WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Thursday, 8 May 1997

Legislative Council

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THE PRESIDENT (Hon Clive Griffiths) took the Chair at 11.00 am, and read prayers.

PETITION - LABOUR RELATIONS LEGISLATION AMENDMENT BILL

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [11.03 am]: I seek leave to table in the House a petition that does not conform to the standing orders because it sustained water damage during the rally. It has, therefore, not been signed by the Clerk.

[Leave granted.]

Hon TOM STEPHENS: I present the following petition -

> To the Honourable the President and members of the Legislative Council in Parliament assembled.
>
> The Petition of the undersigned respectfully showeth:
>
> Our wish that any changes to the state's industrial relations system should recognise the special needs of employees to be protected from disadvantage, exploitation and discrimination in the workplace, and that we oppose the Labour Relations Legislation Amendment Bill 1997 which represents an attack on employees, their unions and personal freedom in Western Australia.
>
> Your petitioners most humbly pray that the Legislative Council, in Parliament assembled will: Defer consideration of the Bill until after May 22 1997 to enable those Members of the Council elected in December 1996 to consider the Bill when they take their places after May 22, thus (a) enabling employees to participate in legitimate industrial action to gain better working conditions without the threat of massive fines and imprisonment, and (b) ensuring employees who are unfairly dismissed have access to a fair hearing before the Industrial Relations Commission including the right to proper compensation for unfair dismissal and that the Industrial Relations Commission retains the role of "independent umpire" without interference from Government or the Minister for Labour Relations.
>
> And your petitioners as in duty bound will ever pray.

The petition bears 14 signatures.

[See paper No 432.]

By leave, a similar petition, which did not conform to the standing orders because a signature had been crossed out, was presented by Hon Tom Stephens (16 signatures).

[See paper No 433.]

STANDING COMMITTEE ON GOVERNMENT AGENCIES - REPORT ON GOLDEN EGG FARMS

Consideration to be Made an Order of the Day

HON KIM CHANCE (Agricultural) [11.09 am]: I move -

> That the report of the Standing Committee on Government Agencies on Golden Egg Farms be made an order of the day for the next day of sitting.

I have sought to restore consideration of this report to the Notice Paper for a number of reasons, not the least of which is that it is the first opportunity the House has to give formal consideration to the report, despite its having been tabled on 7 November 1996. On publication it was recommended that the report also be referred to the responsible Minister in another place, Hon M. House, Minister for Primary Industry, for his review and consideration

It is partly that referral to the Minister which causes me to be anxious that consideration of the report be returned to the Notice Paper and, if possible, that such consideration take place as soon as possible. Given the time lag since the tabling of the report in this place, and the virtually simultaneous referral to the Minister, it could result in embarrassment for the House if it fails to consider within a reasonable time a report which deals with a vital interest to a number of people; indeed, it represents the life savings of some people.

This issue has some similarity to one in which the House has taken an interest; that is, the matter of the former licensed milk vendors. The two issues of egg delivery contracts and the licensing system used to distribute milk are

fundamentally different - the Golden Eggs case involves a legal issue and the milk vendor matter was almost entirely political in cause - but the effect of both is the same. We have small business operators who lost most, if not all, of their net assets as a result of a direct political decision or a commercial decision in the Golden Eggs case by a government business enterprise.

To provide a brief overview of the whole situation, I read four points from the report from section A "Overview" as follows -

1. The Committee has spent some time inquiring into the arrangements made by the WA Egg Marketing Board trading as Golden Egg Farms ("the Board"), a statutory trading corporation established to control the marketing of eggs, with a succession of persons ("the drivers") who contracted with the Board to distribute eggs and egg products to retailers. Each driver was assigned an exclusive 'round'. The drivers were obliged to modify their self-owned trucks to meet the Board's requirements for the carriage of eggs.

2. The Committee's inquiry was sparked by allegations that the Board breached its contractual obligations to the existing drivers when it notified them it would not renew existing arrangements but, instead, put up distribution for tender. The drivers argued that although the Board was free to go to tender, it should have paid out the 'goodwill' component of their contract. The Board denies any element of goodwill in its contracts with the drivers.

3. The committee has heard oral evidence from both the drivers and the Board. The Committee bases its recommendations on this evidence. No documentary evidence has been tabled in this matter in order to preserve the right of each party should litigation eventuate.

The final point indicates that the report consists of the facts as determined by the committee and contains a comparative table outlining the evidence presented by each party, and the committee's evidence in light of that evidence. Areas of clear difference arose in the facts presented by the parties, and the committee as a result has made some recommendations. However, because of the clear differences in the evidence presented to the committee, the committee was placed in a situation in which it felt it could not take the inquiry to its logical conclusion.

In the nature of any business enterprise that tenure is dependent on commercial performance. As such a degree of risk will always be involved. The Golden Egg Farms and the milk vendor cases have in common a change to long established practice on which the businesses relied. The facts, as determined by the committee, are not necessarily in dispute.

First, Golden Egg Farms, as I refer to the body in this speech, is a trading arm of the WA Egg Marketing Board, a statutory authority established to control the marketing of eggs. The board is established by section 7 of the Marketing of Eggs Act, section 9 of which makes the board a body corporate which may sue or be sued. Section 10 of the Act expressly states that the board shall not, except in relation to any matter in which the board is specifically authorised by the Governor to act on the behalf of the Crown, be the agent, or servant or representatives of the Crown. I mention that provision to make clear that there is no question of the board being protected by crown immunity.

The board has three transport systems: First, collectors pick up eggs from farms and deliver them to the grading operation; second, owner-driver delivery persons transport packed eggs and processed egg products to customers in the greater metropolitan area; and third, the long distance transport operators delivering in country areas. It is the second of those systems, the owner-drivers, to whom the report relates. The drivers contracted with the board to distribute eggs and egg products to retailers and, consequently, each driver was assigned an exclusive round. It is from that point that the issue begins.

Despite the fact that the Egg Marketing Board is a statutory corporation, it was a contractual system and did not rely on legislation to enable the drivers to carry out those duties on behalf of the board. It is on that point that the essential differences between the egg drivers and the milk vendors exist.

Prior to 1982 the drivers were employees of the board as waged drivers. They were paid to drive delivery trucks owned by the board. In 1982, the board introduced a contract system by which drivers became owner-drivers. The contract terms were in the order of four years, and were subsequently shortened to terms of one to two years. A typical contract between the board and the drivers included a provision allowing the board to have absolute discretion in establishing a new agreement, appointing new contractors or calling for tenders when the contract terminated or expired.

In 1986, nine contract drivers covered the Perth metropolitan area. In February 1987, a driver named Clem Holmyard sold his round to the other eight contractors. When a driver wished to sell a round, it could be sold only to a

purchaser approved by the board. When that sale occurred, the board interviewed the prospective purchaser of the round to ensure that he was suitable for the job. If so, a contract would be issued.

The contractual arrangements with the drivers were brought into line so that the current terms were all due for expiry on 31 December 1994. Extensive negotiations occurred between the drivers and the board leading up to that broad cut-off date. In the conduct of those negotiations, the drivers, among other matters, sought an increase in remuneration under any future contracts. A number of a meetings were held between the drivers and board representatives, and negotiations continued beyond the formal dates of 26 and 27 October 1994. A counter offer by the drivers was put to the board on 10 November 1994.

On 18 November 1994 the board wrote to drivers advising that their contracts would not be renewed and that it had been decided to hire a prime contractor to do the metropolitan deliveries with effect from the expiration of the contract on 31 December 1994. At that point the dispute finally arose. Thereafter there were a number of meetings, offers and counteroffers, including one made by the board to the drivers on or about 27 February 1995, to which there was no response. On 15 May 1995 the board wrote to the drivers giving them notice of the termination of the extended contract, effective from 31 August 1995, and advising of the board's intention to go to tender. Tenders were advertised on 28 June 1995 and later a prime contractor was selected.

On 23 August 1995 the drivers petitioned Parliament about the termination of their contracts and on 24 August 1995 the former Standing Committee on Government Agencies launched an inquiry into Golden Egg Farms, pending advice from the Standing Committee on Constitutional Affairs and Statutes Revision that it would not inquire into the matter further as a result of the reference that had been made to the latter committee upon presentation of the petition.

On 7 September 1995 the Constitutional Affairs Committee formally notified the Government Agencies Committee that it believed it was more appropriate for the Government Agencies Committee to inquire into the drivers' petition dated 23 August 1995. Although it has taken some time to cover the detail of this matter, it is necessary for members to understand the bare bones of the time scale of what occurred and how the House came to take an interest in this issue.

The committee's interest in the matter is not, and has not been, limited to this specific grievance raised in the petition, and in other ways, by the former Golden Egg Farms delivery contractors, but rather in the broader question of how the Government and its agencies handle the contracting out of services. In that context, after receiving the grievance the committee decided to make inquiries.

The then committee has had a general interest in the matter of contracting out of government services and felt it could learn more about how the system functions by taking an interest in specific cases. It is a matter of significant interest to the House. Irrespective of whether our position is in favour of further contracting out of public services, it is necessary in each case to understand the situation very clearly. A tremendous amount of work has been done on this matter by the committee and it would be an awful waste of that work and commitment of resources if this matter is not returned to the Notice Paper.

We tend to associate the effective contracting out of public services with the competitive tendering contracting out policy, with hospitals, education and transport being three of the key areas. Of course another factor is involved. Many of the services that previously were provided by government and are being provided by the private sector rely on the former wages employees of the relevant agency or department becoming contractors to that organisation. That is happening commonly, in Western Power for example. It is occurring all the way through the whole gamut of government agencies and departments. In this case we have a pretty good example of how such contracting out should not be done.

When they are offered the opportunity to become self-employed contractors to the Government, wages employees must be given the message that they should not rely on the same tenure they had as members of staff; that they certainly should not rely on any unwritten assurance by government that their job as a contractor is as secure as it was when they were wages employees; and that they should certainly not accept that there is anything of comfort in the contract about rates of pay or tenure of employment or tenure of contract unless it is clearly written in the contract. That is at the heart of this issue.

One of the difficulties the committee had in arriving at its conclusions is that fairly early in our investigations it determined that this dispute had not been the subject of the full available course of the law. By its nature, it was a dispute in law but all legal avenues had yet to be exhausted. The key issue that arose was, by way of example, that a clear disparity existed in the evidence given by each of the two parties to the dispute. Quite apart from the constitutional requirement of the separation of powers doctrine which prevents the committee from exercising the powers of the courts, a practical problem arose. To assess the divergent matters of fact which arose in the case, we

found our committee was deficient in that only a court is property equipped to adduce evidence, to allow for cross-examination on that evidence and to perform the functions of an adversarial procedure under the rules of evidence normally associated with the courtroom process.

The issues of contention on matters of fact were numerous. One or two of them are worth summarising here, but I will not attempt to take this matter to any length. On one hand the drivers gave evidence that there was documentary evidence of the board's direct involvement in the weekly deductions for goodwill payments; that is, in the sale of Clem Holmyard's round to the remaining drivers. From the drivers' point of view this seemed to be indicative of the board's tacit support for the concept of goodwill and for an inherent continuing value of the contract. Effectively the basis of the claim was that the contract should not have been removed without an allowance for goodwill being made.

On the other hand the board claimed the weekly deductions were not the basis of a claim for goodwill by the drivers, but were a reflection of the pro rata share according to the dozenage - that is, the amount of work associated with the round - that was apportioned to each of the two drivers who were offered a section of Clem Holmyard's round. The board further claimed that the sum deducted was not sufficient to be classed as representative of goodwill. In that example alone, we can see that a parliamentary committee is not properly equipped, nor is it the proper place, to make a decision on those facts. That decision should be made in a court of law.

Another issue was that on one hand the drivers claimed that an agreement was reached between them and the board on 27 October 1994. On the other hand the board claimed there was no such agreement at this or any other meeting. The contracts with the drivers were still under negotiation, and that suggested evidence about which there was a further meeting between the drivers and the board on 10 November 1995.

They are just two of the disputed facts that cover three pages of the report. I have no intention of going through them, but they indicate to the House the degree to which facts are contested and the reason the committee was unable to proceed further with those disputed facts. As a consequence, the committee's first recommendation is that the specific issues of the drivers' grievance would be most appropriately resolved within the framework of the courts. The committee was therefore careful that it did not prejudice the rights of Golden Egg Farms or the drivers in the event that litigation arose, particularly in relation to the disputed facts. However, the committee did make determinations in relation to some matters, and in some instances they were matters that lay at the very core of the dispute. Principal among those issues was whether in practice the contracts held by the drivers were such that they could have a reasonable expectation that they would be renewed upon termination, subject only to satisfactory performance and an agreement on price. It was the concept of reasonable expectation that had led incoming contractors to pay prices for delivery rounds that far exceeded the market value of the outgoing contractors' assets, which amounted to little more than a truck.

The Golden Egg Farms board relied on the wording of the contracts in support of its claim that they had no ongoing component. On the face of it, it is clear enough that the contracts did terminate with the effluxion of time. While that matter is not keenly disputed, it does not address what was seen, and seems to be established by practice, to be the reasonable expectation that, upon expiry, the contracts would be renewed.

The committee formed the view that the drivers had good reason to believe that they had some security of tenure that exceeded the terms of the written contract. It came to that belief for a number of reasons and based on the evidence presented, including that it was apparent that the board had never voiced any objection to the practice of drivers negotiating the sale of contracts to third parties at prices that very clearly included a goodwill component. I stress that last point.

Whether the board was aware in every case of the price being negotiated between the outgoing and incoming contractors is relevant and disputed. However, at the same time, it is beyond my belief that the board and its management would not have known within reasonable parameters the prices being negotiated between the parties. Certainly, it was no direct business of the board to know the prices but, at the same time, they were freely quoted. Everyone connected with the Golden Egg Farms operation, or at least in that division, was aware of the prices being paid for these contracts. While I acknowledge that the board representatives have said that there was no reason for the board to know what those prices were in every case, it is beyond my belief that it did not know within reasonable parameters. As far as the committee has been able to determine, at no time did the board object nor was any warning given to incoming contractors that there was no ongoing component in the contract. In some instances it is clear that the board not only knew about some of the factors involved in the sale of rounds but, indeed, facilitated their sale, for example, by assisting in the advertising of rounds. In the Holmyard case it is also clear that it assisted in financing the purchase of an outgoing contractor's round.

The board negotiated with drivers on the matter of truck replacements, which involved financial arrangements between the board and drivers over seven years. As I have already indicated, towards the end of the contracting system, licences were issued for terms of only one to two years - the maximum contract entered into in those final

years. When the board was negotiating with contractors financial arrangements covering seven years - that is, more than three times the longest contract - it is very clear that, as a result, drivers might form a reasonable expectation that contracts were likely to exceed the terms of the written agreement and that they would not necessarily expire with the effluxion of time as set down in the contract to the extent that there was an expectation that another contract of that same nature would be written; in other words, the contract would roll over. The fact that contracts rarely exceeded a two year term was clear indication to the committee that the board was not only contemplating a rollover of existing contracts but was also prepared to base negotiations for the next contract term upon the expectation of further terms.

One of the four possible legal implications arising from item three of the report's conclusions and recommendations is the issue of collateral contracts. The committee sought advice on this issue and, without going into that advice in detail, it is interesting to note that there is a difference in practice between Britain and Australia in the way unwritten contracts are held enforceable at law. The committee deliberated on whether two contracts existed: The written contract, which had a clear expiry date; and an unwritten contract, which was based on the understanding that, subject to certain conditions, the contracts would be renewed. This assumes that the two forms of contracts were collateral and, in practice, indivisible due to the capital value that had attached itself to the written contract. The difference in practice between Britain and Australia lies in the weight that the two jurisdictions give to an unwritten contract. In Britain an unwritten contract is more likely to be deemed enforceable than in Australia, where we rely more heavily on the formal structure of an agreement. However, that does not necessarily mean that the drivers' case is without merit. The committee has indicated that legal action might be possible pursuant to a number of provisions - including the Trade Practices Act 1974 and the Fair Trading Act 1977 - and subject to consideration of the issue of estoppel and collateral contract.

The committee also recommend that the report be referred to the Minister for Primary Industry for further review, and that has occurred. It is important that the committee consider the results of that referral. I believe the Minister responded some time ago, but that matter is still covered by privilege. I am keen that we pursue that matter with the Minister, not because I think the Minister can pull a resolution out of the box but because he is entitled to the committee's assistance in considering how this issue might similarly affect other contracting issues in his portfolio.

I have already dealt with the reason the committee was interested in this issue. However, its genesis was an arrangement made by Golden Egg Farms with its then employee drivers in an attempt to resolve what had been a fairly unhappy workplace. It was a workplace in which industrial disputation had occurred from time to time, and Golden Egg Farms sought a solution, in concert with its employees, to overcome that matter. In that sense, the process of contracting the delivery services to owner-drivers was successful for many years and the owner-driver system had served both the drivers and Golden Egg Farms very well. When Golden Egg Farms decided to seek a prime contractor to replace the owner-drivers, it did so in the face of years of effective service by those owner-drivers and in the knowledge that those drivers would suffer significant financial loss as a result of its decision. I find that action extremely difficult to accept from both an ethical and moral point of view. Obviously I will not make judgments on the legal issues. In this case and in the case of the milk vendors, the action that was taken has left a small group of business people bitter and disillusioned at the way they were treated.

The committee shared my view to the extent that it states in part D of the report, under the heading "Summary and Recommendations", at page 16 -

> The Committee does not wish to prejudice the rights of either the drivers or the Board in this matter, but suggests that the fact that a dispute has arisen reflects adversely on the administrative processes of various government agencies and statutory authorities in a climate of changing arrangements. There is a clear obligation on government agencies and statutory authorities to perform their functions in a moral and ethical way, as well as in a legal way. Every effort should be made to avoid further disputes of this nature, and this will continue to be the subject of further investigation by the Committee.

I accept the committee's implied qualification with regard to the climate of changing arrangements in which this event took place. It was those changing arrangements which led us to examine this incident in the first place. I have said more than once that whether we support or oppose the extension of the contracting out system, it is equally important that Parliament be satisfied about the integrity, propriety and fairness of the contracting process, and about the outcomes of that process. Although this issue remains unresolved as far as the committee is concerned, I have my own view about the outcome of this exercise of government management of a specific contract. In a word, I think Golden Egg Farms' management of this issue stinks. I believe its conduct may have been legal - I do not know that because no judgment has been made on that - but it does not bring any credit to the board of Golden Egg Farms and it can give little comfort to the Government in relying on its agencies to act as fair corporate citizens.

The message that it sends out to the small business sector is not encouraging. That message is, "When you do business with a government agency, you can trust only what is written in the contract and not a word more. Long established practice can be reversed with little or no notice, and long and effective service means nothing if the agency determines to take another course."

The postscript to the issue - this has not been the subject of committee consideration so far - is the outcome of the altered arrangements and whether that outcome has been of benefit to Golden Egg Farms, the consumers and the public. The board of Golden Egg Farms made an executive decision to substantially change the arrangements that had served the board well for many years and to move to a prime contractor. Golden Egg Farms eventually let that delivery contract to a major Australian transport company, which has, incidentally, a first class reputation in this field. I do not intend to name that company, but it is a company that I rate highly and I am sure that Golden Egg Farms would have had every reason to be confident that it could produce the delivery services that it desired at the lowest possible cost. However, that is not quite the way it turned out. I do not intend to go into the details any further, but I am sure that if the committee were inclined to make further inquiries, it would find that Golden Egg Farms turned its back on the owner-drivers to its cost, because the distribution arrangement it spurned was the most efficient and cost effective distribution system available to it.

Implicit in my view about what happened in this arrangement is a warning to anybody who seeks to take advantage of the contracting systems which are offered as an alternative to wages employment in the public sector. We have seen a number of examples, particularly those raised by the Minister for Transport from the changes that have been made at the Midland railway workshops, of employees who have done well out of such arrangements and out of becoming contractors to Westrail or subcontractors to Westrail's prime contractors. I have no doubt that the examples given by the Minister were accurate and made in good faith. However, it is very clear that not all contracting arrangements have such beneficial outcomes. The Golden Egg Farms drivers' case is, unfortunately, typical of many of the examples of which we hear which have highly unsatisfactory results.

The committee's interest in this matter lies not only with the specific grievance raised by the Golden Egg Farms delivery drivers but in ensuring that so as far as possible contracts between individuals and government agencies in the case of the former committee, and government agencies and government departments under the new committee's broader charter in this matter, are as fair and reliable as we can possibly make them. Government agencies and departments need to set an example of fair corporate citizenship. I cannot accept that it is legitimate for a government employer or a government prime contractor to have no greater responsibility to the people whom it employs or with whom it deals than that which is defined by the law. Clearly, a corporation or a government department or agency can act in a way which, while legal, is not ethical. In my view, what happened in this case pushed the borders of ethics to the very limit.

I understand that my colleague Hon Graham Edwards, who first raised this matter with me, wants to make a contribution. I commend the motion to return the consideration of this report to the Notice Paper. In doing so, I hope that in some way, pending the consideration of the report, that will help to prevent other contractors to government agencies suffering the unnecessary and unfair losses that the Golden Egg Farm delivery drivers incurred. I wish those drivers well in any subsequent legal action they may choose to undertake. I express my deep regret that we were not able to assist them further at this stage.

HON GRAHAM EDWARDS (North Metropolitan) [11.49 am]: I am pleased to second the motion put and so ably argued by Hon Kim Chance. I congratulate and thank Hon Kim Chance for the work that he has done with regard to this matter. The individual drivers involved can be well pleased with the representation that Hon Kim Chance has provided in this Parliament and on the committee, and with the way he argued their case today.

I have read the report closely, and I compliment the committee on its report. However, I wish to make a couple of points: I disagree with the committee's findings. It could have gone further in its report, although I am not aware of the details of the committee's deliberations. I will bear that in mind. At page 15 under "Summary and Recommendations", the report states -

> There are clear disparities between the evidence presented by each party. Notwithstanding the Committee's clear jurisdiction to investigate this matter, practicality and constitutional convention in Australia generally dictate that under the separation of powers doctrine, the functions of Parliament, the judiciary and the Executive remain distinct and that no branch attempt to exercise the powers of the other.

I agree partly with that, but one of the points driven home in this House of Review in recent years is that we not only have a right but also an obligation to review the actions of the Executive. That was fairly clearly pointed out by the Royal Commission into Commercial Activities of Government and Other Matters, and I invite members of the committee and of this House generally to read a number of the recommendations made by that royal commission. We do have an obligation to overview the actions of the Executive, particularly to ensure that the agencies and

departments that operate under the control of Ministers are operating properly. Equally, we must ensure that Ministers act in a proper way according to their obligations and responsibilities. It appears to me that the committee was a little too cautious in its recommendations. However, I am not privy to the evidence or to the committee's deliberations.

I turn now to page 16 of part 5 of the report, to which Hon Kim Chance referred. It states -

> There is a clear obligation on government agencies and statutory authorities to perform their functions in a moral and ethical way, as well as in a legal way. Every effort should be made to avoid further disputes of this nature, and this will continue to be the subject of further investigation by the Committee.

That is a very interesting and strong statement. It appears that the committee must feel that in this situation the government agencies were not operating in a moral and ethical way. If that was not the feeling, why did the committee make that general statement? Whether the committee members feel that way or not, I believe the board has not acted in a moral or ethical way. It might be argued it operated in a legal way, but there is no evidence it operated in a moral or ethical way.

Hon Barry House: Reading between the lines, the member is correct.

Hon GRAHAM EDWARDS: I thank Hon Barry House, the Chairman of the Standing Committee on Government Agencies, for his interjection. If the view is that the board did not act in a moral or ethical way, the Minister has a responsibility to step in here. Four options are listed in the report: An assessment of conduct pursuant to the provisions of the Trade Practices Act; an assessment of conduct pursuant to the provisions of the Fair Trading Act; the issue of collateral conducts; and the issue of estoppel. There is also another option: Ministers have obligations to ensure that agencies and departments under their control are acting in a proper way. In this case it is clear that the Minister is the first point of call. Perhaps he needs to look closely at this report and the events which led to it. The Minister should have stepped in. He should have said to the agency under his control that it had an obligation to the owner drivers, and he should have ensured that the board fulfilled its obligations.

I am aware that Ministers have an incredibly heavy workload. I know also that Ministers are approached by lobby groups from all over the place, particularly when Ministers have responsibilities as diverse as this Minister has. However, the Minister is also a businessman and he is capable of assessing the argument and considering the rights and wrongs of the situation. The drivers have been to see the Minister and his staff. When the drivers originally went to see the Minister's staff, those officers expressed disbelief when they were told about the situation. They could not believe that owner drivers had been treated in this way.

I urge the Minister to read this report. If I can read between the lines I am sure that the Minister can do the same. It is incumbent on the Minister to tell the board members, particularly the chairman, who was appointed by the Minister, that they have an obligation to act with fairness; they have an obligation to act in a moral and ethical way.

The Minister should use his powers and responsibilities to ensure this matter does not go to the courts, but is resolved with goodwill. I do not think there is much goodwill in this argument. There has been a very strong flow on through other agencies in the community as a result of these events. Hon Kim Chance summed up this fairly when he said that the actions of the board of Golden Egg Farms stunk. I think this matter stinks to high heaven and that the Minister should step in, use his powers as the umpire and endeavour to ensure that these owner drivers are fairly compensated for the goodwill they have lost. The Minister should also take action to restore faith and confidence in a system that has operated for a long time not only under the Golden Egg Farm's distribution system but also in other areas of government. I know the Minister to be a fairly reasonable bloke. I hope therefore he will take reasonable action to ensure this matter is resolved expeditiously. I support the motion.

Debate adjourned, on motion by Hon Bob Thomas.

LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Second Reading

Resumed from 7 May.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [12.02 pm]: In 1824 another combination Act repealed the restrictions on combinations. As I was telling the House last night this was a restriction -

Hon Graham Edwards: Is the Minister handling the Bill going to show us the courtesy of attending?

Hon TOM STEPHENS: This restriction on the combination Acts -

Hon Graham Edwards: He is not in the Chamber and he should be.

Hon P.H. Lockyer interjected.

Hon Graham Edwards: You should not defend him. He is not in this Chamber and he should be in here listening to this debate. Hon Phil Lockyer knows that.

The PRESIDENT: Order! The minute I take my eyes of the place, members think the rules change. They stay in place even if someone is discussing something with me. I must be getting old; I cannot listen and look at the same time.

Hon TOM STEPHENS: It is now possible for workmen to combine to seek the fixation of wages without risking prosecution for criminal conspiracy. These combination laws were very important to the history and emergence of the trade union movement. As well as those combinations, combinations of masters were also permitted. However, it was by the Act of 1824 that it was made an offence for a person to use violence, threats or intimidation to force another to leave his employment or to despoil or destroy goods or to prevent others from accepting work or for workmen to combine to do any of these.

An interesting period of British history develops as a result of those combination laws of the early part of the nineteenth century. A wave of strikes and violence occurred and quickly the Combination Act of 1825 had to be passed. That Act repealed the 1824 Act and strengthened provisions against non-legal combinations, defining more carefully the legal ones. The general result was to permit collective bargaining over wages and hours. However, no statutory means was available of enforcing collective agreements. This inevitably led the combination laws going straight to the courts, as we would expect. They presented difficulties of interpretation. We are referred to the case of Duffiel that occurred soon after these laws were passed. The judgment brought down in that case was that workmen not employed had the right to agree in combination that they would not accept employment except on specified terms. They had no right to combine to persuade others who were employed to strike. That is where the combination laws dealt with such an agreement under the terminology of "conspiracy". The judgment brought down in that case said that such an agreement would amount to conspiracy. As members can imagine, this led to additional developments in the work force during this period of British history.

The Parliament of Great Britain pressed on with legislation in this area with an Act passed in 1859 to amend and clarify the 1825 Statute. As members will appreciate, this period, 1859, follows an important period of British history. In response to the combination laws as a result of the social movement in Great Britain, people were starting to buck at the laws that made it difficult for workers to unite and participate in benefiting from free association of workers. In this period emerged the heroes of trade union folklore and history. They were the people who became known as the Tolpuddle Martyrs from among the English farm labourers. They were sentenced in 1834 to seven years banishment to a penal colony in Australia for organising trade union activities in Dorsetshire, in the village of Tolpuddle. Their leaders, James and George Loveless -

Hon Peter Foss: I have been there.

Hon TOM STEPHENS: It is extraordinary that the Minister has not benefited at all from his travels. Regrettably, rather than drawing on the lessons of history he seems determined to repeat the mistakes of history, such as the prosecutions of the individuals represented in that case. The Minister, apparently familiar with nineteenth century British history, seems determined to live in that period of British history, with the statutory provisions of this legislation so reminiscent of those times.

George and James Loveless established a lodge of the Friendly Society of Agricultural Labourers during the great national wave of trade union activity from 1833 to 1834. The Whig government at the time became alarmed at the dimensions of working class discontent. The six Tolpuddle labourers, the Loveless brothers - sometimes known as the Lovelace brothers - James Brine, Thomas Stanfield and John and James Hammet were charged for administering unlawful oaths. Quite clearly the charge was aimed at their combined attempt to protect their already meagre wages. They were convicted and sentenced by a judge who was written up in the history books as a hostile judge. That hostile judge and jury converted those six men into popular heroes of the day to the union movement and to the labour movement throughout the world.

Hon N.D. Griffiths: One of them went to Port Arthur.

Hon TOM STEPHENS: This chapter of British history starts to connect with Australian history. There was immediate public reaction in all parts of the country, particularly in London, where large demonstrations occurred, in which many future chartist leaders took part. The Government largely ignored the popular sentiment and it was not until March 1846 that the sentences were remitted. The Tolpuddle Martyrs were sentenced to transportation to Australia for organising those trade union activities.

I now make passing reference to the Tolpuddle Martyrs and what they represent in the Labor movement. I understand that they were deeply connected to the Wesleyan tradition in the Methodist tradition of Britain at the time. The Wesleyan tradition was of a non-conformist church in Christian Great Britain and it became involved with the struggles of the working community. That tradition finds expression in Australian trade union history, which is connected to the grand Wesleyan tradition of combined forces of non-conforming sections of the Christian expression of Britain in helping to sustain workers in the period of great trial with the labour laws of the time. It found many expressions in influencing the laws of that period of British history. They joined force with other components of British society.

We should pay tribute to what that group represents and the traditions from which it sprang and its determination to pursue justice and equity for the working class of Great Britain at the time. This was done against the established church, which had political expression in Parliament and controlling the laws at the time. This resistance movement emerged from the non-conforming Christians of Great Britain.

A proud tradition emerged and spread throughout the world from the Wesleyan tradition, of which we have in many ways been the beneficiary.

Hon Peter Foss: Hardly you, I would have thought.

Hon TOM STEPHENS: I have been a beneficiary because that Wesleyan tradition at a later point in Australian history joined force with the Catholic tradition with which I am connected. The two forces became the twin pillars of the Labor Party of which I am part. People forget this part of Australian history. Members may not be aware that those two components of our Labor movement are strong to the present day. I will talk more about this later in this debate.

Hon P.H. Lockyer: You remind me of Hon Joe Berinson, not only as an orator but also as an actor.

Hon TOM STEPHENS: I am complimented by any comparison with Mr Berinson, but I am dwarfed in that comparison.

Hon P.H. Lockyer: Berinson, Stephens and Laurence Olivier are a trio.

Hon TOM STEPHENS: I am flattered; I consider myself a pygmy compared to my esteemed predecessor.

The change of a leadership in the Australian Labor Party after the last election was a fascinating experience.

Hon N.D. Griffiths: It was very ecumenical.

Hon TOM STEPHENS: The party went through a major disaster, which was a trauma for us all. We came through that trauma and the ballot process took place -

Hon N.D. Griffiths: We are all the stronger for it.

Hon TOM STEPHENS: - and a new leadership structure was put in place. I was shell shocked by the result which I did not expect.

Hon P.H. Lockyer: Are you giving the left their say?

Hon TOM STEPHENS: They will have their say.

The DEPUTY PRESIDENT (Hon Murray Montgomery): Order! The member will address the motion before the Chair.

Hon TOM STEPHENS: I was shell shocked to find myself as leader of my colleagues in the upper House, and I wondered how I would pursue this task. Dr Gallop said to me as quick as a flash when heading into the media conference, "Do you know what is important about what has happened?" I said no. He said, "Look at the balance. The four of us in the leadership team of the Australian Labor Party represent that balance with two from the Wesleyan tradition and two from the Catholic tradition." The two pillars, which were the more radical parts of the Labor movement in 1890, were represented. Dr Gallop and Mr Ripper represent one pillar, and Hon Nick Griffiths and I represent the other tradition which joined forces in the 1890s to work with militant people, socialists and radicals at the time to produce the expression in the union movement and the parliamentary sphere.

Hon P.H. Lockyer: Do you have any sympathy for the $100 I lost in the leadership vote?

Hon TOM STEPHENS: I did not know there was a bet on.

Hon P.H. Lockyer: I had odds of 10:1.

Hon TOM STEPHENS: I would also have taken a bet against me getting this spot!

The Molestation of Workmen Act was passed in 1859 to amend and clarify the 1825 Statute. It said that any person, whether employed or not, might enter into an agreement with others to fix a wage rate and hours, and that they were not liable for prosecution by reason merely of endeavouring peaceably to persuade others to strike. This was an enormously important development in the Statute books of Great Britain. Combinations of workmen were free from prosecution in these circumstances only if the questions in dispute concerned wages or hours of work, and judicial interpretation was generous on this point.

A trade union would be legal if its purpose did not go beyond the Combination Act 1825 and was not in "restraint of trade". If it was a legal combination, it enjoyed certain statutory rights, but only by the aid of the court through its members. However, in the case of embezzlement, the wrongdoer could not be proceeded against as he was a joint owner of the property as a member.

The Larceny and Embezzlement Act 1868 overcame this problem. Also, the Trade Unions' Funds Protection Act 1869 provided that an association of persons should not, on the ground that some of the rules might operate in restraint of trade, be deemed for the purposes of legislation concerning frauds against friendly societies as not being covered by that legislation.

A royal commission was established in 1867 under the chairmanship of Sir William Earle. It was an interesting royal commission. The report contained majority and minority reports. Interestingly for members of Parliament who regularly participate in the preparation of committee reports - I have not participated in a royal commission, although from time to time members become members of honorary royal commissions - it is frustrating that we are not able to get a majority report out of the committee system.

A minority report was issued from the royal commission which had more influence on the legislation which followed in Great Britain than the majority report. The Trade Union Act 1871 followed, which contained two important concessions for unions: The fact that the rules might operate in restraint of trade did not make a member liable for prosecution, and merely that they might act in restraint of trade did not render union agreements void.

The definition of "trade union" included a combination of workmen and masters for regulation between both or themselves, or for imposing restrictive conditions on the conduct of any trade or business, and the provision of benefits to members. The legislation provided for registration, which gave the union a legal entity distinct from its membership.

The British Criminal Law Amendment Act of 1871 did not continue the provision concerning peaceable picketing as in the Molestation of Workmen Act and it was assumed that all picketing was illegal. This was held to be so in the case of R. v Bunn, where it was held that a gas company's employees who went on strike and, therefore, broke their contracts of employment were guilty of common law conspiracy. The Conspiracy and Protection of Property Act was passed in 1875 to overcome this. This Act provided that an agreement to do an act in furtherance of a labour dispute was not indictable as a conspiracy if the act, when committed by a single person, was not a crime. It was still a crime of conspiracy if, firstly, the act when committed by a single person was a crime; secondly, if the conspiracy was covered under some other legislation, for example, in relation to unlawful assembly; thirdly, where it related to essential services; and, fourthly, where the consequences would endanger human life or expose valuable property to destruction.

[Quorum formed.]

Hon TOM STEPHENS: This Act provided also that it was an offence for any person without legal authority with an intention to compel another not to do an act he had a legal right to do, to use violence or intimidation. I refer members to the case of Curran v Treleaven. The judgment in that case is instructive. Three secretaries of unions told Mr Treleaven that if he did not cease to employ non-union labour they would put out on strike the unionists working for him. They did this and the strikers were instructed to cease work peaceably. It was held that there was no intimidation. An offence of "persistently following" emerged under this Act and it was found to have happened in the following circumstances: In Smith v Thomasson, the respondent, while a picket during a strike, had silently followed a workman who was employed in place of a striker, for a short distance. The case book indicates that a crowd had also followed and showed hostility. Members can imagine the circumstances that would have been described to the court. Having resolved their difficulties under the criminal law of conspiracy, trade unions found themselves, by judicial decision, to be in trouble under the law of tort.

Hon Peter Foss: That is stalking.

Hon TOM STEPHENS: It is a bit like stalking. The courts had adopted a vigorous view of the rights of business corporations in combination conspiring to injure a competitor and, in fact, causing damage to his business. However,

in Taff Vale Railway Co v Amalgamated Society of Railway Servants, the House of Lords held that a trade union could be sued in tort and its assets, including benefit funds, taken in satisfaction of the judgment.

With that point we reach the period of British history where one would think that resolutions should have been passed to address the needs of the workers. As inevitably happens, the sweep of history continued. Eventually, the Parliament realised that it had to get its act together to resolve the obvious inequities that would remain in British society if those judgments were to be the law of the land for much longer. The workers eventually found a way to convince the Government to enact the Trade Disputes Act of 1906. This Act gave immunity from civil claims to unions engaged in genuine trade disputes.

Hon N.D. Griffiths: That was a good Liberal Government.

Hon Max Evans: They are all good.

Hon TOM STEPHENS: It was a good Liberal Government. Members will appreciate the need to focus on the effect of the 1906 Act because it set the tone for industrial relations legislation from that period of British history to the present. What the British Government did in that Act is something that Western Australian Liberal Governments have never done to the trade union movement; that is, to provide some of the protections available at law to the trade union movement of Great Britain.

Hon N.D. Griffiths: That is because of this House.

Hon TOM STEPHENS: That is correct. The British legislation has remained absolutely effective, even through the Thatcher years. Some limitations and restrictions have been imposed, but to the present day the unions in the United Kingdom have immunity provided they follow certain statutory requirements, including a pre-strike ballot and notice to employers before taking action. Even if they lose that immunity there is a cap on the damages that can be claimed against them. Currently a union with 100 000 or more members has limited liability. The practice in the UK accords with the practice in most western democratic nations. Its Statute book was put in such a shape that it provided immunity for the trade unions from the processes of law if they complied with certain conditions.

Members know that the Minister for Labour Relations has grabbed aspects of the British context, which include the process of a pre-strike ballot.

Hon N.D. Griffiths: He has grabbed the dirty bits.

Hon TOM STEPHENS: He has done that and has not given any immunity or protection to the unions.

Hon N.D. Griffiths: Or the processes.

Hon TOM STEPHENS: That is right. None of these aspects has been translated into the Australian context.

Hon N.D. Griffiths: He uses its labels, but the substance is different.

Hon TOM STEPHENS: Absolutely. That is why it was important for me to retrace British history to outline what has actually happened. I have taken members from almost the year dot to the present day to illustrate that the British context is not one that provides justification for the legislative initiatives which are now before the House and would be enacted if the Bill were to become law. This Bill is taking up only one component of the British tradition and ignoring the fact that immunity needs to be embraced.

Hon Peter Foss: You have forgotten to mention the massacres.

Hon TOM STEPHENS: I hope the Minister is not suggesting massacres take place.

The lessons from history are not being learnt by this Government. It is selectively reading history in the context of industrial relations in Britain.

The skills of Peter McKerrow and Erik Locke - the talented support people available to me and my colleagues - in downloading slabs of useful information from the Internet help me to appreciate what is going on in the international context.

Off the Internet came the conservative manifesto for the lead up to the most recent British elections. There was no commitment, even in that manifesto, to altering the processes in such a radical way as is envisaged by this Parliament. The heirs and successors to the extremism of the Thatcher years were trying to alter the British context. I know it was softened by the Liberal components of the Thatcherite Tories. However, even they with their manifesto did not suggest a dramatic change to the British context that would have produced the awful discrimination against workers that will now occur in this State through this legislation. It is worth referring to that manifesto even though it has been so decisively rejected by the British people. It states -

> Many countries in Europe have tried to cocoon themselves from global competition behind layers of red tape and regulation - such as the Social Chapter and a national minimum wage. This provides a false sense of security, playing a cruel trick on working people. It also excludes the unemployed from work.

That is interesting; it is an indication of where Mr Kierath is coming from.

Hon N.D. Griffiths: Similar streams!

Hon TOM STEPHENS: Similar streams of consciousness and similar thought processes. The manifesto continues -

> As companies in the rest of Europe have grown more uncompetitive, employers have found it too expensive to employ new workers, investment has gone elsewhere, and the dole queues have lengthened. The European social model is not social and not a model for us to follow. But if Britain signed up to the Social Chapter it would be used to impose that model on us - destroying British jobs.
>
> No Conservative government will sign up to the Social Chapter or introduce a national minimum wage. We will insist at the Intergovernmental Conference in Amsterdam that our opt out is honoured and that Britain is exempted from the Working Time Directive: if old agreements are broken, we do not see how new ones can be made.
>
> We will resist the imposition of other social burdens on the work place through a new European employment chapter.

Another section of the manifesto dealt with strikes in essential services. Even the provisions of this manifesto do not cause the same difficulties for workers as will the Statutes with which we will soon be faced. Under the heading "Strikes in Essential Services" the manifesto states -

> Industrial relations in this country have been transformed. Insofar as there is still a problem it is concentrated in a few essential services where the public has no easy alternative and strikers are able to impose massive costs and inconvenience out of all proportion to the issues at stake. We will protect ordinary members of the public from this abuse of power.
>
> We will legislate to remove legal immunity from industrial action -

That is the proposal; it has not been removed at that time. It continues -

> - which has disproportionate or excessive effect.

Even in the manifesto of extreme Thatcherism there were still qualifications that are not contained in the Western Australian Statute books in the industrial relations field.

Hon N.D. Griffiths: They were wimps compared to this mob!

Hon TOM STEPHENS: Absolutely; and the Thatcherite Conservatives have been decisively rejected by the British people.

Hon N.F. Moore: Things change. I am not sure that New Labour would be taking your line on this, either.

Hon TOM STEPHENS: The Leader of the House has missed the whole point of my two hour speech.

Hon N.F. Moore: Perhaps you would like to repeat it.

Hon TOM STEPHENS: No. The whole point of that speech was to indicate to the House what has been produced in Britain and why it is so unfair and inaccurate to draw on the British context by lifting out a component of that system and ignoring the component of legal immunity contained in the British statute books.

Hon N.F. Moore: When you are new Labor, you will have a different point of view.

Hon TOM STEPHENS: Not at all. The Bill before the House is an inappropriate attempt to tackle these issues. The British have put in place a system different from ours. That provides immunities. Even when it was at its most extreme and was removing the immunities, it left in place protections for the union movement even when one would expect the full penalty of the law for strikes in essential services. Even in that regard, there are qualifications that are not contained in the Western Australia context. I continue with my quotes from the Conservative manifesto which was so decisively rejected by the British people. It continues -

> Members of the public and employers will be able to seek injunctions to prevent industrial action in these circumstances. Any strike action will also have to be approved by a majority of all members eligible to vote and ballots will have to be repeated at regular intervals if negotiations are extended.

The manifesto of the British Labour Party is important also because I want to own up to the way it presented its case. One can do that now once one understands the history about which I am speaking and why New Labour in Britain under Tony Blair was able to use this manifesto. It states -

> In industrial relations, we make it clear that there will be no return to flying pickets, secondary action, strikes with no ballots or the trade union law of the 1970s. There will instead be basic minimum rights for the individual at the workplace, where our aim is partnership not conflict between employers and employees. . . .
>
> Key elements of the 1980s trade union reforms to stay.
>
> There must be minimum standards for the individual at work, including a minimum wage, within a flexible labour market. We need a sensible balance in industrial relations law - rights and duties go together.
>
> The key elements of the trade union legislation of the 1980s will stay - on ballots, picketing and industrial action. People should be free to join or not to join a union. Where they do decide to join, and where a majority of the relevant workforce vote in a ballot for the union to represent them, the union should be recognised. This promotes stable and orderly industrial relations. There will be full consultation on the most effective means of implementing this proposal.

If we lifted that out without understanding the history we might have thought the British Labour manifesto provides support and justification for what Mr Kierath is on about. However, we now know after listening to and examining the history of the British Labour movement to this point, that this legislation is opposed to unions operating with immunity under which they have never operated in Australia because their rights have been frustrated at law and continue to be frustrated at law by virtue of legislation such as that which is before this House now. An interesting article appeared in Monday's *The West Australian*. It stated that the first act of the new Foreign Secretary, Robin Cook, was to fly from London to Amsterdam to sign up for the Social Chapter as the Labour Party said it would in the lead up to the British elections. Following the decisive rejection of the conservative manifesto, the new Labour Government sent the Foreign Secretary to Amsterdam to sign up to the Social Chapter ensuring that British workers will be covered by international covenants which support their wages and conditions.

Obligations at law will occur as a result of the election of the new Labour Government in Britain. The Foreign Secretary's first act for the new Government of Great Britain was to sign that Social Chapter. That very important new development has been embraced by the British people and their new Government to provide protection for those people whom the Government of Western Australia has not even considered.

We can see what developed in the Australian tradition. The arbitration systems have regarded the recognition of organisations of employees as basic to the working of our system of industrial law. If we study common law and its statutory amendment and consolidation, we will see how the trade union movement in the widest sense has been recognised as a legal personality.

We must now go on to see something of the development of unionism into its broad present day structure. In the earliest days of Australia, convicts had absolutely little hope of forming associations to better their conditions and obtain higher wages. Free immigrants also met with little success in forming small benefit and trade societies along the British lines. The Shipwrights United Friendly Society was founded in 1830. A boat building benefit society followed in the next year. The Cabinetmakers and Upholsterers Society was formed in 1833.

It was not until the gold rushes of the 1850s, however, when the Australian population trebled and the working man had increased his bargaining value, that the foundations of solid trade unionism were laid. The economic factors at any point in the history of any nation dramatically affect the structures that are put in place. When the gold rushes had occurred the foundation started to be laid for the development of a solid trade union movement. In Great Britain in 1852 a group belonging to the Amalgamated Society of Engineers were penalised for taking part in a strike. They were given assistance by their society to emigrate to Australia. On board the *Francis Walker* they formed a branch of the union, and thus was born on 8 October 1852 the Australian section of the second biggest union in Australia, the Seamen's Union. The Miners Association followed soon afterwards.

A shorter working day is the aim that has run through the Australian trade union movement since its beginning, a major reason usually being related to the extension of employment to greater numbers. When the Melbourne journeymen and tailors combined they announced that their aim was to raise rates and wages and to get every member of the thimble and sleeve trade into constant employment. That has been the objective of the union movement in Australia from its earliest times. It is an objective with which the movement has been understandably preoccupied right through to the present time. The Operative Stonemason Society was successful in New South Wales in negotiating an eight hour day with employers in 1855. An Eight Hours Labour League was established in Victoria in 1856, the first trades hall being built as a meeting place for unions in 1859. The call for shorter hours in response

to increased technology - which we compare these days with the response to automation - is not a recent development in thinking. The Amalgamated Railway and Tramway Service Association in 1895 stated as one of its aims to obtain a shorter working day, as labour saving devices increased production with less labour, with the object of lessening and preventing the wholesale distress usually following to the worker by the application of inventions and science to industry.

The ideologies of the period reflected the view that all men are brethren. Solidarity was the ideal as well as the method. In the introduction of the constitution of the Australian Workers Union, now Australia's biggest union, appears the statement -

> No man liveth to himself. We are all mutually dependent one upon another. Under the existing order of things, however, each is forced into warfare with his fellow, and life is made a struggle in which the success of the winner means that those whom unjust conditions have forced into a fight are crushed back into hopeless misery. Experience has taught us that no great reform can be secured otherwise than by systematic organised effort.

The first unions were not linked with politics but occasionally the unions would seek the election of a representative; for example, James Hocking was one of first out of this industrial context who was elected to the New South Wales Parliament. He served in that Parliament from 1859 to 1882, being paid a salary during this time by his constituents in marked contrast to the arrangements that were in place at that time, which basically meant that the only way one could get into the Parliament was if one were wealthy enough to have other streams of income. There was no opportunity for parliamentarians to be paid. As a result the Parliament became the domain of the wealthy. It was not until the union movement became active that it found a way to get some parliamentary representation. The union movement had to bear the responsibility of paying those first representatives. It did that during the life of that parliamentary representative in the New South Wales Parliament. The union movement pressed and pressed to ensure that at some point the Parliament would pay the salaries of representatives so that Parliament would no longer be the domain solely of the rich who drive Rolls Bentleys but also of ordinary members, who do not have the opportunity of parking their Rolls Bentleys outside the Parliament, as some members opposite do, even on days like this in front of the union presence on the other side of the road. The Rolls Bentleys are on display as a sign of the affluence of members opposite.

Hon N.F. Moore: One member opposite. I drive the same car you do.

Hon TOM STEPHENS: I do not know what I drive. Generally I am on my bicycle, when I am not falling off it.

Hon N.F. Moore: Yours is a class war.

Hon TOM STEPHENS: This legislation is all about class war. It reflects the class warfare that the Government is engaged in.

Hon N.D. Griffiths: They are trying to impose a class system in Australia, one which we really do not have at the moment.

Hon TOM STEPHENS: Precisely. This Bill is specifically about reducing the opportunities for the ordinary men and women to organise themselves and to take action to protect current wages and conditions and reducing benefits for ordinary workers so that the people who profit from their labour can get richer and they will get poorer. The Government thinks that if it continues to drive down wages so that we end up with the working conditions of the People's Republic of China, to which Minister Kierath is so attracted, that will be of benefit to the people on this State. It may be of benefit to the people who drive the Rolls Bentleys and occupy the benches opposite.

From 1879 the intercolonial trade union conferences were held regularly. The unions pressed successfully for the regulation of factory and mining conditions, for legal recognition, for an extension of the right to vote and for the payment of members of Parliament. By 1889 there were 124 unions with a total membership of 54 000 - about 1:50 of the population. By this time the unions had won the right to bargain collectively in this country.

The early 1890s is an important period of the history of the political labour movement in this country. It is fundamental to the reasons that we on this side of the House are here. It was a period during which the unions engaged in a series of big strikes in the maritime, pastoral and mining industries but were beaten badly, partly because a severe depression was at hand. Export prices, especially for wool, had slumped. Overseas loan moneys became tight, credit was restricted, and unemployment was widespread. Union funds were exhausted, membership declined and wages and conditions deteriorated. The trade unions learnt the lesson well. They saw the role that the Government had played in helping to crush the strikes. This inspired them to political action. This movement took two forms - support for compulsory arbitration and the formation of political organisations designed to introduce legislation for the benefit of the working class. The conditions of the working class did not dramatically improve,

regrettably, with the formation of the Australian Labor Party. However, the union movement was able to put political pressure on government institutions and through that pressure to make great advances in labour law.

The introduction of compulsory arbitration which, though eventually put in place before Labor formed its first Government, nonetheless was the result of this combination of a labour movement developing a political wing, and the industrial and political wings uniting closely in the first phase of Australian history and putting that combined pressure on the institutions at the time to produce the system that developed and has been in place in this State and nation until the present. Regrettably, that is now being undone and the stitches taken out of the fabric that has been in place up until this time in this country as a result of the efforts of so many men and women across this nation in building a fine tradition of the labour movement.

Theories inspiring the unionists were of a range that was not to occur again. At that time Henry George, Edward Beliamy, Gronlund, Karl Marx, and Frederick Engels were all influences. Early in the twentieth century Eugene Debbs, Tom Mann, Jean Jaures and Philip Snowden were important in influencing the philosophy and the tradition out of which came the union movement, and its tradition that found expression in the labour parties. The labour parties were not comprised of a dominance of trade unionists. Diverse radical elements, land reformers, middle class liberals, monetary enthusiasts, high tariff advocates and socialists of every shade came together in this broad amalgamation that made up the early Australian Labor Party.

I will now describe some of the values which have underpinned our country's labour laws this century and the system of arbitration and collective bargaining which, up to the present, they have reflected. It was not trade unionists, but non-labour politicians - the three liberals, Charles Kingston, Arthur Deakin, Henry Bournes Higgins - who were responsible for industrial arbitration laws. The wages boards, which were designed originally to prevent sweat shops, had their powers extended to include the regulation of hours and conditions generally. By the early years of the twentieth century systems of conciliation and arbitration had been set up in the Commonwealth and all States. Henry Bournes Higgins was perhaps most influential in the shaping of Australian labour laws this century. Professor Ron McCallum, the Blake Dawson Waldron professor in industrial law at the University of Sydney, described Higgins' contribution in an article in the June 1996 "Journal of Industrial Relations" and I quote from my notes as follows -

> In simple and graphic language, he (Higgins) was able to encapsulate much that was in the shared values of Australian women and men of his time. Although the arbitral processes over which he presided were somewhat rigid, his primary aim was to build a fair and just regime for Australian workers under the rule of law. As his most recent biographer, John Rickard notes," . . . his judgments in spite of the form required of them, speak with the zeal of the social reformer". His approach to many social questions can be characterized as paternal, but he grasped the needs of workers in an industrial society. Higgins showed his concerns about human dignity in a revealing (albeit gendered) passage first published in the second of his three Harvard Law Review articles. He said:
>
> > "The court does not ignore, however, the increasing demand of employers for some voice as to the conditions of working, the uneasy feeling that employers, or rather their foremen, have an autocratic power is too absolute. Wages and hours are not everything. A man wants to feel that he is not a tool, but a human agent finding self-expression in her work".

Those are expressions that would hardly be endorsed by the Minister for Labour Relations because his Bill undermines the principles of fairness and reinforces the autocratic power of the Minister and the employer that can be exercised in the relationship between an employer and employee. It was Higgins who said that each worker must have, at the least, his essential human needs satisfied, and that among the human needs there must be included the needs of the family. He said that sobriety, health, efficiency, the proper rearing of the young, morality, humanity, all depend greatly on family life, and family life cannot be maintained without suitable economic conditions.

I will quote from my notes on Professor McCallum's article, which state -

> At the present time when workers are endeavouring to balance work with family responsibilities, these statements seem as apt as they were some eighty years ago. Work is not just a means to an end, but a necessary and fulfilling part of human life, which must be balanced with other human activities.

Regrettably, in our Parliament over the past four years we have seen attempt after attempt to unravel the protections of our labour laws which safeguard the interests of employees by legislating for weaker bargaining power, particularly affecting the young, women, migrants and Aboriginal people about whom I spoke earlier. One of the most offensive provisions of this Bill is the attempt to reverse the onus of proof and diminish the rights of employees in unfair dismissal matters. This is exactly the sort of provision that offended Higgins.

Hon Peter Foss: It is restoring the usual onus of proof.

Hon TOM STEPHENS: The Attorney might say it is the usual process. Hon Peter Foss knows the disadvantage that will occur to ordinary working men and women in this country as a result of this reversal. It is a reversal that should not take place.

Hon Peter Foss: It was a reversal in the first instance. That was the sort of thing Mr Higgins was implying.

Hon TOM STEPHENS: It was his concern for the disadvantaged in our community that should argue the case for why the Government should not proceed with a Bill like this. If the Government wanted to retain the traditions out of which Higgins came and in turn created for this country, the Government would not go down the legislative path that is currently before this House.

Hon N.D. Griffiths: Mr Foss is a member of the H.R. Nicholls Society, which does not like the traditions of society.

Hon Peter Foss: I am not a member, but I do agree with their views.

Hon TOM STEPHENS: What a great tragedy that the Attorney General agrees with the views of such an extremist element in society.

Hon Peter Foss: They are not extremist; they are conservative.

The President: Order! Do not bother talking about it just tell me.

Hon TOM STEPHENS: The Government has frequently argued that its legislation will create a more productive workplace in this State. It claims that small business is crying out for reform and further deregulation of the labour market and dismantling of the award system. The hard evidence about the economy is otherwise. When one looks at the Australian context and the history of which we are part, one recognises that something is particularly special about our country. Our great history has created for us a society in which we all love to live. When the Government starts unstitching something like the labour laws, which are part of the rich tapestry of our society that provides equity and a fair go and a justice system for all - justice and equity before the laws and in the arbitration system - it is changing the fabric of our nation and State in ways that will reverse the sweep of history and start to create for our society something that is much worse, something that is devastating and will amount to a savage blow against ordinary men and women. If the Government starts to go down new paths such as that of the United States it will create for this State and our nation unacceptable levels of poverty, and diminished wages and conditions for ordinary workers. We will see people fall back into poverty through reduced wages and conditions. We will slump into the process that has engulfed the United States and other countries that have not had that fine tapestry created for them by history. We should be proud of our history. That is an additional reason that we are against this legislation that is before the House.

Sitting suspended from 1.02 to 2.30 pm

Hon TOM STEPHENS: In a written submission to the Senate Committee on the Workplace Relations Bill, Professor Isaacs of the University of Melbourne described the results of a survey which he conducted with the Department of Employment and Training and the Australian Chamber of Commerce. That survey refutes the claims of this Government that the small business community's needs will be served by this reform, as it is described by the Government. The survey found that the vast majority of firms were covered by industry and common rule awards and that industrial action rarely occurred in most firms. Approximately 70 per cent claimed they had never experienced industrial action and only 4 per cent said they had had a strike in the preceding 12 months. It also revealed that unionisation was at a low level. Nearly three-fifths of the firms had no union members, but where there were union members, on average about half of the workers were union members. It indicated also that nearly four-fifths made over-award payments, and in about half of these, all employees received over-award payments. Of those who wanted to make changes in their work practices, just over one-quarter were frustrated from doing so, 3 per cent because of resistance from unions, 7 per cent because of award restrictions mostly in connection with hours of work and penalty payments and 10 per cent because of inadequate financial resources. The survey found that the majority preferred or were not opposed to being covered by awards.

Professor Isaacs noted in his submission to the committee - this is the sort of submission we would have received if a committee of this Parliament had considered this legislation - that it is reasonable to draw the general conclusion from the surveys that no radical change to the existing institutional arrangements were called for in order to promote better industrial relations or improved productivity performance. It said it is reasonable to infer that, for small business, the existing industry award provides the reference point for informal arrangements beyond the award between employers and individual employees. It also has the advantage of taking pay and conditions out of competition in the industry covered by the award. From the point of view of the workers, the existence of an award provides them with the protection of minimum pay and conditions regardless of bargaining power.

Professor Isaacs made the point that the sort of labour relations regime which this Government is promoting through this Bill will reduce the incentive for greater productivity at the workplace. That is a very important point for those of us who are preoccupied with ensuring that the community has a productive work environment. While we have unemployment at high and increasing rates, particularly in regional Western Australia, this Bill will reinforce the likelihood that small businesses will engage in further cutting of wages and conditions in order to survive competition. That will begin a chain of events that will lead eventually to real problems in productivity. We have seen that in this State under the workplace agreements legislation and the minimum conditions of employment legislation. There is further support for that argument in the table that I presented to this Chamber earlier.

Professor Isaacs said in his submission that a reduction in labour costs achieved in this way could reduce the incentive for greater productivity. More significantly, he said further that workers affected would be those with weak bargaining power. Substantial numbers of workers in Western Australia, particularly women workers, are having that situation presented to them both by current arrangements and the provisions of this legislation.

I now propose dropping a section of my speech, not because it is not important, but because I am beginning to draw my speech to its conclusion. That section is summarised by my saying that this legislation has a particularly damaging impact upon minorities and disadvantaged groups. Legislation of this sort is harsh and oppressive. It will have a particularly insidious impact on the disadvantaged in our community; that is, that section that can least afford to be disadvantaged further. That section of our society includes women, people from non-English speaking backgrounds, Aborigines, the disabled and others. Some of my colleagues will develop these arguments further. I will put that speech in my drawer to be brought out at another time in a further attempt to stop the Government continuing to go down this path.

Some people in the community still work for a pittance. People work in sweat shops on shifts that last all day and all night. Instead of dealing with the problems that these people are experiencing, particularly those people from non-English speaking backgrounds, we are moving further away from the opportunity to consider their needs.

One of the contentious provisions of this legislation is that which deals with the right of entry of union officials and access by union officials to records. These changes in the Bill are very profound. They are completely out of step in every way with community expectations of the role of unions as service providers with a major arm of that service being ensuring adherence to the terms and conditions of award and agreements. All of us expect the union movement to tackle these questions.

This part of the Bill goes straight to the heart of this piece of legislation. The Minister is seeking to steadily erode the power of the unions and put their power into the hands of employers. The employer will be empowered with the knowledge of who is a union member. Employers with a non-unionised workplace will not have to face scrutiny of trade unions if this legislation is passed with its current provisions intact. The Minister is saying that he wants more non-unionised workplaces and apparently more sweatshops where records would go unexamined, workers would be exploited and unions could not by law get involved. The Bill provides that a right of entry will not be available to unions except where an employer employs union members. It will be granted to the union only when it has been made clear to the employer which employees are union members. They will be removed from awards, orders and industrial agreements. Before a union organiser can visit a workplace, the employer must be told which employees he or she has come to represent. The access to wage and time records has been restricted. Under the provisions of this Bill employers will be given the right to refuse to produce wage and time records of non-union labour.

I recognised earlier the confidentiality of union membership lists. The arguments for it in so many cases are undeniable. Just as the Government has argued along civil libertarian lines for the abolition of compulsory unionism, as it did on the student union issue, it must respect that some people may wish to keep their membership of a union a private matter, particularly where they are employed by employers who are opposed to unionism. People must have the right to join the union and have the protection of confidentiality. This clause strikes against that right of protection. It blows it out of the water and exposes union members to the wrath of employers who have access to the knowledge that an employee is a member of the union.

During a debate a number of years ago I told the House of my very first experience of employment as a young high school graduate who had just completed his high school certificate and was finding his first significant job in the work force. I went to work for a chap involved in the building industry. He was employing me as a builder's labourer. As I have told the House, I did not come from a family connected with the union movement. I did not understand in my childhood the way of the world. I went from my protective high school environment out into the building sites of the outer metropolitan area of Sydney, where I fell into the hands of my first wolf, an employer who put me on a job site and had me work extremely hard. I did so as a young, fit, high school graduate who was working vigorously to save some money to start what I anticipated to be my law studies at Sydney University. During that period I worked vigorously. Before the final four weeks I had developed some considerable trust in my employer. He got

me to sign off the wages book for him in advance of his completion of the detail of the wages book. At the end of my job I went to pick up my last pay cheque. I found that no pay cheque was to be made available to me. He effectively robbed me of my last four weeks of pay for work as a builder's labourer. I was absolutely stunned because I could not believe that there were people in the world who could be so greedy in regard to someone who had thrown all his energies and enthusiasm into the task at hand. I had worked honestly and vigorously for the chap. I came home on the back of the truck at the end of nearly every day exhausted after cleaning the building sites. I remember lying on my back, exhausted and falling asleep among broken glass, rakes and bricks, having given the best of my efforts to this prosperous chap. At the end of that period, as I was getting ready to receive the money I so desperately needed to go on to conduct my legal studies, I found that four weeks' salary out of my 12 week period had suddenly been snatched away. As I say, I was completely stunned that this went on in industry. Over the years as a member of Parliament I have discovered that this experience is not unique. We regularly hear of people who are greedy and exploitive of ordinary workers. In my case I had to try to find some way into the system to see what could be done to protect myself and to try and recover my wages for which I had foolishly initialled. It turned out that I could do nothing. The union movement was particularly helpful, even though I did not have a ticket. I did not know about these things at that time as a young 16 year old. However, I learnt a very important lesson, because the union movement moved in on that employer and made sure that its members understood exactly what the employer was up to. I left that area of Sydney many years ago. I understand that he learnt a lesson by the union movement responding with its organisational skill. It inflicted a penalty for what he had done to me, which was not an isolated case, as the union movement was able to tell me. He experienced a penalty for his activities that was not available through any other process. There was available to the work force organised labour that could take on a greedy and rapacious employer who was able to do that to a young and enthusiastic person such as I was at that time.

We all know, as do members on the other side of the House, that some employers regrettably are still greedy and rapacious with their work force. In those circumstances employees still need to have available to them a protection at law from the departmental officers of the Department of Productivity and Labour Relations. Those officials regrettably are being stripped away from the support that was given to workers. Under this Government, Minister Kierath has regrettably restricted the support of the officers of his department for protecting employees. More and more of the work of protecting employees falls back on the unions, whose capacity to do that is to be further diminished by this same Minister with Bills such as this. The overwhelming majority of employers are good and honest. However, regrettably, a significant minority will take advantage of the situations that will be opened up by virtue of the Government's initiatives in this Bill and its administrative arrangements in diminishing the support available to the work force through departmental officers.

Hon Derrick Tomlinson: The same applies to employees; the majority are good, honest people, but one or two are problematic.

Hon TOM STEPHENS: That could quite possibly be true. This legislation does not tackle that circumstance. All it does is create a situation in which the overwhelming majority of the work force will be penalised significantly.

The Minister has indicated that to some extent this Bill rehashes the 1995 legislation. The Act as it stands prevents the Industrial Relations Commission from empowering a union representative to enter any premises, which is the principal residence of the employer, or any other residential premises. Interestingly enough, in my case that thieving employer's records - I can assure members that I was the victim of a crime - were at his residence. It is proposed that the Statute book will now protect the principal residence of the employer from any union representative gaining access to those records. It is proposed that the commission be prohibited from allowing a union representative to enter any premises of an employer unless he was the employer or former employer of a member of the organisation. In my case I did not belong to a union. Nevertheless the union, of which I was not a member as a 16 year old, was able to pursue my case at that time because of its enthusiasm for the rights of workers. Once this Bill is passed a person in those same circumstances - who was not a union member - would not be entitled to the support of the union to protect that person from a greedy, rapacious employer who was guilty of theft of the entitlements of an employee.

Similar to the 1995 provisions this Bill requires the existing members of unions to identify themselves to their employer in order to permit entry by their union representatives. It specifically limits the ability of unions to enter the workplace of employers bound by existing industrial awards to ensure that the provision of the minimum standards stipulated in that award are being observed by the employer. Although this capacity offers unions an opportunity to recruit members it is also the vehicle by which community standards are maintained. One would have thought that the opportunity to build the union movement would be something that any decent western democracy would want to see happen. The union movement provides an opportunity for some structures in the system to make sure that the scales of justice are to some extent more evenly balanced than would otherwise be the case. We must have a strong union movement. We do not want only organisations of employers and their political wing, the Liberal Party, that will protect only the rights of employers. However, the provisions of this Bill attack the union movement

to prevent its organising to protect employees. The balance in the scales of the justice system are starting to move against the employee. This is something that is unconscionable and an additional reason the Bill should not be given a second reading.

When we eventually complete debate on this Bill I hope this House will not allow this legislation to be enacted. I fear it is a hope against hope. Employers will be able to get away with underpaying workers and not giving them their legal entitlements. This legislation will deny access to union representatives to inspect the record books. I receive many representations as a member of Parliament, and I presume so do others, including members opposite The union movement is not part of my background; however, as a result of my job as a member of Parliament I know of circumstances in which an employee would no longer be protected by the statutory provisions that should help the employee to get some redress against the injustice that can be so easily meted out against him by greedy and rapacious employers. The Department of Productivity and Labour Relations has received numerous inquiries about underpayment of wages and it is a reasonably common practice, in these days of job insecurity, for unions to be called in to inspect records.

The protection of privacy is of paramount importance to many employees, who want or need the security or knowledge that their actions in calling in the union will be kept secret from their employer less they suffer persecution. Yet the provisions of this Bill invite persecution. The State will invite employers to single out the unionised employee and mete out a penalty that could go as far as dismissal, with little redress available to the employee. Recently I took the opportunity to watch the proceedings of the federal Industrial Relations Commission in relation to the activities of a particularly greedy employer. I will not bother naming the employer. I watched the Transport Workers Union leading evidence from the representative of the company, a successful family business solidly connected with personalities in the upper echelons of the Liberal Party. The names come right out of the Liberal Party membership list. That company was in the dock and evidence was being led of a senior family member, who is a mainstream Liberal. The son of that family was in the box being made to reveal how they had photographed the unionised employees on a picket line and systematically ensured that each one of those unionised employees was picked off and dismissed out of that company's work force.

Hon N.D. Griffiths: Like the photographers at the top of Parliament House.

Hon TOM STEPHENS: It will be a tragedy if that becomes current industrial practice. Fortunately, in this case the federal commission penalised the company for wrongful dismissal. Regrettably, the opportunities for that will narrow further and further as this Government moves in to protect employers, who will have increased opportunities to deal unfairly with their work force.

Hon Bob Thomas: It is "hold a ticket and no start".

Hon TOM STEPHENS: Many decent employers do not have a problem with inspection of their books. I am not a great one for the notion that people need too many protections. When one does things one should have the opportunity for the community to judge what one does. If employers have nothing to hide, why would they want their wages books protected and prevent inspection by a departmental representatives or in this case the union? If those employers were paying award wages they would have nothing to fear from an inspection. Reputable employers do not mind inspections, because they can prove what they are doing is right. The reasons that some employers support the provisions of this legislation are that they are underpaying their employees and running a deliberate anti-union policy or not accommodating members who want to join a union.

Why does the Government not go out of its way to protect people from that sort of thuggery in disreputable sections of the business community that we know exist? I know that it exists from my own experience. The Government talks about union thuggery, yet it is an extraordinary thing that the thuggery of the employer and the employer organisation is not subject to the same level of preoccupation by this Government. Governments, and certainly Parliaments, have an obligation to get inside the structures of the way society is organised and provide a fair balance between players in the social structures of our State and nation.

An employer who took the opportunity to express opposition to this legislation was reported in today's *The West Australian*. I have learnt about the thuggery of organisations and what that expression of opposition involved for that person. He is not quite a captain of industry, but simply a sublieutenant. Members should be aware of the volcano that erupted over that chap to pressure him back into his box. For daring to stick up for the unions that person has received threats from industry, and his family has been abused in telephone calls. That bloke is an employer. He deals daily with the Transport Workers Union of Australia, yet he had people telephone him in the early hours of this morning abusing him as a union lover.

Hon P.H. Lockyer: Did you see the blokes in the Public Gallery last night?

Hon TOM STEPHENS: Hon Phil Lockyer deserves it. I will not provoke the people in the gallery. I will press on with doing my job on their behalf; that is, putting in this parliamentary context all the reasons the Government should not pursue legislation such as this. I will continue doing that at length in the hope that members opposite will at some point show some sense and put up the white flag. Until they do that, I will be gagged and guillotined only by the processes in place.

Hon P.H. Lockyer: Exactly.

Hon TOM STEPHENS: Hon Phil Lockyer provocatively refers to the fact that the Government has in place the guillotine. When it turns midnight the Government will have the opportunity to shut us down and get this Bill through its first phase; namely, the end of the second reading debate. Hon Phil Lockyer should not be proud of that. I do not know why he thinks that is a good thing to do. I had hoped members opposite would not boast about the time frame they have put in place. Hon Phil Lockyer knows the sort of travesty involved in putting in place the guillotine. He more than most should not boast about a guillotine process. He should hang his head in shame because he knows why it is in place and the damage it does to the capacity of this place to scrutinise the Bill and allow all members to clarify why they should reject this legislation.

If we include in this legislation a prohibition on one group that currently has access to the books of employers, it will be better for the small proportion who cheat and deliberately steal from their employees through the underpayment of wages. On many occasions the unions are asked by the employers' competitors to do these inspections. Employers will know the cost of a job and will say that a competing employer cannot be paying award rates to its workers. Employers are expected to provide a safe workplace for employees, yet they cannot compete because someone down the road is cheating. They know that is the case because they have the evidence. This legislation will protect the small proportion of employers who are ratbags who seek to intimidate their work force and pay them below their entitlements. The Minister for Labour Relations can be proud of himself in seeking to protect that small minority of employers who do not do the right thing and who cheat and steal from their employees.

The Attorney General comes from a distinguished law firm and is no doubt used to taking up a case to protect criminals.

Hon Peter Foss: We didn't do criminal law.

Hon TOM STEPHENS: The Attorney General protected only the criminals involved in corporate law?

Hon Peter Foss: We did not do criminal law.

Hon TOM STEPHENS: I put it to the Attorney General that he comes from a law firm that regularly involved itself in protecting the captains of industry and the big commercial firms. He has been comfortable taking on the brief of developing all the arguments in defence of rapacious companies.

Hon Peter Foss: They had rapacious clients.

Hon TOM STEPHENS: I find that an impossible proposition.

The PRESIDENT: Order! Hon Tom Stephens should not get into a conversation with the Attorney General.

Hon TOM STEPHENS: I will not because that would be a breach of the standing orders of this place. As you know, Mr President, I am determined to confine my mode of operation in delivering my opposition to this Bill to the requirements of the standing orders. I wonder whether the Attorney General's former law firm was involved in the support of Robe River Iron Associates and Mr Copeman. Legal work that was done in support of the anti-union and anti-worker activity has continued to this day in an attempt to smash the union movement in the Pilbara in places such as Wickham and Pannawonica. That law firm helped to construct the argument for that company -

Hon Peter Foss: No, it did not; it was another firm.

The PRESIDENT: Order! Let us go over the rules again. The member does not talk to the Attorney General; he talks to me. I am not interjecting on him. I am interested in what he is saying. I do not want the Attorney General interjecting because he will get an opportunity to speak at a later stage. In the meantime Hon Tom Stephens should not be provocative.

Hon TOM STEPHENS: The Industrial Relations Commission will be required to review all awards, agreements and orders within six months and to offer an opportunity for the parties to be heard regarding proposed changes to the award, order or agreement. However, at the end of that, which can effectively be a useless process, the commission will still be required to vary the award, order or agreement, irrespective of the views of the employers, employees or unions affected, and to reflect the requirements of the new legislation. This is a deliberate, unilateral intrusion of government will without any regard for the wishes of employers or employees alike. I object strenuously to a

Government like this, which is hell-bent on moving aside the umpire, getting into the work context and putting the thumb on the scales, firmly in favour of the employer. The employee will be left without the protections that were available previously through the strength of the commission's processes that provided legitimate adjudication of the needs of the employer and employee.

A further amendment will be made to the Bill by inserting new section 49AB in the Act. Even when a union is able to enter a workplace to address the concerns of a member, the power of the union may be exercised only for the purpose of dealing with industrial matters involving the member. An employer, former employer or union may apply to the commission regarding any disputes over the proposed arrangements.

That is something I dealt with in a different way earlier in my comments. Previously I tackled the Attorney General's comments in his second reading speech. I will now address the specific provisions of the Bill. I said at that time that the provisions in the Bill did not reflect exactly the claims made in the second reading speech. Unortunately the speech is badly phrased. Nonetheless, the Bill will produce an undesirable effect for employees and their representatives. I fear for those members of employee organisations who might find themselves on the premises of workplaces with which their union has an agreement. If any worker raises with them an industrial matter and they have not gone onto the premises strictly in accordance with the terms and conditions of this legislation, they will be subject to penalties, which can be severe.

Further, a major amendment is made to section 49B(1) which was introduced as a result of the 1995 amendments. Currently the provision allows non-members of the union to notify the employer that they wish to have their records kept confidential from a union representing the workplace. This allows a positive effort by non-union members to protect their own privacy. Mr Kierath thinks he can protect the privacy of workers better by ensuring that their records are kept secret by an employer claiming to protect the privacy of the worker. Obviously, the opportunity can be taken by employers to cover their breach of existing award provisions regarding minimum rates of pay and conditions. The new paragraph allows an employer to have the opinion that access to the records may infringe the privacy of non-union members to keep the record confidential from the union. There is no ability for non-union members to allow their records to be inspected, or to override the will of their employer wishing to keep their records private. This limits the ability of non-union members to ensure they are receiving their correct entitlements.

I have not seen many blue copies of Bills, but it is a good development because we can see what a "blue" this legislation is! The document indicates how the Act when amended will draw the line through the protections currently available to employees and will subject them to some of the penalty provisions in a devastating way.

Where an employer refuses to allow a union official to inspect records, the employer must undertake to produce the records to an industrial inspector within 48 hours of being notified of the requirement to inspect by the union representative. Obviously, this becomes a resource issue involving the availability of industrial inspectors. Again, this is a matter within the control of the Government and, although the employer may have the records available within 48 hours, it may be weeks, months or years before an industrial inspector becomes available. Questions in this House have revealed how overstretched the industrial inspectors currently are. Once again, an unnecessarily bureaucratic process is being imposed on the union movement. Employers will find it very easy to frustrate inspections of time and wages records by the union movement, simply by applying to the commission for determination of any dispute. That is likely to take weeks, if not months. It will be very easy for employers to underpay workers and get away with it.

On the question of inspection of time and wages records, any existing provisions applying for inspection of time and wages records will be unilaterally cancelled. It was only in late 1996 that the Industrial Relations Commission was able to give effect to the last edict by the Minister for Labour Relations in this area. Now radical change is again required. It is a clever Government and Minister, hell-bent on destroying the union movement by yet again moving the goalposts. The last range of changes involved enormous cost for the employee organisations as they tried to gear themselves up to accommodate the new statutory requirements. No sooner had they done that, than a new wave came in over the top of them. It involves enormous cost to comply, because these employee organisations must rearrange their affairs yet again to accommodate the demands of this madcap Government as it continues with its radical changes to the system. All existing provisions of industrial award agreements and orders are unilaterally cancelled by the proposed amendment. Thereafter, within six months the Industrial Relations Commission must give the opportunity for parties to be heard. However, at the end of the token exercise, it is required to vary the industrial award, order or agreement to reflect the new legislation.

The effect of this clause relates to the right of inspection. The Opposition has two great problems with it. Firstly, it opens the opportunity for the employer to cook the books. One of the essential aspects of the right of entry provisions was that a union representative or an industrial inspector could attend a workplace without prior notice to inspect the books. That was a very important measure and I am sure that no-one more than the Minister for Labour

Relations, Hon Graham Kierath, understands these provisions. All the media reports indicate that as a businessman he had personal experience of the processes unleashed upon someone who has cooked the books. He knows that the possibility of random inspections keeps in check those employers who might otherwise not have a legitimate set of books. We know that by giving 48 hours notice, the Government is simply providing rogue employers with the opportunity to cook the books. The fundamental concept involved is flawed. The opportunity of burning down the caravan, or wherever else the books are kept, to make sure the inspector cannot inspect the books, is regrettably likely to be an increasing feature of the way greedy employers operate in future because of the changes to the Industrial Relations Act by virtue of this legislation. It will protect people who are in breach of any fundamental principles of law for the entitlements of people who have worked for a wage.

Secondly, union officials will no longer be entitled to look at the books, but must wait on the industrial inspectors. The Minister often says that the Department of Productivity and Labour Relations has industrial inspectors who will do the job and that union officials are not needed for this purpose. The poor performance of these industrial inspectors is no reflection on them. Regrettably, it is simply a result of their massive workload. One of the consequences of the decline in union membership is much greater reliance upon, and need for, the services of the industrial inspectors. The Minister said he had employed five new inspectors in recent times. However, those appointments followed a devastating report by the department condemning its own performance in the recovery of wages. It goes nowhere close to keeping up with the demands increasingly falling upon DOPLAR.

We know that people who contact DOPLAR, believing the Minister's statement that the department is ready, willing and able to take up their cases, are routinely told that a file cannot be opened for them for up to nine months. What an enormous travesty that the system is so heavily stacked against employees by both the administrative and legislative arrangements that will come into effect by virtue of this Bill. Time and again the Opposition has raised in the Parliament cases of people who have been waiting for up to two years for officers of the department to do their job. We also know from the statistics presented to Parliament from time to time that the rate of prosecutions and recovery have dropped dramatically, because officers have been instructed to sell the virtues of deregulation and workplace agreements.

I now move to another section of my contribution dealing with the international perspective. It is an important part of the whole process. The Minister has said at various stages during the consideration of this legislation, as it was being cooked up inside the Government and when it was presented to the other place, that the legislation could be adjudicated by the appropriate international bodies and if it were found to be in breach and to have failed, he would cop that adjudication. I will indicate exactly where that case is at the moment. I had the opportunity this morning of attending a meeting with the Trades and Labor Council executive. The adjudication of the international body is now becoming available to the union movement. In Europe the International Confederation of Free Trade Unions is now engaged in adjudication of the amendments to which I have yet to pay attention in this place. A preliminary judgment has been made that the legislation is in serious breach of the International Labour Organisation convention. The officer who communicated this information in the early hours of the morning said that from his observations these are among the worst, if not the worst, breaches in the western world. The quorums required for the pre-strike ballot process under this provision which require a majority of those eligible to cast a vote, represent a breach of the conventions of the ILO. Putting in place convoluted and remote provisions in the Statute, which will make it difficult for people to gain legitimate access to industrial activity - whether strikes or other forms of industrial activity - will put this Bill and the amended Act in breach of the ILO convention. The harsh, over the top, excessive, and unconscionable penalties, to be deliberately put in place to appease employers, are in breach of ILO covenants. The preliminary opinions of the organisation are that failure to provide in the legislation a twin provision in the pre-strike ballot process offering immunity for employee organisations against representation is a breach of the ILO convention. The off-handed nature of the essential service provision, again in the preliminary view of that organisation, represents a failure to get to the basic standards required of nations which are signatories to those covenants.

This legislation is trundling through the system of adjudication by those whose responsibility it is to make judgment on such legislation. While the processes were under way, suddenly the Government changed the goal posts. The Minister said on one hand that it was good enough to subject the Bill to this adjudication, yet when it was about to receive a big thumbs down the Premier said that the measure would be judged by the Government of Western Australia alone. We know that this Government is not the only judge of such provisions.

Other processes will be unleashed by virtue of this legislation. Eventually, it will be judged in the courts of the land and will be found wanting. I look forward to the day the courts take up the task which the Parliament regrettably appears determined not to embrace. In the end, we know that the community of Western Australia will judge this legislation. They will do so harshly when the opportunity arises to express a viewpoint of a Government which introduces such legislation. That opportunity is a number of years off, but the Government has indelibly etched into the mind of the Western Australian community the way it has handled this matter. The ordinary mums and dads of Western Australia will be the final judges of this legislation, and they will take the opportunity to dispatch members

opposite from the Treasury benches. Also, I am sure they will guarantee that members opposite are never returned to a position of control in this House.

The international perspective judges this legislation harshly. I need not move into all the possible comparisons of this legislation with that in other parts of the globe, but I will touch lightly on a couple of areas. I know some of my colleagues will make comparisons in detail. One of my colleagues said before the legislation was before the House that he wanted to make a comparison with the legislation in the People's Republic of China. I initially thought that to be a very enthusiastic and strange contribution.

Hon N.D. Griffiths: It is a knowledgeable suggestion.

Hon TOM STEPHENS: It had enormous insight. We found in the middle of the research period for that comparison that the Minister for Labour Relations went to China, demonstrating the point my colleague was trying to make. I initially thought the member showed a lack of political judgment in making that suggestion - I was wrong. My colleague Hon Ed Dermer has experience of the labour laws of China and saw the laws of that regime imitated here. He picked up the flavour of Comrade Kierath and recognised that a totalitarian approach was to be adopted in dealing with the rights of workers. I understand he will develop those themes later.

I understand also that other members will draw on the labour laws of other parts of South East Asia which one would never expect to be emulated in this State. One would not expect our labour laws to be heading towards those of countries around us which regrettably do not show the respect we expect to the right of the work force, employees and citizens. The approach adopted in this country, until now, has been held dear by the Parliaments of this country.

The United States Department of State each year provides an assessment of each country's human rights practices. The latest assessment was issued in January this year and provides a detailed analysis of how the Chinese regime treats its workers. My notes on the report of that body read -

> The People's Republic of China (PRC) is an authoritarian State in which the Chinese Communist Party (CRP) is the paramount source of power.
>
> Citizens lack the freedom to peacefully express opposition to the party-led political system and the right to change their national leaders or form of Government.

The report says in relation to the right of association -

> The 1982 Constitution provides for "freedom of association", but qualifying language makes it clear that this right is subject to the interests of the State and the leadership of the Communist Party. The country's sole officially recognized workers' organization, the All-China Federation of Trade Unions . . . is controlled by the Communist Party. Independent trade unions are illegal.

Regrettably, this Bill reflects the Government's increasing attempts to intrude into the affairs of the union movement, to limit the freedom of association of employees and to meddle in the affairs of the trade union movement.

As the Minister's second reading speech indicates, the Bill will allow the Government to initiate processes which will effectively shut down authority given to officials by employees to govern the union for them. The Government can effectively remove them from office and bring in a new set of union bosses through the processes of the court in control of that union. It is a most extraordinary process by any standard. In fact, the only comparison for such a provision is to be found in China and other authoritarian regimes. The US Department of State report continues -

> Credible reports indicate the Government of China has attempted to stamp out illegal union activity.

For "illegal", read any free union activity. It is the sort of activity to be made illegal in WA by many provisions of the Bill.

I was going to develop at length a comment on some documentation which fell into our hands in the process of this debate indicating how the Government, particularly the Minister, was seriously looking at a use of the Criminal Code. I know the Deputy Leader of the Opposition in this place will take on the analysis of the documentation which has come our way, and will show exactly the length to which the Minister for Labour Relations will go to use the Criminal Code to get stuck into employee and employer organisations and their officials. I leave that job to my colleague.

Regrettably, the Attorney General is responsible for the administration of the Criminal Code. I fear that he shows no real concern for protecting the rights of workers and citizens of Western Australia. His obligation as Attorney General is to be responsible in a special way for statutory arrangements and to act as an umpire to balance these matters in the community. However, the Attorney has a prurient interest in the provisions of this Bill. His unhealthy support for the provisions of this Bill places in question his capacity to be Attorney General, whose role is, in a way,

to be detached from the political imperatives otherwise driving Governments as they sometimes act in breach of the demands and traditions of law in a democracy.

I will skip over some of the additional comments I had intended to make about China; however, the right to strike, which had been included in the 1975 and 1978 Chinese Constitutions, was removed from the 1982 Constitution on the ground that the socialist political system had eradicated contradictions between the proletariat and enterprise owners. The trade union law assigns unions the role of mediators or go-betweens with management in cases of work stoppages or slowdowns. Beginning in 1993, the Ministry of Labor stopped officially denying the existence of strikes, but strikes are still not officially sanctioned, and accurate statistics on strike incidents are not available. One unofficial, yet credible, 1995 estimate put the number of work stoppages at 1 870. In March 600 workers went on strike to protest unpaid back wages and excessive overtime at a joint venture hardware manufacturing factory in the Shenzhen SEZ. In Wuhan, according to reports, unemployed workers have repeatedly staged sit-down protests in front of the entrances of the Wuhan government and Hubei provincial government offices. Six hundred people participated in the largest demonstration.

I now wish to take up a key issue in this debate - the utter failure of the Government to acknowledge any obligation to maintain or assert international labour standards in its legislation. Explaining to this House what those conventions are and why this Parliament should support them is an essential part of the case for why the provisions in this Bill should not be agreed to by this Parliament. There is still the opportunity for the English senator-elect, Hon Ross Lightfoot, to have a change of heart, to understand the argument I have put to the House and to say, "I have had enough; I agree; it's time for me to go to Canberra and not participate in this debate." Even now he has the chance to do the decent thing and get out of this place, to accept the cogency and strength of the argument and say, "Enough; I'll go; no more. I won't participate in the processes of putting in place -

Hon P.R. Lightfoot: You are forgetting about the ratification of the Joint House. Don't talk to me about it. I have nothing to do with that.

Hon TOM STEPHENS: We are ready for a Joint House ratification whenever Hon Ross Lightfoot is.

Hon P.R. Lightfoot: The Joint House ratifies that.

Hon TOM STEPHENS: He says, "You can trust me." We just want to see the end of him in this place.

Hon P.R. Lightfoot: About as far as I can wheel a barrow full of dynamite through a bush fire!

Hon TOM STEPHENS: It is a pity Hon Ross Lightfoot did not do the right thing and jump off the balcony and do us all a favour.

Australia is a party to a number of international conventions under which we are bound to observe certain standards in industrial and related social and family matters. I will give the most relevant for our purposes in this debate. The United Nations Declaration of Human Rights in article 23(4) provides that everyone has the right to form and join a trade union for the protection of their interests. What is significant about that declaration is that there is no international police force or court to enforce these obligations. The way in which countries are compelled to adhere to this and other conventions depends on the weight of public and diplomatic opinion, but the UN declaration sets out the base standards for all civilised nations and is an absolutely fundamental instrument in international law.

There are similar provisions in other jurisdictions which do have the force of domestic law because other countries have recognised that these and other rights are fundamental to a civilised and fair society. Regrettably our political opponents in the Government will not allow these fundamental rights and requirements to be part of the statutory framework that will operate in this State.

The European Court of Human Rights has considered similar provisions in the European Convention on Human Rights and Fundamental Freedoms. Australia has also ratified the five core human rights conventions of the International Labour Organisation: The Freedom of Association and Protection of the Right to Organise Convention, No 87; the Right to Organise and Collective Bargaining Convention, No 98; the Equal Remuneration Convention; the Abolition of Forced Labour Convention; and the Discrimination (Employment and Occupation) Convention. Australia has also ratified the Termination of Employment Convention and the Workers with Family Responsibilities Convention. These ILO conventions specifically provide for the right to form and join trade unions, and they make express provisions against anti-union discrimination.

For those opposite who deny the moral force and significance of these conventions, I will give an example of a group of workers whose efforts to achieve social justice at the workplace and in society were inspired by these standards. Their efforts were the precursor of later events which led to the downfall of an empire which stretched from eastern Germany to the Pacific. I speak, of course, of the heroic struggle of the Polish working people through their trade

union, Solidarity, which emerged in the late 1970s and ultimately triumphed in 1989 when it defeated the Communist Party at Poland's first free elections. The precursor of Solidarity was the uprising of workers in the early 1970s in the port city of Gdansk. In 1979 these workers published a charter of workers' rights in their underground paper. This charter prefigured many of the demands Lech Walesa made on behalf of the striking shipyard workers a year later. The charter also included demands for trade unions to be freed from government control and direction, and states -

> Only the independent trade unions, which have the backing of the workers whom they represent have a chance of challenging the authorities; only they can represent a power the authorities will have to take into account and with whom they will have to deal on equal terms.

Significantly, attached to this charter was an appendix in which the workers cited the relevant clauses of the ILO convention and the International Covenant on Economic, Social and Cultural Rights, both of which the Polish Government had signed and which it asserted it upheld to the letter. If it is good enough for a repressive and decaying communist regime to acknowledge the existence of these conventions, it should to be good enough for this Government to do so. Later, in 1980, when Solidarity emerged in the Lenin Shipyard, those earlier demands had expanded to 21 items, among which were the acceptance of free trade unions, independent of the party and employers in accordance with the ILO convention 87 concerning trade union freedoms, and the guarantee of the right to strike and the security of strikers and persons who help them.

They are the pleas and the demands of the workers and the union members in Western Australia at this time, demands that echo those of humanity across this century in many different parts of the globe. Resonating out of the demands of the Polish workers in the 1980s are the legitimate demands of the workers of Western Australia now. Why not leave them with the rights of free association, to organise and to protect themselves? The Government has an obligation to respect those rights and to give them that freedom. Eventually this policy of the Polish Government brought about its downfall, as we hope it will bring about the end to this Government in Western Australia, and not before time.

Regrettably in the meantime this legislation will be passed and much damage will occur to the rights of the workforce as we see the average employees heading into an economic decline where the greedy and rapacious employers, the rich of this community, continue to see their asset base rise and the inequities in our system getting worse with the scales tipping away from the rights of the ordinary mums and dads of Western Australia.

Hon Bob Thomas: Rights to which the workers have become accustomed.

Hon TOM STEPHENS: Regrettably it appears that the Government has forgotten that. I put to the House that the Government recognises that in the end it will have to face the people on this legislation, but is dealing with it now in the hope the people will have forgotten about it. Our task will be the task of the union movement and every worker and a broad cross-section of the Western Australian community. It will be to remind the people of Western Australia of what is being done in these dark days of our history and of the abuse of the system we are witnessing as this legislation is rammed through this place, which no longer has a mandate and which has gone past its legitimacy as a place of review of the initiatives of the Government. This place passes provisions that must be condemned, as they will be in time.

Regrettably, the Government will press on with its illegitimate pursuits. Here we are in 1997 and the workers of this State are being arrested in peaceful protests. Unions and workers will soon face substantial penalties for attempting to exercise the rights that Polish workers fought for under Communism for 20 years.

We all remember that before Solidarity triumphed and the shipyard electrician became President Walesa, the Polish regime used police and soldiers to impose martial law in 1981. Repressive methods went hand in hand with the use of the legal system to dismiss strikers and dissolve their associations. In our system, that will be done by the Supreme Court, which will punish individuals who in conscience object to these provisions, by imposing indefinite imprisonment and fines. In Western Australia, the Industrial Relations Commission will effectively dissolve offending unions and blacklist their officials from participation in the labour movement.

The second reading debate has only just begun. As we get closer to the guillotine that hangs above us, we know that we will have the opportunity to illustrate why this Bill should not be given a second reading. Mr Deputy President (Hon Barry House), in a few moments we will suspend the sitting for the afternoon tea break, at the end of which we will have question time. We will then return to the second reading debate. I will continue at that time to put some additional points that I have not yet had the opportunity to raise in this debate. I want to develop the question of why the church community is attacking the state labour laws currently before the House. I will go through the arguments that no doubt the churches have had to consider as they arrived at the conclusion that these laws are unconscionable and that they should be rejected by this Parliament.

As a prelude to my contribution on that topic I will quote the article that appeared in *The West Australian* of 26 April 1997 under the banner "Churches attack state labour law" as follows -

> Premier Richard Court faces a religious backlash next week over his Government's controversial third wave of industrial relations changes.
>
> WA's Anglican, Catholic and Uniting churches are expected to target Mr Court in a bid to force him to rewrite the legislation, which they say will cause unnecessary division in the community.

Members will recall the comments I made about the early period of industrial history in Great Britain. I referred to the Wesleyan tradition; that is, the tradition of which the Uniting Church is the custodian in the ecclesiastical community of the Christian movement. It was the Wesleyans in the 1880s who fought against the repressive legal regime in place at the time and who argued for a change in the laws. Now we have the heirs and successors to that fine tradition - the Uniting Church - arguing against the repressive laws we see before this Chamber.

Interestingly, those Wesleyans became the Tolpuddle Martyrs and were the founders of the union movement in Australia, after having been transported because of their efforts to build up the right of free association for workers. Those non-conforming Christians of Great Britain were up against the Tory Party at Prayer - the Tories or Conservatives as they are now known and the Church of England or the Anglican community. The heirs and successors of that tradition in Western Australia have now joined in the condemnation of the provisions of this Bill.

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon TOM STEPHENS: I am in the home straight and am about to conclude my remarks on this Bill.

Hon Kim Chance: So soon?

Hon TOM STEPHENS: Regrettably, I must consider that the guillotine will come down soon and many of my colleagues are busting to make their contribution.

Hon N.D. Griffiths: We have enjoyed your every word.

Several members interjected.

Hon TOM STEPHENS: I was developing the theme about the connection of the Christian churches in opposing the State Government's labour legislation. I referred to last Saturday's *The West Australian*. It outlined the unity which had developed between the Christian leaders in opposing the provisions contained in the Bill. For me, this unites some of the essential themes of the opposition to this legislation. It comes out of the history of the emergence of the trade unions and the momentum they found through their Christian faith in some of the early Tolpuddle Martyrs as they developed this great tradition. It connected with what was developing on the continent through thought, philosophy, theology and the reading of the scriptures. It was embraced by the leaders of the Catholic community in Europe - in Germany with Bishop Kettler and then by His Holiness Pope Leo XIII. In the 1890s, in response to the message of the Christian gospel, Pope Leo brought down the famous papal encyclical Rerum Novarum. That papal encyclical goes to the heart of these issues. In his reflections on the implications of the Christian gospel and the meaning of the gospel for the social conditions of that time Pope Leo laid the foundations for much of the social teaching of the Catholic Church. He developed a theology in defence of the rights of employees from his assessment of the gospels. We in this House start each day with a prayer for assistance in our deliberations on the affairs of the people of Western Australia. Many of us swear on the *Bible* when we are sworn in as members of Parliament. In the period I have been here I have sworn on the same *Bible* each time I have been sworn in. It is not a well-thumbed *Bible*. It is not the one I use regularly; I do not rely on it as often as I might. However, His Holiness Pope Leo XIII drew on two texts as he constructed his case for supporting the workers of that time. He used two texts in particular to support his encyclical, the first of which was Proverbs 18:19 which states -

> Brother helped by brother is a fortress,
> friends are like the bars of a keep.

He then used Ecclesiastes 4:9:10 which states -

> Better two than one by himself, since thus their work is really profitable.

They were the two texts from which that Christian leader drew support when constructing a case in support of the unity of the workers. Others have gone into the same book and come up with chapters supporting their arguments. They have used the Corinthians' verse about the believer and unbeliever not being put together in the one yoke. That is the basis upon which they have constructed a theology of support for the legislation that will destroy the union

movement. Others will be able to pick up a small text from the scriptures and construct theology in support of their argument. Because this book contains conflicting thoughts, it cannot be used by itself in support of the Bill. The *Bible* says "there is no God". If one were trying to develop a theology based on that line, one would not go very far.

Hon P.H. Lockyer: If you keep talking like this, I will start believing.

Hon TOM STEPHENS: Mr Lockyer will be interested to find that the complete sentence in the *Bible* is, "The fool says in his heart there is no God." It is sad to see people using a small text from the *Bible* to support their arguments on this Bill. There is another tradition upon which one can rely to construct a case for unity and the need for justice and equity in our community. It is a Christian tradition of which so many of us are proud.

Point of Order

Hon B.M. SCOTT: Last evening we were asked not to carry on a discourse with people in the gallery. I think it is hardly fair that the member is addressing the gallery without people there having an opportunity for redress. The speaker should be addressing the Chair and not the gallery.

The PRESIDENT: Order! That is not a point of order.

Debate Resumed

Hon TOM STEPHENS: I will address the Chair. My intent is quite clear. Anyone using a small text of scriptures to construct a theology in support of laws that are repressive would be misguided. The Christian movement, developed over 2 000 years, has multiple expressions. However, all those expressions by and large come down in support of the oppressed, the weak and the needy. The powerless and the weak require justice and support from the wider community. It is in that context that the broader tradition finds something rich about that tradition and rallies around those who are experiencing assaults on their right to associate and their right for equity in the work force.

It also rallies to protect the rights of the poor in our community. Regrettably, this community is becoming increasingly distanced from that tradition, and, regrettably, legislation such as this is an expression of something that the Rerum Novarum text had seen develop in Europe. Pope Leo XIII saw that what had developed out of the laissez faire liberalism in the Manchester school was a virtual slave market in Europe in which the workers were being dealt with as mute victims. The Manchester liberalism was really a form of state absolutism masquerading under liberal phraseology administered by a bourgeoisie whose guiding ideal was that of rampant egoism. The pope felt that a monopoly of production and commerce had fallen into the hands of a small number of tycoons who had laid upon the labouring poor a yoke little better than that imposed by slavery itself.

At the time in Great Britain another great convert from Anglicanism to the Roman tradition, Henry Manning, the Archbishop of Westminster since 1855 and a cardinal since 1875, rejected phrases such "free contract" and the "independence of adult labour" as pure cant. He said they were phrases designed to isolate the defenceless workers and deprive them of the strength that unity would bring for the protection a concerned state would proffer. To him it was self-evident that there can be no true freedom of contract between a capitalist and a working man, and that capital always remained invulnerable while the work force continued to provide its labour.

There were two other interested parties between masters and men - this was in response to the industrial disputation of London at the time - and they were the multitude of women and children and the whole peaceful population of London. There is a real obligation on the state to respond to the problems associated with disputes between capital and labour and that is the common good. That is where I was drawing on the secular philosopher, Jeremy Bentham, from which comes a recognition of the demands of what it is to be human; that is, the essence of humanity is respecting the call and plea of humanity for equity and justice in our society.

Cardinal Manning said -

> I do not believe it will ever be possible to establish peaceful relations between owners and workers in a useful and lasting manner until a just, fixed, and publicly established regulation is recognised that determines profits and wages; a measure upon the basis of which all free contracts between labour and capital will be governed.

This attitude of Pope Leo XIII forms the linchpin of catholic social teaching right until the present. When I previously quoted Rerum Novarum, one member said that he was not so much a Rerum Novarum man. The tradition is consistent throughout all those encyclicals on reflection; that is, that the leader of the catholic community, expressing that reflection on the gospel, says that there is a real need for the state to have a role in the worker question. Could or should the State intervene when there is a conflict between capital and labour? The answer is definitely yes.

That response is through supporting the right to free association of employees and to guarantee that they have a chance to associate in such a way as to protect their rights. The encyclical was explicit in saying that the church believes that within defined limits the very laws and authority of the State should be used to safeguard the wellbeing of the worker. Striking is a right that the encyclical recognised by enumerating "over prolonged hours of work and too heavy labour and the fact that they consider their wages to be too low" as motives for strikes, and also when there is "a concerted interruption of work", more commonly called a lockout, by capital. More to the point, the encyclical stated that "if the workers are oppressed by employers laying unjust burdens on them, or they are degraded by conditions repugnant to their human dignity and personality; if by excessive labour, or by work not suited to their sex and age, harm is done to the health of the workers in all these instances the power of the authority of the state should be used . . ."

The whole question of ecclesiastical approval of state intervention in the worker question was laid to rest. Popes ever since and the church leadership, both clerical and lay, throughout the history of some hundred years have continued to develop a bias in favour of the support of rights of employees to free association and to utilise that free association; they have not supported any laws which would provide for oppression by employers. The encyclical dealt with the argument directly in these words -

> If through necessity or fear of a worse fate, the worker is forced to accept a harsh agreement imposed by an employer or contractor, he is subject to a form of violence against which justice must protest.

The encyclical laid down the parameters of a living wage. The words chosen in that encyclical of Rerum Novarum were the base from which Henry Bournes Higgins drew in the famous Harvester case in 1907, about which I was speaking earlier. He did not acknowledge, probably wisely, the thoughts that bore on his judgment in the courts, but he took up quite specifically and deliberately the terminology of Rerum Novarum. His judgment of a basic wage became the rock upon which the arbitration court of Australia was built.

The question of trade unions as independent and separate worker bodies was posed in Catholic circles and was of concern to that community over an extended period of time. That community has always come down in defence of this right. So strong was this tendency to glorify the past that Leo XIII himself spoke, perhaps drawing on the guilds, finally coming down in favour of the trade union movement. With the guilds the distinction was, of course, that the employer and the employees would join together in one structure. He drew on the notion of the union movement. We have seen that reinforced in Australia by church leadership over an extended number of years.

In Australia we had specifically the problems of the industrial disputation of the 1890s with the shearer and maritime strikes and the other difficulties with which the workers were faced. That saw the leadership of the Catholic community at that time, particularly Cardinal Moran, joining forces in the great rallies and marches through Sydney that took place in defence of the rights of the workers. That showed that the church at that time was joining in the support of the union movement. Cardinal Moran, an Irish prince of his church, marched in solidarity with the workers as they built a defence of the rights of workers. He said in a famous speech -

> It is by their principles and maxims that one must judge them. It would be unfair and unjust to assign to the leaders of the Labor Party those false maxims that imply the name of Communism . . . I have no hesitation in saying that there is not the slightest danger of our Australian people of ever being contaminated by the extreme views of Socialism.

He went on to defend the whole role of the Labor Party in support of the union movement and providing ways of producing a bridge between capital and labour. In his Christmas message of 1952 he asked -

> What, in fact, is the essential purpose of the unions, if not the affirmation in practice that man is the subject and not the object of social relations; the protection of the individual against the collective irresponsibility of anonymous owners; the bringing of the person of the worker to the notice of whoever might otherwise think of him as only a productive agent with a price?

The present pope, John Paul II, has done nothing other than to reiterate even more strongly the principles laid down in Rerum Novarum. Of course he would as a Polish man coming out of the context of Solidarity, with support for the union movement and all those principles about which I have been speaking. That tradition has been consistently maintained and supported contemporarily by other Christian leaders in our community. The rights of the workers should always take into account the limitations imposed by the general economic situation of the country. He said -

> In order to achieve social justice . . . there is a need for ever new movements of solidarity of the workers and with the workers. This solidarity must be present whenever it is called for by the social degrading of the subject of work, by exploitation of the workers and by the growing areas of poverty and hunger. The church is firmly committed to this cause . . . and the rights that flow from it, especially the right to a just wage and to the security of the worker and his or her family.

The recent catechism of the Catholic Church enjoins the workers to seek solidarity among themselves so as to resolve socioeconomic problems, which is tantamount to acknowledging the need for trade unions. A certain moral obligation to join a union rests on the moral solidarity of the workers' groups. Mindful of the fact that the actions the union takes in the defence of its members are intended to benefit all related workers, it is clear that no trade union can work effectively for social justice for its members unless it is really representative and even at times able to appeal to the force of numbers and of finance. Rerum Novarum said that the alternative result of capitalism without the opportunity of effort to limit its effect caused chaos, greed, revolution and great suffering among the workers. Socialism to the degree that it posed a threat to society was a response to the excesses of capitalism. In the assessment of those leaders of the community, the alternative was support for the structures that limited the excesses of those two forces.

Where does that finally bring us as we get to this legislation? A copy of a letter dated 28 April 1997 was made available to me. Its author is someone whom I hold dear and I know other members in this parliamentary community will have considerable respect for him. He is the recently ordained Bishop of Broome, the Most Reverend Christopher Saunders, who said in this letter addressed to the Association of Heads of Churches WA -

> While not wishing to comment on this paper directly I would like to express my view on the proposed legislation in question. I believe that the Association of the Heads of Churches of WA might have something to say on this matter in addition to the views already expressed by individual members.
>
> I have read the Labour Relations Legislation Amendment Bill 1997 and find some aspects of it rather disturbing.
>
> Firstly, it appears that the proposed legislation emanates from an ideological stance held by the Minister and well demonstrated in the content of his public statements on various occasions. This stance is fundamentally opposed to the notion and rights of a Union organisation as commonly understood in the Australian experience of unionism. Under the proposed legislation employers and the government are given rights under certain conditions that will interfere with the independence of Unions and allow these parties limited but unprecedented control of the governance of the unions. A foundational tenet of Unions is that they are there to represent the rights and opinions of the members and as such they are governed as private associations. To extinguish or seriously diminish such rights for ideological reasons is a travesty of justice and an unneeded interference.
>
> Secondly, the bureaucratic requirements that will need to be in place before a union can enact a strike will necessitate a lead-in time of some weeks. This measure is draconian as it militates against the rights of the individuals to publicly object, by way of withdrawing their labour, to a situation they find unacceptable in their place of work. In this context it impacts upon a person's right of free assembly and freedom of speech. The power invested in the employer and the government on the occasion of a pending strike is Orwellian in character and detracts from fundamental rights won by workers in previous generations to safeguard themselves from exploitation and offenses against natural justice.
>
> It is to be noted that there is no legislation in place to prevent the withdrawal of capital from the industrial equation. (cf B.H.P. and Newcastle) To have in place such a piece of legislation would be considered by the proponents of the Industrial Relations Legislation Amendment Bill an unwarranted intrusion by government into the economy.
>
> Thirdly, the overriding consideration that is evoked by this proposed legislation is that it is provocative and divisive . . . and rushed. Its lack of consideration of the needs of the worker is proof enough of its intention - to equip employers with rights over employees unknown in industrial practice since Dickensian times.

Hon Peter Foss: Who is this?

Hon TOM STEPHENS: The Bishop of the Diocese of Broome, the Most Reverent Christopher Saunders, who has taken the opportunity as one of the church leaders of the Western Australian community to read the Bill in detail.

Hon Peter Foss: It sounds vaguely political to me.

Hon TOM STEPHENS: This bishop would take great offence to any such suggestion.

Hon Peter Foss: He should be more careful about his remarks.

Hon TOM STEPHENS: He is as careful about his remarks as any ecclesiastic leader. He read the Bill and he has found the Minister out.

Hon Peter Foss: He got it wrong.

Hon TOM STEPHENS: He came to the only conclusion possible. He continues -

> The lack of definition of terms such as "essential services" is indicative of the poor quality of the Bill as law. Quite evidently the need for definition will cause a litigious situation of alarming proportions.
>
> If I may, since I will not be able to attend your meeting, I would like to suggest that members of the Heads of Churches consider strongly opposing this 'rushed' and quite divisive legislation. . . .
>
> Yours sincerely
> Christopher Saunders
> Bishop of Broome

I have received an enormous number of letters from a range of people and they continue to arrive in my office in a similar vein. They are from church leaders, members of those churches, the civic leadership of our State, and the union leadership of Western Australia. Representations are being made to the Opposition from across the spectrum. They are saying, "For goodness sake, present our case in such a way that this Government will stop proceeding with the Bill that is currently before the House." All I can say, in the name of all of those Western Australians, is: Stop! No more! Do not do it! It is of no benefit to the community that the Government is elected to serve.

The Government should pull back from the precipice from which it is determined to push this State, going over and over to our demise as a collective. This Government knows that this legislation is not needed. It is not good and it should not be proceeded with. I will take the opportunity again and again in this debate to argue the principles and the detail of this Bill. It is wrong in principle and in detail. It is legislation that is not needed and it should not be proceed with. For heavens' sake, the community's sake and for the sake of members opposite the Government should: Stop! No more! Do not do it! Withdraw!

HON N.D. GRIFFITHS (East Metropolitan) [5.05 pm]: After listening to the wise words of Hon Tom Stephens on the Labour Relations Legislation Amendment Bill only one thing can be done to this Bill: Kill it. It is no good for the people of Western Australia. It fails any reasonable test. It is an evil Bill. When Hon Tom Stephens brought out the *Holy Bible* he reminded me of what people a few hundreds years ago did when they perceived issues as being evil. They brought out the *Bible*, a candle and a bell. When I first picked up this legislation and read it, I did not like what I read and I put it away for a while. I hoped it would go away. I still hope it will go away. I do not know what got into the minds of those opposite bringing something like this before this House. It is no good to anyone. Its purposes are to prevent the trade union movement from carrying out its work and to do what it can to destroy the Australian Labor Party.

The primary evil of this Bill is that it is intended to destroy the trade union movement. If that occurs the people of Western Australia will suffer in many ways. It may take some time, although from what we have seen of the effects of the first wave we will see its effects far quicker than people realise. First, it will affect living standards generally. Many people are already struggling because of the policies of this Government, because of some of the shackles it has already put on the trade union movement. People generally will experience a drop in living standards as they have in other places where trade union movements have been shackled. Those drops in living standards will be reflected in falling wages - that is the first and most easily recognisable signpost. People will be working longer hours. I read recently that the average Western Australian is spending more time working now than in years previously. That is notwithstanding the fact that we are in a time of unacceptably high levels of unemployment. People are already working longer because of a nasty workplace regime.

Hon B.K. Donaldson: You want a 30 hour week.

Hon N.D. GRIFFITHS: Hon Bruce Donaldson is in favour of people working longer for less.

Hon N.F. Moore: That is not true.

Hon N.D. GRIFFITHS: Hon Norman Moore supports the same proposition.

Hon N.F. Moore: I do not at all, nonsense.

Hon N.D. GRIFFITHS: When people work longer hours for less, apart from the obvious lack of justice, it has effects on their families and on society as a whole. That is what this Bill is about. People will spend more time at work and less time with their families. Their relationships with their partners and children will suffer. I thought members of this House would know what working long hours from time to time can mean to their relationship with other people. For a start, their families do not see them much. This will apply to an ever-increasing number of people in Western Australia. People will arrive home tired and frustrated. Their basic human relationships will suffer. Their material standard of living will drop. Their capacity to be involved in the activities of their community will be greatly

diminished. We have already seen that happening to a great extent as a result of the nasty workplace agreements regime. Increased working hours already affect family life to the detriment of our society. Many people are working on Saturdays and Sundays and later and earlier in the day than would otherwise be the case.

Members opposite do not care about the fundamental things that are essential to the quality of life that we in Australia have come to enjoy. Australians have come to enjoy a certain quality of life because of the role of the trade union movement. Hon Tom Stephens referred to the history of the trade union movement. He dealt to some extent with the role of significant Christian denominations with particular reference to Britain. He referred to the Tolpuddle Martyrs as an example of what happens in a society in which an effective trade union movement is not permitted to exist.

Hon Peter Foss: Peterloo was the name of the massacre.

Hon N.D. GRIFFITHS: I am well aware of the Peterloo massacre. It saddens me that the Attorney General, notwithstanding his knowledge of the massacre, associates himself with legislation such as this. Peterloo is a graphic example of how the Government of the United Kingdom used its forces to oppress peaceful protest.

Hon Tom Stephens in dealing with these matters of tradition referred to Pope Leo XIII. What that pope had to say over 100 years ago is still accepted by those who share the faith of which he was then head. That is accepted by members of the Roman Catholic Church and their leaders. When the Federal Labor Government introduced bad legislation - legislation that has been passed, but which I find extremely distasteful and which I would not wish to be associated with in any way - the Catholic Social Justice Commission put forward a submission that relied heavily on the teachings of Pope Leo XIII. It pointed out that his teachings had been followed and supported continually by successive leaders of the Roman Catholic Church. The relevant ingredient of that teaching is that to have a society that is fair, it is essential to have an effective and free trade union movement. I refer to a society in which people can have a reasonable and proper family life, are able to work for reasonable hours and receive a fair rate of remuneration, and are not exploited; a society which, of its nature, is a modern society involving modern methods of production and the like. This Bill attacks what some would call the capitalist society. It attacks an effective free trade union movement. It is meant to. That is at the core of this Bill. That is the policy of this legislation. I will deal with this aspect in greater detail shortly.

The legislation seeks to make criminals out of people involved in proper trade unionism.

Hon E.R.J. Dermer: Doing their duty.

Hon N.D. GRIFFITHS: Yes; people doing their necessary work on behalf of those who do not of themselves have bargaining power. Pope Leo XIII and successive popes and so many people who are opposed to this Bill believe without any reservation that for a fair society to function, an effective trade union movement is required. That is at the heart of the difference between members opposite and us on this side of the House. Opposition members know there is no equality of bargaining between the ordinary individual, the person who sells his or her labour - the Government likes to treat people as commodities; therefore, I will use that language - and those who purchase the labour. That was at the heart of our conflict over the workplace agreements legislation and it remains at the core of our conflict over this Bill.

Perhaps I am wrong; perhaps members opposite recognise this inequality in bargaining. On reflection, I think they know it. There is common ground between us. We all know there is inequality of bargaining among workers, the sellers of labour. There may be the occasional exception; for example, somebody who is so super-qualified for a form of labour and for whose personal skills the demand is so high that such a person may have great bargaining power. However, those people are the exception rather than the rule. There is this common ground, this recognition of an inequality of bargaining power. I assume members on the other side agree; they are not stupid, they have been elected to Parliament and should have some degree of worldliness. In that context the Government wants to remove the only protection people who provide their labour have. It wants there to be inequality of bargaining power in practice, because it wants to remove the evener from the game. It wants to remove the trade union movement so that there is no equation. The inequality of bargaining power exists in practice without a trade union movement, and that is the primary principle of this Bill. It does not matter that the Government goes through the process and gives the Labor Party the flick, because the Labor Party is essentially a vehicle to enhance the living standards of Australians by doing what it can to make sure that, among other things, there is an effective trade union movement. It is the primary role of the Labor Party because it recognises that the development of what has been, for the most part, a fair society, has occurred because of the trade union movement.

Hon Tom Stephens referred to Cardinal Moran. He was around when the Australian Labor Party was founded. Many historians argue that he played a pivotal role in shaping opinion at the time of the formation of the ALP. On one occasion he delivered a public lecture on the rights and duties of labour. Hon Tom Stephens has referred to that

lecture, and I will further refer to it because it is at the core of where I, as an ALP member of this House, am coming from in my opposition to this evil measure. I refer to a book by Bruce Duncan entitled *The Church's Social Teaching*. I refer to some words set out at page 169 of that book. In the preceding and subsequent pages the lecture to which Hon Tom Stephens referred is dealt with in considerable detail. It is significant that the lecture was given after an election which gave rise for the first time to a critical mass of Australian Labor Party members of Parliament in New South Wales. Thirty-five Labor members of Parliament attended this lecture in 1891. The observations made were true then, as they are true now.

The cardinal pointed out something in which all members on this side of the House believe; that is, a fair day's work for a fair day's pay. That has many implications. There is no pretence about it - people must receive a just and sufficient wage. They must be able to support their families and have a civilised standard of living. Members opposite are putting that at risk. In the course of that lecture the cardinal made observations about the lovely term "freedom of contract". This legislation is about that. It flows on in a wave from the Workplace Agreements Act. It tries to enhance the notion of freedom of contract. Of course, that is a sheer nonsense if there is inequality of bargaining. Australia has been a fairly civilised country because it has not gone in for contract regimes. Of course, many people in the work force enter into contracts. Everyone enters into a contract of employment, but all these contracts are underpinned by an award system. An effective award system is underpinned by an effective trade union movement. The award system is being attacked, as is the trade union movement. I quote briefly some observations by Cardinal Moran on the concept of freedom of contract -

> . . . no other form of words has been so misused, perhaps, in modern time, till -

He is an Irishman. He continues -

> - in the hands of designing men it has been turned into an engine of robbery, and the very name of liberty had become a mockery, a delusion and a snare.

The observation was made, and I agree with it wholeheartedly, that if a contract was not free or in accord with natural rights, it ceased to be binding. When comparative equality in bargaining was lacking in Europe, it had imposed starvation wages on workers and forced parents to contract their children out as slaves. Too often freedom of contract came to mean liberty to plunder, defraud and oppress. In my time as a member of this House I have had the good fortune to be engaged in some parliamentary business overseas. I have seen some pretty dreadful sites. I have seen a bit of Thatcher's Britain, and it was disgusting. Notwithstanding the so-called notional standards of living in places such as Hong Kong, people who live there are deprived for the most part. That is because they worship this idea of contract, not the fairness for which the Opposition stands. The principle of this legislation is to push contracts down the throats of Australians.

I turn to Cardinal Moran, who quoted from the words of a British royal commission on trade unions and made reference to six-year-old children carrying half a hundredweight and regularly making 40 long journeys a day. This image is nineteenth century stuff, but a lot of this type of neglect is happening around the world. Members should go around Perth to see the misery and many people becoming increasingly miserable. When members opposite have this proposed legislation working effectively, they will send people down that path. We have nothing like the deprivation described by the cardinal, but it is found in other countries, such as the one praised by the Minister for Labour Relations after his visit.

This was a pretty good royal commission because it exposed evil; its report reads -

> There was a common practice of drawing loads by means of the girdle and chain. Children, boys and girls, had a girdle bound around their waist, to which a chain was attached. In this way, going on all fours, they had to draw the cart through narrow and damp passages; their sides were blistered by the girdle, their backs were kept bent all day, and the pains they endured were sometimes intolerable.

That is what happens with freedom of contract, which members opposite stand for - they know it. Hon Derrick Tomlinson laughs at human misery because he enjoys creating it!

Withdrawal of Remark

Hon DERRICK TOMLINSON: I find that remark offensive and I ask for it to be withdrawn.

Hon N.D. GRIFFITHS: I withdraw.

Debate Resumed

Hon N.D. GRIFFITHS: Civilisation has a very thin veneer. It should be guarded and cherished as it is very easily discarded. Humankind has been around for a long time and many so-called civilisations have risen and fallen. It

seems that very few societies in human history have been fair. For most of its history, Australia has been a fair society. However, it is not a society which can be continually attacked by stupid and evil measures and continue to remain civilised. This legislation has caused outrage on the part of many in the community who normally do not raise their voices at all, other than to cast a vote during elections to choose their representatives. Australia is a far more fortunate country than many others.

Other countries which are civilised like Australia have fairness. Civilised countries have something else in common - a substantially democratic system of government with an effective trade union movement; they go together. When I refer to a democratic Government, I mean a functioning one, not one which is democratic in name only.

Western Europe is comparable with us, although the United Kingdom has slipped behind at a fast rate - it now has been given hope. If we look at the rest of the world, for the most part we see not much is on show. Those parts of Canada, such as British Columbia, with a reasonably effective trade union movement have a society in which people have a decent sense of worth and standard of family living. Human misery is inflicted in places led by people like members opposite.

Two years ago, a change in government occurred in the Province of Ontario where roughly the equivalent of the ALP in Canada, the New Democratic Party, lost government. It was replaced by people who characterised themselves as economic rationalists: They let contracts and cut government expenditure and attacked the trade union movement. In fact, before they were in office for a few weeks, they cut pensions by 20 per cent. I suppose members opposite are not as bad as some others. However, the trade union movement in Ontario has never been as strong as that in Western Australia.

Perhaps I was a little pessimistic in my earlier comments. Notwithstanding this Bill, the trade union movement will survive because the people of Western Australia are behind the unions. Members opposite have less than four years to go in office, and the electorate will want people who defend democratic principles in office at the next election. People will remember and the unions will survive. Members opposite will not be well remembered in history; they will not be famous, but infamous.

What sort of a society do they want to make - one with increasing crime? Since the policies of members opposite were implemented, that is how the community operates. In recent times great reliance has been evident on the approach to treat people as things rather than human beings, and a notion of market forces to apply rather than a proper sense of human values and fairness in dealing with each other. We have had increasing alienation, crime, despair and misery.

What sort of society do those who support this Bill want Australia to be? Do they want a society like the one with which Mr Kierath is so enamoured? He came back recently from a trip, of all places, to the People's Republic of China and made some favourable comments about its industrial relations system on his return. I commented earlier about a free trade union movement, not one which is a bosses' or Government's trade union movement. The Bill creates the potential for a Government's trade union movement to be created. Those opposite who have a totalitarian state of mind have done a con job. They want to tell people what to do rather than engage in useful discourse to resolve whatever difficulties may arise through negotiation and proper democratic means.

I do not know whether those opposite are concerned about what is good for the people of Western Australia or what propels people to bring in this sort of a Bill into the Parliament which has been elected by the democratic processes. I know there has been talk about a mandate, but no reasonable person accepts the view advanced by those opposite. Over the past few weeks members of the public have continually expressed outrage because of their view that matters should proceed on a moral basis. In passing, I mention the senate vacancy and the fact that the composition of this House will change shortly.

I do not know whether everyone in Western Australia is aware of the sitting hours of the Legislative Council. Before we changed the sessional order, we moved to adjourn at 6.00 pm on Thursdays. A couple of weeks ago we changed the sessional order so that we started at 11.00 am, rather than at 2.30 pm, on Thursdays. That sessional order has been changed this week, but previously we moved to adjourn at 5.00 pm. As we know, we were sitting longer to advance these matters. That is a matter of great concern to the people of Western Australia. Reasons have been expressed by me and others about why this debate should bring about a change in the sessional order. This Bill is being discussed in the context of the outrage people are expressing, not only to Hon Tom Stephens and me but also to members opposite, about the policy of the Bill.

What are those opposite trying to achieve? I am fearful of the consequences. I have given my view of the likely consequences if this matter is not rectified. Just who is behind this Bill? Who is supporting it? We hear announcements through the media organs of some groups. Apart from elected representatives of the Liberal Party,

I have not spoken to anyone about this matter who is in favour of it. Although I have not been lobbied by the Chamber of Commerce and Industry of Western Australia, I understand it supports this legislation.

Hon Bob Thomas: The leader of the Chamber of Commerce and Industry supports it.

Hon N.D. GRIFFITHS: Hon Bob Thomas supports the view that the leadership of the CCI is in favour of the Bill, and I think he is right. Reference has been made to employers, many of whom are decent people.

Hon E.R.J. Dermer: There is not too much internal democracy in the Chamber of Commerce and Industry.

Hon N.D. GRIFFITHS: Perhaps it should have secret ballots. I know some people in this Parliament came from its ranks. The membership of the Chamber of Commerce and Industry is widespread, but I am not aware that the membership has been consulted. However, pronouncements are being made on behalf of the Chamber of Commerce and Industry that some people who have an involvement with it agree with this evil Bill. I do not know how to characterise them. I suppose I could describe them as academic, market force groupies. They seem to be of that ilk. They do not seem to be people who have practical experience of running a business, of employing people, of dealing with employees in a reasonable and proper way. Employers and employees work best together in a framework of fairness, and fairness comes about with the effective involvement of the trade union movement. People who have any experience of working with those ingredients will have nothing to do with a measure such as this, unless they are stupid or evil.

That is one category of people who may be in support of this Bill. Then there are those who are servile, servants of corruptive wealth, who will do anything on behalf of their masters. We know what kind of people they are and, unfortunately, we come across them from time to time. It is always distressing that some people will do anything for their own selfish purposes. Some people do not like others, and I think we have had some experience of their philosophies. They believe in the market, that people are commodities. According to their view of the world, a worker is not a human being; that person is a unit cost in production. Those sorts of people go along with the proposition that there is no such thing as society. They do not care about our society.

Some people believe in the master and servant relationship. They are very fond of the reflective way in which they reminisce over the events of previous centuries. They tend to be snobs and to look down on others, make silly remarks and discriminate without any proper basis. They do not treat people as human beings; they do not encourage human values. They have a view of human nature which I do not share. They also do not share the traditions to which Hon Tom Stephens referred so eloquently. They see human beings as being as bad and as evil as they are and as these policies they support are.

Why do some people want to do such damage to our society, especially in Western Australia, which should be happy? We have everything going for us. We are a young society. We have a wonderful climate. The people here have the opportunity to enjoy recreation on the cheap. We have great resources. We have a skilled work force. Mostly we get on with each other. In a society like ours, it does not matter where people come from. We all rub shoulders at the footy. Our children play teeball against other people's children, irrespective of what the parents do. This society functions.

This Bill is about destroying that society. I do not know why those opposite want to do this. The second reading speech is similar to the Bill. I picked it up, read it and threw it down in disgust. There were words in the second reading speech about how the so-called pre-strike ballots - it is not much of a ballot; there is nothing democratic about it in terms of the process, nothing practicable about it - contained a process to prevent strikes. This process will not give people a fair, practical ballot, but will prevent strikes. I do not think I have to quote from the second reading speech because I am sure everyone in here will have read it. However, I read somewhere in that speech that this legislation would minimise strikes. Those opposite are using it as a sugar coating on a poison pill. Those opposite say that we must minimise strikes in Western Australia. The rest of Australia will be infected by this philosophy if this legislation is passed. Strikes in Western Australia are not a problem.

It is fascinating that in an era of minimal industrial disputation a measure is introduced supposedly to lower the incidence of disputation and, because of its evil nature, an immediate result is an increase in disputation. Not only is this a stupid measure because of its effect on our society, but it is also very evil. I suppose it is evil because members opposite do not like the idea that, for the most part, Australia was extremely well governed for a considerable period as a result of a very effective partnership between the Australian Labor Party and the trade union movement.

HON E.R.J. DERMER (North Metropolitan) [5.51 pm]: The appropriate starting point for the examination of the Labour Relations Legislation Amendment Bill is the Minister's driving purpose. In order to understand that purpose, we must examine his words and deeds. Early in his career - on 8 July 1993 - the Minister said -

> Any society which holds dear the democratic principles of fairness and justice must provide protection of the weak against the strong, and this applies as much in employment relations as elsewhere.

They are fine sentiments if we can trust them. If working Western Australians could trust them, they would have every confidence in their future well-being. As a representative of working Western Australians - particularly those in the North Metropolitan Region - if I could trust those words, I would be happy working with the Minister. We could work together to enhance productivity and peaceful and harmonious relations in Western Australian workplaces. Sadly, when we examine his deeds, we see that the Minister for Labour Relations is totally untrustworthy. Any trust in the sincerity of these words has been systematically dismantled by his deeds. The Minister's speaking of fairness, justice and protection of the vulnerable is by far the most twisted irony that any of us has heard in public life.

When the Minister first took the solemn oath of responsibility for his portfolio, the labour relations system was first class, and at its core was the Industrial Relations Commission. It is interesting that the commission's authority and responsibility are based in the Industrial Relations Act 1979. I note that this system has its foundations in the Charles Court Government and that it is his son's Government that is undermining it. I mean "foundation" in the modern sense; obviously the foundations of the system go back much further.

It is natural that from time to time disputes will arise between employers and employees as a result of differing interests. The first duty of the Industrial Relations Commission is to endeavour to conciliate such disputes. The commission seeks the common ground between employer and employee through negotiation and conciliation. Most often, disputes are resolved in a way that enhances the productivity of the workplace and its fairness. It also ensures that there is fair pay for the work of the employees and a fair profit for the enterprise of the employers. Whenever the conciliation proves ineffective in resolving differences, the commission provides an excellent forum for their arbitration.

The commission is independent; the commissioners, once appointed, have an independence akin to that of the judiciary of this State and nation. It provides a balanced and fair forum for the arbitration of disputes, and will hear arguments from employer and employee representatives.

Industrial awards have always been the most important product of the commission. Industrial awards provide a public definition of the remuneration and conditions to which an employee is entitled in return for the performance of specified duties for the benefit of the employer. By virtue of being a public definition, an industrial award has the essential qualities of being open, accountable and enforceable. Of course, an industrial award is never a stagnant constriction on an evolving and dynamic workplace, and amendments and adjustments can always be achieved under a system that works well; that is, returning the consideration of that award to the commission.

As is sadly evident in his deeds and the Bills he has introduced in this Parliament, the Minister for Labour Relations' driving purpose is the removal of the balance and fairness that he found in the State's labour relations system when he took that oath of responsibility to the people of Western Australia. His purpose is to leave the working people of Western Australia without representation, without effective power of negotiation, completely vulnerable and exposed and totally at the disposal of the unchecked will of their employers. Hon Nick Griffiths very eloquently explained the reason negotiation by an employee on his or her own behalf is no negotiation at all. I recommend attention to and consideration of his contribution on that point.

The Minister's first assault on the working conditions of Western Australians was quite insidious. The Workplace Agreements Bill, introduced in July 1993, was presented in the guise of choice and flexibility. That legislation established the provisions of workplace agreements as contracts between employees and employers that defined the duties of employees and the conditions of employment.

Whereas the terms of an industrial award can be determined by the IRC, effectively enforced by the commission's making recommendations that then go to the Industrial Magistrate's Court, if a workplace agreement condition is breached by the employer, the only form of redress is to resort to common law, because it is effectively a common law contract.

I ask members to consider the example of a labourer contracted to a large mining company where that company has in some way breached the workplace agreement. I remind the House that once someone has signed a workplace agreement they lose the choice of going back to the protection of the award. Because the agreement is a common law contract, the redress is to go to the courts to find justice. I ask members to consider the plight of that labourer taking on a large mining company with extensive financial and legal resources at its command. If that notion were not so tragic, it would be laughable. I am not here to laugh; the notion is tragic and it is the essence of what the Minister for Labour Relations is endeavouring to achieve.

I would like members to contrast this notion with the notion of someone on an industrial award who finds that his or her employer is not abiding by one of the conditions of that award. That matter can be taken to the IRC, where there is a fair and equitable hearing with representatives of the employer and the employee, and with the commission as an independent body making the final decision.

The Workplace Agreements Act presents workplace agreements as a choice. However, it is a false choice because all too often a workplace agreement is presented to an employee not as a choice but effectively as a condition of employment insisted upon by the employer. Many workplace agreements that I have studied give the employer the absolute discretion to change the rate of pay without any consultation.

Sitting suspended from 6.00 to 7.30 pm

Hon E.R.J. DERMER: I was explaining that the apparent choice offered in a workplace agreement is false, which is widely understood. My estimate is that less than five per cent of Western Australians have signed workplace agreements. That five per cent are predominantly in one of three industries, each of which has a common characteristic which corresponds to the reason the employees have signed workplace agreements. The characteristic is a lack of effective choice for the employee in the face of an employer's insistence. The first industry is the state public sector where, sadly, the ideological fixation of the Minister for Labour Relations prevails. The second is the retail industry where, given the tragically high level of youth unemployment, young prospective employees are in no position to argue with an employer who insists on their signing a workplace agreement. The third industry is mining, which is intrinsically unstable, with short to medium term projects. One can understand why employees in that industry are in a weak position and predominantly they have signed workplace agreements. The point remains that only five per cent of Western Australian workers have been misled by the false choice offered by workplace agreements.

We must look at what the Minister for Labour Relations offers in place of the security of conditions in the award system. The Minister has offered to the working people of Western Australia a public insult in the form of the Minimum Conditions of Employment Act, which was presented to the Parliament in July 1993. The core of the Minimum Conditions of Employment Act is a wage fixed not by a tribunal or any body which listens to representation, but annually by the Minister. What was the Minister's most recent offering in defence of the most important single working condition, which is a wage? His most recent offering was $278.80 per week. The *Government Gazette* of 29 October 1996 gave the minimum weekly rates of pay order for 1996. Under section 15 of the Minimum Conditions of Employment Act, the Minister for Labour Relations arbitrarily fixed the minimum rate of pay for employees of 21 years of age or more at $322 gross. Of course, after tax that $322 gross translates into $278.80 per week take home pay. That is the Minister's excuse for the protection of the conditions of workers of Western Australia. That $278.80 for a full week's work is a base insult. It cannot be described in any other way. That compares with $235.85 as the poverty line for a single person, as determined for the December quarter of 1996 by the Melbourne Institute of Applied Economic and Social Research.

In 1993 the Minister also produced the Industrial Relations Amendment Bill. Its major effect was to remove anyone who signed a workplace agreement from the protection of the Industrial Relations Commission. It stopped the commission with its intrinsic balance and fairness being able to have any role which might otherwise have ameliorated the worse excesses of workplace agreements. The Minister for Labour Relations on taking responsibility inherited a fair, open and balanced system based on the independent adjudication of equally heard arguments. With each of the Acts carried in 1993 the Minister sought to replace this fair system with the reduction of employment conditions for Western Australian workers to the barest possible minimum, and by his own arbitrary decision is that bare minimum set.

Having established both the Workplace Agreements Act and the Minimum Conditions of Employment Act, each with its own pernicious complement of designs to undermine the conditions of working Western Australians, the Minister for Labour Relations was not content. Western Australian workers who were injured in the course of fulfilling their duties to their employers, at that point had access to common law for compensation for injuries. This just and natural right was anathema to the Minister. He moved further legislation to withdraw this right. The Workers' Compensation and Rehabilitation Amendment Bill 1993 effectively withdrew this right from the majority of Western Australian workers. Only injured workers who can demonstrate an economic loss of more than $100 000 or a 35 per cent total bodily impairment have any access to common law after the enactment of that legislation. That means that the vast majority of workers do not have access to common law. Looking for consistency in the thinking of the Minister for Labour Relations is often challenging and always instructive. The Minister sought to withdraw the Workplace Agreements Act from the jurisdiction of the Industrial Relations Commission and introduce it into the field of common law. On the one hand, the Minister has an enthusiasm for common law; on the other hand, he has a marked aversion to common law. There is one consistency and one consistency only. The Workplace Agreements Act and the Workers' Compensation and Rehabilitation Amendment Act have one thing in common: They are designed to

reduce the rights of Western Australian workers. An assessment of those Acts to look for the common point - to reduce the rights of Western Australian workers - is very instructive as to the Minister's real purpose. The Minister was not content with depriving Western Australian workers of their access to common law in the event of injury at work.

The Minister's discontent was aggravated, because the worst excesses of the Workplace Agreements Act and the Minimum Conditions of Employment Act were not biting as the Minister had hoped. The commonsense of most employees, the good and effective work of the trade unions representing employees, and even the enlightened self-interest of wise employers who understood the importance of good industrial relations for productivity, were combining to dull the most savage cuts, the most savage impact, of each of the Minister's legislative attacks. Faced with this resistance to his will by those in our community with the best interests of the community at heart, the Minister for Labour Relations found what has now become his pattern, his obvious answer to resistance to his will in the community: He brought down more legislation.

The infamous second wave was the next line of attack on the working conditions of Western Australians. It was first presented in Parliament in September 1995. It is interesting that at this point, the Minister's colleagues, afraid of the extreme nature of the proposals, took steps to ameliorate this by voicing their objection. Relatively wise counsel prevailed in Cabinet, and the Industrial Relations Legislation Amendment and Repeal Bill was eventually enacted in a moderated form after the Minister was forced to re-present the Bill in November 1995. Even in its moderated form, that Bill when enacted inflicted real damage on working Western Australians and on our industrial relations system. It restricted the access of union officials to time and wage and other records. It also gave employers the unilateral right to determine to which superannuation fund an employee's payments should be made. Under the award system, superannuation was a component of an award and was, therefore, quite rightly, the subject of negotiation, as are all components of awards. Despite the constraints of his colleagues, the authoritarian nature of the Minister's approach to his responsibilities for labour relations was still evident in that Act.

However, many Western Australians had seen a degree of moderation of the Government's approach to labour relations, and they were relieved at that apparent moderation in the Government's dealings with that Act. Most importantly, the Premier's commitment that no further industrial relations legislation would be introduced without the consent of all concerned offered a great deal of relief to many Western Australians. Sadly, all sense of relief and comfort disappeared immediately after the federal and then state elections in 1996. After the second election, we saw that rather than real moderation having prevailed upon the Court Government, it was nothing but a political ruse to achieve a political advantage.

The Minister for Labour Relations remained discontent. It is probable that he was scowling, resentful of the temporary restraints that had been applied by his colleagues to his driving purpose. The product of the Labour Relations Minister's seething discontent was, of course, the Labour Relations Legislation Amendment bill. The perverse character of that Bill is consistent with its twisted conception in the Minister's mind, based on his seething discontent. The ideologically fixated objective of this Bill is to ensure the worst possible working conditions for Western Australian employees.

The Minister's desire to reduce workers' conditions had been frustrated by the commonsense of most workers and the resilience and hard work of those in the trade union movement. The Minister had become increasingly frustrated, because the impact of each legislative attack had been dulled whenever the workers remained united. Western Australian workers understand that, as individuals, there is no balance in negotiation on industrial relations, there is no fair go, there is no fair payment for hard work, and there are no decent conditions. Western Australian workers further understand that, as individuals, they are in no position to resist the arbitrary will of the Minister. For all these reasons, Western Australian workers have chosen to maintain their free association in trade unions. They understand fully that united they can achieve collective bargaining and that collective bargaining is essential to improving the quality of their working conditions.

Western Australian trade unions have worked hard and effectively in defending their members. The unions have demonstrated intelligence and ingenuity in sustaining the defence of their members, despite the successive legislative attacks by the Minister for Labour Relations. The unions have worked hard to maintain the industrial award system, and the take up rate of approximately 5 per cent for workplace agreements is good evidence of the effect of this hard work. This good work of the union movement in Western Australia has frustrated the Minister for Labour Relations, frustrated the design of his successive legislative attacks, and frustrated his driving purpose to reduce Western Australian workers to the circumstance of subsistence and subservience.

The Labour Relations Minister has sought relief from this mounting frustration in the solution which is most obvious to his mind. That solution is to destroy the trade union movement and, by so doing, destroy the effective defence of working conditions for employees in this State. This destructive solution is exactly the purpose of the Labour

Relations Legislation Amendment Bill. It is my judgment that the Minister will not succeed in this purpose. He will not succeed in his desire to destroy the trade union movement in this State, although I have no doubt that this is precisely the objective of the Minister in presenting this Bill.

I have every confidence in the resilience of the trade union movement, in conjunction with the loyalty and commonsense of trade union members, and that the unions will sustain the fight despite the successive legislative attacks by the Minister. Whatever the outcome of this debate, and whatever legislation the Minister may put forward in future, the unions and the commonsense of Western Australian workers will prevail in the end. Although the Minister inherited a decent system of labour relations, he may succeed in creating a protracted war of attrition. Within that sad outcome, the resilience of the Western Australian trade union movement will greatly exceed the resilience of the Court Government.

It is important that we examine the Minister's new designs in his latest work, the Labour Relations Legislation Amendment Bill. The right to take industrial action is an essential component of the repertoire of trade union negotiators. The fact remains that industrial action is always an option of last resort. However, this option adds substance to the negotiating position of trade union officers and representatives. A wide range of industrial action is available, such as work to rule, where employees stick to working strictly in the area that is designated their responsibility and do not venture into working beyond that which is their normal pattern. That is one end of the spectrum of possible industrial action. The other end is the rarely used decision to withdraw labour. The withdrawal of labour is rarely used in this State. If it were not for the provocations of the Minister for Labour Relations Western Australia would have an excellent reputation for industrial harmony and peace.

To understand the Labour Relations Legislation Amendment Bill we need to look at the distinction between the Minister's words and his deeds. The Minister has presented the Bill to the public of Western Australia as simply enforcing a requirement that before unionists go on strike they need to have a pre-strike ballot. However, when one looks at the detail of the Bill one gets a totally different picture. Within the Bill the word "strike" was originally applied to virtually any industrial action, whereas the commonly understood notion of a strike in the Western Australian community is the withdrawal of labour. A ballot before a withdrawal of labour may be seen by some to be a reasonable proposition. The deception is that this is not the main purpose of the legislation. When one studies the legislation thoroughly it is a deliberate collection of designs with the purpose of stopping trade unions undertaking their good work in defence of their members.

As originally presented the Labour Relations Legislation Amendment Bill sought to make a pre-strike ballot necessary for any industrial action. The Government's amendments announced on 5 May have reduced this slightly and the only industrial action one can have without a pre-strike ballot is that involving no more than four employees unless the employees either have the written permission of their employer to conduct the industrial action or they face an imminent and serious health and safety risk.

The mechanisms contained in the Bill for the conduct of a pre-strike ballot are deliberately designed to be absurdly difficult. They are full of measures to delay the process and to prevent union members from conducting a ballot. The real effect of these requirements would be to make practical industrial action close to impossible. Where employees saw industrial action as necessary they would need to pre-plan by seven weeks for the impact of their industrial action, the seven weeks being the time that it would take for a pre-strike ballot to be conducted. Even then there is no guarantee as many provisions in the Bill are designed to delay such a pre-strike ballot, so it is impossible to predict when industrial action would apply.

The pre-strike ballot in the Bill before us is a recipe for confusion in industrial relations. It will confuse negotiations for both the employer and employee. This cannot be good for productivity or harmony in our workplace. The common understanding of most Western Australians about a ballot is that if the number of yes votes cast for industrial action is greater than the number of no votes industrial action would be endorsed. However, the view put forward by the Minister of how a pre-strike ballot would work does not fit with the common understanding of a ballot. The Bill requires that the number of yes votes cast for industrial action must be greater than the total of the remaining people who are entitled to vote. If I vote yes that would count; however, if I do not vote it is counted as a no vote.

Hon Peter Foss: Half a no vote.

Hon E.R.J. DERMER: This is a distorted mechanism. It is not a democratic system by any means. It is a stacked and distorted ballot.

Hon Peter Foss: An amendment is coming in to change that.

Hon E.R.J. DERMER: I am pleased to hear it, and it is not before time.

Hon N.D. Griffiths: The member is talking about the second reading speech not about the amendments.

Hon E.R.J. DERMER: I have seen a number of amendments and I have accommodated those in my comments; however, I have not seen that particular amendment. I look forward to seeing it.

Hon Graham Edwards: Do not believe it until you see it.

Hon E.R.J. DERMER: Yes, I want to see it in black and white.

Hon Peter Foss: I will withdraw it any minute.

Hon E.R.J. DERMER: The other deception involved is that the Minister has given the public the perception that the ballots are secret. The Bill does not guarantee that ballots will be secret. It has a form of words that the ballots will be secret as far as is reasonably practical. Those words are deliberately loose and vague. They compromise the guarantee of secrecy in a pre-strike ballot. Those words give unscrupulous employers - sadly there are a number in our community - the opportunity to intimidate their staff into voting no in a pre-strike ballot.

The other problem with the pre-strike ballot is that any participant has the right to have access to the list of those who are eligible to vote. Those eligible to vote in a pre-strike ballot are the union members. The employer will have a list of union members. Sadly, employers in our community will take intimidatory action against their staff to discourage them from joining the union. This is facilitated by this Bill. Any reasonable Western Australian would assume that once an industrial action received the endorsement of a pre-strike ballot it would be free to go ahead. However, the Bill also provides the Industrial Relations Commission with the power to order that industrial action stop; that is on application by almost anyone.

Trade unions in our community are free associations of citizens. The unions are doubly accountable to their members because members have the right to choose whether they will join the union or not. Secondly, they elect their officials through fair and democratic election. The majority of trade union members elect their officials through the auspices and good offices of the Western Australian Electoral Commission. This Bill is designed to disrupt union democracy.

I have already described how the outcome of the pre-strike ballot is distorted - I look forward to receiving the amendment that may change that. The convoluted process required for a pre-strike ballot may inadvertently lead union officials to contravene it. Any contravention may lead to the disqualification of that official from holding office with the union for up to three years. In that event the Industrial Magistrate's Court would have the power to fill that position. Rather than being represented by a freely and democratically elected union official someone will be imposed from outside after the elected official, who has the confidence of members, has been disqualified. This outcome is a clear interference in the right of freely associated union members to democratically elect their own officials.

The Labour Relations Legislation Amendment Bill contains an extraordinary further attack on the free and democratic decision making of union members. This Bill proposes to empower the chief industrial relations commissioner, on application, to strike out a state union deemed to be party to a federal award. This means that the right of employees to be represented by their chosen union can be cancelled and that the employees can be forced to be represented by a different union. That is an outrage. Rather than being members of a union of their choice, and seeking the natural haven of the flawed but relatively secure federal industrial relations system, the union members by an arbitrary decision can have their union membership changed to another union.

The most important part of regular union work is not industrial action. It is the visits by union officials to workplaces to ensure that awards and workplace agreements are complied with by the employers. The Labour Relations Legislation Amendment Bill entails a number of unnecessary hurdles which the union official needs to conquer before gaining access to information. It is clear that the Minister's aim is to hinder the good work of the unions, looking after their members. The driving purpose of the Minister for Labour Relations is the destruction of effective protection of the employment conditions of Western Australian workers. That is the common feature of each wave of his legislation.

My confidence in the commonsense of Western Australian workers and the resistance of the Western Australian trade union movement is such that I remain confident that the Minister will not succeed, regardless of the outcome of this debate. The great sadness is that in his pursuit of this purpose he will inflict damage not only on Western Australian workers and their families but also on the economic and social fabric of this State. Given that the destruction of the effective protection of employment conditions is the driving purpose of the Minister for Labour Relations, it is salutary for us to examine employment conditions in a community where those conditions are without protection.

The July 1996 edition of the Victorian publication "Social Action" contained an insightful description of employment conditions in foreign owned enterprises in the relatively prosperous southern industrialised provinces of the People's Republic of China. The article describes the conditions of employment. Workers are required to pay a deposit upon recruitment, which usually adds up to two or three months' salary. Workers cannot reclaim the deposit if they resign

or are dismissed. Workers' identity cards and temporary residence permits are confiscated - workers are virtually held in custody, because they cannot go anywhere without their identity cards. Workers are paid less than the minimum wage. A survey of 14 foreign owned enterprises in the electronics industry in Guangdong province revealed that eight enterprises - that is, over 50 per cent - were paying wages well below the minimum, and up to 32 per cent lower in one case. Overall the wages were 18 per cent below the minimum. Workers are usually paid one month in arrears so that they are discouraged from resigning. Some workers receive their wages once every couple of months and some enterprises pay only the basic living allowances. They work overtime with little or no overtime payment. Workers must get management approval if they want to go out during weekends and holidays. In practice, only a few of them can go out as there is a limited quota. Foreign owned enterprises usually do not offer holidays and workers do not apply. While overtime is limited to 36 hours per month, a survey in Guangdong revealed one foreign owned enterprise working 222 hours, with no proper payment for extra time. Toxic chemicals are used without regard to workers' safety. This is particularly critical in the shoe industry, which uses large quantities of the solvent toluene. Badly equipped factories, without proper ventilation fans, have led to leukaemia, and infertility in female workers. Inadequate safety measures for fire prevention have resulted in hundreds of workers losing their lives in industrial fires. Harsh management, using physical and verbal abuse against workers, is common. The article also refers to workers being placed in cages as a punishment. The article's description of these appalling conditions includes the imposition by most factories of a fixed time limit for going to the toilet, usually three to five minutes, with workers who exceed the limits being subject to fines. In one factory in the Meilin industrial zone workers may not have a drink of water during working hours. They are fined for having a drink of water.

I recommend this article to members, particularly those opposite. Needless to say, such appalling working conditions are possible only because of the brutal repression and persecution of any free organisation of labour by the Government of the People's Republic of China. It is sad to consider the obvious parallels between the driving purpose of the Minister for Labour Relations, a senior member of the party founded by Sir Robert Gordon Menzies, and the oppressive policies of the People's Republic of China. That must be very sad for the vast majority of Liberal Party members and supporters.

Last week I had occasion to reflect on the democratic credentials of the State Liberal Government. We must all hope that the Minister for Labour Relations does not share the Chinese vision of a flexible work force. I had hoped that his recent visit to that nation would not assume the nature of a labour relations fact finding mission. Therefore, the Minister's press release on 28 April was of serious concern. The Minister stated that our industrial laws must be improved to boost the State's productivity and to secure jobs growth in a highly competitive and international regional economy. He also said 1.2 billion people in China are producing very high quality products with wage rates one-tenth of those in Australia so we must be creative, innovative and more productive if we are to compete. I would not have believed such a statement had I not seen it in black and white. The statement was released immediately following his return from his inspection of those appalling social conditions and complete lack of safe working conditions in China.

Hon N.D. Griffiths: He will apply the guillotine to wages.

Hon E.R.J. DERMER: That is right.

I will conclude my remarks by referring to the conundrum which often exercises the minds of economic rationalists in Australia: How will the Australian economy compete with neighbouring economies such as that in China? We must all hope and pray that the Minister for Labour Relations does not believe that he has the answer to that conundrum.

HON JOHN HALDEN (South Metropolitan) [8.07 pm]: In any debate relating to industrial relations it is interesting to reflect on the history of other countries and tie that in with what may happen in Western Australia, assuming that this legislation is passed. I make no bones about it; I intend to be provocative. Probably the most provocative step ever taken in the industrial relations arena, dealing with unions and unionists, were the 1933 enabling Acts in Nazi Germany. As a result of those enabling Acts unions were deregistered and workers were forced into a union of Hitler's choice. There seems to be some similarity here. Silencing the union movement was Hitler's most effective move to ensure that the Nazi party held power and any other political party ceased to exist. There was no way the union movement could be tolerated. It was outlawed from about 2 May 1933; and it could not fund any opposition to Nazi Germany in a political sense. Union officials were gaoled at the whim of Nazi officials. Hitler used the powers of the enabling Acts to introduce forced labour. He had complete control over workers' rights to be involved in any industrial action.

I turn now to page 406 of *Hitler* by Joachim F. Hest which reads -

> In spite of all these soothing assurances, each of the five articles of the Enabling Act smashed "an essential part of the German Constitution to smithereens." By Article 1 legislation passed from the Reichstag to the

> administration; Article 2 gave the government power to make constitutional changes; Article 3 transferred the right to draft laws from the President to the Chancellor; Article 4 extended the application of the Enabling Act to treaties with foreign states; Article 5 limited the validity of the Act to four years and also to the existence of the present administration.

Page 410 of the same book states -

> The Enabling Act concluded the first phase of the seizure of power. It made Hitler independent of the alliance with his conservative partners. That in itself thwarted any chance for an organized power struggle against the new regime . . . The parliamentary system has capitulated to the new Germany. For four years Hitler will be able to do everything he considers necessary: negatively, the extermination of all the corrupting forces of Marxism; positively, the establishment of a new people's community. The great undertaking is begun. The day of the Third Reich has come!"
>
> Actually, Hitler had needed less than three months to outmaneuver his partners and checkmate almost all the opposing forces. To realize the swiftness of the process we must keep in mind that Mussolini in Italy took seven years to accumulate approximately as much power.

I do not suggest that what we are debating now is of the same dimensions as that. One of the catchcries of Nazis at that time was that they had a mandate to do it. However, the mandate did not extend to abuses of the size and extent Hitler proposed. Sure, he had a mandate, but a mandate is not only the right to do what one can with the blunt instrument of the numbers in a Parliament, but also an obligatory right to do what is a difficult task; that is, to ensure that on all occasions the rights, privileges and obligations of minorities are protected. No matter how this legislation is read, there must be concern. I will exemplify that further. The rights, obligations and privileges of minorities are under great challenge by this legislation, although not to the same degree as existed in 1933. I do not believe any fair minded conservative or progressivist could possibly tolerate some of the provisions in this Bill.

As someone who is unashamedly pro-union, I turned to history to suggest how we could deal with this legislation. I wondered how people would avoid the legislation. How would one get out from underneath what this legislation proposes to do? What vehicle, what legitimate tactic or means, would one use? I thought it was fairly clear. This Bill deals with some clear and distinctive phrases that should be analysed. The Bill deals with organisations, which are defined in the legislation as unions. It deals also with employee organisations, unions' employees, members of unions, officers of unions, and employees of a union entitled to participate in a representative capacity. It also mentions the Industrial Relations Commission and the Minister for Labour Relations. These are the main players in this Bill. How does one get around the provisions of a Bill that has as its key points all the way through it those people or organisations? How does one extract oneself from this draconian legislation and how does one do it legally?

In proposing this legislation the Government has not looked at history. This is not the first time this tactic has been used against unions internationally. How have unions survived and how will they survive in Western Australia? I suggest that while keeping their jurisdiction in the industrial arena they will change to the Corporations Law arena. That is the American experience. The unions will do it because they will have to survive.

Without having any consultation with the union movement, I suggest there are ways around this legislation. One could drive a truck through this piece of nonsense. It has not been thought through clearly. How do we get around it? We go to the Corporations Law and establish on the one hand a limited liability company - I will refer to it as the miscellaneous workers company limited - and on the other hand, the miscellaneous workers' union. All that must be done in order to avoid a number of nasty provisions in this legislation is the transfer of assets from one group to the other. I ask members opposite this question: Under part 4 of the Bill, how could the Government control a limited liability company, except by using political donations legislation, as was prescribed federally, or the state legislation? It could not be done - and they are damned fools to think they could do that.

If I can think of a way around this legislation in two days, how smart do members opposite think a bunch of industrial, commercial and corporation lawyers will have to be to get around this nonsense?

Hon B.K. Donaldson: By amendment.

Hon JOHN HALDEN: It cannot be amended because it is federal legislation. That is the other factor.

Hon Peter Foss: The Corporations Law is state legislation.

Hon JOHN HALDEN: It is both. It could not be done unilaterally, and the Attorney General knows it. Of course, the commonwealth law would take precedence under section 109 of the Constitution. One does not have to be smart to know that if this legislation is passed, the unions will manoeuvre to get around it, because it is harsh. I do not

know that they will accept what I say as the way to go, but they will make an effort to get around it. After well over a decade of political expenditure, at both a commonwealth and state level, the associated legislation has been particularly difficult to apply as the lawmakers at the time hoped. This legislation is so easy to drive a truck through that we must ask why the Government is doing this. It is not good, sound legislation. If I can think in two days how people might avoid it, I am sure others march smarter and more legally competent than I could do the same.

I will clarify that for those opposite. Basically, all people must do is transfer the concept of union membership to shareholder. One can purchase a limited liability company relatively cheaply, change the rules of association, and call on levies from time to time to ensure that the limited liability keeps operating.

Hon Peter Foss: You would come under the boycott provisions of the Trade Practices Act.

Hon JOHN HALDEN: I understand that. However, the Minister knows as well as I that there are ways around that.

Hon Peter Foss interjected.

Hon JOHN HALDEN: I can assure the Attorney that they will and they have in the United States of America. They will transfer from an organisation with members to one with shareholders, from union executives to boards, and from one annual general meeting to another. There is no difference. The board can control the distribution of shares. Workers could be invited, depending on the articles of association -

Hon Peter Foss: You must put out a prospectus.

Hon JOHN HALDEN: I understand that. Is that really difficult? Of course it is not.

Hon Peter Foss: It is expensive.

Hon JOHN HALDEN: I am sure that national unions could easily provide the funds for that, bearing in mind that their survival is at stake. The limited liability company could expand by providing services for workplace agreements and for people entering contracts of employment.

Hon Peter Foss: We would support your suggestion, but you would not have exclusive coverage.

Hon JOHN HALDEN: At the end of the day if unions are pushed into a corner, they will adapt and survive. A tax on unions is not a new international experience. It does not require great knowledge to be aware that unions must adapt in order to survive, and they will. In spite of the Attorney General's comments, I am sure he knows as well as I that unions will do that. They will use every opportunity under existing law to do so. More importantly, they will remove themselves as much as possible from the jurisdiction of the State and move to the federal jurisdiction. They will use whatever rights, obligations and provisions are available under state industrial legislation to ensure their continuation, but they will have more protection at the corporate level.

I now refer to the fifth edition of *Australian Corporations Law Guide*. I compare the statutory duties of company directors with those proposed in this Bill for employees of unions. Section 232 imposes a number of duties on company officers: They must act honestly, exercise care and diligence, not make improper use of insider information and not make improper use of their position. Under the Labour Relations Legislation Amendment Bill the penalty for breach of that provision is up to three years' loss of employment in the union for which the employee works. The penalty for breaching section 232 under company law is prohibition on managing a corporation, a fine of up to $200 000, an order for compensation to the company for any loss suffered, an order to pay any profits to the company, and any punitive damages the court sees fit to impose. In addition, the breach will constitute a criminal offence if it is committed knowingly, intentionally or recklessly. That is novel. The deeming provision does not have that concept available to it. It further states that a person shall not act dishonestly or with the intent of making a gain or deceiving or defrauding someone. If a union official is barred for three years, and continues to be involved with the union, he is considered to be in contempt of the Supreme Court. The penalty for that offence is unspecified. However, a company director who does not act honestly or exercise due care and diligence, is involved in insider trading or makes improper use of his position, is liable under company laws for a maximum penalty of a $200 000 fine and/or five years' imprisonment. I compare that to an unlimited and unspecified penalty by the Supreme Court to fine or gaol a person for as much or as long as it thinks fit.

Why would people stay under the regime of this Bill when they have the opportunity to opt out in certain areas? People would not be that stupid, but members opposite have not understood what will happen. They are mad if they think unionists and their legal advisers are stupid. Members on this side are serious when they suggest that clauses of the Bill should be deferred. It is not necessary to be a Rhodes scholar to understand what the unions' tactics will be the moment this Bill is proclaimed. What would be the effect of this legislation if an organisation decided to move from the industrial relations arena to a combination involving corporate law and the industrial relations system where it suits the union?

Part 2 of the Bill deals with duties of officials of organisations. If the union is reduced to a shell company in a commercial sense the duties of its officers and the implications of this Bill will be significantly reduced. Part 4 of the Bill deals with political expenditure. How many times has it been said that the rules for unions are different from those for companies? The simple answer for unions is to become companies and then come under the auspices of federal and state law dealing with individuals and companies. It would then be necessary to disclose donations of more than $1 500 and get the approval of the board, and ultimately the shareholders at the annual general meeting. Why would the unions stay under the nonsense of the proposed system when it would not cost more than a few thousand dollars to make this change? Of course they would not. They would shift their administrative and financial base from the industrial area to the commercial area and then they would not have this problem.

I am not suggesting that the scenario I paint will overcome parts 2, 3 and 4, but there are ways to ameliorate them. Unions may want to use people individually to selectively strike at the heart of organisations. We should not forget that under the new definition "the individual" is not bound in the same way as two or more workers. We may well find that individuals are used far more selectively and creatively in industrial action.

I will cover part 5 further in my comments in this speech. Entry to work sites and unfair dismissal are industrial matters. I am exposing the duality of this new animal. The union would have access; its limited liability company would not care. It would have no role in that area, but between the two of them a new monster would be created.

With federal awards the Government has tried to simplify the process. For example, it does not want to deal with the Western Australian State School Teachers Union and the national School Teachers Union. One may say it will not go on strike and the other may say it will go on strike. That could cause all sorts of problems.

However, in a new creative environment it will not be a matter of dealing only with state and federal unions but also with corporations which will be predominantly outside the bounds of this legislation, although not in every sense. The Government is creating a new industrial environment and does not know its ramifications. I do not know them, in which case I suggest that most members opposite do not know them. I do not think they have thought about them. They will now have to fight on three fronts.

Hon Cheryl Davenport interjected.

Hon JOHN HALDEN: Exactly. The effort to attain simplicity and attempt to knock off unions by amalgamating them will not work because they will have three fronts. People who are probably far smarter than I am may think there are four fronts. However, unions will not roll over in an intellectual, legal, or industrial sense because of this piece of nonsense before us. They will look at every option for survival.

In putting these propositions tonight I do not speak on behalf of the unions. I speak as a member of this place who took two days to think about how we might stuff up the legislation, to be blunt. I think we can do it with more aplomb and legal knowledge than I have. There are ways around this legislation. Why do we keep saying to members opposite they should consider this legislation far more carefully? They must look at every part of this Bill and its unforeseen consequences. If members opposite do not get it right from their perspective rather than from mine, they will create a monster of greater proportions than they see now.

I refer now to part 5 of the Bill which deals with federal awards. At the risk of breaching a standing order I will quote a little from the Bill although I know that is more appropriate in Committee. Members opposite do not understand the concept of deeming. If they do understand it, any comment I have ever made about their being conservative, fascist or Nazi-like, I meant. If they allow a deeming provision to be incorporated in any legislation, particularly this sort of legislation, they deserve those titles. This Bill deems that if a federal union does something it is deemed, without proof, that the state body knows about it. It can attract criminal penalties. Taking it out of that arena I will give another example of the trend members opposite are setting. Under the Criminal Code if my mother smoked dope and I knew about it, but did not report it to the police, I would be deemed to be equally guilty as she was. Even though I had not committed the offence I would be deemed to be equally guilty because I did not report it. In the history of this nation I do not know of a legal provision which allows for that sort of nonsense. It is unconstitutional and likely to be the most unfair and reprehensible legislation that has ever been passed in this Parliament as a principle. The last time the guillotine was used in here it was a disaster for this place and a financial disaster for the State. There is one provision on which the unions in this State will be able to fight this legislation; that is the deeming provision. No doubt the Attorney General had a hand in this little monster.

Deeming is a creative way of trying to impose the Government's will over federal bodies. Under section 109 of the Constitution that cannot be done. I ask the Attorney General to address the following issue when he responds: One may commit a criminal offence as deemed under this Bill, but have not committed a criminal offence. If one is unable to control the circumstances of that criminal offence or of the offence, how is one guilty?

The Australian Constitution has implied rights - it has more than implied rights it has clear rights - about how one can be found guilty of a criminal offence, and one cannot be found guilty of it to be deemed guilty of it. There could be nothing more disgusting, more arrogant, more nonsensical or more outrageous perpetrated by the Parliament on the people of Western Australian, or on any group whatsoever, than to deem them to be guilty of having knowledge without the slightest ability to prove it. I could say to a member opposite that I saw him drive his car at 80 kmph and therefore he is deemed to be guilty of an offence. That is an example of what is in this legislation. One is deemed to be guilty. We cannot have a system based on any justice that deems people to have knowledge or deems them to be guilty. Under our system of law we must decide guilt on the basis of proof, evidence and fairness.

The main problem with part 5 of this Bill is that it will be struck down by the High Court. No gathering of wise, fair minded, knowledgable judges could possibly sustain it as being constitutionally valid, bearing in mind our international obligations, which I covered in my speech the other night. The Attorney General may have renewed hope in the High Court. It may be 7:0 and I know one thing, there will be more than four judges who will not allow this kind of deeming principle. This State will probably again waste money on political nonsense. After all, it has been prone to and fond of doing that before.

In spite of what opposition members may think about this Bill, I understand the Government can ram it through the Parliament, and it will. Some government members think there are excesses in the industrial relation system and want a change. In spite of some members opposite wanting a change, they want that change to contain the central principles of fairness, equity, lack of abuse and secret ballots. This Bill, particularly part 5, cannot deliver that. If the Government wants that, it will not achieve it in this blunt way or by the speed with which it has tried to implement the legislation.

I can say with some assurance that the union movement will get around this Bill. It will have to survive and to appropriately defend its members. Clearly, there are ways to do that and I have already said it can be done industrially through Corporations Law. The High Court will play its role. Why is the Government going ahead with this Bill? If it wants to reform the system it will not achieve its aim by enacting the provisions of this Bill. I do not agree with the Government about some parts of the Bill, but if the Government wants to implement them it can do so. The Government cannot possibly sustain a fair argument about parts 4 and 5 or the position that in the long term it will deliver what it wants.

I notice that the Government will amend the unfair dismissal proposal, which is particularly appropriate because as it stands it is draconian. The Government cannot control pre-strike ballots and the role of unions as it would like, because they will be subject to modification and change. If the Government wants pre-strike ballots, the provisions should be fair and should not be excessive as are other parts of this Bill because it will not achieve the outcome it desires. Instead, there will be enormous rancour, expense and division in the community. The Government has the opportunity to consider whether it wants to enact all the provisions in this Bill and accept all the trouble it will bring or whether it will reconsider it in toto or in part. The Government does not have to be too smart to work out how to get around the problems and to determine what hurdles it will have to overcome to keep it in the Statute books.

I actually jumped the queue tonight and I have an important telephone call to attend to. I thank Hon Jim Scott for giving me the opportunity to push in ahead of him.

I do not think this legislation will achieve what the Government wants. This Government cannot control federal legislation, Corporations Law, trade practices law or taxation law and that will be the next move in this chess game. The Government should not play chess. If the Government wants it to work it should get it right now; otherwise to get it right will involve enormous cost.

HON J.A. SCOTT (South Metropolitan) [8.45 pm]: One of the most notable aspects of the Minister's second reading speech is that reasons are given for the proposal to implement secret ballots. However, there does not seem to be any purpose to the rest of the Bill except to make life harder for unions. The Minister's second reading speech commences with reference to election mandates. It reads that the legislation was -

> . . . emphatically mandated by the people of Western Australia, not only in February 1993 but most recently in December 1996.

It has been stated clearly that this Bill was withdrawn before the federal election because of the implications for the federal coalition Government. It was unpopular and it appeared only after the 1996 election. It was not part of the state election campaign. That campaign revolved around a social dividend. Members know what happened to that. When taxes and charges were increased members became aware that the social dividend was division and higher taxes. The Minister said in his second reading speech that -

> The past four years have demonstrated the Government's commitment to fundamental reform of labour relations.

I would not call it "reform". To continue -

> The reform has been undertaken as a means to an end, making the Western Australian economy more competitive and more efficient and industrial relations more harmonious and fairer.

I know how harmonious it has been. The State is on strike! When members drive home tonight I hope their car is harmoniously full of petrol or they might not get home.

The reality is the legislation is divisive and unfair. More than that, it is extremely unjust. Further on the Minister's second reading speech states -

> Furthermore, it has been paid the quite remarkable compliment of being the model emulated by the Commonwealth Government for Australian workplace agreements in its recent Workplace Relations Act 1996.

That is hardly a compliment. The Federal Government is in chaos. The Prime Minister does not know in which direction he is heading. There is division in the coalition and the paying off of a vote in the upper House has come to a shabby end. The person involved has been forced to resign from the position of Deputy President of the Senate. The Government could hardly gain any kudos by following the Federal Government's example. If the Federal Government is following what the State Government is doing, it must be doing something wrong. The second reading speech continues -

> Our enthusiasm to continue the process of reform is undiminished. "More Jobs and More Choices" made quite specific and deliberate reference to some of the supposedly contentious matters contained in the Industrial Legislation Amendment and Repeal Bill of 1995.

What does this Bill have to do with more jobs and more choice? I do not see any of that explained in the second reading speech. Where are the jobs? They do not exist. The Government's industrial reform so far has not caused a surge in employment over the last four years despite significant investment. Employment has remained at the same percentage rate it has been at for ages. Hon Derrick Tomlinson laughs as he seems to think it is a good thing, but it is a tragedy for many people.

Hon Derrick Tomlinson: I think you're such a ridiculous, silly little man.

The PRESIDENT: Order!

Hon J.A. SCOTT: Hon Derrick Tomlinson is entitled to his opinion, but it is a pity that his opinions have no facts to back them up.

Hon Derrick Tomlinson: You're standing there. You are an embodiment of stupidity.

Hon J.A. SCOTT: Hon Derrick Tomlinson would like me to stop talking about the Government's failure to provide more jobs and more choices - they do not exist! There has been reduced activity in the building industry, which is a high investment area, largely because many people are on short term contracts and in part time work and cannot secure bank mortgages. This could be the very reason the economy - the housing and retail sectors particularly - is struggling in recent times. Anyone who says that that is not a true is not telling the truth. I will be happy for Hon Derrick Tomlinson to tell me the opposite, but I can show him the facts and figures to support my argument.

I have no problem with pre-strike ballots, and neither do the unions. Most people could agree to them if only the Government could work out a simple process for applying them. Confrontation is not needed. It is a matter of working out a simple process to ensure that the procedure works. A huge amount of hypocrisy is found in the second reading speech, which states -

> One of the driving imperatives was the desire to see unions become more accountable to their members . . .

I will return to that point later. I sat in the Chamber when the compulsory pre-strike ballot provisions were debated in the other place, and Mr Kierath said he would be happy to see the Opposition and the Trades and Labor Council propose a simpler model. He said, "I am happy to accept amendments." Was that the case? Mr Kierath was not telling the truth; he did not want to change his Bill, which is set in such a way to make the unions' job more difficult and expensive. The speech further reads -

> The concept of a compulsory pre-strike ballot is opposed by some trade union leaders. They see it as a threat to their privileged position of influence -

Where is the proof of that? The speech continues -

> - which they use capriciously by arguing they should have an unchallenged right to orchestrate strikes and industrial action at a time and in a manner of their choosing.

My understanding is that union leaders are voted in by members; like here, if they do not do the job, they are voted out. The speech further reads -

> They have little or no concern for the economic damage they inflict on union members.

It does not ring true to me. At times huge anger may be directed at employers, but not at the workers. I want to hear some examples of proof where trade union leaders have acted in this way. The claim is a lot of nonsense. It is a reflection of the bad feeling towards unions by the Minister in the other places. I understand he had some confrontation with unions when he was an employer, and he is still trying to get even.

The Minister said, "the community strongly supports the concept of compulsory pre-strike ballots". I do not know whether that is true, but neither does the Minister - he says it anyway. The Bill is based on flowery rhetoric. He says that people like this or that and act in a certain way for some unknown reason, but he does not back up his claim with examples.

The Minister then spoke about the Bill containing provisions which specifically identify what constitutes a strike or strike matters. I understand that change has been made in this regard. I have not had time to reconsider this matter, so I will not comment further. However, we have no surety that the changes Mr Kierath and Mr Court tacked together at the last minute will solve anything or be adopted by this House.

The second reading speech says that the experience in the United Kingdom shows that secret ballots reduce strike action. Again, the Minister gives no proof of that assertion either. He then refers to federal award coverage as follows -

> The Federal Government's Workplace Relations Act has ameliorated the quite disgraceful situation whereby the federal commission would arrogantly, and seemingly automatically, override the wishes of employers and employees -

The federal people are like the unions; that is, they are only interested in hurting employers and employees and are not interested in doing their jobs, according to Mr Kierath. I am sorry; I should refer to Hon Peter Foss but, apart from one word, his second reading speech was identical to Mr Kierath's. Therefore, I can safely use the expression "Minister" for both members.

The Minister has decided that the federal commission arrogantly and automatically overrides the wishes of employers and employees to regulate their relationship by way of workplace agreements. In the words Mr Kierath and Hon Peter Foss might use, it is arrant nonsense.

The second reading speech goes on to say that in the Government's view the new provisions require supporting state legislation to bring home to unions the consequence of wanting to have a foot in both camps. It is interesting that the unions must have a foot in both camps; yet people on the other side speak about freedom of choice. That is, on one day people may chose to go shopping in a place which they think gives them a better deal. I thought that was what the Liberal Party was all about. However, the unions cannot do that.

[Quorum formed.]

Hon J.A. SCOTT: The second reading speech states that the provisions of this Bill will enable a state workplace agreement to override an otherwise applicable federal award. Some people might disagree with that, and I think we are likely to see some challenges to it. It says that the Government accepts the federal system has an important role to play. Even though it is arrogant and overrides the state system for no reason, the coalition has a strong commitment to maintaining the state system at an optimum level of efficiency. The bottom line is that employers and employees should have an employment system that is accessible, fair, efficient and modestly priced. If that is the case, surely this Bill will do exactly the opposite. It is not efficient. It will make the secret ballot process so complex that it will be very costly. The Bill is aimed at reducing the rights of employees and it will push up the cost of unions. It will be inequitable, inefficient, expensive and slow to respond to an issue.

The second reading speech then addresses the specific parts of the Bill. It talks about the duties of officials of organisations and imposing quite high fines on people if they fail to comply with an order of the Industrial Magistrate's Court to do any specified thing, or to cease any specified activity. That is a pretty wide ranging area. It opens a Pandora's box. That is almost like supreme power. The second reading speech also contains a reasonable provision. It states that the new provision will prevent people from being punished twice for the same offence. Perhaps the Attorney General knows better than I do whether it is unlikely that people could be charged twice for the same offence.

Hon Peter Foss: It is important to make sure you can't be.

Hon J.A. SCOTT: I did not think that was likely to happen anyway. It is not really giving away very much.

Hon Peter Foss: Don't you think it is important to say that?

Hon J.A. SCOTT: If it does not happen -

Hon Peter Foss: You could get sued twice, and this provision stops that from happening, too.

Hon J.A. SCOTT: Yes. I see that it has to do with civil proceedings. It says that an official found to be in breach of the financial obligations, however, may be disqualified from holding an office in the union for up to three years. Any breach of an order of the Industrial Magistrate's Court is a contempt punishable by the Supreme Court. That will keep the unions in their place! In his response I ask the Attorney General to advise whether that applies to only those from unions or whether it applies to employers and also employees who are not members of a union.

In relation to pre-strike ballots, the Minister said that he had referred earlier to the Government's view that it is appropriate for the community to be assured union members will participate in a pre-strike ballot before engaging in any strike action. I would like to see the letters received by the Minister from members of the community asking for these pre-strike ballots. In that way I would be assured the Minister was not just stringing me along.

Hon Peter Foss: You don't think people want pre-strike ballots?

Hon J.A. SCOTT: I think it is a good idea, but it is made to sound as though the community is clamouring for assurance from the Government.

Hon Peter Foss: It has something like 70 per cent support in the community.

Hon J.A. SCOTT: Where are all these people who are clamouring for such a thing to occur, other than the Chamber of Commerce and Industry of Western Australia?

Hon Graham Edwards: In the 500 Club.

Hon J.A. SCOTT: Exactly. The way in which the second reading speech is written makes it a pile of nonsense. It says that the legislation prohibits the participation by members of unions in any form of strike unless endorsed by a secret ballot of relevant members. It says that a person authorised by the Minister or a person affected by the strike may seek an injunction against the person engaged in a breach or proposing to engage in a breach. We now have thought police coming into this. People must not even think about having a strike because an injunction can be served on them. If people were in a tearoom having idle chitchat about industrial matters, an injunction may be served on them which will force them to have a secret ballot, irrespective of whether the discussion was serious. The legislation defines a pre-strike ballot and provides for the Full Bench of the Western Australian Industrial Relations Commission to declare that a branch of a federal union operates in conjunction with a state union, as though it were the same body, if certain criteria, as set out in the Bill, are established.

I wonder whether organisations which are in the federal jurisdiction can be judged by a state jurisdiction to be the same body as that which falls within the state jurisdiction. I do not know whether that it is a possibility. I wondered whether there might be some argument about that. The criteria to be used is that if the state body does not inform the commission that it is about to take some action, the state body then gets into strife, even though it may not have been informed by the federal body that such an action was taking place, or the action was being brought on by somebody else who thought the union members would go on strike. The second reading speech states -

> Pre-strike ballots should be conducted as speedily as possible.

I refer the Attorney to some of the scenarios put forward by the Trades and Labor Council.

Hon Peter Foss: The Electoral Commission says it is three to seven days.

Hon J.A. SCOTT: I have a number of scenarios here with time frames for the process, and it appears that it takes much longer than that.

Hon Peter Foss: It does not. The voting procedures, on average, take between three and seven days.

Hon J.A. SCOTT: What happens when there is a very unsafe situation in a workplace?

Hon Peter Foss: That is covered by another Act, which allows workers to cease work.

Hon J.A. SCOTT: What happens if the employer says that the employees must keep working?

Hon Peter Foss: That is illegal.

Hon J.A. SCOTT: The employer cannot deem that the stop work -

Hon Peter Foss: The workers can go to an industrial magistrate.

Hon J.A. SCOTT: But if they have not had a ballot to stop work, how does this affect it?

Hon Peter Foss: It does not affect that.

Hon J.A. SCOTT: I will take the Attorney General's word for that; obviously he knows the law.

Hon Peter Foss: Just to reassure everyone, we have put that in the amendments.

Hon J.A. SCOTT: The second reading speech also states -

> The key principle involving pre-strike ballots is the enshrining of a new, democratic process of decision making by rank and file union members prior to any strike action being taken.

That is good; it is fantastic. There is this wonderful new democratic process in unions. What happens when there is a breach by a union and some of the other provisions are brought into play, and it is ruled that the union will lose its right to represent those workers?

Hon Peter Foss: You are confusing two areas.

Hon J.A. SCOTT: I am making a comparison. On the one hand the Government is saying that it is giving unions a new, democratic right. If there is to be a strike, all workers will be able to vote in a secret ballot and, because it is secret, there will be no pressure. However, when the Government withdraws the right of a union to represent workers, is a secret ballot conducted asking the members whether they wish to be represented by another organisation?

Hon Peter Foss: They can stay with the federal award.

Hon J.A. SCOTT: It states -

> An organisation whose federal counterpart seeks federal award coverage for employees covered by a state award, may have all its rights as a party to the award cancelled and such rights may be given to a substitute organisation. Where the related federal organisation notifies the federal commission under section 99 of the federal Act that there is an alleged dispute between it and an employer covered by a state award or industrial agreement, the state organisation will be obliged to notify the registrar of the state commission of that dispute notification. Failure to do so will be an offence. Notifications that have already been made, and not withdrawn or determined by the federal commission, will also be subject to these provisions.
>
> The commission is to advertise for other organisations or employers to apply to have that organisation struck out as a party to the relevant state award or industrial agreement and to have another organisation substituted.

Hon Peter Foss: They have already gone to the federal award. Therefore, they are governed by that and the federal union. They can stay with that.

Hon J.A. SCOTT: Will there be a secret ballot of the members asking them if they want their organisation -

Hon Peter Foss: They decide to stay with the federal union under the federal award.

Hon J.A. SCOTT: Who decides?

Hon Peter Foss: The workers.

Hon J.A. SCOTT: The Attorney General said that an organisation or union whose federal counterpart seeks federal award coverage for employees covered by a state award may have all its rights as a party to the award cancelled. Those rights may be given to a substitute organisation.

Hon Peter Foss: It is the right of the worker to decide whether he wants to be under a federal or state award.

Hon J.A. SCOTT: There will be a secret ballot to decide one question but not the other. It is not a secret ballot at all. In one instance, where it achieves the Government's goals, there will be a secret ballot but, where it achieves the workers' goals, there is no ballot.

Hon Peter Foss: It is quite the reverse. Read the Bill. That is a radical suggestion for you.

Hon J.A. SCOTT: The second reading speech then states -

> The Bill also provides greater choice for employers in dealing with employees who have had unfair dismissal claims resolved in their favour.

Employers can now decide whether they wish to compensate employees for loss or injury caused by the dismissal instead of reinstatement or re-employment. The speech continues -

> Also, the impact of paying compensation to the employees will be minimised, as the WA Industrial Relations Commission or the Industrial Magistrate's Court, as the case may be, may permit employers to pay compensation in instalments.

I am sure that the Attorney General will soon be introducing legislation to allow paedophiles to choose to pay their fine by small instalments or to live near their victims.

Hon Peter Foss interjected.

Hon J.A. SCOTT: The Government is saying that the victim - the person unfairly dismissed -

Hon Peter Foss: But lawfully dismissed.

Hon J.A. SCOTT: - loses his rights, and the employer will decide where he will work. The employer - the perpetrator, the person who did wrong -

Hon Peter Foss: They do not have any rights; they have been lawfully dismissed.

Hon J.A. SCOTT: The Attorney is saying that the perpetrator has done nothing wrong.

Hon Peter Foss: It is a lawful dismissal; there is nothing illegal. It is unfair -

Hon J.A. SCOTT: What is unfair about it?

Hon Peter Foss: We have said it is "unfair".

Hon J.A. SCOTT: The Attorney and I know that "lawful" and "fair" are different. I am talking about "unfair". The Attorney is saying that the person who has been unfair makes the decisions. That is the wrong power relationship. Get it right!

Hon Peter Foss: But it is lawful.

Hon J.A. SCOTT: It is totally unfair, as are most provisions in this Bill.

Hon Peter Foss interjected.

Hon J.A. SCOTT: The next Bill Minister Kierath will introduce will gaol victims for complaining and make them pay the costs as well.

Hon Peter Foss: You refuse to understand the difference between a "lawful" dismissal -

Hon J.A. SCOTT: Attorney, do not fiddle around -

The DEPUTY PRESIDENT (Hon W.N. Stretch): The member will address his comments to the Chair and the Attorney General will refrain from commenting until he has the call. I have been very tolerant but I have had enough.

Hon J.A. SCOTT: There is failure in the over-legalistic mind of the Attorney General, who is responsible for this legislation in this House, to understand that people do not always think in legalistic terms. In fact, "unfair" means "unfair". When someone has been unfair to someone else, that person should not be rewarded. If the Attorney General cannot understand that, he needs to study something other than law - perhaps justice would be more appropriate.

I refer members to the political donations clauses. We have not heard any reasons for the political expenditure clauses. What are the reasons for this? The second reading speech states -

> The Government will amend the legislation relating to expenditure for political purposes by expressly limiting moneys which can be used for such expenditure to those that a member gives to the organisation for that purpose, together with any interest earned from moneys in a political fund.

What is political donations legislation doing in a labour relations Bill? It has nothing to do with it. It is one of the real reasons behind this Bill, which is to instal the Liberal Party in a very favourable position. The Bill says nothing about limiting corporations' ability from spending their funds however they want. They do not have to go to their

shareholders. If Wesfarmers, Bunnings and other people who want to chop down the south west forests at an unsustainable rate want favours from the Government, they can give it nice, large political donations. I have looked at the political donation sheets. Members opposite are shaking their heads, but the reality is that there are many big funders of the Liberal Party and the Labor Party - some of them fund both of them and the National Party. Wesfarmers funds just about everybody to keep them happy. I do not think it has everybody's political philosophy drawn to its heart. The reality is that it is done very much for favours. The probability of any sort of corrupt use of political funding is more likely to come from a source like that than a union.

As we know, unions' political funds traditionally go either to the Labor Party or on campaigns on issues about which they feel strongly. The Government will let them have a campaign about which they feel strongly but will try to restrict their ability to speak out against the Government's policies. I can remember when unions had campaigns to speak out against a Federal Labor Government. The crux of this legislation against political donations is totally and utterly unfair and does not belong in a labour relations Bill. As a private member, I shall be talking to people in order to obtain advice on how to introduce political donations legislation which will level up the ledger so that corporations have to live by the same rules as unions.

The coalition hardly comprises the parties for reform when it comes to political donations. It has been tardy, both at the federal level and state level. It wanted it to be kept secret in order to have funds coming in the back door. Why does it suddenly want to hit one section of the community, the unions, and limit their ability to direct political funding where they want it to go? It is because it goes to the Labor Party. None comes to me. This legislation is unfair and the Government is getting close to corruption. This is a really dirty pool of foul legislation.

Hon Peter Foss: What an outrageous suggestion.

Hon J.A. SCOTT: Will the Attorney give me an assurance that as soon as he has the opportunity he will force legislation through here, either as a Minister or a private member, that treats corporations in exactly the same way as unions and says that they must go to their shareholders, who may say that they do not want their money to go to political donations or campaigns?

Hon Peter Foss: No.

Hon J.A. SCOTT: Why not?

Hon Peter Foss: People can choose whether or not to invest in any corporation.

Hon J.A. SCOTT: They can choose whether or not to join a union. It is exactly the same. The Attorney is an utter hypocrite.

Hon Peter Foss: People can join only one union for their cover.

Hon J.A. SCOTT: The Attorney is a hypocrite.

Hon Peter Foss: You are not allowed to call people hypocrites.

Hon J.A. SCOTT: I will withdraw calling the Attorney a hypocrite, even though my thoughts remain in the same direction.

Hon Peter Foss: That is also not allowed.

Several members interjected.

Hon J.A. SCOTT: This legislation will ensconce the Government in a very comfortable position with political funding and make it very difficult for unions to put money into the Labor Party. It will also prevent unions from dissenting from decisions of any Government, because when the Labor Party or whatever party might happen to get into power in this State, it will be able to prevent any dissention in the same way. As sure as eggs are eggs, when the Labor Party gets into power it will want to change this legislation. When the position changes in the upper House the Labor Party will bring in political donations legislation which will ensure that corporations are brought to account as well.

Hon N.D. Griffiths: We will repeal this legislation.

Hon J.A. SCOTT: This Bill is very nasty. It comes from a Minister who seems totally obsessed with destroying unions and their right to represent members in this State. People need that representation more than ever. The international trend is to make people more and more efficient and for them to work harder for less. The end point is ridiculous. If we work harder and more efficiently, somebody else will do it more efficiently, somebody else will

work harder and somebody else even more so. Then we will have to get more efficient and so will they. At the end of the day we will impoverish our people. It is a nonsense.

Jimmy Fox was investigated by the task force inquiry, which handed information to the police, who charged Fox with extortion. Today he was acquitted, even though Minister Kierath said that he was a guilty man. He said that it came to light the previous day that a deal involving criminal behaviour had been made between a construction manager and a union official involving the corrupt payment of $20 000 to an official of the Builders, Labours, Painters and Plasterers Union. The opposition member, Mr Ripper, said that it seemed the Minister might be talking about a matter that was before the courts. The Minister ignored that and was allowed to go on. He said that it was the same union which had had a number of charges laid against it and appeared on a regular basis to oppose the Government's industrial reforms in this place in the public arena. He has called someone guilty of being corrupt and an extortionist who was found not guilty by a jury. That is outrageous. I hope that Minister will have the decency to apologise to the person who was found not guilty. That attitude sums up the Minister. He is very quick to make opinionated and nasty comments about people who belong to unions to try to paint them as villains all the time when it has not been the case.

I really hope that before this State is thrown into total industrial chaos and years and years of trouble from this legislation -

Hon B.K. Donaldson: You said the same thing in 1993.

Hon J.A. SCOTT: Did I? I do not think I did.

Hon Peter Foss: Everybody else did.

Hon J.A. SCOTT: Can the member show me where I said it? The Bill will achieve the opposite of what it sets out to do, except for the fact that it will ensure that the Liberal Party is able to fill its coffers while any political opposition is forced to struggle for funding and unions will not be able to carry out any campaigns on behalf of their workers. What a wonderful situation for this Tory Government, which is so ancient in its thinking that it will soon go the way of the Major Government in the United Kingdom. It is totally out of touch with reality. If the Minister had any sense, he would withdraw this terrible and unfair legislation, which is close to corrupt in the area that deals with political donations. I do not think I will ever see such a bad Bill in this House again; if I do, I will oppose that Bill as well.

HON CHERYL DAVENPORT (South Metropolitan) [9.31 pm]: I want to admit at the outset, before I express my opposition to this Bill, that I have a vested interest in seeing it defeated. The reason is that I joined a trade union when I was 16, as a clerk in a small business, and I have been a member of a union for the past 34 years. I have had occasion since then to seek the help of the union when employers have sought to not pay my colleagues and me the right wages or to provide the right working conditions.

I will make some general observations about this Bill, I will detail some concerns which have been raised with me by the people at the workers' embassy as the reasons that they do not want to see this third wave legislation passed, and I will then concentrate on how this legislation will have the greatest impact on women workers.

This legislation is offensive, unnecessary and particularly undemocratic. Firstly, it is offensive because it is aimed specifically at workers who choose to be members of trade unions. Workers choose to join employee organisations in order to protect their conditions of employment, to ensure that they can maintain and improve their wages, and to protect themselves against unscrupuluous employers. It is for these reasons that trade unions were formed in Australia in the 1890s. I have no doubt that this Labour Relations Amendment Bill has the potential to plunge this State into industrial chaos because of the ideological intransigence that is being exhibited, particularly by the anachronistic member for Riverton, but also by the Government as a whole.

Secondly, this legislation is unnecessary because in 1997 - indeed, for the past decade - workers represented by unions and employers have worked cooperatively in Western Australia to achieve positive outcomes for all Western Australians. This achievement has been despite a high rate of unemployment and the arrival of Minister Kierath on the labour relations scene. The only evidence of major industrial unrest has been centred on the introduction of the first and second waves of industrial relations legislation, which saw the escalation of industrial disputes from 41 days per 1 000 workers in 1994 to 150 days per 1 000 workers in 1995. Obviously when people feel they are being bled and denied their rights, such as the right to free and open negotiation about their employment, and Governments do not listen, workers will react -

Hon J.A. Scott: So if I had said that in 1993, I would have been correct.

Hon CHERYL DAVENPORT: Absolutely. Australia is not a developing country subject to oppression, and there is no reason that we should now be subjected to such oppressive industrial relations law.

Thirdly, this legislation is undemocratic because it attacks the rights of people who wish to subscribe to the notion of collectivism in the workplace rather than individualism. I have no doubt that this legislation will create a worker-against-worker attitude in Western Australian workplaces, and I note and concur with the comment of my colleague the member for Cockburn in his speech in the Legislative Assembly that the principles of unionism depend on the fact that workers have the right to strike. In a democracy - that is, in a free country - workers should have and do have the right to strike.

This legislation is draconian, and its impost of complex right to strike laws set up mechanisms that deny that right to workers who are union members. Democracy is about freedom and choices for people. This Bill contains none of those rights, despite the Minister's claim. During the recess, I took the time to read the second reading debates in the Legislative Assembly. It is an absolute disgrace that in the other place, no coalition member other than the Minister contributed to that debate.

Hon N.D. Griffiths: They had nothing to contribute!

Hon CHERYL DAVENPORT: Absolutely, and the same is occurring in this place. It is an absolute abrogation of their responsibility as elected members that they did not contribute, because this legislation in its current form will adversely affect the quality of the working life of many of their constituents. I will watch very closely the contribution of coalition members in this so-called House of Review. Obviously because this legislation will be guillotined, they will not even speak. I suspect the Minister will not even reply to the debate.

Hon P.R. Lightfoot interjected.

Hon CHERYL DAVENPORT: That is why the debate should not be guillotined; then we could hear from members opposite.

Hon Derrick Tomlinson: We would take some of your time.

Hon N.D. Griffiths: Hon Ross Lightfoot will give us a retrospective from the Senate.

Hon CHERYL DAVENPORT: We will wait with bated breath for that.

The DEPUTY PRESIDENT: And members will remain in order.

Hon CHERYL DAVENPORT: The only comfort that one might take from the fact that members opposite will not contribute to this debate is that they then must concur with and understand what this legislation will mean for their constituents. They are willing to condone practices which will deny Western Australians their basic human rights. The International Covenant on Economic, Social and Cultural Rights was ratified by Australia on 10 December 1975. Article 8(1) provides for the right of everyone to form trade unions; the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; and the right to strike, provided it is exercised in conformity with the laws of the particular country. Have we seen unions pull people out of work when they have not wanted to be pulled out of work? We have not. That would be the last thing that a trade union organiser would do, because it would be the last step in trying to get an employer to the negotiating table. Unions in this State have not abused their position, and there is no reason that these laws should be brought into this place.

I ask all government members these questions: What is the reason for introducing a Bill of this nature? Why is this Bill so important in the public interest? Who wants this Bill? Has there been public clamour for this Bill? What pressure has been placed on government members to introduce such legislation? Who in the community is saying that legislation to make these changes is so vital? We have spent a number of hours in this place over the past few days arguing that we should not be debating this legislation; nevertheless, here we are. If government members were honest with themselves they would not be able to answer those questions, because industry and employers are not clamouring for this legislation. This legislation is a sop to the Minister for Labour Relations because he had to back off prior to the December 1996 election. I refer members to several editorials and newspaper articles over the past month or so. It is useful to quote these into the record. The first is the editorial in *The West Australian* on Monday 7 April headed "Kierath's Bill smacks of ideology".

Hon E.J. Charlton: We have heard it 17 times so far

Hon N.D. Griffiths: Why are the Minister's interjections tedious repetition?

Hon CHERYL DAVENPORT: No, the Minister has not heard the parts that I will quote; although, if he has, he will hear them again. The editorial states -

> A perplexing question regarding Graham Kierath's revamped industrial relations legislation is: why?
>
> Why is it being pushed as a priority at the start of the Court Government's second term when there is no apparent community demand for it? Business - big and small - is not crying out for it, the general public is at best lukewarm and the union movement is vehemently opposed.
>
> The conclusion that is hard to escape is that the son of the son of the Kierath industrial relations package - the so-called third wave - has more to do with ideology than community benefit.

It continues -

> A politically cynical reason to reintroduce it now is that there is no election - state or federal - on the horizon. Another is that the Court Government loses control of the Upper House in May.
>
> For a Government that supposedly prides itself on its propriety, it is difficult to understand how it can justify rushing contentious legislation through State Parliament before the will of the people is reflected in the Upper House.

It continues -

> . . . instead of being provocative, Mr Kierath and the rest of the Cabinet should proceed at a more restrained pace and convince the community - and enough of the members of the new Legislative Council - that the third wave is good, necessary legislation.

Members opposite are not game to do that. The second article is from the *Sunday Times,* that left wing rag that we read on Sundays, and was written by Janet Wainwright - a raving left wing journalist!

Hon P.H. Lockyer interjected.

Hon CHERYL DAVENPORT: And she is not a left-winger, Mr Lockyer. She states -

> . . . Mr Kierath's heavy-handed determination to push through the so-called third wave of industrial reforms is propelling this State towards the type of upheaval it saw in the 1970s.

She wrote this on 20 April, before the escalation of the disputation that is currently occurring. She foresaw this in April, and she was right. She continues -

> It is badly timed because there is no perceived need for it.
>
> The only need is that seen by the Government - to get the bill through before the Legislative Council changes its political colour on May 22.
>
> We have had relative industrial peace for more than five years and WA's reputation as a reliable provider of exports has all but been established.
>
> . . . Even before Mr Kierath introduced the first wave of industrial reforms in 1993, the industrial anarchy which reigned in the days of high employment had ended.
>
> Economic downturn and high unemployment forced the unions to moderate their behaviour . . .

That is a fact. At the conclusion of this article she states -

> But there is much more which arguably erodes free speech and which clearly should not be railroaded through Parliament against the electors' wishes.
>
> Mr Kierath is an experienced parent. Surely the lessons learnt in his household should put into play in Parliament.

The next quote is from the editorial in *The West Australian* a month later on 7 May. It is interesting because *The West Australian* has been pretty kind to the Government over the past few years.

Hon P.H. Lockyer: Bite your tongue.

Hon CHERYL DAVENPORT: Yes, it has Mr Lockyer.

Hon E.J. Charlton: You did not bring anything into Parliament; it never came near the Parliament.

Hon CHERYL DAVENPORT: Is that right Mr Charlton?

Hon N.D. Griffiths: The Minister should talk about his own decisions.

Hon CHERYL DAVENPORT: The Government is in the hot seat at the moment, not the Opposition.

Hon E.J. Charlton: And warming to the task.

Hon Kim Chance: I do not remember your bringing Stateships to the Parliament.

Hon E.J. Charlton: That is right; I saved $16m.

Hon CHERYL DAVENPORT: The editorial is headed "A cynical and autocratic decision". It states -

> The Court Government is tossing parliamentary convention on the scrapheap and wrecking its credibility as a fair-minded government by ruthlessly ramming its industrial relations legislation through the Upper House.

Hon E.R.J. Dermer: No respect for our system at all.

Hon CHERYL DAVENPORT: The editorial continues -

> The Government gave notice last night that it would use the guillotine and gag to ensure its contentious Bill passed through the State Parliament next Thursday. This is a week before the conservative's lose control of the Legislative Council for the first time in more than 100 years of representative government in this State.

Hon E.R.J. Dermer: They will lose the Assembly next.

Hon CHERYL DAVENPORT: It continues -

> It is a breathtaking display of arrogance and contempt for the people's vote in December and for the proper role of the Council as a House of review.

Hon P.R. Lightfoot: It is a breathtaking example of good judgment.

Hon CHERYL DAVENPORT: Mr Lightfoot can laugh, and I wonder whether he is proud that he will be one of those people who will bring this State to its knees. The editorial concludes -

> The Court Government is banking on the people forgetting its abuse of parliamentary procedure by the next election. It is the thought process of a cynical and autocratic administration and a bitter disappointment to West Australians who thought they had voted for something much better.

I am here to say that they did not. Unfortunately, all Western Australians will have to bear the burden of this draconian legislation and its effect on the community.

I will move on to some of the comments that have been made by the people who have come in over the past few days to the workers' embassy. I will not mention names; however, these are community responses to this legislation. It is very important that members on the other side hear some of them. This letter is from a woman who says -

> To be denied the right to have an industrial organiser enter my workplace in a time of need (when there is a dispute) is to me unacceptable and undemocratic.
>
> To have to wait 2 - 7 weeks to be able to exercise my right to access industrial action in the event of a dispute is undemocratic to my mind.

Hon E.J. Charlton: Both of those statements are wrong.

Hon Graham Edwards: It is not wrong; you have not even read the Bill.

Hon CHERYL DAVENPORT: The letter continues -

> Unfair dismissal and involuntary redundancy will have an immediate and unacceptable effect on my personal work situation.
>
> I believe that with the new legislation tripartite negotiations which I believe is the right of the ordinary worker in a democracy, will disappear. This will only result in the rich getting richer and the poor getting poorer.

> As a mature aged worker I will be severely disadvantaged in regard to my ability to provide for my retirement if my employment is terminated prematurely.

The next letter is from a worker in the education area. She states -

> I oppose the 3rd wave because it is an attack on my civil rights & my right to protest when I perceive that the Government is doing the wrong thing or at least something I disagree with.
>
> The right to be able to withdraw your labour is a very basic one & the only one the average worker has to protect his/her working conditions. The third wave seeks to make it extremely difficult for workers to take action and those in so called "essential services" almost impossible. The time it will take to run through the convoluted secret ballot process will be far too long and far too open for too many people to interfere with. The decision to take industrial action should rest with the union & its members and no-one else.
>
> I am also concerned that the Govt is involving itself in the day to day running of voluntary organisations. Today it's the unions, tomorrow who else - churches, the local cricket club?? The churches who have spoken up against Mr Kierath regarding this legislation had better watch out, they might be next.
>
> With regard to political expenditure restrictions, why do these only apply to workers unions? What about companies who also donate to political parties? Why aren't they going to be compelled to consult all shareholders when they make donations? Am I a cynic or is it only coincidence that companies traditionally donate to the Liberal Party and the unions traditionally donate to Labor?
>
> A further concern I have is Mr Kierath's attitude to our response to his legislation. He accused Tony Cooke of misleading us all. Doesn't he believe workers can think for themselves? Has Tony Cooke had time to also brainwash the heads of 3 mainstream churches, and also time to dash overseas and influence international opinion? I don't think so.

Another letter comes from a woman who says -

> The third wave is the most punitive piece of Industrial Legislation I have ever read. Not only are we, as members, expected to undergo an incredibly long and complicated process in order to voice any kind of protest about wages, conditions, cuts to services etc, but WE STILL CAN GET FINED $200 A DAY IF THE MINISTER SO DECIDES.
>
> I expect the right to protest when it is needed. I may hardly ever want to but I may need to some time. Mr Kierath, you seek to take that right away from me.

The next letter is from a person who has worked in the Education Department. It reads -

> When I worked at the Education Department of WA, the only way we could get the employer to actively negotiate with the workers over the 1996 Enterprise Bargaining Agreement was to put in place work bans. We still worked all day but not doing all usual duties (which still left plenty to do). We didn't want to take action, because we were dedicated to what we were doing but public servants at EDWA had been waiting for about 4 years for a wage increase and had been negotiating the Enterprise Bargaining Agreement for almost 2 years!

Hon N.F. Moore: That is not right.

Hon CHERYL DAVENPORT: It took two years to get the department to the negotiation table. The letter continues -

> Would we be considered an essential service and therefore not allowed to put on work bans? Why should Mr Kierath be able to decide this?
>
> At our union, we have democratically (and secretly) elected Delegates, who, called mass meetings where we voted in favour of taking on work bans. Some voted against these bans but overwhelmingly the members voted in favour.
>
> The union system works in a very similar way to the Australian parliamentary system. We elect delegates and councillors, in secret postal ballots, just as, as citizens we vote for politicians to represent us.
>
> The Australian government holds a referendum only when it wishes to make constitutional change so why must a union now secretly ballot all its members when it wishes to take action such as putting on work bans, protesting about issues which affect members, or when it wishes to spend money in a certain way? And why must we beg to the commission to hold such a ballot? Who else must do this in Australian society? The farmers' federation? The Chamber of Commerce and Industry? The Scouts? Churches? Schools?

Universities? Companies? Which companies secretly ballot all their shareholders over how they spend their money, who do they ask before they close down sections of their business throwing thousands of workers out of work?

> When I worked at the Education Department I was battling to earn $25,000 a year - yet this 3rd wave legislation's sole aim is to strip me of the only working rights I have while company bosses and politicians, who don't have to secretly ballot their share holders or their constituents every time they wish to 'take action' on a matter or spend money, earn nothing below $80,000 (and usually much much more).
>
> In short, this legislation is an undemocratic intrusion into organizations, that is unions, which have a right to carry out their business as their members see fit. We have elected officers who we, as members, authorise to act on our behalf just like any other organization. We, as members, have the right to a secret ballot, and we do use them when we want to, such as when voting to finally accept an enterprise bargaining agreement. We have the fundamental right to determine these matters for our union.
>
> Mr Kierath has no authority to intrude into our union's affairs just as he has no right to intrude into the affairs of the churches or the scouts or the AMA for that matter.
>
> And secondly, the only thing I have to bargain with is my labour. It is my fundamental right to withdraw my labour when I wish without asking anyone, not the boss, not the commission, and certainly not Mr Kierath.
>
> If I cannot withdraw my labour, when I believe it is important to, and without being fined, I am effectively enslaved.
>
> Why is the Western Australian Liberal Party promoting and making legal this form of legislatively approved slavery?

It is pretty powerful stuff. I have a couple of other letters but I will not read them into *Hansard*, because I want to turn my attention to the stop work meeting I attended on 24 April at East Fremantle with 1 500 to 2 000 blue collar workers from the Australian Manufacturing Workers Union, the Communications, Electrical and Plumbing Union, the Construction, Forestry, Mining and Energy Union and the Builders Labourers, Painters and Plasterers Union. The meeting was called to inform members about this legislation and about the public rally that was held last week outside Parliament when some 25 000 to 30 000 people turned up to protest. The meeting was quite powerful, and it was very important in the context of this legislation. Not one dissenting voice was heard among the 2 000-odd people at the meeting on 24 April.

Hon E.J. Charlton: Surprise, surprise!

Hon CHERYL DAVENPORT: That is a lot of people! Those people are not accustomed to going on strike but they had good reason because they care about their children and families. They see this sort of legislation having a major impact on their lives. The meeting unanimously passed a motion to support the action taken by the trade union movement across this State. A man spoke to me about a previous employment situation he had experienced. He now works at the Collie power station but previously he had taken up a workplace agreement after the road construction activities of Main Roads were contracted out. This is a department for which Hon Eric Charlton is responsible. The man told me that he worked 84 hours a week for $534 on a workplace agreement, and that is a disgrace these days. He moved from that employment and returned to the award system because -

Hon E.J. Charlton: Give me the facts!

Hon CHERYL DAVENPORT: I will not. Why should I? This man had the facts. He worked under those conditions for months but he chose to get himself another job because the first job was so draconian. This is the result of the Government's contracting out arrangements - which are not very good for the ordinary people.

I turn now to the potential effects this legislation will have on women workers, particularly those from non-English speaking backgrounds, young women, and those in blue collar industry or the service sector. During the 1993 debate in this place on the workplace agreements and minimum conditions of employment legislation, I spoke extensively about the fears I had for women workers and young people who would be affected by that legislation. Early research that had been carried out in New Zealand about the move to enterprise bargaining agreements were indicating the widening gap between the wages for men and women, and a reduction of working conditions, particularly for women.

I draw the attention of members to a paper by Jocelynne Scutt entitled "Equal pay under threat" on research she carried out. Even then she extended the warning to the Australian Government in its move to enterprise agreements that equity problems would probably arise. She said the centralised wage fixing system brought Australia to the forefront in lessening the gap between men's and women's wages and that this principle should be retained. Although

the United States and United Kingdom have equal pay Acts, they are a long way behind the Australian system. At the time that research was conducted the women's rate of pay was something like 90 per cent of the men's rate. She said then that we should be conscious of that move from a centralised wage fixing system. She has been proved right because that gap is increasing. I refer members also to a speech in the House of Representatives by the federal member for Fremantle -

> In Western Australia--where male average weekly earnings are $748.20 compared with the national average of $705.80--we -

That is, Western Australia -

> - have always been ahead of the national average. Western Australia's female average weekly earnings are actually below the national average at $570.60 compared with $586 nationally--and the gap is growing.

We are some four years down the track from when I told the House that we should be aware that a move to workplace agreements would lead to that kind of gap occurring. Unfortunately this legislation will amend the Workplace Agreements Act and the Minimum Conditions of Employment Act. Those amendments are not for the better because they embrace the new federal Workplace Relations Act. I have taken some time to look at the debates on the federal Workplace Relations Act 1996. It does not give me cause for great hope. Recent research conducted in Australia and New Zealand, where deregulation of the labour market occurred some years ago, indicates this kind of legislation will not improve the lot of women.

In 1996 the commonwealth Department of Industrial Relations researched developments following the federal Act of 1994 on enterprise bargaining. That research gives real cause for concern. The study found that employees reported a deterioration, rather than an improvement, in working conditions. There was little satisfaction with management, weakening levels of job security, rising stress levels in the workplace, and growing concerns, particularly for women, about their ability to balance work and family responsibilities. Those concerns are expressed even when a union can legally represent them. The Minister for Labour Relations would have us believe that the changes that are to be effected in this Bill will benefit all Western Australians, when clearly they will not benefit women workers who in the main are concentrated in low paid positions, and that is not good for the families who depend on those women.

Far from making women's tasks in the family easier - that is, juggling work and family responsibilities - this legislation, by changing the Workplace Agreements Act and the Minimum Conditions of Employment Act, will make life even more difficult for women than it is. Women workers in the main are concentrated in low paid and low skilled jobs, particularly if they are migrants from non-English speaking backgrounds. Women are employed also in a higher level of part time and casual work. The Minimum Conditions of Employment Act provides the ability to split shifts and interrupt work and family responsibilities - and the Government talks about flexibility. That kind of flexibility does not suit employees; it suits only employers. Rarely are women consulted in relation to that. Therefore, it limits their choices.

I will highlight evidence that was tendered to the Senate References Committee on the Workplace Relations Act by the Association of Non-English Speaking Background Women of Australia and, in particular, to evidence given by Debra Carstens, the coordinator of that organisation. She states that individual workplace agreements will effectively compound disadvantage -

> What does that disadvantage mean for migrant women? Non-English speaking background women in Australia are in an extraordinarily vulnerable position in the labour market. There are 1.1 million migrant women in Australia. Some have come with skills and others have been unskilled. One thing that they share, however, is their difficulty with the English language, and that has meant that they have been located in particular jobs, mainly unskilled ones, where they are vulnerable and without opportunities for promotion.

Hon E.R.J. Dermer: The Minister always picks on the most vulnerable.

Hon CHERYL DAVENPORT: Absolutely. She continues her evidence -

> Our main concern is with the assumption that all individual workers will be in a situation where they are able to bargain and negotiate for their workplace agreements in a relatively equal capacity to their employers. With non-English speaking background women, this is certainly not the case.

One of the other women who gave evidence to the inquiry spoke through an interpreter. Maria Ng, a member of Asian Women at Work in New South Wales, says -

> . . . the employers are very hard to be equal with, so we do not have any requests . . . We are too scared that, if we open our mouth and ask, we will get sacked from our job. Because of a lack of English we do not really understand the details of the award.

She talks about the 50 per cent of workers who must agree to invite union officials to the factory. Those officials cannot visit the workplace if there is not that agreement among the workers. She says -

> The workers' English is not very good; they cannot read or write.
>
> . . . about the individual contracts. With a new contract a union cannot help the individual, so it would not be very good for the workers. I would like to talk about secret contracts. That is unfair. For the same work we will get different pay. With the workers, because they do not understand English much, they do not know their rights. About the single bargaining unit: with the multiple unions, their power will become weaker, and the boss will probably not pass on any information to us.

The inquiry moved on to address the fashion industry in particular where many outworkers are exploited by unscrupulous employers who obviously have most of them on workplace agreements. Individual contracts tend to dominate in areas where Governments have contracted out jobs that were originally in the government day labour force. An executive study into the New South Wales government cleaning service in 1994 found that since it was contracted during the former state Liberal Government's time in office, real cause for concern has emerged. I will refer to a couple of findings from the executive summary of that report -

> The study found that most workers interviewed experienced a reduction in the number of workers at each worksite; a reduction in hours; a loss of job security; an increase in workload; an increase in stress and injuries; and a deterioration in conditions of service and entitlements, such as sick leave, superannuation and long service leave. These issues were shown to be of concern for both male and female cleaners, Australia-born and immigrant workers.

It further states -

> A surprising finding was that the majority of respondents indicated that the workplace culture had changed to a more competitive environment which is less tolerant of immigrants with poor English skills. This is an aspect which has not received any attention in the debate on contracting out until now. Immigrant women cleaners with poor English ability who were interviewed experienced an increase in harassment, humiliating treatment, verbal abuse and unfair treatment compared with other workers.

The executive summary also stated -

> This study has a number of policy implications. Authorities which contract out services may need to require tendering firms to adopt policies to prevent discriminatory practices and to supply detailed evidence of the equal employment policies and practices in place. There also appears to be a need to increase the role of social justice agencies in the development of specifications and the monitoring of employment practices of contractors in as much as they impact on disadvantaged groups.
>
> It is hoped that by drawing attention to the perspectives and experiences of the NESB women affected by the contracting out of the NSW Government Cleaning Service, policy-makers will more readily understand the human cost and look beyond the limited budgetary calculations when determining whether or not to contract out government services.

In addition to the problems identified on contracting out in New South Wales, problems have become apparent in Western Australia, it is quite likely that some of the things that have emerged in New South Wales will also occur in this State. I hope the Government will look into this and take steps to redress such problems when it finishes its current inquiry.

The draconian nature of this legislation, particularly the amendments to workplace agreements and minimum conditions of employment, will impact very badly on women workers. If the situation is not bad enough for them with the move to enterprise agreements which resulted in deterioration in their wages and working conditions, it will be even more horrendous in this context.

I conclude by quoting into the record a letter published in *The West Australian* on 22 April 1997, from one of the co-convenors of the Women's Electoral Lobby in Western Australia, under the heading "Women are scapegoats" -

> This good cop, bad cop act is transparent. Federal and State governments accuse each other for their failures to manage public utilities and services.
>
> It is their united policies of economic rationalism and privatisation that are at fault.

It is a con job to off-load responsibility on to the PAYE taxpayer who has already contributed and paid for all the utilities in the past.

Has the sense of history been lost in the rush for economic rationalism and greed? In the past the plight of widows and orphans was taken up by the unions.

Poor families used to be at the mercy of greedy colonial governments and powerful employers.

The human rights of citizens, employees and their families were improved by hard-fought battles in the marketplace.

When it was economically useful, women were welcomed in the workplace. Now women are the scapegoats. They are being forced back into the nest to help solve the unemployment problem that was caused by blinkered, misguided economists.

Some things can't be reversed. There has to be a better solution to this awful mess we are in.

Pensions were fought for by unionists and contributions were made through pay-as-you-earn taxes. Men and women stood side by side marching through this century for better conditions and rights to education, housing and health-care, training and safe work conditions.

Our freedom to do this is now under threat by the third wave Industrial Relations Bill. What will we all do when there is nothing left in the kitty - return to serfdom?

That comes through again and again in my reading and in the fears expressed by workers. Does the Government want to plunge this State into crisis with the deregulation of the marketplace, as has happened in the United States where one in five workers receives the minimum hourly rate of $5.15 that led to so much poverty? The measures contained in this legislation have the potential to do that in this State, and the people who will be most affected are women and young people. I absolutely oppose the legislation and it gives me no comfort that we shall sit in this place over the next week and a half and ram it through because this Government will not subject it to the proper scrutiny of one of the committees of this House to make it reasonable legislation.

HON J.A. COWDELL (South West) [10.16 pm]: This Parliament is charged with legislating for the peace, order and good government of Western Australia. I regret to say that this Bill before us tonight contributes to neither the peace, order nor good government of the State. In fact, it may be entitled a Bill to remove workers' rights, because it removes workers' rights and enhances the power of the employer in this State. It puts the full weight of the Government of the State behind the employer. It is purely and simply a class Bill.

Hon N.D. Griffiths: A Bill without class.

Hon J.A. COWDELL: Without class, but class motivated. This Bill could be entitled a Bill to impede the economic development of Western Australia, because it has indeed contributed mightily in only the last few weeks to that end. The Bill could be entitled a Bill to contest the industrial laws of the Commonwealth, because sections of this legislation are bound to bring this State into conflict once again with the commonwealth industrial legislation. It could be entitled a Bill to overthrow the established tenets of international labour law, because it is a Bill designed to bring this State into conflict with the International Labour Organisation and the International Confederation of Free Trade Unions. It could be entitled a Bill to cause social dislocation within the State of Western Australia and to do serious injury to the sense of community in this State, because already unionists have been arrested and we have seen the start of social dislocation.

With this Bill the Government is practising the grossest deception on the people of Western Australia. It is in the best spirit of Stalinesque or Goebbelsian doublespeak, the sort of claims put up by Stalin when he was dizzy with success. One of his statements in the early 1930s, describing the absolute disaster of agricultural reform and the death of five million people, was entitled "Dizzy with success". We have a similar situation here. The Government says that black is white; that we need this legislation to prevent industrial disputation. However, it is this and legislation of its ilk that causes industrial disputation.

I will refer in some detail to the deception practised by this Government. Then I will refer to the mailed fist behind the deception, Minister Kierath's list and what this Bill will add to it. Then I will make a brief reference to the road to the workers' utopia as set out by the Government. There was the first wave, the second wave, and now the third wave. Then there is Mr Kierath's glorious vision following his visits to China and Vietnam exemplifying the workers' utopia that can be created in Western Australian. I will conclude by summing up why this House should most urgently discharge this odious piece of legislation.

The Attorney General referred to the magnificent mandate of the Government for this legislation. It is just that deception, the concept of mandate - that something was put before the people and they approved of it - that is perhaps the greatest deception. If the general public had been following the media they would not have expected this legislation. What did the letter of 7 November 1995 signed by Premier Richard Court and addressed to the Secretary of the Trades and Labor Council of WA say?

Hon E.J. Charlton: Dear Tony.

Hon J.A. COWDELL: The Minister is perceptive. I can see why Hon Murray Criddle has no chance of making the front bench. The letter reads -

> As you can see from the number of matters upon which the Government has sought to accommodate the Council's concerns, we have developed a position which, as far as is possible, will provide for workable outcomes in the areas targeted for reforms.
>
> We expect, as a consequence of the number of changes proposed and of the significance of each of these changes, that the Council would not seek to reinstitute the campaign of industrial action. We believe that our proposals embody a significant accommodation of the Council's position.

That is the assurance in a letter signed by the Premier. Elsewhere in the letter he says -

> Tripartite group to be established to make recommendations to the Minister on any suggested changes. There will be no further legislation unless agreement on all sides.

He does not have in brackets after that "until we get through the next election campaign and then we will swing it back on you".

Hon Derrick Tomlinson: Can you read the subtitles above that paragraph?

Hon J.A. COWDELL: It has to do with the Fielding report.

Hon Derrick Tomlinson: Exactly.

Hon N.D. Griffiths: The Fielding report disagrees with what the Government is proposing in a significant part of this Bill, which I doubt you have read Mr Tomlinson.

Hon J.A. COWDELL: However, as I said, no such qualification of any description was given by the Premier of assurances of having reached a compromise.

Hon Peter Foss: Why did you leave it out then? It's called selective quoting.

Hon J.A. COWDELL: No; I am happy to read the rest of the letter. The Premier began his letter by saying -

> Following our discussions today, your latest written submission and our previous discussions, I am writing to advise you of the Government's position with respect to the Industrial Legislation Amendment and Repeal Bill 1995.
>
> After giving the issues raised in your latest submission considerable thought, we agree we will amend the Bill in the following areas:

Of course the amendments are made. Suddenly the objectionable clauses disappear and we are faced with the new Bill.

On the front page of *The West Australian* of 8 November - where the voting public can perceive what is going on - is the following -

> WA unions dropped their threat of widespread industrial action yesterday after the State Government gutted its second wave of industrial reforms.
>
> A meeting of senior ministers late on Monday night agreed to scrap two of the most contentious elements of the Bill and water down two others.
>
> He denied the Government had backed down on its legislation, saying a compromise had been reached.

The compromise is now ripped up. I refer again to the mandate and what the public was led to believe. A year elapsed during which occurred events with committee reports in here and so on. An article in *The West Australian* under the headline "IR Bill may be out of time: Court" stated -

> In November Cabinet agreed to scrap the most contentious elements of the second wave Bill, and the following months Upper House Government MP's agreed to split the Bill by hiving off remaining contentious sections.

Then Mr Kierath popped up and gave a warning on the third wave. The Minister has indeed been consistent. I quote from *The West Australian* of 12 September -

> Labour relations Minister Graham Kierath has warned he could use the delay in passing his second wave legislation to reintroduce tougher measures struck out in an agreement between the Government and the Trades and Labor Council.

Hon B.K. Donaldson: What date was that?

Hon J.A. COWDELL: It was dated 12 September 1996, a year later, and close to an election.

Hon N.D. Griffiths: You drafted it Mr Donaldson.

Hon J.A. COWDELL: Mr Kierath was being consistent. Only the next day in *The West Australian* under the heading "Kierath rapped for IR threat", we have the following assurances from the Premier -

> Premier Richard Court pulled his Labour Relations Minister sharply into line yesterday, saying Graham Kierath would not be deciding the direction of the State Government's industrial relations program.
>
> Mr Court rejected Mr Kierath's threat to introduce tougher industrial relations laws after the next State election.
>
> "If we are re-elected I believe we have already implemented most of our reform agenda," Mr Court said.

That was a straight out disowning and denial of the view of the Minister for Labour Relations.

This legislation has a magnificent mandate as propounded by the Attorney General! It was not brought before the people. The people were promised by the Premier, as was the TLC, that the compromise would hold. The views of the Minister for Labour Relations were disowned in the public forum. It was not only the TLC that was deceived on this matter but also the voting public.

On the question of deception there is nothing more impressive than the Attorney General's second reading speech. It is breathtaking in its audacity and inaccuracy. I will quote just a few lines to remind members of what the Attorney General said.

Hon B.K. Donaldson: What page?

Hon J.A. COWDELL: Page 1790 of Hansard. He said -

> At the 1996 state election, the coalition's policy on labour relations for the next term of government was stated in the platform document "More Jobs and More Choices". Our vision of creating more jobs and more choices for all Western Australians -

Further on the Attorney General said -

> Our enthusiasm to continue the process of reform is undiminished. "More Jobs and More Choices" made quite specific and deliberate reference to some of the supposedly contentious matters contained in the Industrial Legislation Amendment and Repeal Bill of 1995. Not surprisingly, therefore, this Bill demonstrates the Government's commitment to concluding the reforms from the 1993 industrial relations policy -

Members should go back to the Government's policy and forget what the general public had seen on the front page of the paper - a specific repudiation of the Minister for Labour Relations and his stance - by his saying the compromise will hold. We now hear from the Attorney General that the Government has a mandate on the basis of the detailed policy put forward at the election. I got out the policy and the full page statement by the Minister for Labor Relations on 27 November last year, which refers obliquely, not specifically, to reforms contained in the Bill before the House. The policy reads -

> Labour Relations Minister Graham Kierath said the goals set for the next four years include implementing secret ballot provisions, increasing access to the Western Australian Industrial Relations Commission and continuing to offer the choice workplace agreements have given to both employers and employees.

It goes on about matters -

> Mr Kierath said the Government would look to bring WA labour relations legislation into harmony with the federal workplace relations reforms where possible in order to simplify and rationalise the WA legislation.

That is as near as one will get to another clause in the Bill. We then go to the detailed policy statement, which runs to 15 pages, and we find obscurely placed in there, vague references to industrial reform, but only a few of the specifics that are contained in this legislation. This is what the Attorney General claims in his second reading speech is the Government's mandate. This is what the Government put before the people. The only trouble is that it is hidden in 15 pages of verbiage, which refer to everything else under the sun, while on the front page of *The Western Australian* the parliamentary leader of the Government, the Premier, is completely disowning this course of action. There is the mandate! There is no mandate. The Government has deceived the public.

The Attorney General's second reading speech states -

> Workplace agreements have unshackled the previously strait-jacketed employment system in this State -

The last time I looked at the statistics about 6 per cent of the work force were covered by workplace agreements. I do not know how the Attorney can say that, but, of course, he has never been unduly constrained by the facts of the situation. Nevertheless this is the situation now. We do not know the figures because the Minister for Labour Relations will not publish them. We receive only cumulated figures on workplace agreements, not the actual number of people who are covered by workplace agreements. The Attorney General said in his second reading speech -

> The reform has been undertaken as a means to an end, making the Western Australian economy more competitive and more efficient and industrial relations more harmonious and fairer.

Of course the Opposition should vote for it because this Bill will make industrial relations more harmonious! We can see that around us day in and day out! How can the Opposition question the assurance of the Minister on this matter? The Attorney General said -

> The Government will not resile from its absolute commitment to the important principle that the members should have the opportunity to show, by secret ballot, their attitudes to any contemplated strike action.

He quotes Tony Blair and so on. The Opposition commends that principle and is not opposing it. This legislation, under that guise, effectively outlaws strike action altogether. Talking about the Stalin style, the Attorney General says -

> The concept of a compulsory pre-strike ballot is opposed by some trade union leaders. They see it as a threat to their privileged position -

It is real warrior stuff. Then we go down one paragraph and it becomes -

> In contrast to the attitude of trade union leaders, the community supports strongly the concept of a compulsory pre-strike ballot.

The Attorney General went from "some trade union leaders" to "all trade union leaders" are evil opponents of this legislation. It is a simple but effective device. It bears very little relationship to the truth of the matter.

The Attorney General then approvingly refers to the United Kingdom experience. He does not bother to point out that the United Kingdom legislation bears very little relationship to the legislation that is being debated tonight. All the Attorney General's claims about the glorious achievements in the UK may be true, but they were not achieved by a piece of legislation like this.

I will note some of the other deceptive comments by the Attorney General in his second reading speech. He said -

> Consistent with the provision of section 152 of the federal Workplace Relations Act 1996, the provisions of this Bill will enable a state workplace agreement to override an otherwise applicable federal award.

The legislation includes a provision to extend the slum sector of state workplace agreements. The Attorney General says he is committed to maintaining the state system at its optimum level of efficiency. Members may think he is referring to awards, but it is the workplace agreements sector, which covers 6 per cent of the work force of Western Australia. The Attorney General then drives to wipe out the state award system. With reference to part 2 of the Bill the Attorney General said -

> The Government will extend the legislation relating to the financial obligations of union officials to include employees of unions who are entitled to participate directly in the financial management of a union in a representative or advisory capacity.

It is extended to even advisory employees. When asked in another place the Minister for Labour Relations did not know why it had been extended but said he would find out from his department. This is what we are supposed to adopt. There is a guarantee in the Attorney General's second reading speech that strikes will still be subject to criminal proceedings. The Opposition can probably rely on this assurance, if on nothing else. The legislation prohibits the participation of members of a union in any form of a strike that is not endorsed by secret ballot of relevant members. "Strike", of course, means any form of industrial action, although an amendment to be later considered covers a half-page and will try to define a strike.

The Minister's speech states that pre-strike ballots should be conducted as speedily as possible, the only trouble being that this legislation can, and probably will, draw out the process week after week. The speech continues-

> The strike action, whether it be a stoppage, ban or any other limitation on the performance of work, must conclude not later than 28 days after the declarations of the results of the ballot.

One can have a strike provided one has a ballot every 28 days, otherwise it is illegal. It is wonderful legislation! It continues -

> The commission may order a ballot to be held on the application of the union or one of its members, or of a relevant employer or organisation of employers, or on its own motion where the commission has reason to believe that a form of strike is contemplated by members of the organisation. The Minister may also direct the commission to order a ballot . . .

Therefore, we can have a pre-emptive strike by the employer, an employers' organisation or the Minister himself. So much for the autonomy and representativeness of the internal democratic function of a union which the Minister says this Bill is about. The processes and procedures section of the speech indicates that the implementation of the ballot will be matters for the commission to determine. The commission can direct the ballot to be conducted by either the registrar or a nominee of the commission or under arrangement with the Electoral Commission. It is an open ended liability in terms of cost whereby the Governor can impose the costs run up by the Electoral Commission, every 28 days, upon the union.

We have page after page of half-truths and deception in the Minister's second reading speech. The problem is that behind this deception is the mailed fist - the reality. Mr Kierath's list is a sort of *Schindler's List* in reverse. It is the sort of list on how to send them to, not save them from, the camps. Minister Kierath had his department busily working away to compile a list of all the ways under existing legislation he could gaol unionists and ordinary workers. He got 15 but that was not enough, so we have another 10 in the Bill before us. Members should be aware of them. I will mention only the first two or three on this list prepared by the department for the Minister.

Fifteen options were identified; namely, criminal charges under section 338 of the Criminal Code against each person who threatens industrial action with intent to cause a detriment, or makes a threat to unlawfully cause a detriment. These are indictable offences with penalties of up to seven years' imprisonment. Criminal charges under section 558 of the Criminal Code apply against any group of individuals who conspire to threaten industrial action with intent to cause a detriment. This carries the same penalty as a substantial offence. Criminal charges under sections 552 and 553 of the Criminal Code are listed. No wonder the Attorney General does not want a new model code; the current one is doing just fine! Sections 552 and 553 relates to attempting to threaten industrial action with intent to cause a detriment, unlawfully causing a detriment or inciting others to do so. The penalty for this offence is half that applying to a substantive offence. Criminal charges under sections 63 and 64 of the Criminal Code are for unlawful assembly or riot in respect of demonstrations by three or more people acting in concert. These are misdemeanours carrying penalties of one year's and three years' imprisonment respectively.

Hon Kim Chance: Did you say "unlawful assembly"?

Hon J.A. COWDELL: It is on the list.

Hon Kim Chance: It is going back to 54B.

Hon J.A. COWDELL: It is amazing what is still in the code. I am only on the first three items, so by the time the Minister turned the page he was positively salivating over what he found. However, it was not sufficient as the Minister has more measures in his Bill. Proposed section 78 has a penalty of $5 000 and a daily penalty of $500. Proposed section 80 carries a disqualification of a union official from holding office for three years, and contemplates an offence punishable by the Supreme Court as for a contempt. I understand Hon Kim Chance is au fait with that section. Proposed section 97B carries a penalty for an individual of $1 000 and $100 daily, and a penalty for an organisation of $5 000 and a daily penalty of $1 000. Proposed section 79G has a penalty for an individual of $1 000 and for organisations $5 000; the provision also has another proposed subsection with similar penalties. Proposed section 97J enables the Governor to impose all sorts of costs on a union for the wonderful pre-strike ballot; again,

$1 000 penalty applies for an individual and $5 000 in the case of an organisation. The Bill probably has 20 references to penalties of $1 000 or $5 000.

We have added to Mr Kierath's original punitive list, mainly, but not exclusively, on the basis of the Criminal Code the measures contained in this Bill. Of course, these are conditions to impose personal loss and institutional destitution for bankrupting trade unions or any other worker organisation. At this rate, given those penalties, the Minister for Justice, who is responsible for prisons, could probably argue strongly in Cabinet for increased appropriations for the new prisons to be required for the breakers of the law.

We have the deception behind the deception of what was presented at election time by the Premier. The reality of the betrayal is contained in the Bill. Every paragraph in the Minister's second reading speech is a deception.

I have two more references in the Minister's second reading speech, as I almost overlooked a key one under political expenditure which reads -

> Because the focus of the legislation is on the expenditure by the organisation, references to political donations have been changed to "political expenditure" . . .

That sounds simple enough. Rather than outlawing a donation at election time, this Bill affects the ability of trade unions to survey candidates at election time on their area of interest, to find out their views, and to publish in the newspaper a list of those candidates who support, say, educational expenditure, a school budget, and also those who oppose it and want to spend the money on roads or whatever. That cannot be done under this legislation. A limitation has been imposed on political expenditure. We no longer have political donations. It now means any sort of expenditure and any sort of survey.

Under the next provision moneys paid as a result of unlawful political expenditure are to be forfeited to the Crown. This brings the legislation into serious conflict with accepted international standards. The concept that if someone takes money and the culprit is found, the money goes back to the Crown and not to the person from whom it was obtained, is very interesting, but fully advanced in this legislation.

We then have a draconian section on federal award coverage. An organisation can be placed under any award provided it is a state award. It tries to keep people within the state award system and prevents them from transferring to the federal award system. Although the federal award system is not all that rosy these days, given the actions of the Howard Government, it is significantly better than what is provided under this regime, the state awards and workplace agreements.

Another delightful provision says that an organisation which has its rights cancelled cannot become a substituted organisation and the relevant employers will be notified of any cancellation of an organisation's rights and will be prohibited from collecting from the employees any union dues from that organisation. That is a bit of a hollow threat nowadays. The legislation chops off any award agreement to collect union dues at any rate. Members of an organisation that has its rights cancelled in respect of them may demand a refund of a proportion of the union dues. An organisation which has had its rights cancelled as a union, will be required, if asked, to give details of any affected members to any organisation which is substituted for it.

This provision is wonderful. It means that if a union is heading out to a federal award, the state coverage is taken away and it is allocated to another state union so that its members cannot move to the federal award. The Government allocates the replacement. We have all this talk about freedom of choice; however, there is no freedom of choice here. If the coverage of the union is cancelled at a state level, the substitute organisation is allocated. It is not up to individuals to decide where they will end up. We get back to the old situation where there were bosses' unions, with sham organisations being set up. We have seen this before in Western Australian and Australian history.

Hon Kim Chance: It existed in the United States.

Hon J.A. COWDELL: Yes. There was a great deal of trouble for 10 years after the First World War, after the conscription divisions, where nationalist unions were set up and employers tried to force employees into the bosses' unions. That same sort of structure is being set up here. The deception, half-truths and misleading statements go on for page after page in the second reading speech.

With this third wave piece of legislation, we are moving down the road to the workers' utopia. We had the first wave. We set up the employment slum sector, the workplace agreements, and limited the role of the Industrial Relations Commission. We have also seen the second wave of industrial reforms and the limitations it imposed. Now we come to the third wave. We are aware of the direction in which the Minister is heading. We all read an article in *The West Australian* of 29 April under the heading "Asian trip hardened my attitude: Kierath", which states -

> Labour Relations Minister Graham Kierath said yesterday his visit last week to China and Vietnam had strengthened his resolve to change the State's industrial laws.
>
> He said WA workers had to become more creative and productive to compete with low-paid workers in China.
>
> "There are 1.2 billion people in China producing very high-quality products with wage rates one-tenth of those in Australia . . .

The Minister's direction for workers is clear: We are heading for the workers' utopia and with the third wave of industrial reforms we will get there. This is the final solution for the trade unions.

This House should discharge this Bill at the second reading stage for many reasons, the first being the economic cost of this exercise. On television the other night the Premier quoted a figure of $120m, going up all the time, as being the cost of the industrial action to the State as a result of this legislation. Of course half the Ministry is asking why this outrage, when there is nothing in this Bill to cause it? If there is nothing in this Bill to cause outrage, it is certainly nothing to be pressed at a cost of $120m - and going up.

Secondly, the Bill should be discharged because of the social cost, the disruption in our community and the likely arrests and gaolings that will follow the passage of this legislation. Thirdly, it should be discharged because of the legislative cost; not only the cost in delaying other important pieces of legislation unduly, but also the cost of delaying senator-elect Hon Ross Lightfoot from attending in Canberra and giving the national Parliament the benefit of his wisdom - a real legislative cost we must bear in mind - not to mention the cost of this Chamber's final act, the old conservative Legislative Council ramming through a piece of legislation without performing a review function in any way.

Fourthly, this Bill should be discharged because of the doubtful legal basis of many aspects in terms of our international obligations and because of the commonwealth's industrial legislation. It should be discharged because the Government has no mandate to introduce it. I know we have discussed mandates, and I will not go into it again. However, members might find it worth while to read David Black's column of a few weeks ago under the heading "Mandate madness". It answers the more extreme claims of the Attorney General. As I have said, this part of the Liberal Party policy - not coalition policy - was so obscure, so hidden away, in a 15-page industrial relations paper, as to be unnoticed. In fact, most of the major initiatives in this Bill were not even contemplated in that 15-page paper, let alone publicised so that the people knew what they were voting on in this respect. We were to accept the assurances of the Premier who told us not to worry; that he was not going back on the compromise; that he would accept the compromise that was worked out with the unions following the 1995 legislation; and that he would not allow the Minister for Labour Relations to overturn it.

His assurance was on the front page of *The West Australian* and, of course, it is worth nothing. Nevertheless, one can understand the public's being confused and misled by that. Finally, we should discharge this legislation for two reasons: First, because of its real or intended consequences; that is, the destruction of the trade union movement and protection of workers' rights. Secondly, if those are not the real or intended consequences of this legislation, then it is a situation of "no net gain'; that is, these changes are not substantial and, therefore, the game is not worth the effort and cost

HON KIM CHANCE (Agricultural) [11.01 pm]: I oppose this Bill and I oppose the twisted philosophy that gave birth to it. I oppose the brutal manner of its introduction and I oppose the meanness of spirit that drives the protagonists. However, most of all, I oppose what this Bill will do -

[Interruption from the gallery.]

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! I suggest Mr Cooke that you allow your representative to continue.

Hon KIM CHANCE: Most of all, I oppose what this Bill will do to my fellow Western Australians.

[Interruption from the gallery.]

The DEPUTY PRESIDENT: Order! Hon Kim Chance.

Hon KIM CHANCE: On the day this Bill was introduced in this place, 30 000 Western Australian workers marched on this Parliament to protest against it. One or two quick witted members opposite asked where were the other 1.5 million who did not march and who presumably take the other point of view. When I see 30 000 workers marching on the Parliament demanding the introduction of secret ballots that are so convoluted that it takes weeks

for them to take effect, when I see 30 000 workers marching on the Parliament demanding that we introduce laws prohibiting political participation by unions then I will believe some of the statements made by members opposite.

One of interesting aspects of this debate outside the House has been the number and the nature of contacts we have received as members of Parliament. It is well known that the voters in my electorate are fundamentally conservative. In fact, it contains a Legislative Assembly electorate that returns a conservative member with 80 per cent of the vote. However, every contact I have had, bar none - and there has been a steady stream of calls, particularly in the past couple of weeks - has been in support of the Opposition's or the Trades and Labor Council's position on this Bill. I have not had one call requesting that we get on and pass this legislation because the caller wants to see laws brought in to prevent unions participating in the political process. I have not had one call asking me to support this legislation so that unions in certain sectors can be prevented from holding a secret ballot. I have not had one call asking me to support this legislation for any reason. Not one Western Australian, or anyone else for that matter, has called me to suggest that the Opposition should support the Bill. A number of callers have asked me whether I support it, but not one has said that I should.

I would be interested to know from members opposite - presuming that electors call them - how many calls they have had from their electors asking them to support the Bill. I know they have had callers asking them not to, because I have spoken to people who have also spoken to some of my colleagues opposite. However, there is not a lot of support out there.

Legislators and Legislatures make mistakes from time to time, and it is no crime for a Legislature to make a mistake - all people are fallible and legislators are people. However, history draws a line between bad law created out of simple if honest folly and bad law created out of malicious intent, and that line is pretty fine. In my view, this Bill crosses that line. This is a Bill -

[Interruption from the gallery.]

Point of Order

Hon P.R. LIGHTFOOT: Mr Deputy President, you should not tolerate interruptions from the Public Gallery.

The DEPUTY PRESIDENT: Mr Cooke, I suggest that if you want to stay here, which is entirely your right, you must observe the rules of this place.

[Interruption from the gallery.]

Hon P.R. LIGHTFOOT: Mr Deputy President, I again point out that you should not tolerate interruptions from the Public Gallery.

[Interruption from the gallery.]

The DEPUTY PRESIDENT: Mr Cooke, I again suggest that if you wish to remain you observe the decorum of this place. You know well that you are entitled to be here, but until you are elected to the floor of this place you are not entitled to take part.

[Interruption from the gallery.]

Debate Resumed

Hon KIM CHANCE: This is malicious legislation, just as was section 54 of the Police Act. That long gone section forbade public assembly without authorisation. I was fascinated to hear Hon John Cowdell raise the question of illegal public assembly in the context of the series of offences dreamed up by Minister Kierath in order to force the passage of this Bill. I have no idea where it came from but I was fascinated to hear it. Public opinion took charge of proposed section 54B. It was consigned to the rubbish dump in very short order upon the election of a Labor Government.

I do not believe this legislation should ever become law but, should it happen, it will ultimately suffer the same ignominious relegation to the garbage as proposed section 54B, and for the same reason. The legislation is not consistent with the concept of fairness and common decency that most of us hold in our dealings with other people. Should this Bill ever become law, and increasingly it looks probable, it will not warrant the respect of the people. As legislators we place ourselves in a precarious position if we enact law for which the community has no respect. Like proposed section 54B was, I predict that this legislation will be openly flouted. We have already seen occasions in which community leaders have advocated actions which would be in conflict with the Bill's provisions. Not only do I understand why people would openly advocate that people should challenge this proposed law but also I would endorse their challenge and be prepared to join them. I would take that action not because I have a long union background, but because the legislation offends my sense of decency. Most members know that my background is

not that of a trade unionist. For the largest part of my working life I was an employer, I was a founding member of a registered employer association and an elected national representative of farmers. I came to this place with fairly modest ambitions but, above all, I thought I might be able to help create a more harmonious society. I felt that if I were able to help in some way, that would be sufficient ambition. However, I believe that this legislation is deliberately setting out to inhibit the creation of the kind of society in which every individual has the opportunity to pursue his or her ambitions, regardless of the circumstances of their birth. This legislation deliberately sets out to impose legal sanctions on the peaceful and non-violent actions of a worker who, in concert with one or more other workers, sets out to improve his conditions or even - this is absolutely disgraceful - express a point of view on how society itself might be improved and enhanced.

This is fascist legislation in the literal sense of the word "fascist". If anyone doubts the authoritarian nature of the proposed law, let us look at some of the Bill's clauses. I can skip over most of them because some of my colleagues have mentioned them. If the industrial magistrate makes an order on a union official, such as the application of a fine under section 77(2) of the Act, the registrar can apply not only for a further order to declare that officer's place to be vacant but also for that officer to be disqualified from holding or even acting in an office of a union for three years. If that is not a classic double jeopardy situation, I do not know what is. It is double jeopardy because it imposes a penalty but then it goes on and imposes the further penalty of saying, "You will not be entitled to earn your living in the industrial relations industry as your are qualified to do. Go out and find other work, if you like, somewhere else. Do not come in and act even in an unpaid role in your financial officer role." I do not know how members opposite can say that this in some way will create a more harmonious society and workplace. It is downright unfair.

Hon John Halden may have referred to this: Why is there no reflection of this action, if it is desirable, in the Corporations Law? Why do we not apply the same conditions? If someone commits an offence under the Corporations Act, such as a financial officer in a company, why do we not fine him and also prevent him from working in a corporation.

Hon Peter Foss: We do that.

Hon KIM CHANCE: The Government does not do that in the Corporations Law.

Hon Peter Foss: We do.

Hon KIM CHANCE: The Government might do in the Criminal Code. I am sorry but the Attorney is wrong. It is not for the same offence.

Hon Peter Foss: He can be fined as a director and banned from being a director.

Hon Kim Chance: Not for the same offence. It is for a criminal offence.

Hon Peter Foss: Yes.

Hon KIM CHANCE: This is not a criminal offence.

The PRESIDENT: Order!

Hon KIM CHANCE: I am amazed that the Attorney does not understand the effect of his own legislation.

Hon Peter Foss: I do. It is the same in the Corporations Law.

Hon KIM CHANCE: It means that an officer or employee of a union who commits a minor offence and does not or cannot pay the imposed fine, effectively becomes a criminal. He could be denied employment in a union for up to three years. If he performs in any function of an office in a union, even on an unpaid basis, he commits a further offence of contempt of the Supreme Court - a crime punishable by imprisonment. Those provisions are contained in clauses 4 to 7 of the Bill.

The intimidatory nature of the Bill extends also to secret ballot provisions. I do not want to spend a lot of time on them because they have been fairly well canvassed. Once a secret ballot has eventually taken place for proposed industrial action, there is still no immunity granted by that process against litigation by employers, including civil action. Even though a union may have gone through the tortuous process of holding a secret ballot prior to instituting some form of action, both it and the workers taking part in that action remain liable to litigation. Further, it seems that it is also open in some circumstances for the Minister or any other person who happens to claim to be affected by the so-called strike, which may not be a strike but a stop work meeting or some other form of action, to seek an injunction against any person engaged in industrial action after the granting of a resume work order. If that is the case, any further action taken by that person or persons, following the issuing of a resume work order, can be deemed

to be in contempt of the Supreme Court, an offence which carries a prison sentence. I find it a little hard to find that in the Bill but it is certainly referred to on page 12 of my copy of the second reading speech.

One of the most incredible aspects of the legislation is found in clause 36, proposed subsection (16), under which if the Supreme Court is satisfied that a person or union is even proposing to take action while a resume work order is in force, an injunction may be granted. This again has the effect of putting people who are doing no more than standing up for their rights in a position where they can be held to be in contempt of court and imprisoned. When some of our members said that this whole legislation is underlined with criminal provisions, that is exactly the case. They were not stretching the truth. At the end of almost every charge under this Act we can find means by which a unionist can be imprisoned. I do not think that is a mistake; it is there deliberately. That is why I referred to the meanness of spirit which drives this legislation. Even the dubious protection which is afforded to employees by the completion of a pre-strike ballot is worthless to some employees.

That is why I referred earlier to the fact that this legislation is not about guaranteeing the right to a secret ballot, because there are circumstances by which every worker in every workplace can have a secret ballot already. This legislation is about denying people the right to an effective secret ballot. If the commission decreed before or after the ballot had been held that the dispute was not, for example, related directly to the employees' wages and conditions - such as teachers taking action over a cut in the Education budget - or if the commission decided that essential services might be disrupted - such as nurses working on a work to rule basis over an issue about their wages and conditions - or even that the action might cause hardship to any of the parties to the dispute, which presumably could include the strikers, a resume work order could be issued which would have the effect of making any further action, or even any further proposed action, a breach of the Act, which would incur those same draconian penalties.

I want to make absolutely sure that members opposite understand what I just said. I will give an example of what the Bill does. If nurses at Royal Perth Hospital were seeking an improvement in conditions at the hospital, particularly if those conditions affected patients' rather than nurses' welfare, so the issue was not related directly to the wages and conditions of those nurses, and if those nurses were contemplating a stop work meeting to draw attention to their case, they would be required, first, to hold a pre-strike ballot. Having successfully done that, perhaps some seven weeks later, they might then be advised by the commission that their proposed action constituted a strike under section 32(11)(d)(iii) of the Act because their action might disrupt the supply of essential services to a significant number of members of the public, and that the commission was entitled to issue a resume work order, even though work had not stopped yet and there was no indication that it would stop, other than for a stop work meeting.

If those nurses were sufficiently concerned about the welfare of their patients that they held the stop work meeting anyway, they would be committing a breach of the Act and could incur the range of penalties provided for breaches of the Act, which have been well and truly forecast by other members. If the Minister successfully sought an injunction at that point, and this was also ignored by the nurses - for example, they held another meeting- they could then be found in contempt of court and imprisoned.

I do not know how members opposite feel about this scenario, but it makes me feel sick that we are even talking about and contemplating legislation which is that vicious, that brutal and that bloody dumb. Why would they want to send nurses to prison because all they had done was hold a stop work meeting about the conditions for patients at Royal Perth Hospital? Ironically, had they done all of those things because of their concern for their wages and conditions, they would not have put themselves in that situation. This is dumb law. We are talking about making criminals out of people who are doing nothing more than speaking their minds and trying to improve the conditions in which they work and in which their patients have to survive.

To equate this legislation with freedom of the individual in the workplace, as some government members have done, is the ultimate hypocrisy. This legislation serves one purpose and one purpose only, and we should make no mistake about it. The purpose it serves is to grind workers into submission. The purpose it serves is to separate the individual worker from the one unit of power that that worker can use to advance his or her circumstances; that is, the unions. Members opposite must wonder in their quiet moments why the coalition has always been such a spectacular failure in the area of industrial relations. It is good at some things, I will grant it that, but at industrial relations it is useless, and members opposite would have to admit that also in their quiet moments. I do not expect them to admit that now, obviously, but if they thought about what this Bill will do, particularly in the example I have just given, they might get some inkling about where they have gone wrong and why they find themselves on one side of the debate when virtually every other community, media and church leader is on the other side.

Why have members opposite been so universally condemned? Has it not occurred to them that they have just got it wrong? I am sure Mr Kierath told them that this legislation would do some good things and have some good effects, but I do not think he told them any of this. I think members opposite are generally decent people. Generally they

are not people who would say, "That is a good idea. We should do that." I heard my friend the Minister for Transport say that he wholeheartedly supported this legislation. I know him better than that. He does not believe in the effect of the legislation, of which I gave an example a moment ago. He would not want that, but that is what his Government's legislation will do. That is the reason that the Leader of the Opposition and others have been trying to convince the Government that it should take this legislation away and have another look at it. That is not much to ask.

Until a couple of days ago, there was a sticker on the boom gates at the exit to the members' car park which read "Union rights are your rights". That sums it up pretty well. The quality of our society is measured not only by our wealth but also by the quality of our environment. It is also measured in an important sense by the way we treat each other. Those measures of quality include the crime rate, the fairness of our laws, the scope of our health and education systems, the equity of our electoral system, and our right to free speech and to democracy.

It was the Australian concept of industrial democracy that led so many thousands of European citizens to choose this country and come here in that huge wave of postwar immigration. I have spoken to some of those people who came here in the 1950s, and brave people they are. I said, "What attracted you to Australia?", and they said, "Australia is a country where industrial disputes are settled by a process of arbitration." They are not settled by brutality in the workplace, as those workers had become used to in Europe in the 1920s, the 1930s and the 1940s. The last two of those measures of quality that I spoke about - the right to free speech and the right to industrial democracy - are debased by this Bill. As a result, not just unionists' rights are debased by this Bill but the rights of all of us as a society are debased by this Bill. If this Bill were to become law - I can only hope it does not - all of us, our families and our friends would live in a society which might still be rich, but it would be a poorer society than it is now. It would be a society in which free speech was limited, in which honest people through honest actions could be branded as criminals, and where goodwill between employers and employees would be shattered.

This is junk law. It is junk law driven by one person's hatred of unions which seems to backdate to his own unsuccessful foray into the business world.

On Anzac Day I listened to an excerpt from the address of His Excellency Major General Michael Jeffery AC MC in which he defined the principles of democracy for which Australian servicemen and women fought, one of which was particularly apt to the situation in which we find ourselves; that is, to be governed in accordance with the will of the people. This has been mentioned before; however, it should be mentioned again in the context of this debate.

The will of people in Western Australia was expressed in December 1996. It was the will of the people that the conservative majority that existed in this House for over a century should cease. Why are we dealing with legislation of such profound significance while this House is still structured according to the will of the people determined in 1993? That is a question above all others. Even if the difficult notions of the legislation are perhaps misunderstood by people, that question will always be understood by every Western Australian. It is not a question that will be forgotten. The arrogance by which this Government has chosen to take advantage of that window of opportunity, those last few days of the conservative majority in this place is something that people will not forget easily.

I am not the only one to feel a sense of outrage at this. I will read briefly from an article in the April edition of *Western Review* written by a senior political reporter with National Nine News, Mr Matt Price. This is a real Governor's night, because it includes a quote from the Governor's speech at the opening of Parliament. The article states -

> . . . Labour Minister Graham Kierath's scud attack on the new parliament defies belief. Twice unable to get his industrial reforms past his own cabinet colleagues before the election, he's brought it back again to kick off the new term. Kierath goes on to nominate May 21 as the deadline for his reject bill to be made law, denying he's trying to steamroll the thing through the parliament. He says it's merely "coincidence" that May 22 happens to be the day the conservatives lose control of the Upper House for the first time since Federation.
>
> . . . For Court and Kierath to smugly and blatantly take advantage of a quirk in our constitution, which allows a time lag between new Upper House members taking their seats, is bad enough. For them to deny they're doing it is insulting and foolhardy. Kierath claims labour reform is urgent, but in the same breath quotes figures showing industrial disputes in WA to be the lowest in Australia.
>
> The Government's unseemly haste on the new industrial laws is another blow for "open and accountable" administration. This flagrant detour around democracy will only add legitimacy to the inevitable industrial turmoil.

He then ended by quoting the Governor's address to this Parliament. The article continues -

> "With the assistance of good government, a wise Parliament and with God's help there is no limit to a prosperous and contented future."
>
> God help us.

I can only echo the sentiments expressed in that article.

I urge members opposite not to be conned into believing that the Bill is about improving the effectiveness of our workplaces as a result of the introduction of secret ballots. The language in the Minister's second reading speech includes terms like more productive, competitive, rewarding, safer, fairer and - laughably - more harmonious in relation to the outcomes of this Bill in the workplace.

[Interruption from the gallery.]

Hon KIM CHANCE: He did not go into that.

Mr President, make no mistake about the outcome of the legislation: If it becomes law it will be and should be resisted. That resistance will not create more harmonious workplaces. Anyone who thinks that still believes in fairies at the bottom of the garden.

It is true that the Bill does include among its other provisions the introduction of compulsory secret ballots. However, it does so in a form that will create more, not less, tension in the workplace. All that will occur is that the nature of disruption will change from formal to informal action, and disputes will be drawn out by the over-prescriptive requirement of the Bill for those ballots. When employers, particularly those in the metal trades, have spoken to me about this Bill they have suggested that one of the most dangerous elements of the Bill is the time lag. They said that if they have a problem in the workplace by calling either their employer organisation or sometimes dealing directly with the Amalgamated Metal Workers Union they can do something to fix the dispute before if goes off the air. Even if there will be a blue, they want to get it over with and get down to business again. The difficulty here is that we will have a blue but it cannot be resolved, because a pre-strike ballot must be held. It could be days, weeks or months later that we get to the end of that process.

It has been fairly well accepted that the period between the dispute occurring and the secret ballot taking place will be about seven weeks. How much productivity will we get out of our factories in those seven weeks?

Hon Mark Nevill: What factories? They will have closed down.

Hon KIM CHANCE: That is assuming things have settled down. That is what is concerning employers in the metal trades. Even if it is only two weeks, if a dispute cannot be resolved quickly it will go on costing. Members opposite say that the Chamber of Commerce and Industry is in favour of this legislation. If that is the case - I am not saying members opposite are liars - perhaps the CCI needs to have a word with its members. I know that its members do not want the Bill.

[Interruption from the gallery.]

Hon KIM CHANCE: Secret ballots are available and open to all workplaces now. It is a fact of life. There is no workplace in Western Australia where a secret ballot cannot be negotiated. Already in a number of workplaces and awards and industrial agreements secret ballots are built into the legal process. Any workplace can enter into those same arrangements. However, this Bill in some circumstances will take away the rights that would otherwise be granted by secret ballot. Once it is deemed that a workplace is supplying an essential service holding a secret ballot will not achieve anything, because if workers proceed with industrial action - regardless of whether a secret ballot was conducted under the process laid down by law - they will be in breach of the Act. This legislation will remove the effect of the secret ballot and not facilitate a secret ballot.

I am aware that some government members are uncomfortable about the content and dubious value of the Bill. I cannot believe that the employers who have spoken to me over the past three weeks have not also spoken to members opposite. I am also aware that the Cabinet was provided with data on the level of support for this legislation among employers. However, it was not provided with another set of data from employers on their opinions about this legislation which showed a much less rosy picture. Yet it was data which was equally valid and credible. It came from work done by a select committee of this House. That is part of the deception that surrounds this Bill, and I wonder why the decent members opposite continue to put up with it. I have been a staunch member of the Australian Labor Party since 1971, but if the Labor Party ever tried a stunt like this on me, I would vote with the other side. I would leave the Labor Party if it tried to pull the wool over my eyes with such legislation.

Hon Mark Nevill: Why don't members opposite tackle some of the bikie gangs, and do something useful instead of sleeping?

Hon KIM CHANCE: In the limited time available to me I have dealt with just two aspects of the Bill. Even then I have touched only lightly on the issues of secret ballots and the penal provisions relating to finance officials and employees. However, the Bill has wider scope than that and I would like to deal with more of it even though I am running short of time. I will turn to the end of my speech where I pose a few questions to members opposite. This relates to double standards.

[Interruption from the gallery.]

Hon KIM CHANCE: We do indeed, but they get worse.

The double standards in this Bill extend to the issue of political expenditure and political participation. A union is a voluntary organisation, as is a company. Both unions and companies are bound by exactly the same duties at law to report on the question of political donations. However, under this Bill a union cannot contribute to a party, a candidate or a group of candidates except from a specific fund dedicated for that purpose. A company suffers no such impediment on its actions or determinations. Why? Political donations are not an industrial matter. Other members have said this before. I think Hon Ed Dermer made that point very well. Political donations are not an industrial matter but one concerning the Electoral Act. That Act treats unions and companies in exactly the same way, so what is the reason for this clever double shuffle? Mr President, you do not need me to spell it out. I am here only to illustrate double standards.

The second double standard is that any contribution made by a union to any form of political expenditure must be made through its members according to the members' express wishes. A company, association or voluntary association can make any contribution that its executive or board so determines.

Hon Mark Nevill: Western Mining paid the salary of the President of the Liberal Party. He was shifted there a month before he went from the Department of Minerals and Energy.

The PRESIDENT: Order!

Hon KIM CHANCE: Not only can those companies and organisations make any donation in any manner they determine, but they can do so even if the contribution is against the express wish of any shareholder of the company - as Wesfarmers did, in my case - or any member of the organisation.

The third double standard is that any officer of a union who authorises political expenditure outside the strict provisions of the Act will face severe penal provisions. No officer of any company faces similar restrictions in the same circumstances.

The fourth double standard is that a finance officer of a union can, in the event of a breach of the Act, be banned from acting in that capacity for three years. No such ban is possible on a finance officer of a company. Despite the sophistry from the Attorney General when he tried to suggest that was possible, nothing in this legislation says that a finance officer of a company can be banned from acting in the capacity of a finance officer of a company in the event of a breach of the Act. Again, a finance officer of a union can be found in contempt of court and imprisoned if he or she acts in an official capacity after a banning order is made. No such penalty applies to a finance officer of a company. Unauthorised political expenditure by a union is subject to forfeiture to the Crown, but no forfeiture order can be applied to expenditure by a company.

Members of Parliament have received a lot of letters lately from the Granny Smith goldmine which has been offended by Liberal Party policy on a gold levy. Members should consider this situation: If the union representing the workers at the Granny Smith mine were to incur similar expenditure writing to members of Parliament and others, protesting about the Liberal Party policy on the introduction of a gold levy, and they were to pay for the cost of the campaign from the general funds of the union, and if the company itself were to do the same thing and pay for the cost of the campaign - maybe even the same campaign and the same leaflets - out of the general funds of the company, the union would have committed an offence but the company would not. If one needs any further example of why this is junk law, all one needs to do is open the Bill at any page, because it is junk from one end to the other.

I do not intend to use all my time, even though I have cut my speech dramatically short. With those few words, I will leave the bulk of the material I have prepared for this speech. However, I must say that I do not think I have ever come across legislation as vicious and brutal as this, and worse than that, I have never seen legislation so badly managed by a Government -

[Interruption from the gallery.]

Hon KIM CHANCE: Not only is the legislation itself bad enough to raise considerable public offence by the nature of it, but also the Government through its appalling management of the legislation has managed to get the public more and more offside simply by the nature of its management.

HON GRAHAM EDWARDS (North Metropolitan) [11.48 pm]: I oppose this legislation.

[Interruption from the gallery.]

The PRESIDENT: Order! We have been through this. Hon Graham Edwards is endeavouring to address the Chamber. He is entitled to be heard. I ask the people in the gallery to refrain from interrupting him.

Hon GRAHAM EDWARDS: I reiterate that I oppose this legislation. I oppose it because it is basically corrupt, and because it is being dealt with in a way which is, in turn, corrupting the process, customs, traditions and procedures of this House. This corrupt legislation is not an assault just on the responsible union movement of this nation. It is worse than that; it is an attack on the very foundations of our country. This legislation is the product of an arrogant Government that is trying to undo the great traditions that have been important to the foundation and development of Australia. This corrupt legislation represents an attack on the values the people of this nation have for many decades held dear as important characteristics in the make-up of the ordinary Australian person.

One of the great characteristics of the history of Australia has always been the spirit of mateship and the creed of a fair go. The union movement and this nation have their very foundations in that spirit of mateship - a spirt that was born of the need and recognition in the early days that if this country was to grow and prosper, it would do so only if it developed as a country that allowed a fair go for everyone. This Government is now hell-bent on destroying that time proven tradition. That is the spirit the diggers of the First World War brought home with them; it is the spirit that has persevered over the ensuing decades; and it is the spirit this Government will never break.

I said earlier that the Government in its obscene haste to get this legislation through this place had corrupted the processes of this Chamber. Normally the Minister handling a Bill such as the complicated Bill we have before us would sit in his seat listening to the debate, noting the points raised, and preparing responses to questions. However, this Attorney General has not done that. He has shown a genuine disinterest in the debate. He knows that at midnight the guillotine hanging over this debate will fall and he knows that he does not have to justify a single part of this Bill in order to have the second reading passed. If that is not a corruption of the system and of the procedures, customs and traditions of this House, nothing is. The Attorney General has sat around the House, giggling like an immature school child or playing crosswords. It is interesting that in his marathon speech last night the Leader of the Opposition in this place drew attention to that. When the Attorney General was not doing that, he played with his new toy, his mobile phone - the one with the mirror in the lid. Apart from that, this Attorney General has sat there ignoring the debate and reading a novel about Japan. I do not know that it is a novel about Pearl Harbour. However, just as Japan's leaders committed that nation to its day of infamy, so too are the leaders of the coalition in this place committing this Government to a day of infamy in the history of this nation.

For a long time I have been appalled at the arrogance of this Government. However, never in my life have I witnessed the sort of arrogance the Attorney General has displayed by the way he has conducted himself in this place. He might take some pride from that and he might feel smug and smart about it, but what he has done, and the way he has conducted himself during the course of this second reading debate, is a disgrace. Neither he nor any one of the people who sit on that side of the House should take any pride in that.

We know from the denigrating comments Ministers on that side of the House make about *The West Australian* that they have no interest in what it has to say, and we know they have no interest in the sorts of editorials that have been written. I draw to their attention an editorial that was written this week in the community newspapers. As you are aware, Mr President, community newspapers in this State leave an incredible impression on the people of Western Australia. They are highly read and rarely do they get into a political editorial. I quote this editorial under the heading "The will of the people?" -

> Does the state government really have a mandate for its industrial relations legislation?
>
> Thinking people should ask themselves that question.
>
> We have the mandate, the government repeatedly claims.
>
> But its opponents - and many who helped vote it in for a second term - say it doesn't.
>
> A government returned to power has hundreds of planks in its election platform.
>
> Some of those planks often are the lesser of two evils. Some may be electorally unpopular but are buried in the overall appeal of one party's package against another's.
>
> Some of those planks may be anathema to sensible people who voted for the government only because they liked more of its pledges than they disliked.
>
> So are we being conned when the government says it has a mandate?

> Governments of all colours cry "mandate" whenever voices are raised in protest at their actions - even if many of those voices belong to their own supporters.
>
> Unfortunately, we, the voters, have no choice - we have to accept the whole package or nothing. And if it's nothing, we have to wait until the next election.
>
> The Macquarie dictionary definition of mandate: The instruction as to policy given or supposed to be given by electors to a legislative body or to one or more of its members.
>
> The problem with this is that though a government seizes on it as a means to push through its whole package - the unpopular with the popular - much of the electorate sees it differently.
>
> In an ideal world there would be facility for the electorate's wishes to have some effect right through a government's term of office.
>
> In the real world the electorate can do this only through letters to newspapers, talk-back radio, private polls, badgering of MPs, protest meetings, demonstrations or, ultimately, industrial action.
>
> There can be no doubt that riding in the groundswell of opposition to the government's third-wave industrial legislation are many of the government's staunchest supporters.
>
> And there can be no doubt that many of these reasonable and sensible people are asking: "Do you really have a mandate for this, Mr Court?"

If we ask that question, the resounding answer is no; it does not have a mandate. I talked earlier about the true spirit of this country. That spirit of Australia will endure. The Government's legislation may pass through this Parliament, but it will not prevail over the people of this State; it will not prevail over the spirit of the people of this State and it will not prevail over the will of the people of this State.

I again ask the Government to tell us who wants this legislation. We know the masters of the coalition, the Western Australian Chamber of Commerce and Industry want it; we know the 500 Club wants it; and we know the Minister for sneers who sits in another place wants it. But who else wants it? Not one of these people opposite has been able to tell us who wants this legislation.

This is one of the last speeches I will make in this House, and I conclude by saying that I am incredibly saddened by what has happened in this place over the past few days. I take great pride in sitting on this side of the House with my colleagues. I would rather sit on this side without the numbers but with the moral right, than sit on the other side with the numbers and have to contend with my conscience and this arrogant and fascist legislation.

Mr President, I appreciate the job you have done in the course of this debate. I know it has been difficult, and I do not think I have ever seen a Presiding Officer placed in a more difficult position. Once again, that is because of the emotion and passion this sort of legislation arouses in people. It has been a difficult debate to control and I thank you for the maturity with which you have done that. I thank you also, Mr President, for the very even-handed and balanced way in which you allowed people in the Public Gallery to have their say the other night. Many Presiding Officers would not have been mature enough to do that, but you were and it is to your great credit.

The PRESIDENT: In accordance with the order passed by this House, I must now interrupt the debate for the purpose of putting the question.

Hon GRAHAM EDWARDS: Does that mean my speech is cut short by this draconian guillotine?

The PRESIDENT: Yes.

Point of Order

Hon P. SULC: I seek your clarification, Mr President, with regard to the motion to which this House is about to be subjected. It provides that the time at which the second reading is to be put is 2400 hours. I understand that the 24 hour clock moves from 23 hours, 59 minutes and 59 seconds to 0000 -

The PRESIDENT: Order! That is not a legitimate point of order.

Debate Resumed

The PRESIDENT: The question is that the Bill be now read a second time.

Question put and a division taken with the following result -

Ayes (17)

Hon A.M. Carstairs	Hon Peter Foss	Hon M.D. Nixon
Hon George Cash	Hon Barry House	Hon B.M. Scott
Hon E.J. Charlton	Hon P.R. Lightfoot	Hon W.N. Stretch
Hon M.J. Criddle	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore	

Noes (15)

Hon Kim Chance	Hon Val Ferguson	Hon J.A. Scott
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Tom Stephens
Hon Cheryl Davenport	Hon John Halden	Hon P. Sulc
Hon E.R.J. Dermer	Hon Tom Helm	Hon Doug Wenn
Hon Graham Edwards	Hon Mark Nevill	Hon Bob Thomas *(Teller)*

Question thus passed.

Bill read a second time.

[Interruption from the gallery.]

ADJOURNMENT OF THE HOUSE SPECIAL

On motion without notice by Hon N.F. Moore (Leader of the House), resolved -

That the House at its rising adjourn until 11.00 am on Friday, 9 May 1997, and on that day -

(a) the sitting is suspended between 1.00 and 2.00 pm;

(b) 5.00 pm is the time fixed for the purposes of Standing Order No 139(b)(iii) - questions without notice; and

(c) Standing Order No 61(b)-(d) applies as if the time prescribed for the interruption of business is 5.30 pm.

House adjourned at 12.09 am (Friday)

QUESTIONS ON NOTICE

RECYCLING - WASTE MINIMISATION

Government Policy

156. Hon J.A. SCOTT to the Minister for Finance representing the Minister for the Environment:

(1) Why has not the Government designed a waste minimisation and recycling policy to halve waste dumped in landfill in Western Australia, set as part of a national objective at the Australia and New Zealand Environment Conservation Council in 1992?

(2) Is Western Australia the only State not to have a waste minimisation and recycling policy?

(3) If not, which other States have not?

(4) Apart from the salaries of public servants, what State funding has been allocation to support waste minimisation and recycling programs in Western Australia?

(5) What are these programs?

(6) How much funding is allocated to each program?

(7) How does Government funding for waste minimisation and recycling compare with that in other States and territories?

(8) How are recycling programs in other States and territories funded?

(9) What were the 1995 national interim recycling targets?

(10) Did Western Australia achieve these targets?

(11) If not, why not?

(12) What support does the Government provide for the development of country recycling?

(13) Why do the State's three largest regional centres, Bunbury, Kalgoorlie and Geraldton, not have kerbside recycling?

(14) Why has the Government failed to ensure universal kerbside recycling in Perth?

(15) Which local government councils in the metropolitan area are not providing a kerbside recycling service?

(16) Which councils are not collecting all their materials listed in the national recycling targets?

(17) What is the Government doing to ensure that all councils provide a comprehensive recycling service?

(18) How will Western Australia halve its waste to landfill by the year 2000 if after four years since the 1992 ANZECC agreement it has not succeeded in establishing comprehensive recycling services throughout Perth, let alone Western Australia's regional centres?

Hon MAX EVANS replied:

(1) The Department of Environmental Protection has been preparing a draft state waste reduction and recycling policy. The draft policy is soon to be presented to me for consideration.

(2) No.

(3) Tasmania has a policy in draft form.

(4) In the 1996-97 budget year the Department of Environmental Protection has $75 000 allocated for this purpose. In addition, during 1996 Cabinet approved a grant of $828 000 for the establishment of a tyre recycling facility in Western Australia.

(5)-(6) The State Government's waste reduction and recycling programs are run by the Department of Environmental Protection. The programs cover the following activities -

waste reduction and recycling education and promotion - $5 000;
the State Recycling and Waste Reduction Awards - $3 000;
the recycling and waste management conferences run by DEP - self-funding;
policy and strategy development - $20 000;

support for rural and remote recycling by way of small grants, and staff support - $6 000;
general recycling support - $4 000;
cleaner production - $12 000; and
government agency recycling - $25 000.

Sponsorship of the state recycling conference and recycling awards, and private sector support for community recycling education and for the development of public place recycling provide additional operational funding.

(7)-(8) In Western Australia funding for these issues - at State Government level - is lower than in NSW, Victoria and South Australia, each of which funds their programs from a levy on waste disposed of in landfills. The ACT Government's expenditure on waste reduction and recycling is drawn from consolidated funds and is greater than Western Australia's. A direct comparison is difficult because the ACT government also acts as a local authority in providing kerbside recycling and other waste management services for the community. Queensland funds its waste reduction and recycling activities form consolidated revenue; its expenditure is greater than Western Australia's. The Tasmanian and the Northern Territory governments also use consolidated funds but their expenditure on waste reduction and recycling is lower than Western Australia's.

(9) The 1995 national interim recycling targets were -

plastic containers - 25 per cent;
glass - 45 per cent;
aluminium cans - 65 per cent;
steel cans - 25 per cent;
liquid paperboard cartons - 20 per cent;
newsprint - 40 per cent; and
paper packaging - 71 per cent of input to be secondary fibre.

The Western Australia Government successfully advocated the extension of these targets in 1996 to cover organic waste and construction and demolition waste which are major components of the solid waste stream.

(10) Western Australia only achieved the targets for newspaper recycling and recycled content of paper packaging.

(11) Western Australia did not achieve the majority of the 1995 national targets principally because a number of large local authorities did not - and still no not - provide adequate kerbside recycling services for the community. Western Australia's performance has otherwise been hindered by the lack of scale and distance from markets characteristic of many of the State's rural and remote localities.

(12) The Government, through the Department of Environmental Protection, provides assistance for a recycling coordinator working for a local government regional council in the South West. The department has also provided an interim support scheme for the transport of newspaper to Perth for recycling, and a number of small grants for recycling infrastructure. The department also has several officers who are able to offer support and advice for rural and remote recycling as part of their roles.

(13) The City of Bunbury had a kerbside recycling service until 1994 but cancelled it because the contractor could not sustain the service any longer at the prevailing contract price. I understand the City of Bunbury and surrounding shires are likely to re-introduce kerbside recycling in the latter half of 1997. The City of Kalgoorlie-Boulder has received assistance from the State Government to start up kerbside recycling but its response so far has been limited to a recycling drop-off centre at its landfill site. Kalgoorlie and Geraldton both cite cost as a reason for not implementing kerbside recycling.

(14) The Government does not have the power to enforce the provision of kerbside recycling services but has been continually encouraging local authorities to upgrade their services in this area.

(15) I am advised that the City of Gosnells and the Shires of Mundaring and Serpentine-Jarrahdale do not provide a kerbside recycling service at present.

(16) The City of Gosnells, the City of Perth, the Shire of Serpentine-Jarrahdale, the Shire of Mundaring, the Town of Vincent, and the City of Wanneroo are not collecting all the materials listed in the national recycling targets.

(17) The Government is developing its state waste reduction and recycling policy, which will include a range of programs designed to promote recycling and waste reduction activities throughout the State. These programs will include incentives for local authorities to provide comprehensive kerbside recycling schemes, community education, recycling infrastructure support, support for rural and remote recycling, and household hazardous waste programs.

(18) The Government is committed to achieving the ANZECC national goal of halving waste to landfill by the year 2000. However kerbside recycling, whilst it is important, is only 15 per cent of this total reduction. The large waste volumes are in the areas of green and organic waste, construction and demolition waste, and putrescible domestic and commercial waste. I am advised that with the considerable recycling of green and organic waste and construction a demolition waste, the planned operations to divert putrescible waste from landfill for resource recovery purposes, and planned enhancements to kerbside recycling in certain local authorities the State is well placed to achieve the year 2000 goal. The state waste reduction and recycling policy will provide the necessary State Government backing and support for the achievement of the state's objectives in this important area of environmental protection.

LEGAL COSTS COMMITTEE - CHAIRMAN

Appointment

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

I refer the Attorney General to tabled paper 286, the annual report of the Legal Costs Committee, tabled on March 11, 1997 -

(1) Are you aware that the report says the work of the committee 'was disrupted when the Chairman resigned and four months elapsed before a new Chairman was appointed.' and 'Under the provisions of the Legal Practitioners Act the Committee is unable to function or make determinations whilst a Chairman has not been appointed'?

(2) Why did you fail to appoint a Chairman for four months?

Hon PETER FOSS replied:

(1) Yes. The resignation of the Chairman exposed a flaw in the legislation in that there is no provision for the Deputy Chairman to act as Chairman in the event of a vacancy in the position of Chairman. While this may have prevented the committee from making formal determinations in the period leading up to the appointment of the new Chairman, I am advised that the committee still met informally and continued to carry out many of its functions during this period.

(2) There was no forewarning of the Chairman's resignation. The appointment of his successor followed the usual procedures and there was no undue delay in making the appointment. It must be appreciated that it does take time to properly identify appropriate candidates for such positions and to go through the necessary administrative processes.

LIBRARY SERVICES OF WA ACT - AMENDMENT

Increased Charges

354. Hon MARK NEVILL to the Minister for the Arts:

(1) Does the State Government intend to amend the Library Services of WA Act to charge for a wider range of activities and services?

(2) If yes, what new services will be charged, and what existing service will be increased and when will these charges commence?

(3) Has local government been involved in the development of any charging policy?

(4) When does the State Government intend to introduce legislation to increase library charges?

Hon PETER FOSS replied:

(1) The Library Board of Australia Act 1951-1983 will be changed to cater for the establishment of the Ministry for Culture and the Arts. It has been the intention for some time to enable changes to be made for specialised/customised services for people willing to pay.

(2) Has not been determined but will be for new services. Existing free services will not be affected.

(3) Not applicable since no policy has been commenced as yet.

(4) A new Act will be introduced in the 1997 spring session.

WATER RESOURCES - WESTERN AUSTRALIAN ESTUARINE RESEARCH FOUNDATION

Swan River Trust - Payments

384. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Water Resources:

(1) Did the Minister for Water Resources understand the second part of question on notice given March 11, 1997 in relation to the Western Australian Estuarine Research Foundation?

(2) If more than one payment has been made by the Swan River Trust to the Western Australian Estuarine Research Foundation, when were payments made?

(3) What were the exact dates when payments were made?

Hon MAX EVANS replied:

(1) Yes.

(2) 1994-95, 1995-96, 1996-97.

(3) March 1995, April 1995, 28 December 1995 and 10 March 1997.

STATE FINANCE - ABORIGINAL YOUTH SERVICES PROGRAMS

Funding

419. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Aboriginal Affairs:

What State Government funding is to be made available for Aboriginal Youth Services programs in 1997?

Hon E.J. CHARLTON replied:

State Government funding for Aboriginal Youth Services is dispersed among a number of government agencies and is not separately identifiable.

GOVERNMENT INSTRUMENTALITIES - PROGRAMS FOR ABORIGINES

Funding

434. Hon TOM STEPHENS to the Minister for the Arts:

(1) What programs are conducted in the Minister’s portfolio, and related agencies, to assist and advance the welfare of Aboriginal persons?

(2) What are the details of these programs?

(3) What funds are made available to these programs?

(4) What is the source of those funds?

The answer was tabled. [See paper No 435.]

GOVERNMENT INSTRUMENTALITIES - PROGRAMS FOR ABORIGINES

Funding

440. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Water Resources:

(1) What programs are conducted in the Minister for Water Resources' portfolio, and related agencies, to assist and advance the welfare of Aboriginal persons?

(2) What are the details of these programs?

(3) What funds are made available to these programs?

(4) What is the source of those funds?

Hon MAX EVANS replied:

Office of Water Regulation -

(1) The Office of Water Regulation does not conduct any programs which have the objective of assisting and advancing the welfare of Aboriginal persons.

(2)-(4) Not applicable.

Water Corporation -

(1) In providing water and waste water services on contract to AAD/ATSIC remote Aboriginal communities, the Water Corporation provides training and awareness programs associated with the operation and maintenance of these schemes.

(2)-(4) Not applicable.

Water and Rivers Commission -

(1) Investigations for Aboriginal community water supplies.

(2) The Water and Rivers Commission is carrying out desk studies, field investigations and supervision of drilling to locate water supplies.

(3) $70 000 per year.

(4) Aboriginal Torres Strait Islander Commission.

LEGISLATION - PUBLICATION ON THE INTERNET

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

I refer to the recommendation of the Standing Committee on Constitutional Affairs and Statutes Revision to the effect that Western Australian legislation be placed on the Internet -

(1) Did AustL11 formally request permission in October of 1996 to publish Western Australian legislation at no cost to the Western Australian Government?

(2) Is it the case that the Commonwealth and the States of New South Wales, South Australia and Victoria permit publication of their legislation?

(3) Will the Attorney General ensure that AustL11 receives a licence to publish?

(4) If so, when?

(5) If not, why not?

Hon PETER FOSS replied:

(1)-(2) Yes.

(3) Yes, subject to the development of appropriate licensing arrangements.

(4) When appropriate licensing arrangements have been made.

(5) Not applicable.

CRIMINAL INJURIES COMPENSATION ACT - APPEAL PROVISIONS

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

(1) Will the Attorney General be introducing legislation in accord with the stated view of the Acting Chief Assessor of Criminal Injuries Compensation in his annual report for the year ended December 31, 1996 that "as a matter of priority, the appeal provisions of the Act should be amended so that appeals can only be made on points of law"?

(2) If so, when?

(3) If not, why not?

(4) If no decision has been made, when is it intended that a decision will be made?

Hon PETER FOSS replied:

(1)-(4) The Ministry of Justice is reviewing the Criminal Injuries Compensation Act 1985 and its application in Western Australia. I expect to receive a copy of the review's report within the next month. A decision will then be made regarding the need for legislative change in respect of appeals and other issues raised in the report.

PRISONS - WOOROLOO

Effects of Bush Fire

452. Hon MARK NEVILL to the Minister for Justice:

I refer to the recent bushfire which destroyed part of Wooroloo Prison -

(1) Is this prison heritage listed?

(2) What is proposed to repair the damage caused by the bushfire?

(3) Which buildings will be replaced and which will not be replaced?

(4) Were the buildings insured?

(5) If yes, with whom were they insured?

(6) What funds have been recovered from each insurer?

(7) How much of this will be used to replace the buildings at Wooroloo Prison?

Hon PETER FOSS replied:

(1) No.

(2) Buildings damaged beyond repair have been demolished and the site cleared. All other buildings, services, fences, etc. otherwise damaged by the fire, have been or are currently in the process of being repaired.

(3) No buildings are proposed to be replaced.

(4)-(5) Wooroloo Prison is one of many State Government owned buildings covered by a self- insurance fund known as the building damage management fund. Such buildings are therefore not 'uninsured' but 'self-insured'.

(6) $141 000 has been expended from the BDMF to cover damage caused by the fire.

(7) Refer (3) and (6).

QUESTIONS WITHOUT NOTICE

GLOBAL ARTS FOUNDATION - FUNDING

325. Hon TOM STEPHENS to the Minister for the Arts:

(1) Has an organisation called the Global Arts Foundation applied for funding, or any form of support, from agencies within the Minister's responsibility?

(2) If yes, when and what assistance was it seeking?

(3) Was it successful?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No.

(2)-(3) Not applicable.

SPORT AND RECREATION - WA ALIVE PROGRAM

Projects Funded

326. Hon TOM STEPHENS to the Minister for Sport and Recreation:

(1) Has the Minister approved allocation of the remaining $8m of the $26m from the WA Alive program - formerly the community sports and recreation fund?

(2) If yes, will the Minister table the list of the successful applications showing the type of project funded, the amount granted and the region of the State from which the application came?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) Yes.

I seek leave to table the lists.

[Leave granted.] [See paper No 434.]

TOURISM - ELLE CAMPAIGN

Advertisements - Media Decisions

327. Hon TOM STEPHENS to the Minister for Tourism:

(1) Can the Minister confirm that an estimated $6.4m will be paid to a group called Media Decisions for the placement of Elle commercials?

(2) Is Media Decisions connected with a company known as Marketforce which has already been paid nearly $2m for the research and production of the advertisements?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes. A total of $6.4m is estimated to be paid to Media Decisions for the placement of the Brand WA advertisements over the next three years in the markets of Sydney, Melbourne, Singapore, Indonesia and the United Kingdom.

A detailed breakdown of the placement costs in the current financial year is provided in the document titled "Synopsis of Brand WA Strategy Advertising Cost" tabled in Parliament on Wednesday, 7 May 1997. Estimated expenditure for 1997-98 and 1998-99 is outlined in the document and included in the figure of $6.4m.

It should be noted that Media Decisions retains only 10 per cent commission on international media placement and 15 per cent commission on national media placement in accordance with the terms of the contract with the Western Australian Tourism Commission, with the balance paid to the media outlets from which advertising space is purchased. These outlets include television statements and newspapers.

(2) Media Decisions is a 100 per cent owned operating division of Marketforce and holds the government master media contract. It has held the contract for the past four years, having been reappointed to this business by the State Supply Commission in July 1996.

ENVIRONMENT - MINIM COVE

Waste Problem - Report

328. Hon J.A. SCOTT to the Minister representing the Minister for the Environment:

(1) Has the Webster committee examining the additional waste problem at Minim Cove made any recommendations to the Minister?

(2) If so, what was that advice and how will the Minister act on that advice?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No. The committee has provided its report to the Environmental Protection Authority.

(2) The EPA will now consider the committee's report as part of its assessment of the proposal. The authority will report to the Minister, and he shall deal with its recommendations in the manner provided under the Environmental Protection Act.

TOURISM - ELLE CAMPAIGN

Ms Mostyn's Expenses

329. Hon N.D. GRIFFITHS to the Minister for Tourism:

Is the Minister now in a position to answer question without notice 318 asked yesterday, which reads -

(1) Was a ceiling placed on the expenses the Government agreed to pay for Elle Macpherson's publicist, Patti Mostyn, during the filming of Tourism Commission commercials?

(2) What is the total cost to date of Ms Mostyn's expenses?

(3) What is the anticipated cost of all payments to Ms Mostyn?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes. The agreed fee was $20 000 payable in two instalments of $10 000 plus disbursements for telecommunications expenses.

(2) $20 680.

(3) $20 680.

This information is detailed in the "Synopsis of Brand WA Strategy Advertising Costs" tabled in Parliament on Wednesday, 7 May 1997.

SCHOOLS - AUSTRALIND HIGH

Demountable Classrooms

330. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:

(1) Will the Minister confirm that 20 demountable classrooms are planned for the Australind High School?

(2) What is the current enrolment at that school?

(3) What is the estimated peak enrolment for the school?

(4) When does the Minister estimate work will begin on the planned new high school in the neighbouring suburb of Eaton?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) There are no plans at present to place additional demountable classrooms at Australind Senior High School. It is anticipated that some demountable classrooms will be removed from the school when major additions costing $3m are completed at the end of this year.

(2) The enrolment at Australind Senior High School in February 1997 was 1 091 students.

(3) It is difficult to estimate the peak enrolment at Australind Senior High School as it will depend on the date of establishment of the proposed secondary school at Eaton. Enrolments at Australind Senior High School are expected to approximate 1 300 students early next decade.

(4) The Education Department has acquired a high school site at Eaton. As yet, no date for the establishment of a secondary school on this site has been set.

MINING - MINING AND ENERGY GAMES

Funding

331. Hon TOM STEPHENS to the Minister for Tourism:

(1) Has the Government provided any money for the staging of a Mining and Energy Games or an event of a similar nature?

(2) If so, when was the money provided and how much was provided?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) Two applications have been received. An application in 1995 received $125 000, while an application in 1997 for $150 000 was unsuccessful.

TOURISM - ELLE CAMPAIGN

Advertisements - Marketforce

332. Hon TOM STEPHENS to the Minister for Tourism:

(1) Can the Minister confirm that Marketforce will receive nearly $2m for work associated with the Elle commercials?

(2) Did each aspect of the work that Marketforce carried out for the Western Australian Tourism Commission go through the formal tendering process, specifically -

(a) the pre-campaign research - $392 262;
(b) the production of advertisements - $1 450 572;
(c) the post-production costs - $72 400; and
(d) the industry launch of the advertisements - $34 890?

(3) If no to (2), or parts of this question, what process was followed which saw Marketforce receive the contract?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) In the current financial year, Marketforce will be paid $1 581 724 for work undertaken in relation to the Brand WA advertising strategy. It is estimated a further $300 000 will be paid to Marketforce for production costs associated with the television commercials over the next three years.

(2) The State Supply Commission advertised for a company to develop a long term brand position for Western Australia on 9 September 1995. On 14 December 1995 advice was received from the State Supply Commission that the WATC board of commissioners' recommendation to appoint Marketforce to undertake this business was approved.

All of the work specified in the question is included in the scope of the advertising contract between the WATC and Marketforce Australia, prepared by the Crown Solicitor's Office.

(3) Not applicable.

ENVIRONMENT - MINIM COVE

Waste Problem - Liability

333. Hon J.A. SCOTT to the Minister representing the Minister for Lands:

(1) In the event of the failure of the waste cell at Minim Cove, is LandCorp responsible for repairing the damage and for contingent liabilities? If not, who is?

(2) Has the extent of liability for the toxic waste been estimated? If so, what is it?

(3) How much waste is in the cell and what would be the cost of transporting to Mt Walton the storage and management of the waste?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Through the Department of Land Administration, the Crown will be assuming this responsibility.

(2) The clean-up has been undertaken subject to strict environmental requirements and will be certified by the Department of Environmental Protection.

(3) There is 258 000 cubic metres of waste in the cell. The cost to transport this volume of material to the Mt Walton site is estimated at $82m.

WESTRAIL - FORMER EMPLOYEES

Interstate Travel Vouchers - Termination of Entitlement

334. Hon KIM CHANCE to the Minister for Transport:

(1) Is the Minister aware that under the Westrail selective voluntary severance scheme ex-employees are entitled to an interstate travel voucher?

(2) Is it true that Westrail has determined that these travel vouchers will not be available after 30 June this year because of the proposed sale of the *Indian Pacific* train?

(3) Is the Minister aware that Westrail has not written to affected persons advising them of termination of this entitlement?

(4) What steps will the Minister take to restore to these ex-employees their contractual entitlements?

Hon E.J. CHARLTON replied:

(1) I am not aware of the details regarding that. I am aware of the proposal by the Federal Government to sell the *Indian Pacific*. It will cost the Federal Government about $2b to dispose of Australian National Railways.

(2)-(3) The situation regarding the individuals' travel arrangements is a separate question. A fair amount of review has taken place regarding the counter-arrangements across Australia on private train operations and the like. I am unable to give the member a specific answer. However, it is time to acknowledge that free travel across Australia is perhaps one advantage that does not have much life left in it.

TRANSPORT - CONCESSIONAL FARES

Review

335. Hon B.K. DONALDSON to the Minister for Transport:

(1) Has the review of public transport concessional fares which are affecting some commuters from both the Two Rocks and Mandurah areas been completed?

(2) If so what changes have occurred as a result of the review?

Hon E.J. CHARLTON replied:

(1)-(2) We completed the review this morning. The Department of Transport advised me that it has assessed the number of students involved - the centre of our concern - their travel times and their routes. The changes within the Budget mean that all Dayrider concession fares - that is, the all-day ticket - will come into line with standard fare holders of the day ticket. They will not be able to operate until after 9.00 am. We have revised the policy so that students will not be able to use the Dayrider between 7.15 am and 9.00 am. In other words, until 7.15 am they will be able to use it. That will enable students in the two areas mentioned to begin their travel journey as they did prior to the budget change a couple of weeks ago. Other concession holders will have the rest of the day to make their trips. In addition, due to a severe shortage of space on the new Mandurah express link service that we implemented over recent months, a coach will be added to that service. Not only have we accommodated students' needs to use a Dayrider concession ticket by changing the cut-off time to 7.15 am, we will also be providing an additional vehicle. That will provide sufficient space for the students to take advantage of the concession. The Dayrider ticket at $2.50 will continue to operate at those times.

WOMEN'S SUFFRAGE CENTENARY

Funding

336. Hon CHERYL DAVENPORT to the Minister representing the Minister for Women's Interests:

(1) Is the Minister aware that when suffrage celebrations occurred in New Zealand and South Australia in 1994, $5 million was allocated over three years for planning and conducting these celebrations?

(2) Is it true that only $100 000 a year has been set aside for planning the Western Australian suffrage celebrations in 1997-98 and 1998-99 and the same amount for conducting the celebrations?

(3) If so, why is the Western Australian Government not giving these celebrations the same financial support as did both the New Zealand and South Australian Governments?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Yes.

(2) No. The amount of $100 000 has been allocated for community grants. The Centenary of Suffrage Committee and the Women's Policy Development Office are working jointly on appropriate executive support arrangements. The committee will also seek corporate sponsorship and other broad-based community support for the celebrations.

(3) Not applicable.

JUSTICES OF THE PEACE - CERTIFICATES

New

337. Hon N.D. GRIFFITHS to the Leader of the House:

I refer to question without notice 324 yesterday in which the Attorney General said that the Royal Association of Justices of Western Australian expressed to him its disgust with the certificate justices of the peace are being given since the Governor ceased to give them direct commissions. He said that the certificate looked more appropriate for someone who had completed a silver service course at TAFE.

(1) Does the Leader of the House dissociate himself and his ministry from those comments?

(2) Has he received representations from TAFE silver service course graduates about the alleged poor quality of their certificates?

(3) Given the Attorney General's predilection for supposedly improving the quality of certificates, will the Leader of the House allow the Attorney General to sign all TAFE silver service course graduate certificates from the State?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I am not the Minister responsible for TAFE, having relinquished that portfolio after the last election.

(1)-(3) No.

HOMOSEXUALITY - TASMANIAN CRIMINAL CODE

High Court Challenge - Cost to Western Australia

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

What has been the cost to Western Australia so far with respect to the High Court challenge to provisions of the Tasmanian Criminal Code regarding sodomy?

Hon PETER FOSS replied:

Nil.

PAPOTTO, SAMUEL JOHN - ASSAULT

Police Investigation

339. Hon TOM HELM to the Attorney General:

I refer to the case of Samuel John Papotto, who in the Central Law Court, Perth on 20 January 1997 was charged with knowingly completing business while a bankrupt.

(1) Has the Police Service received a complaint regarding an incident which took place on 20 January 1997 in courtroom 91 in the Central Law Court building, Perth?

(2) Is the Police Service investigating the complaint?

(3) Does the complaint relate to Papotto assaulting a witness and threatening the witness with death?

(4) Has it been three and a half months since the complaint was made to police and have they concluded the investigation?

(5) Has the Police Service found that any offences were committed?

(6) If so, what are the offences?

(7) Are the police intending to lay charges?

Hon PETER FOSS replied:

I thank the member for some notice of this question. I am informed that the information will take some time to compile; therefore I ask the member to place the question on notice. I indicate to members who have questions to me in my capacity representing the Minister for Police that I am unable to answer any questions of which notice has been given today because of computer difficulties.

LEGAL AID - COMMISSION

Funding

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

Some notice of this question has been given. I refer to his reported comments in *The West Australian* of 21 April 1997 that the apparent budget cut to the Legal Aid Commission was due to a $210 000 Dietrich payment.

(1) When was that payment made?

(2) Why is the payment characterised as a budgetary provision when the payments referred to in the Attorney's answer to question without notice 78 of 18 March 1997 are characterised as individual ex gratia payments for which no budgetary provision is made?

Hon PETER FOSS replied:

(1) The payment has not been made. It will be part of the funding reconciliation with Treasury at the end of the financial year.

(2) The payment to be made in 1996-97 was an ex gratia payment and hence no budgetary provision was made. However, once approved, it is added to the moneys authorised to be drawn upon.

JOURNALISTS AND FORMER MEMBER - PROSECUTION

Cost

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

What was the cost to the State of the Attorney General's prosecution of journalists Martin Saxon and Geof Parry, and Hon David Smith?

Hon PETER FOSS replied:

The cost has not yet been calculated.

PAWNBROKERS AND SECOND-HAND STORES - STOLEN GOODS

Arrests

342. Hon TOM STEPHENS to the Attorney General representing the Minister for Police:

Some notice of this question has been given.

(1) How many people were arrested and charged with selling stolen goods to pawnbrokers and second-hand stores in WA in 1993, 1994, 1995 and 1996?

(2) How many people have been arrested and charged this year?

Hon PETER FOSS replied:

As I indicated earlier, it will take some time to compile the information; therefore, I ask that the member put the question on notice. As a result of computer difficulties, the same answer will apply to all my questions in a representative capacity today.

CHILD CARE CENTRES - OPERATIONAL SUBSIDIES

Withdrawal - Impact

343. Hon CHERYL DAVENPORT to the Minister representing the Minister for Family and Children's Services:

(1) When will operational subsidies to community based child care centres cease?

(2) What provision has been made to assist centres that in the past relied on operational subsidies to restructure their operations so they can continue to compete effectively in the market?

(3) What is the Government's policy on those centres that experience short term liquidity problems following operational subsidy withdrawal?

(4) In the event that a withdrawal of the operational subsidy results in the closure of centres, how will assets be distributed?

(5) How do centres retain the goodwill accumulated over the years?

(6) In the event that centres are forced to close, what provision will be made to protect the financial investment of those management committees and communities that have made substantial contributions to physically improve the value of buildings and grounds?

(7) Who is liable for liabilities or debts incurred by centres with operational subsidies?

(8) Can child care centre staff or management committee members be held personally liable for financial loss incurred by the centres?

Hon E.J. CHARLTON replied:

(1) The commonwealth subsidy will cease on 1 July 1997.

(2) The Commonwealth Government has made funds available to support centres to develop restructure plans.

(3) Centres have been aware of this change for almost 12 months and a short term liquidity problem should not therefore occur.

(4) Asset distribution relies on the origin of the funding used to purchase those assets and the individual centre's constitution.

(5)-(6) Where possible, the building will maintain a community service function benefiting all community members.

(7) The incorporated body.

(8) Only if they have breached their duties under the Associations Incorporation Act or corporate affairs legislation.

ROTTNEST ISLAND - MOORINGS

Ownership and Transfer

344. Hon GRAHAM EDWARDS to the Minister for Tourism:

(1) How is it possible for boat owners to own up to three moorings at Rottnest Island?

(2) How is it possible for them to transfer the ownership of the moorings at the time they sell their boats?

(3) Is that a practice supported by the Rottnest Island Authority and the Minister?

(4) If no to (3), will that practice be picked up in the review of the moorings situation?

Hon N.F. MOORE replied:

(1)-(4) My understanding is that the sort of practice the member described happens from time to time. A number of problems were identified by the Rottnest Island Authority in respect of the moorings policy, which has been in place for a number of years. As the member rightly points out, a review of the policy has been conducted. I understand a decision has just been made about the way the policy will be amended and how the new policy will be implemented. I have not seen that decision yet, but I understand that some action will be taken to avoid the circumstance the member described; that is, people developing a lifelong attachment to a mooring, and transferring it to their children and so on. An attempt is being made to treat moorings at Rottnest as a commercial product and to introduce a degree of competitiveness into the process of obtaining moorings. This is to get away from people establishing a dynasty in respect of ownership of moorings. When I have had a chance to be advised by the authority about the new policy, I will advise the member of the changes to be made.

NATIVE TITLE - GOVERNMENT OPPOSITION

Cost

345. Hon TOM STEPHENS to the Attorney General

How much money has been expended by the Government and the former coalition Government on the following:

(1) Opposing native title claims both in Western Australia and elsewhere, including opposing Aboriginal objections to the use of expedited procedures for mining exploration and development proposals; and

(2) Opposition to native title legislation through court process and other means;

including the direct and indirect costs of using government personnel and resources? The question was asked some time ago.

Hon PETER FOSS replied:

If it was asked some time ago, I will not have that answer any more.

LEGISLATION - ANTICOMPETITIVE

Review

346. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) Has the Premier made a commitment under the anticompetition policy to review state legislation which provides statutory requirements which are anticompetitive?

(2) What is the date by which the States have undertaken to review their anticompetitive statutory policies?

(3) Will the Premier concede that the focus of the pearling legislation and the latest pearling review is to provide as a prime basis for refusing to expand the industry the desire to protect the existing operators and their market?

(4) As that policy is contrary to the competition rules and is an antistatutory provision, will the Premier inform the House when it is anticipated that the Government will review that anticompetitive legislation, and what is the timetable for the review?

Hon N.F. MOORE replied:

I thank the member for some notice of this question provided on 1 May 1997. I suggest that if members ask questions with no great urgency, they place them on notice. A lot of effort was made to obtain an answer for 1 May and the member asks the question on 8 May.

(1) Under the national competition policy, the principal aim of which is to promote competition in the Australian economy, all participating jurisdictions have agreed to review legislation which restricts competition to determine whether those restrictions are both necessary and in the public interest. Western Australia is a participating jurisdiction under the national competition policy.

(2) Clause 5(3) of the competition principles agreement of the national competition policy, which deals with the requirements for legislative review, provides that existing legislation which restricts competition will be reviewed by the year 2000.

(3) The Pearling Act is one of several hundred Western Australian items of legislation which will be subject to review. The Pearling Act will be reviewed to determine whether it contains any restrictions on competition and, in turn, whether they are in the public interest and necessary to achieve the objectives of the Act.

(4) No anticompetition provision is necessarily contrary to the competition policy as anticompetitive practices can be justified where there is clear public benefit in doing so. The Pearling Act will be reviewed in 1999-2000.

ATTORNEY GENERAL

Prosecutions

347. Hon N.D. GRIFFITHS to the Attorney General

Since becoming Attorney General, what persons other than Martin Saxon, Geof Parry and Hon David Smith has he prosecuted or caused to be prosecuted?

Hon PETER FOSS replied:

I brought these prosecutions forward on the advice of the Director of Public Prosecutions, who believed he did not have the capacity to do so. He considered it had to be done in the name of the Attorney General. As members are aware, prior to the establishment of the position of DPP, all prosecutions were taken in the name of the Attorney General, although, as a matter of practice since Hon Ian Medcalf was the Attorney General, the actual decision making had been in the hands of others. In this case the decision making was also in the hands of others, but the recommendation was brought in my name.

GRAIN FREIGHT RATES

Negotiations

348. Hon KIM CHANCE to the Minister for Transport:

(1) Is it the Minister's intention that the Grain Logistics Committee will be the body that will carry out negotiations with Westrail on behalf of the industry for future grain freight contracts?

(2) If it will not be the representative body to carry out those negotiations, which representative body will carry out those negotiations?

(3) Will the negotiations be carried out within the Grain Logistics Committee or with that committee negotiating externally with Westrail?

Hon E.J. CHARLTON replied:

(1)-(3) The member who raises this important question has a wide knowledge of this subject. The old grain freight steering committee negotiated on behalf of the grain industry with Westrail, which was not part of that committee. In the past the Wheat Board paid Westrail for the movement of grain and the Grain Pool of Western Australia was responsible for other grains. Ultimately, it came down to these two bodies actually agreeing to a price. The Grain Logistics Committee has taken the place of the grain freight steering committee, which was a voluntary organisation. I understand that the Wheat Board and the Grain Pool will liaise directly with Westrail to negotiate a contractual arrangement. However, that will be properly debated by the Grain Logistics Committee to ensure that all the players approve of the negotiation process. That is one of the greatest challenges facing the Grain Logistics Committee, which did not confront the grain freight steering committee. The Grain Logistics Committee will want to know what costs are incurred by Co-operative Bulk Handling Ltd in transporting and storing grain. It is a separate in-house decision by CBH, but the information must be made known to the key players in making decisions.

Hon Kim Chance: We always wanted them, but Uncle Mick wouldn't give them to us.

Hon E.J. CHARLTON: Uncle Mick has been put out to grass, and I hope he does not read this. The whole culture must change. Like the Wheat Board, the committee must ensure that each player provides the reasons that it wants to move certain tonnages of grain at a particular time of the year.

Hon Kim Chance: I acknowledge that that is important, but I am concerned how the negotiations will take place.

Hon E.J. CHARLTON: This is a moving target because the committee is in the early stages of its deliberations. However, it will be done on the basis I have outlined.

TOURISM - ELLE RACING

Norgard Report

349. Hon TOM STEPHENS to the Minister for Tourism:

Less than two weeks ago, in a *Sunday Times* article dated 27 April, it was claimed that the Elle Racing Pty Ltd syndicate was given the financial all clear by a private consultant hired by the Western Australian Government. Mr Harvey, the syndicate director, is reported as saying that Mr Ross Norgard was very impressed with what was happening. Given the news in today's *The West Australian* that the yacht may not start -

(1) Can the Minister now inform the House what Mr Norgard had to report about Mr Harvey's Elle Racing?

(2) Has the Government paid any money to Mr Harvey or Elle Racing since 19 December 1996, and if so, how much?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. This question is one of the reasons that the whole yachting syndicate is experiencing difficulties. There is ongoing speculation about its chances of success. It demonstrates how journalists respond to particular circumstances. One journalist writes a story saying that it sounds very positive on the basis of what he was told. On the basis of similar information another journalist says that the yacht will not sail. The ongoing speculation is not helping and I suggest that the Opposition will do the State a favour by, on the odd occasion, being supportive of what is happening.

(1) The performance of Elle Racing Pty Ltd under the contract with the Western Australian Tourism Commission is being constantly monitored. Mr Norgard's report is part of that monitoring. Mr Norgard's report is based upon information provided by Elle Racing which the Government has been informed by Mr Harvey is confidential. As previously indicated, I have offered to arrange for officers of the Tourism Commission to brief the Leader of the Opposition, Dr Gallop, on all aspects of the Elle Racing contract in a manner that would ensure confidentiality.

(2) No.
