Dwelling Burglary	Motor Vehicle Theft	Graffiti	Total
Jul-10	32	0	7	2	6	31	78
Aug-10	16	0	9	4	3	72	104
Sep-10	13	0	16	7	7	87	130
Oct-10	10	1	4	7	4	3	29
Nov-10	7	0	12	3	4	3	29
Dec-10	11	2	26	4	3	34	80
Jan-11	11	1	29	2	7	0	50
Feb-11	5	0	17	1	4	0	27
Total	105	4	120	30	38	230	527

Notes:

1. Statistics are provisional and subject to revision.

2. The number of reported offences for a period (e.g. calendar year) comprises all selected offences reported during that period and may include offences committed during earlier periods.

Source: WA Police, Frontline Incident Management System (IMS)

MALAGA — CRIME STATISTICS

4848. Ms R. Saffioti to the Minister for Police

What are the monthly reported crime statistics for the suburb of Malaga from January 2010 to February 2011 for the following crime categories:

(a) assault;

(b) burglary (dwelling);

(c) burglary (other);

(d) graffiti;

(e) robbery; and

(f) motor vehicle theft?

Mr R.F. JOHNSON replied:

(a)–(f) Below statistics are available on the WA Police internet site.

Monthly Verified Offences for locality of Malaga from January 2010 to February 2011:

	Offence Category						
Month	Assault	Robbery	Dwelling Burglary	Non-Dwelling Burglary	Motor Vehicle Theft	Graffiti	Total
Jan-10	2	0	2	10	1	3	18
Feb-10	2	0	0	4	1	1	8
Mar-10	4	0	0	5	2	1	12
Apr-10	3	0	0	2	1	0	6
May-10	3	0	0	5	1	5	14
Jun-10	0	0	1	6	2	2	11
Jul-10	3	0	0	10	1	3	17
Aug-10	5	0	1	28	6	2	42
Sep-10	5	0	0	18	2	1	26
Oct-10	0	0	0	28	5	1	34
Nov-10	5	1	1	5	3	2	17
Dec-10	0	1	0	5	5	0	11
Jan-11	3	0	0	8	0	5	16
Feb-11	1	0	0	14	0	2	17
Total	35	2	5	148	30	28	249

Notes:

1. Statistics are provisional and subject to revision.

2. The number of reported offences for a period (e.g. calendar year) comprises all selected offences reported during that period and may include offences committed during earlier periods.

Source: WA Police, Frontline Incident Management System (IMS)

ALBANY REGIONAL HOSPITAL — ACCREDITATION

4898. Mr P.B. Watson to the Minister for Health

Has Albany Regional Hospital passed its accreditation in the last two years, considering it has been subject to three coronial inquiries, and also the scathing coroner's report into the death of Kieran Whatmore?

Dr K.D. HAMES replied:

Albany Hospital, as part of the WA Country Health Service – Great Southern region participates in the Australian Council on Healthcare Standards Accreditation four year quality cycle.

In March 2009 the health service achieved organisational wide accreditation, being measured against the Evaluation and Quality Improvement Program standards. The health service is due for reassessment in late 2011.

SHAREFARM TIMBER AND CARBON INTERESTS — SALE

4909. Mr M.P. Murray to the Minister for Forestry

I refer to the tender for the sale of Sharefarm Timber and Carbon Interests (RFT092010), and I ask:

(a) how many tenders were received;

(b) how many offers were declined; and

(c) without a successful tender applicant to purchase the Forest Products Commission's timber and carbon interests, what is the future of the timber farms?

Mr D.T. REDMAN replied:

(a) One

(b) One

(c) The Forest Products Commission (FPC) is planning to re-issue an amended tender for the FPC's sharefarm interests. The FPC is exploring a range of alternative divestment options should the tender process prove to be unsuccessful.

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