WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE ASSEMBLY

Thursday, 20 November 1997

Legislative Assembly

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THE SPEAKER (Mr Strickland) took the Chair at 10.00 am, and read prayers.

PETITION - NURSING HOME CARE

MS McHALE (Thornlie) [10.03 am]: I present the following petition -

> To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled.
>
> We, the undersigned believe that nursing home care should be equally available to all Australians on the basis of clinical need, irrespective of a person's capacity to pay for that care. Accordingly we call on the Federal Government to abolish the entry fee and the extra daily fees for those needing a nursing home bed.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 201 signatures and I certify that it conforms to the standing orders of the Legislative Assembly.

The SPEAKER: I direct that the petition be brought to the Table of the House.

A similar petition was presented by Mr Kobelke (75 signatures).

[See petition Nos 114 and 116.]

PETITION - RED HILL LANDFILL SITE

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [10.04 am]: I present the following petition -

> To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled.
>
> We, the undersigned people of Western Australia wish to express
>
> Our opposition to the Proposal to upgrade the Red Hill Landfill site, situated on Toodyay Road, to a Class Four Landfill facility.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 11 signatures and I certify that it conforms to the standing orders of the Legislative Assembly.

I also have another 105 signatures that do not conform to the Standing Orders that I will be passing on to the Minister.

The SPEAKER: I direct that the petition be brought to the Table of the House.

[See petition No 115.]

STATEMENT - MINISTER FOR WORKS

Regional Buying Compact

MR BOARD (Murdoch - Minister for Works) [10.06 am]: I inform the House of a new regional buying compact which reinforces the State Government's commitment to regional suppliers in Western Australia. The new compact - which has been endorsed by state Cabinet - aims to maximise the amount of government buying in regional areas and provide regional suppliers with a greater opportunity to successfully bid for government contracts. It has been expanded to include all goods, services, works and infrastructure, involving all government agencies and now provides for a consistent commitment throughout all of government procurement.

To foster the growth of regional businesses, the new compact establishes a 10 per cent price preference - to a maximum sum of $50 000 - for all goods and services sourced and used within specific, predetermined regional zones. Due to their isolation and cost structures, these businesses are not always able to compete effectively with large national or international companies, but should now be able to do so under the new compact. Similarly, a 5 per cent preference - to a maximum sum of $50 000 - also applies to all construction contracts conducted by regional contractors in their regions. This will give local construction companies and contractors a competitive edge when vying for government contracts. Furthermore, where a metropolitan company is bidding for a contract in a regional area, the new policy encourages the use of local subcontractors by providing a price preference for that work.

The new compact aims to see a greater slice of the Government's annual $6b budget for goods, services and construction spent in regional Western Australia. This in turn will help to promote and strengthen regional economies, increase employment opportunities and encourage the development and growth of small businesses in regional areas. As a Government, we are increasingly conscious of the impact our buying decisions have on regional communities and the subsequent effect this can have on businesses and individual community members. Certainly, the aim of the new compact is to ensure we generate positive benefits for all regional centres.

The regional buying compact has been developed by the State Supply Commission in close consultation with industry groups, regional suppliers and government agencies. An extensive information campaign will soon be conducted in regional areas to educate suppliers on the various preferences available and to ensure government buyers are familiar with the new policy.

The new regional buying compact will be extremely beneficial to regional Western Australia and marks yet another milestone in the ongoing improvement of government purchasing processes. I commend the new regional buying compact to all government agencies, suppliers and the entire Western Australian community.

REAL ESTATE AND BUSINESS AGENTS AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Mr Shave (Minister for Fair Trading), and read a first time.

AGRICULTURAL LEGISLATION AMENDMENT AND REPEAL BILL

Second Reading

MR HOUSE (Stirling - Minister for Primary Industry) [10.10 am]: I move -

That the Bill be now read a second time.

In order to assist in ensuring the effective operation of Western Australia's agricultural sector, a number of agricultural Statutes are in need of minor amendment. This Bill proposes to repeal the Fruit Growing Reconstruction Scheme Act and amend seven other Acts.

The Veterinary Preparations and Animal Feeding Stuffs Act and the Fertilizers Act require the registration of animal feedstuffs and fertiliser products. Consultation between States and the development of common draft standards has removed the need for registration, and it is proposed to repeal the registration provisions and related references in these Acts. Industry, farmer bodies and government agencies across Australia have called for and support the removal of registration requirements for products such as fertilisers and many stockfeeds, provided quality standards are maintained.

The catalyst for these proposed changes has been the establishment of a national registration authority to provide for the national registration of agricultural and veterinary chemicals. Consequently, all medications for stockfeeds are now registered with that authority.

The Fair Trading Act and the Commonwealth Trade Practices Act contain powers to protect the consumer from false description and other inappropriate actions. In the case of stockfeed or fertiliser products, it is proposed that these Acts provide for the responsibility that the product is suitable for the purpose for which it is marketed. Quality standards can then be ensured using the provision for certain standards in the Veterinary Preparations and Animal Feeding Stuffs Act and the Fertilizers Act. This, rather than registration, will ensure the control of standards for animal feedstuffs and fertilisers sold in Western Australia. This Bill also provides for the pro rata refund of registration fees for the 1996-1998 registration triennium.

Artificial Breeding of Stock Act: This Act requires the Minister for Primary Industry to personally receive and approve variations in the conditions for a licence authorising premises to be used for the purposes of the artificial breeding of stock. This Bill proposes that the chief veterinary surgeon, an officer of Agriculture Western Australia, is more appropriate to handle this duty. As a safeguard, the proposed amendment includes a provision allowing a person to apply to the Minister to have a decision of the chief veterinary surgeon reviewed. This amendment removes one level in the regulatory process while maintaining the necessary controls. In most circumstances under the present Act the Minister refers to the chief veterinary surgeon, who then provides advice back to the Minister.

The Seeds Act: Options for seed testing and seed certification services in Western Australia are presently limited by this Act as it restricts the Minister for Primary Industry to appointing only officers - that is, public servants - to be inspectors or seed analysts for the purposes of this Act. This largely prevents Agriculture Western Australia from

outsourcing its seed testing and certification services. In order to have a realistic outsourcing option, an amendment is proposed to extend the Minister's power to appoint persons other than public servants to be inspectors and seed analysts.

Horticultural Produce Commission Act: This Act provides a statutory means by which growers of horticultural produce agree to a levy to provide funds for services authorised by the growers themselves. However, at present, the Act is limited to growers of fresh or processed fruit or vegetables and flowers. It is proposed to amend the Horticultural Produce Commission Act to broaden the type of horticultural crops eligible to participate in development schemes through self-funding arrangements. This will significantly widen the industries that are able to form grower committees to obtain and allocate funds for services such as research and development.

Widening the industry coverage of the Horticultural Produce Commission Act is an initiative raised by producers in the presently excluded horticultural sectors. It is proposed to amend the definition of horticultural produce as specified in the Act to include nut crops and processed nuts, ornamental plants and turf plants. The Act provides the commission with extensive safeguards to ensure that a grower committee will not be formed unless the poll of growers is in favour of the establishment of a committee with regard to a particular kind of horticultural produce. In order to establish a grower's committee, a poll of all relevant growers must be conducted, and at least 75 per cent must vote and 70 per cent must agree before a grower's committee can be formed and fees for service collected.

At times, Statutes are in need of amendment, albeit of a housekeeping nature, in order to remove superseded requirements. One such Statute is the Agriculture Protection Board Act, which contains a reference to the chief executive officer of the Agriculture Protection Board, an office previously removed from the Act. This redundant reference should be deleted.

Another case is the Agriculture and Related Resources Protection Act, which provides for the Agriculture Protection Board to assign one of its officers to be the executive officer of a zone control authority established under the Act. This is no longer relevant as all staff of the Agriculture Protection Board will be transferred to Agriculture Western Australia, with this agency to be the operational arm of the board. It is proposed to repeal the relevant section to enable an officer of Agriculture Western Australia to be employed in these roles. While having no direct implications for industry, this amendment will nevertheless facilitate the administration of the Act.

It is also necessary to repeal the Fruit-growing Reconstruction Scheme Act, which was proclaimed in 1972 to give effect to an agreement between Western Australia and the Commonwealth to provide for a scheme under which fruit growers pulled up fruit trees that were, in the interest of the industry, no longer required. The scheme was wound up some 14 years ago. A total of $435 215 was advanced to growers for the purpose of removing fruit trees. This assistance was converted from a loan to a grant if the grower complied with the conditions of the scheme. As at 30 June 1983, all advances had either been converted to a grant or repaid. No assets or liabilities remain with regard to this scheme. The repeal of the Fruit-growing Reconstruction Scheme Act is supported by industry, as the Act no longer has a functional role. Its repeal will formally end the financial commitment to this scheme that has not functioned for many years. Moreover, it conforms to the Government's policy of removing redundant legislation.

The implementation of all the proposed amendments is unlikely to have any direct net impact on the Government's Budget. However, it will have benefits for all in the future, with the Bill directed towards ensuring that the Government's legislative framework supports rather than hinders the operations of various enterprises in a wide range of industries. In addition, the Bill should enhance the internal efficiency of operations within Agriculture Western Australia. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

MISUSE OF DRUGS AMENDMENT BILL

Second Reading

MR DAY (Darling Range - Minister for Police) [10.20 am]: I move -

That the Bill be now read a second time.

The purpose of the Bill is to amend the Misuse of Drugs Act 1981 to insert a definition of "supply". By doing so, the application of the word will be applied to the situation of a person redelivering drugs under a bailment; that is, where the accused alleges that he or she was holding the drugs on behalf of the owner for return to the owner as required. At present, the word "supply" does not include this situation. This is a direct result of the Court of Criminal Appeal case Manisco (1995) (WA) in which it was held that the word "supply" was not appropriate to include the mere return of physical control of drugs from a person with whom they have been temporarily deposited, to that owner as required. The Court of Criminal Appeal held that there was nothing in the Misuse of Drugs Act 1981 to displace that ordinary meaning. The decision in Manisco has been used to avoid conviction for charges containing

the supply element, in cases in which the accused alleges that he or she was holding the drugs on behalf of the owner and was to give them back to the owner as required. sThe definition inserted by clause 3 is similar to that of other jurisdictions, including that of the New South Wales Poisons Act and the Drug Misuse and Trafficking Act. The definition will provide a clear direction to the courts of the meaning of "supply".

The state coalition Government has stated publicly that the drug problem being experienced by the community is a very serious one, and we have taken numerous steps to overcome this. An example of this is the establishment of the Western Australian strategy against drug abuse action plan which involves widespread intergovernment agency involvement in putting initiatives to the Government to combat the drug problem in Western Australia.

The amendment is also consistent with the state coalition Government's law and order policies in which a clear commitment to the community has been made to pursue offenders who are presently escaping prosecution by using a loophole in the law. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

ENVIRONMENTAL PROTECTION (LANDFILL) LEVY BILL

Second Reading

Resumed from 22 October.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Mr Sweetman) in the Chair; Mrs Edwardes (Minister for the Environment) in charge of the Bill.

Clauses 1 to 3 put and passed.

Clause 4: Levy may be prescribed -

Mr McGOWAN: I move -

Page 2, after line 28 - To insert the following -

(d) provide for the reimbursement of administrative costs incurred by the person, organisation or licensee collecting the levy.

Section 4 of the Act sets out the regulation making power relating to the collection of the landfill levy. My amendment seeks to provide for reimbursement of administrative costs incurred by local government or private operators in the collection of the levy on behalf of the Government. It is speculative that councils will benefit from this levy. Local government authorities and private operators will incur significant costs in the collection of the levy. Those costs will be incurred immediately, and possibly will include labour, computer operations, additional paperwork and time. The philosophical view is that because local government is the third tier of government it will be at a disadvantage. It should not be involved as a tax collector for the State without its costs being reimbursed. The amendment will provide capacity for the Minister to ensure that local government and private operator costs incurred in the collection of the levy will be met. This is a worthwhile amendment.

I tried to find a mechanism within the Bill to provide local government with a share of the levy, to meet the costs of collection. A fair rate would be between 3 per cent and 5 per cent of the levy. However, with my limited resources, I was unable to propose an amendment which would give effect to that notion in an acceptable form. Instead my amendment calls on the Government to put in place a regulation to allow the administrative costs involved in the collection of the levy to be reimbursed to local government and private operators. It is incumbent on the Government to devise a mechanism to do that, in order to assist local government in this regard. I understand from discussions with the Minister earlier that the Government supports the amendment, and I congratulate the Minister for being rational and sensible in this regard.

Mrs EDWARDES: The Government supports the amendment. On reflection, this provision should have been included in the previous Bill under its regulation making powers because the Bill before us deals more with collection of revenue than expenditure. The reimbursement of administrative costs has not been considered in depth, but because a regulation may be prescribed we can consider this issue during further extensive consultation. Expenditure from the levy will be a matter for the advisory committee. I prefer that the revenue from this source be returned to programs rather than applied to huge administrative costs. I will watch those costs carefully, because we do not want

the same situation here as occurred in the eastern States where large amounts have been applied to administrative costs. We will maintain a very lean machine here. We will consider carefully the likelihood of reimbursement of administrative costs incurred from the collection of the levy. As indicated earlier, perhaps this provision has been placed in the wrong spot, and that probably is a result of two lawyers getting together to draft the amendment.

Dr EDWARDS: It is always a bit of a worry when two lawyers get together. I thank the Minister for agreeing to the amendment. However, I want to make some comments about the sentiments behind it. There is no doubt that local government plays a significant role in waste collection and management.

I will comment briefly on the process now because it is a cognate debate and this is the first opportunity we have had to look at this Bill. It is important to have this amendment to reassure local government about the intention of these Bills. Local government appears to need reassurance that collecting the levy and using the money from the fund will cut down on waste. Anything we can do to help give that reassurance, bring the issue to the table and support it is a good idea. That is the reason for the amendment.

There are a couple of other aspects to consider. The Opposition is sympathetic to local government's views because it had a discussion paper and it now has legislation, but not everything in the discussion paper is in the legislation. The positive twist is that it is good that the Minister has introduced some legislation - she could have left all of the issues to be dealt with next year. However, we appreciate local government's uncertainty and concerns. Members on this side will watch closely to see how this works. We also do not want to see an escalation in administrative costs - everyone agrees with that. We look forward to the implementation of these measures.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5 and 6 put and passed.

Title put and passed.

Report

Bill reported, with an amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Mrs Edwardes (Minister for the Environment), and transmitted to the Council.

SURVEILLANCE DEVICES BILL

Second Reading

Resumed from 21 October.

MRS ROBERTS (Midland) [10.35 am]: I believe that the Government and the Minister have let down the public, the Police Force and other law enforcement agencies in this State with this legislation. It has presented at this very late stage of the session a very complex Bill that deals not only with listening but also with optical surveillance and tracking devices.

Many months ago I drew the Minister's attention to the fact that he had not introduced the amendments to the Listening Devices Act which his predecessor promised and which were promised in the Liberal Party's election platform. As I pointed out at the time, those amendments were needed because of a Queensland High Court case, Coco v the Queen, which I note the Minister referred to in his second reading speech. In simple terms, that case meant there was not necessarily an implied power of entry when permission or authorisation to install a listening device was given. In fact, in Queensland, when evidence is obtained contrary to an authorisation, that evidence is automatically inadmissible. In Western Australia, judges have discretionary powers and they may choose to accept or reject such evidence. Of course, that is an awkward situation, to say the least, for police and other law enforcement officers.

Surveillance does not come cheaply. Listening posts must be set up and staffed and it can be expensive to place a listening device and monitor it effectively. It would be an enormous waste of police resources if the evidence so obtained were thrown out of court on the discretion of a judge.

That is why it was so necessary to move the amendments to the Listening Devices Act - changes that the previous Minister for Police agreed to in principle a couple of years ago. At a much earlier stage this year, or even at this late stage, the Government should have introduced those changes to the Listening Devices Act that would have given the power of entry so that that action would not be construed as trespass and potentially render the evidence inadmissible

in court. However, the Government has chosen to muddy the whole issue by introducing very complex and all-encompassing legislation in a very sensitive area. As a result, there is very little likelihood of this legislation being passed by the end of this parliamentary year.

That poses a number of difficulties, because it means that those law enforcement agencies will continue to be impeded because of the Coco decision. I note in the second reading speech that reference is made to a 1987 committee set up to review the Listening Devices Act. There is no question but that legislation is out of date or that it needs amending because of the decision in the case of Coco v the Queen.

I note that it also lists that the committee was set up to review the fact that the National Crime Authority cannot use listening devices. That is an incorrect statement because the NCA can and does use listening devices. It has not since 1994, the time of Coco v the Queen, used listening devices when any question of entry or trespass has arisen. It still enables the NCA to make application for listening devices in a public place when the occupier's consent has been given. This severe restriction needs to be lifted forthwith. The pace of law reform in this State has been painfully slow under the coalition Government as we have seen practically no legislation enacted in this area in recent years. It is unfortunate that when at last the Parliament has the opportunity to correct that situation, the proposal goes beyond the use of listening devices and beyond the extent of legislation which operates in other States of Australia.

The second reading speech outlined the points identified in the 1987 review as follows -

> The Act has not kept pace with new technology - optical surveillance devices, such as video cameras, and tracking devices are not covered by the Act;

It is correct that the police and other law enforcement officers do not have the power of entry and risk trespassing without the express permission to enter and install a listening device. The penalty for unlawful use of devices is currently inadequate, which is another area of amendment with which the Opposition wholeheartedly agrees.

It is suggested that the Bill follows extensive consultation; in that regard, the Minister said -

> The need for this Bill did not escape the Government as it recognised that unless the legislation was carefully constructed, undue intrusions into people's lives could occur.

The Government's legislation, if passed, could cause undue intrusion into people's lives. The second reading speech also suggests -

> The basic form of the Bill is to prohibit covert surveillance of private activities and private conversations by anyone except those sanctioned by judicial authority, and then only subject to certain conditions.

Interestingly, the Bill is couched so that reference is not expressly made to covert as opposed to overt surveillance, as is seen in legislation in other States. At this moment, New South Wales is looking at reviewing its listening devices legislation which is already in a better state than is the Western Australian legislation. The process of consultation in New South Wales has been far more extensive than that which occurred here, and the New South Wales Law Reform Commission released a very comprehensive issues paper on the matter.

The reference in the Minister's second reading speech to private conversations is another area of concern. Currently, no inhibition is placed on people recording a conservation to which that person is a party. Yet, for reasons not explained by the second reading speech, that current right will be taken away from people. I draw members' attention to clause 5(1), particularly paragraph (b), which reads -

> Subject to subsections (2) and (3), a person shall not install, use or maintain, or cause to be installed, used or maintained, a listening device -
>
> (a) to record, monitor, or listen to a private conversation to which that person is not a party; or
>
> (b) to record a private conversation to which that person is a party.

Of course, that clause is to be subject to proposed subsections (2) and (3), but those provisions are to be helpful to the police and other law enforcement officers but not particularly helpful to, and will not alleviate problems for, private individuals going about their jobs. This difficulty results from the lack of consultation on the Bill. Although extensive consultation may have occurred within the Police Service, perhaps the NCA, and certainly the Anti-Corruption Commission, given the serious concern about the invasion of privacy and the civil liberty issues involved, nowhere near the necessary community discussion took place. It is another example of where this Bill seeks to do much more than only sort out the problem with power of entry. We certainly should fix that key area.

Given the reference to covert optical and other surveillance, the Bill is not comprehensive enough. It is neither one thing nor the other. It is not just an amendment to the Listening Devices Act to remedy a fault, although it is not

comprehensive in that regard. Also, it does not cover overt surveillance to the extent that one might expect in this day and age. Overt surveillance has become an intrusive but sometimes necessary part of our everyday lives. This has resulted from changing technology in the context of this legislation. As we go about our everyday lives, we are subject to being photographed or filmed when walking down the street in Claremont, in a department store, at the corner deli, at the railway station, in the bank, or on a train. I can see no regulation or control of those more overt forms of surveillance within the legislation.

With regard to private conversations to which I referred in relation to clause 5, the Minister suggested in his second reading speech the following -

> . . . the Bill successfully balances the individual's right to privacy with the need for law enforcement officials to use intrusive methods to detect the commission of offences.

I do not think a successful balance has been achieved. Perhaps even the journalists to whom many of us speak regularly will find their activities are curtailed because of this legislation. Unless people have the express permission of the other parties to a conversation, under this legislation they will no longer be able to record a conversation to which they were a party. This practice is widespread and quite common, not only in law enforcement fields, which seems to have been the only concern of the people drafting this Bill. I cite the case of journalists by way of example. More and more, because of the availability of technology, people often choose for a whole variety of reasons to record conversations to which they are a party. I do not think the Minister has made a case for us to support a change to that situation all of a sudden. Should he fail to make that case, the provision should not be as restrictive and we should continue to operate under the current conditions. The second reading speech would have us believe that this Bill is more cautious and careful than is the actual legislation. The Minister in his second reading speech says -

> The Bill makes it clear that activities and conversations carried on in circumstances in which the parties should reasonably expect that they may be observed or overheard are not considered private.

This is a new thing too. He goes on to say -

> It is envisaged, generally, that activities carried on outside a building would not be considered private. For this reason, journalists and private investigators will be able to continue to undertake their lawful duties without fear of breaching the Act.

I really wonder if that is the case when we consider some of the definitions provided in this Bill, particularly the definition of an optical surveillance device in clause 3, which reads -

> **"optical surveillance device"** means any instrument, apparatus, equipment, or other device capable of being used to record visually or observe a private activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment;

The Bill has this all encompassing definition of an optical surveillance device where the word "any" is used in front of instrument, apparatus or equipment and only specifically excludes spectacles, contact lenses or a similar device that might be used by persons with impaired sight. Many other devices are used regularly by people in the community and professions. Telescopes come readily to mind. A camera with a telephoto lens could be regarded under this definition as an optical surveillance device. It could apply to a camera with just about any type of lens. The Minister seems to think, as he specifies in his second reading speech, that binoculars, telescopes and similar devices that are used to observe suspect illegal covert activity in field situations will not be affected. He says -

> . . . for example, fisheries officers who observe marron poachers at night on Wellington Dam. Even though the persons being observed are attempting to conceal their activity, such illegal fisher people should reasonably suspect that their activities may be observed.

The average person does not thinks he will be observed somewhere outside of a building at night. The expectation seems to be that everybody in the community is fully aware of the available technology and the fact that potentially, with the exception of being inside their own dwelling or place of work - even people's workplaces are not excluded unless they happen to be the owner, principal occupier, manager or whatever - people should expect to be continually under surveillance. This is a whole new way of thinking for Western Australians and probably Australians. We are now to assume that just about anywhere we go, whether we are acting lawfully or unlawfully, we could be observed.

If the field officers from the Fisheries Department, for example, were observing marron poachers at Wellington Dam, what else and who else would they observe? Other people may be doing other activities which are not unlawful but which the officers are also observing. If people decided to have a midnight tryst at Wellington Dam, they would not think that somebody had some high powered telescope with a night light and could be observing them. A disturbing matter is that there is no provision in this Bill for any evidence obtained contrary to this legislation to be inadmissible in a court. If police officers, fisheries officers or whoever obtained evidence of other activities for which they did

not have a warrant and which were possibly none of their business and in situations where people would not reasonably expect to be observed, any evidence that is collected under this legislation could be used in court against the people observed. The Minister needs to go back and have another look at this whole area. In his second reading speech he says -

> The Bill also prohibits the use of optical surveillance devices to record or observe private activities to which the person is not a party. Where the person is a party to the activity, the Bill prohibits recording unless certain consent requirements are satisfied.

Perhaps now when we are making home videos, we must make sure that everybody consents to being on tape because the average video recorder could be regarded as an optical surveillance device under this definition and also a listening device because most record sound. To seek people's consent before we take a video seems a little passing strange and a bit heavy-handed.

Part of the Bill covers tracking devices. I note that this is covered in the discussion paper from the New South Wales Law Reform Commission. It does not appear in either the second reading speech or the legislation that there is any cognizance of the fact that tracking devices can be more than just tracking devices. At the same time they can be listening devices and may also, either now or in the future, be used as optical surveillance devices. The Minister refers to tracking devices in his second reading speech when he says -

> The Bill provides that a person must not use a tracking device to determine the geographical location of a person or object without consent. Exemptions are created for the police, the National Crime Authority and the Anti-Corruption Commission where acting under warrant or emergency authorisation, and officers acting under any Act of the Commonwealth.

Let us consider the FLIRC, the forward looking infra-red camera which is used on the police helicopter. I doubt the police intend to obtain a warrant every time they want to use that device. However, under that broad definition of optical surveillance device or what could be defined as a tracking device, one way or the other the FLIRC will fall within the purview of this Bill.

Mr Day: We propose to introduce an amendment to cover that situation.

Mrs ROBERTS: The Minister will find this will be awful legislation and that we will work out some amendments now and many more amendments will be required next year and the year after. Because this legislation is not well thought through and goes much further than we should be going at this time, it requires amendment for all kinds of matters. A provision covering the FLIRC is one of many potential amendments.

Mr Bloffwitch: I thought it was basically a copy of the federal legislation or one of the other State's legislation.

Mrs ROBERTS: No, it is not. No mention is made in the Bill of traffic. An example is given in the New South Wales Law Reform Commission paper that when the International Olympic Committee was in Sydney, it was taken on a tour of the venues for the Olympic Games. The equivalent of Main Roads WA in New South Wales is able to monitor traffic flow. Through the tracking of the International Olympic Committee's vehicles, the authority was able to ensure the vehicles got green lights as they travelled between the Olympic venues. Comprehensive information is available in other States that indicates that other agencies that use tracking devices could be caught out by this legislation. The likes of Main Roads or the Department of Transport could find it useful on occasion, as the authority did in Sydney, to track vehicles for the purpose of adjusting traffic lights. In that case it adjusted them all to green as those important Olympic vehicles headed towards those signals. That is a different kind of use for a tracking device.

One of the reasons for updating the Listening Devices Act and including all the other areas of surveillance is that technology has moved far. Perhaps with this ever changing and updating technology, the Government has not thought far enough ahead. Beyond listening devices, already many other contingencies and many other advances or near advances in technology will not be covered. Under this legislation all kinds of unintended consequences could stop people from doing things that would have been lawful except for this legislation.

Mr Bloffwitch: Can you give us an example?

Mrs ROBERTS: I just gave the example of tracking the Olympic cars so that traffic lights could be switched to green as the cars approached. The Minister for Police says a court may issue a warrant for a surveillance device only if it is satisfied there are reasonable grounds for believing that an offence has been or is likely to be committed or that the use of a device would be likely to assist an investigation into that offence or suspected offence, or enable evidence to be obtained. That goes much further than the current listening devices legislation and it goes much further than legislation in most other States. Although I agree that the police need these important tools to obtain evidence on which to convict criminals or to protect the public in other circumstances, we should not allow those circumstances

to become fishing expeditions. That is why it concerns me that the Minister's second reading speech includes the words "likely to assist in investigation". How is that defined? That statement is broad and all-embracing.

Mr Bloffwitch: Wouldn't it depend on the severity of the case and those matters being taken into consideration?

Mrs ROBERTS: When considering legislation these days a judge will look first at the legislation and second at the second reading speech. Clause 13(2)(d) in part 4 of the Bill relates to this comment in the second reading speech. Subclause (2) states -

> When considering an application for a listening device warrant, an optical surveillance device warrant or a tracking device warrant, the court must have regard to - . . .
>
> (d) The intelligence value and the evidentiary value of any information sought to be obtained;

Obtaining evidentiary value is fine: That is what we want police to be able to do. However, we do not want these kinds of devices used for fishing expeditions or to gain intelligence generally. They should be used only when there is a real belief an offence has been committed. Legislation in other jurisdictions contains wording closer to this: To enable evidence to be obtained about the commission of an offence or the identity or location of an offender. That is what this legislation should provide for. It should be used by police to obtain evidence on the commission of an offence or to assist in establishing the identity or location of an offender. It is going too far to be able to use these kinds of devices, which are intrusive and which are an invasion of people's privacy, if it is believed the evidence obtained would be likely to assist in an investigation - that is broad and all-embracing - or, under clause 13, would contribute to the intelligence value. In police terms, "gaining intelligence" is just trying to fish for information to see what is going on. We should be talking about the evidentiary value and hard evidence.

Mr Day: Have you looked at clause 13(1)(a), which refers to the question of whether an offence has been, is being, or is about to be, or is likely to be, committed? That refers to the question of an offence as you suggest should be the case.

Mrs ROBERTS: That is right. Subclause (2) states also that the court must "have regard to". I do not think the court should have any regard to the intelligence value; its regard should be to the evidence value and the matters I have outlined.

I turn now to one of my significant concerns about this Bill; that is, the complete failure to define "offence". Many definitions are given in clause 3, but "offence" is not defined. That means that, subject to the judge's considerations, there is nothing to suggest that this must be a really serious offence. We can say that it should be left to the judge, but that has not been done in other jurisdictions. When we consider this side by side with the fact that there is no inadmissibility of evidence obtained contrary to the Act, we are opening up the whole situation to abuse.

I will give some examples of what other States and Territories regard as serious offences. In Tasmania, the situation is that the person making the communication and publication believes reasonable grounds were necessary to make the communication or publication in connection with, firstly, an imminent threat of serious violence to the person or substantial damage to property or, secondly, a serious narcotics offence. The Northern Territory refers to proceedings being of a very serious nature. In New South Wales serious offences include the imminent threat of serious violence, a serious narcotics offence or other prescribed serious offences. Those serious offences include things like murder, kidnapping and offences punishable by imprisonment for a maximum of, at least, seven years. That would include serious fraud offences, money laundering or the loss of, or risk to, a person's life. There is no clear definition where the application must be made to a judge or a court. Some people are under the impression that these applications must be heard by the Supreme Court; however, I see no reference to that in the Bill. That is another area the Minister must clarify. If the applications must be made to a judge, nothing specified in the legislation would prohibit an authorised officer having the hearing before a Family Court judge.

Mr Bloffwitch: Is it not in the definition we have?

Mrs ROBERTS: No.

Mr Day: I understand that under the Interpretation Act, it is a Supreme Court judge.

Mrs ROBERTS: The Minister understands it is a Supreme Court judge. We will raise that matter again in Committee when the Minister could perhaps give us an unequivocal assurance on that point.

A very good summary of the background to the use of listening devices appears in the New South Wales Law Reform Commission's "Issues Paper 12: Surveillance". It talks about the need for balancing our need and desire to convict criminals and to protect the public against privacy concerns. Paragraph 5.1 refers to the New South Wales Listening Devices Act and states -

> When the *Listening Devices Act* (LDA) was introduced its primary functions were stated to be the protection and preservation of the right of individual privacy, while at the same time recognising that listening devices can have legitimate and beneficial uses. It was recognised then, and continues to be recognised, that electronic surveillance is a legitimate crime fighting tool that can obtain compelling evidence to assist in securing convictions, but that it is intrusive. Accordingly, the principles of restraint and privacy must continue to be balanced against the public policy behind the goal of convicting a criminal and increasing levels of community protection. The legislation does so by prohibiting the use of listening devices, except in limited circumstances. The Commission's approach to this review is to suggest reform in this area to accommodate technological changes, but so that such reform maintains the balance between privacy and the need to use surveillance.

This Bill does not have that balance right. First of all, it fails to define the level of offence for which people may make application for a warrant for a surveillance device. Members of the community might feel it is not appropriate to have their privacy invaded or to have that level of intrusion for a whole range of minor offences; however, they are wholeheartedly behind those devices being used when there is a reasonable belief that evidence may be collected for very serious crimes, to which I have referred already; for example, narcotics crimes, those that deal with very serious fraud and those relating to a danger to the life of someone. When we place that side by side with the failure of this Bill to render inadmissible in a court of law any evidence obtained illegally or contrary to this legislation, there are some very legitimate reasons for concerns.

Mr Bloffwitch: Don't you think it is terrible that there is evidence that someone is guilty and it cannot be used in court because of a technicality? I have seen some examples of that, and then members of the public shrug their head and ask why.

Mrs ROBERTS: That kind of evidence is used already in court, and listening devices are an effective tool. Because the current Act does not cover the power of entry, trespass becomes a question and the case can be thrown out. For months I have asked the Minister to fix that up. The previous Minister said he would do it, but we are still waiting. This goes much further.

Mr Day: That option of bringing in a so-called quick fix to the current Listening Devices Act was something I seriously considered but, on balance, I concluded that it would be better to introduce the legislation as a whole because it offers much greater protection for the privacy of individuals than is the case under the current legislation. If we simply introduced that quick fix, those protections for privacy would not be provided. I was not at all confident it would be passed by both Houses of Parliament in those circumstances.

Mrs ROBERTS: I am ready to believe the Minister had the best intentions, but this Act goes too far. The unfortunate consequence may be that we do not rectify speedily what I consider to be a fairly easily rectifiable problem and that we will deal with this for a very long time. It is already my understanding that the minor parties in the upper House have concerns. Had we been able to see in this place a Bill to rectify that problem and perhaps make some changes to only the Listening Devices Act, we would have had a good opportunity of securing the support of the Legislative Council.

Mr Day: If the minor parties in the upper House have concerns about this legislation, do you not think they would have, at least, equal concerns about an amendment to the Act which would give police and other law enforcement officers the ability to use forced entry into the homes of people without the protections in this legislation? Do you think they would agree to that?

Mrs ROBERTS: I will get to that in a moment. Although the Minister says protections are included in the Bill, he is providing some increased and more intrusive powers than already exist.

I referred to prohibitions that apply in other places on evidence that is obtained contrary to the listening devices legislation. In Queensland and New South Wales, evidence obtained in contravention of the respective Acts is inadmissible in civil and criminal proceedings. Section 14 of the Tasmanian legislation dealing with listening devices refers to unlawfully obtained evidence being inadmissible. Section 14(1) states that where a private conversation has come to the knowledge of a person as a result, direct or indirect, of the use of a listening device in contravention of section 5 of that Act, evidence of the conversation and evidence obtained of a direct conversation may not be given by that person in any proceedings before any court or person authorised to receive evidence. The Tasmanian legislation places a further restriction on evidence which is gained in this way.

In the briefing with the Minister's advisers, I suggested that if evidence is obtained which has nothing to do with the original application for the placement of the listening or other surveillance device, that evidence should not be admissible. The Minister's advisers did not think that evidence should be automatically inadmissible. The Bill is now giving the police carte blanche on that. Nothing in the Bill states that evidence obtained contrary to the Act or

evidence obtained which had nothing to do with the reason for the warrant being given in the first place is inadmissible. That is left completely open in the Bill.

The Minister's advisers cited an example. A similar example is where, as a result of obtaining a warrant for an alleged drug offence, they recorded information relating to a murder or some other criminal offence. They did not think that evidence should be inadmissible. They did not want a murderer to get off when they had an admission on tape, despite the fact that it was not the reason for which the warrant was given in the first place. That appears to be a sustainable argument. However, the Tasmanian legislation gets around that where it says, in layman's terms, that if the evidence obtained relates to a crime of a certain serious level, it can be admissible in court. I think that is an important check that the Minister should consider putting in place in our legislation.

Section 14(3) of the Tasmanian legislation lists the exceptions. It states that evidence is not rendered inadmissible if all the principal parties to the private conversation consent to the evidence being given - that seems fair; or if the private conversation comes to the knowledge of persons called to give the evidence otherwise than in the manner referred to, notwithstanding that the person also obtained knowledge of the conversation in such a manner. That also seems reasonable. It may be that the police have knowledge of that conversation or the commission of that offence through other means, so that should not be a prohibition on the police.

The legislation also states that such evidence is admissible if someone has taken proceedings under this Act. I feel that is appropriate too. The Tasmanian legislation also states that in proceedings for an offence punishable by imprisonment by life or 21 years, or a serious narcotics offence, the court can decide whether that evidence is admissible. That kind of provision puts the checks and balances in place.

Mr Bloffwitch: What if the evidence relates to someone who confesses to a burglary? I know it is not as serious as the other examples, but should we not be able to use that evidence as well? If in a conversation two people say they knocked off a hotel and they have the money stashed, does the member not think the police should be able to use that?

Mrs ROBERTS: It is matter of balance between that and an individual's privacy. If the member reads the considered conclusions that people have come to all around this country on the issue of privacy, these kinds of devices represent a dreadful intrusion into people's lives. It is sad that just about everywhere we go we expect to be seen, photographed, videotaped and have our conversations not only overheard but recorded.

Mr Cowan: You seem to want a nanny state in every other sense.

Mrs ROBERTS: The Deputy Premier should not accuse me of that. He does not have any evidence for accusing me of that.

Mr Cowan: I was speaking generally. I was not speaking specifically about the member for Midland.

Mrs ROBERTS: I will take that as an apology, Deputy Premier. We have an open-ended level of offences for which an application for a surveillance device could be granted. An example for the member for Geraldton is if the police believed he was committing a corporate crime or potentially his wife was doing something wrong at her caryard business or whatever. Let us say she was accepting hot cars or who knows what. Someone could say to the judge, "Don't you think this is a serious offence? We think she has been dealing in hot cars and we want a warrant for all these things." They might decide they will put a device at the caryard, and one at the member's house in his bedroom. While the member is in his bedroom he might have a private conversation with his wife about his tax return or a number of other things. They will say, "You beaut; let's get him." That could happen even though the member was not the reason for the device being put there in the first place.

Mr Day: On this example, car theft is a major problem for the whole of the country, and Western Australia in particular. One aspect is that there are some organised rackets, and some people involved in car theft in a major way should be subject to this sort of surveillance.

Mrs ROBERTS: My point in mentioning that is to highlight the fact that other evidence, which was not the purpose of installing the listening device in the first place and which may be of a minor nature, could be picked up and someone could be prosecuted on the basis of it.

Mr Bloffwitch: If I have done something wrong, I deserve to be prosecuted.

Mrs ROBERTS: I wish in the limited time remaining to raise some other issues. The first is the time limit for prosecutions. Clause 28 provides that a proceeding for an offence under the legislation is required to be commenced within two years after the offence was committed. Sometimes offences under this kind of legislation do not become apparent until the case goes to trial. Some of the serious cases that go to trial, as a consequence of the placement of these listening devices, do not get into court within two years of the offence being committed. The offence may be disclosed in court long after the offence was committed and certainly not within two years of it. I do not understand

why a time limit should be imposed on prosecutions. There may be an argument for it, but certainly two years is not long enough. I would be pleased to hear an argument for five or seven years.

I also record my concern about the emergency authorisations permitted under this legislation. Those emergency authorisations may be given by an authorised person, as defined in clause 3 of the Bill, and the authorisations will remain in place for 90 days. Although there is provision to report to a judge, this provision circumvents the role of the courts and the judge. At the very least, a time limit of much less than 90 days should be attached to that emergency authorisation, especially bearing in mind that only on very rare occasions could a radio telephone application not be made. Someone, even in a remote location, could be in touch with a duty judge and make a radio telephone application. At least in that way, they would not circumvent the courts or the judge. It is outrageous that authorised officers should be allowed to provide emergency authorisations. I cannot work out why someone would not be able to go to a judge within 24 hours or less. On that basis, emergency authorisations should be valid for a maximum of two days, and during that time the person could go to a judge for a proper hearing. Potentially, the commissioner, one of his deputies, or someone from the Anti-Corruption Commission or National Crime Authority could give himself emergency authorisation, put his case together and report it to the judge later. I do not think the provisions for reporting to the judge are strong enough.

I now refer to the power to search detailed in clause 26. It is an example of the police being given more intrusive powers than they already have. If the police or other agencies believe an offence has been committed, they have general powers under the Criminal Code and other legislation. I see no reason for conferring these additional powers to search using surveillance devices. It is an area open to abuse, and will allow them to go on further fishing expeditions.

This type of legislation is always a matter of balancing privacy and civil liberty rights against the need to get evidence on criminals to enable successful prosecutions. Unfortunately, there are many holes in this legislation. It is flawed in a major way and I am very disappointed with it overall.

Mr Day: Are you saying you would have supported a simple amendment to the Listening Devices Act to overcome the problems being experienced?

Mrs ROBERTS: I said that months ago.

Mr Day: I have not heard it.

Mrs ROBERTS: I asked the Minister a question about it.

[The member's time expired.]

MR RIEBELING (Burrup) [11.35 am]: The Minister would have been far better served, and so would the Police Force, by introducing a simple amendment to the current Act to make it more workable rather than introducing this legislation. We are told that one of the reasons for this legislation is that things are getting more sophisticated and it is necessary to keep up with current trends. However, I suggest this leads us down the path taken by the United States, in that complex legislation will be enacted. The Opposition does not oppose this legislation, but everyone knows lawyers love complex legislation. Rather than closing the loopholes, this Bill will open up hundreds of loopholes and provide potential avenues for lawyers to pick holes in the legislation. I do not know who drafted it, but some of the drafting is somewhat unusual, especially that in the interpretation clause.

I refer to the definition of "listening device". I do not know whether the Minister has read that, but I am sure it will be of great comfort to people who are deaf to know that wearing their hearing aids does not constitute an offence. It is absolutely beyond me to understand why that is included in the interpretation clause. The definition goes further and states that a hearing aid will not be considered a listening device for the purposes of this Bill, but it will be if the volume is higher than that required to hear an ordinarily audible voice. It seems that when hearing impaired people wear a hearing aid, it is okay if they do not turn up the volume. Perhaps by interjection the Minister can explain the reason for this definition.

Mr Day: I would have thought the purpose was obvious. It is to make it clear that devices such as hearing aids will not be covered by the legislation. If someone were covertly using a hearing aid to inappropriately listen to somebody else's private conversation, that would be a different situation.

Mr RIEBELING: Will people who are in the business of enforcing the penalty provisions of this legislation seriously be expected to check hearing aids to see whether people are deaf? It is bizarre.

Mr Day: The other option is to take it out, in which case it would be implied that a hearing aid would be covered by the legislation.

Mr RIEBELING: In which case commonsense would prevail. It is similar to the definition of an "optical surveillance device". Has the Minister read that definition?

Mr Day: Yes, what about it?

Mr RIEBELING: Once again, the obvious is stated. People's glasses are not considered to be a surveillance device. That is huge news!

Mr Day: Maybe there is a good argument for making things clear in legislation.

Mr RIEBELING: I give the Minister a tip: That is not the way to do it.

Mr Day: In an earlier question you said you did not know who drafted the Bill. You should be aware that the genesis of this legislation was in 1988, five years before your side of politics lost government.

Mr RIEBELING: The Labor Party Government was thrown out so the Minister should not bring that up as an example.

Mr Day: It has been around for a long time.

Mr RIEBELING: But not in this form.

Mr Day: In this exact form it has been reasonably finalised.

Mr RIEBELING: To provide that deaf people wearing hearing aids would not commit an offence unless they turned them up, is the funniest definition I have ever seen in my life. This legislation, which I must admit I was ignorant of prior to reading the legislation, includes tracking devices and surveillance cameras. I thought it was a Bill for bugging devices such as listening devices, but now I know better. It involves many aspects of following a citizen and finding out what he is doing. If he is doing unlawful acts he will be prosecuted by way of the evidence.

Mr Day: Do you agree that it is appropriate to have legislation in this State that provides adequate protection for individuals in respect of other surveillance devices such as covert video cameras and tracking devices?

Mr RIEBELING: I do not disagree with that. However, I agree with what the member for Midland said; that is, this is not a fishing trip device, it is a tackle box. It allows for a person to put a device into a house, for any reason whatsoever and use the evidence to prosecute.

Mr Day: The person must get a warrant from a judge first which is quite different from the situation under the Listening Devices Act.

Mr RIEBELING: I understood that under the Listening Devices Act the issuing of a warrant was required from a magistrate or a judge.

Mr Day: That is not the case. That authority can be given by a senior police officer. Much greater checks and balances are included in this legislation.

Mr RIEBELING: That is a vast improvement. I was ignorant; I thought a judge or a magistrate would have to issue a warrant to allow surveillance.

Mr Day: A warrant for a telephone interception is a completely different situation. A warrant from a judge is required under this legislation.

Mr RIEBELING: I refer to section 10 which allows the admissibility of evidence obtained by mistake or as a by-product of the main game. I am no lawyer and the lawyers on this side will no doubt refer to this.

Mr Osborne: You are a better person for it.

Mr RIEBELING: Absolutely. I do not agree with what the Minister said about the business activities of the member for Geraldton!

Mr Bloffwitch: Thank you very much.

Mr Osborne: You want one of those cars, don't you?

Mr RIEBELING: Clause 10 sets out evidence that can be admissible in court. What must be proved before a judge issues the warrant is provided for under clause 13. Subclause (2)(a) provides for what the court must have regard to when considering an application. It is beyond me how someone can be expected to provide to a judge reasons for the issuing of a warrant, but under clause 10, anything else that is useable would be admissible. On appeal, a court would knock out any information that was not referred to in the warrant application because that clause is specific

and requires what the judge must consider when deciding to issue a warrant. It is specific except for the public interest, whatever that may be. If a detective from the drug squad were being examined by a judge, presumably on oath - the warrant would be based on a sworn document - and the public interest were being considered, the judge would no doubt have noted that on the warrant.

The wording of the rest of the Surveillance Devices Bill indicates that it would be very difficult for information gained outside the warrant to be used. Therefore, I am somewhat more at ease with clause 10 because it will not have a great effect. Therefore, I do not know why it is included in the Bill. Subsequent clauses indicate there is little likelihood of its being used.

The member for Midland referred to the two years' use of evidence obtained. I presume that is under the Statute of limitations and that a complaint must be laid within that two year period. No doubt the evidence will be good for as many years as it takes to go before the courts. Perhaps the Minister can reassure us of that.

Mrs Roberts: They might not realise there is an offence unless the case about the listening device gets into the court. Many of them can take two or three years to get to court. They might discover as part of that that it is being contravened, but it will be too late.

Mr RIEBELING: Some sort of Statute of limitations should be on it only in light of fairness in prosecution.

Mr Day: We are talking about a Statute of limitations on the admissibility of evidence obtained under this legislation.

Mr RIEBELING: Yes. Usually that means a complaint must be laid within that period.

Mr Day: The concern expressed by the member for Midland was about the limitation of two years applying to any person being prosecuted for an offence under this Act; that is, using a surveillance device illegally.

Mr RIEBELING: Would that not be the same answer?

Mr Day: They are two separate issues.

Mr RIEBELING: Surely that still means that under the Statute of limitations a complaint must be lodged within two years of the action.

Mr Day: I will check on that. I understand that is right.

Mr RIEBELING: We on this side are always right; we just want to check that!

The Bill is a bold attempt to try to solve a problem which has occurred obviously with the current legislation with which I was not au fait and thought it involved a different process. For that ignorance, I apologise to this House. Surely, rather than the complex, lengthy paragraphs on what are recording devices and equipment that is used to install the device, a simple definition of recording equipment could be described as: "The recording device plus equipment required". It is that complexity of legislation which leads to litigation and loopholes in the law. The Minister may be satisfied that this Bill will cover every scenario that may be used in defence cases to try to knock out the evidence that is obtained by listening devices. However, I am sure there are some loopholes in the legislation and that they will be tested.

Clause 14 deals with the placing of tracking devices on vehicles. I am concerned that it appears that a tracking device may be placed on a vehicle before permission to place that device has been obtained. Is that the Minister's understanding?

Mr Day: No. A warrant must to be obtained prior to the installation of a tracking device.

Mr RIEBELING: That is what I thought, but subclause (1)(a) states that a court may issue a tracking device warrant if the court is satisfied, upon an application made in accordance with section 15, that a tracking device or devices has or have been attached or installed on a vehicle. That indicates to me that if a policeman saw a vehicle parked in a suspicious place, such as under a cannabis tree, he could attach a tracking device to it and then make an application to have that device authorised.

Mr Day: No. The relevant clause is clause 7, which prescribes the situations in which a warrant can be issued for the installation of a tracking device. Clause 14 refers simply to the situation where a tracking device has already been installed lawfully but requires maintenance or retrieval. For example, if a vehicle that had been fitted with a tracking device while situated in a public place were moved so that it was no longer in a public place, clause 14 would authorise what would otherwise constitute a trespass or criminal offence.

Mr RIEBELING: I see. I misread that. I understand that the police need every possible assistance in fighting criminals, particularly organised crime syndicates that use sophisticated weaponry to avoid detection. If this

legislation achieves that end, that is fine, but a simpler piece of legislation would have done the same job. The more words there are in legislation, the greater is the possibility that loopholes will be found in it. This legislation, which is 46 pages long, will probably contain at least 46 loopholes for the sophisticated and highly paid lawyers who work for these highly organised criminals. One of the great problems in our legal system is devising legislation that ensures that organised criminals face the consequences of their actions. I am not convinced that this legislation will do that. I hope the Minister is correct in saying that it will. If it does, congratulations; if it does not, I expect it will come back to this place for amendment.

MS ANWYL (Kalgoorlie) [11.54 am]: I, like my colleagues, support the Surveillance Devices Bill. There is no doubt that this Bill will be a critical tool in the law enforcement process. I have some reservations as a result of perusing the Bill. I regret not having had access to the New South Wales Law Reform Commission issues paper before today, because that contains a very helpful analysis of these issues; and I have no doubt the Minister had access to that paper.

The Opposition supports this legislation because it is serious about tackling the causes of crime and also crime itself, and because we are extremely serious about extending police powers insofar as they may be required to stop organised crime. We agree that one of the main frustrations of the police in tackling organised crime, particularly in the face of its increasing sophistication, is the lack of clear guidelines for covert operations. Another important issue is resources, to which I will return. It is fair to say that the Police Force in this State, and certainly in its interaction with the Australian Federal Police, the National Crime Authority and Customs, has been hampered by the lack of clear legislation outlining the matters which this legislation endeavours to outline. For that reason, the Opposition is keen to support the legislation.

I agree with the members for Midland and Burrup that there is a clear need to have checks and balances in place to protect the public and to protect the concept of privacy, and also to ensure that some accountability is put in place to subject police practices to scrutiny. I am sure that the Minister will address that issue in his response.

There can be no better example in recent times of police powers gone mad than the Victorian example which was highlighted a couple of months ago, where special branch was conducting a huge array of surveillance activities of a number of organisations, many of which we would all agree posed little or no threat to the security of Victoria or any other State.

A member interjected.

Ms ANWYL: Our Commissioner of Police is a Victorian, but so am I.

Mrs Roberts: You have been here for a long time. He has been here for only a couple of years.

Mr Osborne: You can always tell a Victorian; you just cannot tell them much.

Ms ANWYL: I have moved beyond parochialism. The only parochialism that I like is that which involves the goldfields, so unless members want to talk about the gold royalty, perhaps they should desist.

Mr Day: It was the Victorians in the goldfields in the 1890s who led us into the Federation.

Ms ANWYL: That is right, otherwise this State would still be on its own.

I want to discuss in a serious way what happened in Victoria, because the evidence is that under Governments of different political persuasions, the police continued in their own merry way to record activities and infiltrate such insidious organisations as Radio 3CR, which was a local community radio station. I heard a media person say that if the revolution did not start at Radio 3CR it would never start!

It is important to remember that organisations such as lone parent support associations, child care groups and others, were subject to forms of surveillance. No-one disputes the need to target certain organisations. However, there should be some scrutiny of that surveillance. If the Government of the day does not have access to the information, it is very difficult to see how the police can be held accountable in this arena. I am aware that this legislation contains a strict application for warrant but I give the Victorian example as evidence of the ability of activities to occur outside legislation. It appears that mainly evidential problems occur with the presentation in the courts of evidence gathered by covert means; that is, the law of evidence and how it is applied in the courts is a matter of complexity. The second reading speech refers to the case of Coco. Another important case is the Wridgeway case which has dominated discussion. Another case often referred to in the courts is the Bunning and Cross case which is applied as to whether overall the probative value of a piece of evidence which may have been illegally obtained outweighs any concept of prejudice or public policy breached by the illegal gathering of the evidence. As with much case law, it is a complex area. The evidence law is not as clear as it might be.

I realise this lies beyond the Minister's portfolio; however I would like him to comment on how it will fit in with the Attorney General's planned review of the entire criminal justice system. Even if the Minister is not in the position to respond, can he pursue the question of whether the plan is to clarify the situation? One suggestion is to have a codification of evidence law, but I find it difficult to endorse that recommendation as it would be very difficult to accomplish. However, the police must constantly weigh up these issues quickly. Therefore, any assistance would be good.

Mr Day: On what issue does the member seek clarification?

Ms ANWYL: The Attorney General has announced a review of the entire criminal justice system. Will any thought be given to how matters of evidence law will impact on the successful prosecution of criminals? One of the major reasons for codification in the area is that often evidence is excluded in court because it has been obtained illegally. I find it difficult, because as a member of the Select Committee on the Misuse of Drugs Act 1981, I have been privy to much information which, for various reasons, I do not wish to address here. Having worked in the criminal justice system for many years, I am aware of the number of voir dire hearings that occur - that is, where the jury is asked to leave the court, to allow discussion about whether certain evidence is admissible - and that can lead to a great deal of uncertainty in the system. Therefore, although I do not necessarily support the idea of a codified evidence law, I wonder whether the Attorney General has any ideas in that area. I believe that a three member committee is considering that issue. Evidence law is not as clear as it might be. That is a product of our having inherited more than a couple of hundred years of English law and having attached our own modifications on a common law basis over the years, and the various amendments to the Evidence Act.

As a result of the Delta reforms, there has been greater involvement of everyday members of the Police Service in a range of activities. Again, my attention turns to the drug arena. I suggest that the number of police officers coming into contact with all these issues, such as by way of the operation of the "final dose" tactic employed in Northbridge, is always increasing. That is, there is multiskilling across the force generally. That in itself creates difficulties for officers who must make split second decisions, in some cases, about the way they will gather evidence. The level of sophistication in that area will increase rather than decrease. As much as possible, police officers should be legally trained. I do not necessarily mean by way of tertiary qualifications, but the component of studies and continuing education in that area is very important. As a lawyer, I would not like to have to brief a bunch of general duty police officers about this legislation. It would be a very difficult task. Perhaps we need to look at ways of increasing opportunities for police officers to have access to legal advice. There are some precedents for this within the Police Force, and there are much greater opportunities to have bodies of legal knowledge made available to police officers, whether by the employment of in-house lawyers or some other means.

Mr Day: I agree that police should be given a reasonable level of legal training and that they should have access to an adequate amount of legal expertise. To that extent, two officers from the legal unit of the Police Service are here at the moment. More is being done in that area. Under the Delta reforms and improved training being given to the police, a greater degree of legal expertise is being gained. No doubt, there will be further developments over the next couple of years.

Ms ANWYL: Resources are a major issue. I do not know the solution. The public's main preoccupation is with the drug enforcement area. We must consider ways to improve those resources.

I have talked about organised crime, and I said that the supply of resources was a critical issue. Leaving the recent examples aside, over many years police resources have been stretched because of a number of factors, which I will not take time to address now. Given the sophistication of the technology being employed by professional criminals as opposed to organised crime, no doubt the budgets of individual squads must be increased so that they can access that technology. I know, again having seen evidence, that some significant purchases of equipment have occurred recently. However, it is an area in which it will be increasingly difficult for the Police Service to keep up to date given the money available to professional criminals and the increasing speed at which technology is advancing.

The member for Midland addressed the issue of disparities between state and federal legislation. As a matter of public policy, uniform legislation seems desirable. I would like the Minister to address the steps that have been taken at the national level to establish a network between commissioners to ensure that drug enforcement legislation is complementary. Other States might be going through the same process of making their legislation more workable and better defining covert powers of police.

I turn to some specific concerns about the legislation. I find it difficult to form an opinion about the way in which the legislation will work. It has a theme of defining what is private and what is public and what ought reasonably to be expected. I refer to the concept of the reasonable man and the objective test of what ought reasonably to be expected.

[Leave granted for the member's time to be extended.]

Ms ANWYL: It find it hard to understand how that will work. Shops display signs saying that customers may be subject to camera surveillance. In the second reading speech the Minister referred to shop workers. I acknowledge that the camera is an anti-shoplifting device, but does that mean that one can expect to be filmed in a change room trying on clothes? It is difficult to draw distinctions. The public will be interested to know how that will work. For example, if it is suspected that a drug deal is under way in one of the larger retail stores that young people frequent, does that mean the change rooms will be staked out? I am sorry to say that the Eastern Goldfields District Senior High School was the subject of a search for drugs involving sniffer dogs. Is it possible that the entire school might be the subject of surveillance in the future because of a suspicion of drug dealing? It is difficult to balance the issues.

I was interested to note the Minister's comment in the second reading speech making a distinction between the outdoors and being inside buildings. The Minister stated -

> It is envisaged, generally, that activities carried on outside a building would not be considered private.

I do not know that most people would agree. When talking about the Hay Street Mall they would, but is one's own backyard therefore not considered to be private?

In relation to the definitions provided in clause 3, I reiterate the query raised by the member for Midland about the need to define "offence". I am unclear whether we are talking about every offence. If we are, an offence as trivial as disorderly conduct, in which on a technical reading of the law, we all engaged on one or more days of the week -

Mr Cowan: Speak for yourself.

Ms ANWYL: I do, but the Deputy Premier would be surprised if he were to pursue the issue. That must be taken into account.

I am cognisant that clause 13(2)(a) provides that matters are to be taken into account by the judge. If the Minister's response is simply to say that the judge can deal with this, I will not be surprised. However, it is necessary to make clear the types of offences about which we are talking. An interesting example is the type of surveillance undertaken of people alleged to be obtaining workers' compensation payments fraudulently. That is one of the most common uses of surveillance in our community. One could argue that, if someone were doing that, it would be an offence pursuant to the Western Australian Workers' Compensation and Rehabilitation Act, but it could also be perjury. We must define that.

I was curious to note that the NCA officer referred to must be an officer of either the federal or state Police Force. It would be desirable to have applications available to non-police members of the NCA. Having said that, its staff numbers have been depleted by about 50 per cent in Western Australia this year as a result of federal Budget cuts.

I refer the Minister to the definition of "private activity". I have already raised the difficulty of the meaning of the words "ought reasonably to expect". Further guidance will need to be provided on this issue. The same applies to private conversations. In that sense, we must remember that it was previously legal to tape a conversation -

Mr Baker: Only face-to-face.

Ms ANWYL: That is right, but this legislation changes that.

Mr Baker: Yes.

Ms ANWYL: That is a significant change. Given that the penalties prescribed are reasonably hefty, particularly for a body corporate in relation to financial matters, this has some potential for problems.

Mr Day: Are you talking about journalists?

Ms ANWYL: I have not directed my mind to particular examples. I am thinking of cases which involve people undertaking surveillance for legitimate reasons. For example, there might be a marriage separation and allegations of stalking. Many people also have dictaphones these days. I know there are protections for private investigators -

Mr Baker interjected.

Ms ANWYL: The member is talking about admissibility in court and I am talking about the offence of taping a conversation. They are quite different. The possibility of individual citizens being subject to a fine in that regard, given that the behaviour was previously sanctioned by the law, is great.

The question was raised whether the definition of "surveillance device" was wide enough to cover the types of surveillance occurring. We have listening devices and optical surveillance or tracking devices. Many records are

kept on computers these days. I have certainly been involved in cases in which much of the evidence has been computer records.

I refer members to the New South Wales Law Reform Report at page 9, where reference is made to computer surveillance. Mention is made of surveillance, but we should take the opportunity to apply a wide definition of surveillance. Given that so many records and transaction are maintained on computer, it is a glaring omission.

Also, I draw the Minister's attention to clause 21 regarding emergency authorisations. A definition of "emergency authorisations" is provided in the Bill, but it does not adequately set out what that means. The clause refers to reasonable grounds existing for believing that there is an imminent threat of serious violence to a person or substantial damage to property. I wonder whether that needs further clarification.

Mr Day: To clarify what specifically?

Ms ANWYL: What exactly is meant by an emergency? In what cases is it anticipated that an emergency will arise? The emergency authorisation may be given by an authorised person, who I presume will be a senior police officer, but the application of that term is not clear. In what circumstances will one have grounds for believing the emergency to exist?

Mr Day: A couple of examples could be a hostage situation, or a police officer could have a belief that a major drug offence is about to occur and surveillance devices are needed urgently. Other situations could well arise.

Ms ANWYL: In conclusion, notwithstanding its reservations, the Opposition supports the legislation. It is keen to see it work effectively as a further tool for law enforcement, as has been requested by the Police Service for some time.

MR McGOWAN (Rockingham) [12.23 pm]: The Surveillance Devices Bill is a complex piece of legislation which I have not had a great deal of time to examine. However, it seems to be an attempt to regulate a range of matters regarding the gaining of evidence in relation to criminal matters. I have some concern about whether regulating these areas is the right way to go.

I recall a case when I worked in the Navy in which I had to deal with legislation involving amendments to the commonwealth Crimes Act which attempted to regulate the way commonwealth police could interview and conduct investigations. It placed time limitations on the obtaining of evidence and such matters. In many ways, the complexity of that legislation made it more difficult for police to operate, and for people to understand their rights. These matters should be simplistic rather than legalistic.

Nevertheless, it is our duty to examine the Bill and determine whether it should be passed. Later in my address I will set out concerns about the Bill which the Minister might like to address in his reply.

The Bunning v Cross High Court decision in the 1970s considered evidence illegally obtained by law enforcement agencies. It indicated that sometimes evidence is procured in a way which is outside the concept of the law. The finding, which was contrary to the view of the United States Supreme Court, was that evidence obtained illegally in Australia can be admissible in court, but a test must be conducted to determine the value of the evidence against the means by which it was obtained; namely, a test of reasonableness. The court could determine in individual cases whether the evidence would be permissible

Mr Baker: You will also agree that the other test regarding the general rule of admissibility is the ease with which the applicable law could have been complied with. If there is an area of law setting out how a procedure is to be followed, Bunning v Cross states that one must take into account the ease of compliance with the law. In circumstances where, for example, it is difficult to obtain evidence, or to obtain a permit to get the evidence, it is possible to ignore the illegality and allow the evidence to be adduced. That is an exception to the general rule.

Mr McGOWAN: Sure. We have a different system from that operating in the United States, the law of which has developed since the 1930s when the US Supreme Court took a view different from the Australian ruling. It said that any evidence obtained illegally was not permissible. People involved in law enforcement in the US - namely, bodies such as the federal police, the coastguard and the Federal Bureau of Investigation - had to comply with the rules regarding the obtaining of evidence. Therefore, if they obtained evidence contrary to those rules, it was completely inadmissible.

The member for Geraldton interjected that he was opposed to that concept, and that he was of the view that the US situation was the law in Australia. That is not the case. The member may have watched too many movies like *Dirty Harry* to adopt that point of view. However, that view is commonly shared throughout Australia.

Mr Baker: In addition to the law concerning the admissibility of evidence illegally obtained, the overriding common

law discretion can exclude evidence obtained by unfair means using the Lee and Island discretion. It is not just a matter of determining whether the evidence was illegally obtained, but also whether it was fairly obtained bearing in mind the circumstances which applied at the time.

Mr McGOWAN: The public has the view that courts are always throwing out cases on the basis that evidence was illegally obtained. When courts talk about technicalities - the member for Geraldton referred to that point - it generally relates to some aspect of evidence, not whether it was illegally obtained. It could be issues of hearsay or something of that fashion. I do not accept that the courts in this country have a major problem with the use of evidence procured in a fashion not completely by the book.

A major question of balance arises. We live in a liberal democratic society and we must ensure that we balance law enforcement against citizens' rights. Members of the public say that evidence should be obtained, yet the same people who have a hard view on these issues will also say that police should not have excessive powers, particularly when it affects those people. We must ensure that we maintain the traditions of a free society in which people can undertake their daily business without fear of being watched or a Big Brother state developing.

It is important that we use that as our central principle. There must be a strong law enforcement system but it must comply with the norms that have developed over the hundreds of years of the common law system, which Australians enjoy in good measure today.

This freedom has not taken place in a number of areas in Australia. I will refer briefly to one or two in the time left to me. When I lived in Queensland there was a major problem with police. When a rally or something of that fashion was held, police would show up with cameras and photograph all the participants so that they had a record. Special Branch officers were there to keep a file on everyone involved in those sorts of things. Obviously that was a breach of the freedoms we expect in this nation. I understand that, when I was not really politically aware in the 1970s, there were some problems with the law of Western Australia on assembly and the like. I remember that in Queensland people were photographed if they turned up at a rally which was not condoned by the Government. We obviously need to ensure that does not happen again. This Parliament needs to ensure that we do not allow our Police Force to exercise its duties by turning this State into a State like Queensland was in the 1970s and the 1980s.

A number of different parts of the Bill seem to set out rules relating to listening, optical and tracking devices. It also sets out exemptions to the operation of those rules. The Bill seems to be far broader than just law enforcement legislation in that it attempts to regulate the behaviour of a whole range of people apart from police officers. The Minister will have to address some difficulties in the Bill when he responds to let us know how the Bill will apply to operations which involve tracking or listening devices and which are not conducted by the police. I am not sure if previous speakers have given these examples, which I mulled over today. At the moment police operate speed cameras, red light cameras and the like. I do not know whether they must now be required to obtain some sort of warrant from a judge to operate those things.

Mr Day: The answer is no. Any reasonable person would conclude that they were being photographed in a public place and could well expect to be photographed in such a situation.

Mr Baker: The legislation dealing with the right to use those pieces of equipment will override this legislation on the basis that that legislation specifically deals with those pieces of equipment.

Mr McGOWAN: Is there legislation specifically authorising speed cameras?

Mr Day: Unlike you, I am not a lawyer. However, legislation allows the road traffic code to be enforced, which enables speed cameras to be used. As I have said, this Bill will not impact on speed cameras because they are being used in what is clearly a public place.

Mr McGOWAN: Does it have an impact on journalists who may be going about their duties when filming a person in a public place in circumstances when that person clearly does not want to be photographed? One can think of embarrassing situations that people may be in when in a public place when obviously they would like to know that they would not be photographed. They could be private individuals, members of Parliament or anyone. Will this Bill have an impact on that kind of operation by the Press? An infamous example is the case of the late Princess of Wales and her life over the past 20 years. Would this Bill limit the operations of photographers in this State from taking of photographs of a person in a public place when it is a clear invasion of his or her privacy?

Mr Day: In short, the answer is yes. This Bill is intended to stop people photographing people or recording conversations of people involved in private activity. A private activity is defined in the Bill. If you are referring to the incident in which the Princess of Wales tragically died, she was travelling in a motor vehicle in a public place. In the end it would probably be for a court to judge whether she could reasonably be expected to be photographed in a public place. I suspect that that sort of situation would not be covered by this legislation. This Bill is intended

to cover people involved in intimate activity in a public place when they would clearly not expect to be filmed or photographed by a television camera.

Mr McGOWAN: Let us take the case of "A Current Affair" when, in an appalling incident, people photographed an individual in a small business, I think with his consent. The individual subsequently committed suicide. What would happen under this legislation if a cameramen from that program went into someone's business and filmed him without his knowledge or filmed someone on the street when it was clear that that person did not want to be filmed? That would be a clear invasion of privacy. Would this Bill limit the Press in that type of situation?

Mr Day: Interpretation in the end is always up to the courts. However, it will not prevent somebody from being filmed when that person could reasonably be expected to be filmed in a public place. This Bill is intended to stop somebody from being filmed when that person is in a private situation or is being covertly filmed in a private place without his consent.

Mr McGOWAN: If the cameraman from "A Current Affair" went into somebody's business and filmed him and ran that on television, would the producers of "A Current Affair" be prosecuted or would the individual who suffered be able to bring a civil action?

Mr Day: There are offences under this Bill and penalties apply.

Mr McGOWAN: It does not provide for a civil remedy in those circumstances?

Mr Day: Presumably civil action could also be taken in certain situations but I do not think that this Bill impacts upon any civil rights.

Mr McGOWAN: Another circumstance is that at university, people often play pranks and record other people doing embarrassing things.

Mr Baker: Was a device inserted in your room?

Mr McGOWAN: No, but I can recall being a party to some misadventures. Would this Bill mean that people would be liable to be charged for those sorts of pranks?

Mr Day: If somebody is using a surveillance device as defined in the Bill to record unlawfully the private activities of any individual, it would be an offence under the provisions of this Bill; for example, if somebody were using a video camera covertly in someone's bedroom to record activity, that would clearly be an offence under this Bill.

Mr McGOWAN: Those are the difficulties I foresee with how this Bill will be enforced. In circumstances where there is an element of fun, somebody could be prosecuted.

I have only a short time left so I will address my concerns on specific clauses of the Bill. I ask the Minister to respond when he winds up. The application for a warrant applies to the National Crime Authority. The Bill does not mention to which other commonwealth authorities it applies. I wonder how a state Act can be expected to limit a commonwealth body in view of the provisions of the Constitution. If the legal advice to the Government is that this Bill can limit a commonwealth authority in operation in Western Australia, does that mean there should be further provisions in relation to organisations such as the Australian Federal Police, the defence forces and the like? Should a general exemption be contained in the exemption clauses on the defence forces? They regularly carry out operations such as this. Perhaps constitutionally they have their own Act and they can avoid these provisions. However, as the Bill contains a provision for a commonwealth authority, that is something the Government should address.

Clause 28 sets out a time limitation on prosecutions. That is unusual in Australia in the law for criminal offences. Limitation periods are not often involved with criminal offences. The examples overseas where those sorts of provisions are in place are probably a mistake. If someone commits an offence at one point, it should be an offence for at least a longer period than two years. In Germany there is a 10 year limitation period on almost all criminal offences. A two year period is probably too short a time limitation on that. I seek the Minister's advice on why that provision is included and whether he is prepared to change it.

Under clause 26 a draconian power is invested in the police to search for listening devices on people who they suspect have them. They can conduct that search without any limits on that power.

MR BAKER (Joondalup) [12.42 pm]: I applaud the Government on the introduction of this Bill. The Bill is needed in the fight against organised crime and crime in general. It is timely that it be introduced in this House, especially in view of the drug crisis that many members of the community perceive the State is experiencing. I am sure the various surveillance devices in the Bill will be useful weapons in the armoury of the Western Australia Police Service in its criminal investigations and, more particularly, of the drug squad in fighting highly organised criminal syndicates

involved in the large scale trafficking of illicit drugs. These syndicates are becoming far more technologically advanced in their access to electronic equipment. It is important the Government keep us as up to date as it can.

In view of the fact that it is important this Bill be up to date, it is necessary to conduct a comparison with similar legislation in other States to see how this Bill fares. I understand this Bill will be dealt with in this House by consent, subject to minor amendments. It is important that by the time the legislation is passed it is as up to date as possible. The usual practice when drafting legislation that seeks to overcome a new mischief in the community or a mischief that has existed for some time is to look at other jurisdictions in Australia to see whether any States and Territories have identified the existence of such a mischief and to determine what legislative steps they have taken to deal with the mischief.

My understanding is that in Australia the Act that was previously held out as being the most up to date legislation in this area was the New South Wales Listening Devices Act. It is timely that this Bill is before this House because that New South Wales Act was recently reviewed by the New South Wales Law Reform Commission. In July last year the Attorney General of New South Wales directed the Law Reform Commission to review the New South Wales Listening Devices Act. The Law Reform Commission was required to inquire into and report on the scope and operation of the Listening Devices Act and any other related matter.

It is interesting to analyse the problems with the New South Wales legislation highlighted by the Law Reform Commission review. In May this year the New South Wales Law Reform Commission released issue paper No 12, which is a summary of its inquiry into the New South Wales legislation. I will deal with the part of that report on what the Listening Devices Act does not cover. The chapter to which I refer deals with the defects in the New South Wales legislation. The object of my doing this is to determine whether the defects in the New South Wales legislation are overcome in this Bill and to ensure our Bill is as up to date as possible by the time it passes through this House.

One major defect highlighted in the New South Wales legislation was that it contained no specific provision or authorisation for the purpose of testing, repairing or maintaining a listening or surveillance device. That is not the case with this Bill. This Bill contains such an authorisation. The words contained in our Bill are broad.

[Leave granted for speech to be continued.]

Debate thus adjourned.

[Continued on page 8372.]

PERSONAL EXPLANATION - MINISTER FOR HEALTH

Princess Margaret Hospital for Children - Closure of Operating Theatres

MR PRINCE (Albany - Minister for Health) [12.45 pm] - by leave: My personal explanation is about information contained in my answer to parliamentary question on notice 2325 from the member for Churchlands. Information provided to me by Princess Margaret Hospital for Children on planned closures of theatres at the hospital contains some errors; consequently, my answer to question 2325 contains some errors. In my answer I provided the following information on Princess Margaret Hospital: In answer to part (2) of the question I stated that operating theatres are closed to carry out essential maintenance work and to take advantage of the seasonal break to allow staff to clear annual leave entitlements. In answer to part (2)(c) for each of the years 1994-95, 1995-96 and 1996-97 I stated that the hospital had three theatres and I provided the dates of 23 December 1994 to 8 January 1995, 22 December 1995 to 8 January 1996, and 23 December 1996 to 5 January 1997 respectively. My answer to part (3)(c) of the question was that three theatres will be closed from 19 January 1998 to 29 March 1998 and two will be closed from 24 December 1997 to 18 January 1998.

Princess Margaret Hospital has provided further advice that clarifies its theatre closures as follows: In 1994-95 three theatres were closed from 26 December 1994 to 8 January 1995; in 1995-96 three theatres were closed from 25 December 1995 to 7 January 1996; in 1996-97 three theatres were closed from 23 December 1996 to 6 January 1997; and in 1997-98 three theatres will be closed from 29 December 1997 to 11 January 1998 and two will be closed from 13 January 1998 to 1 February 1998.

I regret any inconvenience this error may have caused members. I thank the member for Churchlands for bringing the matter to my attention. I table a revised copy of my reply to question on notice 2325 together with a letter of explanation from the Chief Executive Officer of Princess Margaret Hospital for Children. Members will see from the revised information that theatre closure times during the forthcoming Christmas period for the hospital will total 23 working days.

[See paper No 941.]

STATEMENT - MEMBER FOR THORNLIE

Yale Primary School

MS McHALE (Thornlie) [12.50 pm]: This Government has misled school communities about its commitment to the safety of children on the roads, and I will explain why. I am lobbying on behalf of the Yale Primary School, which is in a suburb in my electorate. In its pre-election statements, the Government indicated that it would progressively implement a 40 kilometres per hour speed limit on all roads adjacent to government and non-government schools; it did not say on some roads. As recently as yesterday in *The West Australian* the project manager of Main Roads Western Australia said that contractors had been faster than expected in installing these signs in the 1 100 schools around the State. That is probably because Main Roads was being very selective about where the signs were installed.

The statement also said that it was hoped the reduced speed limit would cut the number of road accidents involving students. Yale Road is a busy road, but it is not a highway. In a letter to me the Minister for Transport said -

> With regard to Yale Road, it is certainly recognised that such a busy road could be unsafe for children.

A school zone will not be installed on Yale Road, supposedly because there is a supervised crossing. Not all children use that. The response from the Minister is not adequate and does not fulfil the Government's commitment - and this community is not prepared to tolerate the present situation.

STATEMENT - MEMBER FOR SWAN HILLS

Red Hill Landfill Site Petition

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [12.52 pm]: I recently handled a petition from the Gidgegannup community containing 120 signatures, but I was able to table only one page of the petition containing 11 signatures as only that page conformed to standing orders. I advise the Minister for the Environment, through this statement, that the full petition signed by members of the Gidgegannup community contained 120 signatures. I will be passing the rest of the petition to the Minister for her consideration.

The petition expressed opposition to the proposal to upgrade the Red Hill landfill site to a class 4 landfill facility. This has caused considerable concern; therefore, in conjunction with the local progress association, I have made arrangements for an information evening at Gidgegannup where the East Metropolitan Region representative will be in attendance to give details. I signal to the Minister that there is very strong concern.

STATEMENT - MEMBER FOR MAYLANDS

East Maylands Primary School - Asbestos Roof

DR EDWARDS (Maylands) [12.53 pm]: I wish to raise my concern about the state of the asbestos roof at the East Maylands Primary School. For many years this roof has been a problem. In fact, five years ago, signalling concern about the roof, it was encapsulated. Since that time the roof has been on the list of roofs that need repairs. Every year, usually at the start of the school year, I have gone into the department and made sure the work to that roof is advancing up the list. This year it has been deferred, once more. Yet again East Maylands Primary School will not get a new roof. This is a very serious situation. Although the roof has been encapsulated, only the outside part was encapsulated. People walking along the verandahs at the school who look up towards the roof will see pieces of jagged asbestos. Parents are petrified that they are sending their children to a school where the kids will be breathing asbestos fibres. Given its jagged appearance, I assume that fibres are leaking from the roof.

This school is very old and it needs airconditioning. The parents are seriously fundraising to get airconditioning, and they are making huge advances; however, new airconditioning cannot be put into an old asbestos roof. The situation may well be that the parents have the money to enable the airconditioning to be installed, but their children may have to put up with another very hot, sticky summer in dreadful conditions because the roof is in such an appalling state. Time and time again, we have complained. We have been very reasonable about this issue. It is outrageous - and it is time something was done.

STATEMENT - MEMBER FOR SOUTHERN RIVER

Nulsen Haven Association

MRS HOLMES (Southern River) [12.54 pm]: I recently had the pleasure of presenting a Lotteries Commission cheque for $60 000 to the Nulsen Haven Association. This money is to be used towards the cost of furniture and equipment for 24 people who have severe disabilities and who currently live in State institutions. These people will now be housed in purpose built accommodation in the City of Gosnells area.

In 1987 the association embarked on a transitional program aimed at moving its residents out of hostel-type care to the community based accommodation. With assistance from the Commonwealth, State and local governments, Homeswest and the Lotteries Commission this initiative has been an enormous success. The program has resulted in 13 purpose built homes being made available in the south east metropolitan area. The association states that its biggest challenge is to maximise its residents' participation and involvement in the community. To this end it has now been able to provide an opportunity for an additional 24 people with disabilities to enhance their physical health and wellbeing by living in an environment which closely resembles a family home.

The association's staff and volunteers work extremely hard to look after these people with disabilities. I congratulate them on their achievements and wish them every success in their new facilities in the Cannington area.

STATEMENT - MEMBER FOR WILLAGEE

Ms Belinda Wardlaw-Jones

MR CARPENTER (Willagee) [12.56 pm]: I bring to the attention of Parliament and the Minister for Disability Services the case of a Brentwood mother, Belinda Wardlaw-Jones. She came to my attention because she and her husband and child feature in an ABC television documentary due to go to air early next year.

Mrs Wardlaw-Jones was the first woman in the world to be diagnosed with a condition called limb girdle muscular dystrophy. She was not expected to be able to have children but she has a young son. Last year she figured prominently in some positive publicity for the Government when the Disability Services Commission announced as part of the "Count us in" strategy that she and her husband would be in receipt of some assistance to allow them to live a life where a carer was provided at home. What has transpired is that the amount of money allocated to this couple is totally inadequate and they are now in a serious financial plight and are desperate for the Government to help them out. Given that at the time the money was allocated to this family they were part of some positive publicity for the Government, the Disability Services Commission and the Premier, I urge the commission to look upon their case favourably and increase the funding that is available to this family.

STATEMENT - MEMBER FOR JOONDALUP

Mitchell Freeway Extension

MR BAKER (Joondalup) [12.57 pm]: As I have indicated to this House on many occasions one of the most important election promises that was made by the Government during the course of the 1996 election campaign was the announcement to extend the Mitchell Freeway north from Ocean Reef Road to Hodges Drive. This announcement is important because it will act as a catalyst in the economic development of the area, particularly the Joondalup CBD and business park.

The Minister for Transport has recently issued the first of what I hope will be a series of newsletters concerning the Mitchell Freeway extension. The first edition of the Minister's newsletter refers to the establishment of a community liaison group. It will liaise with various community groups to ensure that they are consulted at every key stage of the extension of the freeway to ensure that their concerns about traffic, noise, pollution etc will be properly addressed. At this point the Minister has called for applications from people who are interested in becoming members of that liaison group. I commend the Minister for this. Rather than my having to ask questions in Parliament every second week regarding the progress of the extension, this newsletter no doubt will keep the public well informed. It also provides a means by which members of the public can have an active say in the various key stages of the extension.

Sitting suspended from 12.59 to 2.00 pm

PARLIAMENT HOUSE - VISITORS AND GUESTS

THE SPEAKER (Mr Strickland): Before we proceed with question time, I take the opportunity to welcome some distinguished guests from the National Assembly of Malawi: The Speaker, Mr Munyenyembe, Minister Patel, Mr Chinere and Mr Luwe, together with some of their staff.

[Applause.]

[Questions without notice taken.]

MATTER OF PUBLIC INTEREST

Real Estate and Business Agents Supervisory Board - Inquiry

THE SPEAKER (Mr Strickland): Today I received within the prescribed time a letter from the member for Armadale in the following terms -

Pursuant to Standing Order 82A I propose that the following matter of public interest be submitted to the House for discussion today -

That this House calls upon the Government to establish an independent judicial inquiry to examine -

(1) The failure of the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board to take legal action in respect of certain complaints including -

(a) Sure Sales scheme;

(b) The complaints lodged by the following aggrieved consumers:

(i) Myra Parker;
(ii) Ross Jose;
(iii) Colin Kiely; and
(iv) Laksmono Kartika.

(2) Whether there has been any improper interference with any ministerial investigations by the supervisory boards or others.

(3) What action is required to resolve the conflict of interest problems endemic in the industry.

The matter appears to be in order. If sufficient members agree to this motion, I will allow it.

[Five members rose in their places.]

The SPEAKER: The matter shall proceed on the usual basis, with half an hour allocated to members on my left, half an hour to members on my right, and five minutes in total to the Independent members, should they seek the call.

MS MacTIERNAN (Armadale) [2.37 pm]: I move the motion.

The administration of the real estate and conveyancing industry in this State is a disgrace. For the past four and a half years we have seen a succession of Liberal Ministers trying to keep a lid on the mounting individual complaints and on the increasing numbers of calls for reform from within the industry. They have procrastinated and done anything other than take on those very powerful real estate interests who are the beneficiaries of the systemic problems that we have in Western Australia which allow conflicts of interest to reign supreme within real estate and conveyancing. Many people have tried to secure justice for the individuals involved and many have tried to secure a reform of the system but all unfortunately to no avail. The current Minister is probably on a par with, if not worse than, the other Ministers who have had this responsibility for the past four and a half years. He has come into this place time after time with wildly inaccurate accounts of what is going on in the industry.

Mr Shave: That is the pot calling the kettle black.

Ms MacTIERNAN: Not at all. If the Minister has a judicial inquiry, we will see which of us is vindicated.

The Minister has presided over a conflict of interest group that did not meet for the first eight months of this year, although it had been four years in the planning. Only recently has there been a little flurry of activity. Likewise, with the individual complaints that we have brought before the House, there has been very little action until there is some publicity and questions are raised in Parliament; we see another brief flurry of activity and the matter is left to die. I will go through some of these cases to provide some detail.

Mr Shave: Do it accurately.

Ms MacTIERNAN: I shall certainly do that, and much more accurately than the Minister has done. First, I raise the question of Sure Sales scheme. For those members who are unfamiliar with Sure Sales - that is a bit surprising, given the amount of coverage it has attracted in the Press over time - it was a real estate scheme which purported to guarantee that it would purchase homes at an agreed price if they did not sell at auction. Of course, it sounded wonderful. People were told that they would get a certain price for their homes. However, a whole heap of upfront fees had to be paid by vendors to secure the benefit of this guarantee. They had to pay insurance premiums, valuation fees and a range of other expenditures. Very few people who put their homes up through this scheme have been able to sell their properties under the provisions of the scheme. In fact, many have sustained very substantial financial loss. On the basis of these alleged guarantees, the vendors have made unconditional offers to purchase other homes and have been caught short and have lost between $1 000 and in excess of $40 000. The contracts were drawn in such a way as to make it appear that Sure Sales would purchase the homes; however, a close reading of the contracts revealed that the scheme offered nothing of the sort.

This has been a subject of much controversy. We asked the Minister for Fair Trading recently why the departmental investigators had yet to lay a single charge about this scheme. The Minister's failure to have the matter taken to prosecution has meant that all the victims have been unable to recover from the fidelity guarantee fund. The Minister comes into this Parliament in his blase way and says, "We have been investigating for only eight months; this is a really complex matter and we have had eight months, so what do you expect?" We expect a lot more in eight months from the Minister. I can tell the Minister that he has misled the Parliament. This matter has not been going on for eight months; it has been going for more than 16 months.

I have a series of letters from the Real Estate Institute of Western Australia going back to June 1996 written to the Minister's predecessor, the Real Estate and Business Agents Supervisory Board and the staff at the Ministry of Fair Trading, saying that something is profoundly wrong with the system and asking for the commencement of an investigation. One letter was dated 28 June, another 24 July, another 31 July and yet another 13 August. The Real Estate Institute was worried about this scheme. What did we find? We found an inspector who went out and started to gather the information. From letters we have and statements from the victims, we know the inspector was going out as early as August 1996 collecting the data, obtaining statements, going to lawyers' offices and getting loads of filed documents to enable him to take this investigation further. Then there is a bit of a kerfuffle in the public arena. It is found that the chairman of the board which is supposed to be overseeing this investigation happens to be one of the targets of the investigation - one, Mr David Miller of Kott Gunning who drew up these controversial and problematic contracts.

Mr Sharkey, the inspector, was going out, diligently collecting all the documents, preparing the case and being proactive while Mr Miller was presiding over the board. What happens? Instead of getting rid of Mr Miller, who has a massive conflict of interest, we get rid of Mr Sharkey because he is doing his job. Mr Sharkey is told, "You are off the job; we will put another government employee in your place." Indeed, Mr Sharkey was taken off the job. We then see another person - supposedly a police officer brought over from New South Wales - who in about February 1997 is given the job to take on the investigation. It certainly does not proceed at anywhere near the pace at which it had earlier. I have a letter from a solicitor who wrote to one of the victims of Sure Sales. In his letter of 15 November, he states -

> As you know we met with Colin Sharkey of the Ministry of Fair Trading on 13 November 1996 and gave him all the information from our file to assist him with our investigation. Colin admitted that David Miller's involvement is causing him some difficulty in pursuing the investigation.

We have prime facie evidence which must be investigated that Mr Miller, either actively or because of his position, was putting pressure on the investigator. We must know why the investigator was taken off the job, and Mr Miller was not taken off the board. In my view that is a most worrying course of events. That is why we are seeking a judicial inquiry into this matter. We need an opportunity for these inspectors and staff of the ministry to come forward and put their case, to tell us what is going on. Time and again the Minister has come into this place and has accused me of attacking public servants.

Mr Shave: Absolutely. It is disgraceful.

Ms MacTIERNAN: Obviously the Minister does not understand the principles of Westminster democracy; that he has responsibility for the administration of the department; that many decent people within the Ministry of Fair Trading are being frustrated in performing their duties by the interference they are receiving at the hands of various people, and because this Minister has allowed the system to prevail in which the supervisory board, with its heavy industry representation, is controlling the investigations. This is prime facie evidence that should be acted on.

I now refer to the case of Colin Kiely. He is an age pensioner who got caught up in an extraordinary land deal. He started out with an unencumbered house in Victoria Park. As a result of the way in which he was misled and shamefully dealt with by a real estate and settlement agent he was left not only without his home, but also without a single cent in cash. It was another case where the settlement agency was part of a real estate company. It allowed Mr Kiely's home, without his knowledge, to be used as collateral for a loan by a developer. When that developer went bad the financiers of the deal foreclosed and Mr Kiely lost everything.

I will tell members the players involved in this. Although I am not sure of his age, Mr Kiely is an age pensioner. The other players were Sanctuary Settlements, which is the settlement company of none other than Satterley Real Estate, and Estate Settlements which is the settlement agency of Ray White Real Estate. Every player in this transaction failed to protect the interests of Mr Kiely. Mr Kiely made his complaint in 1990 to the Ministry and the various supervisory boards. Nothing was done - absolutely nothing - for Mr Kiely. At that stage he still did not even have a home. In 1994 it was brought to the attention of the then Minister for Fair Trading, Hon Peter Foss. No action was taken until a story appeared in the *Sunday Times* in October 1995. That notoriety caused a little flurry of activity that very soon subsided. Mr Kiely was lucky to find a lawyer who was so scandalised by this travesty that he took

on the case part pro bono and part legally aided. This year he was able to obtain a settlement, the terms of which are confidential, but it is clear that the strength of Mr Kiely's claim was vindicated. Six years later the guilty parties have gone untouched. Not a single prosecution has been launched. Not even a single disciplinary action has been taken by this Minister, his predecessors or the departments or boards over which they preside.

Mr Shave: Are you saying I should get involved directly?

Ms MacTIERNAN: No, but when the Minister is receiving the number of complaints he received and he knows there are endemic conflict of interest problems in the industry, he should do something about it. He has been on Mogadon for the past nine months and has done nothing.

Mr Shave: Come on, be kind.

Dr Gallop: You should have put a rocket under the department on this and you have done nothing.

Ms MacTIERNAN: The Minister has done nothing. What has he done about the conflict of interest reference group? Absolutely nothing. It did not even meet for the first seven months of his administration.

Mr Shave: Obviously they are comfortable with the way the industry is going.

Ms MacTIERNAN: Comfortable and relaxed!

I have referred to the Parker case previously in this House. The Minister has once again whitewashed the incident.

I again draw the attention of members to this case because the Minister came into this House and, via a dorothy dixer, sledged me comprehensively, although completely ineffectually, for having the audacity to take up Mrs Parker's case. He called me uncaring and callous because I was exploiting an elderly pensioner.

I will give members Mrs Parker's version of events. When she heard this she wrote to the Minister, and no doubt the Minister has the following letter -

> I am so angry at the comments referred to including the attack on Ms McTiernan. My age is in no way of detriment in my ability to speak on my own behalf and indeed others in similar situations. As an active lobbyist I have a right to speak out against Settlement and Real Estate practices and admit to being furious at the way the Liberal party have dared to denigrate me in such a fashion.
>
> The callous and unprofessional way in which the government sought to attack me via Mr Baker is also despicable. This government *should be <u>supporting</u> the Opposition* in its quest for justice for all real estate victims instead of looking for loopholes.

Previously I set out Mrs Parker's case, but for those members who were not present at the time I will briefly run through the events. It was a case involving the settlement agent acting for all the parties, the real estate agency, the developer and the finance company - they were all interrelated. It was a complex web of interconnection.

Mrs Parker, who is in her seventies, was purchasing a retirement home and she was duped into believing the transaction had been completed. She moved all her goods into the home and she allowed her life savings to be handed over to the failing developer. She was not told at the time that she did not have a binding contract for the sale, let alone a title deed. I will not go into the details of that case because I did that on a previous occasion.

The Minister came back with the biggest lot of gobbledegook rivalled only by his other responses. He reads out prepared statements from his department and does not give any independent scrutiny to these issues.

Notwithstanding this disgraceful transaction where a 74 year old woman had to go out to work to pay off a mortgage because she had been cheated so comprehensively by these real estate and settlement agencies, the Minister said he had looked at it and there was nothing in it.

I will read to the House the legal opinion on this case that was given to the conflict of interest working group over which Hon Ross Lightfoot presided until he was sacked by Mr Foss for coming up with recommendations that were too radical. The opinion is by a senior and experienced conveyancing solicitor. It reads -

> It is most surprising that the Ministry could consider no wrongdoing has occurred. It appears that all of the following possible serious breaches of the Settlement Agents Code of Conduct are raised by the complaint and warrant proper inquiry by the board: . . .
>
> 2. . . . There should have been disclosure by the settlement agent to Mrs Parker that the offer to purchase had not then even been accepted and that the vendor's finance was not available, as well as disclosure of the settlement agent's conflict of interest. There appear to be prima facie breaches

> of rule 16 (duty to ascertain and communicate to the client all available pertinent facts), rule 2 (prohibition on placing of another person's interests above those of the client), and rule 11 (not recommending that the client take legal advice when it was necessary or prudent to do so).

In the view of the solicitor who reviewed the case there were three very clear breaches. It is also said the settlement agent must have known of the vendor's serious financial problems and that the vendor would most probably be unable ever to give Mrs Parker title. This is in itself a breach of rule 7.

The department says it has looked and cannot find anything wrong. One must ask what is happening. It is interesting because the Minister said that three separate investigations had been undertaken. On each occasion the modus operandi of the boards and the Minister is to act only after pressure from the Press or the Parliament. They scurry out and do a little bit and let it die down. They do it again and have another investigation, but nothing ever happens. This is a classic example. An investigation took place, then a second investigation and a third investigation. The third investigation was interesting because it was supposed to be by an independent person, but it was by an employee of the ministry. He admitted that his investigation did not consist of interviewing any of the people or taking evidence separately. It was a case of simply reviewing the file notes. When there is a new investigation they dig out the file and flick through it and, finding nothing, put it away. They mark off another case completed. It is a disgrace.

This matter has been looked at again since the last episode and the letters Mrs Parker received have again been reviewed by conveyancing solicitors. Again they say there is no substance to the Government's claim that there is no credible evidence. All the evidence is on the face of the documents.

I have also raised the case of Dr Ross Jose on a previous occasion when I set out some of the circumstances. Dr Jose was buying land and again the vendor, real estate agent and settlement agent were part of the one corporate group. It seems the vendor did not want to proceed with the contract, allegedly because the purchaser's development would undermine his development plans. The settlement agent told the purchaser that the deal was off and returned the deposit. Again the purchaser has been vindicated and, through the courts, has taken civil action to recover his losses. Again, Dr Jose is outraged, as are many other complainants, that the guilty party has not been punished.

Mr Shave: Just so that I understand, is he also outraged with the department?

Ms MacTIERNAN: Yes, and with the supervisory boards and, I imagine, the Government and the Minister who has misrepresented his case in this place.

Mr Shave: I just need to know the facts.

Ms MacTIERNAN: Of course the Minister does, although it is a pity that on previous occasions he has not been interested in the facts. As I said, although the purchaser has been vindicated he is very angry that his complaint was drawn out for more than two years. What makes his case even worse is that not only was an initial complaint made, but also a subsequent complaint was made a year later. Mr Wild, on the supervisory board supposedly controlling the investigation, rang Dr Jose and put pressure on him to withdraw the complaint.

As I said, this case involves one of the players on a supervisory board. When Dr Jose contacted the investigator to complain about the conduct of the settlement agent who put pressure on him to withdraw from the complaint, the same inspector said to Dr Jose, "I am sorry, I have been pulled off your case; it was getting very difficult and I have been put off the scent." The Minister comes in here with a couple of paragraphs of sheer waffle to try to explain why such a clear case of conflict of interest has -

Mr Shave: This is the last time I will be nice to you.

Ms MacTIERNAN: The blokes opposite are absolutely pathetic; they cannot address the issues. They think that if they can engage in sexist repartee it will have an effect. It will not have any effect.

Mr Shave: Just because we like you does not mean we want to get engaged in sexual repartee.

Ms MacTIERNAN: The Minister is on the wrong tram; I will debate the issues.

The Minister told the House that the real estate board was examining the matter. The real estate board has no jurisdiction over this matter. It is a simple complaint against a settlement agent. He said that mystery witnesses had been overseas. They had obviously been overseas for two years. It is turning into a Christopher Skase case. He said, "We had to do some investigation of the pharmaceutical industry." The motivation of the vendor in breaching the contract is of no relevance to this case.

Every single point the Minister raised was a wild goose chase designed to avoid the essential fact; that is, a powerful player in the real estate industry was the subject of a complaint which has not been investigated. The inspector who was investigating it was pulled off the job.

Until the Opposition raised the matter in this place, nothing was done. It was two hours after I notified the Minister of our concern about this matter and that we were raising it in a grievance that Dr Jose received a telephone call informing him that the department was examining his case. He had not heard a single word from the department for eight months. Only two hours after we spoke on the issue the department was back on the case.

Mr Shave: He tells a different story from you.

Ms MacTIERNAN: The final case involves a Mr Laksmono Kartika who bought a house and land package in South Lakes. Again a clear theme flows through here: The vendor who was Homemaker; the selling agent; very prominent real estate agents, Keogh and Thoroughgood; and the settlement agencies, Residential Settlements acting for both parties, were all interrelated parties. Once again, not a single independent person was involved in this transaction looking after the interests of the purchaser.

Mr Shave interjected.

Ms MacTIERNAN: Yes. A detailed complaint was made about a year ago and all the documents and the breaches that it constituted were set out and nothing happened. It was not until a letter was sent to me and the Minister that he decided to do something. Unfortunately, time has run out, but these cases indicate that there is a very profound problem within this industry which must be dealt with. This Government is incapable of doing it; we need an independent judicial inquiry into these problems.

MR SHAVE (Alfred Cove - Minister for Lands) [3.05 pm]: The Government will not support this motion. However, I will eliminate some of the emotional aspects the member for Armadale has tried to introduce into this debate. When a complaint is brought before the Government an investigation must take place; many people must be interviewed and proper scrutiny must take place. If we did what the member for Armadale wanted us to do - that is, as soon as someone lays a complaint bring a prosecution - we would be treating people unfairly. The member for Armadale tries to avoid -

Ms MacTiernan: Colin Kiely's complaint was made six years ago.

Mr SHAVE: The member for Armadale tries to say that she is not attacking the public servants, having a shot at the Ministry of Fair Trading, or accusing the investigators, but that she is having a go at the Minister and the supervisory boards. That is not the truth. In Mrs Parker's case three investigations took place. The last investigator -

Mr Ripper: You are satisfied with the performance of your department?

Mr SHAVE: Absolutely. The member for Armadale refers to a former crown prosecutor at the Ministry of Fair Trading, who was not involved in any of these cases, and the member calls it a whitewash and says that he has not done the job properly. That can be taken in two ways: Either he is grossly incompetent as a performing legal officer or he is corrupt.

Ms MacTiernan interjected.

Mr SHAVE: I understand the principle that the member for Armadale is making in this place; that is, that public servants are whitewashing investigations.

Ms MacTiernan: I did not say that; you are not doing your job.

Mr SHAVE: If she is saying otherwise, she is telling an untruth.

Ms MacTiernan: I set out legal opinion for you; I was not asking you to take my word.

Mr SHAVE: The member for Armadale sprays her bullets at anyone and does not care if they hit a public servant. She should shoot the bullets at me, not at the public servants.

Ms MacTiernan interjected.

The SPEAKER: Order! We had quite a reasonable start to this debate but the level of interjection has become too great. We need only one person participating.

Mr SHAVE: She also commented that a Mr Sharkey was pulled off a case because he did not -

Ms MacTiernan: That was the evidence.

Mr SHAVE: I will tell members what is the evidence, why the member for Armadale has no credibility and why the Press are not listening to her: Everything she touches burns her. Every time she opens her mouth she makes a mistake. Mr Sharkey was taken off the case to ensure that there was no suggestion of a conflict of interest in his case. That was because, as a ministerial officer, he had done some work for the Real Estate and Business Agents

Supervisory Board and, as a result, the department felt it was proper and appropriate not to put him in a position where people might have believed a conflict of interest could arise.

Ms MacTiernan: That is a joke.

Mr SHAVE: It is not a joke; it is the truth.

Mr Kierath: I want to listen to the Minister.

The SPEAKER: Order!

Ms MacTiernan interjected.

Mr Kierath: I can't hear the Minister.

The SPEAKER: Order! I formally call the Minister for Planning to order for the first time.

Mr SHAVE: The member for Armadale has made her criticism. She should now understand. I hope she will leave Mr Sharkey alone now. I hope she will leave the rest of the ministry staff alone, and stop accusing them when they are doing their job in a proper manner!

Ms MacTiernan: You are a bully.

Mr SHAVE: I am not a bully. The member is the bully.

Ms MacTiernan: We cannot criticise you or your administration of the department!

Mr SHAVE: The member is trying to say now that it is my administration.

Several members interjected.

Mr SHAVE: The member is trying to attack me by tearing down public servants who cannot defend themselves.

Ms MacTiernan: We have given you ample opportunity to address this issue.

Mr SHAVE: I am doing that now. The member must sit there and listen, because she raised the issue.

Immediately there was a perceived conflict of interest, Mr Miller, the chairman of the board, excused himself from any meetings or involvement -

Ms MacTiernan: Rubbish!

Mr SHAVE: The member may say it is rubbish. The ministry staff have confirmed, on no less than six occasions, that Mr Miller has not been involved in any proceedings, but the member is saying that is rubbish. I accept that is what the member wants to say but, again, it is not true. I met Mr Miller with regard to these matters, prior to the member's raising the issue with me. Had I cared to ask Mr Miller to stand down from the board, I am sure he would have. I did not particularly desire to have a meeting with him, because he had not been convicted of anything. I am a person who thinks that if someone is doing a job, and doing it well, and has not done anything unreasonable or illegal, he should be given a fair hearing. The member for Armadale wanted me to sack the man, to convict him before he was charged of anything - then she would have been quite happy.

Ms MacTiernan: Why was Mr Wild stood down?

Mr SHAVE: I will talk about that in a minute. I will finish my comments on Mr Miller: As the situation stands, I could easily have replaced Mr Miller but at this time no-one has produced any evidence to suggest that Mr Miller has done anything illegal or unethical.

Ms MacTiernan: What about this document? I will table it if you want.

Mr SHAVE: Table it.

Ms MacTiernan: It is a letter that states that Mr Miller's involvement has made the investigation difficult.

Mr SHAVE: Table it. Did a ministry staff member say that?

Ms MacTiernan: Yes.

Mr SHAVE: Table it, and I will look at it.

Ms MacTiernan: Are you concerned that ministry staff would say that?

Mr SHAVE: I am happy to look at the letter. It is contrary to my advice. The head of the department who, as I

understand, was appointed by the previous Labor Administration, has indicated that Mr Miller has taken no part in any discussions related to this matter. He has given me no reason to assume that Mr Miller has been involved. I believe that ministry member is a decent, honest person who has told me the truth.

Ms MacTiernan: Let us have an investigation, and then you will be exonerated.

Mr SHAVE: We must look at the business of Sure Sales Systems (Australasia) Pty Ltd. Yesterday, the member raised the issue of Mr O'Leary, who was accused of making false and misleading statements to vendors; claiming affiliations and sponsorships which he did not have; operating as a real estate salesperson while employed by an agent; holding himself out to be a real estate agent while not licensed; fraud and forgery. The question was: What is the ministry doing? The ministry has undertaken a comprehensive investigation, and I hope that when people are facing these sorts of charges, any investigation is comprehensive and thorough. As a result of the investigation, two courses of action are being taken: Firstly, advice is being prepared to the acting executive director, recommending that certain charges be laid against Mr O'Leary. The advice has been completed, and will be provided to the executive director this week. Subject to the executive director's endorsement of the charges, charges will be laid under the Criminal Code, the Fair Trading Act, and the Real Estate and Business Agents Act. The investigation was taken over in January 1997 by an investigator specifically engaged for the purpose. The investigation has taken a number of months because it involved interviewing in excess of 50 witnesses and obtaining and analysing a large amount of documentation. Therefore, as far as Sure Sales is concerned, I am very comfortable with the fact that the ministry has approached the matter in a proper and appropriate manner. The member has suggested that people are not doing their jobs, but that is not true.

I turn now to Dr Ross Jose, the second person the member for Armadale talked about as being unhappy. By way of interjection, I asked whether Dr Jose was outraged at the behaviour of the ministry, and the member indicated that he was and that he had just cause.

Ms MacTiernan interjected.

Mr SHAVE: The member can try to change her wording now, but she must listen. The member can consult *Hansard* later. I turn now to a letter dated 13 November to Mr Sharkey, who had telephoned Dr Jose, because Mr Sharkey was concerned by hearing the member for Armadale say in this place that Dr Jose was disenchanted; that it was a whitewash, and that he was dissatisfied with what was going on. The letter from Dr Jose to Mr Sharkey reads -

> Following your telephone call today I wish to confirm that Alannah MacTiernan rang me yesterday asking if I could confirm the overall complaint re Summit Realty/Combined Settlements.

Someone said to the member that she should ring up the gentleman and get the details, and she did. We expect that from the member for Armadale. The letter continues -

> I confirmed briefly the general facts of my complaint and gave permission for my name to be used in Parliament for a question to be directed to the Minister re progress in the case. It is not my desire to jeopardise the prosecution of this case in any way, and I have been happy with the investigation, albeit slow, by yourself to date and made no criticism of you when speaking to her.

Ms MacTiernan: That is consistent with what I said.

Mr SHAVE: How is that consistent with Dr Jose's outrage? How is it consistent with it being a whitewash, and the accusation that people were not doing their job, and that there should be a judicial inquiry? The member is a disgrace!

Ms MacTiernan: It is consistent with what I said about Mr Sharkey.

Mr SHAVE: The issues surrounding the accusations about Mr Wild will be investigated properly and appropriately by the ministry. We will not be rushed into making decisions that are wrong, ill informed or not thoroughly researched -

Ms MacTiernan: Will you table that letter?

Mr SHAVE: Yes. This is embarrassing for the member.

Ms MacTiernan: It is not. I said that Mr Sharkey has been doing his job.

[See paper No 942.]

Mr SHAVE: I can see that the member is concerned for my welfare.

We now turn to the Kiely case. Mr Kiely entered into a contract for the development of his land. This involved the

purchase of his land for $350 000 for a subsequent development of townhouses, of which he would receive one unit valued at $180 000 and a cash payment of $160 000. It appears that Mr Kiely was not familiar with many real estate transactions and entering into a complex development.

The investigating officer in 1991 took the view that the best course of action open to Mr Kiely to protect his interests was to pursue an urgent civil claim. He advised Mr Kiely accordingly. The involvement of the settlement agent was not examined at that time. Mr Kiely lost his civil case.

Ms MacTiernan: What! He lost it?

Mr SHAVE: He lost his original case he undertook around 1991.

Ms MacTiernan: He has won his case.

Mr SHAVE: Mr Kiely lost his civil case in the District Court. He then referred the dispute to the then Fair Trading Minister, Mr Foss - a fine Minister - in August 1995. As a result, a meeting was convened between Mr Kiely, Mr Foss's principal private secretary, Irena Dillon, and Will Morgan from the real estate branch of the Ministry of Fair Trading. Mr Kiely advised that he was pursuing action before the Supreme Court. However, after further meetings with Mr Will Morgan, Mr Kiely advised that he was unlikely to pursue civil action in the foreseeable future.

The member for Armadale says that the Ministry of Fair Trading had done nothing for six years, but the man was undertaking civil action.

Ms MacTiernan: He was undertaking civil action only from 1995.

Mr SHAVE: That is not how I am advised.

Ms MacTiernan: And your department would do nothing. It was only when he could find a lawyer that -

Mr SHAVE: I am more inclined to believe the advice than what the member says.

The SPEAKER: Order! The member for Armadale will come to order.

Mr SHAVE: Mr Kiely advised that he was pursuing action before the Supreme Court. After further meetings with Mr Morgan, Mr Kiely advised that he was unlikely to pursue civil action in the foreseeable future. In view of the fact that the actions of the settlement agent had not been previously examined, and that Mr Kiely was not pursuing civil action, the ministry agreed to examine the actions of several parties, including the agent and the settlement agent. The ministry determined that any investigation would examine an alleged breach of article 11 of the Settlement Agents Code of Conduct, which states -

> Whenever it is necessary or prudent to do so, a licensee shall recommend to his client that the client seek the advice of a solicitor in respect of the transaction or any aspect thereof.

Mr Kiely was receiving legal advice from a solicitor, Mr Solomon. The investigator was liaising with Mr Solomon to determine whether sufficient evidence would support a civil claim against the settlement agent. Any advice from Mr Solomon which supports this claim is also strong evidence supporting the settlement agent's view that the settlement agent should have recommended independent legal advice at the time the transaction was taking place.

Although the investigator is of the view that insufficient evidence supported the article 11 breach, he agreed to hold the investigation file open pending the disclosure of any new evidence resulting from the civil action. Several months ago the file was subpoenaed as evidence for the civil trial in the Supreme Court. We now have been made aware that the civil action was settled out of court, and it is our intention to seek the return of the investigation file so that a complete review can be undertaken by an officer at the ministry.

Often in such cases, a civil action runs concurrently with another action and the ministry must make a decision not to implement an action which might interfere with the civil proceedings. The member for Armadale, as a lawyer, should understand that; however, she does not want to do so. Her goal is to continually attack the ministry and hope that by attacking its public servants, somehow I will suffer the consequences.

Ms MacTiernan interjected.

The SPEAKER: Order! I remind the Minister that if he pauses, he seems to allow the interjection to occur. The member for Armadale is persistently interjecting.

Mr SHAVE: I am sorry, Mr Speaker. I have a dose of the flu today which I do not want to give to the member for Armadale.

We will now talk about Mr Kartika. I think the member got as far as mentioning Mr Kartika in discussing her motion.

Ms MacTiernan: Briefly.

Mr SHAVE: Mr Kartika lodged a complaint with the ministry through his solicitors on 11 November 1996 against a company known as Residential Settlements. Mr Kartika is a resident of Indonesia, and he invested in a house and land package in South Lakes in November 1994. As the member mentioned, the group that handled that transaction were Keogh and Thorogood.

The deal was negotiated at an exhibition in Jakarta - not something I would recommend - and Mr Kartika paid an initial deposit of $6 000, or 9.6m rupiah, on the purchase price of $92 000 for the land only. A special condition was that he enter into a building contract to have a house erected for $108 000. A relationship exists between Keogh and Thorogood and Residential Settlements; that is, they have common directors.

Once again, the ministry has investigated this matter thoroughly, and preliminary legal advice is that there are breaches of the code in respect of the conflict of interest. A brief has been prepared, and it has been forwarded to the proper authority. I would expect, but I cannot say definitely -

Ms MacTiernan: And nothing happens.

Mr SHAVE: The member says that, but it seems that as we go through these issues, most of them are leading to prosecutions, yet the member claims that nothing is happening. She says that these people are doing nothing.

Ms MacTiernan: If these matters are leading to prosecutions, does that not say to you that maybe we should be looking at the fundamental problems? Maybe we should be saying that all these cases involve real estate agents which own settlement agencies, so maybe we need to change the law in that regard. Do you reach that conclusion?

Mr SHAVE: The member for Armadale is saying that an endemic problem exists in the real estate industry, but I disagree. The average real estate agent provides a very satisfactory service to the public.

Mr Ripper: Do you have full confidence in the supervisory system, and believe that it justifies public confidence?

Mr SHAVE: I have the utmost confidence in the supervisory board. It does a very good job.

Ms MacTiernan: So you're not worried about conflict of interest or the cases which demonstrate that settlement agents compromise when put in a position in which either the vendor's or the real estate agent's position is at risk? All these cases are about compromising the position of the purchaser. Does that not worry you?

Mr SHAVE: The member for Armadale is saying that if a person is a real estate agent and has an interest in a settlement agent also, that naturally leads to the conclusion that a problem will be related to the operation of those groupings.

Ms MacTiernan: Do you concede there can be a problem?

Mr SHAVE: I concede there can be, just as I concede that when a settlement agent runs a settlement agency alone and he is involved in a real estate transaction, there may be a conflict of interest in the operation of that industry for a number of reasons. It may be that that settlement agent steals money from the trust account. I have a view that it does not matter what profession it is, whether it is real estate agents, lawyers or politicians -

Mr Graham: Careful!

Mr SHAVE: Yes. There will be good politicians and bad politicians.

Ms MacTiernan: This is like Foss saying with reference to the Royal Commission into Commercial Activities of Government and Other Matters that it is not the system that is at fault, but the individuals who are at fault. That is complete and utter nonsense.

The DEPUTY SPEAKER: Order! Members, an extraordinary number of interjections are being made. Perhaps members can let the Minister address the Chair and continue with his speech.

Mr SHAVE: I do not warm to solicitors. I think they are often overpaid for the mediocre job they do. Often I open my newspaper and see headlines stating "Solicitor gaoled" or "Solicitor debarred" because there was a conflict of interest and because the solicitor behaved in an improper manner. However, that does not mean that all solicitors behave in the same manner. If the member for Armadale is trying to say there are endemic problems in the real estate industry, I do not agree with that. Considering the number of transactions the real estate industry undertakes, the number of prosecutions and complaints is minimal. I suggest that if members look at the number of transactions settlement agents undertake, they will find figures proportionate to the problems the member for Armadale says are endemic in the real estate industry.

Many people, including me, buy and sell properties through real estate agents and have had those real estate agents involve settlement agents who have transacted the arrangement. I have been happy with that situation, as have been many people to whom I have spoken. It must be ensured a system is in place so that if people break the law, the appropriate action is taken. I am sorry that the people involved in the four cases raised today have lost money. No-one likes to see people lose money. However, on occasions, people do the wrong thing. People can take action through the courts, although that is not entirely satisfactory when they must spend a lot of money. A supervisory board is in place. I introduced a Bill this morning for the deregulation of real estate fees that aims to give more power to the supervisory board to intervene when people are charged an unreasonable figure. I think that legislation will work well.

I will not be flustered by the member for Armadale who makes many incorrect accusations and says many things about people, including a reference to Dr Jose being outraged. I will not allow the member for Armadale to come into this place and continue to attack those good, hardworking public servants. If she continues to do that, I will continue to support those people.

Ms MacTiernan: You are defending the big players in the real estate industry. You are bankrolled by them.

Mr SHAVE: The member for Armadale might be interested to know that the average real estate person earns about half the salary she earns in this place. I would be careful if I were her when she says these big players in the real estate industry are making a lot of money, because my understanding is that the real estate industry is in a depressed state at the moment. That is most unfortunate for the industry.

MR KOBELKE (Nollamara) [3.35 pm]: The member for Armadale rightly raises a matter of considerable importance. In doing so, she has not made a single attack on the many fine public servants who are trying to work in the Ministry of Fair Trading. She is about exposing the total incompetence of the Minister for Fair Trading and the fact that the system is not working. This Minister finds that difficult to deal with. Has the Minister taken all steps necessary to satisfy himself that the agencies under his responsibility have properly and effectively handled the complaints that are the subject of this motion?

Mr Shave: Absolutely.

Mr KOBELKE: The Minister says "absolutely", yet he attacks the member for Armadale personally. He does not address the issues. The member for Armadale said what a good job Mr Sharkey was doing; however, the Minister said he was moved because of a conflict of interest. As an investigator he had done work for someone who might be on the other side of a "possible" situation in the future. Yet Mr Miller, who is the chairman of the board and is the subject of a major investigation, does not have any conflict of interest in the eyes of this Minister. That is something the Minister says he would act on only if there was a conviction. The Minister is shallow. Everyone sees straight through what he is saying. The Minister fails to accept his ministerial responsibility. When the member for Armadale and others have raised with him and his department major flaws and major inadequacies in the functioning of the agencies under him, he has failed to investigate them properly.

The Minister told the House today that he has looked into the matter to satisfy himself that his agencies are working properly.

Mr Shave: Absolutely.

Mr KOBELKE: The Minister is on the record. Will the Minister resign when the case is shown to be otherwise?

Mr Shave: Won't have to.

Mr KOBELKE: The Minister will have to resign.

Question put and a division taken with the following result -

Ayes (17)

Ms Anwyl	Mr Kobelke	Mr Ripper
Mr Brown	Ms MacTiernan	Mrs Roberts
Mr Carpenter	Mr McGinty	Mr Thomas
Dr Gallop	Mr McGowan	Ms Warnock
Mr Graham	Ms McHale	Mr Cunningham *(Teller)*
Mr Grill	Mr Riebeling	

Noes (30)

Mr Baker	Mrs Hodson-Thomas	Mr Omodei
Mr Barron-Sullivan	Mrs Holmes	Mrs Parker
Mr Board	Mr House	Mr Pendal
Mr Bradshaw	Mr Johnson	Mr Prince
Dr Constable	Mr Kierath	Mr Shave
Mr Court	Mr MacLean	Mr Sweetman
Mr Cowan	Mr Marshall	Mr Trenorden
Mr Day	Mr Masters	Mr Tubby
Mrs Edwardes	Mr McNee	Mrs van de Klashorst
Dr Hames	Mr Nicholls	Mr Osborne *(Teller)*

Pairs

Mr Marlborough	Mr Barnett
Dr Edwards	Dr Turnbull

Question thus negatived.

ROAD TRAFFIC AMENDMENT BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Mr Omodei (Minister for Local Government), read a first time.

SURVEILLANCE DEVICES BILL

Second Reading

Resumed from an earlier stage of the sitting.

MR BAKER (Joondalup) [3.44 pm]: Before this debate was adjourned I was in the process of comparing the recommendations in the report of the New South Wales Law Reform Commission on the New South Wales Listening Devices Act with this Bill to ascertain whether the defects in that Act will also be reflected in our Bill. I hope that is not the case.

I will deal with that part of the report that highlights the defects in the NSW legislation and recommends change. Paragraph 5.50 refers to the lack of suitable powers in the New South Wales Act to authorise entry onto land for the installation, retrieval, maintenance and repair of devices. The New South Wales Act contains no specific authorisation for those purposes. The proposed Bill contains those powers.

The term "maintain" in the Bill has a broad definition in the interpretation clause. It states -

> . . . in relation to a surveillance device, includes adjust, repair, reposition, and service.

The term maintain is broader than the definition that would normally be attached to that in the *Oxford Dictionary* or in accordance with ordinary concepts and usages. That concern raised by the NSW Law Reform Commission in relation to the NSW Act has no impact or bearing upon this Bill.

A second concern that was raised in the report was the lack of provision in the New South Wales Act authorising the retrieval or removal of surveillance devices once they have been installed or attached in premises. Once again the procedures in our Bill authorise retrieval.

Mrs Roberts: They forgot to retrieve the device from the residence of the former member for Wanneroo.

Mr BAKER: That is right. That is what kicked the ball off in the first place. I will not comment further as I have undertaken not to.

This Bill overcomes that defect. The other defect of the NSW Act is in the ability of the person placing or using the device to use electricity. The Act is defective in that it does not permit the use of electricity. Decisions relating to disputes regarding the powers under that Act indicate that the Act does not in any way permit or authorise the use of electricity in those circumstances.

Mrs Roberts: The Opposition raised that with the Minister's advisers at our briefing. An amendment is on the Notice Paper now with regard to that.

Mr BAKER: Is the member for Midland saying that is why such a power exists in the Bill?

Mrs Roberts: The Minister will include it in the Bill as a consequence of that.

Mr BAKER: I am not sure whether this would satisfy that concern. However, clause 13(6) states -

> A court, when issuing a warrant under this Division, may authorize the connection of a surveillance device to an electricity supply system and the use of electricity from that system to operate the device.

The Bill does not contain a definition of the term "electricity supply system". Clause 13(6) will overcome that other problem that is highlighted in the NSW Act. The broad phraseology in clause 13(6) would authorise the use of any supply source, rather than supply systems that are owned or operated in the name of the Government. I would have thought the phraseology is broad enough to include private supply sources on private premises or even the electrical system in a motor vehicle without the express or implied consent of the owner.

Mrs Roberts: The Minister for Police has an amendment listed on the Notice Paper to insert the words "connect a surveillance device to an electricity supply system and use electricity from that system to operate the device".

Mr Day: That amendment will enable a device to be connected to an electricity supply system in respect of an emergency use of power; that is where the current Bill is deficient. As the member for Joondalup has stated, the Bill provides for a routine use of a surveillance device under a normal warrant but there is a deficiency in that it does not include emergency uses. As the member for Midland said, it is proposed to amend that.

Mr BAKER: In any event I have highlighted two of the major shortcomings of the NSW legislation and it is good to see those shortcomings are not reflected in the proposed Bill.

The member for Kalgoorlie raised an issue during the course of her remarks that related to computer surveillance. I accept that in the use of computers involving telephone lines we would have had jurisdictional difficulty in enacting legislation. However, we must accept that use of the Internet is becoming prevalent when people communicate. The use and flow of information on the Internet is expanding.

It is a pity that prima facie we do not appear to have the jurisdictional powers to enact laws to authorise certain persons to tap into the Internet in those circumstances. There is also the issue of whether the Act provides any power at all for the surveillance of computers generally. I understand that is not the case but, depending on how a visual recording device is used, it could be argued that it is possible to indirectly, although not very effectively, monitor the use of computers. Those points were raised in the issue paper of the Law Reform Commission dealing with the New South Wales Act. It may well be that in due course amendments will be made as the use of the Internet becomes more prevalent and widespread in the community.

Something that relates indirectly to the Bill is the need for additional, complementary legislation. One need I address specifically, is that police involved in undercover operations - who are no doubt actively involved in surveillance at the moment, and will rely heavily on the provisions of this Bill - must have further protective provisions in the law to make sure they cannot be prosecuted when they undertake certain acts or actions in the course of their surveillance activities. I understand the legal services unit of the Police Service is currently having input into the drafting of an undercover operations Bill, but it is important for that complementary legislation to be enacted. The big step has been taken in this Bill, but the next step is to introduce complementary legislation. I urge the Minister to fast track the final draft of any proposed legislation relating to undercover officers and table it at his earliest convenience.

I now raise the issue of the obvious need for police standing orders to be issued for the use of surveillance devices under this Bill. I understand it is possible to introduce regulations, pursuant to regulation 402E under the Police Act, and for police standing orders to be introduced. Of course, several recommendations arose from the Wood royal commission in New South Wales which dealt specifically with the use of electronic devices and equipment. Those recommendations emphasised the need for strict standing order procedures to be implemented regarding their use. The obvious concern is the potential for the abuse of the use of surveillance devices in certain circumstances. Rather than grapple with the recommendations that might apply, I ask the Minister to consider that these must be developed hand in hand with this Bill.

Many concerns have been raised by members opposite about the privacy issues when surveillance devices are used. In that regard I managed to obtain a copy of the full report on the case of Coco v The Queen in the High Court decision which has been referred to. The Queensland Act was under the spotlight in that case, and that Act contains a definition of "private conversation" to the effect that if there is expressed or implied consent to what is happening it will not result in a breach of the Act. In other words, there would be no need for a warrant or approval.

Ms Anwyl interjected.

Mr BAKER: That is it. I agree. The member for Rockingham raised a hypothetical situation involving certain nocturnal carryings on in a room during his university days. Clearly, in those circumstances the people participating

thought their activities were private. If they had been conducted in a public place, it might be argued that there was an understanding that those acts would or could be viewed by the public. It gets back to assessing each case individually, bearing in mind all the facts and circumstances prevailing at the time. The definition of "private conversation" in the Queensland equivalent to the Western Australian Bill, contains an exclusion in relation to persons who expressly or by implication consent to the monitoring or surveillance of their activity. It is a broad notion to argue that consent can override the need for warrants and so on. It is interesting to note how Queensland has dealt with that valid privacy issue.

I certainly endorse the Bill. I look forward to its being passed quickly through the other place, and I look forward to the police having these additional powers. I hope this Bill will assist in their endeavours to detect illegal activities, particularly those relating to illicit drug traffickers.

MR KOBELKE (Nollamara) [3.56 pm]: The Surveillance Devices Bill is one more example of the law trying to catch up with the changes in society, particularly those driven by the rapid changes in technology. Of course, privacy and surveillance issues have been discussed for some time, but the changes in technology have made it much easier for some people to invade the privacy of others. Prying into the affairs of individuals has a long history, going back as far as the days of the Bible and probably before that. Today the environment is totally different because of the ability to use technology to overhear people's conversations when they believe they are having a private conversation. Also, technology can be used to view people from a great distance, and to photograph people at night when they are in an unlit place. Both situations, which would have been impossible a few years ago, are now possible, and they are not just seen in a James Bond movie. The technology is available to a wider range of people because of the improvement in technology and the reduction in the cost of it.

It is appropriate to enact legislation that will catch up with the current situation. This Bill is a valid attempt to do that. I will not make a judgment on whether it could have been done better. Some may feel the legislation falls short of what should be done in this area. I will comment generally on the role this Bill will play and raise a number of queries about the possible interpretation placed on the provisions of this Bill.

The Bill will cover two quite different areas. One relates to police and law enforcement, and the other relates to the use of these technologies by non-police agencies. Of course, they all relate to the ability to pry into matters that people may wish to keep private. I will be brief in commenting on the police and law enforcement agency use of the legislation, because I do not have any expertise in this area. However, I acknowledge that it is most important. We are all aware of the problems of crime in our society today, and the difficulties with the drug problem and its connection with criminals and organised criminal elements. I am sure we all acknowledge the need to ensure law enforcement agencies are as well equipped as possible in order to combat that major problem. They regard the use of these devices in a proper and organised way as fundamental to that fight against crime. To the extent that this Bill assists in that, it has the full support of the Opposition.

However, the issue goes beyond that because the criminals themselves have access to a range of sophisticated technologies. It also goes beyond the simple matter of prying into the activities of individuals, who may be engaged in illegal activities or may be conspiring to commit illegal activities. However, I will not go into that; it is a complex area. The Bill puts in place a reasonable set of controls to ensure that those agencies comply with the law. Judging by press statements over the past few years - perhaps that is not a good judge of the situation - there appear to be cases in which the police have not obeyed the existing laws concerning various surveillance devices. We need an effective regime with which the police - including other investigative agencies of government - must conform, without limiting their effectiveness against the important fight against crime. The Bill deals with those issues, but I will not comment on whether it could do it a little better.

I turn now to the Bill's effect on private individuals who wish to use some form of technology in order to gain information or evidence on matters which may be considered private to other individuals or to which they might be a party. The use of technological equipment for surveillance by private investigators is one example of that. However, with this legislation those private investigators will now be brought under a much tighter regulatory regime than previously applied to them. That is certainly a very good step.

I am not sure how effective it will be because although I do not have any first-hand knowledge of agencies generally referred to as private investigators, I gather that in the light of their very purpose they will be prying into things that should be private. It will be a matter of whether the police will be able to enforce this legislation. The Minister might like to indicate whether the Police Service will be provided with extra resources so that it can monitor private investigators who in some areas have had carte blanche and who might now have to withdraw from activities that will be made illegal by this Bill.

Although they might not be able to use information gathered through illegal means under this legislation, in legal proceedings often private investigators might not need the information or evidence for a case. We could find private

investigators breaching this legislation unnoticed until something happens by accident, such as the discovery of a bugging device in Wayde Smith's home or the uncovering of the blue file, tapes, etc by an investigator of the Royal Commission into Commercial Activities of Government and Other Matters. We find out about these instances through the media, and some of them will clearly become illegal under this Bill. Who will ensure that those private investigators or people of that ilk will be conforming with the law?

I refer to the effect this will have on private individuals who might wish to use some form of surveillance device to gather information. Once this Bill becomes law we must run an education campaign so that people understand their responsibilities. The spread of technology means that almost every home - I do not have one - has a video camera. Many people are hobbyists who have electronic equipment that could be used for eavesdropping of one form or another. Although other federal legislation may control it, certain uses of that equipment will fall within this legislation.

I am not saying we need a high profile television campaign - it can be done in many ways. Nevertheless, we must promote the message that activities in which individuals have previously engaged could be outside the law with the passage of this legislation. The cheapness of the equipment, its ease of use, its sophistication and extended range enabling it to pry into situations which previously would have been private, give powers to ordinary citizens which previously we would see in James Bond movies as something that only espionage agencies with billions of dollars could develop.

I refer to listening devices. I will not draw minor distinctions between listening devices with optical surveillance and tracking devices because the legislation clearly parallels the coverage of those surveillance devices. I will talk only about listening devices, bearing in mind that the same provisions will apply to the other areas, with some variation.

Clause 5(1) reads -

> . . . a person shall not install, use, or maintain, or cause to be installed, used, or maintained, a listening device -
>
> (a) to record, monitor, or listen to a private conversation to which that person is not a party; or
>
> (b) to record a private conversation to which that person is a party.

From the outset the Bill is referring to private conversations. That is defined earlier in the Bill. It will be an offence with a penalty of $5 000, or imprisonment for 12 months, for an individual and $50 000 for a body corporate to pry into a private conversation in that way. It will also apply to recording a private conversation to which the person is a party. I have some concerns about that, but an escape clause is included further on in the Bill which should cover most of my concerns.

Mr Day: Which clause?

Mr KOBELKE: I am referring to clause 5 as an example which applies across the three areas. In subclause (2) this limitation does not apply in three specific cases on which I will not comment, but to police and investigative agencies established under the Act. Subclause (2)(d) indicates that it does not apply to the use of a listening device resulting in the unintentional hearing of a private conversation. Clearly that should be ruled out. However, we must wait on the judgment of the court to get some measure of what is "unintentional hearing" the determination of which I, as a non-lawyer, have difficulty coming to grips. We might have to wait for some case law to see how that might be interpreted; nonetheless the Opposition clearly supports the intent.

Subclause (3) reads -

> Subsection (1)(b) does not apply to the installation, use, or maintenance of a listening device by or on behalf of a person who is a party to a private conversation if . . .
>
> (d) A principal party to the private conversation consents expressly or impliedly to that installation, use or maintenance and the installation, use, or maintenance is reasonably necessary for the protection of the lawful interests of that principal party.

That refers to the clause which covers emergency authorisation. I am not sure of the situation if an individual wished to uphold his rights and monitor a conversation that was clearly private. In a number of situations that is very important. Unfortunately, people regularly approach me who feel that they have been improperly dealt with in the workplace. To establish a case of unfair dismissal or victimisation, they must gather evidence, and would need to get a recording or have someone monitor the conversation to place on the record evidence that is necessary to uphold their rights. I am not sure whether this legislation will rule out that aspect. The exemption is applied by clause

5(1)(b) which relates to a private conversation to which the person is a party. If two people are in private conversation and one consents to a third party taping or monitoring the surveillance of a conversation, I understand that would be okay.

Mr Day: That situation is covered by clause 5(3)(d), and the optical surveillance device is covered by clause 6(3)(b)(iii), where it is stated that if the use of such devices is reasonably necessary for the protection of lawful interests of the party it would be permissible to record the conversation or activity. Therefore, there would need to be a lawful reason, and in the situation described by the member the courts probably would accept it as a lawful reason.

Mr KOBELKE: That was my suggestion. That is not the sticking point. It must be subject to clause 5(1)(b) which relates to the recording of a private conversation to which a person is a party. Let us say that a worker feels that to uphold his rights at law, as an aggrieved party, he needs evidence, and he seeks that evidence by way of private conversation. If, as a party to the private conversation, he were to conceal a recording device or use an optical or photographic device, under clause 5(3)(d) that would be allowed. However, if the person, in order to get the evidence, feels he needs to engage in a private conversation with, say, an employer, but is not in a position to undertake the recording and seeks a third party or a friend to do it, it appears that is ruled out by the law. Perhaps it must be. I do not say we should let it happen because it could create other problems.

As I read it, the legislation would not allow that. However, I seek clarification. If it is the case, people at large need to know because an individual may quite rightly be pursuing his rights at law in order to get evidence about some wrong that has been done to him. If that is the case, there is an important distinction between a person entering a conversation and making a recording - whether audio or visual - and a situation where a friend or accomplice is used as a third party to record the private conversation. On my reading of it, that would stand outside the law.

Mr Day: I will provide an answer for the member on that.

Mr KOBELKE: I return to the definition of private conversation. As I have indicated it appears in clause 5, and in a similar way in other clauses relating to optical surveillance. It will be illegal and the recording, monitoring or listening to a private conversation will attract a severe penalty. We must consider what is a private conversation. In the Bill, a private conversation is defined as "any conversation carried on in circumstances that may reasonably be taken to indicate that any of the parties to the conversation desires it to be listened to only by themselves, but does not include a conversation carried on in any circumstances in which the parties to the conversation ought reasonably to expect that the conversation may be overheard". The important part of the definition is that the parties to the conversation ought reasonably to expect that the conversation may be overheard. That is an exclusion from what is a private conversation.

The Minister picked up that point in the second reading speech and used those words. Those sentences read -

> The Bill makes it clear that activities and conversations carried on in circumstances in which the parties ought reasonably to expect that they may be observed or overheard are not considered private. It is envisaged that generally activities carried on outside a building would not be considered private. For this reason, journalists and private investigators will be able to continue to undertake their lawful duties without fear of breaching the Bill.

I have some difficulty with two issues in the speech, and I seek clarification. The Minister's use of the phrase "reasonably to expect that the conversation may be overheard", does not extend to his statement "it is envisaged that generally activities carried on outside a building would not be considered private". I do not accept that activities carried on outside a building would, by their nature, be considered private. The Minister's wording is correct; but emphasis is placed on "generally activities carried on outside a building", which raises the question whether, generally, activities inside a building would be private. Generally conversations inside Parliament House would not necessarily be private.

I fear that the second reading speech, which is important for interpretation, could lead people to believe that when one moves outside a building it is a different situation in relation to what is considered private or not private within the definition in the Act. The Minister also states that for this reason journalists and private investigators will be able to continue to undertake their lawful duties. I am not sure how that flows logically. The situation that would relate to journalists and private investigators would apply equally whether outside or inside a building. It would depend on the type of building. If it were a private residence, it may be one thing; if it were a public building, it would be another. Therefore, the definition of inside or outside may not be a good one for establishing the differentiation the Minister seeks.

Mr Day: It is not meant to be.

Mr KOBELKE: We will have to wait for the courts to make a determination before we will know how well the definition will work.

Mr Day: It is important to consider the definition of "private activity" and "private conversation". In brief, they relate to activities where someone would reasonably expect to be observed or overheard. That is the crux of the point. We cannot be totally discriminatory about whether it is inside or outside a building. The second reading speech referred to what may be generally the situation. The member is correct: Inside a building may be a very public place.

Mr KOBELKE: As a non-lawyer, I find this legislation understandable; it is a very positive approach to the issue. However, it will depend on how the courts interpret the wording. There will be difficult cases which may move the boundary of public perception of how the Act will be interpreted. We will need to see how it works out.

As another example of the issue which the Minister has raised by way of interjection, the definition of private conversation states "the parties to the conversation ought reasonably to expect that the conversation may be observed or overheard", but the parties are yet to be established. I do not know whether that would be done by poll. Would one ask people what they expect? How will the court make the judgment? Also, public perceptions will change over time. What people might expect to be the situation today might be different one or five years later.

For example, if two people were in a major square in the city at lunchtime having a private conversation, within the wording of the Bill they should reasonably expect that their conversation should not be overheard. If they saw no-one within five or six metres from where they sat, and they were sitting close, almost speaking in each other's ear when talking about something commercially confidential or a very private matter, my judgment is that it is reasonable that they should expect the conversation not to be overheard.

However, if a long distant directional microphone were placed 100 metres away to pry into that conversation, it would be in contravention of the legislation. The courts must establish that matter. Through a television program or a series of events which attract media coverage, many people of our State may realise that directional microphones can be used for such prying. Therefore, the public's "reasonable expectation" will change. Currently, my judgment is that the example I outline should be a private conversation in the general hustle and bustle of the city. Such people should have some form of protection from equipment prying into their conversations.

The situation is different with optical surveillance. Two people in a busy square in the city should not have an expectation that they will not be photographed; it could be done by a tourist with a video camera. No expectation of privacy from optical surveillance should be held in that situation. I highlight the problems the courts will face with a range of cases in determining what will be considered to be a private conversation. I make no criticism of the provision - I cannot come up with a better one - and we must see how it works.

The Minister said that people need to note warning signs regarding surveillance. When we use the hole in the wall bank teller, we are told that we might be photographed. We are aware that in various areas of the city video surveillance cameras are in place, and people are aware that their privacy could be intruded upon by those devices. Therefore, it is hard to draw a line between the private and the public domain in places such as retail outlets, private homes or buildings used for public purposes where this equipment is in use. Signage is needed to warn people where surveillance occurs. How will judges regard signs warning people that their action may not be private? That aspect is not as troublesome as some of my earlier examples, but problems may arise with signage and legal interpretations in this Bill.

I mention briefly the restrictions on publication and communication within clause 9. A penalty will apply for publishing or communicating private conversations captured through listening devices or optical surveillance devices. Although a limitation is placed on the communication and publishing of private conversations, a defence is that the communication is in the public interest. It is a matter of ensuring that the rights of individuals are not trampled upon by the law.

Will the Minister outline what will happen in a case of a neighbourhood dispute, some of which occur in my electorate? People may be concerned about a person living next door or in close proximity if they know that the person is a little different from other people; that is, the individual is a loner, has licensed guns, is aggressive and engages in a range of activities which invade the privacy of neighbours and their enjoyment of their homes. What will happen if they seek to use licensing devices to record the disruption, and cameras are used to secure evidence to protect their rights? We need to ensure that people do not step outside the law in neighbourhood disputes. People may not be party to a conversation - it may be a fight at a neighbour's home at 3.00 am and people in the vicinity cannot sleep - but will they be able to procure evidence to support action to uphold their rights? Under this law, people will be limited, so people need to know those limits.

I support the Minister. I hope the problems I outline will be ironed out quickly in the workings of the Bill.

MR GRILL (Eyre) [4.27 pm]: I make it clear at the outset that I have not made a great study of the Bill, so my comments will be far more general than those of my predecessors. Although the Opposition will not oppose the legislation, it causes me considerable concern as a lawyer and a civil libertarian.

We live in what we deem to be a liberal democracy, and we have been very proud of that fact for a long time. In fact, we are among a small group of countries which are true liberal democracies, and a feature of a liberal democracy is that it enjoys freedom and rights. These aspects are enshrined in Bills of Rights in many places, but not in this country; nevertheless, we honour those rights, one of which is privacy. We have enjoyed a great deal of privacy in this country and State over the years. However, I have seen those rights eroded quite severely during my time in Parliament, and this Bill further erodes those rights.

A trade-off is made in a democracy between the rights of the individual and those of the State. In authoritarian societies the pendulum is well and truly balanced in favour of the State. I have visited some eastern European countries, such as Romania, Hungary, and the former Czechoslovakia, as a guest of those Governments. This was in circumstances endeavouring to advance Western Australia in developing projects in those countries, with some success. I have witnessed the degree of surveillance and intimidation which occurs in such authoritarian regimes, and have seen the fear among the population of surveillance and the secret police. I was in Romania on two occasions when Nicolae Ceausescu was in power, and I met him once, which was not an elevating experience: He spoke to us for an hour and a half through an interpreter in a long diatribe - it was gibberish. At the time, one noted a constant aura of fear around him which was created by his ability to subject his population to surveillance and to intimidate at least one in three people to give evidence and information against fellow citizens. It was not a very wholesome atmosphere in those days in Romania. It is a reflection on the people themselves that they allowed that situation to be brought about.

I have been to Hungary when it was under a totalitarian regime. It was slightly more liberal there; nonetheless, the rights of the individual were very much curtailed. I visited Czechoslovakia and even stayed in the state guesthouse there. The rights of the individuals in that country were very much circumscribed. I do not want to live in that sort of society. We make that trade-off in our society; we trade off rights of the individual against rights of the State. In countries like our own the pendulum has swung in the past very much in favour of the individual. That is what in many respects differentiates our sort of society from those sorts of societies.

There is little doubt that if complete surveillance existed, as was outlined by Orwell in his famous book *1984*, the population could probably be intimidated completely so that no crime was committed. We must make some value judgments. It is difficult to determine where to draw the line. I wonder whether this legislation goes too far.

I know that people who come under the jurisdiction of the Minister for Police have clamoured for a long time for greater powers. When I first came into Parliament they had meagre powers of surveillance. They now have wide powers. Those powers may not be particularly well defined, but they are wide. The Bill will enlarge those powers. It might circumscribe those powers in certain respects with penalties for transgressions. However, the width of the powers that are prescribed under this legislation is great. I will come to that shortly.

Mr Day: I know you said you had not made a close study of the Bill. If you compare it with the existing Listening Devices Act, you will see there are far greater controls in this legislation, with the express intention of protecting an individual's privacy, than is the case under the current legislation. One of the aims is to provide much stronger protection of privacy than currently exists.

Mr GRILL: I take that on board. The Minister obviously knows much more about the Act than I do. I will express a few concerns about that shortly. Perhaps the Minister will comment further then. I respect what the Minister has had to say.

I ask the basic question of whether the granting to police of these further powers of surveillance will have the effect we hoped it might; that is, that by granting the police further powers they would have the ability to clean up crimes quicker, to suppress criminal activity, and to effect a decrease in the crime rate. The strange irony about the situation is that the level of criminal activity in this State has increased in direct proportion to the increase in the level of surveillance. If the two were graphed, the two lines would go in opposite directions. That is of concern. It makes me ask whether simply granting greater powers of surveillance and tracking brings about a more crime free society. I ask that basic question. I do not know whether granting these powers makes for a better society. It would not appear to have made for a better society in those totalitarian countries to which I referred earlier. I do not know whether it makes for a better society in Australia.

I know from my trip to the United States last year that through better policing policies police can bring about a suppression of crime within an area. Quite a number of cities in the United States have been able to reduce their crime rates dramatically. However, they seem to have done it by other means. They seem to have done it by better

direct policing methods, largely by the police getting out of police stations and patrol cars and coming into closer contact and consultation with the community. It was achieved by making police responsible for certain demographic areas in their jurisdiction; by asking for greater accountability from the police as individuals; and by expecting the police to prosecute even the most minor offences so that the minor offences were not ignored. That brought about a greater respect for the law and, in turn, saw less transgression in the community. Examples in United States cities appear to prove that that form of better policing has had a much greater influence than simply widening the powers of the police to track and subject people to surveillance.

In this legislation I see a frightening array of devices that can be legalised for surveillance and tracking, and a frightening array of organisations and people who can use those tracking and surveillance devices and a provision to widen that group of people. I see also a frightening array of circumstances within which those tracking and surveillance devices can be used. However, more worrying than anything is the frightening array of persons who will be able to give authorisation for the use of those devices. Not all that long ago when I first came into Parliament police did not have any rights of surveillance. They were then given rights to surveil people on the basis that they had to gain approval from a Supreme Court judge. Nowadays, not only can an array of judges give that sort of authorisation or approval, but also magistrates can give that authorisation or approval for tracking devices. In emergency circumstances senior police can give other police the right to use surveillance devices.

If we consider that in totality, it is a wide group of people to whom those authorisation rights are given, in very wide circumstances. The Minister says there might be some circumscribing of penalties for those authorisations and for unauthorised use. However, giving magistrates the right to authorise the use of tracking devices is a dangerous step. I know a lot of magistrates. Some are very competent and highly qualified; however, some are borderline incompetents. The Minister and the Government know that because they have had experience with those people and they have had to deal with them when they have transgressed. I know one magistrate in Western Australia who signs blank warrants just in case a police officer needs to use one when she is not there. That is highly illegal and improper and something I thought a magistrate would never contemplate. That is hair raising, yet it happens and the police know that it happens. They do not broadcast the fact, but they know it happens. A police officer gave me a copy of a warrant signed by this magistrate just to prove a point. We have borderline incompetent magistrates. They might be circumscribed to the degree which the Minister has enlightened us.

Mr Day: A warrant for a listening device or an optical surveillance device can be granted only by a Supreme Court judge. Magistrates will be able to give warrants for the use of tracking devices only; the other warrants must be given by a Supreme Court judge.

Mrs Roberts: Where in the legislation can it be issued only by a Supreme Court judge?

Mr Day: Under this legislation and the Interpretation Act. The legislation says "a judge", which under the Interpretation Act means a Supreme Court judge.

Mr GRILL: We hope that is right and to some extent we will be reassured if that is the truth. However, I maintain my remarks about magistrates. I do not believe that all magistrates have the competence nor the impartiality to have these powers. I did not make the mistake of saying they had the right to issue warrants in respect of surveillance devices. I limited my remarks to their involvement with issuing warrants in respect of tracking devices.

Mrs Roberts: You might find that sometimes police will choose to judge shop.

Mr GRILL: I am afraid of that and I have made some pertinent remarks about a particular magistrate who issues warrants in blank just in case they are needed when she is not there to sign them. It does worry me. It also worries me that the police will have the right to issue these warrants. I know they must justify the use of this power afterwards, but the various royal commissions and inquiries into the operations of the police around Australia would lead one to be wary of granting that wholesale right.

Mrs Roberts: It will be too late afterwards because they will be able to use any evidence that is obtained contrary to the provisions in the Bill, because it will be admissible; nothing rules that evidence out.

Mr GRILL: That is the legal interpretation. It is a worrying situation: The users of these devices will, in certain circumstances, albeit emergency circumstances, be the same people who are giving the authorisation. I have not looked at the definition of emergency circumstances in this Bill, but I imagine that emergency circumstances could be a very elastic definition depending on the circumstances and interpretation of the officer at a particular time. I am concerned about this legislation and our rights, especially when the activities that will take place under this legislation will take place in secrecy. The whole of the procedures to grant warrants under this legislation, and the actual surveillance, will of necessity be shrouded in secrecy. If a person is aggrieved at some of this activity he or she may never be fully aware of the extent of it, and because of the secrecy surrounding it may never obtain some sort of remedy against it.

I believe that the legislation, despite the penalties in the Bill, is open to abuse. It worries me considerably. We need to be particularly careful about granting these powers. In terms of the balance that I referred to earlier, we may be erring too far on the side of the authorities against the rights of the individual. The Minister must consider those things. My vote in this House will not make a lot of difference. However, the Minister should think carefully about the extent to which he allows the police and magistrates to grant these sorts of warrants.

MR DAY (Darling Range - Minister for Police) [4.44 pm]: I thank members of the House for their contributions in this debate and for their general support for the Bill. As I said in the second reading speech, it is a significant piece of legislation. It is one that has had a long gestation having originated in 1988 following a review of the existing Listening Devices Act. There has been a great deal of consideration of and discussion on the preparation of the legislation.

Mrs Roberts: Only the listening device part of it has had a long gestation. How long have you been considering optical surveillance?

Mr DAY: One of the deficiencies that was identified in the review in 1988 of the existing Act was that it did not cover the use of technology which was not in common use or not available in 1978 when the original Act was introduced but which had become available in the succeeding years. That is one of the issues identified in the review of that Act at that time.

As has been said, the Bill is intended to replace the existing Listening Devices Act, which is much more limited in its scope in a number of respects. This legislation is designed to bring the legislation up to date with the technology which is now available to law enforcement agencies and which is also available to the public generally in many respects.

The main purpose of the legislation is to provide a balance between the power of law enforcement officers - members of the Police Service, the National Crime Authority and the Anti-Corruption Commission specifically - and the privacy of individuals. I agree that they have significant powers to be able to investigate crime, particularly serious crime and organised crime, including drug trafficking, murder and similar serious offences. On the one hand we intend that law enforcement officers be given those powers; on the other hand the legislation puts in place significant protections for the privacy of individuals. It puts in place protections which are not in the current Listening Devices Act.

Mrs Roberts: Why don't you define the level of those serious offences to which this should apply?

Mr DAY: I will respond to specific points that the member for Midland has brought up in a short while. The Listening Devices Act does not have any controls over the use of video surveillance devices or tracking devices. The authorisation required for police officers or members of the Anti-Corruption Commission to use these devices is far less stringent than is proposed in the Bill, which would require a judicial authority to be given.

I now turn to the specific points which have been made during the debate. The member for Midland indicated that in respect to the problem relating to the Coco case in 1994 - in which it was stated that specific authority had to be given for forced entry into premises for the use of a surveillance device - Western Australian judges have the discretion to decide whether evidence acquired in such circumstances is admissible in a trial. That discretion is available in any jurisdiction under our system of law.

Mrs Roberts: There is no discretion in Queensland.

Mr DAY: The advice that I have - I do not profess to be a lawyer; my professional training was in dentistry - is that discretion is available in any jurisdiction. The member for Midland can debate that with the lawyers.

Mrs Roberts: The Minister should look at some basic notes on Coco. The member for Joondalup can give you some advice on that. One of the difficulties in Coco was that if one contravened the Act by entering premises, which constituted a trespass and obtained the evidence illegally, it was totally inadmissible in Queensland. If one did the same in Western Australia, the judge has discretion to accept the evidence.

Mr DAY: I agree with the member for Midland as far as Western Australia is concerned. It is not a crucial point in this debate. The essential point is that there is a problem, in that law enforcement officers cannot use the power where that specific authority is required or where forced entry is necessary. That is a deficiency in the legislation, which we are seeking to overcome because it is important that the law enforcement officers be able to use these devices in appropriate circumstances to investigate serious crimes.

Mrs Roberts: Why are you referring to forced entry? It applies to any entry which constitutes a trespass on someone's property.

Mr DAY: I understand that entry where permission is given by the owner of the building is not covered. I understand a problem in the Coco case was the forced entry, where authority was not specifically given by the owner of the building.

Mrs Roberts: You could enter premises which are private premises without necessarily making a forced entry, and still trespass.

Mr DAY: That is right. That is what I meant by forced entry. The member for Midland indicated that this legislation is very complex and may result in an undue intrusion into people's private lives. As I have said, one of the main aims of the legislation is to put in place more stringent safeguards than those in the current Act. With respect to the complexity of the Bill, in my view it is more straightforward and simple than the legislation applying to telephone interceptions. The Bill is readable and straightforward, and most people will be able to understand it. I agree there are many grey areas. It is impossible to specify every possible situation that may be covered by the legislation, and in many cases interpretations and judgments will need to be made by the courts as far as the operation of the Act is concerned.

The member for Midland also said the Bill does not provide any control over the more overt use of surveillance - for example, cameras used in open streets. That is correct. It is not intended to cover that situation. As has been explained, this Bill is intended to cover situations in which people are acting privately or are engaged in a private conversation. It is not intended that this Bill have the scope to cover the activities of people in public who have a reasonable expectation that they may be subject to some form of surveillance.

The member for Midland indicated that there may be a problem for journalists and they may not be able to record a conversation to which they are a party, if the other party in that conversation does not agree. That is certainly the case, and I find some conflict in her comments. On the one hand, she talks about undue intrusion into people's privacy and, on the other hand, implies that journalists should have rights available to them which are not available to other members of the public generally. She cannot have it both ways.

Mrs Roberts: Currently, if people have a private conversation one person can record it, whether or not that person is a journalist. I have not heard of any difficulties with that and I wonder why you suddenly want to change the law.

Mr DAY: It is for the reasons stated. It is to give law enforcement officers specific powers, where appropriate, and to protect people's privacy to the maximum extent possible.

Mrs Roberts: What about students taking notes at a lecture?

Mr DAY: Clearly that is a public situation. There is room for a significant amount of commonsense to be used. A lecturer giving a lecture would hardly consider it a private conversation. This Bill is about controlling the use of surveillance devices in relation to private conversations and activities. The member for Midland also asked whether equipment such as cameras and telescopes were covered in the definition of optical devices. That is the case. The essential point is the purpose for which they are being used. If a camera or telescope is used to photograph or examine a situation which is clearly public, the legislation will not apply. If they are used to unduly intrude on a private activity, they are included, as I believe they should be.

I was also asked whether people in an open field at night, who are involved in a private activity, would be protected under this legislation. Yes, they would be unless they were involved in any unlawful activity. For example, people who were unlawfully fishing or gathering marron at Wellington Dam or some other body of water in a covert manner could be subject to surveillance and the use by fisheries officers of binoculars or some other optical recording device. They could reasonably expect to be observed and recorded undertaking that unlawful activity.

Mrs Roberts: While looking for someone potentially taking marron, officers could observe a lot of other legal activities and record them. There is no check on that.

Mr DAY: There is a check on that. First, if they are deliberately attempting to record private activities, that would be unlawful. Second, if they inadvertently record private activities as part of their general and reasonable surveillance, they cannot publish or pass on that information in any way. Part 3 of the Bill deals with the restriction on publication or communication of private conversations and activities. It contains substantial protection.

A question was asked about home video cameras and whether permission was needed for their use. Obviously it depends on the purpose for which they are being used. Commonsense would apply. I was asked whether the forward looking infra-red camera is covered by this legislation. Generally, because it would be used from a helicopter or aeroplane in an area open to the public where people would not expect to be observed, the legislation would not apply. To clarify the situation, I advise members that the Government proposes to include an amendment to the effect that instruments such as the FLIR cameras can be specifically exempted.

Mrs Roberts: That could be regarded as both an optical surveillance device and a tracking device.

Mr DAY: Yes, but it does not matter what it is regarded as; my previous comments apply. I was asked about the use of tracking devices, specifically on cars used in the Sydney Olympics bid. I understand tracking devices were installed in the cars so that traffic lights could be changed and a clear flow of traffic achieved. Quite clearly, consent would have been given for the use of a tracking device by the occupants of those cars, either overtly or implied, and it would not be illegal.

Mrs Roberts: What about taxi companies and bus companies that want to know where their vehicles are?

Mr DAY: Implied permission would be given by the drivers of those vehicles for the use of the devices. It is not a question of their being used covertly. This legislation is designed to cover a situation where private activities or private conversations are involved.

The member for Midland referred to clause 13(2)(d), which states that when considering an application for a warrant, the court must have regard to the intelligence value and the evidentiary value of any information sought to be obtained. The member for Midland was concerned that the police could use this clause to engage in a fishing expedition simply because they wanted to gather intelligence. This clause applies a tougher test than would otherwise be the case.

Mrs Roberts: That is not so. The Customs Act and other appropriate legislation do not refer to things such as the intelligence value. That reference weakens this legislation.

Mr DAY: We will have to agree to disagree. This is simply one of a range of factors that must be taken into account. It is important to realise that judges will not issue a warrant willy nilly but will weigh up all the factors carefully. We must look also at subclause (1)(a), which states that the court must be satisfied that there are reasonable grounds for believing that an offence has been, is being, is about to be, or is likely to be, committed. It will not be possible to use this clause to engage in a fishing expedition.

The member for Midland identified as - to use her words - a major problem in this Bill the fact that the word "offence" is not defined and it may be possible for law enforcement officers to use these powers for any minor offence. The reason we have not included a minimum gaol term of five or seven years which shall apply to a particular offence is that there are serious offences for which a lesser period of imprisonment applies for which it may be appropriate to use this legislation. Two examples are corruption - for which the maximum penalty is imprisonment for three years - and offences which relate to the Parliament, such as a person refusing to give evidence to a parliamentary committee - for which the maximum penalty is imprisonment for two years or a fine of $8 000.

Mrs Roberts: So a person who refused to give evidence to a parliamentary committee would deserve to have surveillance and listening devices installed in his home and to have his privacy, his family's privacy and his friends' privacy invaded? What a nonsense!

Mr DAY: I am not suggesting that will be the case, and I am sure the member for Midland knows that will not be the case.

Mrs Roberts: The people who visit their home, their family and their friends, will be recorded, and anything that is obtained will be admissible in court. I do not think you have any comprehension of what you are bringing before the Parliament.

Mr DAY: I have a very good comprehension. I venture to say that my comprehension is better than that of the member for Midland, who has been given an extensive briefing on this matter and who has spoken on this matter for 60 minutes today. I am doing my best to respond to the concerns she raised.

The member for Midland concluded by saying that she believed the appropriate balance had not been achieved. I believe a good balance has been achieved, for the reasons I have outlined. The member for Midland said that this power should be used only for serious offences and that evidence that had been obtained inadvertently should be admissible in a court only for serious offences. It is important that the public interest be taken into account. I believe the public does want effective action to be taken against people who are committing offences. For example, a warrant might be issued to inquire into suspected drug trafficking activities, but the use of the surveillance device revealed that corruption was also occurring. The maximum period of imprisonment for corruption is two years. Is the member for Midland suggesting that that evidence of corruption should not be admissible in court? I believe it is reasonable that it be admissible.

Mrs Roberts: You are giving powers to the police well and above what they have currently. You misled your party room when you told it you had cut back on police powers, because you are giving the police carte blanche in many areas.

Mr DAY: That is patent nonsense. The member for Midland needs to appreciate that there are currently no controls on the use of optical surveillance and tracking devices, whether we are talking about the police or anyone else. We are putting in place substantial controls.

The member for Midland said also that the requirement that a prosecution under the Act for an offence be commenced within two years is too short a period. That requirement is based on the limitations that apply in a range of Acts; for example, in the Fisheries Act the limitation is two years, and in other Acts the limitation is 12 months. If the member would like to move an amendment to provide for a greater length of time within which action shall be commenced, I would be prepared to consider it, because that would be of great assistance to the police. If the member for Midland is suggesting that the police should be given greater powers with regard to this matter, I would be happy to entertain the idea.

Mrs Roberts: You know what I said.

Mr DAY: I do, and I wrote it down. I think the member was talking about something quite different. The member also expressed concern about the use of emergency authorisations and said that the period of 90 days was too long. Ninety days will not apply. The law enforcement agency will be required to go before a judge as soon as is reasonably possible after the use of a surveillance device under an emergency authorisation, and the judge will need to ratify that use.

Mrs Roberts: It is just report to a judge -

Mr DAY: Yes, and as soon as is reasonably possible. Obviously it cannot leave it for 90 days.

Mrs Roberts: It will have to report to the judge what it has done, but the actual emergency authorisation will stand for 90 days. The judge will not necessarily overturn that.

Mr DAY: Of course, but if the judge says that it is inappropriate to use that device, obviously the use of it must cease.

Mrs Roberts: And any evidence that they have obtained can be used, even though they have contravened the Act.

Mr DAY: Is the member suggesting that if evidence were obtained that a person was involved in committing a serious offence, because of a technicality that evidence should not be admissible in a case against that person in a court?

Mrs Roberts: I am saying that the officers can and should go before a judge in order to get such a warrant. However, if they do not go before a judge and put an emergency authorisation in place under their own name, and a day or two later a judge cancels that authorisation, after they have obtained evidence in their little fishing expedition, none of that evidence should be admissible. You are letting them do everything they want to do. You have no checks on the police at all.

Mr DAY: The member is saying that there are no checks on the police. That is interesting.

Mrs Roberts: On the use of emergency authorisations.

Mr DAY: That is simply not the case. They need to go before a judge as soon as is reasonably possible to have the use of that device ratified. If approval is not given, the use must cease.

Mrs Roberts: And any evidence can be used in court. What a great situation!

Mr DAY: Is the member suggesting that if someone has been involved in committing a serious offence, because of a technicality, that evidence should not be able to be used in a case against them?

Mrs Roberts: If the police have gone in there in a situation in which a judge would not have given them a warrant, no, it should not be used in court.

Mr DAY: Is the member saying -

Mrs Roberts: You are letting the police be a law unto themselves.

Mr DAY: That is absolute nonsense. Is the member saying that in every situation police should be required to go before a judge before they use a surveillance device?

Mrs Roberts: They can use the radio or telephone application procedure. Judges are available 24 hours a day.

Mr DAY: A Supreme Court judge might not be available at very short notice. It might be a hostage situation in which a life is in danger or a major drug deal in which it is reasonable, and the public would expect, that the police would be able to gain the evidence required to ensure a conviction in court.

Mrs Roberts: Why not include a restriction that they can be used only in those serious situations?

Mr DAY: If the member were to read on she would see the situations described in which they can be used. The member seems to be unreasonable about this legislation.

The member for Burrup was supportive in his comments. He indicated that he was much more relaxed than the member for Midland.

Mrs Roberts: Don't misrepresent the member.

Mr DAY: I am not. Among other things, the member for Burrup asked why hearing aids and spectacles were included in this legislation. Technically under the Act if they are not excluded they would be covered. Obviously commonsense dictates they should not be covered, and that is being clarified.

The member for Kalgoorlie asked a number of questions and expressed her general support of the legislation. She asked specifically how the review of the whole criminal justice system established by the Attorney General will relate to this legislation once it is implemented. It is too early to say. I have not been able to get definitive information from the Attorney General about that. We will have to wait to see how it relates to the legislation.

The question was asked whether computer surveillance might be covered under the proposed legislation. Any interference with the telecommunications system, where information is being transmitted along telephone lines, would be covered under the appropriate commonwealth legislation dealing with telephone interception.

Unlawful access to a restricted situation on a computer is covered under section 440A of the Criminal Code of Western Australia, which provides that it is an offence for such unlawful access to be gained.

The member for Rockingham asked a number of questions about the use of speed cameras and whether they would be covered by this legislation. Clearly that is not the case because they are being used in a public setting. He also asked how this legislation will apply to federal agencies. That is covered in clause 4(2) of the Bill, which provides -

> This Act does not apply to the activities and operations of a prescribed Commonwealth agency, instrumentality or body.

Members are aware that the legislation is intended to apply to members of the National Crime Authority, so those officers can use all the powers in this legislation. I have had correspondence and discussions with the federal authorities about the coverage of this legislation and their agencies. We have decided to ensure that none of the powers available to law enforcement agencies under this Act will apply to federal agencies unless they are specifically included in the legislation. On the other hand, they are not subject to the limitations of this legislation for the time being. Any federal agency should come into line with the safeguards being put in place for the citizens of Western Australia. I have written to the federal Attorney General asking that the Federal Government enact legislation, preferably in the next 12 months, to ensure that all federal government agencies are subject to the same safeguards as apply to agencies within Western Australia.

Mrs Roberts: I asked about the power to search. Why do they need powers to search? You referred to other things being in the Criminal Code. If there is a reasonable belief on the part of the police that an offence is being committed, they can use the powers under the Criminal Code and a number of other pieces of legislation. Why give specific powers to search? Is that not simply giving police more powers that could be abused?

Mr DAY: If police are to investigate alleged offences effectively under this legislation, they need to be able to acquire the evidence and, in some circumstances, to search premises.

Mrs Roberts: They can do that under the Criminal Code.

Mr DAY: We are making it clear that they have the power to investigate an alleged offence under this legislation.

Mrs Roberts interjected.

Mr Cowan: Let him make his speech.

Mr DAY: The member for Joondalup referred to the need for law enforcement officers to be required to retrieve devices where authority has been given for them to be used. We have included a specific reference to that need in the legislation in clause 13(8)(h), which provides -

> that were practicable the surveillance device should be retrieved or rendered inoperable during the period that the warrant is in force;

That has been included specifically to ensure, wherever possible, that surveillance devices are retrieved. It is not

possible to stipulate any time frame within which they should be retrieved, because it might not be safe to do so, or it might alert the subject of the surveillance. Clearly, this must be done in a covert manner.

The member for Joondalup also referred to the fact that we must provide greater protection to undercover officers. A covert operations Bill is being drafted at the moment to achieve that aim.

The member for Nollamara asked a number of questions. Most importantly, he asked about a person using a device with a lawful reason but requesting that a third party be able to use the device on their behalf. That will be possible. It is covered in clause 3(a)(ii), which provides -

> a person who, with the express or implied consent of any of the persons by or to whom words are spoken in the course of the conversation, records, monitors or listens to those words;

The situation to which the member referred - where an employee has a lawful reason to record a conversation with an employer and requests a third party to do so - is permitted.

The member for Nollamara also raised a question about neighbourhood disputes, where a person who is not a party to the dispute records a conversation or activity. This legislation provides that people who are not a party are prohibited from unduly recording an activity in which they are not involved. That is one of the important safeguards provided by this Bill.

The member for Eyre referred to the need for police to get out of their cars, as it were, and make much more contact with people rather than relying on the use of what the member referred to as fairly heavy handed powers. I entirely agree that the police need to undertake that sort of activity. That is one of the changes we are seeing under the Delta program, where a lot more proactive action is being taken by police to make contact with the public and the community generally and where they are "getting out of their cars" and taking that proactive action. On the other hand, it is also essential to have law enforcement officers having the powers necessary to be able to keep up with people involved in serious crime, whether drug trafficking, kidnapping, abduction or murder. There is no doubt that some serious offenders have sophisticated equipment available to them. It is essential that police officers and others have substantial powers available to them so they can investigate those serious crimes.

The member for Eyre also raised concerns about magistrates being able to issue warrants. As I responded to him by way of interjection, it will be possible only for a Supreme Court judge, as stated in the Interpretation Act, to issue a warrant for an optical surveillance device or a listening device. It will be possible for magistrates to issue warrants for the use of tracking devices, but tracking devices only. I am advised in response to the questions asked by the member for Midland on why we do not specifically indicate that a Supreme Court judge is meant when we refer to "judge", that parliamentary drafts people will not insert a word in the definition section where that word is clearly defined in the Interpretation Act. It is simply not necessary to be more specific than we have been in the legislation.

The member for Eyre also expressed concern about the issue of warrants in secrecy. Quite clearly, if this legislation is to work at all, warrants need to be issued in secrecy so that people who are involved in serious crime will not be aware of the fact that they are being observed. Obviously, if they are made aware that they are being observed, there is not much point in having those powers available to the police.

In summary, this legislation provides a very satisfactory balance between giving law enforcement officers the ability to investigate serious crime on the one hand and providing greater protection to individual privacy on the other hand. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

REVENUE LAWS AMENDMENT (ASSESSMENT) BILL (No 2)

Receipt and First Reading

Bill received from the Council; and, on motion by Mr Cowan (Deputy Premier), read a first time.

Second Reading

MR COWAN (Merredin - Deputy Premier) [5.24 pm]: I move -

> That the Bill be now read a second time.

This Bill seeks to implement two measures to improve the equity and efficiency of the taxation arrangements of the State. In particular, amendments are proposed to the Land Tax Assessment Act and the Stamp Act.

As is now our practice with taxation amendments, members will note that the legislation takes the form of a single revenue laws amendment Bill to allow much more efficient use of Parliament's time. Members should also note that an explanatory memorandum has been prepared to accompany the Bill, which provides a detailed account of each of the amendments.

The Bill is structured in three parts. Part 1 contains the preliminary provision, including the commencement dates of the measures proposed in parts 2 and 3 of the Bill, which is the date the Act receives the royal assent.

Part 2 seeks to amend the Land Tax Assessment Act to give the Commissioner of State Revenue the power to extend the time within which an application may be made for the land developers' concession.

The Land Tax Assessment Act provides a concession to a land developer who has subdivided lots on hand at 30 June where the subdivision has occurred in the previous assessment year. A developer is currently required to notify the commissioner by 31 August, providing full details of the landholding on which the developer seeks the concession. If the notice is not lodged by that date, the developer is not entitled to the concession. This restriction was put in place to allow the State Revenue Department to have all details on hand before assessments are issued during September.

The amendments in this part of the Bill seek to give the Commissioner of State Revenue power to extend the date for lodgment of an application where the taxpayer demonstrates reasonable cause for the extension. The commissioner may only extend the time for making the application to a date which is prior to the following 1 July. The measure in this part of the Bill is not expected to have any significant cost to revenue.

Part 3 of the Bill seeks to amend the corporate reconstruction exemption in the Stamp Act to provide relief for corporate reconstructions involving the interposition of a foreign company between a Western Australian company and its shareholders where the interposition occurs for genuine commercial reasons, other than the avoidance of stamp duty. Under the current exemption regime, only an Australian incorporated company may be interposed between a Western Australian company and its shareholders. This restriction was considered necessary to prevent the corporate reconstruction exemption from being used as a duty avoidance mechanism. Without this restriction, it was considered that duty could have been avoided by interposing a foreign entity, effectively allowing dutiable share transfers in that company to be conducted offshore where no Western Australian stamp duty would be payable.

However, it has become apparent that the requirement for the interposed entity to be incorporated in Australia may unduly restrict corporate reconstructions that are undertaken for purely commercial, as opposed to stamp duty avoidance, reasons. As a result, the amendments proposed in this part of the Bill seek to allow an exemption where a non-Australian entity is interposed between a Western Australian company and its shareholders, where a good business case exists to support the interposition. Three additional restrictions have been inserted to ensure that a sound business case exists before a foreign company can be interposed. The measure in this part of the Bill is expected to provide taxation relief at a cost to revenue in 1996-97 of $2.5m.

I commend the Bill to the House and, for the information of members, I table the associated explanatory memorandum.

[See paper No 943.]

Debate adjourned, on motion by Mr Cunningham.

SUNDAY OBSERVANCE LAWS AMENDMENT AND REPEAL BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Mr Prince (Minister for Health), read a first time.

Second Reading

MR PRINCE (Albany - Minister for Health) [5.30 pm]: I move -

That the Bill be now read a second time.

The Sunday Observance Act 1677 (UK) is an Imperial Act which applies in Western Australia. This Statute has been the subject of consideration by the Western Australian Law Reform Commission, which in its "Report on the United Kingdom Statutes in Force in Western Australia (Project No. 75, October 1994)" considered that the only provision of the Imperial Act which might be preserved is section 6, which prohibits the service of process on a Sunday. The report did, however, point out that section 6 is out of date and should be reviewed and that service of process on Sunday is permissible in the Australian Capital Territory, New South Wales, Victoria, New Zealand and the United

Kingdom. The Imperial Act has been repealed in the Australian Capital Territory, New South Wales, Queensland, Victoria, New Zealand and the United Kingdom.

A number of reasons support the repeal of section 6 of the Imperial Act; namely, that section 63 of the Justices Act permits execution of warrants on Sundays; often, as a result of deregulation of trading hours, Sunday is the only day on which police can find people at home to serve summonses; police who, unaware of section 6, have served summonses on Sundays have done so without incident or complaint; and other jurisdictions permit service on Sundays.

In the context of the Restraining Orders Act, consideration was given to the possible relevance of the prohibitions contained in section 6 of the Sunday Observance Act 1677 (UK) to the service of telephone restraining orders on a Sunday. Although on the face of it the Sunday Observance Act may not preclude the service of such orders, a decision was made to research this matter further in order to provide an assurance that no difficulties would be encountered with such service. That research confirmed that, although the Act itself probably did not preclude such service, a common law provision remains which probably forms part of Western Australian law and which may cause some difficulty. This relates to the common law position that "judicial acts", except in limited circumstances, are prohibited on Sundays. The common law rule has been abrogated in a number of cases by Statute; for example, the Supreme Court Act and the District Court Act have specific provisions to enable those courts to sit at any time. However, the real risk seems to remain that judicial acts of magistrates, save perhaps for those under the Local Courts Act, may be held invalid if done on a Sunday; that is, otherwise valid acts could be invalidated by the operation of the common law rule.

Broadly, the Bill seeks to do two main things: Firstly, the Imperial Act known as the Sunday Observance Act 1677 (UK) is to be repealed so far as it is part of the law of Western Australia. Secondly, by an amendment to the Interpretation Act the Bill will remove doubt that any decision by any person acting judicially is valid despite it happening on a Sunday, thus abrogating the common law rule if it applies; and at the same time it will validate any such judicial acts which have already occurred in case the rule applied. Therefore, the Bill provides a measure of retrospectivity in that anything done before the commencement of the relevant provisions is as valid, and is to be regarded as having always been as valid, as it would have been had the changes commenced before the thing was done.

As with the Supreme Court Act and the District Court Act, under a number of Western Australian Acts the common law rule has been abrogated with respect to criminal matters dealt with under the Criminal Code. However, the common law rule does not appear to have been abrogated with respect to judicial proceedings for offences created by Statutes other than the Criminal Code and dealt with under the Justices Act. This is reflected in the existence of statutory provisions specifically providing for the validity of certain kinds of judicial acts done on Sundays; an example of this is section 31(3) of the Fish Resources Management Act . With the passage of this Bill, those provisions will no longer be required, and for this reason a number of Statutes will be amended consequentially as set out in schedule 1.

In conclusion, this is an important Bill in that it seeks to improve certainty in relation to the validity of a range of judicial and other acts performed on a Sunday. Although the Bill builds upon the work of the Western Australian Law Reform Commission, it opportunely addresses concerns raised following the enactment of the Restraining Orders Act because it is important that any uncertainty relating to the issuance of restraining orders on Sundays be removed, especially given the new provisions relating to telephone orders. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

FISHING AND RELATED INDUSTRIES COMPENSATION (MARINE RESERVES) BILL

Council's Message

Message from the Council received and read notifying that it did not insist on its amendment No 5 to which the Assembly had disagreed.

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL (No 2)

Second Reading

Resumed from 16 October.

DR GALLOP (Victoria Park - Leader of the Opposition) [5.35 pm]: This Bill repeals a number of Acts and makes various amendments to a number of others. As the second reading speech of the Premier says, the aim of the Bill is to make Parliament more efficient by reducing the number of amending Bills that deal with relatively minor

legislative amendments and repeals. The amendments and repeals in the Bill are required to be short and not controversial, and they must not impose or increase any obligations or adversely affect any existing rights.

The Opposition supports the Government's attempt to make Parliament more efficient, including by repealing out of date and unnecessary Acts. For that reason the Opposition supports this concept of omnibus Bills. However, the Opposition believes Bills of this kind should not be used as a smokescreen to avoid scrutiny of proposed amendments that require a more detailed deliberation and explanation. A number of changes are included in this Bill. As with the Statutes (Repeals and Minor Amendments) Bill debated in this House in April this year, the number of changes proposed means that it is not necessarily an easy Bill for the Opposition to deal with.

We must rely on the assurances of the Government that the changes are all minor and inconsequential. The accompanying explanatory notes are useful in explaining exactly what is the proposed change, but in some amendments the Opposition would have preferred a better explanation about why a particular change is proposed. I repeat the suggestion made by the member for Belmont in the debate on the earlier Bill that Bills of this type could be first examined by the Joint Standing Committee on Delegated Legislation, if its terms of reference were expanded to consider these types of changes. Many of the changes in this type of omnibus Bill are similar to those introduced by regulation and, therefore, it could be appropriate that the Joint Standing Committee on Delegated Legislation examine the changes to see whether they impact on the rights of citizens or will substantially change arrangements that have been put in place by Parliament.

This would mean a report could be prepared by the committee before the Bill was brought to the House. At the time of the earlier debate the Premier considered that the suggestion that Bills of this kind go before a committee was "reasonably constructive"; however, the Government has not taken the matter further. If it is intended to continue with these types of omnibus Bills, I urge the Government to give serious consideration to that suggestion. The Opposition will support this legislation, but we would like to see some specific areas examined during Committee.

I will refer to the section of this Bill dealing with the Government Employees Superannuation Act. It may be that when the Premier comes to summarise the second reading debate, he may be able to deal with these matters as if we were in Committee, rather than actually going into Committee.

Clause 38 of the Bill provides that section 17B(2)(d) of the Government Employees Superannuation Act is to be substituted with an amendment which seeks to clarify the exclusion rules for membership of the 1987 superannuation scheme as a consequence of the introduction of salary packaging for public sector employees and the establishment of alternative superannuation arrangements for certain public sector agencies. A member of the 1987 scheme will not be excluded from membership of the 1997 scheme unless such an arrangement increases the cost of superannuation to the person's employer above the cost of the 1987 scheme. The Opposition does not oppose this amendment, but I make the point that this amendment is an example of the need to ensure that omnibus Bills of this type do not start to include complicated or possibly controversial matters.

Superannuation is undoubtedly a complicated area. I think it is open to argument whether amendments of this kind should be included in an omnibus Bill which encompasses a range of Acts, even if it is anticipated that the proposal is non-controversial. There will always be a need for greater explanatory material for amendments to more complex areas of law, such as superannuation, more than that which can be provided in an omnibus Bill. This part of the Bill is not a non-controversial, matter of fact amendment to legislation that should be lumped in an omnibus Bill. The Opposition would like to know more about why this clause is seen as necessary. I am sure the Premier could do that in his summing up of the second reading debate or during Committee.

The second area I will look at is the Valuation of Land Act. Another amendment which raises some concern is clause 71(2), which amends section 32(1) of the Valuation of Land Act by deleting the words "this Act" and substituting "Part III". On the face of it this is a very minor amendment, but it does have important implications. Section 32 currently provides that any person liable to pay any rate or tax assessed in respect of land who is dissatisfied with a valuation made under "this Act" may serve upon the Valuer General or any rating or taxing authority a written objection to the valuation. The proposed amendment would mean that this right of objection would apply only to valuations of land made under part III of the Act. The reason given in the explanatory notes is that rating and taxing valuations are made under part III of the Act and it is the intention of section 32 that objections apply only to valuations made under part III, not the whole Act. The explanatory note goes on to say that there have been instances where prospective purchasers of crown land valued under section 39, which is in part V, have "attempted incorrectly" to object to a market valuation provided to the Department of Land Administration for the purpose of disposing of surplus land, utilising the appeal provisions of section 32.

I do not agree that this amendment is that straightforward. I particularly do not agree that it should necessarily be included in an omnibus Bill of this type. The Opposition will not oppose this amendment, but it has serious concerns if this proposed amendment is indicative of the types of changes that will be included in omnibus Bills in the future.

I accept that on one reading the amendment is reasonable because section 32 applies to ratepayers or taxpayers where the valuation is the basis of an assessment; not where the valuation is for the purpose of disposing of the land, as it is in the situation in section 39. I note that in discussing the objection and appeal provisions the second reading speech to the Valuation of Land Act would appear to support the argument that section 32 is limited to the imposition of rates or taxes based on valuation, although it does not specifically state that. However, obviously some prospective purchasers of crown land, valued under section 39, have thought that the appeal mechanism in section 32 applied to their situation; that is, to disposals of crown land and not just to assessments. I would argue that the fact that some parties believe that they have an option to object to the valuation under the Act - even if this is considered "incorrect" - indicates that the proposed amendment is not necessarily that straightforward or routine.

As the second reading speech to this Bill states, the amendments are not to "impose or increase any obligations or adversely affect any existing rights". It seems that this proposed amendment is about as close to adversely affecting an existing right than properly should be included in this type of Bill. For these omnibus Bills to work as efficiently as they should, it is important that they not be misused to get more substantial or controversial amendments through by this type of mechanism. The Opposition will not oppose clause 71, but wishes to emphasise that it does not agree that this amendment properly falls under the Government's self-imposed ambit of what omnibus Bills of this kind should and should not cover. The comments of the member for Belmont which were raised in an earlier version of this type of legislation still stand.

I seriously suggest to the Premier that he look at the possibility that Bills of this type be referred to the Delegated Legislation Committee or a committee of that type to report back to Parliament. I ask the Premier to respond to two points in his response: First, the amendment that deals with the Government Employees Superannuation Act. Could the Premier provide an explanation of why this amendment is considered necessary? I also indicate to the Premier that the section dealing with the Valuation of Land Act comes very close to an amendment to legislation that does affect the rights of individuals. According to the bureaucracy's interpretation of the legislation, it may not affect the rights of individuals. However, the many people in the community who have accessed this Act to make appeals on valuations might feel their rights have been affected. Therefore, this is an example of an amendment that should not be in an omnibus Bill but should be dealt with by more substantial independent legislation within the Parliament.

The Bill also deals with a number of non-controversial amendments. We could talk about some of those, but I am certainly happy that these amendments are non-controversial. They relate to the Parliamentary Commissioner Act, the Westpac Banking Corporation (Challenge Bank) Act, and typographical errors in some legislation. The Bill also repeals some Acts.

The Opposition supports the repeal of the Imperial Acts (Masters and Apprentices) Adopting Act 1873. This Act has been overridden to the extent of any inconsistency by the Industrial Training Act 1975, which will itself be repealed when part 7 of the vocational education and training legislation comes into operation. That legislation will provide for matters concerning trainees which include apprentices, therefore the 1873 Act is no longer required. We can also see that there is no reason to maintain the Kalgoorlie Racecourse Tramways Act 1904 on the Statute books. The Road Districts Rates Act 1924 enabled transfers of land sold for default in payment of rates under the Road Districts Act 1919 to be registered. The 1919 Act was repealed by the 1960 Local Government Act, which has since been repealed by the Local Government Act 1995. The repeal of the 1924 Act means that no transfer entered into following a power of sale pursuant to an order under the Act will be able to be registered by the Registrar of Titles where there has been no change in the proprietorship of the land. The Department of Land Administration advised that it was unlikely that such transfers existed, and anyway alternative methods of dealing with the conveyance would be available - for example, adverse possession or court orders.

There are many parts of this Bill which appropriately fit under the heading of an omnibus Bill. However, the Premier has taken that argument to the limits in respect of the Government Employees Superannuation Act and the Valuation of Land Act. The Opposition supports the legislation.

MR COURT (Nedlands - Premier) [5.50 pm]: I thank the Leader of the Opposition for his support. I will respond to the two queries he raised. The Leader of the Opposition is correct in saying it is important that the legislation be used only for minor amendments. It is good to see some of these Acts being repealed, because we spend hours passing new legislation and it is interesting to get rid of so many of them.

With regard to the Government Employees Superannuation Act, the current provision prevents employees of agencies that establish separate superannuation schemes from making voluntary contributions to these new public sector schemes while they are members of the 1987 scheme. However, these same employees are not prevented from making voluntary contributions to any other private sector scheme. The current provision is constraining the Water Corporation and Western Power in establishing new superannuation arrangements for their employees that offer the flexibility available to private sector employers. Basically, they are restricted in making contributions, and this amendment will allow some flexibility. It is to the advantage of the employees to do it.

With regard to section 71 of the Valuation of Land Act, the Act is principally for the valuation of land for rating and taxation purposes. Those valuations are carried out under part 3 of the Act. Section 72 provides that any person liable to pay any rate or tax can object to a valuation. Section 39 in part 5 gives the Valuer General the power to make other non-rating valuations for government departments and public authorities. The Valuer General can charge for this service. Such valuations might include valuations for the Commissioner of State Revenue, for stamp duty purposes, or for compensation on a compulsory acquisition of land, or for the Department of Land Administration when selling crown land. In each case the person affected by the valuation has an avenue of appeal. In the case of stamp duty, a person can appeal to the Supreme Court; on compensation matters a person can go to arbitration; and an offer to sell can be refused.

Section 32 clearly applies only to valuations for rating and taxing under part 3, and not to those under section 39 which have other appeal avenues, as outlined. The amendment merely clarifies what is required in law, and it does not affect any existing rights.

Dr Gallop: Certainly in the community there was a view, because it was obviously exercised by people, that this part of the Act gave them that avenue. This section of the omnibus Bill is close to one that could have been considered on its own terms rather than as part of a bigger package.

Mr COURT: I accept that. Where there is a difficulty, a separate Bill can be introduced to make the change. However, it was considered a small change and because it does not affect existing rights, it was not thought to be controversial. I thank the Opposition for its support.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and transmitted to the Council.

House adjourned at 5.55 pm

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

GOVERNMENT INSTRUMENTALITIES - CONTRACTS

Value and Terms

1824. Mr BROWN to the Deputy Premier; Minister for Commerce and Trade; Regional Development; Small Business:

(1) What functions or services has each department or government agency under the Deputy Premier's control contracted out since 1993, stating -

(a) the date;
(b) the amount;
(c) the recipient;
(d) whether the recipient was Western Australian, Australian or foreign; and
(e) the term of the contract,

for contracts worth the following amounts -

(i) more than $100 000;
(ii) between $50 000 and $100 000;
(iii) between $10 000 and $50 000;
(iv) between $1 000 and $10 000?

(2) What functions or services are being planned or intended to be contracted out by each department or government agency under the Deputy Premier's control during the current term of government, stating -

(a) the approximate date it will take place;
(b) the amount;
(c) the recipient;
(d) whether the recipient is Western Australia, Australian or foreign; and
(e) the term of the contract,

for contracts worth the following amounts -

(i) more than $100 000;
(ii) between $50 000 and $100 000;
(iii) between $10 000 and $50 000;
(iv) between $1 000 and $10 000?

Mr COWAN replied:

Department of Commerce and Trade

(1) The Department of Commerce and Trade is not able to provide the information requested in the question without some further specification and explanation. Obtaining the answer to cover all contingencies will be resource intensive and, depending upon the interpretation of the question, may still not be satisfactory. The department is able to provide a response to questions of this nature which are more specific.

(2) There are no services or functions currently being planned to contract out. However, the department's Internal Audit Committee regularly reviews and monitors functions and services across the agency for opportunities which may lend themselves to this process.

Small Business Development Corporation

(1) Information Technology Help Desk Support.

(a) December 1995.
(b) $20,165.
(c) Fujitech.
(d) Western Australian.
(e) December 1995 - January 1997.

(i) Nil.
(ii) Nil.
(iii) $20,165.
(iv) Nil.

Information Technology Help Desk Support

(a) February 1997.
(b) $13,530 (to October 1997).
(c) Alpha West.
(d) Western Australian.
(e) February 1997 - January 1998.

(i)-(ii) Nil.
(iii) $13,530 (To October 1997).
(iv) Nil.

(2) Journal/Serial Publications Management

(a) January 1998.
(b) $1,500 per annum.
(c) DA Information Australia.
(d) Australian.
(e) 12 months.

(i)-(iii) Nil.
(iv) $1500 per annum.

International Centre for Application of Solar Energy (CASE)

(1)-(2) CASE has not in the past nor has any plans in the future to contract out any core activities.

Gascoyne Development Commission

(1) The majority of the requested information is stored on the GAS accounting system, which the Commission no longer has access to. The only way to produce the information required is to undertake a manual search of every accounts batch since January 1993, which would require an extraordinary use of accounting staff resources.

(2) The Commission will continue to spend money on items such as advertising, printing and production costs according to project workload. The Commission will also incur contract costs for services such as photocopying and cleaning. From time to time consultants will be engaged to assist the Commission. It is unlikely they will exceed $50,000 in value and the Commission is not likely to engage more than three per year.

Goldfields-Esperance Development Commission

(1) The Goldfields-Esperance Development Commission do not have the available resources that are required to adequately answer this question.

(2) Development of a Transport Strategy.

(a) Not yet awarded.
(b) $60,000.
(c)-(e) Not applicable.

Infrastructure Study

(a) Not yet awarded.
(b) $25,000.
(c)-(e) Not applicable

Great Southern Development Commission

Internal audit

(1) (a) 1993.
(b) Approx $1500 per annum.
(c) Mr Peter Scarfe.
(d) Western Australian.
(e) (i)-(iii) Nil.
(iv) 1993 - 1995.

Internal audit

(a) 1995.

(b) approximately $2,000 per annum.
(c) Wheatcroft Enterprises.
(d) Western Australian.
(e) (i)-(iii)
Nil.
(iv) Open ended, however is reviewed at the end of each financial year.

Payroll Processing

(a) May 1996.
(b) approximately $3,000 per annum.
(c) Fujitsu Australia Ltd.
(d) Australian.
(e) (i)-(iii)
Nil.
(iv) May 1996 - May 1998.

Personnel Management

(a) May 1997 - May 1998.
(b) Approximately $2,000 per annum.
(c) Fujitsu Australia Ltd.
(d) Australian.
(e) (i)-(iii)
Nil.
(iv) May 1997 - May 1998.

Cleaning

(a) Sept 1995.
(b) $5,328 per annum.
(c) Delron Cleaning Services.
(d) Western Australian.
(e) (i)-(iii)
Nil.
(iv) Sept 1995 - Sept 1998.

Computer System Contract

(a) November 1997.
(b) Approx $2000 per annum.
(c) Mr Klaas Hoekstra.
(d) Western Australian.
(e) (i)-(iii)
Nil
(iv) Open ended, 1 month notice.

(2) Nil.

Kimberley Development Commission

(1) An adequate answer to the question would require extensive and detailed research back to 1993 in a now defunct accounting system. The Kimberley Development Commission does not have sufficient resources to undertake the level of research required. However, the Commission is able to provide a response to questions of this nature which are more specific.

(2) There are currently no formal plans to contract out any services. This position is, however, consistently under review.

Mid West Development Commission

(1) The Mid West Development Commission participates in an number of across government contracts and has not contracted out any services or functions apart from these. The information requested would prove difficult to obtain and place an inappropriate workload upon the Commission. However, the Commission is able to provide a response to questions of this nature which are more specific.

(2) The Mid West Development Commission is not planning to contract out any existing services and functions. However, if the State Supply Commission provides further potential contracting out opportunities, the Commission may review our activities in order to improve efficiency.

Peel Development Commission

(1) The Peel Development Commission has insufficient resources to research back to 1993 to provide the

answers to the detailed information requested. However, the Commission is able to provide a response to questions of this nature which are more specific.

(2) No decisions have been made with respect to contracting out any functions or services.

Pilbara Development Commission

(1) The information requested would require excessive resources to obtain and would place an inappropriate workload on the Commission. However, the Commission are able to provide a response to questions of this nature which are more specific.

(2) No decision has been made with respect to contracting out any further functions and services.

South West Development Commission

(1) No functions or services performed by the (then) South West Development Authority in 1993 have subsequently been contracted out by the South West Development Commission.

(2) Nil.

Wheatbelt Development Commission

(1) The Wheatbelt Development Commission does not have sufficient resources available to undertake the level of research required. However, the Commission is able to provide a response to questions of this nature which are more specific.

(2) Nil.

SCHOOLS - LOCAL AREA PLANNING

Change in Process

1851. Mr RIPPER to the Minister for Education:

(1) Has the Government altered its proposed local area education planning process as a result of submissions from the public?

(2) If yes, how has the proposed process been changed?

Mr BARNETT replied:

(1) A reference group made up of the Western Australian Council of State School Organisations, unions, administrator associations and senior officers of the Education Department considered all submissions on the draft Local Area Education Planning Framework and made recommendations for change. All major recommendations were endorsed and included in the final document. A further reference group meeting is planned to consider the changes made to the document.

(2) The final version of the Local Area Education Planning Framework was released on the 23 September 1997. This document had a number of changes from the draft, including -

- expanding parent, staff and student participation in the planning process;
- extending the timeline for planning and consultation;
- staggering the starting point for the planning process;
- modifying the process to ensure that planning takes account of the impact on staff and the pastoral care of schools; and
- stating the reinvestment guidelines.

FAIR TRADING - TELEPHONE ADVERTISING SCAMS

Complaints - Prosecutions

1906. Ms ANWYL to the Minister for Police:

(1) Is the Minister aware of telephone advertising scams involving the bogus sale of advertising space in a variety of fictitious publications?

(2) If so, what number of complaints have been made in Western Australia in 1996 and 1997?

(3) Has any research been done about the extent of the problem in other States and, if so, what was the result?

(4) Have any prosecutions been made or charges laid against persons obtaining monies by misleading intending advertisers?

(5) If so, what are their names and dates on which they were charged or convicted?

Mr DAY replied:

(1) The Western Australia Police Service Major Fraud Squad is not aware of such a telephone advertising scam.

(2)-(5) Not applicable.

INDUSTRIAL DEVELOPMENT - OAKAJEE

Infrastructure and Operating Costs

2018. Dr CONSTABLE to the Minister for Resources Development:

With regard to the Oakajee development -

(a) what are the estimated costs of providing the necessary infrastructure for the development;

(b) what is the estimated annual value of non-infrastructure costs, including operating costs for the port and railway, forgone royalties and any subsidies;

(c) how many ships are estimated to visit the proposed Oakajee development per week;

(d) what, if any, companies have indicated they will move to Oakajee when it is operational?

Mr BARNETT replied:

(a) During debate on the Iron and Steel (Mid West) Agreement, the cost of the Oakajee Port was quoted at $282 million. Current estimate for the port is significantly less than that. The railway from Narngulu is estimated to cost $35 million. Other infrastructure is still subject to further design.

(b) The annual value of non-infrastructure costs, which would include environmental monitoring are not expected to be large. The operating costs of the port and railway are to be recovered from the users whilst the royalty to apply is that applicable in the Iron and Steel (Mid West) Agreement Act. The reduced royalties reflect the value of further processing to the iron ore.

(c) Current estimates for the An Feng Kingstream (AFKS) 2.4 million tpa steel mill would require an average of 1 ship every 10 days to visit the proposed Oakajee Port.

(d) No companies beyond AFKS have yet indicated they will move to Oakajee. However other companies have expressed an interest.

INDUSTRIAL DEVELOPMENT - OAKAJEE

Reasons for Choice of Site

2019. Dr CONSTABLE to the Minister for Resources Development:

Why was the Oakajee site chosen for the development of an industrial site, particularly over alternative sites with some degree of existing infrastructure?

Mr BARNETT replied:

The Oakajee Industrial Estate is being proposed as part of the current State-wide program of establishing world class, strategic industrial estates at key regional areas. Oakajee has been a part of this program since 1990 but was first identified as a potential industrial site in the late 1960s.Oakajee has unique benefits for the development of resource based industry. These are:

- Sufficiently far from Geraldton to avoid unacceptable impacts to the residents of Geraldton.
- Close enough to Geraldton to allow workers at Oakajee to live in Geraldton.
- An opportunity to develop an adjoining deep water port.

INDUSTRIAL DEVELOPMENT - PETROCHEMICAL PLANT

Feasibility Study - Consultation with Local Authorities

2061. Dr GALLOP to the Minister for Resources Development:

(1) Which local government authorities were consulted in the feasibility study carried out on the location of a petrochemical plant in the Pilbara?

(2) Does the Minister have a consultation program in place for the development of this project?

(3) If yes -

(a) when will consultation begin; and
(b) with which groups will the Minister be consulting?

(4) If no consultation is proposed, what is the justification for such an approach?

Mr BARNETT replied:

(1)-(3) The Government has called for Registrations of Interest in establishing a petrochemical plant in the Pilbara. The closing date was Friday 26 September 1997. A process is now underway which will result in a preferred proponent being nominated to undertake a detailed feasibility study. It would be expected that the proponent would undertake an extensive consultation process with the stakeholders in the Pilbara with particular attention paid to the local community and Aboriginal groups. There has been extensive consultation with the Roebourne Council on the plans for a petrochemical project and interaction with the local Aboriginal groups as part of the planning being done for the establishment of heavy industry estates in the Pilbara. In addition, the draft Karratha Area Development Strategy, which included reference to the petrochemical project, was released earlier this year for a period of public comment.

The possibility of a petrochemical project in the Pilbara was also highlighted in the Burrup Land Use Management Plan which received extensive public consultation before being finalised. The draft and final plan was prepared by a committee which involved the local community and Aboriginal interests. Further, the project was foreshadowed in the document describing the plans for the Maitland Industrial Area near Karratha which was prepared by Department of Resources Development and LandCorp for consideration by the EPA and advice from the EPA to the Minister for the Environment. As part of the EPA consideration and advice, the document was released for a period of public comment.

The above clearly demonstrates that there has already been considerable public consultation and opportunity for the local community and Aboriginal groups to be informed about and comment on the plans for a petrochemical project in the Pilbara. As the project proceeds there will be further opportunities, for example during the environmental assessment process and the consultation procedures put in place by the proponent, for the community in the widest sense to be informed about and comment on the project.

(4) Not applicable.

POLICE - HALLS CREEK RIOT

Working Group

2104. Mr GRAHAM to the Minister for Police:

(1) What was the cause of the riots in Halls Creek on 15 August 1996?

(2) Was a working group established to deal with the issue?

(3) If no to (2) above, what mechanisms were put in place to deal with the issue?

(4) If yes to (2) above -

(a) what organisations were represented on the working group;

(b) which individuals were represented on the working group;

(c) on what dates did the working group meet;

(d) what decisions have been made by the working group;

(e) what actions have been taken by Government as a consequence of decisions made by the working group;

(f) what additional funding has been allocated to Halls Creek as a consequence of the working group;

(g) what additional resources have been allocated to Halls Creek as a consequence of the working group;

(h) what has been the cost of the operations of the working group;

(i) what Government support has been allocated to the working group;

(j) to whom does the working group report;

(k) on how many occasions has the Minister met with representatives of the working group?

Mr DAY replied:

(1) Public disorder by a group.

(2) Yes. A Key Agency Forum was established under the leadership of the police.

(3) Not applicable.

(4) (a)-(b)

Inspector K Richards	Police
R Blackwood	Aboriginal Affairs Department
S Cannon	Family and Children's Services
M West	Ministry of Justice
K Hunter	Community Based Corrections Department
I Trust	Aboriginal and Torres Strait Islander Commission

(c) 23 August, 1996, a community meeting was attended by approximately 200 people and a committee was formed which held meetings on 1 September, 1996, 10 September, 1996 and 1 October, 1996. The Key Agency Group held a community meeting at Balgo on 28 August 1996, which resulted in Aboriginal Community councillors advising they intended to form a Combined Communities Committee. However, this was never formed because the community did not have a coordinator living on site.

(d) That Government agencies play a pro-active role in attending communities and dealing with social and health issues.
That nominated drinking areas are set up within Halls Creek town area.
That police restrict street drinking to a minimum.
That stronger policing is undertaken to ensure responsible dispensing of liquor from local outlets.
That the Halls Creek Aboriginal night patrol be re-introduced and locally supported.
That tighter restrictions are placed on the sale of alcoholic beverages in relation to trading hours.
That wardens from communities be utilised at functions as a buffer between community groups, the community residents, town residents and the police.
That police receive additional cultural awareness training.
That a more responsible administration and on-site coordination role is undertaken by ATSIC and Department of Aboriginal Affairs.

(e) Street drinking has been curtailed by police through additional patrols.
A designated drinking area has been nominated.
The Aboriginal night patrol has been re-instituted.
Alcohol sales are restricted.
Wardens have been trialed at functions.
Police now conduct a local cultural awareness program throughout the Kimberley.
The Department of Aboriginal Affairs with ATSIC have commenced addressing the administration problem.
Police are strictly enforcing the Liquor Licensing Act.

(f) All charges have been made within existing budget allocations.

(g) The Halls Creek police staff have increased by two and an additional vehicle provided. Housing has been provided for additional staff.

(h) Agencies have met their costs internally.

(i) The Key Agency Forum has had the State Government's full support.

(j) The Forum is currently operating under Police community leadership.

(k) Specific meetings have not been held with the Minister, however, ongoing monitoring and reporting through the responsible lead agency has been ongoing.

ENVIRONMENT - HYDROCARBONS

Automotive Airconditioners - Regulation

2117. Mr BROWN to the Minister for Energy:

(1) Does the State Government intend to introduce any legislation or regulations which would have the use of hydro-carbons as a refrigerant in automotive airconditioners controlled along similar lines to those that already exist in Queensland and/or the Northern Territory?

(2) What steps has the Government taken to investigate this matter?

(3) Has the Government made any decision on this matter?

(4) If so, what decision has been made?

(5) What action is proposed?

(6) Has the Government taken the decision not to initiate any legislation or regulations on the use of hydro-carbons in automotive airconditioners?

(7) If so, why?

Mr BARNETT replied:

(1) The Government intends to put in place a more light-handed regime of regulation than is in place in Queensland and the Northern Territory.

(2) Industry has been consulted on the need for regulation and related matters.

(3) Not formally, but notice of intention of the form of regulation proposed has been given in response to some enquiries.

(4) It is intended to enable regulation of minimum safety standards for the equipment by amending the scope of existing legislation, which presently does not cover the use of LPG for this kind of purpose. It is proposed to then draft new regulations that will require compliance with relevant national technical and safety standards. These would be enforced by the Office of Energy.

(5) The Office of Energy is presently preparing proposals to amend legislation. Once the power to draft regulations is available, industry will be consulted on the content of the proposed regulations.

(6) No.

(7) Not applicable.

POLICE - MOTOR VEHICLES

V8 and V6 - Conditions of Use

2146. Mrs ROBERTS to the Minister for Police:

(1) What are the conditions laid down for the police use of V8 and V6 motor vehicles by regional police officers?

(2) What are the number of accidents involving high speed pursuit vehicles for each of the following years -

(a) 1993;
(b) 1994;
(c) 1995;
(d) 1996;
(e) 1997?

Mr DAY replied:

(1) Historically, V8 motor vehicles have been purchased and utilised for traffic operations. Both V6 and V8 motor vehicles are used throughout the State on a regional basis and there are no overriding conditions or policy which govern the use of either type of vehicle for normal patrol duties. In the case of urgent duty driving situations only qualified drivers may respond to priority one tasks when driving appropriate police vehicles as laid down in the Commissioner's Orders and Procedures Manual.

(2) (a) 42.
(b) 97.
(c) 69.
(d) 50.
(e) 31 (as at October 9, 1997).

GOVERNMENT INSTRUMENTALITIES - NORTH WEST

Employees and Programs

2197. Mr GRAHAM to the Minister for Police; Emergency Services:

(1) What departmental staff in departments under the Minister's control are located in the following towns -

(a) Port Hedland;
(b) South Hedland;
(c) Tom Price;
(d) Paraburdoo;
(e) Telfer;
(f) Marble Bar;
(g) Nullagine;
(h) Karratha;
(i) Halls Creek;
(j) Wiluna;
(k) Dampier;
(l) Roebourne;
(m) Wickham?

(2) What are the classifications of those staff?

(3) What programs are currently being funded in the towns listed in (1) above, in the departments under the Minister's control?

Mr DAY replied:

Western Australia Police Service

(1)-(2) Staffing levels at police stations are subject to requirements and may vary to meet needs as they arise within each Police Region. Within the Northern Police Region, there are 345 authorised sworn positions from Commander to Constable and 22 authorised unsworn positions ranging from levels 6 to 1. All locations except Telfer have police stations.

(3) The Western Australia Police Service funds numerous initiatives designed to reflect the safety and security needs of the community. The expenses associated with these initiatives are met from within the annual budget allocations.

Bush Fires Board

(1)-(3) Nil.

Fire & Rescue

(1) (a-g) Nil.
(h) 3.
(i)-(m) Nil.

(2) Director - Level 8.
Area Manager - Level 6.
Directorate Support Officer - Level 2.

(3) Fire & Rescue Service of WA provides in line with its service delivery, volunteer support and training, emergency response activities and fire prevention activities.

State Emergency Services

(1) (a) Regional Manager, Assistant Regional Manager, Community Liaison Officer and Support Officer.
(b)-(m) Nil

(2) Regional Manager - Level 5.
Assistant Regional Manager - Level 3.
Community Liaison Officer - Level 3.
Support Officer - Level 1.

(3) Community Emergency Services.

POLICE - MULTANOVAS

Number and Location

2311. Dr CONSTABLE to the Minister for Police:

(1) How many multanovas are there in operation in Western Australia?

(2) What criteria are applied to determine the location of multanovas? In particular, does the accident history of the area affect the decision?

(3) In each of the last five years; what sums were raised through the use of multanovas?

Mr DAY replied:

(1) 14.

(2) The criteria is determined by the Speed Camera Placement Committee, which includes representatives from Office of Road Safety, Main Roads Western Australia, Royal Automobile Club of WA (Inc), Western Australia Municipal Council Association and the Western Australia Police Service. The information is obtained from:

- Main Roads WA statistics;
- Speed related crash spots;
- Areas of complaint;
- Discretion of Commander of Traffic Operations in relation to special traffic campaigns and events;

Crash history is the main priority.

(3) The Police Service does not hold this type of information. Refer to Ministry of Justice.

EDUCATION - DEPARTMENT

PT 2000 System - Cost

2313. Dr CONSTABLE to the Minister for Education:

(1) When was the PT 2000 computerised personnel system installed for use in the Education Department?

(2) What was the cost of installation of this system?

(3) What was the cost of training staff to use the system?

(4) Has the PT 2000 system been -

(a) replaced; or
(b) modified in any way?

(5) If yes to 4(a) or (b) above -

(a) when;
(b) why; and
(c) at what cost?

(6) If no to (4)(a) or (b) above, is it intended to replace or modify the PT 2000 system, and, if so -

(a) when;
(b) why; and
(c) at what cost?

Mr BARNETT replied:

In her question, the member refers to the "PT2000 computerised personnel system". It is assumed the honourable member is referring to the Schools Personnel 2000I system in use in approximately 220 schools throughout the State

(1) The P2000I system was first implemented in March 1996.

(2) The total cost for installation of the P2000I system was $1,839,500

(3) The total cost of training staff to use the system was $89,850

(4) (a) No.
(b) Yes.

(5) (a) The P2000I system was released in a phased approach. Each new release included an increase in functionality. The initial release included only basic functionality where staff could update personal details. The current release includes far greater functionality including Relief Teacher payments and Leave processing for all staff. These releases have taken place in three stages being March, July and September 1996.

(b) It was always planned that elements of the system would be phased in over time in order to ease school staff into the comprehensive changes being made.

(c) The total cost of enhancements have been included in the installation cost above.

(6) (a)-(c) The P2000I system is and always has been a component of the Education Department's Personnel 2000 Project. The Project is essentially the successor to the previous HRMIS (Human Resource Management Information System) Project which was initiated in 1993 with the aim of selecting and implementing a computerised human resource system for the Department. The HRMIS Project was unable to achieve its aims for a number of reasons. Broadly, these related to changes in the business environment, and the complex, centralised business processes operating in Human Resource operational areas. The Personnel 2000 Project has been initiated as a result of a combination of:

- the outcomes of the HRMIS Project;
- the review of the Education Act and Regulations;
- the general devolution agenda;
- the Hoffman Report; and,
- general reform in the public sector.

The Education Department is undergoing significant change particularly via a workplace reform agenda which initially is being implemented through a number of enterprise bargaining initiatives between the Department and its employees. These initiatives require the Department to critically review its business practices and policies to ensure that changes to roles and responsibilities of its employees will result in the benefits and increased productivity being sought. Many of these arrangements affect employees' roles in coordinating the development of the required frameworks and in simplifying the business of human resource to support this change.

Purpose: The aim of the new system is to eventually let schools manage their own personnel functions independently of the central office. This will mean more efficient rostering, payroll processing and faster leave allocation. The desired outcome is to develop human resource management policy, processes and systems which:

- support improved management practice;
- support devolution of decisions and processes to the most appropriate level;
- support the Education Department's change initiatives;
- provide for flexibility in decision making;
- lead to effective workplace reform;
- improve efficiency and effectiveness; and
- simplify process.

The P2000I system was used to test the concept of personnel processes being completed at the school level and to assist the development of new school based processes. To complete the process, the Department has been developing a new personnel and payroll system (based on the PeopleSoft HR software) to replace the current outdated centralised system. It is planned to implement the new HR System in April 1998. The benefits which will result include:

- a state of the art human resource management platform which will ultimately encompass some 800 sites and approximately 30,000 employees;
- process improvement and increased efficiency, including speedier payment for employees, particularly relief teachers;
- replacement of current payroll system with a modern, high technology corporate Human Resource System;
- substantial reduction in Central Office staffing;
- technology and communications across schools;
- reduction in overpayments and an improved service;
- outsourced activities;
- Workplace Reform;
- immediate access by staff to information about leave and other entitlements; and
- comprehensive data for the Department and government about the workforce, accrued liabilities, etc to facilitate effective planning.

The total project cost is currently set at $11 million.

GOVERNMENT INSTRUMENTALITIES - MARKETFORCE

Contracts - Number and Value

2336. Mr BROWN to the Minister for Resources Development; Energy; Education:

(1) Since February 1993, has the Minister and/or any department or agency under the Minister's control engaged the company Marketforce?

(2) How many contracts has the company received?

(3) What is the value of each contract?

(4) When was each contract let?

(5) What has been the total amount paid to the company each financial year since that time?

Mr BARNETT replied:

(1)-(5) The member should be aware that it would require considerable resources to go back over five years of archives to obtain the information sought. It would be unreasonable to expect the resources to be committed but if the member has a specific question about any particular contract with Marketforce, I will consider providing that information.

FUEL AND ENERGY - GAS

Pipeline - Karratha, Roebourne and Wickham

2370. Dr GALLOP to the Minister for Resources Development:

(1) Is the Minister considering including the towns of Karratha, Roebourne and Wickham into the gas pipeline grid?

(2) If yes, when is it likely to occur?

(3) If no -

(a) what is the reason for their exclusion; and

(b) will the Minister give a commitment to review this situation?

Mr BARNETT replied:

(1) Yes.

(2) The Government intends to commence the call for expressions of interest in gas reticulation in such areas once the capacity to licence providers has been enacted by the Parliament under amendments to the Energy Coordination Act currently before Parliament.

(3) Not applicable.

BUILDING INDUSTRY - CONSUMER PROTECTION

National System - Agreement

2562. Mr BROWN to the Minister for Housing:

(1) Has the State Government been involved in any discussions with the Commonwealth Government and/or any other State Governments on developing a national framework of consumer protection for the building and development sector relating to such matters as licencing/registration, statutory warranty/indemnity insurance, coverage, criteria and competency, and dispute resolution?

(2) What action has been taken by the State Government in this regard?

(3) Has the State Government entered into an agreement or national framework with the Commonwealth and other State Governments?

(4) What matters are currently under consideration by the State Government?

Mr SHAVE replied:

(1) Yes.

(2) Staff of the Ministry of Fair Trading and of Builders Registration Board attended an expanded meeting of Builders Licensing Australia, the umbrella body of Australian building Licensing Authorities in July this year. That meeting agreed that consumer protection is the primary objective of the regulatory framework and endorsed proposals for a nationally consistent framework for builder regulation. Six components of such a framework were identified and agreed by those present. These were:

Licensing/ Registration/Accreditation
Dispute resolution
Contracts
Insurance
Education
Building standards/controls

There has been no formal endorsement by any State Government of this framework or of the undertaken by Building Licensing Australia, (BLA) pending further meetings of that Group.

(3) No. Any endorsement by Western Australia of a national framework would need to be subject to the competition policy review of the Builders Registration Act which is due to be completed and any recommendation implemented, by the year 2000.

(4) See parts (1) to (3) of this question.

WASTE DISPOSAL - LEVY

Urban Landfill - Annual Income

2663. Mr McNEE to the Minister for the Environment:

(1) With regard to the Government's proposed waste reduction and recycling policy, how much will the urban landfill levy raise each year?

(2) Will country municipalities be exempt from the levy?

(3) Will the State maintain in real terms, its current contribution of $2.3 million per year to waste management in addition to funds expected from the landfill levy?

(4) Specifically what special assistance will be provided to country municipalities to enable implementation of recycling?

Mrs EDWARDES replied:

(1) Approximately $3.5 million to $4.0 million per year.

(2) Yes. The levy will only apply to waste dumped in Perth metropolitan landfills. Perth metropolitan waste will be subject to the levy wherever it is dumped.

(3) The contributions to waste management programs in the forward estimates will be maintained.

(4) The draft State Waste Reduction and Recycling Policy proposes assistance to country municipalities in the form of waste management planning, educational and promotional campaigns, assistance with the acquisition of recycling infrastructure, and assistance in transport of recyclables to markets in Perth. These programs will be enhanced under the proposed Waste Management and Recycling Fund, which is included within the Environmental Protection Amendment Bill 1997.

EMERGENCY SERVICES - FIRE AND EMERGENCY SERVICES AUTHORITY BOARD

Representation of Urban Volunteer Firefighters

2695. Mrs ROBERTS to the Minister for Emergency Services:

(1) Is it the intention of Government not to have a democratically elected representative of urban volunteer firefighters on the new Fire and Emergency Services Authority Board?

(2) If so, how and why was this determined?

(3) Is the Minister prepared to reconsider this matter?

Mr DAY replied:

(1)-(3) In June 1997 I announced the establishment of an Emergency Services Taskforce chaired by Mr John Lloyd, to progress the implementation of a proposed new structure to improve coordination and planning across the Emergency Services portfolio. The Taskforce submitted its report containing 63 recommendations on 1 October and on 23 October I informed the House of the outcome of this initiative.

It is proposed to replace the existing Fire & Rescue Service and Bush Fires Boards with one Board of Management. Board members will be appointed, not on a representative or elected basis, but for their

individual expertise and experience in various areas such as strategic management, emergency services, finance, community education and relations, people management and voluntarism. Expressions of interest will be called for appointments to the new Board and as previously stated, a person's demonstrated commitment and understanding of volunteers will be taken into consideration.

I acknowledge there have been concerns expressed by some volunteers regarding their preference for an elected member on the Board. However, the majority of volunteers are prepared to give the new structure and appointed Board an opportunity to show the benefits it can provide. The Board will be reviewed two years after commencement and will be closely monitored.

In addition to the Board, each of the three emergency services agencies will have a consultative committee which will include volunteer and employee representatives and the Chairpersons of these Consultative Committees also be members of the new Board. It is further proposed that additional volunteer input to the decision-making of the new Authority will come from a proposed twice yearly volunteer forum.

QUESTIONS WITHOUT NOTICE

ROYAL COMMISSIONS - CITY OF WANNEROO

Corrupt Payment - Liberal Party Candidates' Election Campaigns

816. Dr GALLOP to the Premier:

I refer to the finding of the Royal Commission into the City of Wanneroo that money corruptly obtained by Dr Wayne Bradshaw found its way into the coffers of the Liberal Party in Western Australia. Is the continuing lack of leadership by the Premier on this matter - and his failure to have the corrupt money trail pursued - due to his adherence to the doctrine outlined by the member for Wanneroo yesterday that anyone who attacks a friend of his will cop it?

Mr COURT replied:

I cannot find the exact section in the report, but before question time I read that part relating to the $15 000. The report of the royal commission clearly states that the money went to Dr Bradshaw and not to the Liberal Party. I suggest that the Leader of the Opposition read all the quotes in the royal commission report.

LOCAL GOVERNMENT - ELECTIONS

Campaign Donations and Expenditure - Disclosure

817. Mr MacLEAN to the Minister for Local Government:

Will the Minister advise the House of the progress in preparing regulations under the Local Government Act in relation to disclosure of campaign donations and expenditure at local government elections?

Mr OMODEI replied:

I thank the member for some notice of this question. Yesterday the Leader of the Opposition made a second reading speech on his Bill to amend the Local Government Act by inserting new sections 4.100 to 4.107. It is a pity he did not read the earlier sections of the same part, particularly section 4.59. This section allows regulations to be made requiring the disclosure of gifts made to, or for the benefit of, candidates and to control the electioneering activities and practices of candidates. Most of the provisions that the Opposition's Bill seeks to enact can, therefore, already be dealt with by way of regulations. They are, in fact, under way.

On 16 October I directed the Executive Director of the Department of Local Government to provide advice on a number of issues that need to be addressed in preparing such regulations. Among those issues are questions about whether disclosure should be monitored by the returning officer, who is usually the chief executive officer, or by the Electoral Commissioner, and whether such regulations should apply to every council in the State. I have now received a preliminary report, which I will discuss with the Minister for Parliamentary and Electoral Affairs and the Electoral Commissioner. With the next local government elections due in May 1999 - although there may be some occasional elections before that - there is still some time yet to find an appropriate system to regulate such matters.

FAMILY AND CHILDREN'S SERVICES - BUDGET

Allocation of Resources

818. Ms ANWYL to the Minister for Family and Children's Services:

I refer to the Minister's media statement last Friday in which she claimed that the budget of the Department of Family and Children's Services is well on track. Is the only reason that department will not blow its budget this year the fact that the Minister is refusing to allocate sufficient resources to investigate serious allegations of child abuse?

Mrs PARKER replied:

I thank the member for the opportunity to speak to this matter. The Department of Family and Children's Services has had an increase of 24 per cent in its budget over the past four years, and that is certainly an indication of the priority given by this Government to matters relating to families and children. The department has also won national recognition for the way it has reorganised its response in handling reports -

Ms Anwyl: What about unallocated cases?

Mrs PARKER: If the member will be quiet, I will explain the situation. I consistently receive inquiries from Ministers and departments in other States who want to inspect some of the programs being run in Western Australia. In particular, parent information centres are being visited regularly by people from other States. Other States also want to buy some of the materials, videos and magazines prepared by the department in Western Australia.

Several members interjected.

The SPEAKER: Order! I allow interjections at times when it is productive to do so. The member for Kalgoorlie has asked a question and she has tried to get in an interjection or two. However, it is not acceptable for several other members to interject at the same time.

Mrs PARKER: The member for Kalgoorlie used the term "unallocated cases", and she claims the department and certain district officers cannot cope with the workload before them.

Ms Anwyl: That is what your staff say.

Mrs PARKER: When a case is reported to a district office, it is placed on an unallocated list. On a regular basis the team allocates cases according to their priority, and whether it involves an allegation of child maltreatment and needs a quick and high priority response. In the case of a child maltreatment allegation a response is made within 24 hours of receiving the notice. In the case of a child concern report, it may be allocated to a specific officer, or it may remain within the team pool to be monitored through the process. As such, that case can be termed unallocated, but in no way is it a fact that it has not been acted upon.

The department and this Government place a high priority on families and children and on providing a good and effective response to this difficult problem of child abuse.

The member for Kalgoorlie as shadow spokesperson has the opportunity to make a positive contribution to the debate and the sector. If she wants some information and if she wants to understand the processes that are in place, I am happy at any time to arrange for her to have a briefing. However, I am tired of the member for Kalgoorlie bringing half truths into this place and trying to twist what is the case. There has not been a call from the Midland office. If that office had cases in the unallocated pool that it wanted to allocate but did not have staff available, it would be able to call upon a regional pool. At no time has the staff at the Midland office called upon that extra facility because they were unable to deal with the demand.

SPORT AND RECREATION - MULLALOO SURF LIFE SAVING CLUB

Funding

819. Mr BAKER to the Parliamentary Secretary representing the Minister for Sport and Recreation:

Early last month I had the pleasure of attending the official launch of the 1997-98 Western Australian surf lifesaving season at Mullaloo Surf Life Saving Club. What is the nature and extent of financial assistance provided by the State Government to the surf lifesaving movement in the State, particularly the Mullaloo Surf Life Saving Club?

Mr MARSHALL replied:

I thank the member for some notice of this question. The Minister has provided the following response -

In the 1996-97 Budget, Surf Life Saving of Western Australia received $300 000 for the third year of its

beach safety services and education program Surfund agreement. This agreement is currently being renegotiated. Sport development plan funding of $38 750 was also received to support sport coaching, competition initiatives and administrative salaries. In 1996-97, no specific government allocations were made to Mullaloo Surf Living Saving Club other than as determined by Surf Life Saving of Western Australia in apportioning Surfund financial support to its clubs. In this instance, Mullaloo received $2 130 for rescue and educational equipment.

POLICE - MANJIMUP

Budget Cuts - Impact

820. Mrs ROBERTS to the Minister for Police:

Is the Minister aware that cuts to the operating budget of the Police Service will result in the following work restrictions being imposed on police in Manjimup in the new year: Five day working weeks; no night call outs; no police after 4.00 pm; and patrols only to within 10 kilometres of the town? Is the Minister aware of concerns expressed by the local business community about the impact of these cuts? Does the Minister agree that the people of Manjimup have a right to expect a reasonable police presence at all times?

Mr DAY replied:

No, I am not aware of those specific concerns. They sound reasonably fanciful to me. I entirely agree with the member for Midland that the people of Manjimup should expect an adequate Police Service and response to matters of concern to them, and I have no doubt that will be provided by the local police in Manjimup and the officers of the Bunbury police district.

POLICE - MANJIMUP

Budget Cuts - Letter from Manjimup Chamber of Commerce and Industry

821. Mrs ROBERTS to the Minister for Police:

Is the Minister telling me that he is not aware of the letter written to him on 13 November 1997 by the Manjimup Chamber of Commerce and Industry outlining those concerns?

Mr DAY replied:

Yes.

CONSTITUTIONAL FORUMS - COMMENCEMENT

822. Mr JOHNSON to the Premier:

At the opening of the Constitutional Centre on 29 October, the Premier announced that a series of Western Australian constitutional forums would be held in the lead up to the previously announced people's Constitutional Convention. When will the constitutional forums be held?

Mr COURT replied:

At the opening of the Constitutional Centre, we said that we proposed to hold six forums in different parts of the State and that the first forum would be held prior to Christmas. Since the opening of that centre, in discussions with Malcolm McCusker, who will chair the forums, it has been agreed that we should commence those forums after the Federal Government's convention on the republic has been held. We intend to commence the forums in March and conclude them by July. They will be held at six locations in the metropolitan area and regional centres. The three main themes of the forums will be the implications of a republic, the state Constitution, and federation issues. Three discussion papers will be prepared presenting different sides of the arguments to assist in the running of those forums. That will be a good opportunity for people to have their say on those critical matters.

HEALTH - BUDGET

Deficit - Media Ban

823. Mr McGINTY to the Minister for Health:

(1) Can the Minister now advise the House of the full extent of the deficit in the Health budget, including the deficit for metropolitan and country hospitals, and other health services?

(2) Did the Minister direct the Commissioner of Health to ban hospitals from discussing their budgets with the media?

(3) If no, does the Minister agree with the ban; if not, will he instruct the health commissioner to lift the ban on hospitals talking to the media?

Mr PRINCE replied:

(1)-(3) I have advised the House of the information given to me by the Metropolitan Health Services Board and I have advised the House of the information given to me on some of the country health services. I have no further information at this time.

Mr McGinty: What will you talk about with the Premier tomorrow?

Mr PRINCE: When I have the totality of the information, I will make it public, as I did last financial year and the previous financial year.

Mrs Roberts: Yesterday you said you would have the information today.

Mr PRINCE: I did not. I will meet with the Premier and we will discuss the 1998-99 budget. We will also discuss what is happening this financial year.

Ms MacTiernan: That would be helpful. Before you start to plan the new budget, you need to know what was in the last budget.

Mr PRINCE: Of course.

With regard to the allegation that I have directed the commissioner, I have not directed the commissioner at all, nor has the commissioner directed the chief executive officers of any of the hospitals.

Mr McGinty: A directive went out yesterday to the hospitals not to talk to *The West Australian*, and you know that.

Mr PRINCE: That is not true. The commissioner has spoken to the reporter from *The West Australian* about the inaccuracy of that report.

What will the member for Fremantle do about the patients at Swan District Hospital who cannot be looked after because he has been telling the missos to stay out on strike? That hospital has had to cancel all elective surgery, it cannot get food in, and it cannot get waste out.

The member for Fremantle has done that. He knows perfectly well that Spotless Services Australia Limited was awarded the contract on the condition that there was full take up of all staff positions at Swan. The missos have said that their stop work action is being undertaken to make a point; they fundamentally disagree with the government policy. The member for Fremantle was out there this morning. There was a further meeting at one o'clock, and the missos are staying out. What will the member for Fremantle do about the patients? What will the member for Fremantle do when the emergency ward closes down and the nearest emergency ward is 35 minutes away in Perth? What responsibility will the member for Fremantle take for that attack upon the sick of this State?

RAILWAYS - JANDAKOT EXTENSION

Date of Commencement

824. Mrs HOLMES to the Minister representing the Minister for Transport:

The proposed passenger rail extension to Jandakot is of utmost importance to my electors. I ask-

(1) What is the current date for commencement of this rail link?

(2) Can the date for completion be brought forward?

(3) If not, when is it anticipated that work will commence and finish?

(4) When does the Minister envisage that the rail link will be fully operational?

Mr OMODEI replied:

I am always impressed by the member for Southern Rivers. She is one of the best advocates for her electorate in this Parliament.

Mr McGinty: She is the only advocate for her electorate!

Mr OMODEI: The Minister for Transport has provided the following response -

(1) The Government will await the outcome of the master plan, which will detail the costs, infrastructure and rolling stock requirements and the time necessary to bring all this on stream before making any decision in this regard.

(2)-(3) That may be possible, depending on the outcome of the master plan, the passenger demand and the availability of finance.

Dr Gallop interjected.

The SPEAKER: Order!

Mr OMODEI: Take a few tablets. The answer continues -

(4) The Government is committed to complete the link by 2005.

POLICE - KIMBERLEY

Traffic Law Enforcement - Reduction of Service

825. Mrs ROBERTS to the Minister for Police:

(1) Is the Minister aware that as a result of regional police budgets in areas such as the Kimberley, officers in charge now consider that traffic vehicles are too expensive to run and as result are leaving those vehicles garaged?

(2) Is he aware that traffic duties are now virtually non-existent in the Kimberley?

(3) If so, what is he doing about it?

(4) If not, does it concern him that Delta is having this impact?

Mr DAY replied:

(1)-(4) No, I am not aware of any reduction in traffic law enforcement in the Kimberley region by the Police Service, and I would find it highly surprising if there were any lack of attention being given to enforcement of traffic laws in that region or any other region of Western Australia. However, I know that only three weeks ago I had the great pleasure of opening a new police station at Halls Creek. That is a great asset and addition to the local community and police officers working in that difficult area.

While I was there attending the Cabinet meeting - which all Ministers attended - I also had the great pleasure of visiting the new police station at Kununurra, which I will have the pleasure of opening in the next few months. Far from the Kimberley region's being neglected in respect of the provision of adequate facilities to police officers, the opposite is the case.

ROADS - PEELWOOD PARADE-OLD COAST ROAD INTERSECTION

Installation of Traffic Lights

826. Mr MARSHALL to the Minister representing the Minister for Transport:

This year's Budget allocated moneys to install traffic control lights at the intersection of Peelwood Parade and Old Coast Road. The reason is that there have been 55 accidents at that intersection in the past four years, with another bad accident recently. In addition, the nearby Erskine development, which has expanded to three subdivisions in six years, has led to increased traffic on the Old Coast Road. When will the traffic lights will be installed at Peelwood Parade?

The SPEAKER: I remind the House that question time is for questions and not for mini speeches.

Mr OMODEI replied:

Another very good representative. If he is not looking after the elderly, he is looking after traffic problems. The Minister has provided the following response -

I assure the member for Dawesville that Main Roads recognises and appreciates the traffic problems being experienced at the intersection of Peelwood Parade and the Old Coast Road. In recognition of this, the installation of traffic control signals has been included on the Main Roads' works program as a high priority job. The design work is currently under way and installation will be carried out as quickly as possible. The member will be interested to know that Main Roads is currently looking at a number of options to speed up

the delivery of the signal installation program through the allocation of additional resources. Every effort will be made to advance signal installation at this location.

SMALL BUSINESS - GOVERNMENT CONTRACTS

Payment of Invoices - Changes in System

Mr BROWN to the Premier:

I refer to changes to the system of paying invoices detailed in Treasurer's Instruction No 308, introduced on 12 September 1997, which stipulates that payments to suppliers shall be made as close as possible to the end of the month following the month in which a claim for payment is made.

(1) Does the new policy mean that small business may be kept waiting 55 days or more, depending on the time the invoice is submitted, for payment of an account?

(2) Why has the Government deemed it necessary to disadvantage small business by delaying payment for services rendered?

Mr COURT replied:

(1)-(2) It is normal commercial practice to pay accounts 30 days after the end of the month. Is the member saying that the accounts should be paid 30 days after the invoice date?

Mr Brown: The new system has meant that small businesses are kept waiting a lot longer for payment than was previously the case as a result of this change.

Mr COURT: It is 30 days. Is the member saying -

Mr Brown: The small business people who have contracts with the Government are complaining to me. I will tell them they are wrong if that is what the Premier is saying.

Mr COURT: This Government - unlike the Labor Government - pays its accounts 30 days after the end of the month, which is normal commercial practice.

Mr Graham: That was introduced by Brian Burke.

Mr COURT: He said he would do it but it did not happen.

Mr Graham interjected.

The SPEAKER: Order!

Mr COURT: I should explain this to the member. If he is saying that we should pay 30 days after the date of the invoice, it means that, if a company were supplying a number of goods over a month, it would need to be paid five, 10 or 15 cheques each month.

Mr Brown: Do you know what is in Treasurer's Instruction No 308?

Mr COURT: It states that accounts should be paid at 30 days, and that is normal commercial practice.

INDUSTRIAL RELATIONS - WORKPLACE AGREEMENT

Kaiser-Bechtel Joint Venture

827. Mr BARRON-SULLIVAN to the Minister for Labour Relations:

Is the Minister aware of an agreement between a major south west employer and unions that provides a beneficial result for all parties?

Mr KIERATH replied:

I thank the member for some notice of this question. I have recently been made aware of an agreement reached between the Kaiser Bechtel Joint Venture and the Construction, Forestry, Mining and Energy Union, the Amalgamated Metal Workers Union and the Communications, Electrical and the Plumbing Union. It is interesting to note what is included in the provisions of that agreement. All allowances and overtime have been incorporated into an annualised salary - so the workers gave up their overtime and penalty rates. They also put all their leave entitlements into a leave bank, which is allocated each pay on a pro rata basis, and they work Monday to Friday on 10 hour shifts.

The reason I am raising this is that I congratulated them for reaching that agreement. That is precisely what we on this side of the Chamber have been saying for a long time should have happened.

Several members interjected.

Mr KIERATH: Listen to them; listen to how they scream. The trade union leaders, including Tony Cooke, spoke about these agreements in glowing terms. Why? He said that they provide better wages and conditions for the people involved, they increase job security and local content, and they encourage consultation between the management and the work force. That is what we on this side have been promoting. In this case, the unions have been involved in the process, and we congratulate them for that.

This has happened thanks to the industrial relations reforms that this Government has introduced. When the unions have not been prepared to reach agreements like this, the management and the work force have been able to make their own arrangements. I know on good authority that one of the reasons this agreement was triggered was that unions came to the party to negotiate so that workplace agreements and other direct negotiating tools were not included. That is the difference.

I want to place on record my congratulations to the unions, employees and companies involved. Members opposite should be a bit fairer about it. Equally, they should congratulate people when the unions are not involved and they reach those exact arrangements.

POLICE - COUNTRY LOCATIONS

Attendance at Perth Court Hearings - Costs

828. Mrs ROBERTS to the Minister for Police:

(1) Is the cost of a police officer in a country location attending court in Perth met from of the country region's budget or a central fund?

(2) Is the cost of a police officer in a country location attending training in Perth met from the country region's budget or a central fund?

Mr DAY replied:

(1)-(2) I will need to obtain this information from the Police Service. I assume that the member for Midland is asking for information on the question she asked last week about the speeding charge against Senator Ross Lightfoot. She asked at that time whether the charge would be proceeding. I am advised that it will and that the responsible officer will be flown to Perth to take part in that court case. A hearing is listed for the Midland Court of Petty Sessions on 16 March 1998.

POLICE - COUNTRY LOCATIONS

Attendance at Perth Court Hearings - Refusal of Permission

829. Mrs ROBERTS to the Minister for Police:

As a supplementary question, is the Minister aware that in order to save money on travelling costs, country police officers are being refused permission to attend court hearings in Perth as witnesses and that this is resulting in charges being withdrawn or acquittals because of second best evidence being given?

Mr DAY replied:

No, I am not aware of that situation, but I will seek the relevant information.

YOUTH - YOUTH ADVISORY COUNCILS

Establishment

830. Mr OSBORNE to the Minister for Youth:

The Minister has spoken about a youth portfolio initiative to establish a network of youth advisory councils right across Western Australia. A youth advisory council has just been established in my electorate of Bunbury. What has been the response from other councils and what kind of issues will it be addressing initially?

Mr BOARD replied:

I thank the member for Bunbury for his assistance in starting one of the early youth councils in Western Australia. Youth advisory councils have already commenced in Mandurah, Jerramungup, Roebourne, Cockburn, Rockingham,

South Perth, Kwinana, Denmark and Bunbury. Some 50 local authorities have shown an interest and 37 have already committed to the establishment of youth advisory councils. These councils will provide great advice to my portfolio and other Cabinet members seeking advice on young people and the initiatives we will take with the youth in this State. In their early meetings the youth councils will be advising on the youth expo next year. As I have already indicated to the House, one of the biggest youth expos in Australia will be held on the Esplanade between 19 and 22 March. Young people will have a very strong input into the big youth expo. Youth councils are now advising my portfolio of what they would like to see take place in the youth expo. We have very strong corporate sponsorship. I indicate to members who want to get involved and promote young people in their electorates that they have an opportunity to support the youth expo. We have available through our youth grants program an opportunity to support young people who want to participate in the youth expo. The youth expo on its final day will culminate in a battle of the bands competition. I am delighted that 550 young bands from throughout Western Australia have already applied to participate in that competition.

PORTS AND HARBOURS - NAVAL BASE, KWINANA

Reports

831. Ms MacTIERNAN to the Minister representing the Minister for Transport:

A planning and discussion paper released in March by the State Government advised that a new port in Cockburn Sound would not be needed until 2020 when Fremantle reached its full capacity. Responding to that report, the Minister for Transport said that the State Government would build a new port in Kwinana within 23 years as an extension to the Fremantle port.

(1) What reports or advice is the Minister now relying on as the basis for developing a new port in competition with Fremantle within four years?

(2) What do these reports or advice say about the impact of the new port on Fremantle?

(3) Will the Minister table copies of that report or advice?

Mr OMODEI replied:

The Minister for Transport has supplied the following response -

(1)-(3) The development of a new port at Naval Base, Kwinana will be conditional upon the interest demonstrated by the private sector in building, owning and operating such a port through the expression of interest process the Minister recently initiated. The new port will not be dependent on Western Australia's needs only but also the possible expansion of trade on a national basis. This will be part of any expressions of interests that come forward.
